

4 PUMP COURT

THE BUILDING SAFETY ACT 2022

A SECTION-BY-SECTION COMMENTARY
AND CASE DIGEST

SEAN BRANNIGAN KC
4 PUMP COURT

21 September 2026



seanbrannigankc.com/bsa

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Sean Brannigan KC, 4 Pump Court, Temple, London EC4Y 7AN
clerks@4pumpcourt.com · +44 (0)20 7842 5555

Note on this Edition

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First Edition — September 2026.

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CONTENTS

PART 1 – INTRODUCTION (SECTION 1).....	13
Section 1 – Overview of Act.....	14
PART 2 – THE REGULATOR AND ITS FUNCTIONS (SECTIONS 2–30).....	16
Section 2 – The building safety regulator.....	17
Section 3 – The regulator: objectives and regulatory principles.....	19
Section 4 – Duty to facilitate building safety: higher-risk buildings.....	23
Section 5 – Duty to keep safety and standard of buildings under review.....	25
Section 6 – Facilitating improvement in competence of industry and building inspectors.....	26
Section 7 – Proposals and consultation relating to regulations.....	28
Section 8 – Duty to establish system for giving of building safety information.....	30
Section 9 – Building Advisory Committee.....	32
Section 10 – Committee on industry competence.....	34
Section 11 – Residents’ panel.....	36
Section 12 – Committees: power to amend or repeal.....	40
Section 13 – Local authorities and fire and rescue authorities: assistance etc to regulator.....	42
Section 14 – FSO authorised persons: assistance etc to regulator.....	46
Section 15 – Provision of assistance etc: supplementary.....	49
Section 16 – Guidance about the provision of assistance.....	53
Section 17 – Strategic plan.....	55
Section 18 – Revised strategic plans.....	58
Section 19 – Annual report about information provided under mandatory reporting requirements.....	60
Section 20 – Statement of regulator’s engagement with residents etc.....	62
Section 21 – Report on certain safety-related matters.....	64
Section 22 – Authorised officers.....	66
Section 23 – Authorised officers: offences.....	69
Section 24 – Provision of false or misleading information to regulator.....	71

Section 25 – Review by regulator of certain decisions made by it.....	73
Section 26 – Right of appeal: requirement for review before appeal.....	76
Section 27 – Cooperation and information sharing.....	78
Section 28 – Fees and charges.....	82
Section 29 – Service of documents.....	85
Section 30 – Interpretation of Part 2.....	88
PART 3 – THE BUILDING ACT 1984 (SECTIONS 31–60).....	90
Section 31 – Higher-risk buildings etc.....	91
Section 32 – Building control authorities.....	100
Section 33 – Building regulations.....	107
Section 34 – Dutyholders and general duties.....	118
Section 35 – Industry competence.....	121
Section 36 – Lapse of building control approval etc.....	125
Section 37 – Determination of certain applications by Secretary of State or Welsh Ministers.....	130
Section 38 – Compliance and stop notices.....	134
Section 39 – Breach of building regulations.....	141
Section 40 – Liability of officers of body corporate etc.....	144
Section 41 – Revocation etc of certain provision made under section 2(2) of ECA 1972.....	146
Section 42 – Regulation of building control profession.....	148
Section 43 – Transfer of approved inspectors’ functions to registered building control approvers.....	172
Section 44 – Functions exercisable only through, or with advice of, registered building inspectors.....	174
Section 45 – Default powers of appropriate national authority.....	178
Section 46 – Higher-risk building work: registered building control approvers.....	182
Section 47 – Higher-risk building work: public bodies.....	190
Section 48 – Insurance: removal of requirements.....	192
Section 49 – Plans certificates.....	194
Section 50 – Cancellation of initial notice.....	199
Section 51 – New initial notices.....	203
Section 52 – Information gathering.....	212
Section 53 – Information.....	215
Section 54 – Functions under Part 3 of Building Act 1984.....	219
Section 55 – Minor and consequential amendments.....	221
Section 56 – Appeals.....	222
Section 57 – Fees and charges.....	224
Section 58 – Levy on applications for building control approval etc.....	227
Section 59 – Crown application.....	231
Section 60 – Application to Parliament.....	233
PART 4 – HIGHER-RISK BUILDINGS (SECTIONS 61–115).....	235
Section 61 – Overview of Part.....	236
Section 62 – Meaning of “building safety risk”.....	238
Section 63 – Recommendations about regulations under section 62.....	243
Section 64 – Advice about regulations under section 62.....	246
Section 65 – Meaning of “higher-risk building” etc.....	248
Section 66 – Regulations under section 65: procedure.....	252
Section 67 – Regulations under section 65: additional procedure in certain cases.....	255
Section 68 – Modification of Part in relation to certain kinds of higher-risk building.....	258
Section 69 – Recommendations about definition of “higher-risk building” etc.....	260
Section 70 – Advice about definition of “higher-risk building” etc.....	263
Section 71 – Meaning of “occupied” higher-risk building etc.....	266
Section 72 – Meaning of “accountable person”.....	268
Section 73 – Meaning of “principal accountable person”.....	275
Section 74 – Part of building for which an accountable person is responsible.....	278
Section 75 – Determinations by the tribunal.....	279
Section 76 – Requirement for completion certificate before occupation.....	281
Section 77 – Occupation: registration requirement.....	284
Section 78 – Registration of higher-risk buildings.....	286
Section 79 – Occupied building: duty to apply for building assessment certificate.....	289
Section 80 – Applications for building assessment certificates.....	292
Section 81 – Building assessment certificates.....	294

Section 82 – Duty to display building assessment certificate etc.....	297
Section 83 – Assessment of building safety risks.....	301
Section 84 – Management of building safety risks.....	304
Section 85 – Safety case report.....	308
Section 86 – Notification and provision of report to the regulator.....	312
Section 87 – Mandatory reporting requirements.....	315
Section 88 – Keeping information about higher-risk buildings.....	318
Section 89 – Provision of information etc to the regulator, residents and other persons.....	320
Section 90 – Provision of information etc on change in accountable person.....	324
Section 91 – Residents’ engagement strategy.....	327
Section 92 – Requests for further information.....	331
Section 93 – Complaints procedure operated by principal accountable person.....	334
Section 94 – Complaints procedure operated by the regulator.....	336
Section 95 – Duties on residents and owners.....	338
Section 96 – Contravention notices.....	341
Section 97 – Access to premises.....	344
Section 98 – Duty on regulator to enforce Part.....	347
Section 99 – Compliance notices.....	348
Section 100 – Compliance notices: supplementary.....	351
Section 101 – Offence: contravention giving rise to risk of death and serious injury.....	353
Section 102 – Special measures.....	355
Section 103 – Appeals against compliance notice etc.....	356
Section 104 – Appeals against decisions of the regulator made under this Part.....	358
Section 105 – Appeals against decisions of the regulator made under regulations.....	360
Section 106 – Appeals: supplementary.....	361
Section 107 – Enforcement of decisions of the First-tier and Upper Tribunal.....	363
Section 108 – Guidance.....	364
Section 109 – Cooperation and coordination.....	366
Section 110 – Managers appointed under Part 2 of the Landlord and Tenant Act 1987.....	368
Section 111 – Building safety directors of resident management companies.....	370
Section 112 – Implied terms in leases and recovery of safety related costs.....	373
Section 113 – Provision of building safety information.....	384
Section 114 – Commonholds.....	388
Section 115 – Interpretation of Part 4.....	391

PART 5 – OTHER PROVISION ABOUT SAFETY AND STANDARD OF BUILDINGS (SECTIONS 116–160)

.....	393
Section 116 – Remediation of certain defects.....	395
Section 117 – Meaning of “relevant building”.....	399
Section 118 – Section 117: height of buildings and number of storeys.....	409
Section 119 – Meaning of “qualifying lease” and “the qualifying time”.....	415
Section 119A – Meaning of “connected replacement lease”.....	424
Section 120 – Meaning of “relevant defect” and “relevant steps”.....	431
Section 121 – Associated persons.....	441
Section 122 – Remediation costs under qualifying leases etc.....	454
Section 123 – Remediation orders.....	466
Section 124 – Remediation contribution orders.....	482
Section 125 – Meeting remediation costs of insolvent landlord.....	507
Section 125A – Notifications by insolvency practitioners.....	510
Section 126 – Building industry schemes.....	515
Section 127 – Building industry schemes: supplementary.....	521
Section 128 – Prohibition on development for prescribed persons.....	524
Section 129 – Building control prohibitions.....	528
Section 130 – Building liability orders.....	532
Section 131 – Building liability orders: associates.....	562
Section 132 – Order for information in connection with building liability order.....	567
Section 133 – Service charges in respect of remediation works.....	573
Section 134 – Duties relating to work to dwellings etc.....	578
Section 135 – Limitation periods.....	583
Section 136 – Establishment of the new homes ombudsman scheme.....	591

Section 137 – The new homes ombudsman scheme.....	594
Section 138 – “Relevant owner”, “new build home” and “developer”	597
Section 139 – Regulations under section 138.....	601
Section 140 – Power to require persons to join scheme and to provide information.....	603
Section 141 – Register of members.....	607
Section 142 – Developers’ code of practice.....	608
Section 143 – Amendment of the Government of Wales Act 2006.....	611
Section 144 – New build home warranties.....	612
Section 145 – New build home warranties: financial penalties.....	616
Section 146 – Construction products.....	618
Section 147 – Liability relating to construction products: general definitions.....	621
Section 148 – Liability relating to construction products.....	625
Section 149 – Liability for past defaults relating to cladding products.....	630
Section 150 – Liability relating to construction products: limitation in England and Wales.....	639
Section 151 – Liability relating to construction products: limitation in Scotland.....	643
Section 152 – Costs contribution orders: general definitions.....	647
Section 153 – Costs contribution orders made by courts.....	649
Section 154 – Costs contribution orders made by the Secretary of State.....	653
Section 155 – Costs contribution orders: assessments.....	658
Section 156 – Amendment of Regulatory Reform (Fire Safety) Order 2005.....	662
Section 157 – Architects: discipline and continuing professional development.....	675
Section 158 – Architects: Appeals Committee.....	679
Section 159 – Architects Registration Board: fees and discharge of functions by a committee.....	683
Section 160 – Housing complaints made to a housing ombudsman.....	685
PART 6 – GENERAL (SECTIONS 161–171).....	688
Section 161 – Liability of officers of body corporate etc.....	689
Section 162 – Review of regulatory regime.....	695
Section 163 – Financial provisions.....	699
Section 164 – Crown application.....	700
Section 165 – Application to Parliament.....	702
Section 166 – Power of Secretary of State to make consequential provision.....	704
Section 167 – Power of Welsh Ministers to make consequential provision.....	706
Section 168 – Regulations.....	708
Section 169 – Extent.....	711
Section 170 – Commencement and transitional provision.....	714
Section 171 – Short title.....	720

INTRODUCTION

1. The Building Safety Act 2022¹ is the most significant piece of construction/building safety legislation enacted in England and Wales in a generation. It is likely to have every bit as profound an impact as the introduction of Adjudication. Born of the Grenfell Tower disaster of 14 June 2017 and the fundamental regulatory failures identified by Dame Judith Hackitt’s Independent Review,² the Act transforms the existing regulatory framework governing and litigation risk of construction projects. It creates a new Building Safety Regulator. It establishes a more stringent regime for higher-risk buildings. It introduces leaseholder protections against remediation costs that are

¹ Building Safety Act 2022 (c. 30). Royal Assent: 28 April 2022.

² Independent Review of Building Regulations and Fire Safety (the Hackitt Review), Final Report: Building a Safer Future (Cm 9607, May 2018).

unprecedented in their scope and retrospective reach. Most significantly, it extends limitation periods for claims under the Defective Premises Act 1972 to 15 years for prospective works and to 30 years retrospectively. It empowers the Courts to pierce the corporate veil through building liability orders. And it lays the groundwork for a new homes ombudsman, a reformed construction products regime, and an overhaul of the regulation of architects.

2. The Grenfell Tower Inquiry's Phase 2 Report, published on 4 September 2024,³ laid bare the systemic failures - of manufacturers, contractors, building control bodies, and government - that the BSA is designed to address. The Act is a dramatic response to a national tragedy.

WHY THIS COMMENTARY?

3. I have written this commentary because we are at a point of inflexion in the life of the Building Safety Act. The Act received Royal Assent on 28 April 2022. Its principal operative provisions came into force in phases between June 2022 and October 2023. The higher-risk building regime under Part 4 has been live since 1 October 2023. The Act is no longer new: but its impact is only now being understood. The first wave of case law is now arriving, and it is arriving quickly.
 - (a) In May 2025, the Supreme Court handed down its landmark decision in **URS Corporation Ltd v BDW Trading Ltd**⁴. URS resolved a number of critical questions relating to on section 135. More to the point it set out in very clear terms indeed the policy considerations which the Courts should apply to the Act.
 - (b) Similarly, the Upper Tribunal has delivered a series of important decisions on the leaseholder protection provisions in sections 116–125, including **Adriatic Land 3**, **Triathlon Homes**, and **Grey GR v Edgewater**⁵. These cases have begun to define the boundaries of the remediation order and remediation contribution order jurisdictions;

³ Grenfell Tower Inquiry, Phase 2 Report (HC 22, 4 September 2024).

⁴ **URS Corporation Ltd v BDW Trading Ltd** [2025] UKSC 21

⁵ **Adriatic Land 3 Ltd v Long Leaseholders** [2024] UKUT 113 (LC); **Triathlon Homes LLP v Stratford Village Development Partnership** [2024] UKUT 55 (LC); **Grey GR LP v Edgewater (Stevenage) Ltd** [2025] UKUT 18 (LC).

- (c) Similarly the High Court has grappled with the first building liability order applications under section 130,⁶ and has upheld a £14.5 million adjudication enforcement under the retrospectively extended DPA limitation period⁷; and
 - (d) Two further appeals to the Supreme Court are pending as at the date of this commentary.⁸
5. This is, in short, an Act in the process of being interpreted and applied for the first time. The case law is developing rapidly. The principles are being established now. The leading textbooks - *Keating on Construction Contracts*,⁹ *Hudson's Building and Engineering Contracts*,¹⁰ and *Jackson & Powell on Professional Liability*¹¹ - are doing well to keep up, but their treatment is necessarily spread across different chapters and confined by the scope of each work. There is, to date, no single work that takes the practitioner through the Act, section by section, with the statutory text, explanatory notes, case law, and commentary in one place.
6. This commentary is intended to go at least some way to fill that gap. Its purpose is a very practical one: to give the construction, property, and insurance practitioner a single reference work in which the complete text of each section is set out, together with the relevant explanatory notes, a detailed commentary on the provision's legal significance and practical operation, and a digest of all the case law that has considered it - together with clickable URLs for those cases.
7. I hope that that practicality is increased by this being a living document: my aim is that I, together with some of my colleagues at 4 Pump Court (who feature in many of the cases this ebook deals with) continue to update this book as new cases, statutory guidance - and thoughts – emerge.

THE STRUCTURE OF THIS WORK

⁶ **Click St Andrews** [2024] EWHC (TCC); **BDW Trading Ltd v Ardmore Construction Ltd** [2025] EWHC 434 (TCC).

⁷ **BDW Trading Ltd v Ardmore Construction Ltd** [2024] EWHC 2325 (TCC) (£14.5 million adjudication enforcement under DPA 1972 with 30-year extended limitation).

⁸ As at September 2026, the Supreme Court has granted permission to appeal in **Triathlon Homes LLP v Stratford Village Development** Partnership (on the retrospectivity of remediation contribution orders) and **Adriatic Land 5 Ltd v Long Leaseholders at Hippersley Point** (on the retrospectivity of legal costs protection under Schedule 8).

⁹ *Keating on Construction Contracts*, 12th ed. (2024), paras 14-165A, 15-060 to 15-068.

¹⁰ *Hudson's Building and Engineering Contracts*, 14th ed. (2023).

¹¹ *Jackson & Powell on Professional Liability*, 9th ed. (2022).

8. The commentary follows the structure of the Act itself. It is divided into six Parts, corresponding to the six Parts of the BSA:
- (a) Part 1: Introduction (section 1)- the overview provision, which sets out the scope of the Act and provides the roadmap for its contents.
 - (b) Part 2: The Building Safety Regulator (sections 2–30) - the creation of the Building Safety Regulator (originally within the Health and Safety Executive; a standalone body since 27 January 2026), its functions, strategic plan, committees, and information-sharing powers.
 - (c) Part 3: Building Act 1984 (sections 31–60) - the extensive amendments to the Building Act 1984, including the reformed building control regime, registered building inspectors, building control approval, and compliance and stop notices.
 - (d) Part 4: Higher-Risk Buildings (sections 61–115) - the new regulatory regime for higher-risk buildings in occupation, including registration, the safety case, accountable persons, building assessment certificates, residents’ duties, and the mandatory occurrence reporting system.
 - (e) Part 5: Other Provision about Safety and Standard of Buildings (sections 116–160) - the most heavily litigated Part of the Act, encompassing leaseholder protections and remediation costs (ss.116–125A), building industry schemes (ss.126–129), building liability orders (ss.130–132), service charges (s.133), the DPA 1972 amendment (s.134), the limitation extension (s.135), the new homes ombudsman (ss.136–145), construction products (ss.146–151), costs contribution orders (ss.152–155), fire safety (s.156), architects (ss.157–159), and the housing ombudsman (s.160).
 - (f) Part 6: General (sections 161–171) - corporate officer liability, the mandatory review of the regulatory regime, Crown and Parliamentary application, regulation-making powers, territorial extent, and commencement.

HOW EACH SECTION IS TREATED

9. Each section of the Act is addressed in the same format, designed to enable the practitioner to locate the relevant material quickly: it sets out methodically:
- (a) **Statutory text.** The full text of the section is set out, including all subsections and paragraphs. Where a section has been amended (by the Levelling-up and Regeneration Act 2023 or the Leasehold and Freehold Reform Act 2024), the amended text is given with the amendments noted.
 - (b) **Commencement and amendments.** A boxed note identifies when the section came into force, the statutory instrument (if any) that commenced it, and any textual amendments.
 - (c) **Explanatory notes.** The relevant paragraphs of the Explanatory Notes to the BSA are reproduced in italics, providing, for better or worse – and sometimes obviously for worse – the government’s own explanation of the provision’s intended effect.
 - (d) **Commentary.** An analytical commentary attempts to address the provision’s legal significance, its relationship to other provisions of the Act and to the wider law and its practical implications. Where a provision has generated case law, the commentary provides a brief analysis of the decisions and seeks to identify the principles that have emerged. Where — as in most cases — it has not, the commentary is short.
 - (e) **Case digest.** Where a section has been the subject of judicial consideration, a case digest is provided in a structured format: case name, citation, court, judge, date, key issues addressed, key issue decided, summary of the case, authorities cited, and link to the judgment. This enables the practitioner to identify the relevant authority at a glance and to locate the full text.
 - (f) **Practical notes.** Where a provision raises specific practical issues for advisers, a practical note highlights the key points.

THE LEGISLATIVE CONTEXT

10. The BSA does not stand alone. It has *already* been amended by two subsequent Acts of Parliament: the Levelling-up and Regeneration Act 2023¹² and the Leasehold and Freehold Reform Act 2024. The LURA 2023 made targeted amendments to the leaseholder protection provisions, including the insertion of section 119A (with retrospective effect to 28 June 2022) and amendments to the regulation-making powers. The LFRA 2024 inserted a new section 125A (building remediation schemes) and made consequential amendments throughout Part 5. Both sets of amendments are noted and analysed in this commentary.
11. The regulatory framework continues to evolve. In December 2025, MHCLG published its Single Construction Regulator Prospectus, consulting on proposals to unify the regulation of building safety, building control, and construction products under a single authority. The consultation closed on 20 March 2026, and a government response is expected in the summer. The BSR's own enforcement activity is accelerating. The first building assessment certificates under Part 4 are being issued. The Remediation Acceleration Plan envisages that all identified life-safety risks in residential buildings over 11 metres will be addressed by 2029. The Act is, in short, entering its most consequential phase.

A NOTE ON THE CASE LAW

12. The case digests in this commentary state the law as at 21 September 2026. I have sought to include every reported decision that addresses a provision of the BSA, whether at first instance or on appeal. Where a decision of particular significance is pending (such as the two outstanding Supreme Court appeals), this is noted. The reader should be aware, however, that the pace of new decisions is considerable. The First-tier Tribunal (Property Chamber) is now hearing a substantial volume of remediation order and remediation contribution order applications under sections 123 and 124. The Technology and Construction Court is dealing with the first wave of building liability order applications and adjudication enforcement claims involving the extended DPA limitation period. New decisions will supersede parts of this commentary. That is the

¹² Levelling-up and Regeneration Act 2023 (c. 55); Leasehold and Freehold Reform Act 2024 (c. 22).

nature of writing about an Act at this stage in its development. Indeed, it is my very reason for writing about it.

ACKNOWLEDGEMENTS

13. I am grateful to the authors of the practitioner works on which this commentary draws, and in particular to the editors and contributors of *Keating on Construction Contracts* (12th edition), *Hudson's Building and Engineering Contracts* (14th edition), and *Jackson & Powell on Professional Liability* (9th edition) Cross-references to these works are provided throughout the commentary.
14. I am particularly grateful to my colleagues at 4 Pump Court. As I say above, many of them have been involved in the leading cases which have emerged, sometimes even on the winning side. They are not only thinking about the issues thrown up by the BSA on a daily basis: they are shaping the law as it emerges. If any aspects of the commentary set out in this book strike the reader as helpful, it is most likely that that aspect comes from conversations with those colleagues. Errors, if any, are mine.

SEAN BRANNIGAN KC

4 Pump Court

Temple

London

EC4Y 7AN

September 2026

THE BUILDING SAFETY ACT 2022

A Section-by-Section Commentary and Case Digest

PART 1 – INTRODUCTION (SECTION 1)

SECTION 1 – OVERVIEW OF ACT

STATUTORY TEXT

- (1) This Act has 6 Parts, and contains provisions intended to secure the safety of people in or about buildings and to improve the standard of buildings.
- (2) Part 2 contains provision about the building safety regulator and its functions in relation to buildings in England.
- (3) Part 3 amends the Building Act 1984.
- (4) Amendments made by Part 3—
 - (a) provide that the regulator is the building control authority in relation to higher-risk buildings in England, and
 - (b) require the regulator (for England) and the Welsh Ministers (for Wales) to establish and maintain registers of building control approvers and building inspectors.
- (5) Part 4 is about occupied higher-risk buildings in England, and imposes duties on accountable persons.
- (6) Part 5 contains further provisions, including—
 - (a) provisions about remediation and redress;
 - (b) provision requiring a new homes ombudsman scheme to be established;
 - (c) powers to make provision about construction products;
 - (d) further provision about fire safety;
 - (e) provision about the regulation of architects;
 - (f) provision about housing complaints.
- (7) Part 6 contains general provisions.

EXPLANATORY NOTES

Section 1: Overview of Act

Effect

141. Section 1 is intended to assist the reader of the Act to understand the provisions that follow. It sets out the reason why the Act has been brought forward and signposts the main elements of the Act. This section is not intended to have legal effect; rather it guides the reader through the remaining provisions of the Act, which are intended to have legal effect.

Background

142. This is a new provision. It highlights that this Act amends the Building Act 1984.

COMMENTARY

1. Section 1 provides a structural overview of the Act. It is not intended to have independent legal effect. Instead it serves as a guide to the six Parts that follow. Its utility is primarily as an aid to statutory interpretation: as a result, in cases of doubt about the scope or purpose of a particular provision, reference to section 1 may assist in identifying the mischief at which the provision is aimed.
2. The section is however useful and may be relevant in argument in that it confirms that the Act is directed at two overarching objectives: (a) securing the safety of people in or about buildings, and (b) improving the standard of buildings. These dual objectives inform the construction of specific provisions throughout the Act, including the broad definitions of “building safety risk” in section 62 and “relevant defect” in section 120.
3. Part 2 (sections 2–29) establishes the Building Safety Regulator (originally within the Health and Safety Executive; since 27 January 2026 a standalone body sponsored by the Ministry of Housing, Communities and Local Government) and defines its general functions, including strategic planning, engagement with residents, and oversight of building control. Part 3 (sections 30–60) amends the Building Act 1984 to reform the building control regime, creating a new system of registered building inspectors and building control approvers. Part 4 (sections 61–115) establishes the detailed regime for occupied higher-risk buildings, including registration, assessment, and ongoing management of building safety risks.
4. Part 5 (sections 116–156) contains provisions on remediation, leaseholder protections, liability, construction products, and fire safety, as well as the new homes ombudsman scheme and provisions relating to architects. Part 6 (sections 157–170) contains general provisions including commencement, extent, and transitional arrangements.
5. Section 1 was brought into force at Royal Assent on 28 April 2022. There has been no reported case law on section 1 as at September 2026.

THE BUILDING SAFETY ACT 2022

A Section-by-Section Commentary and Case Digest

PART 2 – THE REGULATOR AND ITS FUNCTIONS (SECTIONS 2–30)

SECTION 2 – THE BUILDING SAFETY REGULATOR

STATUTORY TEXT

- (1) In this Part “the regulator” means the Building Safety Regulator.
- (2) Schedule 1 contains amendments of provisions of the Health and Safety at Work etc Act 1974

Words in s. 2(2) omitted (27.1.2026) by virtue of The Building Safety Regulator (Establishment of New Body and Transfer of Functions etc.) Regulations 2026 (S.I. 2026/20), reg. 1(2), Sch. 2 para. 11(b) (with reg. 5)

Words in s. 2(1) substituted (27.1.2026) by The Building Safety Regulator (Establishment of New Body and Transfer of Functions etc.) Regulations 2026 (S.I. 2026/20), reg. 1(2), Sch. 2 para. 11(a) (with reg. 5)

EXPLANATORY NOTES

Section 2: The Building Safety Regulator

Effect

143. Section 2 establishes the new Building Safety Regulator within the Health and Safety Executive.

144. Section 2 also introduces Schedule 1, which amends the Health and Safety at Work etc. Act 1974 to make provisions supporting the creation of the Building Safety Regulator within the Health and Safety Executive.

Background

145. This is a new provision.

146. Following advice from Dame Judith Hackitt (as Independent Ministerial adviser on the Building Safety Regulator), the Government intends that the Building Safety Regulator will take the form of a new division within the Health and Safety Executive.

COMMENTARY

1. Section 2 established the Building Safety Regulator (“the Regulator” or “BSR”), originally as a function of the Health and Safety Executive (“HSE”). That structural choice followed Dame Judith Hackitt’s recommendation that the new regulator should sit within an existing body with enforcement experience, and it gave the Regulator immediate access to the HSE’s prosecution machinery and institutional expertise in risk-based regulation.
2. That arrangement has ended. With effect from 27 January 2026 the Building Safety Regulator ceased to be part of the Health and Safety Executive and became a standalone body corporate sponsored by the Ministry of Housing, Communities and Local

Government: see the Building Safety Regulator (Establishment of New Body and Transfer of Functions etc.) Regulations 2026 (SI 2026/20), which transferred the building functions and made consequential amendments across Part 2 (the amendment annotations appear in the statutory text above). The restructuring anticipates the Single Construction Regulator proposals consulted on in the December 2025 Prospectus.

3. Section 2 was brought into force on 28 April 2022. The Regulator's enforcement practice is now developing: see **HSE v Integritas Property Group Ltd** [2025] EWHC 2613 (TCC), the first injunction obtained to restrain occupation of a higher-risk building without gateway 3 completion certification, digested under s.38 (a secondary-sourced note; the application was made while the HSE still exercised the building functions).

SECTION 3 – THE REGULATOR: OBJECTIVES AND REGULATORY PRINCIPLES

STATUTORY TEXT

- (1) The regulator must exercise its building functions with a view to—
 - (a) securing the safety of people in or about buildings in relation to risks arising from buildings, and
 - (b) improving the standard of buildings.
- (2) In exercising a building function (other than an excepted function), the regulator must have regard to the following principles—
 - (a) regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent, and
 - (b) regulatory activities should be targeted only at cases in which action is needed.
- (3) The duty in subsection (2) is subject to any other requirement affecting the exercise of the function.
- (4) In subsection (2) “excepted function” means—
 - (a) a function under any of sections 4 to 6, ...
 - (b)
- (5) In this Part “building function” means—
 - (a) any function of the regulator under, or under an instrument made under, this Act or the Building Act 1984;
 - (b) any prescribed function of the regulator;
 - (c)

S. 3(4)(b) and word omitted (27.1.2026) by virtue of The Building Safety Regulator (Establishment of New Body and Transfer of Functions etc.) Regulations 2026 (S.I. 2026/20), reg. 1(2), Sch. 2 para. 12(a) (with reg. 5)

S. 3(5)(c) omitted (27.1.2026) by virtue of The Building Safety Regulator (Establishment of New Body and Transfer of Functions etc.) Regulations 2026 (S.I. 2026/20), reg. 1(2), Sch. 2 para. 12(b) (with reg. 5)

EXPLANATORY NOTES

Section 3: The regulator: objectives and regulatory principles

Effect

147. Section 3 sets out the objectives that the Health and Safety Executive must follow when exercising its functions as the Building Safety Regulator (such functions are referred to as building functions), and certain principles which will guide the way the Building Safety Regulator undertakes its main operational functions.

148. The first objective is to secure the safety of people in or about buildings. This aim applies to risks to safety that are associated with buildings (rather than, for example, broader issues of general crime and disorder). The objective covers people either in buildings or in their immediate vicinity, as (for example) people close to a building could be hit by material from the building.

149. The second objective is to improve the standard of buildings. The Health and Safety Executive could fulfil this objective by taking steps that either improve the quality of a standard or lead to more consistent compliance with an existing standard. A standard is defined in section 30 and can cover the requirements of the building regulations, guidance in Approved Documents, as well as non-legislative British Standards set by the British Standards Institution, and standards recognised within industry.

150. When undertaking a specific activity, the Building Safety Regulator may consider that only one objective is relevant, or that one objective should carry more weight than the other.

151. The Building Safety Regulator will not be responsible directly for the construction or management of buildings - this Act, alongside the Building Act 1984 and building regulations, assigns clear duties in respect of those matters. For example, the Accountable Person is primarily responsible for ensuring that a higher-risk building is managed safely when occupied (see later sections). The intention of the statutory objective is to ensure that the Health and Safety Executive exercises its regulatory functions with the aim of securing safety and improving standards.

152. Section 3 then sets out principles to which the Building Safety Regulator must have regard when delivering its main operational functions. These principles are focused on the way in which the Building Safety Regulator should undertake its main operational functions. The principles reflect established regulatory good practice.

153. Under the principles, operational activity should be consistent, transparent and accountable, which could be secured by grounding operational activity on published policy and guidance, and publishing performance metrics about how the activity was undertaken. Activity should be targeted on cases where action is needed, and be proportionate, rather than (for example) requiring excessively costly measures for little benefit in terms of reduction in risk.

154. All the Building Safety Regulator's building functions are subject to the principles, except the regulator's general functions in sections 4 to 6. This reflects that these general functions focus on driving culture change and improvement across whole industries, or monitoring safety and standards across all buildings. When undertaking these very general functions, which are not focused on enforcing in individual cases, certain of the principles (in particular targeting action only at cases where action is needed) are not appropriate.

155. Section 3 defines the Building Safety Regulator's "building functions" as: 1) Building functions provided for in this Act, the Building Act 1984, and regulations made under those two pieces of legislation; 2) Functions of the Health and Safety Executive defined as building functions by regulations made under this section; 3) Functions of the Health and

Safety Executive provided for under the Health and Safety at Work etc. Act 1974 that relate directly to the other building functions (such as exercising the powers in new section 11A Health and Safety at Work etc. Act 1974, which enables the Health and Safety Executive to make arrangements to deliver its building functions).

156. Building functions are subject to the Building Safety Regulator's objectives, would form part of the Building Safety Regulator's strategic plan (see section 17), are relevant to powers to share information and duties to cooperate (see section 27 and Schedule 3) and are subject to the regular review of the regulatory system (see section 162).

Background

157. Section 3 is a new provision.

158. The principles draw on the example of section 21 of the Legislative and Regulatory Reform Act 2006. Utilising established principles of regulatory best practice, which apply to Health and Safety Executive's existing regulatory functions, will help ensure that the Health and Safety Executive delivers coherent and effective regulation across its different functions. The principles reflect both the approach the Health and Safety Executive takes to its existing functions, and the proportionate approach the Health and Safety Executive will take to its new building functions. Example 1 When making proposals to the Secretary of State for changes to the building regulations, the Building Safety Regulator could act in line with its objectives by suggesting changes to the regulations to seek to resolve a recurring problem with standards of buildings. Example 2 When undertaking its functions in respect of higher-risk buildings under the new regime in Part 4 of the Act, the Building Safety Regulator could exercise its functions with a view to securing the safety of people in or about buildings by preparing best practice guidance encouraging dutyholders to deliver their responsibilities for resident safety effectively. Example 3 Where dutyholders do not respond positively to encouragement and information, active enforcement of the new regime could also help meet the objective to exercise its functions with a view to securing safety. When enforcing Part 4, the Building Safety Regulator will have regard to the principles. We expect that the regulator will operate consistently and transparently, e.g. on the basis of a published enforcement framework, which is the approach suggested by the Regulator's Code. The action taken will be proportionate to the seriousness of the breach and targeted at cases where action is needed.

COMMENTARY

4. Section 3 sets out the Regulator's three statutory objectives: (a) securing the safety of people in or about buildings in relation to risks arising from buildings, (b) improving the standard of buildings, and (c) improving the standard of persons who carry on activities in connection with the construction or management of buildings. These objectives inform the exercise of all of the Regulator's functions. They are therefore likely to be highly relevant to any challenges made to the Regulator.

5. The section also prescribes regulatory principles, including acting proportionately, transparently, and in a manner consistent with the objectives. These principles are modelled on the Legislative and Regulatory Reform Act 2006 regulators' code. Again, these Regulatory principles are likely to be centrally relevant to any challenge made to any decision of the Regulator in the future.
6. There has been no reported case law on section 3 as at September 2026.

SECTION 4 – DUTY TO FACILITATE BUILDING SAFETY: HIGHER-RISK BUILDINGS

STATUTORY TEXT

- (1) The regulator must provide such assistance and encouragement to relevant persons as it considers appropriate with a view to facilitating their securing the safety of people in or about higher-risk buildings in relation to building safety risks as regards those buildings.
- (2) The assistance and encouragement that must be provided under subsection (1) includes, in particular, assistance and encouragement with a view to facilitating securing the safety of disabled people in or about higher-risk buildings in relation to building safety risks as regards those buildings.
- (3) For this purpose “relevant persons” means—
 - (a) residents of higher-risk buildings within the meaning of Part 4,
 - (b) owners of residential units in such buildings,
 - (c) persons who are accountable persons within the meaning of Part 4, and
 - (d) persons upon whom duties are imposed by virtue of paragraph 5B of Schedule 1 to the Building Act 1984 (dutyholders).
- (4) In subsections (1) and (2)—

“building safety risk” has the meaning given by section 62;

“disabled”: see section 30;

“higher-risk building” means—

 - (a) a higher-risk building within the meaning of Part 4 (see section 65), or
 - (b) a higher-risk building within the meaning of the Building Act 1984.
- (5) Parts 3 and 4 confer further functions on the regulator in relation to higher-risk buildings.

EXPLANATORY NOTES

Section 4: Duty to facilitate building safety: higher-risk buildings

Effect

159. Section 4 requires the Building Safety Regulator to assist and encourage those responsible for the safe construction and management of higher-risk buildings, as well as residents in those buildings, to secure the safety of people in or around those buildings in relation to building safety risks. This includes helping to make sure that disabled people are

safe from building safety risks. This section should be read alongside Part 3 and Part 4 of the Act.

160. *The effect of this section is to ensure that the Building Safety Regulator takes a proactive role and does not limit its regulatory activity in respect of higher-risk buildings to enforcement. This section requires that the Building Safety Regulator takes other steps to enhance the safety of people in higher-risk buildings in relation to building safety risks, such as developing and publishing best practice guidance or running workshops with those responsible for building and managing higher-risk buildings.*

161. *This section does not create any individual right to assistance in a particular case.*

Background

162. *This is a new provision. Example 1 The Building Safety Regulator could meet this duty in respect of Accountable Persons by setting up working groups to understand the obstacles to compliance with the new regime, and then taking steps to overcome the difficulties identified, such as providing better quality information and guidance to these groups. Example 2 The Building Safety Regulator could test publicity materials aimed at residents of higher-risk buildings with the residents' panel, to help ensure that the Building Safety Regulator's communications with residents are well-targeted and effective. Example 3 The Building Safety Regulator could publish best practice guidance to help Accountable Persons secure the safety of disabled people in or around those buildings.*

COMMENTARY

7. Section 4 imposes a duty on the Regulator to facilitate building safety in relation to higher-risk buildings. This is the Regulator's core duty and underpins its oversight of the higher-risk building regime established by Part 4.
8. The duty is framed in terms of facilitation rather than direct responsibility for safety, reflecting the Act's principle that primary responsibility for building safety rests with the accountable persons and principal accountable persons under Part 4.
9. There has been no reported case law on section 4 as at September 2026.

SECTION 5 – DUTY TO KEEP SAFETY AND STANDARD OF BUILDINGS UNDER REVIEW

STATUTORY TEXT

The regulator must keep under review—

- (a) the safety of people in or about buildings in relation to risks as regards buildings, and
- (b) the standard of buildings.

EXPLANATORY NOTES

Section 5: Duty to keep safety and standard of buildings under review

Effect

163. Section 5 requires the Building Safety Regulator to monitor the safety of people in buildings and the standard of buildings, on an ongoing basis.

Background

164. This is a new provision.

Example

The Building Safety Regulator could meet this duty by working with its Building Advisory Committee to review the structural safety of buildings, for example in response to a number of buildings, built using the same materials and construction methods, collapsing. Following this review, if the Building Safety Regulator considers that an amendment to the building regulations is needed to strengthen structural safety of buildings which use that particular construction method and material, the Building Safety Regulator will make this recommendation to the Secretary of State, following a public consultation.

COMMENTARY

- 10. Section 5 requires the Regulator to keep the safety and standard of all buildings under review. Importantly, this is a broader duty than section 4, extending beyond higher-risk buildings to the entire built environment. It enables and empowers the Regulator to monitor trends, identify systemic risks, and make recommendations for regulatory change.
- 11. There has been no reported case law on section 5 as at September 2026.

SECTION 6 – FACILITATING IMPROVEMENT IN COMPETENCE OF INDUSTRY AND BUILDING INSPECTORS

STATUTORY TEXT

- (1) The regulator must provide such assistance and encouragement as it considers appropriate to—
 - (a) persons in the built environment industry, and
 - (b) registered building inspectors,with a view to facilitating their improving the competence of persons in that industry or members of that profession (as the case may be).
- (2) For the meaning of “the built environment industry” and “registered building inspector” see section 30.

EXPLANATORY NOTES

Section 6: Facilitating improvement in competence of industry and building inspectors

Effect

165. Section 6 provides that the Building Safety Regulator must provide assistance and encouragement to persons in the built environment industry and to registered building inspectors to facilitate improvement of competence of organisations and individuals in the industry, or members of the profession.

Background

166. This is a new provision. The Independent Review recognised competence as an area where improvement was needed across the built environment sector. *Example 1: Functions in relation to industry competence* Under this duty, the Building Safety Regulator may undertake activities such as setting the strategic direction of the competence committee (see section 10) to increase competence within the built environment industry, carrying out research and analysis, convening working groups, developing a communications strategy and other activities which support this duty. For example, the Building Safety Regulator may use the insights it gains into the competence levels within the built environment industry to focus the committee’s activities on areas where additional work is most needed and can have the most impact. The Building Safety Regulator can also develop and implement a communications plan with the industry competence committee to encourage industry’s use of the competence frameworks and to highlight the legal requirements regarding competence. *Example 2: Functions in relation to registered building inspectors* Under this duty, the Building Safety Regulator can develop a strategy to increase the competence of registered building inspectors through advice, guidance, training, working groups, advisory committees or research and analysis. One way the regulator might do this could be through commissioning research to look into current competence within the

profession and producing advice on key areas for improvement. Following this advice, the Building Safety Regulator could then publish new guidance for registered building inspectors on how to improve their competence and recommend training to help achieve this. Example 1 When making proposals to the Secretary of State for changes to the building regulations, the Building Safety Regulator could act in line with its objectives by suggesting changes to the regulations to seek to resolve a recurring problem with standards of buildings. Example 2 When undertaking its functions in respect of higher-risk buildings under the new regime in Part 4 of the Act, the Building Safety Regulator could exercise its functions with a view to securing the safety of people in or about buildings by preparing best practice guidance encouraging dutyholders to deliver their responsibilities for resident safety effectively. Example 3 Where dutyholders do not respond positively to encouragement and information, active enforcement of the new regime could also help meet the objective to exercise its functions with a view to securing safety. When enforcing Part 4, the Building Safety Regulator will have regard to the principles. We expect that the regulator will operate consistently and transparently, e.g. on the basis of a published enforcement framework, which is the approach suggested by the Regulator's Code. The action taken will be proportionate to the seriousness of the breach and targeted at cases where action is needed.

COMMENTARY

12. Section 6 requires the Regulator to facilitate the improvement of competence across the building industry and among building inspectors. This duty reflects the Hackitt Review's finding that competence failures were a significant contributing factor to the Grenfell Tower disaster.
13. The section underpins the new system of registered building inspectors and building control approvers established by Part 3 of the Act.
14. There has been no reported case law on section 6 as at September 2026.

SECTION 7 – PROPOSALS AND CONSULTATION RELATING TO REGULATIONS

STATUTORY TEXT

- (1) This section applies to regulations under—
 - (a) this Part, or
 - (b) any provision of Part 4 except section 62, 65 or 68.
- (2) The regulator may at any time make proposals to the Secretary of State for the making of regulations.
- (3) Before making a proposal, the regulator must consult such persons as it considers appropriate.
- (4) Before making regulations, other than regulations proposed by the regulator, the Secretary of State must consult—
 - (a) the regulator, and
 - (b) such other persons as the Secretary of State considers appropriate.

EXPLANATORY NOTES

Section 7: Proposals and consultation relating to regulations

Effect

167. Section 7 creates a power for the Building Safety Regulator to propose regulations to the Secretary of State and sets out the process the Building Safety Regulator must follow when it does so. This approach reflects the fact that the Building Safety Regulator will, in most cases, be best positioned to propose changes to the regulations.

168. The Secretary of State will be responsible for the making of regulations and can make regulations that have not been proposed by the Building Safety Regulator.

169. Section 7 ensures that there will always be consultation before the making of regulations. The Building Safety Regulator must consult on proposed regulations before recommending them to the Secretary of State, and the Secretary of State must consult before making regulations which have not been proposed by the Building Safety Regulator.

170. This section applies to regulations made under Parts 2 and 4 of the Act, with the exception of regulations that change the scope of the higher-risk regime (made under section 62, section 65 and section 68), where there are specific procedures in place for the making of regulations.

Background

171. Section 7 is a new provision which applies exclusively to regulations made under this Act. This section follows the same principles as section 11(3) and section 50 of the Health and Safety at Work etc. Act 1974.

172. The Act provides for an equivalent provision (new section 120B Building Act 1984) at Schedule 5, paragraph 77 in relation to regulations which are made under the Building Act 1984, including in relation to regulations made under the new provisions inserted into the Building Act 1984 by Part 3 of this Act.

Example

If the Building Safety Regulator wishes to propose amendments to regulations to the Secretary of State setting out changes to the content of Safety Case Reports for higher-risk buildings under section 85 in relation to fire safety, the Building Safety Regulator would first need to consult. The Building Safety Regulator would have discretion over whom to consult and might consult (amongst others) government departments who have a strong policy interest, existing committees of the Building Safety Regulator (such as the residents' panel), and fire and rescue authorities. The Building Safety Regulator would also have the option to undertake a full public consultation.

COMMENTARY

15. Section 7 requires the Regulator to make proposals to the Secretary of State about changes to building regulations as it considers appropriate. This gives the Regulator a formal role in the development of building standards, distinct from its enforcement function.
16. There has been no reported case law on section 7 as at September 2026.

SECTION 8 – DUTY TO ESTABLISH SYSTEM FOR GIVING OF BUILDING SAFETY INFORMATION

STATUTORY TEXT

- (1) The regulator must make arrangements for a person to establish and operate a voluntary occurrence reporting system.
- (2) A “voluntary occurrence reporting system” is a system to facilitate the voluntary giving of information about building safety to the person who operates the system.

EXPLANATORY NOTES

Section 8: Duty to establish system for giving of building safety information

Effect

173. Section 8 requires the Building Safety Regulator to make arrangements for a person to establish and operate a system for the voluntary reporting of information about building safety to the person operating the system.

Background

174. This is a new provision and is modelled on existing voluntary occurrence reporting systems used in industries including structural safety and aviation. Recommendation 1.4 of the Independent Review recommends that the existing Confidential Reporting on Structural Safety (CROSS) be extended and strengthened to cover a wider range of engineering safety concerns. This section will contribute to the fulfilment of this recommendation whilst retaining flexibility for another person to operate the voluntary occurrence reporting scheme.

175. The system of voluntary reporting of information about building safety is intended to promote a positive culture within safety management systems.

176. Reports will be received, anonymised, and then analysed and published by the person operating the system. Reports will be made on all buildings including those which are not higher-risk buildings. Safety occurrences which cause a significant risk to life safety in higher-risk buildings must be reported through mandatory occurrence reporting. Voluntary occurrence reporting is not intended to be used for enforcement action, but should confidentially capture occurrences that are of a lower risk level and are of value to industry for information sharing, intelligence gathering and improvement of safety within the built environment.

177. Guidance will be provided to set out what can be reported under the voluntary occurrence reporting system. The specified manner of reporting is envisaged to be via an online portal. Example During a concrete pre-pour quality inspection on the 4th floor of an apartment block, shear links to a slab over one column are found to be at the incorrect spacings. The issue is resolved immediately on site and doesn't present a significant risk to

life safety here, but a similar issue could be present but undetected on other sites and present a bigger danger elsewhere. The person working on the incident reports it through the voluntary occurrence reporting system, where it is then analysed, anonymised and published by the person operating that system. By voluntarily reporting this issue the important details and lessons learned are shared with industry. This release of intelligence would increase industry awareness of the issue and enable workers to better identify and resolve it should it occur elsewhere, averting danger that may otherwise have gone unnoticed.

COMMENTARY

17. Section 8 imposes a duty on the Regulator to establish and maintain a system for the giving of building safety information by persons involved in the design, construction, and management of higher-risk buildings. This is the statutory foundation for the “golden thread” of building information - a key recommendation of the Hackitt Review.
18. The golden thread concept requires that accurate, up-to-date information about a building’s design, construction, and ongoing management is created, maintained, and available throughout the building’s lifecycle.
19. There has been no reported case law on section 8 as at September 2026.

SECTION 9 – BUILDING ADVISORY COMMITTEE

STATUTORY TEXT

- (1) The regulator must ... establish and maintain a committee to be known as the Building Advisory Committee, with the following function.
- (2) That function is to give advice and information to the regulator about matters connected with any of the regulator's building functions except its functions relating to the competence of—
 - (a) persons in the built environment industry, and
 - (b) registered building inspectors.
- (3) The Building Regulations Advisory Committee for England, established under section 14 of the Building Act 1984, is abolished.

Words in s. 9(1) omitted (27.1.2026) by virtue of The Building Safety Regulator (Establishment of New Body and Transfer of Functions etc.) Regulations 2026 (S.I. 2026/20), reg. 1(2), Sch. 2 para. 13 (with reg. 5)

EXPLANATORY NOTES

Section 9: Building Advisory Committee

Effect

178. Section 9 sets out a duty for the Building Safety Regulator to set up an advisory committee. The name of this new committee will be the Building Advisory Committee. This committee will provide advice and information to the Building Safety Regulator in relation to its functions, other than issues of competence of persons within the building industry or registered building inspectors.

179. The existing Building Regulations Advisory Committee for England is to be abolished.

Background

180. This is a new provision, and is in addition to the general powers to set up committees relating to building functions and pay committee members under new section 11A of the Health and Safety at Work etc. Act 1974.

181. The Independent Review recommended that the Government should create a new structure to validate and assure guidance, oversee the performance of the built environment sector and provide expert advice.

Example

The Building Safety Regulator exercises its duty and sets up an advisory committee called the Building Advisory Committee. In carrying out its functions, the Building Safety Regulator identifies an emerging issue relating to the safety of buildings in Part B of the guidance to the Building Regulations which requires consideration and potentially some form of action. In assessing the issue, the Building Safety Regulator asks the Building

Advisory Committee for advice on the matter. The Building Advisory Committee investigates the issue and provides the Building Safety Regulator with expert advice. The Building Safety Regulator considers this technical advice and uses this information to help make an informed recommendation to improve Part B guidance to the Building Regulations.

COMMENTARY

20. Section 9 requires the Regulator to establish a Building Advisory Committee to provide advice on the exercise of the Regulator's building functions. This committee must include persons with relevant expertise and persons who represent the interests of residents of higher-risk buildings.
21. There has been no reported case law on section 9 as at September 2026.

SECTION 10 – COMMITTEE ON INDUSTRY COMPETENCE

STATUTORY TEXT

- (1) The regulator must ... establish and maintain a committee concerned with the competence of persons in the built environment industry (“industry competence”), with the following functions (and any other function that the regulator considers appropriate).
- (2) The functions are—
 - (a) monitoring industry competence;
 - (b) advising the regulator in relation to industry competence;
 - (c) advising persons in the built environment industry in relation to industry competence;
 - (d) facilitating persons in the built environment industry to improve industry competence;
 - (e) providing guidance to the public (or a section of the public) about ways of assessing the competence of persons in the built environment industry;
 - (f) carrying out analysis and research in connection with a function mentioned in any of paragraphs (a) to (e).

EXPLANATORY NOTES

Section 10: Committee on industry competence

Effect

182. Subsection (1) requires the Building Safety Regulator to establish an industry competence committee and provide support as necessary (for instance by providing the secretariat function).

183. Functions of the committee may include other matters but must include the functions set out in subsection (2), which include monitoring industry competence and facilitating its improvement, advising the Building Safety Regulator and others about industry competence, and providing guidance on industry competence.

184. The Building Safety Regulator may set up sub-committees of the committee, to consider specific issues or areas of interest.

Background

185. This is a new provision that will require the Building Safety Regulator to establish an industry competence committee with the functions specified in this section. This is in addition to the general powers to set up committees relating to building functions and pay committee members under new section 11A of the Health and Safety at Work etc. Act 1974.

186. *The Independent Review identified that the current landscape for ensuring competence is fragmented, complex and inconsistent - different disciplines have various routes for assessing competence which are not always clear or consistent. The Review recommended that the built environment industry should work together to develop proposals for a system for competence oversight, which include the establishment of an industry-led committee within the Building Safety Regulator to ensure a consistent approach to improving competence across industry. Example 1: Advising the Building Safety Regulator The Building Safety Regulator has appointed an industry competence committee as required by this provision. The committee provides advice to the Building Safety Regulator as the Regulator develops statutory guidance to the industry advising on how to comply with the legal requirements for industry competence. The committee also provides wider advice to the Building Safety Regulator on competence to support the Building Safety Regulator's wider industry competence function. The committee oversees, advises and monitors the built environment sector in relation to competence requirements for higher-risk buildings, which could include reviewing sector-specific competence frameworks against the benchmark competence standard (currently being developed by British Standards Institution), and makes recommendations for improvements. It publishes non-statutory guidance on the competence frameworks and advice and guidance for actors in the system to help them determine competence, and to signpost schemes or registers which the committee has assessed as meeting the overarching competence framework standard. Example 2: Working with stakeholders The committee convenes stakeholders to enhance competence within industry. This provides a forum for industry to work collaboratively to monitor, refresh and review competence frameworks and to drive competence more widely. Example 3: Research and analysis The committee carries out research and analysis to support all of the above work. One example could be an analysis of the effectiveness of the competence schemes operated in various sectors and whether there are gaps that need to be addressed for any particular sector.*

COMMENTARY

22. Section 10 requires the Regulator to establish a committee on industry competence to provide advice on industry competence matters. This committee supports the Regulator's duty under section 6.
23. There has been no reported case law on section 10 as at September 2026.

SECTION 11 – RESIDENTS’ PANEL

STATUTORY TEXT

- (1) The regulator must ... establish and maintain a committee with the functions mentioned in this section (and any other function that the regulator considers appropriate).
- (2) The committee is to consist of—
 - (a) such residents of higher-risk buildings as the regulator considers appropriate, and
 - (b) such relevant persons (if any) as it considers appropriate.
- (3) The regulator must take all reasonable steps to ensure that the committee includes—
 - (a) one or more residents of a higher-risk building who are disabled,
 - (b) a body that represents, supports or promotes the interests of any description of disabled people that includes residents of higher-risk buildings, or
 - (c) a member of a body within paragraph (b).
- (4) The committee is to give advice to the regulator about such matters connected with the regulator’s building functions and relating to higher-risk buildings as the regulator may specify.
- (5) The regulator must consult the committee before issuing or revising any of the following—
 - (a) guidance to residents of higher-risk buildings about any of their rights or obligations under Part 4 or regulations made under that Part;
 - (b) guidance relating to any duty under regulations made under section 89 to give information or documents to residents of higher-risk buildings or owners of residential units in such buildings;
 - (c) guidance relating to any of sections 91 to 93 or 95 or regulations made under any of those sections (engagement with residents etc, and residents’ duties).
- (6) If the committee has not been established at a time when the regulator has prepared guidance to which subsection (5) applies—
 - (a) that subsection has effect as if it did not require the committee to be consulted before the guidance is issued, and
 - (b) the committee must be consulted in relation to the issued guidance as soon as reasonably practicable.
- (7) See also—
 - (a) section 17(3) (duty to consult committee about regulator’s strategic plan);

- (b) section 94(2) (duty to consult committee about regulator’s complaints system).
- (8) In this section—
 - “higher-risk building” has the same meaning as in Part 4 (see section 65);
 - “relevant person” means—
 - (a) an owner of a residential unit in a higher-risk building,
 - (b) a body that represents, supports or promotes—
 - (i) the interests of any description of residents of higher-risk buildings or owners of residential units in such buildings, or
 - (ii) the interests of any description of persons that includes a description of such residents or owners, or
 - (c) a member of a body within paragraph (b).

EXPLANATORY NOTES

Section 11: Residents’ panel

Effect

187. This section requires the Building Safety Regulator to establish a committee known as the residents’ panel. The purpose of the panel is to ensure that residents have a voice in the work of the Building Safety Regulator, and the Building Safety Regulator has a broad power to consult the residents’ panel on any of its functions which impact the residents of higher-risk buildings.

188. The panel must include residents, and may also have members from the following groups: owners of residential units (e.g. flats) in higher-risk buildings who are not occupying the property (who could, for example, be impacted by expenses relating to the higher-risk building); and groups or organisations which are representative of residents and/or non-occupying leaseholder owners, advocate for them or support them. The representative group could be a member of the panel as a body, or the member of the panel could be an individual member of such representative bodies (expected to be experts or representatives nominated by that body).

189. The Building Safety Regulator must take all reasonable steps to secure the representation of the interests of disabled residents of higher-risk buildings on its Residents’ Panel. The Regulator could achieve this by ensuring the committee includes one or more residents of higher-risk buildings who are disabled, appointing a body to the panel who sends their most appropriate representative from time to time or nominating individual members of such representative bodies (expected to be experts or representatives nominated by that body). These bodies and representatives must be those which will support or promote the interests of disabled people including residents of higher-risk buildings

190. The Act also requires that the Building Safety Regulator must consult the residents' panel on certain matters which it is expected would be of particular interest and importance for residents of higher-risk buildings, specifically: • Under this section, the residents' panel must be consulted on guidance to residents on their rights and obligations under the new regulatory regime for higher-risk buildings in occupation. • Under this section, the residents' panel must be consulted on guidance relating to any duties under section 89 (provision of information etc. to the regulator, residents and other persons) where the guidance is about information provision to residents. • Under this section, the residents' panel must also be consulted on guidance relating to section 91 (residents' engagement strategy), section 92 (requests for further information), section 93 (complaints procedure operated by the principal accountable person), section 95 (duties on residents and owners) or regulations made under any of those Sections. • Section 17 requires that the Building Safety Regulator must consult the residents' panel on its strategic plan. • Section 94 requires that the regulator consult the residents' panel on its system for dealing with complaints from residents that are escalated to the Building Safety Regulator.

191. Section 11 should also be read alongside section 20, which requires the Building Safety Regulator to publish an annual statement on how it engages with the residents' panel, in addition to any other wider engagement with residents and related groups.

Background

192. This is a new provision. The provision reflects that the Independent Review found that trust in the building regulation and fire safety system needs to be rebuilt, with resident involvement and engagement placed at the heart of the new system. This is in addition to the general powers to set up committees relating to building functions and pay committee members under new section 11A of the Health and Safety at Work etc. Act 1974.

193. Having in place a residents' panel will ensure that residents are able to contribute to key policy changes related to residents made by the Building Safety Regulator and also empower the Building Safety Regulator to call on the expertise of the residents' panel for insight and support, wherever necessary.

194. Disabled residents may be particularly vulnerable if there is a major incident in a high-rise residential building. Therefore, specific provision is made to help ensure that the Building Safety Regulator seeks representation from disabled residents (or bodies that represent them).

COMMENTARY

24. Section 11 requires the Regulator to establish a residents' panel to provide advice on the exercise of the Regulator's functions in relation to matters that affect residents of higher-risk buildings. The panel must include persons who are residents of higher-risk buildings.

25. The residents' panel reflects the Act's emphasis on resident engagement and the Hackitt Review's recommendation that residents should have a meaningful voice in building safety.
26. There has been no reported case law on section 11 as at September 2026.

SECTION 12 – COMMITTEES: POWER TO AMEND OR REPEAL

STATUTORY TEXT

- (1) The Secretary of State may by regulations amend or repeal any of sections 9 to 11 (provision about specific committees).
- (2) But regulations repealing section 9, 10 or 11 may be made only if the regulator has made a proposal to the Secretary of State for the making of such regulations (as to which see section 7(2)).
- (3) Regulations under this section may make consequential amendments of this Act.

EXPLANATORY NOTES

Section 12: Committees: power to amend or repeal

Effect

195. Section 12 enables the Secretary of State to amend the provisions creating the three statutory committees (the Building Advisory Committee, the committee on industry competence and the residents' panel), and to make consequential changes to the Act itself, by regulations subject to the affirmative procedure. Regulations to repeal a committee are only able to be brought forward by Ministers following a proposal by the Building Safety Regulator to the Secretary of State.

Background

196. Section 9, section 10 and section 11 of this Act make provision for the creation of a Building Advisory Committee, a committee on industry competence, and a residents' panel.

197. The Building Safety Regulator has general powers to set up committees and change their remit over time under new section 11A(3) of the Health and Safety at Work etc Act 1974. The Government expects the role of the Building Advisory Committee, the committee on industry competence and the residents' panel to evolve over time. These three committees could have been set up under this general power to allow for this flexibility, without any specific provision on the face of the Act.

198. However, given the importance of these committees to the delivery of the reforms recommended by the Independent Review, the Government concluded that the role of the committees should be made clear in legislation, and any future changes in the role of the committees overseen by Parliament through this delegated power.

199. Repeal of the provision for a statutory committee would be a particularly important and sensitive use of the this delegated power and is intended to be used solely to assist the Building Safety Regulator deliver its functions effectively. Therefore, regulations to repeal a statutory Committee can only be brought forward following a proposal by the Building Safety Regulator to the Secretary of State. Example Over time the role and function of these committees and the Building Safety Regulator itself could change, for example if the scope

of the more stringent regulatory regime changes. In such instances, the effective working of the Building Safety Regulator could be supported by a change in the remit or membership of the committees, or their replacement with a more effective alternative. The use of this power in relation to the three committees could involve: In relation to the Building Advisory Committee, the regulation-making power could be utilised once the Building Safety Regulator and industry have matured, and their experience means they are able to adapt their respective roles in developing proposals for guidance and regulations . In relation to the committee on industry competence, the Government considers that the committee's role will be essential in the coming years to ensure the delivery of the Independent Review's recommendations on industry competence. The long-term objective of the policy is that the built environment industry will mature to the point where it can take on greater responsibility for its own standards-setting and competence oversight. Therefore, the eventual repeal of the committee on industry competence provisions could be an indication of success. In relation to the residents' panel, the provisions would need to be reviewed if there are major changes in the scope of the higher-risk buildings regime. For example, if hospitals were brought into scope of the Part 4 occupation regulatory regime, consideration would be given as to whether to extend the panel to include patients and NHS staff, and representatives of those groups. In those circumstances the consequential amendments power might also be used to amend section 20.

COMMENTARY

27. Section 12 confers a power on the Secretary of State to amend or repeal the provisions requiring the establishment of the committees under sections 9–11 by regulations. This is a “Henry VIII” power enabling future flexibility in the Regulator’s advisory structure.
28. There has been no reported case law on section 12 as at September 2026.

**SECTION 13 – LOCAL AUTHORITIES AND FIRE AND RESCUE AUTHORITIES:
ASSISTANCE ETC TO REGULATOR**

STATUTORY TEXT

- (1) A relevant authority may at the request of the regulator do anything for the purpose of—
 - (a) facilitating the exercise by the regulator of a relevant function, or
 - (b) enabling the relevant authority to facilitate the exercise by the regulator of a relevant function.
- (2) The regulator may, for a purpose mentioned in paragraph (a) or (b) of subsection (1), direct a relevant authority to do anything specified in the direction.
- (3) The direction may specify the way in which, and the time by which, the thing is to be done.
- (4) A direction—
 - (a) may be given only if the regulator considers that it is expedient for the authority to do the specified thing, and
 - (b) must state how, in the regulator’s opinion, the doing of the thing will facilitate the exercise of a relevant function or enable the authority to facilitate that exercise.
- (5) A direction may be given only with the consent of the Secretary of State.
- (6) Before giving a direction, the regulator must—
 - (a) make a written request under subsection (1) for the authority to do the thing, and
 - (b) have regard to any written representations made by the authority in the period specified in the request.
- (7) A request under subsection (6)(a) must—
 - (a) state that the regulator may seek consent to give a direction under this section if the request is not complied with,
 - (b) state how, in the regulator’s opinion, the doing of the thing will facilitate the exercise of a relevant function or enable the authority to facilitate that exercise, and
 - (c) specify a reasonable period for the authority to make any representations as to why it should not do the thing requested.
- (8) In this section—

“relevant authority” means a local authority or fire and rescue authority;

“relevant function” means—

- (a) a function of the regulator relating to—
 - (i) the regulation of higher-risk buildings (within the meaning of the Building Act 1984 or Part 4 of this Act), or
 - (ii) higher-risk building work (as defined by section 91ZA of the Building Act 1984), or
 - (b) in the case of a local authority, a function of the regulator relating to the regulation of any work for which the regulator is the building control authority by virtue of section 91ZB of the Building Act 1984.
- (9) A direction or consent under this section must be in writing.

EXPLANATORY NOTES

Section 13: Local authorities and fire and rescue authorities: assistance etc to regulator; Section 14: FSO authorised persons: assistance etc to regulator; and Section 15: Provision of assistance etc: supplementary

Effect

200. Section 13 enables the Building Safety Regulator to call on assistance from local authorities and fire and rescue authorities when regulating higher-risk buildings. It ensures that local authorities and fire and rescue authorities have the legal power to provide assistance requested by the Building Safety Regulator.

201. These provisions also extend to the provision of local authority support to the Building Safety Regulator, when the Building Safety Regulator acts as building control authority for a non-higher-risk building (notably in a mixed development including a higher-risk building).

202. This section enables the Building Safety Regulator to direct a local authority or fire and rescue authority to provide support requested under that section. This section includes safeguards, which are intended to ensure that direction of these independent bodies (who are subject to democratic local accountability) is not undertaken lightly: • Before making a direction, the Building Safety Regulator must first make a formal, written request to the local authority or fire and rescue authority setting out the reason why the assistance is being requested. The local authority or fire and rescue authority must be given the opportunity to consider whether it can provide the assistance requested, or to give reasons why this is not possible. • If the local authority or fire and rescue authority does not undertake the requested activity, the Building Safety Regulator may direct the relevant authority to do so. The Building Safety Regulator must have considered any reasons provided by the authority for not undertaking the activity, still consider it expedient for the authority to undertake the activity and have secured the consent of the Secretary of State for the direction.

203. Section 14 enables the Building Safety Regulator to call on assistance from Crown Premises Fire Safety Inspectors, appointed by the Secretary of State under the Fire Safety Order as “FSO authorised persons”, when regulating higher-risk buildings. It ensures that

these FSO authorised persons have the legal power to provide assistance requested by the Building Safety Regulator. This provision is intended to be used for Crown premises within scope of the Part 4 occupation regime.

204. This section does not contain a power to direct because FSO authorised persons are Crown servants. If a request for support by the Building Safety Regulator were not agreed and the Building Safety Regulator considered securing such support from FSO authorised persons to be essential, the Building Safety Regulator may approach the Secretary of State to request their assistance.

205. Section 15 makes further provisions in relation to the assistance to be provided by local authorities, fire and rescue authorities and FSO authorised persons. This section enables appropriate funding to be provided for the activity requested from local authorities and fire and rescue authorities, and any activity necessary to support this.

206. This section achieves this by enabling funding to be provided both through grants from the Secretary of State and enabling regulations to be made setting out how the Building Safety Regulator would reimburse local authorities and fire and rescue authorities for costs incurred in supporting it. FSO authorised persons are Crown servants and can be supported administratively by the Government without further legislation.

207. This section places a duty on fire and rescue authorities and local authorities to use competent staff when supporting the Building Safety Regulator. The Secretary of State will ensure that FSO authorised persons are sufficiently competent.

208. This section also enables the Secretary of State to make regulations in respect of the provision of support by local authorities, fire and rescue authorities, or FSO authorised persons to the Building Safety Regulator.

Background

209. Section 13, section 14 and section 15 are new provisions.

210. The Independent Review found that major regulatory decisions on higher-risk buildings could be improved by bringing together Health and Safety Executive expertise, local authority building control expertise (and where appropriate, expertise from the private sector) and fire safety expertise from fire and rescue authorities. Section 13 and section 14 are intended to enable the Building Safety Regulator to secure the involvement of local authorities and fire and rescue authorities in decision-making, to secure the objectives of the Independent Review.

211. For Crown premises, FSO authorised persons (otherwise known as Crown Premises Fire Safety Inspectors) act as the enforcement authority under the Fire Safety Order (see article 25(1)(e)). Therefore, it is appropriate that for Crown premises within scope of the regime, the Building Safety Regulator works closely with FSO authorised persons in decision-making on those buildings.

Example

When the Building Safety Regulator acts as the building control authority for higher-risk buildings, the Building Safety Regulator can use these provisions to put in place a “multi-

disciplinary team” including a fire safety expert from the relevant Fire and Rescue Service (or a FSO authorised person for Crown premises) and a building control specialist from the relevant local authority. Before taking key regulatory decisions such as agreeing that construction can start after reviewing full plans at Gateway two, the Building Safety Regulator would be able to take expert advice from the fire and rescue authority and local authority. Under its general powers (notably new section 11A Health and Safety at Work etc. Act 1974), the Building Safety Regulator could also secure expertise from the private sector (where appropriate) to support the work of the multi-disciplinary team. The power to direct would be used in exceptional circumstances. Local authorities and fire and rescue authorities will be under duties to cooperate with the Building Safety Regulator (and it with them) under Schedule 3 in respect of the Building Safety Regulator’s building functions for higher-risk buildings and any relevant function of the authorities. It is expected that the Building Safety Regulator will work cooperatively with fire and rescue authorities and local authorities to secure support from them. If the local authority or fire and rescue authority in the area where the higher-risk building is located is unable to provide support, the Building Safety Regulator could seek support from other fire and rescue authorities and local authorities whose capability is less stretched, or from the private sector. If there were a consistent problem with a fire and rescue authority or local authority not being able to provide support (for instance an unwillingness to employ any staff with the requisite competence), the Building Safety Regulator might consider that direction was necessary to secure its ability to effectively regulate higher-risk buildings in that area.

COMMENTARY

29. Section 13 requires local authorities and fire and rescue authorities to provide assistance to the Regulator when requested. This reflects the reality that the Regulator cannot operate in isolation and depends on local expertise, particularly for site inspections and fire safety assessments.
30. There has been no reported case law on section 13 as at September 2026.

SECTION 14 – FSO AUTHORISED PERSONS: ASSISTANCE ETC TO REGULATOR

STATUTORY TEXT

- (1) An FSO authorised person may at the request of the regulator do anything for the purpose of—
 - (a) facilitating the exercise by the regulator of a relevant function, or
 - (b) enabling FSO authorised persons to facilitate the exercise by the regulator of a relevant function.
- (2) In this section—

“FSO authorised person” means a person authorised as mentioned in article 25(1)(e) of the Regulatory Reform (Fire Safety) Order 2005;

“relevant function” means a function of the regulator relating to—

 - (a) the regulation of higher-risk buildings (within the meaning of the Building Act 1984 or Part 4 of this Act), or
 - (b) higher-risk building work (as defined by section 91ZA of the Building Act 1984).

EXPLANATORY NOTES

Section 13: Local authorities and fire and rescue authorities: assistance etc to regulator; Section 14: FSO authorised persons: assistance etc to regulator; and Section 15: Provision of assistance etc: supplementary

Effect

200. Section 13 enables the Building Safety Regulator to call on assistance from local authorities and fire and rescue authorities when regulating higher-risk buildings. It ensures that local authorities and fire and rescue authorities have the legal power to provide assistance requested by the Building Safety Regulator.

201. These provisions also extend to the provision of local authority support to the Building Safety Regulator, when the Building Safety Regulator acts as building control authority for a non-higher-risk building (notably in a mixed development including a higher-risk building).

202. This section enables the Building Safety Regulator to direct a local authority or fire and rescue authority to provide support requested under that section. This section includes safeguards, which are intended to ensure that direction of these independent bodies (who are subject to democratic local accountability) is not undertaken lightly: • Before making a direction, the Building Safety Regulator must first make a formal, written request to the local authority or fire and rescue authority setting out the reason why the assistance is being requested. The local authority or fire and rescue authority must be given the

opportunity to consider whether it can provide the assistance requested, or to give reasons why this is not possible. • If the local authority or fire and rescue authority does not undertake the requested activity, the Building Safety Regulator may direct the relevant authority to do so. The Building Safety Regulator must have considered any reasons provided by the authority for not undertaking the activity, still consider it expedient for the authority to undertake the activity and have secured the consent of the Secretary of State for the direction.

203. Section 14 enables the Building Safety Regulator to call on assistance from Crown Premises Fire Safety Inspectors, appointed by the Secretary of State under the Fire Safety Order as “FSO authorised persons”, when regulating higher-risk buildings. It ensures that these FSO authorised persons have the legal power to provide assistance requested by the Building Safety Regulator. This provision is intended to be used for Crown premises within scope of the Part 4 occupation regime.

204. This section does not contain a power to direct because FSO authorised persons are Crown servants. If a request for support by the Building Safety Regulator were not agreed and the Building Safety Regulator considered securing such support from FSO authorised persons to be essential, the Building Safety Regulator may approach the Secretary of State to request their assistance.

205. Section 15 makes further provisions in relation to the assistance to be provided by local authorities, fire and rescue authorities and FSO authorised persons. This section enables appropriate funding to be provided for the activity requested from local authorities and fire and rescue authorities, and any activity necessary to support this.

206. This section achieves this by enabling funding to be provided both through grants from the Secretary of State and enabling regulations to be made setting out how the Building Safety Regulator would reimburse local authorities and fire and rescue authorities for costs incurred in supporting it. FSO authorised persons are Crown servants and can be supported administratively by the Government without further legislation.

207. This section places a duty on fire and rescue authorities and local authorities to use competent staff when supporting the Building Safety Regulator. The Secretary of State will ensure that FSO authorised persons are sufficiently competent.

208. This section also enables the Secretary of State to make regulations in respect of the provision of support by local authorities, fire and rescue authorities, or FSO authorised persons to the Building Safety Regulator.

Background

209. Section 13, section 14 and section 15 are new provisions.

210. The Independent Review found that major regulatory decisions on higher-risk buildings could be improved by bringing together Health and Safety Executive expertise, local authority building control expertise (and where appropriate, expertise from the private sector) and fire safety expertise from fire and rescue authorities. Section 13 and section 14 are intended to enable the Building Safety Regulator to secure the involvement of

local authorities and fire and rescue authorities in decision-making, to secure the objectives of the Independent Review.

211. For Crown premises, FSO authorised persons (otherwise known as Crown Premises Fire Safety Inspectors) act as the enforcement authority under the Fire Safety Order (see article 25(1)(e)). Therefore, it is appropriate that for Crown premises within scope of the regime, the Building Safety Regulator works closely with FSO authorised persons in decision-making on those buildings.

Example

When the Building Safety Regulator acts as the building control authority for higher-risk buildings, the Building Safety Regulator can use these provisions to put in place a “multi-disciplinary team” including a fire safety expert from the relevant Fire and Rescue Service (or a FSO authorised person for Crown premises) and a building control specialist from the relevant local authority. Before taking key regulatory decisions such as agreeing that construction can start after reviewing full plans at Gateway two, the Building Safety Regulator would be able to take expert advice from the fire and rescue authority and local authority. Under its general powers (notably new section 11A Health and Safety at Work etc. Act 1974), the Building Safety Regulator could also secure expertise from the private sector (where appropriate) to support the work of the multi-disciplinary team. The power to direct would be used in exceptional circumstances. Local authorities and fire and rescue authorities will be under duties to cooperate with the Building Safety Regulator (and it with them) under Schedule 3 in respect of the Building Safety Regulator’s building functions for higher-risk buildings and any relevant function of the authorities. It is expected that the Building Safety Regulator will work cooperatively with fire and rescue authorities and local authorities to secure support from them. If the local authority or fire and rescue authority in the area where the higher-risk building is located is unable to provide support, the Building Safety Regulator could seek support from other fire and rescue authorities and local authorities whose capability is less stretched, or from the private sector. If there were a consistent problem with a fire and rescue authority or local authority not being able to provide support (for instance an unwillingness to employ any staff with the requisite competence), the Building Safety Regulator might consider that direction was necessary to secure its ability to effectively regulate higher-risk buildings in that area.

COMMENTARY

31. Section 14 requires persons authorised under the Fire Safety Order (“FSO authorised persons”) to provide assistance to the Regulator. This ensures coordination between the building safety and fire safety regimes.
32. There has been no reported case law on section 14 as at September 2026.

SECTION 15 – PROVISION OF ASSISTANCE ETC: SUPPLEMENTARY

STATUTORY TEXT

- (1) This section supplements sections 13 and 14.
- (2) A relevant authority must ensure that any of its staff involved in providing relevant assistance to the regulator have the appropriate skills, knowledge, experience and behaviours.
- (3) For this purpose “relevant assistance” means anything done by the authority pursuant to a request or direction, for the purpose of facilitating the exercise by the regulator of a relevant function.
- (4) The Secretary of State may by regulations make provision about the reimbursement by the regulator of expenditure incurred by relevant authorities in complying with requests or directions.
- (5) The Secretary of State may pay a relevant authority such amount as the Secretary of State considers appropriate in respect of things done by the relevant authority in complying with a request or direction.
- (6) The Secretary of State may by regulations make further provision in relation to requests and directions, including in particular provision about—
 - (a) things done by a relevant authority in connection with a request or direction;
 - (b) things done by an FSO authorised person in connection with a request.
- (7) In this section—
 - “direction” means a direction given under section 13;
 - “FSO authorised person” has the meaning given by section 14;
 - “relevant authority” has the meaning given by section 13;
 - “relevant function” has the meaning given by section 13;
 - “request” means a request made under section 13 or 14.

EXPLANATORY NOTES

Section 13: Local authorities and fire and rescue authorities: assistance etc to regulator; Section 14: FSO authorised persons: assistance etc to regulator; and Section 15: Provision of assistance etc: supplementary

Effect

200. Section 13 enables the Building Safety Regulator to call on assistance from local authorities and fire and rescue authorities when regulating higher-risk buildings. It ensures that local authorities and fire and rescue authorities have the legal power to provide assistance requested by the Building Safety Regulator.

201. These provisions also extend to the provision of local authority support to the Building Safety Regulator, when the Building Safety Regulator acts as building control authority for a non-higher-risk building (notably in a mixed development including a higher-risk building).

202. This section enables the Building Safety Regulator to direct a local authority or fire and rescue authority to provide support requested under that section. This section includes safeguards, which are intended to ensure that direction of these independent bodies (who are subject to democratic local accountability) is not undertaken lightly: • Before making a direction, the Building Safety Regulator must first make a formal, written request to the local authority or fire and rescue authority setting out the reason why the assistance is being requested. The local authority or fire and rescue authority must be given the opportunity to consider whether it can provide the assistance requested, or to give reasons why this is not possible. • If the local authority or fire and rescue authority does not undertake the requested activity, the Building Safety Regulator may direct the relevant authority to do so. The Building Safety Regulator must have considered any reasons provided by the authority for not undertaking the activity, still consider it expedient for the authority to undertake the activity and have secured the consent of the Secretary of State for the direction.

203. Section 14 enables the Building Safety Regulator to call on assistance from Crown Premises Fire Safety Inspectors, appointed by the Secretary of State under the Fire Safety Order as “FSO authorised persons”, when regulating higher-risk buildings. It ensures that these FSO authorised persons have the legal power to provide assistance requested by the Building Safety Regulator. This provision is intended to be used for Crown premises within scope of the Part 4 occupation regime.

204. This section does not contain a power to direct because FSO authorised persons are Crown servants. If a request for support by the Building Safety Regulator were not agreed and the Building Safety Regulator considered securing such support from FSO authorised persons to be essential, the Building Safety Regulator may approach the Secretary of State to request their assistance.

205. Section 15 makes further provisions in relation to the assistance to be provided by local authorities, fire and rescue authorities and FSO authorised persons. This section enables appropriate funding to be provided for the activity requested from local authorities and fire and rescue authorities, and any activity necessary to support this.

206. This section achieves this by enabling funding to be provided both through grants from the Secretary of State and enabling regulations to be made setting out how the Building Safety Regulator would reimburse local authorities and fire and rescue authorities for costs incurred in supporting it. FSO authorised persons are Crown servants and can be supported administratively by the Government without further legislation.

207. This section places a duty on fire and rescue authorities and local authorities to use competent staff when supporting the Building Safety Regulator. The Secretary of State will ensure that FSO authorised persons are sufficiently competent.

208. This section also enables the Secretary of State to make regulations in respect of the provision of support by local authorities, fire and rescue authorities, or FSO authorised persons to the Building Safety Regulator.

Background

209. Section 13, section 14 and section 15 are new provisions.

210. The Independent Review found that major regulatory decisions on higher-risk buildings could be improved by bringing together Health and Safety Executive expertise, local authority building control expertise (and where appropriate, expertise from the private sector) and fire safety expertise from fire and rescue authorities. Section 13 and section 14 are intended to enable the Building Safety Regulator to secure the involvement of local authorities and fire and rescue authorities in decision-making, to secure the objectives of the Independent Review.

211. For Crown premises, FSO authorised persons (otherwise known as Crown Premises Fire Safety Inspectors) act as the enforcement authority under the Fire Safety Order (see article 25(1)(e)). Therefore, it is appropriate that for Crown premises within scope of the regime, the Building Safety Regulator works closely with FSO authorised persons in decision-making on those buildings.

Example

When the Building Safety Regulator acts as the building control authority for higher-risk buildings, the Building Safety Regulator can use these provisions to put in place a “multi-disciplinary team” including a fire safety expert from the relevant Fire and Rescue Service (or a FSO authorised person for Crown premises) and a building control specialist from the relevant local authority. Before taking key regulatory decisions such as agreeing that construction can start after reviewing full plans at Gateway two, the Building Safety Regulator would be able to take expert advice from the fire and rescue authority and local authority. Under its general powers (notably new section 11A Health and Safety at Work etc. Act 1974), the Building Safety Regulator could also secure expertise from the private sector (where appropriate) to support the work of the multi-disciplinary team. The power to direct would be used in exceptional circumstances. Local authorities and fire and rescue authorities will be under duties to cooperate with the Building Safety Regulator (and it with them) under Schedule 3 in respect of the Building Safety Regulator’s building functions for higher-risk buildings and any relevant function of the authorities. It is expected that the Building Safety Regulator will work cooperatively with fire and rescue authorities and local authorities to secure support from them. If the local authority or fire and rescue authority in the area where the higher-risk building is located is unable to provide support, the Building Safety Regulator could seek support from other fire and rescue authorities and local authorities whose capability is less stretched, or from the private sector. If there were a consistent problem with a fire and rescue authority or local authority not being able to provide support (for instance an unwillingness to employ any staff with the requisite competence), the Building Safety Regulator might consider that direction was necessary to secure its ability to effectively regulate higher-risk buildings in that area.

COMMENTARY

33. Section 15 contains supplementary provisions relating to the duties of assistance under sections 13 and 14, including the power to make regulations about the scope and manner of assistance.
34. There has been no reported case law on section 15 as at September 2026.

SECTION 16 – GUIDANCE ABOUT THE PROVISION OF ASSISTANCE

STATUTORY TEXT

- (1) The regulator may issue guidance to—
 - (a) relevant authorities about their functions under section 13;
 - (b) FSO authorised persons about their functions under section 14.
- (2) The regulator may revise or withdraw any issued guidance.
- (3) A relevant authority must have regard to any guidance under this section when exercising its functions under section 13.
- (4) An FSO authorised person must have regard to any guidance under this section when exercising their functions under section 14.
- (5) Guidance under this section may be issued, revised or withdrawn only with the consent of the Secretary of State.
- (6) In this section—
 - “FSO authorised person” has the meaning given by section 14;
 - “relevant authority” has the meaning given by section 13.

EXPLANATORY NOTES

Section 16: Guidance about the provision of assistance

Effect

212. Section 16 enables the Building Safety Regulator to prepare guidance aimed at local authorities, fire and rescue authorities and FSO authorised persons about how they provide assistance to the Building Safety Regulator in the regulation of higher-risk buildings under section 13, section 14 and section 15. Local authorities, fire and rescue authorities and FSO authorised persons must have regard to such guidance, which can be issued only with the consent of the Secretary of State.

Background

213. This is a new provision. Example The guidance could set out what type of competence (skills, knowledge, experience and behaviours) should be demonstrated by local authority building control specialists, when supporting the Building Safety Regulator’s work on any complex and higher-risk construction projects, and in order to comply with the requirements around competence in section 15.

COMMENTARY

35. Section 16 enables the Regulator to issue guidance about the provision of assistance under sections 13–15. Authorities and persons must have regard to such guidance.

36. There has been no reported case law on section 16 as at September 2026.

SECTION 17 – STRATEGIC PLAN

STATUTORY TEXT

- (1) The regulator must—
 - (a) prepare a strategic plan, and
 - (b) submit it to the Secretary of State for approval.
- (2) A “strategic plan” is a plan setting out how the regulator proposes to carry out its building functions in the period to which the plan relates.
- (3) Before submitting it, the regulator must consult—
 - (a) the committee mentioned in section 11 (residents’ panel), and
 - (b) such other persons as the regulator considers appropriate.
- (4) The Secretary of State may approve the plan, with or without modifications.
- (5) Before approving the plan with modifications, the Secretary of State must consult the regulator.
- (6) The regulator must publish the approved plan, and act in accordance with it.
- (7) The first plan—
 - (a) must be submitted as soon as reasonably practicable after this section comes into force, and
 - (b) must relate to a period ending with the third 31 March to occur after the day on which it is submitted.
- (8) If the committee mentioned in section 11 has not been established at the time the first plan is prepared—
 - (a) subsection (3) has effect as if it did not require the committee to be consulted before the plan is submitted, and
 - (b) the committee must be consulted in relation to the first approved plan as soon as reasonably practicable.
- (9) Any other plan—
 - (a) must be submitted before the end of the period to which the most recent approved plan relates (“the current period”), and
 - (b) must relate to the period of three years, or such other period as the Secretary of State and the regulator may agree, beginning immediately after the end of the current period.

EXPLANATORY NOTES

Section 17: Strategic plan; and Section 18: Revised strategic plans

Effect

214. Section 17 creates a requirement for the Building Safety Regulator to produce a strategic plan specifying how the Building Safety Regulator proposes to carry out its building functions during the period to which the plan applies.

215. Given that residents are intended to be at the heart of the new regulatory system, the Building Safety Regulator must consult its residents' panel on the draft plan (and any other persons it considers appropriate) before seeking approval for the plan from the Secretary of State.

216. Once approved by the Secretary of State, the plan must be published and adhered to by the Building Safety Regulator. The first plan must be submitted by the Building Safety Regulator to the Secretary of State for approval as soon as reasonably practicable following the commencement of section 17. A new plan must be submitted to the Secretary of State before the period covered by the existing plan finishes.

217. Section 18 provides that a strategic plan may be revised at any time. The Building Safety Regulator may submit a revised plan for the Secretary of State's approval, or the Secretary of State may require that the Building Safety Regulator submit a revised plan. The revised plan must relate to the remainder of the period to which the current plan relates, or a period that the Secretary of State and the Regulator agree it should apply to. This ensures that should a major new risk to building safety be identified or a major incident occur which could require a change of priorities, the Secretary of State and Building Safety Regulator are able to put in place a revised plan to reflect those priorities.

Background

218. Section 11(5)(a)-(b) of the Health and Safety at Work etc. Act 1984 requires the Health and Safety Executive to submit particulars of what it proposes to do for the purposes of performing its functions, which must be approved by the Secretary of State and followed by the Health and Safety Executive. Under section 12(1) the Secretary of State may approve the Health and Safety Executive's proposals with or without modifications.

219. Schedule 1, paragraph 2 excludes building functions from the requirement under section 11(5)(a)-(b) of the Health and Safety at Work etc. Act 1974 to ensure that this provision (section 17) applies exclusively to the Building Safety Regulator's building functions. The rationale for creating a new requirement for a plan specifically relating to the Building Safety Regulator's building functions is to reflect the importance and distinctiveness of the Health and Safety Executive's new building functions, and to allow for the provision of consultation requirements (notably with the residents' panel) appropriate to the building functions. Example The only specific requirement for the content of the strategic plan is that it must set out how the Building Safety Regulator proposes to carry out its building functions in the relevant period. The detail of the plan will be a matter for the Building Safety Regulator and Secretary of State to determine. The

strategic plan will likely include information such as the Building Safety Regulator's priorities for the period, its key performance and success criteria, and the key risks to delivery. For its health and safety functions, the Health and Safety Executive publishes a more detailed business plan for each year to support delivery of the plan agreed by Ministers. While not a statutory requirement, it is expected that the strategic plan may be supported by a more detailed annual business plan for the building functions.

COMMENTARY

37. Section 17 requires the Regulator to prepare and publish a strategic plan setting out how it proposes to exercise its building functions. The plan must be prepared in consultation with the Building Advisory Committee and the residents' panel.
38. There has been no reported case law on section 17 as at September 2026.

SECTION 18 – REVISED STRATEGIC PLANS

STATUTORY TEXT

- (1) This section supplements section 17.
- (2) The regulator may at any time in the period to which a plan relates—
 - (a) prepare a revised plan relating to the remainder of that period (or to such other period as the Secretary of State and the regulator may agree), and
 - (b) submit it to the Secretary of State for approval.
- (3) The Secretary of State may at any time during the period to which a plan relates require the regulator to submit a revised plan for approval.
- (4) Where such a requirement is made, the revised plan—
 - (a) must be submitted as soon as reasonably practicable, and
 - (b) must relate to the remainder of the period to which the current plan relates (or to such other period as the Secretary of State and the regulator may agree).
- (5) Section 17(3) to (6) apply in relation to a revised plan.
- (6) If approved, the revised plan replaces the current plan.
- (7) In this section—

“current plan” means the first plan mentioned in subsection (2) or (3) (as the case may be);

“plan” means a strategic plan as defined by section 17.

EXPLANATORY NOTES

Section 17: Strategic plan; and Section 18: Revised strategic plans

Effect

214. Section 17 creates a requirement for the Building Safety Regulator to produce a strategic plan specifying how the Building Safety Regulator proposes to carry out its building functions during the period to which the plan applies.

215. Given that residents are intended to be at the heart of the new regulatory system, the Building Safety Regulator must consult its residents’ panel on the draft plan (and any other persons it considers appropriate) before seeking approval for the plan from the Secretary of State.

216. Once approved by the Secretary of State, the plan must be published and adhered to by the Building Safety Regulator. The first plan must be submitted by the Building Safety Regulator to the Secretary of State for approval as soon as reasonably practicable following the commencement of section 17. A new plan must be submitted to the Secretary of State before the period covered by the existing plan finishes.

217. Section 18 provides that a strategic plan may be revised at any time. The Building Safety Regulator may submit a revised plan for the Secretary of State's approval, or the Secretary of State may require that the Building Safety Regulator submit a revised plan. The revised plan must relate to the remainder of the period to which the current plan relates, or a period that the Secretary of State and the Regulator agree it should apply to. This ensures that should a major new risk to building safety be identified or a major incident occur which could require a change of priorities, the Secretary of State and Building Safety Regulator are able to put in place a revised plan to reflect those priorities.

Background

218. Section 11(5)(a)-(b) of the Health and Safety at Work etc. Act 1984 requires the Health and Safety Executive to submit particulars of what it proposes to do for the purposes of performing its functions, which must be approved by the Secretary of State and followed by the Health and Safety Executive. Under section 12(1) the Secretary of State may approve the Health and Safety Executive's proposals with or without modifications.

219. Schedule 1, paragraph 2 excludes building functions from the requirement under section 11(5)(a)-(b) of the Health and Safety at Work etc. Act 1974 to ensure that this provision (section 17) applies exclusively to the Building Safety Regulator's building functions. The rationale for creating a new requirement for a plan specifically relating to the Building Safety Regulator's building functions is to reflect the importance and distinctiveness of the Health and Safety Executive's new building functions, and to allow for the provision of consultation requirements (notably with the residents' panel) appropriate to the building functions. Example The only specific requirement for the content of the strategic plan is that it must set out how the Building Safety Regulator proposes to carry out its building functions in the relevant period. The detail of the plan will be a matter for the Building Safety Regulator and Secretary of State to determine. The strategic plan will likely include information such as the Building Safety Regulator's priorities for the period, its key performance and success criteria, and the key risks to delivery. For its health and safety functions, the Health and Safety Executive publishes a more detailed business plan for each year to support delivery of the plan agreed by Ministers. While not a statutory requirement, it is expected that the strategic plan may be supported by a more detailed annual business plan for the building functions.

COMMENTARY

39. Section 18 provides for the revision of the Regulator's strategic plan. The Regulator must keep the plan under review and revise it as appropriate.
40. There has been no reported case law on section 18 as at September 2026.

SECTION 19 – ANNUAL REPORT ABOUT INFORMATION PROVIDED UNDER MANDATORY REPORTING REQUIREMENTS

STATUTORY TEXT

- (1) As soon as reasonably practicable after the end of each financial year, the regulator must prepare and publish a report about the information provided to it during that year pursuant to the mandatory reporting requirements.
- (2) For this purpose, information is provided pursuant to the “mandatory reporting requirements” if it is provided under—
 - (a) section 87 (duty of accountable person to report to regulator), or
 - (b) any provision of building regulations that is prescribed by the regulations for the purposes of this section.
- (3) A report under this section must not contain personal data.

EXPLANATORY NOTES

Section 19: Annual report about information provided under mandatory reporting requirements

Effect

220. The new regulatory regime will require dutyholders to report certain information to the Building Safety Regulator on safety occurrences within higher-risk buildings as part of a mandatory occurrence reporting regime.

221. Section 19 requires the Building Safety Regulator to publish aggregated information it has received from dutyholders through mandatory occurrence reporting requirements on an annual basis. This section makes clear that information contained within the annual report must not contain any personal data.

Background

222. This is a new provision.

223. Recommendation 1.4 of the Independent Review makes clear that the outputs of mandatory reports (and statistical analysis of this data) should be publicly available. This section ensures that this information is made publicly available.

Example: Information published as part of an annual report

Information published as part of an annual report could include data on the number of reports received, the distribution of occurrences across different types of buildings, the prevalence of individual categories of occurrence, and interventions made by both dutyholders and the Building Safety Regulator to remediate hazards.

COMMENTARY

41. Section 19 requires the Regulator to publish an annual report about information provided under mandatory reporting requirements. This promotes transparency and accountability in the building safety system.
42. There has been no reported case law on section 19 as at September 2026.

SECTION 20 – STATEMENT OF REGULATOR’S ENGAGEMENT WITH RESIDENTS ETC
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STATUTORY TEXT

- (1) The regulator must, at least once each financial year, publish a statement about its engagement with—
 - (a) the committee mentioned in section 11 (residents’ panel),
 - (b) residents of higher-risk buildings,
 - (c) owners of residential units in higher-risk buildings, and
 - (d) bodies that represent, support or promote—
 - (i) the interests of any description of residents of higher-risk buildings or owners of residential units in such buildings, or
 - (ii) the interests of persons including any description of such residents or owners.
- (2) A statement under subsection (1) must, in particular, include information about the regulator’s engagement with residents of higher-risk buildings who are disabled.
- (3) A statement under subsection (1) may be published by including it in the regulator’s annual report.
- (4) In this section—

“annual report” means the report made under paragraph 12 of Schedule 1 to the Building Safety Regulator (Establishment of New Body and Transfer of Functions etc.) Regulations 2026;

“higher-risk building” means—

 - (a) a higher-risk building within the meaning of Part 4, or
 - (b) a higher-risk building within the meaning of the Building Act 1984.

Words in s. 20(4) substituted (27.1.2026) by The Building Safety Regulator (Establishment of New Body and Transfer of Functions etc.) Regulations 2026 (S.I. 2026/20), reg. 1(2), Sch. 2 para. 16 (with reg. 5)

EXPLANATORY NOTES

Section 20: Statement of regulator’s engagement with residents etc

Effect

224. Section 20 requires the Building Safety Regulator to produce a statement at least annually about how it has engaged with residents of higher-risk buildings and related groups about the work of the Building Safety Regulator. This statement must cover engagement with: • the residents’ panel (section 11); • residents of higher-risk buildings

(the report must specifically include engagement with residents who are disabled); • owners of residential units (e.g. flats) in higher-risk buildings who are not occupying the property; and • organisations that represent, support or promote the interests of residents or owners.

225. The Building Safety Regulator may publish this statement within the Health and Safety Executive's annual report, as required under paragraph 10(3) of Schedule 2 to the Health and Safety at Work etc. Act 1974. The Regulator could also publish the statement elsewhere.

Background

226. The provision reflects that the Independent Review found that trust in the building regulation and fire safety system needs to be rebuilt, with resident involvement and engagement placed at the heart of the new system. Disabled residents may be particularly vulnerable if there is a major incident in a higher-risk building. Therefore, specific provision has been made to ensure that the regulator seeks the views of disabled residents and is transparent about how, as the Building Safety Regulator, it engages disabled residents in its work.

Example

The Building Safety Regulator may consult with the residents' panel and (on its advice) set up focus groups with a range of residents from across England to ensure that its advice to residents of higher-risk buildings is helpful to residents with different needs and vulnerabilities. The Building Safety Regulator can include this engagement in the statement. Transparency about this work would help build public confidence that the new regulatory regime has prioritised the safety of residents.

COMMENTARY

43. Section 20 requires the Regulator to prepare and publish a statement about its engagement with residents of higher-risk buildings. This section reinforces the centrality of resident engagement to the Act's regulatory scheme.
44. There has been no reported case law on section 20 as at September 2026.

SECTION 21 – REPORT ON CERTAIN SAFETY-RELATED MATTERS

STATUTORY TEXT

- (1) Before the end of the period of three years beginning when this section comes into force, the regulator must—
 - (a) carry out a cost-benefit analysis of making regular inspections of, and testing and reporting on, the condition of electrical installations in relevant buildings;
 - (b) consider what further provision under the Building Act 1984, or in guidance under that Act, may be made about—
 - (i) stairs and ramps in relevant buildings,
 - (ii) emergency egress of disabled persons from relevant buildings, and
 - (iii) automatic water fire suppression systems in relevant buildings,with a view to improving the safety of persons in or about relevant buildings, and carry out a cost-benefit analysis of the making of that provision.
- (2) Before the end of that period, the regulator must—
 - (a) prepare one or more reports about the analysis mentioned in subsection (1) (which may also contain recommendations), and
 - (b) give them to the Secretary of State.
- (3) The Secretary of State must publish any report received under subsection (2).
- (4) In this section “cost-benefit analysis” means—
 - (a) an analysis of the costs together with an analysis of the benefits that will arise if the things mentioned in subsection (1)(a) are done or the provision mentioned in subsection (1)(b) is made, and
 - (b) an estimate of those costs and of those benefits (subject to subsection (5)).
- (5) If, in the opinion of the regulator—
 - (a) the costs or benefits cannot reasonably be estimated, or
 - (b) it is not reasonably practicable to produce an estimate,the cost-benefit analysis need not estimate them, but must include a statement of the regulator’s opinion and an explanation of it.
- (6) In this section—

“electrical installation” means fixed electrical cables or fixed electrical equipment located on the consumer’s side of the electricity supply meter;

“relevant building” means a residential building or any other kind of building that the regulator considers appropriate.

EXPLANATORY NOTES

Section 21: Report on certain safety-related matters

Effect

227. *This section requires the Building Safety Regulator to conduct reviews into four specific safety related matters within three years of the section coming into force.*

228. *These reviews will be conducted with a view to improving the safety of persons in or about relevant buildings.*

229. *The regulator must conduct a review, including a cost-benefit analysis, of the following area: • Making regular inspections of, and testing and reporting on, the condition of electrical installations in relevant buildings.*

230. *The regulator must conduct a review, including a cost-benefit analysis, of the following areas and assess the need to make further provision, under the Building Act 1984, or in guidance, for: • stairs and ramps in relevant buildings, and • emergency egress of disabled persons from relevant buildings. • Automatic water fire suppression systems in relevant buildings.*

231. *The regulator must prepare reports on the analysis and give them to the Secretary of State, who must then publish them.*

Background

232. *This is a new provision.*

Example

The Building Safety Regulator prepares four individual assessments of measures to improve the safety of people in or about relevant buildings. These may contain recommendations to the Secretary of State to make changes to the Building Regulations and associated guidance. The assessments, including cost and benefit analysis, will then be published.

COMMENTARY

45. Section 21 enables the Secretary of State to direct the Regulator to prepare a report on specified safety-related matters. This provides a mechanism for targeted investigation of emerging building safety concerns.
46. There has been no reported case law on section 21 as at September 2026.

SECTION 22 – AUTHORISED OFFICERS

STATUTORY TEXT

- (1) The regulator may authorise a person in relation to specified paragraphs of Schedule 2 (investigatory powers), for the purposes of any specified relevant building function.
- (2) A person may be authorised in relation to a paragraph of the Schedule only if they appear to the regulator to be suitably qualified to exercise any power conferred by virtue of that paragraph or do anything else mentioned in that paragraph.
- (3) An authorisation—
 - (a) must be in writing;
 - (b) may be varied or revoked by an instrument in writing.
- (4) When exercising or seeking to exercise a power conferred by virtue of Schedule 2, an authorised officer must if asked produce the authorisation (including any instrument varying it) or a duly authenticated copy.
- (5) In this section—

“authorised officer” means a person in respect of whom an authorisation under this section is in force;

“relevant building function” means any function of the regulator under, or under an instrument made under—

 - (a) Part 4 of this Act (higher-risk buildings), or
 - (b) the Building Act 1984;

“specified” means specified in the authorisation.

EXPLANATORY NOTES

Section 22: Authorised officers

Effect

233. This section allows the Building Safety Regulator to authorise individuals so that they can exercise specified powers in relation to “relevant building functions” on behalf of the Building Safety Regulator. Authorisation can only be given where the person is considered by the Building Safety Regulator to be qualified to exercise the power. The Building Safety Regulator will provide the person with written proof of this authorisation, which they will be required to produce if asked.

234. “Relevant building functions” are all of the Building Safety Regulator’s enforcement-related functions, including building control functions under the Building Act 1984 and the

function of enforcing the new occupation regime set out in Part 4 of this Act. This excludes the Building Safety Regulator’s general functions that do not have an enforcement element.

235. The powers available to authorised officers are found in Schedule 2 of this Act.

Background

236. The power set out in this section is designed to enable the effective functioning of the Building Safety Regulator’s functions in respect of higher-risk buildings. The Independent Review found that the regulation of higher-risk buildings could be improved by bringing together Health and Safety Executive expertise, local authority building control expertise (and where appropriate, expertise from the private sector) and fire safety expertise from fire and rescue authorities. Section 13 enables the Building Safety Regulator to secure the involvement of local authorities and fire and rescue authorities in its work on a higher-risk building.

237. In this framework, appropriately trained members of the Building Safety Regulator’s team will require powers to carry out functions on the Building Safety Regulator’s behalf. This is what this provision does.

238. The Building Safety Regulator will have discretion in designating different individuals to exercise different sets of powers, as some will have more competence and expertise than others. This will allow the Building Safety Regulator to assign the relevant powers to those persons who are qualified and equipped to exercise them.

Example

The Building Safety Regulator sets up a “multi-disciplinary team” to regulate the construction of a higher-risk building. The Building Safety Regulator requests assistance with building control matters from the local authority, which provides an appropriately trained building control expert to assist the Building Safety Regulator. The building control expert is designated with Building Safety Regulator powers to enter non-domestic premises without a warrant and to require information, documents etc. (powers under paragraphs 1 and 4 of Schedule 2). However, the Building Safety Regulator decides not to designate this individual with powers to obtain a warrant to enter premises (powers under paragraphs 2 and 3 of Schedule 2), as the individual has not been trained to draft and swear to an information for a justice of the peace. This building control expert, now designated as an authorised officer of the Building Safety Regulator, visits a building site to inspect the construction of the higher-risk building and ensure it complies with building regulations and with the plans and specifications submitted at Gateway 2. In accordance with subsection (4), if the site manager asks to see the authorised officer’s authorisation document, the authorised officer must produce it (or a duly authenticated copy).

COMMENTARY

47. Section 22 provides for the appointment of authorised officers by the Regulator to exercise functions on its behalf, including powers of entry, inspection, and investigation. Authorised officers are the Regulator’s primary enforcement personnel.

48. There has been no reported case law on section 22 as at September 2026.

SECTION 23 – AUTHORISED OFFICERS: OFFENCES

STATUTORY TEXT

- (1) A person who intentionally obstructs a person who is an authorised officer exercising a relevant building function commits an offence.
- (2) A person who, with intent to deceive, impersonates an authorised officer commits an offence.
- (3) In this section—
 - “authorised officer” means a person in respect of whom an authorisation under section 22 is in force;
 - “relevant building function” has the meaning given by that section.
- (4) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) A person guilty of an offence under subsection (2) is liable on summary conviction to a fine.

EXPLANATORY NOTES

Section 23: Authorised officers: offences

Effect

239. This section sets out the criminal offences of obstructing and impersonating authorised officers of the Building Safety Regulator. These offences are designed to protect the effective functioning and decision-making of the Building Safety Regulator by ensuring individuals do not impede the Building Safety Regulator’s operations.

240. Each of the offences has a different penalty to reflect the respective gravity of the offence.

241. The offences of obstructing and impersonating an authorised officer will be triable only in the magistrates’ court, with a maximum fine for obstruction of level 3 on the standard scale (currently £1000) (mirroring the offence of obstructing a police officer in section 89(2) of the Police Act 1996), while impersonation will carry an unlimited fine (mirroring the offence of impersonating a police officer in section 90(1) of the Police Act 1996).

Background

242. This section mirrors similar provisions supporting staff of other regulatory bodies such as the Food Standards Agency, Financial Conduct Authority and the Health and Safety Executive. These offences aim to protect staff of the Building Safety Regulator or those working on the Building Safety Regulator’s behalf, as well as residents and those subject to the regulator’s jurisdiction.

243. This is because obstruction could potentially disrupt or sabotage the operations of the Building Safety Regulator, which could adversely impact the safety of individuals in the building. In addition, those seeking unauthorised entry to dwellings could impersonate staff of the Building Safety Regulator to assist them in doing so. Example 1: Site obstruction The Building Safety Regulator has agreed an inspection plan for the construction of a higher-risk building with the relevant building owner and main contractors. When the officer arrives on the site, they find that they are obstructed from entering the building. The individual carrying out that obstruction can be prosecuted under this section. Example 2: Impersonation A person impersonates an authorised officer and contacts a building owner to obtain confidential information with intent to deceive, such as personal or financial details and resident information, for criminal purposes. This will engage the criminal offence and the person can be prosecuted.

COMMENTARY

49. Section 23 creates offences relating to the obstruction of authorised officers and failure to comply with requirements imposed by authorised officers. These are summary offences punishable by fine.
50. There has been no reported case law on section 23 as at September 2026.

SECTION 24 – PROVISION OF FALSE OR MISLEADING INFORMATION TO REGULATOR

STATUTORY TEXT

- (1) A person commits an offence if they provide false or misleading information to the regulator—
- (a) in purported compliance with a building enactment or a requirement imposed by virtue of such an enactment,
 - (b) in connection with an application made to the regulator under a building enactment, or
 - (c) for the purpose of avoiding enforcement action being taken or continued,
- and the person knows that, or is reckless as to whether, the information is false or misleading.
- (2) In this section—
- “building enactment” means any provision of, or of an instrument made under—
 - (a) Part 2 or 4 of this Act, or
 - (b) the Building Act 1984;
 - “enforcement action” means action taken with a view to, or in connection with—
 - (a) securing compliance with a building enactment or a requirement imposed by virtue of such an enactment, or
 - (b) the imposition of a sanction in respect of a contravention of any such enactment or requirement.
- (3) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding the maximum summary term for either-way offences or a fine (or both);
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both).

EXPLANATORY NOTES

Section 24: Provision of false or misleading information to the regulator

Effect

244. This section sets out the criminal offence of providing false or misleading information, in the circumstances described in subsection (1)(a)-(c), to the Building Safety Regulator.

As with the previous section, this offence is designed to protect the effective functioning and decision-making of the Building Safety Regulator.

245. This section sets out that providing false or misleading information is triable in either a magistrates' or the Crown court; the broad range of sentencing outcomes gives the courts options to address the different degrees of culpability possible with an offence where the mental element includes both intent and recklessness and the offence covers both false and misleading information. A person deliberately providing false information is different from a person providing misleading information, so the sentencing options available need to be equally disparate. If tried in a magistrates' court, the offence will carry a maximum penalty of an unlimited fine and/or the maximum term of imprisonment permitted in a magistrates' court as defined in section 29(1), i.e. 12 months (six months until the commencement of paragraph 24(2) of Schedule 22 to the Sentencing Act 2020). If tried in the Crown court, the maximum penalty will be an unlimited fine and/or two years' imprisonment.

Background

246. This section, as with section 22, mirrors similar provisions supporting staff of other regulatory bodies with the aim of protecting the staff of the Building Safety Regulator or those working on the Building Safety Regulator's behalf. The offence exists primarily to deter the provision of false information, which could disrupt or sabotage the operations of the Building Safety Regulator, which in turn could adversely impact the safety of individuals in the building.

Example: False claim of a building safety risk assessment

In an application to the Building Safety Regulator for a Building Assessment Certificate, an Accountable Person falsely claims that a building safety risk assessment under section 83 has been carried out. Upon discovering that the assessment has not been carried out, the Building Safety Regulator will have a range of options, including issuing a compliance notice under section 99, but would also be able to take criminal proceedings against the Accountable Person under this section.

COMMENTARY

51. Section 24 creates an offence of providing false or misleading information to the Regulator. The offence applies to any person who, in purported compliance with a requirement imposed by or under the Act, provides information that the person knows to be false or misleading in a material particular, or recklessly provides information that is false or misleading in a material particular.
52. This provision is triable either way and carries a maximum penalty of two years' imprisonment on indictment.
53. There has been no reported case law on section 24 as at September 2026.

SECTION 25 – REVIEW BY REGULATOR OF CERTAIN DECISIONS MADE BY IT

STATUTORY TEXT

- (1) This section applies in relation to a prescribed decision of the regulator.
- (2) A prescribed person may, before the end of a period prescribed for the purposes of this subsection, give a notice to the regulator requiring it to carry out a review of the decision in accordance with this section.
- (3) A notice under subsection (2) must—
 - (a) contain prescribed information,
 - (b) be in the prescribed form, and
 - (c) be given in the prescribed way.
- (4) The nature and extent of the review are to be such as appear to the regulator to be appropriate in the circumstances.
- (5) The review must take account of any representations made, or information given, by the person at a stage which gives the regulator a reasonable opportunity to consider the representations or information (and may take account of any other information).
- (6) On the conclusion of the review the regulator must either uphold or vary the decision.
- (7) The regulator must notify the person of the outcome of the review and its reasoning before the end of a period prescribed for the purposes of this subsection or such other period as may be agreed in writing (“the relevant period”).
- (8) Where the regulator is required to undertake a review but does not notify the person by the end of the relevant period—
 - (a) the review is treated as having concluded at the end of that period, and the regulator is treated as having upheld the decision, and
 - (b) the regulator must, as soon as reasonably practicable after the end of that period, notify the person of that fact.
- (9) The decisions that may be prescribed under subsection (1) are any decisions of the regulator under, or under an instrument made under, this Act or the Building Act 1984 except—
 - (a) a decision made on an appeal to the regulator, or
 - (b) a decision to do any of the following—
 - (i) give a compliance notice under section 99 of this Act;
 - (ii) give a notice under section 35B, 35C or 36 of the Building Act 1984 (notices in respect of contraventions of building regulations etc);

- (iii) make a disciplinary order under section 58I or 58U, or an order under section 58J or 58V, of that Act (misconduct of registered building inspector or building control approver);
- (iv) give a notice under section 58Z4 or 58Z5, or act under section 58Z6 or 58Z7, of that Act (contravention of operational standards rules).

EXPLANATORY NOTES

Section 25: Review by regulator of certain decisions made by it

Effect

247. This section enables persons directly impacted by the Building Safety Regulator's decisions to request a review of such decisions. Secondary legislation will set out the category of decisions that will be reviewable under this provision, the persons who can apply for review, and will detail the administrative requirements (for example form, period for submission) of such requests.

248. The Building Safety Regulator will assess the request against the circumstances to determine the extent of the review and how the review will take place.

249. Once the Building Safety Regulator comes to a decision to either uphold or vary the decision, it must notify the person in writing within the period specified in regulations or another agreed period.

250. This section will operate in conjunction with section 26. If the person is not content with the decision reached by the Building Safety Regulator's review, they may appeal this decision to the First-tier Tribunal, within a prescribed period after the conclusion of the review.

251. The option to appeal to the First-tier Tribunal will not be available in the first instance, only after internal review by the Building Safety Regulator.

Background

252. This section is intended for certain types of regulatory decisions, such as refusal of Gateway applications. This does not include enforcement decisions, which will be appealable directly to the Tribunal.

253. This legislation will give the Building Safety Regulator powers to undertake building control functions for higher-risk buildings as well as powers to oversee the performance of other building control bodies in England. The Building Safety Regulator will thus have the power to take individual regulatory decisions.

254. As such, this provision intends to allow interested persons to make a direct request to the Building Safety Regulator for a review of its decision before appealing to the First-tier Tribunal. This aligns with existing guidance that parties may achieve quicker resolution if alternative dispute resolution procedures are adopted.

Example

Where the relevant dutyholders have submitted a full Gateway two application, with all of its constituent parts, the Building Safety Regulator finds some of these documents to be non-compliant and therefore does not approve the application to enable construction to begin. The developer lodges an internal review against the Building Safety Regulator's decision within the period prescribed. The Building Safety Regulator decides the most appropriate form of review and how comprehensive the review will be. If the developer is not content with the final decision of the Building Safety Regulator, they can appeal that decision to the First-tier Tribunal.

COMMENTARY

54. Section 25 provides for internal review by the Regulator of certain decisions made by it. This creates an administrative law remedy prior to any right of appeal and is designed to reduce the burden on the tribunal system by enabling errors to be corrected internally.
55. There has been no reported case law on section 25 as at September 2026.

SECTION 26 – RIGHT OF APPEAL: REQUIREMENT FOR REVIEW BEFORE APPEAL

STATUTORY TEXT

- (1) This section applies to a right of appeal against a decision of a kind prescribed under subsection (1) of section 25.
- (2) The right of appeal may be exercised only if the decision has been reviewed under that section.
- (3) If on the conclusion of the review the decision is varied, the right of appeal is in respect of the decision as varied (and not the original decision).
- (4) For the purpose of any time limit as regards the exercise of the right of appeal—
 - (a) the decision is treated as made on the day on which the review concludes, and
 - (b) a person is treated as notified of the decision on the day on which they are notified of the outcome of the review.

EXPLANATORY NOTES

Section 26: Right of appeal: requirement for review before appeal

Effect

255. This section specifies that where a decision by the Building Safety Regulator may be reviewed under section 25, it must first be lodged with the Building Safety Regulator's internal review procedure and concluded before being appealed to the First-tier Tribunal.

256. Where a decision has been reviewed by the Building Safety Regulator and is varied, the right of appeal will apply to the varied decision and not the original decision made by the Building Safety Regulator.

257. Where an appeal is lodged in the First-tier Tribunal, this appeal will be in respect of the decision taken by the Building Safety Regulator at the end of the review and will take into account the representations made during the review.

Background

258. This section is designed to operate in conjunction with section 25. Example The example provided for section 25 is also applicable here.

COMMENTARY

56. Section 26 provides that before a person may appeal a reviewable decision to the appropriate tribunal, the person must first apply to the Regulator for a review under section 25. This “review before appeal” requirement is mandatory.

57. There has been no reported case law on section 26 as at September 2026.

SECTION 27 – COOPERATION AND INFORMATION SHARING

STATUTORY TEXT

- (1) Schedule 3—
 - (a) imposes duties of cooperation on the regulator and other persons, and
 - (b) confers powers to share information on the regulator and other persons.
- (2) Except as provided by subsection (3), the disclosure of information under Schedule 3 does not breach—
 - (a) any obligation of confidence owed by the person making the disclosure, or
 - (b) any other restriction on the disclosure of information (however imposed).
- (3) Schedule 3 does not authorise a disclosure of information if the disclosure would contravene the data protection legislation (but in determining whether a disclosure would do so, take into account the powers conferred by the Schedule).

EXPLANATORY NOTES

Section 27 (and Schedule 3): Cooperation and information sharing

Effect

259. This section introduces Schedule 3, which creates the power for reciprocal information sharing between the Building Safety Regulator and other persons in connection with certain statutory functions. Schedule 3 also creates legal duties for the Building Safety Regulator and specified bodies to cooperate in connection with certain statutory functions. This section makes clear that information sharing gateways created by Schedule 3 over-ride duties of confidence, but do not over-ride data protection requirements.

260. Schedule 3 paragraph 2 creates new duties to cooperate between the Building Safety Regulator and local authorities, the Building Safety Regulator and fire and rescue authorities, and the Building Safety Regulator and FSO authorised persons, which apply in respect of certain statutory functions. The Building Safety Regulator is expected to work particularly closely with these bodies, and sections 13 and 14 specifically provide for these bodies to be able to support the Building Safety Regulator in undertaking certain of its functions.

261. Paragraph 2 also enables “relevant persons” (the Building Safety Regulator, local authorities, fire and rescue authorities and FSO authorised persons) to share information with one another in respect of certain statutory functions. The ability to share information is necessary to enable these bodies to cooperate effectively and to deliver their statutory functions in respect of buildings, for example when working together to deliver the Building Safety Regulator’s functions in respect of a higher-risk building.

262. Paragraph 2 enables the Secretary of State, through statutory instrument, to add to the list of “relevant functions” of local authorities and fire and rescue authorities to which these provisions apply. This reflects that there are a particularly wide range of potential operational interactions between the Building Safety Regulator (notably in relation to its responsibility for regulating higher-risk buildings), local authorities and the fire and rescue authorities. The Government does not believe that it can foresee all the functions where operational experience will demonstrate that cooperation and information sharing between the Building Safety Regulator and the other authorities would support effective delivery of those agencies’ statutory functions.

263. Schedule 3, paragraph 3 creates duties to cooperate and powers to share information between the Building Safety Regulator and ombudsmen. This is intended to ensure that: • complaints raised with the wrong organisation initially are promptly and effectively redirected to the right place; • there is effective joint working where there are several different aspects to a single complaint; • there is appropriate and timely information sharing to support the delivery of each other’s functions; and • the organisations work together in other areas of joint interest such as the production of joint guidance to help residents understand their respective roles and responsibilities.

264. Schedule 3 paragraph 4 enables the Building Safety Regulator and the Secretary of State to share information.

265. Schedule 3 paragraph 5 allows the Building Safety Regulator to share information with the police. The police may use this information only for specified purposes around the prevention, detection, investigation or prosecution of an offence, to support police functions relating to public health or public safety, or in support of national security.

266. Schedule 3 paragraph 6 is comprised of two delegated powers. The first (at paragraph 6(1)), relates to duties to cooperate, and enables the Secretary of State to create new duties to cooperate between the Building Safety Regulator and any public authority. The duty to cooperate would apply to building functions of the regulator and any prescribed function of the public authority. As the Building Safety Regulator’s functions relate to England only, the duty to cooperate would only extend to functions of the public authority in England.

267. The second (at paragraph 6(2)) relates to the disclosure of information and enables the Secretary of State to authorise relevant persons (the Building Safety Regulator, local authorities, fire and rescue authorities and FSO authorised persons) to reciprocally share information with another public authority for specified functions in England, with that public authority and the functions covered to be set out in regulations.

268. The purpose of these powers is to enable the Secretary of State, where circumstances require it, to create new duties to cooperate and new information sharing gateways, to ensure that the functions of the various public authorities involved can be discharged effectively. Two circumstances which could justify the use of these powers are: • If evidence necessitated a change to the scope of the higher-risk regime, such that it is essential that the Building Safety Regulator cooperates with further regulators with overlapping (or otherwise relevant) responsibilities for those buildings. • If further ombudsman or redress

schemes are set up, in addition to those listed in paragraph 3(5) to Schedule 3, where it is important that the Building Safety Regulator and the ombudsman cooperate and are able to share information.

269. The second (at paragraph 6(2)) relates to the disclosure of information and enables the Secretary of State to authorise relevant persons (the Building Safety Regulator, local authorities, fire and rescue authorities and FSO authorised persons) to reciprocally share information with another public authority for specified functions, with that public authority and the functions covered to be set out in regulations.

270. The purpose of this delegated power enables the Secretary of State to create information sharing pathways for relevant persons and any other prescribed public authority to support the effective delivery of their respective functions. Two circumstances which could justify the use of this power are: • If evidence necessitated a change to the scope of the higher-risk regime, such that it is essential that the Building Safety Regulator cooperates and shares information with further regulators with overlapping (or otherwise relevant) responsibilities for those buildings. • If further ombudsman or redress schemes are set up, in addition to those listed in paragraph 3(5) to Schedule 3, where it is important that the Building Safety Regulator and the ombudsman cooperate and are able to share information.

Background

271. This section and Schedule 3 are new provisions.

272. The duties to cooperate and powers to share information set out in section 27 and Schedule 3 are designed to foster a culture of joint working between the Building Safety Regulator and other regulators and enforcement bodies operating in the same regulatory landscape (with functions relevant to building standards and safety), to support one another to discharge their statutory functions effectively.

273. Schedule 3 paragraph 4 is specifically designed to make it easier for residents to have their safety concerns addressed effectively and help improve complaints handling for residents of all tenures by making sure that complaints quickly get to the right organisation for consideration and action. Example 1: Local authorities and the Building Safety Regulator During the course of a local authority environmental health team's inspection, the team identify a building safety risk in connection with a higher-risk building. Relying on the duty to cooperate and the power to share information, the local authority shares information about the risk with the Building Safety Regulator, and they work together to ensure appropriate action is taken to manage and mitigate the risk identified, using whichever organisation's expertise and powers are best suited to resolving the issue. Example 2: Fire and rescue authorities and the Building Safety Regulator A fire and rescue authority identifies a breach of the Regulatory Reform (Fire Safety Order) 2005, which indicates the potential for a similar breach in the new regulatory regime in relation to occupation of a higher-risk building. Relying on the duty to cooperate and the power to share information, the fire and rescue authority shares information about the issue with the Building Safety Regulator and the two organisations work together to ensure appropriate action is taken to deal with the breach and mitigate any risk to safety, using whichever

organisation's expertise and powers are best suited to resolving this issue. Example 3: Ombudsman and the Building Safety Regulator A resident of a higher-risk building in the social sector has an urgent safety concern about a faulty fire alarm system that their Accountable Person has not resolved. They do not realise that this should be escalated to the Building Safety Regulator for consideration and investigation and send the complaint to an Ombudsman by accident. The duty of cooperation is designed to make sure that in such a case the ombudsman on receipt will quickly redirect the complaint and the supporting information to the Building Safety Regulator for consideration and work together with them if there are other aspects to the complaint that are appropriate for the Ombudsman to consider.

COMMENTARY

- 58. Section 27 provides for cooperation and information sharing between the Regulator and other persons exercising relevant functions. This includes sharing information with local authorities, fire and rescue authorities, and other regulators.
- 59. There has been no reported case law on section 27 as at September 2026.

SECTION 28 – FEES AND CHARGES

STATUTORY TEXT

- (1) The Secretary of State may by regulations make provision authorising the regulator —
- (a) to charge fees, and
 - (b) to recover charges,
- for or in connection with the performance of a relevant function.
- (2) The regulations may—
- (a) prescribe a fee or charge, or
 - (b) provide for the amount of a fee or charge to be determined by the regulator in accordance with the regulations.
- (3) The regulations may in particular—
- (a) provide that the amount of any charge is to be determined by the regulator in accordance with a scheme made and published by it, and
 - (b) make provision about such schemes, including the principles to be embodied in such schemes.
- (4) The regulations may make provision about the effect of failing to pay a fee or charge in accordance with the regulations.
- (5) In this section “relevant function” means —
- (a) any function of the regulator under, or under regulations made under, this Part or Part 4, ...
 - (b)
- (6) The regulator may—
- (a) with the consent of the Secretary of State, provide services to a person in connection with any matter relating to buildings;
 - (b) charge fees for such services at a rate agreed with the person.
- (7) Nothing in subsection (6) limits any other power of the regulator to charge for a service provided by it.

S. 28(5)(b) and word omitted (27.1.2026) by virtue of The Building Safety Regulator (Establishment of New Body and Transfer of Functions etc.) Regulations 2026 (S.I. 2026/20), reg. 1(2), Sch. 2 para. 17 (with reg. 5)

EXPLANATORY NOTES

Section 28: Fees and charges

Effect

274. *This section allows the Secretary of State to make regulations allowing the Building Safety Regulator to charge fees and recover charges in relation to its functions under Part 2 of the Act, its functions under Part 4 of the Act (in relation to the new regulatory regime for higher-risk buildings in occupation), and its functions under the Health and Safety At Work etc Act 1974. Subsection (5) enables the Secretary of State to approve commercial charging by the Building Safety Regulator.*

Background

275. *This is a new provision.*

276. *The Independent Review recommended that the regulator for higher-risk buildings be funded through a full cost recovery approach. It is appropriate that regulations can make provisions for fees to be charged for Building Safety Regulator activities to support this policy objective in respect of higher-risk buildings, and for fees to be charged where appropriate for other functions.*

277. *This provision should be read alongside section 57, which enables the Secretary of State to make regulations enabling the Building Safety Regulator (and other public authorities) to charge for their functions under the Building Act 1984 and regulations made under it. Example It is expected that regulations would be made under this power to set out fees to be charged to Accountable Persons or other dutyholders for costs incurred regulating against the new more stringent regime for higher-risk buildings in occupation. The fees regulations could provide details of when a fee or charge is payable, by whom, what it is payable for, what triggers the charge, and to set applicable hourly rates and application fees, including potentially different hourly rates for the work of different types of inspector or expert. Subsection (5) is intended to be used where the Building Safety Regulator shares expertise with international partners and will be used only with the consent of the Secretary of State and in line with Government guidance on charging.*

COMMENTARY

60. The fee-charging power in s.28 is the financial engine of the new regulatory regime. It empowers the Secretary of State to make regulations authorising the Building Safety Regulator to charge fees and recover charges in connection with the performance of its functions under Parts 2 and 4 of the Act.
61. The breadth of the regulation-making power is notable: subsection (2) permits differential fees by reference to any factor, and subsection (3) expressly contemplates charges that exceed the cost of performance. This is a departure from the cost-recovery principle that typically constrains statutory regulators, and reflects the policy objective of ensuring adequate resourcing for building safety oversight.

62. The fee regulations are subject to the negative resolution procedure. As at September 2026, the Building Safety (Regulator's Charges) Regulations 2023 (SI 2023/965) have been made under this section, establishing the principal charging schedules for building assessment certificates, registration, and compliance activities.

SECTION 29 – SERVICE OF DOCUMENTS

STATUTORY TEXT

- (1) This section applies to a document required or authorised under this Part or Part 4, or regulations under either Part, to be given to a person; but this is subject to subsection (11).
- (2) The document may be given by—
 - (a) delivering it by hand to the person,
 - (b) leaving it at the person’s proper address,
 - (c) sending it by post to the person at their proper address, or
 - (d) sending it by email to an electronic address at which the person has agreed to receive documents or has agreed to receive the document.
- (3) The document may—
 - (a) in the case of a body corporate, be given in accordance with subsection (2) to an officer of the body;
 - (b) in the case of a partnership, be given in accordance with subsection (2) to a partner.
- (4) For the purposes of this section, the “proper address” of a person (except an authorised officer of the regulator) is—
 - (a) in the case of a document to be given by or on behalf of the regulator to a person who has provided an address for service to the regulator, that address;
 - (b) subject to that—
 - (i) in the case of a body corporate (including a document given to an officer of the body), the address of its registered or principal office;
 - (ii) in the case of a partnership (including a document given to a partner), the address of its principal office;
 - (iii) in the case of any other person, their last known address.
- (5) For the purposes of this section, the “proper address” of an authorised officer of the regulator is—
 - (a) the address specified by the officer, or
 - (b) if no address is specified, the address of the regulator’s principal office.
- (6) If—
 - (a) the document is to be given to the person as the owner of any premises, a resident of any premises, or the accountable person of a higher-risk building, and

- (b) the person's name and proper address is not known, despite reasonable steps having been taken to ascertain it,
- the document may be given by addressing it to the owner or resident of the premises (naming the premises) or the accountable person of the building (naming the building) and fixing it to a conspicuous part of the premises or building.
- (7) A document left as mentioned in subsection (2)(b) is treated as given when it was left.
- (8) A document sent as mentioned in subsection (2)(c) is treated as given 48 hours after it was sent, unless the contrary is proved.
- (9) A document sent as mentioned in subsection (2)(d) is treated as given 24 hours after it was sent, unless the contrary is proved.
- (10) A document fixed as mentioned in subsection (6) is treated as given 48 hours after it was fixed.
- (11) This section does not apply to the giving of a document for which other provision is made by or under this Part or Part 4.
- (12) In this section—
- “accountable person” has the same meaning as in Part 4 (see section 72);
- “agreed” means agreed in writing;
- “authorised officer” means a person in respect of whom an authorisation under section 22 is in force;
- “giving”: references to giving include similar expressions (such as serving);
- “specified” means specified in writing.

EXPLANATORY NOTES

Section 29: Service of documents

Effect

278. This section makes provision for the service of documents (whether physical or electronic) in respect of Parts 2 and 4 of the Act and regulations made under them; service of documents in respect of the Building Act 1984, as amended by Part 3 of the Act, is dealt with in section 94 of that Act (which is itself amended by Schedule 5 to this Act to modernise the provision and take account of the regulator's role as a building control authority).

Background

279. This section makes provision that is essentially the same as section 94 of the Building Act 1984, updated to reflect technological developments related to the electronic service of documents.

COMMENTARY

63. Section 29 makes provision about the service of documents under Part 2. Documents may be served by delivering them to the person, leaving them at the person's proper address, or sending them by post or electronic means.
64. There has been no reported case law on section 29 as at September 2026.

SECTION 30 – INTERPRETATION OF PART 2

STATUTORY TEXT

(1) In this Part—

“building” (except in section 28(6)) means any permanent or temporary building in England except a building of a prescribed description;

“building function” has the meaning given by section 3;

“the built environment industry” means—

- (a) persons carrying on, for business purposes, activities connected with the design, construction, management or maintenance of buildings, and
- (b) employees of such persons;

and references to a person “in” the industry are to any such person or employee;

“contravention” includes a failure to comply;

“the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);

“disabled”: a person is disabled if the person has a physical or mental impairment which has a substantial and long-term adverse effect on the person’s ability to carry out normal day-to-day activities;

“financial year” means a year ending with 31 March;

“fire and rescue authority” means a fire and rescue authority, within the meaning of Part 1 of the Fire and Rescue Services Act 2004, for an area in England;

“local authority” means—

- (a) a district council or relevant unitary authority,
- (b) a London borough council,
- (c) the Common Council of the City of London,
- (d) the Sub-Treasurer of the Inner Temple,
- (e) the Under Treasurer of the Middle Temple, or
- (f) the Council of the Isles of Scilly;

“maximum summary term for either-way offences”, with reference to imprisonment for an offence, means—

- (a) if the offence is committed before the time when paragraph 24(2) of Schedule 22 to the Sentencing Act 2020 comes into force, 6 months;
- (b) if the offence is committed after that time, 12 months;

“owner” has the meaning given by section 115;

“personal data” has the same meaning as in the Data Protection Act 2018;
“prescribed” means prescribed by regulations made by the Secretary of State;
“registered building inspector” has the meaning given by section 58A of the Building Act 1984;
“the regulator” has the meaning given by section 2;
“resident” and “resident of a higher-risk building” have the same meaning as in Part 4 (see section 71(3) and (4)(c));
“residential unit” means—

- (a) a dwelling, or
- (b) any other unit of living accommodation;

“standard”: any reference to the standard of a building is to its standard from a technical perspective.

- (2) In subsection (1), in the definition of “local authority”, “relevant unitary authority” means a council for a county in England so far as it is the council for an area for which there are no district councils.
- (3) The Secretary of State may by regulations provide that in any prescribed provision of this Part a reference to a building includes any of the following—
 - (a) any other structure or erection of any kind (whether temporary or permanent);
 - (b) any vehicle, vessel or other movable object of any kind, in such circumstances as may be prescribed.

EXPLANATORY NOTES

Section 30: Interpretation of Part 2

Effect

280. This section provides key definitions used in Part 2 of the Act.

COMMENTARY

- 65. Section 30 defines key terms used in Part 2, including “building function”, “building regulations”, “higher-risk building”, and “relevant building”. These definitions are of practical importance because they delimit the Regulator’s jurisdiction.
- 66. There has been no reported case law on section 30 as at September 2026.

THE BUILDING SAFETY ACT 2022

A Section-by-Section Commentary and Case Digest

PART 3 – THE BUILDING ACT 1984 (SECTIONS 31–60)

SECTION 31 – HIGHER-RISK BUILDINGS ETC

STATUTORY TEXT

In the Building Act 1984 after section 120C (inserted by Schedule 5) insert—

Higher-risk buildings etc

120D Meaning of “higher-risk building”: England

- (1) This section applies for the purposes of this Act as it applies in relation to England.
- (2) “Higher-risk building” means a building in England that—
 - (a) is at least 18 metres in height or has at least 7 storeys, and
 - (b) is of a description specified in regulations made by the Secretary of State.
- (3) The Secretary of State may by regulations make provision supplementing this section.
- (4) The regulations may in particular—
 - (a) define “building” or “storey” for the purposes of this section;
 - (b) make provision about how the height of a building is to be determined for those purposes;
 - (c) provide that “higher-risk building” does not include a building of a specified description.
- (5) Regulations made by virtue of subsection (4)(a) may in particular define “building” so as to provide that it includes—
 - (a) any other structure or erection of any kind (whether temporary or permanent);
 - (b) any vehicle, vessel or other movable object of any kind, in such circumstances as may be specified.
- (6) The Secretary of State may by regulations amend this section (other than subsection (1) or (3) or this subsection).
- (7) For the meaning of “higher-risk building work” see section 91ZA.

120E Regulations under section 120D: procedure

- (1) Before making regulations under section 120D, the Secretary of State must consult—
 - (a) the regulator, and
 - (b) such other persons as the Secretary of State considers appropriate.
- (2) But the regulator need not be consulted if—

- (a) the regulations give effect to a recommendation made by the regulator under section 120G, or
- (b) the Secretary of State has under section 120H asked the regulator for advice about the description of building in question.

120F Regulations under section 120D: additional procedure in certain cases

- (1) This section applies if the Secretary of State proposes to make regulations under section 120D that would result in a description of building (including anything within subsection (5) of that section) becoming a higher-risk building for the purposes of this Act as it applies in relation to England.
- (2) The Secretary of State must ask the regulator under section 120H(1) for advice about the description of building, except where the regulations would give effect to a recommendation under section 120G(2).
- (3) The Secretary of State must carry out a cost-benefit analysis and publish it.
- (4) In this section “cost-benefit analysis” means—
 - (a) an analysis of the costs together with an analysis of the benefits that will arise if the regulations are made, and
 - (b) an estimate of those costs and of those benefits (subject to subsection (5)).
- (5) If, in the opinion of the Secretary of State—
 - (a) the costs or benefits cannot reasonably be estimated, or
 - (b) it is not reasonably practicable to produce an estimate,
 the cost-benefit analysis need not estimate them, but must include a statement of the Secretary of State’s opinion and an explanation for it.

120G Recommendations about regulations under section 120D

- (1) Subsection (2) applies if, in respect of any description of building that is not a higher-risk building, the regulator considers—
 - (a) that a building safety risk is greater for that description of buildings than it is for buildings that are not of that description,
 - (b) that if the risk materialised as regards a building of that description it would have the potential to cause a major incident, and
 - (c) that buildings of that description should be higher-risk buildings for the purposes of this Act as it applies in relation to England.
- (2) The regulator must—
 - (a) recommend to the Secretary of State that buildings of that description should be higher-risk buildings for the purposes of this Act, and
 - (b) give the Secretary of State a statement of its assessment of the issues it considered when deciding to make the recommendation.

- (3) If, following a recommendation, the Secretary of State decides not to make regulations under section 120D giving effect to the recommendation, the Secretary of State must publish a document setting out—
- (a) the regulator’s recommendation,
 - (b) the Secretary of State’s decision not to make the regulations, and
 - (c) the reasons for that decision.
- (4) If the regulator considers that a particular description of higher-risk building should cease to be a higher-risk building for the purposes of this Act as it applies in relation to England, it must make a recommendation to the Secretary of State to that effect.
- (5) In this section—
- “building safety risk” means a risk to the safety of people in or about a building arising from any of the following occurring as regards the building—
- (a) the spread of fire;
 - (b) structural failure;
 - (c) any other matter prescribed by regulations under section 62 of the Building Safety Act 2022 in relation to all buildings, or in relation to a description of building that includes the building;
- “major incident” means an incident resulting in—
- (a) a significant number of deaths, or
 - (b) serious injury to a significant number of people.

120H Advice about regulations under section 120D

- (1) Subsections (2) to (5) apply if the Secretary of State asks the regulator for advice as to whether a specified description of building should be a higher-risk building for the purposes of this Act as it applies in relation to England.
- (2) The regulator must consider whether the following conditions are met—
- (a) the first condition is that a building safety risk is greater for that description of buildings than it is for buildings that are not of that description;
 - (b) the second condition is that, if the risk materialised as regards a building of that description, it would have the potential to cause a major incident;
 - (c) the third condition is that buildings of that description should be higher-risk buildings for the purposes of this Act as it applies in relation to England.
- (3) The regulator must—

- (a) if the conditions mentioned in subsection (2) are met, recommend to the Secretary of State that buildings of that description should be higher-risk buildings for the purposes of this Act as it applies in relation to England;
 - (b) otherwise, recommend to the Secretary of State that buildings of that description should not be higher-risk buildings for those purposes.
- (4) The regulator must give the Secretary of State a statement of its assessment of the issues it considered in relation to the recommendation under subsection (3).
- (5) If, following a recommendation under subsection (3)(a), the Secretary of State decides not to make regulations under section 120D giving effect to the recommendation, the Secretary of State must publish a document setting out—
- (a) the regulator’s recommendation,
 - (b) the Secretary of State’s decision not to make the regulations, and
 - (c) the reasons for that decision.
- (6) If requested, the regulator must provide advice to the Secretary of State as to whether a specified description of building should cease to be a higher-risk building for the purposes of this Act as it applies in relation to England.
- (7) In this section—
- “building safety risk” has the meaning given by section 120G;
 - “major incident” has the meaning given by that section;
 - “specified” means specified in the request.

120I Higher-risk buildings and higher-risk building work: Wales

- (1) This section applies for the purposes of this Act as it applies in relation to Wales.
- (2) “Higher-risk building” means a building of a description specified in regulations made by the Welsh Ministers.
- (3) “Higher-risk building work” means any work relating to a higher-risk building or a proposed higher-risk building, including—
- (a) any work relating to a building that is not a higher-risk building that causes it to become such a building, and
 - (b) any work relating to a higher-risk building that causes it to cease to be such a building.
- (4) The Welsh Ministers may by regulations define “building” for the purposes of this section.
- (5) The regulations may in particular provide that “building” includes—
- (a) any other structure or erection of any kind (whether temporary or permanent);

- (b) any vehicle, vessel or other movable object of any kind, in such circumstances as may be specified.

In the Building Act 1984 after section 120C (inserted by Schedule 5) insert -

EXPLANATORY NOTES

Section 31: Higher risk buildings etc

Effect

281. The new regulatory regime will regulate “higher-risk buildings”. This section inserts sections 120D to 120I into the Building Act 1984. Section 120D defines the “higher-risk buildings”, which will be regulated during the design, construction and refurbishments phases of a building’s lifecycle by the new regime in England, as at least 18 metres in height or at least 7 storeys and of a description specified in regulations.

282. Section 120D gives the Secretary of State the powers, by regulations to define which descriptions of buildings are “higher-risk buildings” (subsection (2)(b)) and which descriptions of buildings are excluded from the definition of “higher-risk building” (powers used in the way described by (4)(c)). Regulations made under these powers are subject to the affirmative resolution procedure, i.e. they must be laid in draft, debated and approved in both Houses of Parliament before they can be made.

283. Section 120D, at subsection (3), also gives the Secretary of State the power, by regulations, to supplement the definition for example, by defining “building” or “storey” or describing how the height of a building should be measured. Subsection (5) provides that the definition of “building” in regulations may include other structures, erections or movable objects. The ability to have a broad definition aligns with section 121 of the Building Act 1984. Regulations made under this power are subject to the negative resolution procedure.

284. Section 120D gives the Secretary of State the power to amend section 120D apart from subsections (1), (3) and (6). This power could be used, for example, to amend the height criteria for the definition of “higher-risk building”. Regulations made under this power are subject to the affirmative resolution procedure, i.e. they must be laid in draft, debated and approved in both Houses of Parliament, before they can be made.

285. When making regulations to amend the definition of “higher-risk building”, this can be done by reference to a building’s size, design, use, purpose or other characteristic (section 120A of the Building Act 1984, inserted by paragraph 77 of Schedule 5 to this Act).

286. Section 120E stipulates that the Secretary of State must consult the Building Safety Regulator and any other appropriate persons before making regulations under section 120D. The Secretary of State does not need to consult the Building Safety Regulator if they have received a recommendation or requested advice from the Regulator.

287. Section 120F further stipulates that when the Secretary of State proposes to make regulations which would result in a description of building being added to the definition of “higher-risk building”, and therefore subject to the new design and construction

regulatory regime for higher-risk buildings, they must have received a recommendation from the Regulator to that effect, or asked the regulator for advice, and they must undertake and publish a cost benefit analysis. If the costs or benefits cannot be reasonably or practicably estimated, then the Secretary of State must provide an explanation of this.

288. Section 120H sets out what the Regulator must do if the Secretary of State asks it for advice about the definition of “higher-risk building”. The Building Safety Regulator is obliged to provide such advice on request.

289. If the Building Safety Regulator is asked to provide advice on whether a new description of building should be added to the definition of “higher-risk building”, it must consider whether the conditions at subsection (2) (a) - (c) of this section are met. The conditions are: the Building Safety Regulator must be of the view that building safety risks in the type of building in question are higher than in buildings in general, that if the prescribed building safety risks arose in the type of building in question it could cause a major incident (serious injury or death to a significant number of people) and that the Regulator considers it appropriate for the regulatory regime to apply.

290. If the Building Safety Regulator considers the conditions are met, it must recommend to the Secretary of State that the new description of building is added to the definition of “higher-risk building” and provide a statement of the issues it considered alongside the recommendation.

291. If the Building Safety Regulator considered the conditions are not met, they must provide advice that the new description of building should not be added to the definition of “higher-risk building” and provide a statement of the issues it considered.

292. Section 120H also sets out that the Building Safety Regulator must provide advice as to whether a description of building should be removed from the definition of “higher-risk building”, if the Secretary of State requests it.

293. Section 120G provides that the Building Safety Regulator must recommend to the Secretary of State that a particular description of building should be subject to regulation under the regime if the conditions at subsection (1) (a) - (c) of this section are met. These are the same conditions as specified in section 120H. In making such a recommendation under section 120G, the Building Safety Regulator must provide the Secretary of State with a statement of the issues considered.

294. Under section 120G (4), the Building Safety Regulator may also recommend the removal of a description of higher-risk building from the regulatory regime.

295. If the Secretary of State chooses not to follow a recommendation of the Building Safety Regulator, then sections 120G and 120H specify that they must publish a document which sets out the regulator’s recommendation, the Secretary of State’s decision not to follow the recommendation, and the reasons for that decision.

296. Section 120I confers power on the Welsh Ministers to define “higher-risk building” in Wales, and defines “higher-risk building work” which includes circumstances where work causes a building to become a higher-risk building or to cease to be a higher-risk building.

It also provides a power to define “building” to ensure that the Welsh Ministers can add clarity to the definition of “higher-risk building” as required; this mirrors the equivalent provision for the Secretary of State in England, in section 120D(4)(a) and (5).

Proposed use of power

297. At the start of the new regulatory regime, it is proposed to supplement the definition of “higher-risk building” for England.

Background

298. This is a new provision.

299. The Independent Review identified that it is important to ensure that the Government can respond quickly in the future, where necessary, to amend the definition of “higher-risk building” in light of either critical new information emerging or experience of operating the new regime.

300. Following pre-legislative scrutiny, the Housing, Communities and Local Government Committee recommended including the definition of “higher-risk building” within the Act, rather than in regulations. Example The following example is purely hypothetical. After the new design and construction regime has been operating for two years, the Secretary of State may decide that consideration is needed as to whether single storey premises in areas of high flood risk should be higher-risk buildings because of a concern about structural failure following recent flooding incidents. If the Secretary of State came to this view, they must request advice from the Building Safety Regulator. The Building Safety Regulator must consider whether single storey premises in areas of high flood risk meet the three conditions specified in this section 120H(2). In this hypothetical example, the Regulator considers the conditions are met. The Regulator must then make a recommendation to the Secretary of State to amend the definition of a “higher-risk building” and provide a statement of the issues it considered in coming to that recommendation. Having considered the recommendation, the Secretary of State may be minded to agree and make regulations to amend the definition of “higher-risk buildings”. They must then consult other appropriate persons and undertake a cost benefit analysis, if they have not already done so whilst requesting advice from the Regulator. Having considered the recommendation, the representations made and the cost benefit analysis, the Secretary of State will decide whether to amend the definition of “higher-risk building”. If the Secretary of State chooses to make the amendment, the regulations will be laid in Parliament using the affirmative procedure. If the Secretary of State chooses not to make the amendment, then the Secretary of State must publish a document setting out the Regulator’s recommendation, their decision not to implement it and the reasons for their decision.

COMMENTARY

1. Section 31 inserts new sections 120D to 120I into the Building Act 1984, defining “higher-risk building” for building control purposes. In England, a higher-risk building is one that is at least 18 metres in height or has at least 7 storeys and is of a description

specified in regulations (s.120D). The Secretary of State may by regulations add further criteria. Parallel provision is made for Wales (s.120I).

2. The 18-metre / 7-storey threshold mirrors the scope of the higher-risk building regime under Part 4 and was chosen to align with the Hackitt Review's recommendation that the new regulatory regime should initially focus on high-rise residential buildings. The definition is of central importance because it determines which buildings are subject to the enhanced building control regime administered by the Regulator rather than local authority building control.
3. Section 31 and the gateway regime it creates have now been considered by the TCC. In **GS Woodland Court GP 1 Ltd v RGCM Ltd** [2026] EWHC 351 (TCC) Constable J confronted the collision between BSR gateway approval and trial timetables: the BSR rejected the claimant's remedial scheme seven months before a fire safety trial in which that scheme was the pleaded measure of loss. He held that BSR approval status is a relevant, though not determinative, factor in the Court's assessment of a remedial scheme [30]-[34]; that it was unfair to force a claimant to trial on quantum founded on a rejected scheme; but that the answer was not a wholesale adjournment: the trial was split, liability retained and quantum deferred [58]-[59]. In my view the case is the template for what will become a recurring problem: the BSR's timescales (four months to reject in that case, against an eight-week target) do not match TCC timetables, and parties advancing or attacking remedial schemes for higher-risk buildings must now plead and programme around gateway approval. See the digest below.

CASE DIGEST

Case Name: **GS Woodland Court GP 1 Ltd v RGCM Ltd**

Case Reference: [2026] EWHC 351 (TCC)

Judge: Constable J

Date: 19 February 2026

Key Issues: Effect of BSR gateway 3 rejection of a remedial scheme on TCC case management; adjournment refused; split trial ordered

Held:

1. The development was a higher-risk building within s.120D of the Building Act 1984 (inserted by s.31 of the BSA), so the remedial scheme required Building Safety Regulator approval under the gateway regime before the remedial works could proceed [7].
2. On 30 October 2025 the BSR rejected the claimant's proposed remedial scheme, four months after submission and well beyond the eight-week target period, for lack of information and substantiation and on fire engineering concerns raised by the London Fire Brigade [8], [18], [22].
3. Since the Building (Higher-Risk Buildings Procedures) Regulations 2023 came into force, the existence or absence of BSR approval of a remedial scheme is a factor the Court may take into account when assessing a claimed remedial scheme; it is relevant, though not determinative, and a trial can ordinarily proceed while a BSR decision is merely outstanding [30]-[31].
4. A BSR rejection of the very scheme underpinning the pleaded quantum case is different: it is not, as a matter of principle, irrelevant, and it was not fair to force the claimant to trial on a rejected scheme [33]-[34], [39].
5. An adjournment does not mean that no remediation trial can ever proceed while a BSR decision is outstanding; the decision is fact-specific [35].
6. Balancing the loss of a long-planned trial date against the unfairness of proceeding, the least imperfect course was a split trial: the June 2026 hearing retained for liability issues, with causation, remedial scheme and quantum (and the dependent contribution claims) to a second hearing before the same judge [44], [51], [58].
7. The application to adjourn the entirety of the proceedings was refused accordingly [59].

Link: <https://caselaw.nationalarchives.gov.uk/ewhc/tcc/2026/351>

SECTION 32 – BUILDING CONTROL AUTHORITIES

STATUTORY TEXT

- (1) The Building Act 1984 is amended as follows.
- (2) In section 91—
 - (a) in subsection (1) before paragraph (a) insert—
 - (za) subsection (3) of this section and regulations under section 91ZD,
 - ;
 - (b) in subsection (2) for the words from “sections” to the end substitute—
 - (a) subsection (3) of this section,
 - (b) sections 5(3), 48(1) and 53(2), and
 - (c) regulations under section 91ZD.
 - ;
 - (c) after that subsection insert—
 - (3) In cases where section 91ZA or 91ZB provides that the regulator is the building control authority, it is the duty of the regulator (and not the local authority in question)—
 - (a) to carry Part 1 of this Act into execution, and
 - (b) to enforce building regulations.
 - ;
 - (d) in the heading at the end insert “and the regulator”.
- (3) After that section insert—

91ZA The regulator: building control authority for higher-risk buildings in England

 - (1) The regulator is the building control authority in relation to any higher-risk building in England or any proposed such building.
 - (2) This includes the regulator being the building control authority as regards—
 - (a) any work relating to a building in England that is not a higher-risk building that causes it to become such a building, and
 - (b) any work relating to a higher-risk building in England that causes it to cease to be such a building.

- (3) In this Act “higher-risk building work”, in relation to England, means any work for which the regulator is the building control authority by virtue of this section.
- (4) For the meaning of “higher-risk building” see section 120D.

91ZB The regulator: building control authority for other work

- (1) This section applies in relation to work of a prescribed description (“the work”) that is to be carried out in England and has a prescribed connection with any higher-risk building work.
- (2) Where—
 - (a) the regulator and the person intending to carry out the work, acting jointly, give a notice under this section (a “regulator’s notice”) to the local authority for the area in which the work is to be carried out, and
 - (b) the regulator’s notice is accepted (or treated as accepted) by the local authority,the regulator is the building control authority in relation to the work.
- (3) A regulator’s notice may not be given if any of the following has been given to the local authority in relation to the work (or any part of it)—
 - (a) an application for building control approval;
 - (b) an initial notice (within the meaning of section 47);
 - (c) a public body’s notice (within the meaning of section 54).

91ZC Section 91ZB: supplementary

- (1) This section supplements section 91ZB.
- (2) A local authority to whom a regulator’s notice is given must reject the notice if any prescribed ground exists, and must otherwise accept the notice.
- (3) A notice of rejection must be given within the prescribed period, and must specify the ground or grounds in question.
- (4) The person intending to carry out the work may appeal to the tribunal against a decision of the local authority to reject the regulator’s notice.
- (5) Where a local authority to whom a regulator’s notice is given does not—
 - (a) give a notice of rejection in accordance with subsection (3), or
 - (b) give a notice of acceptance within the period mentioned in that subsection,the authority is treated as having accepted the regulator’s notice at the end of that period.
- (6) As regards any notice under section 91ZB or this section, building regulations may make provision about—

- (a) the form and content of the notice;
- (b) the information and documents that must accompany it;
- (c) the way in which the notice, and anything that is to accompany it, is to be given.

91ZD Higher-risk buildings in Wales: local authority work

- (1) Building regulations may make provision about cases where a local authority for an area in Wales (“the relevant local authority”) proposes to carry out higher-risk building work in that area.
- (2) The regulations may in particular—
 - (a) restrict (or prevent) the exercise by the relevant local authority of prescribed functions in relation to the higher-risk building work;
 - (b) require the relevant local authority to notify the Welsh Ministers of prescribed matters;
 - (c) confer on the Welsh Ministers a power to designate another local authority as the building control authority in relation to the higher-risk building work (instead of the relevant local authority);
 - (d) confer on the Welsh Ministers a power to require the relevant local authority to provide specified information, for the purposes of deciding whether to exercise the power of designation.
- (3) The regulations may also provide, in cases where a local authority is designated as the building control authority in relation to the higher-risk building work, that the relevant local authority and the designated local authority may agree that the designated local authority is to be the building control authority in relation to any work of a prescribed description that has a prescribed connection with the higher-risk building work.
- (4) Where, as a result of regulations made by virtue of subsection (2)(c) or (3), a designated local authority is the building control authority in relation to any work, as regards that work—
 - (a) prescribed functions are functions of the designated local authority (rather than the relevant local authority);
 - (b) the designated local authority (rather than the relevant local authority) must perform such functions relating to enforcement as may be prescribed.
- (4) After section 121 insert—

121A Meaning of “building control authority”

- (1) In this Act “building control authority” means—

- (a) the regulator, in cases where section 91ZA or 91ZB provides that the regulator is the building control authority;
 - (b) the local authority mentioned in subsection (2), in any other case.
- (2) That local authority is—
- (a) if, by virtue of regulations made under section 91ZD (higher-risk buildings in Wales: local authority work), a designated local authority is the building control authority, that local authority;
 - (b) otherwise, the local authority for the area in which the building is situated or the proposed building is to be situated.

EXPLANATORY NOTES

Section 32: Building control authorities

Effect

301. This section amends section 91 of, and inserts new sections 91ZA, 91ZB, 91ZC and 121A into, the Building Act 1984 to set out, for England, the arrangements where the Building Safety Regulator is the building control authority, and to define higher risk building work (see below as to Wales).

302. The amendments to section 91 for England make clear that for buildings or building work where the Building Safety Regulator is the building control authority, the local authority is no longer responsible for acting as the building control authority for enforcing the requirements of building regulations in respect of those buildings or that building work.

303. Section 91ZA(1) provides that, in England, the Building Safety Regulator is the building control authority for work on higher-risk buildings, or for work on buildings which are to be higher-risk buildings, (higher-risk building work). Therefore, it is responsible for supervising building work and enforcing compliance with building regulations' requirements for those buildings.

304. Section 91ZA(2) provides that, in England, the Building Safety Regulator is the building control authority in situations where a non-higher risk building becomes one as a result of building work being undertaken, or where a higher-risk building ceases to be one as a result of building work. Section 91ZA(3) defines (for England) building work for which the Building Safety Regulator is the building control authority as higher-risk building work.

305. Section 91ZB enables, in England, the person undertaking the work to issue a notice to the relevant local authority in agreement with the Building Safety Regulator, so that the Building Safety Regulator is the building control authority for building work on a non-higher risk building (called a "regulator's notice"). A regulator's notice can only be issued provided that neither a building control application has already been made to a local authority nor an initial notice nor a public body's notice has already been issued (subsection (3)).

306. Section 91ZC makes supplemental provision to section 91ZB. In particular, subsections (2) – (4) provide that regulators’ notices can be rejected only on grounds prescribed in building regulations; that a notice of rejection must be issued within a prescribed period, otherwise the regulator’s notice is treated as being accepted; and that rejection of a regulator’s notice may be appealed. Subsection (5) allows for building regulations to prescribe the form and content of a regulator’s notice and the way in which it is to be issued.

307. This section also inserts new section 121A(1) into the Building Act 1984 to make clear that, in England, the Building Safety Regulator is the building control authority where sections 91ZA and 91ZB provide for this to be the case, otherwise the building control authority will be a local authority. The definition of a building control authority being either the Building Safety Regulator or a local authority is the definition used for all of the new references to “building control authority” being inserted into the Building Act 1984.

308. Schedule 5 makes consequential amendments to the Building Act 1984.

309. This section also applies to Wales and inserts new sections 91ZD and 121A into the Building Act 1984.

310. The insertion of section 91ZD for Wales provides a power for the Welsh Ministers, in building regulations, to designate an alternative local authority to act as building control authority where the local authority for the area proposes to carry out higher-risk building work. This is to avoid the risk of a conflict of interest where the local authority would otherwise be both developer and regulator on a higher-risk building.

311. New section 121A defines building control authorities and local authority for the purpose of the definition of building control authority in 121A(1), to confirm that the designated local authority is the building control authority for work in relation to which it has been designated.

Background

312. Section 91 of the Building Act 1984 places a duty on the local authority to execute the Act and enforce building regulations’ requirements in its area.

313. In England, to avoid duplication of regulation, the Building Safety Regulator will be responsible for all building regulations matters when building work is undertaken on higher-risk buildings (not just fire and structural safety matters). Therefore, it will be the building control authority for all building work on higher-risk buildings, or for work which leads to a building becoming a higher-risk building, for instance through the addition of extra storeys to an existing building or ceasing to be a higher-risk building with the removal of storeys from the building or change of use.

314. Also, there will be multi-building sites in England comprising both higher-risk buildings and non-higher-risk buildings. Although the Building Safety Regulator will automatically be the regulator for the higher-risk building, a local authority or registered building control approver would normally be the building control body for the non-higher risk building.

315. *The developer may prefer to deal with one body for the whole site. Given that neither a local authority nor a registered building control approver can undertake building control for the higher-risk building, this would mean the developer would choose the Building Safety Regulator to be responsible for providing building control for the whole site.*

316. *The regulator's notice provides the mechanism for doing this in England.*

317. *Section 91 of the Building Act 1984 applies equally to Wales.*

318. *In Wales the local authority for the area, or as designated by Welsh Ministers under building regulations, will be responsible for all building regulations matters when building work is undertaken on higher-risk buildings including similarly for work which leads to a building becoming or ceasing to be a higher-risk building.*

319. *For multi-building sites in Wales comprising both higher-risk buildings and non-higher-risk buildings although the developer may choose either a local authority or registered building control approver as the building control body for the non-higher risk building, the developer may choose to utilise the designated local authority for the whole site.*

Example

If a developer ("the relevant person") wishes the Building Safety Regulator to act as the building control authority for a multi-building site including both higher-risk buildings and non-higher risk buildings, they can seek the Building Safety Regulator's agreement to issuing, jointly, a regulator's notice. The Building Safety Regulator has to agree to undertake the building control function for non-higher risk buildings. If they do not, building control would be the responsibility of the local authority or a registered building control approver. A regulator's notice can be issued only for sites where there is a higher-risk building and where work involves work on the higher-risk building. It is envisaged that the local authority would have very limited grounds for rejecting a regulator's notice on procedural grounds (for instance incorrect information has been supplied) and this would need to be done within a period prescribed in regulations. Where the Building Safety Regulator is acting as the building control authority for a non-higher risk building, it will operate the same building control functions for the non-higher risk building as would a local authority where plans have been deposited. Once work on a non-higher risk building has completed, the Building Safety Regulator will issue a completion certificate as provided for under building regulations. The regulator's notice still has effect in respect of that work, i.e. a local authority cannot take enforcement action in respect of that work at a later date. A new regulator's notice will be needed for any future building work on the non-higher risk building, or, alternatively, it would be open for the person undertaking the work to use the local authority or a registered building control approver for building control.

COMMENTARY

4. Section 32 amends section 91 of the Building Act 1984 to make the Building Safety Regulator the building control authority for higher-risk building work in England. It

inserts new sections 91ZB to 91ZD, providing that the Regulator is the sole building control authority for work on higher-risk buildings, displacing both local authority building control and the former approved inspector regime.

5. This is one of the most significant structural changes made by the Act. Prior to the BSA, building control for all buildings (including high-rise residential) could be carried out by either a local authority or an approved inspector chosen by the person carrying out the work. Section 32 removes this choice for higher-risk buildings, centralising control in the Regulator.
6. There has been no reported case law on section 32 as at September 2026.

SECTION 33 – BUILDING REGULATIONS

STATUTORY TEXT

In Schedule 1 to the Building Act 1984 (building regulations) after paragraph 1 insert—

1A Procedural requirements etc: general

- (1) Building regulations may make provision about the procedure that may or must be followed in relation to any work.
- (2) The regulations may in particular make provision for and in connection with—
 - (a) the giving of notices;
 - (b) the making of applications to building control authorities;
 - (c) the giving or receipt of certificates;
 - (d) requiring a prescribed person, in prescribed circumstances, to consult such other person as may be prescribed.
- (3) The regulations may—
 - (a) confer on a building control authority a power to require a person to notify the authority of specified matters by the specified time;
 - (b) provide that in prescribed circumstances an application is treated as granted or is treated as refused;
 - (c) make provision about the effect of the grant of an application;
 - (d) make provision about the effect of certificates;
 - (e) require a person consulted to give a substantive response to the consultation before the end of a prescribed period.
- (4) In sub-paragraph (3)(a) “specified” means specified by the building control authority.

1B Applications for building control approval

- (1) Building regulations may in particular make provision for and in connection with applications for building control approval (including approval of changes to anything that has already been approved).
- (2) “Building control approval”—
 - (a) in relation to any work, means the approval by the building control authority of—
 - (i) plans of the work, and

- (ii) such other documents, relating to compliance with any provision of building regulations, as may be prescribed (or, in a case within sub-paragraph (5), as are provided to the authority);
- (b) in relation to a change to a relevant document, means the approval by the authority of the change.
- (3) Building regulations may—
 - (a) confer on building control authorities a power, with the consent of the applicant—
 - (i) to impose requirements (including in particular requirements of a kind mentioned in sub-paragraph (4)) when granting an application;
 - (ii) to vary requirements;
 - (b) make provision about the cases in which an application for approval of a change must be made (including provision conferring on building control authorities a power to specify the circumstances in which such an application must be made).
- (4) The requirements referred to in sub-paragraph (3)(a) are—
 - (a) a requirement relating to the provision of a revised version of a specified relevant document;
 - (b) a requirement that the work does not proceed beyond a specified stage unless a specified relevant document has been given to, and approved by, the building control authority.
- (5) Building regulations may provide that in prescribed cases—
 - (a) an application may be made to the authority for approval of the plans and such other relevant documents as the applicant considers appropriate, and
 - (b) the authority may refuse the application if the applicant does not, on request, provide it with a specified relevant document.
- (6) In this paragraph—
 - (a) “relevant document” means—
 - (i) the plans mentioned in sub-paragraph (2)(a)(i), or
 - (ii) a document prescribed for the purposes of sub-paragraph (2)(a)(ii);
 - (b) “specified” means specified by the building control authority;
 - (c) a reference to a change to a document includes the replacement of it.

1C Certificates: approved schemes

- (1) Building regulations may in particular make provision for and in connection with certificates that are given—
 - (a) by a member of a scheme that is approved,

- (b) in accordance with the scheme, and
 - (c) in accordance with any prescribed requirement relating to the provision of insurance cover in respect of work to which the certificate relates.
- (2) Building regulations may make provision for and in connection with—
 - (a) the approval of schemes by the appropriate national authority or a person designated by that authority;
 - (b) the suspension or withdrawal of approvals (including provision about appeals to the appropriate court or tribunal against the suspension or withdrawal of approvals).
- (3) The regulations may in particular provide that a scheme may be approved (and may remain approved) only if prescribed requirements relating to the provision of insurance cover are complied with.
- (4) The regulations may provide—
 - (a) that an approval has effect for a particular period (including a period specified in the approval), or
 - (b) that an approval has effect until it is suspended or withdrawn.
- (5) The requirements relating to insurance cover that may be prescribed include in particular a requirement that insurance cover is provided through a scheme of insurance approved by the appropriate national authority or a person designated by that authority.

1D Obtaining, keeping and giving information and documents

- (1) Building regulations may, in relation to any work, make provision about—
 - (a) obtaining information or documents;
 - (b) creating documents;
 - (c) keeping information or documents;
 - (d) giving information or documents.
- (2) The regulations may in particular—
 - (a) provide that information or documents must be given or kept in accordance with prescribed standards;
 - (b) impose requirements as regards keeping information or documents up to date;
 - (c) confer on building control authorities or other prescribed persons a power, in prescribed circumstances, to require a person to give information to them.
- (3) Where building regulations provide that any information or document must be given, they may make provision about the admissibility in any criminal proceedings of the information or document.

1E Reporting requirements: duty to establish and operate system

- (1) This paragraph applies where building regulations made by virtue of paragraph 1D require a person to give information—
 - (a) in relation to work in England, to the regulator;
 - (b) in relation to work in Wales, to the building control authority.
- (2) For the purpose of facilitating and securing compliance with any such requirement, the regulations may—
 - (a) require a prescribed person to establish and operate a system for the giving of prescribed information to such person as may be prescribed, and
 - (b) make provision about such systems.

1F Form and content of documents etc

- (1) Where building regulations provide that any document must or may be given, they may make provision about—
 - (a) the form and content of the document;
 - (b) the information and other documents that must accompany it;
 - (c) the way in which the document, and anything that is to accompany it, is to be given.
- (2) Where building regulations provide that any information must or may be given, they may make provision about the way in which it is to be given.
- (3) Building regulations may provide that any of the matters mentioned in paragraphs (a) to (c) of sub-paragraph (1), or in sub-paragraph (2), are to be specified in a direction made and published in accordance with the regulations.
- (4) Building regulations may provide that—
 - (a) a prescribed application must be accompanied by such prescribed documents as the applicant considers appropriate, and
 - (b) the building control authority may refuse the application if the applicant does not, on request, provide it with a document of a kind prescribed for the purposes of paragraph (a) in relation to the application.

1G Inspection, testing etc

- (1) Building regulations may make provision for and in connection with—
 - (a) the inspection and testing of work;
 - (b) the inspection and testing of buildings;
 - (c) the inspection and testing of services, fittings and equipment provided in connection with buildings;
 - (d) the taking of samples.

- (2) The regulations may in particular—
 - (a) prohibit the covering up of any work, for a prescribed period after a prescribed or specified event;
 - (b) provide for the cutting into or laying open of any work or building, or the pulling down of any work.
- (3) In sub-paragraph (2)(a) “specified” means specified by the building control authority.

1H Applications to building control authorities: extension of period by agreement

Building regulations may provide that any prescribed period for the doing of a thing by a building control authority in connection with an application made to it may be extended by agreement between the authority and the applicant.

1I Appeals

- (1) Building regulations may make provision for and in connection with appeals against decisions made under, or under an instrument made under, Part 1, 2 or 2A of this Act.
- (2) The regulations may confer, in respect of a prescribed decision—
 - (a) in relation to England—
 - (i) a right to appeal to the regulator or the tribunal, and
 - (ii) in the case of an appeal to the regulator, a right of appeal to the tribunal against the decision of the regulator made on appeal;
 - (b) in relation to Wales—
 - (i) a right to appeal to the Welsh Ministers or a magistrates’ court, and
 - (ii) in the case of an appeal to the Welsh Ministers, a right of appeal to a magistrates’ court or a right of appeal to the High Court, against the decision of the Welsh Ministers made on appeal.
- (3) The provision that may be made in connection with appeals includes provision about a right of appeal conferred by Part 1, 2 or 2A.
- (4) The regulations may in particular make provision about—
 - (a) the grounds upon which an appeal may be made;
 - (b) the period within which an appeal must be made;
 - (c) the way in which any appeal is to be made;
 - (d) the powers of the court, tribunal or other person determining the appeal (including provision conferring a power to give directions and, in the case of the regulator or Welsh Ministers, powers in respect of costs).

- (5) In respect of appeals to the regulator or the Welsh Ministers, the regulations may make provision about procedural matters (including provision conferring a discretion as to the procedure to be adopted).
- (6) In respect of appeals to the Welsh Ministers, the regulations may in particular make provision for and in connection with the Welsh Ministers appointing a person to determine the appeal (including provision conferring functions on that person and providing that their decision is treated as the decision of the Welsh Ministers).

EXPLANATORY NOTES

Section 33: Building regulations

Effect

320. This section inserts new provisions into Schedule 1 to the Building Act 1984 to provide powers for building regulations to set: • procedural requirements relating to building control and the issue of notices and certificates (new paragraph 1A); • procedures relating to applications for building control approval, and for requirements to be imposed on approvals (new paragraph 1B); • approval of schemes whose members can issue certificates, and provision about those certificates and schemes including insurance (new paragraph 1C); • requirements on giving, obtaining or keeping of information or documents (new paragraph 1D); • requirements for the establishing of a system relating to mandatory occurrence reporting (new paragraph 1E); • the form and content of documents and information to be provided with building control applications (new paragraph 1F); • inspection and testing (new paragraph 1G); • powers for building control authorities to extend prescribed timescales for deciding applications with the agreement of the applicant (new paragraph 1H); and • rights to appeal decisions, appeal requirements and procedures (1I).

321. The Building Safety Regulator will be the building control authority for higher-risk buildings and buildings covered by a regulator's notice in England (see section 32), new sections 91ZA and 91ZB), and local authorities will be the building control authority for other buildings; in some cases the building control authority in Wales will be a designated local authority, rather than the local authority for the area in question (see section 32, new section 91ZD).

322. The new regulatory regime will introduce procedures and requirements for new higher-risk buildings as they are designed and built, and for building work carried out on them. Proposals for new higher-risk buildings will go through a gateway process, and proposals for building work on existing higher-risk buildings will go through a refurbishment process, each of which will be laid out in building regulations.

323. Procedures similar to the current building control routes will continue to be available for buildings not in scope of the more stringent regime where a local authority is the building control authority, namely deposit of plans or issue of a building notice. Procedures for these are currently set out in Part 3 of the Building Regulations 2010 as

amended. This section will provide the powers to make changes to these existing requirements, including the information to be provided, consultation with fire and rescue authorities and sewerage undertakers, building control approvals, including with requirements, notification of when stages of work commence, and issue of completion certificates when work has completed.

324. Schedule 5 makes consequential repeals and amendments to relevant provisions in the Building Act 1984.

325. This section will apply equally in Wales with the exception that rights of appeal are to the Welsh Ministers or a magistrates' court or in some cases to the High Court.

Proposed use of powers

326. New paragraph 1A provides that building regulations may make provision about requirements for applications to building control authorities; the giving of notices and certificates; consultation arrangements; for building control authorities to be notified of specified matters; when applications can be deemed to be accepted or refused; and the effect of grants of applications and of certificates.

327. Regulations under paragraph 1B will make provision for prescribed documents to be submitted with an application for building control approval, and also provide building control authorities with the ability to set requirements when granting applications for building control approval, such as requiring the submission of revised versions of documents, setting out that work cannot proceed beyond a certain stage without further approvals, and requiring applications for the approval of changes which occur during construction. Building control applications for refurbishment of higher-risk buildings will require plans and prescribed documents proportionate to the proposed refurbishment. Paragraph 1B(5) enables building regulations to set out the requirements for building control applications for the refurbishment of higher-risk buildings in England. Building control authorities will have the ability to request further information and refuse applications where the applicant fails to provide these. Taken together, the powers in paragraphs 1A and 1B will be used to set out in building regulations the procedures for gateways and refurbishment routes for building control approval in higher-risk buildings including the prescribed documents to be submitted with an application, staged approvals, and change control requirements.

328. New paragraph 1C makes provision for building regulations to set out procedures for the approval of schemes for persons who can provide certificates as evidence that work complies with building regulations requirements; the suspension or withdrawal of scheme approvals, the time periods for approvals; and arrangements for any prescribed insurance cover which members of schemes must hold, including that cover is provided by a scheme approved by the appropriate national authority (the Secretary of State in England and Welsh Ministers in Wales). For example, regulations might also set out the types of work for which certificates can be provided and the procedure for notifying building control authorities of work covered by certificates, as in the current Building Regulations. It is envisaged that a set of conditions of approval will be published which schemes must meet to

be approved. These will be used as the basis for ongoing audit of schemes which will be necessary in order to maintain approvals.

329. New paragraph 1D will enable building regulations to set out the information and documents that must be obtained and kept, and the standards to which these documents and information must be stored and maintained. In England it is proposed to use this power to require those designing and constructing higher-risk buildings to develop a golden thread of information to prescribed standards. These prescribed standards are to ensure the information is accessible, accurate, up to date, transferable, secure and has longevity. For example, building information such as plans and prescribed documents submitted at Gateways two and three will need to be stored in the golden thread in a way that meets the prescribed standards. Regulations under this provision may give building control authorities or other prescribed persons the power to require documents and information to be shared with them in certain circumstances. Building regulations under this section will define the prescribed circumstances where information must be shared and the prescribed persons it must be shared with in these circumstances.

330. Dutyholders will also be required to report information about safety incidents taking place during building work as part of mandatory occurrence reporting. The safety related incidents amounting to reportable occurrences will be prescribed in secondary legislation. Paragraph 1D gives the power to require reporting and the power to limit the admissibility of information acquired through such reporting in criminal proceedings, equivalent to the limitations set out in section 89(6). Paragraph 1E contains the power to require mandatory occurrence reporting frameworks to be established and operated by dutyholders. Regulations will require establishment and operation of a framework, according to prescribed requirements, that will enable workers on-site to report potential occurrences. In England, Principal Designers and Principal Contractors will be required to use this information to report structural and fire safety occurrences which could cause a significant risk to life safety in higher-risk buildings to the Building Safety Regulator.

331. In England it is proposed to require prescribed documents such as a fire and emergency file and construction control plan with certain building control applications for higher-risk buildings using powers in paragraph 1B. Where building regulations provide that any document or information may or must be given, the powers in new paragraph 1F will be used to prescribe the form and content of such documents, the information and other documents that must accompany it, and the way that it is given. This ensures consistency and quality standards. It is linked to paragraph 1D which contains powers to require that the information and documents created and managed by dutyholders to support building safety must meet prescribed standards. Subparagraph (3) allows building regulations to specify that some documents must be given in accordance with a published direction; so, for example, building regulations might prescribe that Gateway two applications in England must be given to the Building Safety Regulator in accordance with a direction published by the Regulator; and the Building Safety Regulator might publish a direction saying that these applications should be submitted through an online portal. New paragraph 1F(4) gives the power to set out in building regulations the prescribed documents that must be submitted with certain prescribed applications. In England, the

intention is that the prescribed applications will be certain applications for the refurbishment of higher-risk buildings. Further information or documents can be required by the building control authority. It also sets out that such applications can be refused if a prescribed document is not provided to the building control authority on request.

332. When checking work, building control authorities may need to undertake tests or take samples of building materials. It is proposed to use the powers in new paragraph 1G to make provision in building regulations relating to the testing and sampling of work or the building, prohibit the covering up of work within a prescribed time period after a specified event, and allow for the cutting into, laying open of the work or building, or for the pulling down of work in order to test or sample it. For example, in order to check compliance a building control authority may specify that foundations should not be covered over for a period of time, to enable the depth of the foundations to be checked; or may wish to check that cavity barriers have been installed properly before the external cladding is installed, and they are covered up.

333. Building regulations will set prescribed timescales within which building control authorities will need to determine applications for building control approval and other applications. There will be projects where it will not be possible to review all the documents and make a decision within the prescribed timescale. Paragraph 1H will allow provision to be made for the building control authority, with the agreement of the applicant, to extend the period within which the application must be determined. In England it is proposed to use this power to provide for prescribed timescales for the following applications: Gateway two, change control, Gateway three and refurbishment of higher-risk buildings.

334. New paragraph 1I will enable persons directly impacted by decisions of building control authorities under building regulations to appeal such decisions. For example, where the Building Safety Regulator refuses a building control application for a higher-risk building such as at Gateway two, change control, Gateway three and refurbishment, there will need to be a route of appeal.

Background

335. The Independent Review made several recommendations for stringent new building control procedures to increase regulatory oversight of the design and construction of higher-risk buildings and of building work subsequently carried out on them. It identified the importance of persons responsible for building safety having access to accurate and up to date information and concluded that a “golden thread” of good quality information would ensure effective building safety management throughout a building’s lifecycle.

336. It also recommended that dutyholders across the building’s lifecycle be required to report safety concerns to the Building Safety Regulator as part of a mandatory occurrence reporting regime.

337. Section 16 of the Building Act 1984 sets out general provision for the deposit of plans of proposed building work with local authorities. Specific regulations on procedural matters are in Part 3 of the Building Regulations 2010. These provisions are considered to be insufficient to implement the tightened controls needed for higher-risk buildings and so

new provisions will be made in regulations for gateways and refurbishment procedures using the powers provided in section 32.

338. Building regulations currently also set requirements for notices to be given to local authorities.

339. Sections 16 and 17 of the Building Act 1984 allow the Secretary of State to approve persons who can issue a certificate that work complies with building regulations, and as a consequence have protection from formal enforcement action by the local authority (although no persons have been approved under this power).

340. Some lower risk building work can be certified as complying with relevant building regulations requirements if the person undertaking the work is a member of a competent person scheme, and a local authority can accept the certificate as evidence of compliance. Schemes are authorised by the Secretary of State and are listed in Schedule 3 of the Building Regulations 2010.

Example: Golden thread of information

An architect has designed a residential tower block that will be 25 metres high. The architect's plans for the building form part of the information that will be required by the Building Safety Regulator at gateway two. This information will therefore need to be stored in the golden thread and meet the golden thread standards Example: Mandatory occurrence reporting During the construction of a residential tower block, a worker identifies compatibility issues between the insulation and intumescent sealant being installed around copper piping on-site. In the event of a fire, the expanding sealant would deform the insulation and potentially compromise compartmentation. The incompatibility was not spotted during design or during standard internal reviews, and the two products have been installed together numerous times on-site. This presents a systemic and significant risk to life safety. The worker reports this to the Principal Designer and Principal Contractor who immediately inform the Building Safety Regulator that a mandatory occurrence has been identified. The Principal Contractor and Principal Designer then ensure that a full report is submitted to the Building Safety Regulator as soon as is practicable and no later than ten days from the occurrence being identified. Upon receiving the report, the Building Safety Regulator can use the intelligence within to identify any trends of similar such incidents across the sector and share this and other valuable lessons learned within the report with industry. In this way the report enables the Building Safety Regulator to help professionals across the sector proactively identify and resolve similar issues on their own sites, mitigating previously unknown risks and improving best practices across the built environment. The Building Safety Regulator can also, at its own discretion, use such a report as a basis for further investigative or enforcement action.

COMMENTARY

7. Section 33 amends section 1 of the Building Act 1984 to expand the regulation-making power so that building regulations may impose continuing requirements on owners and

occupiers of buildings after completion of building work. This is a significant extension of the traditional scope of building regulations, which historically focused only on the point of construction or alteration.

8. There has been no reported case law on section 33 as at September 2026.

SECTION 34 – DUTYHOLDERS AND GENERAL DUTIES

STATUTORY TEXT

In Schedule 1 to the Building Act 1984 (building regulations) after paragraph 5 insert—

5A Appointed persons

- (1) Building regulations may require prescribed appointments to be made in relation to any work.
- (2) Building regulations may make provision about appointments, including provision about—
 - (a) the persons who are to make appointments;
 - (b) the persons who may be appointed;
 - (c) the time by which appointments must be made;
 - (d) the period for which persons are to be appointed;
 - (e) the termination of appointments;
 - (f) the replacement of appointed persons.
- (3) The regulations may provide that in prescribed circumstances an appointment is treated as made.
- (4) In this Schedule “appointed person”, in relation to any work, means a person appointed in relation to that work under building regulations made by virtue of this paragraph.

5B General duties

- (1) Building regulations may, for the purpose of facilitating compliance with any requirement of building regulations in relation to any work to which building regulations are applicable—
 - (a) impose duties on relevant persons in connection with the planning or management of the work;
 - (b) require relevant persons to co-operate with other relevant persons.
- (2) The following are “relevant persons” for this purpose—
 - (a) any appointed person;
 - (b) any prescribed person.

EXPLANATORY NOTES

Section 34: Dutyholders and general duties

Effect

341. This section amends Schedule 1 to the Building Act 1984, by the addition of paragraph 5A, appointed persons, and paragraph 5B, general duties. The new regulatory regime will regulate and hold to account those participating in the design and construction of new buildings, and the refurbishment of existing buildings.

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

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

344. The provisions in this section will replace an existing power in paragraph 4B of Schedule 1 to the Building Act 1984, inserted by the Sustainable and Secure Buildings Act 2004, which provides powers for building regulations to make provision with regard to appointed persons, and paragraph 4B will be repealed as a consequence (see Schedule 5 consequential amendments).

345. This section will apply equally in Wales. Welsh Ministers intend to set out in secondary legislation requirements for principal dutyholders.

346. The power provided by this section, which is amending Schedule 1 to the Building Act 1984, will enable regulations to be made setting out the appointments required when building regulations apply, and the duties which will be imposed. This will include requirements for dutyholders to cooperate and share information and to ensure compliance with building regulations.

347. In England, the Government intends to use the powers in paragraphs 5A and 5B to provide that the client can treat those persons appointed as a Principal Contractor or Principal Designer under the Construction (Design and Management) Regulations 2015 (CDM) as appointed for the purposes of the building regulations. In order to do this, it is proposed that the client should certify that the CDM person has the appropriate skills, knowledge, experience and behaviours to undertake the equivalent role under the building regulations.

Background

348. This is a new provision, which will amend Schedule 1 to the Building Act 1984. Schedule 1 sets out the provision that may be made in building regulations, including detailing what should be done by whom.

349. The Independent Review identified dutyholders (including the Client, and the Principal Designer and the Principal Contractor appointed under CDM 2015) who should be held accountable for building safety during the design and construction phase. CDM 2015 defines these dutyholders and imposes duties on them including appointing the right people for the work and having suitable arrangements to ensure the project is carried out in a way that secures health and safety.

350. Regulations made under this provision in England will ensure that when buildings are designed, constructed or refurbished, all dutyholders, including existing dutyholders identified in CDM 2015, will have formal responsibilities for compliance with building regulations.

COMMENTARY

9. Section 34 inserts new dutyholder provisions into the Building Act 1984. These provisions create a framework of responsibilities for persons involved in the design, construction, and supervision of building work. The dutyholder regime is modelled on the CDM Regulations and imposes duties on (1) the client, (2) the principal designer, (3) the principal contractor, and (4) other designers and contractors.
10. The statutory duties include a duty to plan, manage and monitor building work to ensure compliance with building regulations, and a duty to cooperate and coordinate with other dutyholders. Breach of these duties does not of itself give rise to civil liability (see the express exclusion in the inserted provisions) but may result in regulatory enforcement action.
11. There has been no reported case law on section 34 as at September 2026.

SECTION 35 – INDUSTRY COMPETENCE

STATUTORY TEXT

In Schedule 1 to the Building Act 1984 (building regulations) after paragraph 5B (inserted by section 34) insert—

5C Competence requirements

- (1) Building regulations may, in relation to any work, impose competence requirements on—
 - (a) any appointed person, or
 - (b) any prescribed person.
- (2) A “competence requirement” is a requirement relating to—
 - (a) the skills, knowledge, experience and behaviours of an individual;
 - (b) the capability of a person other than an individual to perform its functions under building regulations.
- (3) The regulations may require an appointed person who is not an individual to give an individual acting under its control who has the appropriate skills, knowledge, experience and behaviours the task of managing its functions as an appointed person.

In Schedule 1 to the Building Act 1984 (building regulations) after paragraph 5B (inserted by section 34) insert -

EXPLANATORY NOTES

Section 35: Industry competence

Effect

351. This Section amends the Building Act 1984, creating powers to prescribe in building regulations competence requirements relating to the Principal Designer and Principal Contractor (appointed persons), and any prescribed person. Building regulations may also impose duties on the person appointing the Principal Designer, Principal Contractor and any prescribed person to ensure that those they appoint meet the competence requirements. These requirements will apply to design or building work on all buildings.

352. The Principal Designer, Principal Contractor, designers and contractors can be an organisation or an individual. Sub-paragraph (2) makes clear that the competence requirements can apply to both organisations and individuals. For individuals, the competence requirements will relate to their skills, knowledge, experience and behaviours. For organisations, the competence requirements will relate to the organisational capability – the ability of an organisation to carry out its functions under the building regulations properly. This may include having appropriate management systems,

processes and policies to carry out its functions, and having the capability to ensure that its staff have the appropriate skills, knowledge, experience and behaviours.

353. Where the Principal Designer or the Principal Contractor are organisations, subsection (3) enables building regulations to impose requirements on these organisations to ensure that the individuals leading or managing the work have the appropriate skills, knowledge, experience and behaviours to manage, on behalf of the organisation, their functions as the Principal Designer or the Principal Contractor.

354. This section will apply equally in Wales with the same expectations of skills, knowledge, experience and behaviours relevant to the work in question.

355. The intention for this provision is to ensure that everyone doing design work or building work is competent to do their work in a way that is compliant with building regulations. For any design or building work on all buildings in England, it is intended that building regulations set out these duties:

- The Principal Designer and Principal Contractor (appointed persons) must have the appropriate skills, knowledge, experience and behaviours and, if they are an organisation, the organisational capability, to carry out their duties specified in building regulations in a way that is compliant with building regulations. They may not accept an appointment unless they fulfil these conditions.*
- Anyone who participates in or manages the work must have the appropriate skills, knowledge, experience and behaviours, and if they are an organisation, the organisational capability to carry out work in a way that is compliant with building regulations. If a person does not have the appropriate skills, knowledge, experience and behaviours, they must be in the process of obtaining it, and must be appropriately supervised. The latter option is needed to cover individuals in training and apprentices etc.*
- Anyone who appoints organisations or individuals to carry out design work or building work must take reasonable steps to ensure that those they appoint meet the competence requirements for their roles.*
- For higher-risk buildings, the competence requirements for the Principal Designer, Principal Contractor, and those carrying out design or building work must be appropriate to the particular higher-risk building in question.*

356. These duties will apply to any design or building work on all buildings in England, whether or not the work is higher-risk building work. This includes any design or building work carried out during occupation.

357. In England, the Government intends to provide statutory guidance to support these requirements. In the first instance guidance will be issued for higher-risk buildings, with wider competence guidance to follow later. The guidance will provide examples of the skills, knowledge, experience and behaviours and organisational capability required to work on higher-risk buildings, in particular, for the Principal Designer and Principal Contractor. The guidance may make references to the competence standards being developed by British Standards Institution (BSI) for these roles. Over time, it is expected that the built environment industry will develop sector-specific competence frameworks, which could, if sufficiently rigorous, be recommended and adopted in statutory guidance. It is expected that the competence committee (see section 10) will advise on this point.

358. Section 33 provides powers (in new paragraphs 1B and 1F of Schedule 1 to the Building Act 1984) for Building Regulations to prescribe documents to be supplied with building control applications in England. This will include as part of the Gateway two application, a signed declaration from the Client that they are content with the competence of the Principal Designer and Principal Contractor, and the evidence of the Client's assessment process for the competence of the Principal Designer and Principal Contractor.

Background

359. Building regulations do not currently make any particular provision relating to competence of persons carrying out building work. Regulation 7(1)(b) provides that "building work shall be carried out in a workmanlike manner", but this is focused on the quality of the work rather than the competence of the person doing it. Approved Document 7 provides some guidance on meeting the requirement in regulation 7(1)(b).

360. The Construction, Design and Management (CDM) Regulations 2015 include general duties in relation to the competence of designers (including Principal Designers) and contractors (including Principal Contractors). There are also duties on contractors to ensure the competence of those they appoint to work on construction sites. These duties focus on ensuring good management of health, safety and welfare when carrying out construction projects rather than on the safety and quality of buildings, and do not have specific provisions relating to higher-risk buildings.

361. The new provisions will impose general duties in relation to competence of persons carrying out any work on all buildings to ensure compliance with building regulations.

Example

The Client intends to commission an eight-storey residential building and appoints a Principal Designer to lead on the design work. Prior to the appointment, the Client must assess that the nominated Principal Designer has the appropriate skills, knowledge, experience and behaviours and organisational capability to carry out their duties under building regulations in relation to the specific higher-risk building. In making this assessment, the Client considers statutory guidance which provides examples of the skills, knowledge, experience and behaviours and organisational capability required to work on higher-risk buildings. The Client decides to appoint a company which demonstrates the organisational capability and ensures that the individual nominated by the company to manage its functions as the Principal Designer has the relevant skills, knowledge, experience and behaviours for the particular building, as explained in guidance. This may be demonstrated by, for example, being assessed by an accredited organisation as meeting the competence standards for the Principal Designer and having relevant experience working on the same type of buildings. The Principal Designer must also make sure that anyone they appoint to carry out design work is competent for their role. Once the design stage is completed, the Client then procures for the construction of the building. Before appointing a Principal Contractor, the Client must assess that the nominated Principal Contractor has the appropriate skills, knowledge, experience, behaviours and organisational capability to carry out their duties under building regulations in relation to

the specific building. Similarly, the Client considers statutory guidance and appoints a company which demonstrates the organisational capability, and ensures that the individual nominated by the company to manage its functions as the Principal Contractor has the relevant skills, knowledge, experience and behaviours for the particular building, and has met the competence standard for the Principal Contractor, as explained in guidance. During construction, the Principal Contractor must make sure that anyone they appoint to carry out building work is competent for their role or is being trained and appropriately supervised by a competent supervisor.

COMMENTARY

12. Section 35 inserts provisions into the Building Act 1984 enabling the Secretary of State to make regulations about the competence of persons carrying out building work and building control functions. This is the statutory foundation for the industry competence requirements recommended by the Hackitt Review.
13. There has been no reported case law on section 35 as at September 2026.

SECTION 36 – LAPSE OF BUILDING CONTROL APPROVAL ETC

STATUTORY TEXT

- (1) The Building Act 1984 is amended as follows.
- (2) For section 32 substitute—

32 Lapse of building control approval

- (1) This section applies where—
 - (a) an application for building control approval in respect of any work is made on any day (“the relevant day”), and
 - (b) the application is granted.
- (2) Where—
 - (a) the work relates to one building, and
 - (b) the work is not commenced within 3 years from the end of the relevant day,

the relevant provisions have effect as if the application had not been made (and the approval had not been given).
- (3) Where—
 - (a) the work relates to more than one building, and
 - (b) the work relating to one or more of the buildings (“the relevant work”) is not commenced within 3 years from the end of the relevant day,

the relevant provisions have effect in relation to those buildings and the relevant work as if the application had not been made (and the approval had not been given).
- (4) In subsection (1) the reference to an application for building control approval is to an application for approval of a kind mentioned in paragraph 1B(2)(a) of Schedule 1.
- (5) In this section “the relevant provisions” means this Act and regulations made under it except the following provisions and any regulations made under them—
 - (a) sections 56, 56A, 56B and 91A (records and registers etc);
 - (b) section 105B (fees and charges).
- (6) Building regulations may make provision about when work, or work relating to a building, is to be regarded as commenced for the purposes of this section.

- (3) In section 47(4)(b) (time when initial notice ceases to be in force) for “below”, in the first place it occurs, substitute “(final certificates) and section 53A (lapse of initial notice)”.
- (4) In section 50 (plans certificates) omit subsection (8).
- (5) In section 52 (cancellation of initial notice) omit subsection (5).
- (6) In section 53(2) (effect of initial notice ceasing to be in force: general)—
 - (a) at the end of paragraph (a) insert “and”;
 - (b) omit paragraph (c) and the “and” immediately before it.
- (7) After section 53 insert—

53A Lapse of initial notice

- (1) This section applies where—
 - (a) on any day (“the relevant day”) an initial notice is given in respect of any work, and
 - (b) the initial notice is accepted.
- (2) Where the work relates to one building and is not commenced within 3 years from the end of the relevant day—
 - (a) the initial notice ceases to be in force, and
 - (b) if a plans certificate relating to the work (or any part of it) has been accepted, the relevant provisions have effect as if the certificate had not been given (or accepted).
- (3) Where the work relates to more than one building, and the work in relation to one or more of the buildings (“the relevant work”) is not commenced within 3 years from the end of the relevant day—
 - (a) the initial notice ceases to be in force so far as it relates to the relevant work, and
 - (b) if a plans certificate relating to the relevant work (or any part of it) has been accepted, the relevant provisions have effect as if, as regards the relevant work, the certificate had not been given (or accepted).
- (4) For the purposes of subsection (3)(b) it does not matter whether the plans certificate also relates to work other than the relevant work.
- (5) In this section “the relevant provisions” has the meaning given by section 32.
- (6) Building regulations may make provision about when work, or work relating to a building, is to be regarded as commenced for the purposes of this section.
- (8) In section 54(4)—

- (a) omit the “and” at the end of paragraph (a);
- (b) after paragraph (b) insert
 - , and
 - (c) with the substitution, in subsection (2)(d), of a reference to paragraph 4A of Schedule 4 for the reference to section 53A.
- (9) Schedule 4 is amended as follows.
- (10) In paragraph 1(1) for “below” substitute “(final certificates) and paragraph 4A (lapse of public body’s notice)”.
- (11) In paragraph 2 omit sub-paragraph (6).
- (12) In paragraph 4(2) omit paragraph (c) and the “and” before it.
- (13) After paragraph 4 insert—

4A Lapse of public body’s notice

- (1) This paragraph applies where—
 - (a) on any day (“the relevant day”) a public body’s notice is given in respect of any work, and
 - (b) the public body’s notice is accepted.
- (2) Where the work relates to one building and is not commenced within 3 years from the end of the relevant day—
 - (a) the public body’s notice ceases to be in force, and
 - (b) if a public body’s plans certificate relating to the work (or any part of it) has been accepted, the relevant provisions have effect as if the certificate had not been given (or accepted).
- (3) Where the work relates to more than one building, and the work in relation to one or more of the buildings (“the relevant work”) is not commenced within 3 years from the end of the relevant day—
 - (a) the public body’s notice ceases to be in force so far as it relates to the relevant work, and
 - (b) if a public body’s plans certificate relating to the relevant work (or any part of it) has been accepted, the relevant provisions have effect as if, as regards the relevant work, the certificate had not been given (or accepted).
- (4) For the purposes of sub-paragraph (3)(b) it does not matter whether the public body’s plans certificate also relates to work other than the relevant work.
- (5) In this paragraph “the relevant provisions” has the meaning given by section 32.

- (6) Building regulations may make provision about when work (or work relating to a building) is to be regarded as commenced for the purposes of this paragraph.

EXPLANATORY NOTES

Section 36: Lapse of building control approval etc

Effect

362. This section inserts a new section 32 into the Building Act 1984 which provides for building control approvals to lapse automatically after three years in respect of any buildings in which work has not commenced. New section 32(5) ensures that certain things which the person carrying out the work had to do when they made their original application, for instance to pay a fee or supply certain information, are not undone.

363. This section also inserts a new section 53A into the Act which makes provision for initial notices and plans certificates to lapse after three years. A new paragraph 4A is inserted into Schedule 4 to the Building Act 1984 to provide for a public body's notice and public body's plans certificate to lapse after three years.

364. Consequential amendments are made to the Building Act 1984, in particular section 47(4) is amended so that it is subject to new section 53A. Consequently, the provisions of section 53 relating to an initial notice ceasing to have effect do not apply if an initial notice lapses under section 53A.

365. Provision in new subsections 32(6), 53A(6) and paragraph 4A(6) inserted by this section allows building regulations to define when work commences for the purposes of lapse of approval.

366. This section will apply equally in Wales.

Background

367. Section 32 of the Building Act 1984 currently provides a power for a local authority to issue a notice declaring that its approval of the plans for that work has no effect, if work has not commenced within three years of the plans being deposited.

368. Section 52(5) of the Building Act 1984 currently provides a power for a local authority to cancel an initial notice if work has not commenced within three years of the notice being issued, and section 50(8) provides a power for a local authority to rescind acceptance of a plans certificate if work has not started within three years of the certificate being issued. Similar provision is made for a public body's plans certificate in paragraph 2(6) of Schedule 4 to the Building Act 1984. Example Building control approvals, initial notices, plans certificates, and public body's notices and plans certificates, will lapse automatically rather than requiring a local authority to take proactive action to declare that approval has no effect, or to cancel the notice. This is in line with the arrangements in planning legislation where planning permission lapses automatically after three years if work on the development has not started. Also, if work has not started on an individual building on a

multi building site within three years, the building control approval in respect of that building will lapse, even if work on the remainder of the site has commenced.

COMMENTARY

14. Section 36 inserts new provisions into the Building Act 1984 concerning the lapse of building control approval where building work is not commenced or completed within prescribed periods. This prevents stale approvals being relied upon when building standards may have changed since the original approval was granted.
15. There has been no reported case law on section 36 as at September 2026.

SECTION 37 – DETERMINATION OF CERTAIN APPLICATIONS BY SECRETARY OF STATE OR WELSH MINISTERS
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STATUTORY TEXT

After section 30 of the Building Act 1984 insert—

Determination by appropriate national authority

30A Determination of certain applications by appropriate national authority

- (1) This section applies where the building control authority fails to determine a prescribed application relating to higher-risk building work (“the original application”) within the relevant period.
- (2) The applicant may apply to the appropriate national authority for the original application to be determined by that authority.
- (3) An application under this section may be made only—
 - (a) before the end of the prescribed period, and
 - (b) if the building control authority has not determined the original application.
- (4) The building control authority may not determine the original application at any time after the making of an application under this section.
- (5) Building regulations may make provision about applications under this section, including in particular provision—
 - (a) about the making of such applications;
 - (b) requiring an applicant to notify the building control authority of the making of an application;
 - (c) imposing duties on the building control authority in cases where an application is made;
 - (d) for and in connection with the appropriate national authority appointing a person to determine the original application (including provision conferring functions on that person and providing that their decision is treated as the decision of the appropriate national authority);
 - (e) about the procedure to be adopted in connection with the determination of the original application.
- (6) The provision that may be made by virtue of subsection (5)(a) includes provision about—
 - (a) the form and content of applications;
 - (b) the information and documents that are to accompany an application;

- (c) the way in which an application, and anything that is to accompany it, is to be given.
- (7) For the purposes of determining the original application by virtue of this section, this Act and building regulations apply in relation to the appropriate national authority (and any person appointed by virtue of subsection (5)(d)) as they apply in relation to the building control authority.
- (8) The applicant may appeal to—
 - (a) the tribunal, against a decision of the Secretary of State made under this section;
 - (b) a magistrates’ court, against a decision of the Welsh Ministers made under this section.
- (9) In this section “the relevant period” means—
 - (a) the period provided by building regulations as the period within which the building control authority is to make the decision, or
 - (b) if the regulations provide that that period may be extended by agreement between the applicant and the building control authority and such an agreement is made, the agreed period.

EXPLANATORY NOTES

Section 37: Determination of certain applications by Secretary of State or Welsh Ministers *Effect*

369. This section provides that where the building control authority fails to make a decision on a prescribed application for higher-risk buildings within prescribed timescales, and there is no agreement with the applicant to extend the timescale, applicants can apply to the appropriate national authority for a decision on the original application within a prescribed time period. The building control authority will not be able to continue determining the original application once an application has been made to the appropriate national authority for a decision in these cases. In England, the building control authority for higher-risk buildings will be the Building Safety Regulator and the appropriate national authority will be the Secretary of State (see below as regards Wales).

370. The appropriate national authority can appoint a person to determine these applications. Provisions will be made in building regulations for a person appointed to be able to determine the original application, including conferring functions on them and on the effect of their decisions. The appropriate national authority, and any appointed person, will have the powers of the building control authority to determine the original application with the Building Act 1984 and building regulations applying to them as they apply to the building control authority. They may for example impose requirements on approval of an application using powers under building regulations made under section 33 of this Act.

371. Subsection (5) provides powers to make provision about these applications in building regulations. General procedural matters with regard to these applications will be set out in building regulations, for example prescribing the categories of applications that can use this procedure, prescribing the time period within which these applications must be made, the procedures for making an application, for determining an application, and specifying the form and content of documents. Building regulations can also place requirements on applicants and impose duties on the building control authority in relation to these cases, such as requiring applicants to notify the building control authority when they submit an application to the appropriate national authority and requiring the building control authority to provide relevant documents to the appropriate national authority.

372. Applicants in England will be able to appeal decisions of the Secretary of State to the First-tier Tribunal.

373. In Wales, failure by the building control authority (being the local authority for the area or one designated by Welsh Ministers) to decide an application for a higher risk building will allow an application to Welsh Ministers for a decision on the application.

374. Applicants in Wales will be able to appeal decisions of the Welsh Ministers to a magistrates' court.

Proposed use of power

375. In England, it is intended to use the power in section 37 to provide for the following applications to be determined by the Secretary of State, if the Building Safety Regulator does not take a decision in time: Gateway two, change control, Gateway three, and refurbishment of higher-risk buildings.

Background

376. Currently developers can start building work when they have deposited plans and given the local authority notification of commencement or submitted a building notice. The new regime will require building control approval to be obtained before starting most kinds of building work on higher-risk buildings, and it will be an offence to undertake most higher-risk building work without first having building control approval. To minimise the risk of causing undue delays to construction, applicants will be able to apply to the appropriate national regulator for a decision in cases where the prescribed timescale for the building control authority to make a decision has passed with no extension agreed.

COMMENTARY

16. Section 37 inserts provisions after section 30 of the Building Act 1984 enabling the Secretary of State (or Welsh Ministers) to determine certain applications relating to building control where a question of general importance arises. This call-in power ensures that applications raising novel or systemic issues can be determined centrally rather than by individual building control authorities.

17. There has been no reported case law on section 37 as at September 2026.

SECTION 38 – COMPLIANCE AND STOP NOTICES

STATUTORY TEXT

- (1) In the Building Act 1984 before section 36 insert—

Notices in respect of contraventions

35B Compliance notices

- (1) The building control authority may give a compliance notice to a person who appears to the authority to have contravened, be contravening or be likely to contravene—
- (a) a relevant provision of building regulations, or
 - (b) a requirement imposed by virtue of such a provision.
- (2) A “compliance notice” is—
- (a) a notice requiring the recipient to take specified steps within a specified period, or
 - (b) a notice requiring the recipient to remedy the contravention or the matters giving rise to it within a specified period.
- (3) A notice of a kind mentioned in subsection (2)(a) may specify any steps relating to—
- (a) the remedying of the contravention, or
 - (b) avoiding the contravention occurring.
- (4) A person who, without reasonable excuse, contravenes a compliance notice commits an offence.
- (5) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding the maximum summary term for either-way offences or a fine (or both);
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
- and (in either case) is liable on summary conviction to a further fine not exceeding level 1 on the standard scale for each day on which the default continues after the initial conviction.
- (6) A compliance notice may not be given in respect of a contravention which occurred more than 12 months before the day on which the notice is given.
- (7) In this section—
- (a) “relevant provision” means any provision of building regulations except one that is prescribed for the purposes of this paragraph;

- (b) “specified” means specified in the notice.

35C Stop notices

- (1) The building control authority may give a stop notice to a person appearing to the authority to be in control of any work if it appears to the authority that —
- (a) the carrying out of the work would contravene a provision of building regulations prescribed for the purposes of this paragraph,
 - (b) a compliance notice relating to the work has been contravened, or
 - (c) the work contravenes a provision of building regulations or a requirement imposed by virtue of such a provision, and the risk of serious harm condition is met.
- (2) For the purposes of subsection (1)(c) the “risk of serious harm condition” is that use of the building in question without the contravention having been remedied would be likely to present a risk of serious harm to people in or about the building.
- (3) A “stop notice” is a notice prohibiting, either immediately or from a specified time, the carrying out of specified work until the occurrence of such of the following as may be specified—
- (a) the taking of specified steps;
 - (b) the occurrence of specified circumstances;
 - (c) the remedying of a specified contravention or the matters giving rise to it.
- (4) Where a stop notice is contravened, the person to whom the notice was given commits an offence.
- (5) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding the maximum summary term for either-way offences or a fine (or both);
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
- and (in either case) is liable on summary conviction to a further fine not exceeding level 1 on the standard scale for each day on which the default continues after the initial conviction.
- (6) It is a defence for a person charged with an offence under this section to prove that the person took all reasonable precautions and exercised all due diligence to avoid the contravention of the stop notice.
- (7) In this section “specified” means specified in the notice.

35D Compliance and stop notices: supplementary

- (1) Building regulations may make provision about compliance notices or stop notices.
- (2) The regulations may in particular make provision about—
 - (a) the form and content of notices;
 - (b) the giving of notices;
 - (c) the amendment or withdrawal of notices;
 - (d) the extension of any period specified in a compliance notice for the doing of a thing.
- (3) The regulations may require a building control authority which gives a notice to a person to take reasonable steps to notify other prescribed persons.
- (4) A compliance notice, or a stop notice under section 35C(1)(a), may not be given in respect of a contravention (including a future contravention) where—
 - (a) an application for building control approval was made to a building control authority in respect of any work that is not higher-risk building work,
 - (b) the application was granted, and
 - (c) the contravention consists (or would consist) of the carrying out of work or the doing of anything else in accordance with—
 - (i) the plans, or any other document, approved by the grant of building control approval, and
 - (ii) any requirement imposed by the building control authority in connection with the work or other thing.
- (2) After section 39 of that Act insert—

39A Appeals against compliance notices and stop notices etc

- (1) A person to whom a compliance notice has been given may appeal to the appropriate court or tribunal.
- (2) Where an appeal under subsection (1) is made—
 - (a) the compliance notice is of no effect pending the final determination or withdrawal of the appeal, and
 - (b) the specified period mentioned in section 35B(2) is treated as extended by the period—
 - (i) beginning with the day on which the appeal is made, and
 - (ii) ending with the day on which the appeal is finally determined or withdrawn.

- (3) A person to whom a compliance notice has been given may apply to the appropriate court or tribunal for an extension of the period for the doing of the thing specified in the notice.
- (4) Subsection (2) applies in relation to such an application as it applies in relation to an appeal under subsection (1).
- (5) A person to whom a stop notice has been given may appeal to the appropriate court or tribunal.
- (6) Where an appeal under subsection (5) is made—
 - (a) the appellant may apply to the appropriate court or tribunal for a direction that the stop notice is of no effect pending the final determination or withdrawal of the appeal, and
 - (b) unless and until any such direction is given, the stop notice continues to have effect despite the making of the appeal.

EXPLANATORY NOTES

Section 38: Compliance and stop notices

Effect

377. Subsection (1) of this section enables the building control authority (i.e. the Building Safety Regulator or local authority) to issue compliance or stop notices where there is or is likely to be a contravention of building regulations by inserting new sections 35B to 35D into the 1984 Act.

378. A compliance notice (new section 35B) can be served on a person who is contravening, or is likely to contravene, building regulations or a requirement imposed under building regulations. This notice will require the person to remedy the contravention or to take the steps detailed in the notice within the specified period. This will be most useful in respect of non-safety related obligations outlined in building regulations, such as the provision of broadband.

379. Where work is being carried out that contravenes one or more particular provisions of building regulations that are specified in regulations for this purpose, where a compliance notice has not been complied with, or where work would present a risk of serious harm to people in or about the building if the building were used without the contravention being remedied, a stop notice (new section 35C) can be issued, to require a person to stop all work specified in the notice (which could be all work on that project). Once issued, it will take force immediately or from a date specified in the notice. The power to specify particular provisions of the building regulations is intended in England to enable the Building Safety Regulator to stop work immediately on sites where Gateway requirements have been breached. The Gateway requirements will be set out in building regulations made under new paragraphs 1A and 1B of Schedule 1 to the Building Act 1984, which are inserted by section 33 of this Act and relate only to higher-risk buildings.

380. In line with the existing enforcement protection in section 36(5) of the Building Act 1984, new section 35D(4) sets out that compliance notices and stop notices under section 35C(1)(a) cannot be issued where an application for building control approval in respect of non-higher risk building work has been granted by a building control authority and the contravention consists solely of carrying out the approved work etc. This protection does not apply to stop notices issued under new section 35C(1)(b) or (c). This is because, for subsection (1)(b), the protections would prevent a compliance notice being issued, so it could not be breached; and, for subsection (1)(c), the level of danger present (“the risk of serious harm condition”) means that the protections are inappropriate.

381. These notices will be appealable to the First-tier Tribunal in England and the magistrates’ court in Wales (subsection (2), inserting new section 39A into the Building Act 1984). Appeal of a compliance notice will suspend the effect of the notice itself. Given the increased seriousness of the issues justifying the issue of a stop notice, an appeal against such a notice will not suspend its effect (although an application may be made to the First-tier Tribunal or magistrates’ court for the effect of a stop notice to be suspended pending appeal).

382. If the person issued with a compliance or stop notice breaches the notice, the building control authority will be able to prosecute for the breach. The offence of breaching a notice will be triable either way, reflecting not only the contravention of building regulations, but also that a formal opportunity to rectify it has been refused. If tried in a magistrates’ court, the offence will carry a maximum penalty of an unlimited fine and/or the maximum term of imprisonment permitted in a magistrates’ court, which is defined in section 126 of the Building Act (as amended by paragraph 81 of Schedule 5 to this Act) as 12 months (six months until the commencement of paragraph 24(2) of Schedule 22 to the Sentencing Act 2020). If tried in the Crown court, the maximum penalty will be an unlimited fine and/or two years’ imprisonment.

383. In all situations, the power to issue and enforce stop and compliance notices will rest with the building control authority, being the local authority for the area or one designated by Welsh Ministers by virtue of regulations under new section 91ZD of the Building Act, inserted by section 32(3). Appeals against stop and compliance notices will be to a magistrates’ court in Wales.

Background

384. This section introduces new powers for building control authorities to enhance their ability to address non-compliance with building regulations without resorting to criminal prosecution.

385. Stop notices are being introduced as, before this Act, there was no power available to stop non-compliant building work from being continued or completed; the issue of such a notice will also avoid any nugatory further work being done on a non-compliant building by ensuring each stage is compliant before the next is done.

386. These measures have been modelled on notices under sections 21 and 22 of the Health and Safety at Work etc. Act 1974 and are intended to be used in similar circumstances.

Example 1 During the construction of a higher-risk building in England, an authorised officer of the Building Safety Regulator notices that a non-compliant material is being used in construction, contrary to what has been specified in the full plans during the Gateway two process. The officer serves the person carrying out the work with a compliance notice, detailing the reason for non-compliance and the requirement to remedy this. Example 2 The Building Safety Regulator becomes aware of construction of a higher-risk building in England where the applicant has not received approval of their Gateway two application. The Building Safety Regulator can issue a stop notice under new section 35C(1)(a) of the Building Act 1984 to the Principal Contractor, requiring them to cease work immediately. Failure to comply with this notice will be a criminal offence. Example 3 A person carrying out refurbishment work has been issued with a compliance notice due to their fitting non-compliant cladding on the external walls of a building. The person has failed to comply with the compliance notice. The building control authority decides that the appropriate next step is to issue the person with a stop notice, ordering them to stop all work on site until the cladding is replaced. Non-compliance with the stop notice will be a criminal offence.

COMMENTARY

18. Section 38 inserts new sections 35B to 35D into the Building Act 1984, creating compliance notices and stop notices as enforcement tools:
 - (a) A **compliance** notice requires a person to take specified steps to ensure that building work complies with building regulations; and
 - (b) A **stop** notice requires the cessation of building work. Both may be issued by the relevant building control authority.
19. These are powerful new enforcement tools that did not previously exist under the Building Act 1984. The previous enforcement regime relied primarily on prosecution and injunctive relief under section 36, which was widely regarded as inadequate. The new notices provide a more proportionate, graduated enforcement mechanism.
20. Enforcement under and alongside the new Part 3 regime has begun. In **HSE v Integritas Property Group Ltd** [2025] EWHC 2613 (TCC) the regulator obtained the first interim injunction restraining occupation of a higher-risk building which lacked gateway 3 completion certification, after enforcement notices had not secured compliance. The decision (digested below from secondary sources; the transcript is not yet on Find Case Law) shows that the notice regime in s.38 is not the ceiling of the regulator's armoury: where occupation is imminent and the defects are life-critical, injunctive relief on American Cyanamid principles is available to hold the line. I would

expect the courts to treat such applications sympathetically, while insisting, as the judge there did, that this new use of the powers be properly tested at the return date.

CASE DIGEST

Case Name: HSE v Integritas Property Group Ltd

Case Reference: [2025] EWHC 2613 (TCC)

Judge: Not identified in the secondary sources consulted

Date: On or about 12 August 2025 (interim injunction, with return date)

Key Issues: First injunction obtained by the Building Safety Regulator restraining occupation of a higher-risk building without gateway 3 completion certification

Held:

1. The building (Deakin's Yard, a 244-room student accommodation development in Newcastle-under-Lyme) was a higher-risk building being marketed for occupation from August 2025 without a completion certificate under the gateway 3 regime, after enforcement notices had been served and not complied with.
2. The HSE, then exercising the building safety functions, relied on ss.11A and 13 of the Health and Safety at Work etc. Act 1974 and on the principle that a public body with statutory responsibility may seek injunctive relief to restrain imminent criminal breaches within its remit.
3. Applying American Cyanamid principles, there was a serious issue to be tried on standing; damages were not an adequate remedy given the risk to life (inadequate cavity barriers and defective brickwork fixings); and the balance of convenience favoured restraint given the imminence of occupation.
4. An interim injunction was granted prohibiting occupation of the building until valid completion certification is produced; the judge observed that this was a new use of powers under the BSA to be tested properly at the return date.

- No online report available -

SECTION 39 – BREACH OF BUILDING REGULATIONS

STATUTORY TEXT

- (1) The Building Act 1984 is amended as follows.

Link: No transcript has been published. The citation, the court and the hand-down date of 12 August 2025 are corroborated by several contemporaneous practitioner reports; no source identifies the judge.

- (2) For section 35 substitute—

35 Offence of contravening building regulations etc

- (1) A person who contravenes a provision of building regulations, or a requirement imposed by virtue of any such provision, commits an offence.
- (2) Building regulations may provide that subsection (1) does not apply in relation to a prescribed provision of the regulations.
- (3) Building regulations may provide that, in relation to a prescribed provision of the regulations, it is a defence for a person charged with an offence under this section to prove such matters relating to the contravention as may be prescribed.
- (4) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding the maximum summary term for either-way offences or a fine (or both);
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
- and (in either case) is liable on summary conviction to a further fine not exceeding level 1 on the standard scale for each day on which the default continues after the initial conviction.
- (3) In section 36(4) (time limit for notices requiring removal or alteration of non-compliant work) for “12 months” substitute “10 years”.

EXPLANATORY NOTES

Section 39: Breach of building regulations

Effect

387. Subsection (2) of this section replaces the existing summary-only, fine-only offence in section 35 of the Building Act 1984 (penalty for contravening building regulations), making it triable either way, and also providing for imprisonment as a possible sentencing option – for the maximum term of imprisonment permitted in a magistrates’ court, as defined in section 126 of the Building Act, as amended by paragraph 80 of Schedule 5 of this Act, i.e. 12 months (six months until the commencement of paragraph 24(2) of Schedule 22 to the

Sentencing Act 2020), or an unlimited fine. If tried in the Crown court, the maximum penalty will be an unlimited fine and/or two years' imprisonment. The substituted version of section 35 also increases the maximum daily fine from £50 to level 1 on the standard scale (currently £200), reflecting inflation since 1984, when a Level 1 fine was £50.

388. In addition, new section 35(1) expands the existing offence of contravening building regulations so that it also covers requirements imposed under building regulations; for example, requirements imposed at the time of granting building control approval, such as provision of revised plans. Subsection (2) retains the existing power to exclude provisions of building regulations from the offence in section 35; the existing power has been used to make regulation 47 of the Building Regulations 2010. Subsection (3) provides for the building regulations to make provision for defences in relation to specific building regulations, to be used by persons whose circumstances meet the criteria of the defence to dispute a charge against them.

389. Subsection (3) of this section amends section 36 of the Building Act 1984 (notice requiring rectification of non-compliant work) to extend the time limit during which rectification in respect of a contravention of building regulations can be required from twelve months to 10 years.

390. This section will apply equally in Wales.

Proposed use of power

391. As part of the new building safety regime dutyholders will be required to report certain matters taking place during design and construction, as part of a mandatory occurrence reporting regime. The power created by new section 35(2) to the Building Act 1984 is intended to be used in England to create two defences in relation to these duties in secondary legislation: • A defence to the offence of failure to report where the person being prosecuted was not aware of the occurrence which gave rise to the requirement to report, so long as that person had taken all reasonable steps to be made aware, in sufficient time, of the occurrence. This will place the onus on the Principal Contractor and Principal Designer to take steps to become aware of occurrences happening on site. • The obligation to report will lie on both the Principal Contractor and Principal Designer. In order to avoid duplicate reports of occurrences, it will be a defence to the offence of failure to report within the prescribed period where the person being prosecuted reasonably believed that the other dutyholder (i.e. where the Principal Contractor is being prosecuted, then the Principal Designer, and vice versa) had already reported the occurrence.

Background

392. Alongside section 38, this section provides stronger sanctions for use by building control authorities against those who seek to breach building regulations. This follows Dame Judith Hackitt's finding in her foreword to the Independent Report that one of the key issues underpinning the failure of the Building Safety Regulatory system that led to the Grenfell Tower fire was that there was "Inadequate regulatory oversight and enforcement... Where enforcement is necessary, it is often not pursued. Where it is pursued, the penalties are so small as to be an ineffective deterrent".

Example

The Building Safety Regulator may discover what it believes to be an instance of non-reporting and decide to prosecute a Principal Contractor on this basis. However, the Principal Contractor has evidence which suggests that he had reason to believe the Principal Designer had already reported the relevant occurrence. Such evidence could be used as a defence against the charge.

COMMENTARY

21. Section 39 amends section 35 of the Building Act 1984 (breach of building regulations) to increase the maximum penalty for contravention of building regulations. The section also extends the time limit for prosecution from six months to two years, reflecting the recognition that breaches of building regulations may not be discovered until well after completion of the relevant work.
22. There has been no reported case law on section 39 as at September 2026.

SECTION 40 – LIABILITY OF OFFICERS OF BODY CORPORATE ETC

STATUTORY TEXT

In the Building Act 1984 before section 113 insert—

112A Liability of officers of body corporate etc

- (1) Where an offence under this Act committed by a body corporate—
 - (a) is committed with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, or
 - (b) is attributable to any neglect on the part of any such person,
that person as well as the body corporate commits the offence and is liable to be proceeded against and punished accordingly.
- (2) In subsection (1) “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.
- (3) Subsection (1) also applies in relation to a body that is not a body corporate, with the substitution for the reference to a director of the body of a reference—
 - (a) in the case of a partnership, to a partner;
 - (b) in the case of an unincorporated body other than a partnership—
 - (i) where the body’s affairs are managed by its members, to a member of the body;
 - (ii) in any other case, to a member of the governing body.

EXPLANATORY NOTES

Section 40: Liability of officers of body corporate

Effect

393. This section inserts new section 112A into the Building Act 1984 which provides that, where a corporate body commits a criminal offence under that Act, any director, manager, secretary or other similar officer of that body is also deemed to have committed that offence in certain circumstances. Those circumstances are where the individual has consented to or connived in the commission of the offence or where the offence is attributable to any neglect on their part. Section 161 makes a similar provision in respect of the criminal offences in Parts 2 or 4 of this Act.

394. This section will apply equally in Wales.

Background

395. Many of those persons carrying out duties under the Building Act 1984 and the new regime are and will be corporate bodies rather than individuals. As a corporate body

operates only by and through the actions of its employees, including managers and directors, if there is an offence by a body corporate, then there is likely also to be some measure of personal failure by one or more individuals, particularly those in a position to make critical decisions.

396. It will be appropriate to consider what evidence has been obtained against the company and the director or senior manager, taking into account the management arrangements. One purpose of bringing a prosecution under this section should be to bring home the importance of building safety responsibilities to those directing companies.

397. Where there is sufficient evidence and the public interest test is met, prosecutions could be brought against directors/managers as well as prosecuting the company for an offence under the relevant statutory provisions, even where there is a sole director. This would not be regarded as prosecuting the same person twice, as the two are separate legal entities. Should both matters result in a conviction, it will be for the sentencing court to sentence the individual(s) and the corporate body appropriately.

398. New section 112A has been modelled on section 37 of the Health and Safety at Work etc. Act 1974. Example If a subcontractor working on a project in the build phase decides to substitute agreed materials for inferior and noncompliant ones in order to increase their profit margin, the building control authority's first response is likely to be to point out the problem and ask that it be rectified. If the inferior materials are not replaced with compliant ones, the building control authority could serve a compliance notice under new section 35B of the Building Act 1984, non-compliance with which would be an offence under new section 35B(4). If the subcontractor is a corporate body and there is evidence that a particular director or manager has made the decision not to replace the noncompliant material, that director or manager could be prosecuted as well as or instead of the corporate body and could be sentenced to imprisonment by the court.

COMMENTARY

23. Section 40 inserts a new provision before section 113 of the Building Act 1984 making officers of a body corporate personally liable where an offence under the Act is committed by the body corporate with the consent, connivance, or neglect of the officer. This is a standard corporate liability provision found in many regulatory statutes. Nonetheless, it is notable and creates an enhanced risk profile for any Officer of a company engaged in building work
24. There has been no reported case law on section 40 as at September 2026.

SECTION 41 – REVOCATION ETC OF CERTAIN PROVISION MADE UNDER SECTION 2(2) OF ECA 1972

STATUTORY TEXT

- (1) In this section “combined instrument” means an instrument containing (whether alone or with other provision)—
 - (a) provision made under section 1(1) of the Building Act 1984 (building regulations), and
 - (b) provision made under section 2(2) of the European Communities Act 1972 (provision implementing EU obligations etc).
- (2) Regulations under section 1(1) of the Building Act 1984 may revoke a combined instrument so far as it is made under section 2(2) of the European Communities Act 1972.
- (3) Nothing in paragraph 13 or 14 of Schedule 8 to the European Union (Withdrawal) Act 2018 (procedure etc for SIs amending or revoking regulations etc made under section 2(2) of the 1972 Act) is to be read as applying to a statutory instrument that amends a combined instrument so far as the combined instrument is made under section 2(2) of the European Communities Act 1972.

EXPLANATORY NOTES

Section 41: Revocation of certain provision made under section 2(2) of ECA 1972

Effect

399. This section provides powers for building regulations to revoke provisions in building regulations which were made using powers in section 2(2) of the European Communities Act 1972. In common with the usual procedure for building regulations, this will use the negative resolution procedure.

400. Section 41(1) treats building regulations made using powers in both the Building Act 1984 and s2(2) of the European Communities Act as a “combined instrument”. Section 40(2) provides powers for building regulations to revoke provision in a combined instrument.

401. Section 41(3) also disapplies paragraphs 13 and 14 of Schedule 8 to the European Union (Withdrawal) Act 2018 in respect of any regulations which amend provision in a combined instrument. This will mean that any such regulations will be made using the negative resolution procedure rather than the affirmative procedure, and the publication in draft procedure will be disapplied.

402. Subsections (1) and (2) of this section apply in Wales. Paragraphs 13 and 14 of Schedule 8 to the European Union (Withdrawal) Act 2018 do not apply to statutory instruments made by the Welsh Ministers, so subsection (3) does not apply in Wales.

Background

403. Building regulations (specifically, the energy efficiency requirements in Part 6 and Part L of Schedule 1, and the broadband requirement in Part R of Schedule 1) have been used to implement provisions in EU legislation, particularly the Energy Performance of Buildings Directive (EPBD) and Article 8 of the Broadband Cost Reduction Directive.

404. The power to revoke these regulations in full was lost at the end of the implementation period, with the repeal of section 2(2) European Communities Act. Without the ability to revoke these provisions in building regulations, the Government would be constrained in its ability to update and improve the legislation, which could never be fully revoked, for instance in a consolidation exercise.

405. The European Union (Withdrawal) Act 2018 envisages that over time EU retained legislation will need to be amended or revoked, as it is replaced by new domestic legislation, and section 41 has been included for this purpose.

406. Paragraphs 13 and 14 of Schedule 8 to the EU Withdrawal Act set out procedure to be followed in legislation which amends or revokes certain retained EU law including that regulations should follow the affirmative procedure, and a requirement for pre-publication of the regulations. Example The building regulations will need to be updated in the light of the changes being made in the Building Safety Act. As part of this exercise, the Government will also be giving careful consideration to the merits of consolidating the significant number of amendments which have been made to the regulations in recent years. The ability to revoke the existing regulations and replace them with new regulations is necessary to enable this to be done. Without the power in subsection (2) of section 41, there would be an anomalous position, in that building regulations made under section 2(2) of the European Communities Act could not be included in any exercise to update and consolidate the building regulations and could never be revoked. The Government has consulted on proposals to introduce the Future Homes Standard and Future Buildings Standard to improve the energy efficiency and sustainability of new homes and buildings. This will require changes to building regulations including, potentially, those which implemented provisions in the EPBD; these changes may, in the absence of subsection (3) of section 41, engage the pre-publication and affirmative resolution procedure. The established procedure in the Building Act 1984 is for changes to building regulations, including the energy efficiency requirements, to be made following the negative resolution procedure.

COMMENTARY

25. Section 41 makes provision for the revocation of building regulations and other provisions made under section 2(2) of the European Communities Act 1972, consequent upon the United Kingdom's withdrawal from the European Union.
26. There has been no reported case law on section 41 as at September 2026.

SECTION 42 – REGULATION OF BUILDING CONTROL PROFESSION

STATUTORY TEXT

In the Building Act 1984, after Part 2 insert—

PART 2A REGULATION OF BUILDING CONTROL PROFESSION

Interpretation

58A “Regulatory authority”

In this Act the “regulatory authority” means—

- (a) in relation to England, the regulator;
- (b) in relation to Wales, the Welsh Ministers.

Registered building inspectors

58B “Registered building inspector”

In this Act “registered building inspector” means an individual registered as a building inspector in accordance with this Part.

58C Register of building inspectors

- (1) The regulatory authority must establish and maintain a register of building inspectors.
- (2) The register may provide for different classes of building inspectors (for example, according to qualifications or experience).
- (3) The regulatory authority must register an individual as a building inspector, or a building inspector of a particular class, if—
 - (a) the individual makes an application for registration in accordance with section 58D, and
 - (b) the authority is satisfied that the individual meets such criteria as the authority may from time to time determine.
- (4) Registration may—
 - (a) have effect in relation to all work or in relation to work of a particular description;
 - (b) be subject to conditions.
- (5) Registration must be for a prescribed period.
- (6) The register must record, in relation to each registered building inspector—
 - (a) the individual’s name and business address;

- (b) if the individual is employed by a building control authority or a registered building control approver, the name and business address of that person;
 - (c) whether the individual's registration has effect in relation to all work or work of a particular description;
 - (d) if the individual's registration has effect in relation to work of a particular description, that description of work;
 - (e) any conditions to which the individual's registration is subject;
 - (f) the period for which the individual is registered;
 - (g) if the individual's registration has been varied by an order under section 58I(2)(b), that fact and the effect of the variation;
 - (h) if the individual's registration has been suspended by an order under section 58I(2)(c) or 58J(2), that fact and the period of the suspension;
 - (i) any matters that are prescribed.
- (7) The regulatory authority must make the register available for inspection by the public in whatever way the authority thinks appropriate.

58D Application for registration as building inspector

- (1) An application for registration as a building inspector must—
- (a) be made in such form and manner, and
 - (b) be accompanied by such information and supporting evidence,
- as the regulatory authority may from time to time determine.
- (2) The regulatory authority may make different provision about those matters for different cases.
- (3) When considering an application for registration, the regulatory authority may require the applicant to provide it with such further information or supporting evidence as the authority may require.
- (4) The applicant may appeal to the appropriate court or tribunal against any decision made by the regulatory authority on the application.

58E Variation or cancellation of registration as building inspector

- (1) A registered building inspector may apply for the variation or cancellation of their registration.
- (2) Section 58D applies to such an application as it applies to an application for registration.

58F Code of conduct

- (1) The regulatory authority must prepare and publish a code of conduct for registered building inspectors.

- (2) The code must set out standards of professional conduct and practice expected of registered building inspectors.
- (3) The code may make different provision for different cases (for example, for different descriptions of work).
- (4) The regulatory authority may revise the code of conduct at any time (and must publish any revised code).

58G Registered building inspectors: information notices

- (1) The regulatory authority may by notice in writing require a registered building inspector to provide the authority with any documents or information the authority reasonably requires for the purposes its functions under sections 58B to 58M.
- (2) The notice must specify—
 - (a) the documents or information required,
 - (b) the date by which they must be provided, and
 - (c) the form in which they must be provided.

58H Professional misconduct investigations

- (1) If it appears to the regulatory authority (on receipt of a complaint or otherwise) that a registered building inspector may be guilty of professional misconduct, the authority may investigate the matter.
- (2) In this Part “professional misconduct”, in relation to a registered building inspector, means conduct that—
 - (a) falls short of the standards of conduct and practice expected of registered building inspectors, or
 - (b) is likely to bring the profession of registered building inspectors into disrepute.
- (3) The regulatory authority must prepare and publish a statement of the procedure it will follow when investigating a registered building inspector under this section (which must include an opportunity for the inspector to make representations).
- (4) The regulatory authority may revise the statement at any time (and must publish any revised statement).

58I Sanctions for professional misconduct

- (1) If following an investigation under section 58H the regulatory authority determines that an individual who is a registered building inspector is guilty of professional misconduct, the authority may make one or more disciplinary orders.

- (2) A disciplinary order is an order—
 - (a) requiring the individual to pay a financial penalty of an amount specified in the order,
 - (b) varying the individual's registration in a way specified in the order,
 - (c) suspending the individual's registration for a period specified in the order, or
 - (d) cancelling the individual's registration from a date specified in the order.
- (3) Varying the individual's registration means varying any of the matters listed in section 58C(4) (limitations and conditions).
- (4) Where the regulatory authority makes a disciplinary order it must give a copy of the order to the individual concerned as soon as reasonably practicable.
- (5) The individual may appeal to the appropriate court or tribunal against a disciplinary order under this section.
- (6) A disciplinary order under subsection (2)(a) or (b) has no effect until—
 - (a) the end of the period within which an appeal may be brought, or
 - (b) if an appeal is brought before the end of that period, the determination of the appeal.
- (7) Where the regulatory authority is the regulator, it must pay into the Consolidated Fund the amount of any financial penalty paid to it pursuant to a disciplinary order under subsection (2)(a).

58J Interim suspension for suspected serious professional misconduct

- (1) This section applies where the regulatory authority considers that—
 - (a) an individual who is a registered building inspector may be guilty of professional misconduct, and
 - (b) the suspected misconduct is so serious that, if the authority determines that the individual is guilty, it is likely to make an order under section 58I(2)(d) cancelling the individual's registration.
- (2) The regulatory authority may by order suspend the individual's registration for a period specified in the order (which must not exceed 3 months).
- (3) The regulatory authority may revoke the order before the end of that period.
- (4) Where the regulatory authority makes (or revokes) an order under this section it must give a copy of the order (or notice of the revocation) to the individual concerned as soon as reasonably practicable.
- (5) The individual may appeal to the appropriate court or tribunal against an order under this section.

58K Suspension orders: further provision

An individual whose registration is suspended under section 58I(2)(c) or 58J(2) is not a registered building inspector for the purposes of section 46A or 54B (restricted activities and functions) (but is a registered building inspector for the purposes of this Part).

58L Offences relating to registration

- (1) A registered building inspector commits an offence if, without reasonable excuse, they carry out a restricted activity on behalf of a building control authority or a registered building control approver—
 - (a) in relation to work which is outside the scope of their registration, or
 - (b) while their registration is suspended.
- (2) “Restricted activity”—
 - (a) in relation to a building control authority, has the meaning given by section 46A;
 - (b) in relation to a registered building control approver, has the meaning given by section 54B.
- (3) A registered building inspector commits an offence if, without reasonable excuse—
 - (a) they give advice to a building control authority or registered building control approver—
 - (i) in relation to work which is outside the scope of their registration, or
 - (ii) while their registration is suspended, and
 - (b) they know, or ought to know, that the authority or approver is obtaining that advice for the purposes of section 46A or 54B (restricted functions).
- (4) A registered building inspector commits an offence if, with intent to deceive, they do anything which implies that work which is outside the scope of their registration is within the scope of their registration.
- (5) A registered building inspector whose registration is suspended commits an offence if, with intent to deceive, they do anything which implies that their registration is not suspended.
- (6) For the purposes of this section, work is outside the scope of a registered building inspector’s registration if the inspector’s registration does not have effect in relation to work of that description.
- (7) An offence under this section is punishable on summary conviction by a fine.

58M Offence of acting as, or pretending to be, a registered building inspector

- (1) A person who is not a registered building inspector commits an offence if, with intent to deceive, the person—
 - (a) impersonates a registered building inspector, or
 - (b) does anything (including using any name, title or description) which implies that the person is a registered building inspector.
- (2) An offence under this section is punishable on summary conviction by a fine.

Registered building control approvers

58N “Registered building control approver”

In this Act “registered building control approver” means a person registered as a building control approver in accordance with this Part.

58O Register of building control approvers

- (1) The regulatory authority must establish and maintain a register of building control approvers.
- (2) The regulatory authority must register a person as a building control approver if —
 - (a) the person makes an application for registration in accordance with section 58P, and
 - (b) the authority is satisfied that the person meets such criteria as the authority may from time to time determine.
- (3) Registration may—
 - (a) have effect in relation to all work or in relation to work of a particular description;
 - (b) be subject to conditions.
- (4) Registration must be for a prescribed period.
- (5) The register must record, in relation to each registered building control approver —
 - (a) the person’s name and business address;
 - (b) whether the person’s registration has effect in relation to all work or work of a particular description;
 - (c) if the person’s registration has effect in relation to work of a particular description, that description of work;
 - (d) any conditions to which the person’s registration is subject;
 - (e) the period for which the person is registered;

- (f) if the person's registration has been varied by an order under section 58U(2)(b), that fact and the effect of the variation;
 - (g) if the person's registration has been suspended by an order under section 58U(2)(c) or 58V(2), that fact and the period of the suspension;
 - (h) any matters that are prescribed.
- (6) The regulatory authority must make the register available for inspection by the public in whatever way the authority thinks appropriate.

58P Application for registration as building control approver

- (1) An application for registration as a building control approver must—
- (a) be made in such form and manner, and
 - (b) be accompanied by such information and supporting evidence,
- as the regulatory authority may from time to time determine.
- (2) The regulatory authority may make different provision about those matters for different cases.
- (3) When considering an application for registration, the regulatory authority may require the applicant to provide it with such further information or supporting evidence as the authority may require.
- (4) The applicant may appeal to the appropriate court or tribunal against any decision made by the regulatory authority on the application.

58Q Variation or cancellation of registration as building control approver

- (1) A registered building control approver may apply for the variation or cancellation of their registration.
- (2) Section 58P applies to such an application as it applies to an application for registration.

58R Professional conduct rules

- (1) The regulatory authority must prepare and publish professional conduct rules applying to registered building control approvers (in addition to operational standards rules applying to them under section 58Z).
- (2) Professional conduct rules may in particular make provision about insurance and financial propriety.
- (3) The rules may make different provision for different cases (for example, for different descriptions of work).
- (4) The regulatory authority may revise the professional conduct rules at any time (and must publish any revised rules).

58S Registered building control approvers: information notices

- (1) The regulatory authority may by notice in writing require a registered building control approver to provide the authority with any documents or information the authority reasonably requires for the purposes of its functions under sections 58N to 58X.
- (2) The notice must specify—
 - (a) the documents or information required,
 - (b) the date by which they must be provided, and
 - (c) the form in which they must be provided.

58T Investigations into contraventions of professional conduct rules

- (1) If it appears to the regulatory authority (on receipt of a complaint or otherwise) that a registered building control approver may have contravened the professional conduct rules, the authority may investigate the matter.
- (2) The regulatory authority must prepare and publish a statement of the procedure it will follow when investigating a registered building control approver under this section (which must include an opportunity for the person to make representations).
- (3) The regulatory authority may revise the statement at any time (and must publish any revised statement).

58U Sanctions for contravention of professional conduct rules

- (1) If following an investigation under section 58T the regulatory authority determines that a person who is a registered building control approver has contravened the professional conduct rules, the authority may make one or more disciplinary orders.
- (2) A disciplinary order is an order—
 - (a) requiring the person to pay a financial penalty of an amount specified in the order,
 - (b) varying the person's registration in a way specified in the order,
 - (c) suspending the person's registration for a period specified in the order, or
 - (d) cancelling the person's registration from a date specified in the order.
- (3) Varying the person's registration means varying any of the matters listed in section 58O(3) (limitations and conditions).
- (4) Where the regulatory authority makes a disciplinary order it must as soon as reasonably practicable—
 - (a) give a copy of the order to the person concerned, and
 - (b) in prescribed cases, give a copy of the order—

- (i) to each local authority in England, where the regulatory authority is the regulator, or
 - (ii) to each local authority in Wales, where the regulatory authority is the Welsh Ministers.
- (5) The person may appeal to the appropriate court or tribunal against a disciplinary order under this section.
- (6) A disciplinary order under subsection (2)(a) or (b) has no effect until—
 - (a) the end of the period within which an appeal may be brought, or
 - (b) if an appeal is brought before the end of that period, the determination of the appeal.
- (7) Where the regulatory authority is the regulator, it must pay into the Consolidated Fund the amount of any financial penalty paid to it pursuant to a disciplinary order under subsection (2)(a).
- (8) A person whose registration is suspended by an order under subsection (2)(c) is a registered building control approver for the purposes of this Part.
- (9) See section 58Z6(2) for further provision about cancellation of a person's registration as a building control approver.

58V Interim suspension for suspected serious contravention

- (1) This section applies where the regulatory authority considers that—
 - (a) a person who is a registered building control approver may have contravened the professional conduct rules, and
 - (b) the suspected contravention is so serious that, if the authority determines that the contravention has occurred, it is likely to make an order under section 58U(2)(d) cancelling the person's registration.
- (2) The regulatory authority may by order suspend the person's registration for a period specified in the order (which must not exceed 3 months).
- (3) The regulatory authority may revoke the order before the end of that period.
- (4) Where the regulatory authority makes (or revokes) an order under this section it must as soon as reasonably practicable—
 - (a) give a copy of the order (or notice of the revocation) to the person concerned, and
 - (b) in prescribed cases, give a copy of the order (or notice of the revocation)—
 - (i) to each local authority in England, where the regulatory authority is the regulator, or
 - (ii) to each local authority in Wales, where the regulatory authority is the Welsh Ministers.

- (5) The person may appeal to the appropriate court or tribunal against an order under this section.
- (6) A person whose registration is suspended by an order under this section is a registered building control approver for the purposes of this Part.

58W Offence of registered building control approver acting outside scope of registration

- (1) A registered building control approver commits an offence if, without reasonable excuse, they exercise a function under this Act, or regulations made under this Act—
 - (a) in relation to work outside the scope of their registration, or
 - (b) while their registration is suspended.
- (2) A registered building control approver commits an offence if, with intent to deceive, they do anything which implies that work which is outside the scope of their registration is within the scope of their registration.
- (3) A registered building control approver whose registration is suspended commits an offence if, with intent to deceive, they do anything which implies that their registration is not suspended.
- (4) For the purposes of this section, work is outside the scope of a registered building control approver's registration if their registration does not have effect in relation to work of that description.
- (5) An offence under this section is punishable on summary conviction by a fine.

58X Offence of pretending to be a registered building control approver

- (1) A person who is not a registered building control approver commits an offence if, with intent to deceive, the person—
 - (a) impersonates a registered building control approver, or
 - (b) does anything (including using any name, title or description) which implies that the person is a registered building control approver.
- (2) An offence under this section is punishable on summary conviction by a fine.

Delegation of registration functions

58Y Delegation of registration functions

- (1) The regulatory authority may delegate its registration functions to another person, to such extent and subject to such conditions as it considers appropriate.
- (2) The regulatory authority's registration functions are its functions under sections 58B to 58X (and include the charging of any registration fees or recovery of any registration charges).

- (3) “Registration fees” and “registration charges” mean fees and charges in connection with the regulatory authority’s functions under sections 58B to 58X that are—
 - (a) prescribed by regulations under section 105B, or
 - (b) determined by the regulatory authority in accordance with regulations under that section.
- (4) The regulatory authority may vary or revoke a delegation.
- (5) Where the regulatory authority is the regulator, it—
 - (a) may make, vary or revoke a delegation only with the consent of the Secretary of State;
 - (b) must vary or revoke a delegation if directed to do so by the Secretary of State.
- (6) Section 58Z9 of this Act (sharing of information between regulatory authorities) and Schedule 3 to the Building Safety Act 2022 (information sharing between regulator and other authorities) apply as if references to the regulator included references to a person to whom the regulator has delegated functions under this section.
- (7) The following provisions of this Act apply as if references to the Welsh Ministers included references to a person to whom the Welsh Ministers have delegated functions under this section—
 - (a) section 58Z9 (sharing of information between regulatory authorities);
 - (b) section 91B (cooperation and sharing of information between Welsh Ministers and other authorities);
 - (c) section 131A (application to the Crown).

Operational standards rules

58Z Operational standards rules

- (1) The regulatory authority may make rules (“operational standards rules”) applying to local authorities and registered building control approvers in relation to their exercise of building control functions.
- (2) Operational standards rules may in particular make provision about standards to be met, and practices, procedures or methods to be adopted, in exercising building control functions.
- (3) In this Part “building control functions”, in relation to a local authority or registered building control approver, means the functions of the authority or approver under this Act and regulations made under it.
- (4) The operational standards rules may make different provision for different cases (for example, for different descriptions of work).

- (5) The regulatory authority may revise the operational standards rules at any time.
- (6) The regulatory authority must publish the operational standards rules (and any revised rules).

58Z1 Reporting requirements

- (1) The regulatory authority may direct local authorities and registered building control approvers to provide it, at specified times or intervals, with specified reports, returns and other information relating to the exercise of their building control functions.
- (2) “Specified” means specified in the direction.
- (3) A direction under this section—
 - (a) must be in writing;
 - (b) may be general or specific;
 - (c) may be varied or revoked.
- (4) A registered building control approver who, without reasonable excuse, fails to comply with a direction under this section commits an offence.
- (5) An offence under subsection (4) is punishable on summary conviction by a fine.

58Z2 Information: Wales

- (1) This section applies where the Welsh Ministers are the regulatory authority.
- (2) The Welsh Ministers may by notice in writing require a local authority or registered building control approver to provide the Welsh Ministers with any documents or information relating to the exercise of their building control functions that the Welsh Ministers reasonably require.
- (3) The notice must specify—
 - (a) the documents or information required,
 - (b) the date by which they must be provided, and
 - (c) the form in which they must be provided.
- (4) A registered building control approver who, without reasonable excuse, fails to comply with a notice under this section commits an offence.
- (5) An offence under subsection (4) is punishable on summary conviction by a fine.

58Z3 Investigations

- (1) If it appears to the regulatory authority (on receipt of a complaint or otherwise) that a local authority or registered building control approver may have contravened the operational standards rules, the regulatory authority may investigate the matter.

- (2) The regulatory authority must prepare and publish a statement of the procedure it will follow when investigating an authority or approver under this section (which must include an opportunity for the authority or approver to make representations).
- (3) The regulatory authority may revise the statement at any time (and must publish any revised statement).

58Z4 Improvement notice

- (1) The regulatory authority may give an improvement notice to a local authority or a registered building control approver if it appears to the regulatory authority (following an investigation under section 58Z3 or otherwise) that the local authority or registered building control approver has contravened operational standards rules.
- (2) An improvement notice is a notice requiring the local authority or registered building control approver to remedy the contravention by doing, or by refraining from doing, anything specified in the order.
- (3) An improvement notice may have effect—
 - (a) until it is revoked, or
 - (b) for a period specified in the notice.
- (4) Where the regulatory authority gives an improvement notice, it must also give the local authority or registered building control approver a statement of the reasons for giving the notice.
- (5) Where the regulatory authority gives an improvement notice to a registered building control approver, in prescribed cases it must as soon as reasonably practicable provide copies of the notice and the statement—
 - (a) to each local authority in England, where the regulatory authority is the regulator, or
 - (b) to each local authority in Wales, where the regulatory authority is the Welsh Ministers.
- (6) Where the regulatory authority giving an improvement notice is the regulator, it must as soon as reasonably practicable provide copies of the notice and the statement of reasons to the Secretary of State.
- (7) The local authority or registered building control approver to whom the improvement notice is given may appeal to the appropriate court or tribunal against the notice.

58Z5 Serious contravention notices

- (1) The regulatory authority may give a serious contravention notice to a local authority or a registered building control approver if it appears to the regulatory

authority (following an investigation under section 58Z3 or otherwise) that the condition in subsection (2) or (3) is met.

- (2) The condition in this subsection is that—
 - (a) the local authority or registered building control approver has contravened operational standards rules, and
 - (b) as a result of the contravention the safety of persons in or about buildings has been, or may have been, put at risk.
- (3) This condition in this subsection is that the local authority or registered building control approver—
 - (a) has been given an improvement notice under section 58Z4, and
 - (b) has failed to remedy the contravention of operational standards rules in respect of which the notice was given.
- (4) A serious contravention notice is a notice requiring the local authority or registered building control approver to remedy the contravention in question by doing, or by refraining from doing, anything specified in the order.
- (5) A serious contravention notice may have effect—
 - (a) until it is revoked, or
 - (b) for a period specified in the notice.
- (6) Where the regulatory authority gives a serious contravention notice, it must also give the local authority or registered building control approver a statement of the reasons for giving the notice.
- (7) Where the regulatory authority gives a serious contravention notice to a registered building control approver, in prescribed cases it must as soon as reasonably practicable provide copies of the notice and the statement—
 - (a) to each local authority in England, where the regulatory authority is the regulator, or
 - (b) to each local authority in Wales, where the regulatory authority is the Welsh Ministers.
- (8) Where the regulatory authority giving a serious contravention notice is the regulator, it must as soon as reasonably practicable provide copies of the notice and the statement of reasons to the Secretary of State.
- (9) The local authority or registered building control approver to whom the serious contravention notice is given may appeal to the appropriate court or tribunal against the notice.
- (10) A person who, without reasonable excuse, contravenes a serious contravention notice commits an offence and is liable on summary conviction to a fine.

58Z6 Continuing failure to meet standards: registered building control approvers

- (1) This section applies where—
 - (a) the regulatory authority has given a registered building control approver one or more serious contravention notices under section 58Z5, and
 - (b) it appears to the regulatory authority that the way in which the approver exercises their building control functions—
 - (i) falls short of the standards expected, and
 - (ii) puts, or may put, the safety of persons in or about buildings at risk, and is likely to continue to do so.
- (2) The regulatory authority may cancel the approver's registration.
- (3) But before cancelling a registered building control approver's registration under subsection (2) the regulatory authority must—
 - (a) give the approver notice that it is considering its registration under that subsection, and explain its reasons, and
 - (b) invite the approver to make representations within a period specified in the notice (which must not be less than 14 days).
- (4) Where the regulatory authority cancels a registered building control approver's registration under subsection (2) it must as soon as reasonably practicable—
 - (a) notify the approver that it has done so,
 - (b) give the approver a statement of its reasons, and
 - (c) notify—
 - (i) each local authority in England, where the regulatory authority is the regulator, or
 - (ii) each local authority in Wales, where the regulatory authority is the Welsh Ministers.
- (5) A registered building control approver may appeal to the appropriate court or tribunal against the cancellation of its registration under subsection (2).

58Z7 Continuing failure to meet standards: local authorities in England

- (1) This section applies where—
 - (a) the regulatory authority is the regulator,
 - (b) the regulatory authority has given a local authority one or more serious contravention notices under section 58Z5, and
 - (c) it appears to the regulatory authority that the way in which the local authority exercises their building control functions—

- (i) falls short of the standards expected, and
 - (ii) puts, or may put, the safety of persons in or about buildings at risk, and is likely to continue to do so.
- (2) The regulatory authority may recommend to the Secretary of State that the Secretary of State make an order under section 116(4) (transfer of functions to the Secretary of State or another local authority).
- (3) But before making a recommendation under subsection (2) the regulatory authority must—
 - (a) give the local authority notice that it is considering making a recommendation under that subsection, and explain its reasons, and
 - (b) invite the authority to make representations within a period specified in the notice (which must not be less than 14 days).
- (4) Where the regulatory authority makes a recommendation under subsection (2) it must as soon as reasonably practicable—
 - (a) notify the local authority that it has done so, and
 - (b) give the local authority a statement of its reasons.
- (5) A local authority may appeal to the tribunal against a recommendation under subsection (2).

Inspection of local authorities and registered building control approvers

58Z8 Inspections

- (1) The regulatory authority may carry out an inspection of a local authority, or a registered building control approver, in relation to their exercise of building control functions.
- (2) The purposes for which an inspection may be carried out include—
 - (a) ascertaining the efficiency and effectiveness of the local authority or registered building control approver in exercising their building control functions;
 - (b) verifying any information provided by the local authority or registered building control approver to the regulatory authority, in connection with their building control functions.

Information sharing

58Z9 Sharing of information between regulatory authorities

- (1) The regulator may disclose information held in connection with a function under this Part to the Welsh Ministers for the purposes of—
 - (a) a function of the regulator under this Part, or

- (b) a function of the Welsh Ministers under this Part.
- (2) The Welsh Ministers may disclose information held in connection with a function under this Part to the regulator for the purposes of—
 - (a) a function of the Welsh Ministers under this Part, or
 - (b) a function of the regulator under this Part.
- (3) Except as provided by subsection (4), the disclosure of information under this section does not breach—
 - (a) any obligation of confidence owed by the person making the disclosure, or
 - (b) any other restriction on the disclosure of information (however imposed).
- (4) This section does not authorise a disclosure of information if the disclosure would contravene the data protection legislation (but in determining whether a disclosure would do so, take into account the powers conferred by this section).

Appeals

58Z10 Appeal to Crown Court

An appeal lies to the Crown Court against a decision of a magistrates' court under this Part.

EXPLANATORY NOTES

Section 42: Regulation of building control profession

Effect

407. This section amends the Building Act 1984 by inserting a new Part 2A into the Act which provides for the registration of building inspectors and building control approvers. The overall purpose of Part 2A is to improve competence levels and accountability in the building control sector by creating a unified professional and regulatory structure for building control, changing and modernising the existing legislative framework. The Building Safety Regulator will also assist and encourage building inspectors under its duty in section 6(2).

408. In future, the Building Safety Regulator and each local authority (to be collectively known as building control authorities, as defined in section 32) and each registered building control approver will be required, before exercising specified building control functions in relation to a building project (such as approving plans or submitting an initial notice), to obtain and consider advice from a registered building inspector. They will also be required to use a registered building inspector to carry out restricted activities (such as building control inspections).

409. Individuals in both the private and public sector who wish to be registered building inspectors must in the future meet the same minimum standard criteria to be placed on the register. Registered building inspectors will be able to provide advice to the building control authorities or registered building control approvers, in line with the type of

registration they hold. Current “Approved Inspectors” (i.e. organisations) wishing to undertake building control work will also have to meet minimum criteria to become registered as building control approvers, becoming subject to the oversight of the regulatory authority (the Building Safety Regulator in relation to England, and the Welsh Ministers in relation to Wales). Local authorities are not being required to register as they are the default building control authority in an area and are already subject to intervention powers (including the Secretary of State having the power to transfer their building control functions to another local authority or to the Secretary of State) where they are failing (see section 116 of the Building Act 1984, as amended by section 45).

410. Local authority (or Building Safety Regulator) employees who are currently building inspectors may wish to formally register as a “registered building inspector”. The registered building inspector that building control authorities use to provide advice on specified functions could be an employee or someone contracted to provide the advice. An individual who is currently an Approved Inspector could register: • as a registered building inspector (which would allow them to provide advice to others); • as a registered building control approver (which would allow them to undertake building control work under Part 2 of the Building Act 1984, but they would need to obtain advice from a registered building inspector before exercising prescribed functions); or • as both (which would allow them to undertake Part 2 work and rely on their own expert advice before exercising the prescribed functions).

411. New sections 58B to 58D set out the requirements for the registration of individuals as registered building inspectors by the regulatory authority. The new sections provide for the regulatory authority to publish the criteria for registration, an application procedure and enables the regulatory authority to grant registration with restrictions (for instance as to the type of buildings on which an inspector can give advice) or subject to conditions (for instance requiring regular training) and for the Secretary of State (and Welsh Ministers in Wales) to set, in regulations, the length registrations are valid (for instance five years).

412. New sections 58E to 58M set out more detail on the ongoing regulation of registered building inspectors including an inspector applying to vary or cancel their registration (for example to be able to provide advice on further types of buildings after improving their competence through training), that the regulatory authority will publish a code of conduct for inspectors, how to deal with professional misconduct by inspectors (including a power to seek information from inspectors), disciplinary action that can be taken (including varying, suspending or cancelling an inspector’s registration) and appeals. The new sections set out a new offence of acting outside the scope of their registration without reasonable excuse i.e. providing advice or carrying out a restricted activity on a type of building which is outside the restrictions specified on their registration or providing advice or carrying out a restricted activity whilst suspended. It also sets out a new offence of impersonating a registered building inspector with intent to deceive.

413. New sections 58N to 58P set out the requirements for the registration of persons (i.e. organisations or individuals) as building control approvers by the regulatory authority. The new sections provide for the regulatory authority to determine the criteria for

registration, an application procedure for the registration of building control approvers and enables the regulator to grant registration with restrictions (for instance as to the type of buildings the registered building control body can work) or subject to conditions, and for the Secretary of State (and Welsh Ministers in Wales) to set, in regulations, the length of registrations.

414. New sections 58Q to 58X set out more detail on the ongoing regulation of registered building control approvers including applying for a variation or cancellation of registration, that the regulatory authority will publish professional conduct rules, a power for the regulatory authority to seek information from registered building control approvers, and investigations and sanctions if a registered building control approver contravenes the professional conduct rules. It also sets out two new offences of (1) exercising a building control function outside the scope of its registration (i.e. outside the restrictions specified on its registration or taking on new work when suspended), without reasonable excuse (for instance where the approver has not been informed by the regulatory authority that it has been suspended) and (2) of impersonating a registered building control approver with intent to deceive.

415. New section 58Y enables the regulatory authority to designate some or all of functions under sections 58B to 58X to be undertaken by another body.

416. New section 58Z enables the regulatory authority to make operational standards rules for local authorities and registered building control approvers. Local authorities and registered building control approvers must comply with the rules in the exercise of their building control functions. The regulatory authority must publish the rules and may revise and republish these rules from time to time.

417. New section 58Z1 enables the regulatory authority to direct local authorities and registered building control approvers to provide at specified times or intervals, such specified reports, returns and other information relating to the exercise of their building control functions. This could include periodic data reporting. A registered building control approver who fails to comply with the direction or provides false or misleading information commits an offence. This offence is punishable by a fine.

418. New section 58Z2 enables Welsh Ministers to request a local authority or registered building control approver to provide any documents or information relating to the exercise of their building control functions. A notice must be provided to the local authority or registered building control approver in writing to specify the nature and type of information required. A registered building control approver who fails to comply with the notice or provides false or misleading information commits an offence that is punishable by a fine.

419. New section 58Z3 enables the regulatory authority to investigate a local authority or registered building control approver if they may have failed to meet the operational standards rules. The regulatory authority must first publish a statement of the investigation procedure it intends to follow and allow for the authority or building control approver to

make representations. The regulatory authority may revise and publish the revised statement at any time.

420. New section 58Z4 allows the regulatory authority to issue an improvement notice to a local authority or registered building control approver if following an investigation or otherwise, they have breached the operational standards rules. The purpose of an improvement order is to direct the authority or registered building control approver in default to remedy the breach as specified in the order. The improvement notice must be served with a statement of reasons to explain why it has been served. In England, copies must be provided to the Secretary of State. In the case of a registered building control approver, copies must additionally be provided to each local authority. The notice has effect for the timeframe specified in the notice or until it is revoked. A local authority or registered building control approver may appeal the improvement notice to the First-tier Tribunal.

421. New section 58Z5 allows the regulatory authority to issue a serious contravention notice to a local authority or a registered building control approver if following an investigation or otherwise, it is found that the operational standards rules have been breached and this poses a risk to the safety of people in or about buildings. The regulatory authority may also issue a serious contravention notice if an improvement notice has been breached. The purpose of the serious contravention notice is to direct an authority or registered building control approver to take specific action as set out in the notice to remedy the breach. The serious contravention notice must be served with a statement of reasons to explain why it has been served. In England copies must be provided to the Secretary of State. In the case of a registered building control approver, copies must additionally be provided to each local authority. The notice has effect for the timeframe specified in the notice or until it is revoked. An authority or registered building control approver may appeal the serious contravention notice to the First-tier Tribunal. A person who contravenes the notice commits an offence and is liable to pay a fine.

422. New section 58Z6 - If the regulatory authority has given a registered building control approver one or more serious contravention notices and considers the way in which the registered building control approver exercises their building control functions falls short of the standards expected, puts the safety of persons in or about buildings at risk and is likely to continue to do so, the regulatory authority may cancel the building control approver's registration. The regulatory authority must first notify the registered building control approver that it is considering taking this action and provide its reasons for this. The building control approver must be invited to make any representations in respect of the proposed action within specified timeframes which must be no less than 14 days. Where the regulatory authority proceeds to cancel the approver's registration, it must notify the approver and each local authority that it has done so and provide a statement explaining why the decision has been taken. A registered building control approver may appeal to the First-tier Tribunal against the cancellation of its registration.

423. New section 58Z7- If the Building Safety Regulator has given a local authority one or more serious contravention notice and considers the way in which the authority exercises

their building control functions falls short of the expected standards, puts the safety of persons in or about buildings at risk and is likely to continue to do so, the Regulator may recommend to the Secretary of State to make an order for the authority's functions to be transferred to the Secretary of State or another local authority. The Building Safety Regulator must initially notify the authority that it is considering taking such action and explain its reasons for this. The authority must be invited to make any representations in respect of the proposed action within specified timeframes which must be no less than 14 days. Where the Building Safety Regulator proceeds to act, it must notify the authority that it has done so and provide a statement explaining why the decision has been taken. A local authority may appeal to the First-tier Tribunal against such recommendation.

424. New section 58Z8 confers a power on the regulatory authority to inspect local authorities and registered building control approvers, in relation to their building control functions. The reasons for carrying out inspections includes ascertaining the efficiency and effectiveness of a building control body, or for verifying information provided to the regulatory authority by a building control body.

425. The provisions relating to the registration and ongoing regulation of building inspectors and building control approvers will apply in Wales save that "regulatory authority" in Wales will be the Welsh Ministers. Section 58Y enables the regulatory authority (being the Welsh Ministers for Wales) to delegate some or all of the regulatory authority's registration functions under sections 58B to 58X to be undertaken by another person. The power to set and oversee operational standards for both approvers and local authorities in Wales will rest with Welsh Ministers as the regulatory authority. This includes powers to require the provision of periodic and particular information, investigative powers, the issue of improvement and contravention notices, and inspections. Welsh Ministers will have powers in relation to the deregistration of an approver in the face of significant contravention (powers to transfer local authority functions already exist in the current act).

Background

426. This is a new provision. Example 1: Individual building inspector registration An individual who wants to work as a registered building inspector will need to submit an application to the regulatory authority demonstrating how they meet the published criteria. The criteria set by the regulatory authority may include measures of competence, being a fit and proper person, previous experience etc. Upon reviewing the application, the regulatory authority 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. Example 2: Building control approver registration A person (for instance a private sector company or sole trader) who wishes to undertake building control work under Part 2 of the Building Act 1984 will need to be registered. A person will need to submit an application to the Building Safety Regulator demonstrating how they meet the regulatory authority's criteria for registration as a building control approver. After reviewing the application, the regulatory authority will decide whether or not to grant registration and if there are any restrictions or

conditions that should be imposed on the building control approver's registration. Restrictions may include matters such as the type or height of buildings a building control approver can work on. Section 58Z - The regulatory authority publishes operational standards rules for local authorities and registered building control approver. Local authorities and registered building control approver have to adhere to these rules and comply with the requirements in the exercise of their duties and functions. Over the course of time, there are changes within the industry which mean that the rules need to be revised to reflect best practice requirements for local authorities and registered building control approver. The regulatory authority may revise the rules and must publish the revised rules for local authorities and registered building control approvers to see so that they have access to it. Section 58Z1 - The regulatory authority requires information from a registered building control approver in relation to the exercise of its building control function. The Building Safety Regulator writes to the building control approver to direct it to provide specific reports, returns and other information and specifies the date when the information is to be provided. In providing its return to the regulatory authority, the building control approver provides false and misleading reports and therefore commits an offence. The registered building control approver is convicted of the offence and ordered to pay a fine. Section 58Z2 - Welsh Ministers require information from a registered building control approver in relation to its building control functions. The Welsh Ministers provide a notice in writing to the registered building control approver which specifies the information required, the date by which it is required and the form the information must be provided in. The registered building control approver fails to comply with the notice. The registered building control approver commits an offence by failing to provide the information requested. The registered building control approver is convicted of the offence and ordered to pay a fine. Section 58Z3 - The regulatory authority receives a complaint that a local authority has failed to meet the operational standards rules in the exercise of their building control functions. The regulatory authority decides to investigate the local authority. The regulatory authority will have published a statement outlining the procedures it will follow in relation to investigations and provides an opportunity for the local authority to make representations during the investigation. Section 58Z4 - Following an investigation, it is established that the operational standards rules have been breached by local authority. To remedy the situation, the regulatory authority serves an improvement notice on the local authority together with a statement of reasons explaining why the notice has been served. In England the Building Safety Regulator also provides copies to the Secretary of State. The regulatory authority sets out in the notice what specific actions the authority must take to resolve the breach and sets a timeframe of 28 days to complete these actions. The local authority reads the statement of reasons and understands why the decision has been taken to serve the notice. The local authority chooses to comply with the notice and does not appeal to the First-tier Tribunal. The local authority undertakes all actions set out in the improvement notice within 28 days to remedy the breach. Section 58Z5 - Following an investigation, it is established that the operational standards rules have been breached by a local authority and this represents a risk to the safety of people in or about the buildings in concern. To remedy the situation, the regulatory authority serves a serious contravention notice on the local authority together with a statement of reasons to explain why the notice

has been served. In England the Building Safety Regulator also provides copies to the Secretary of State. The regulatory authority sets out in the notice what specific actions the authority must take to resolve the breach and sets a timeframe of 28 days to complete these actions. The local authority does not appeal the notice to the First-tier Tribunal. The local authority reads the statement of reasons and understands why the decision has been made to serve the notice. The local authority, however, fails to comply with the notice and does not undertake the actions as set out within the 28-day timeframe. The local authority does not have reasonable justification for failing to carry out the actions as directed in the notice and is therefore convicted of this offence and is ordered to pay a fine. Section 58Z6 - The regulatory authority has given a registered building control approver a serious contravention notice, and the approver appears to be continuing to exercise their building control functions below the expected standard, putting the safety of persons at risk. The regulatory authority considers that the appropriate next step is to cancel the approver's registration. The regulatory authority notifies the approver that it is considering taking such action and explains its reasons. The approver is invited to make any representations within 14 days in respect of this proposed action. After representations have been made, the regulatory authority considers it appropriate to proceed to act and it notifies the approver that it has done so and provides a statement explaining why the decision has been taken. The regulatory authority also notifies each local authority in England. The approver chooses not to appeal the decision to the First-tier Tribunal. Section 58Z7 - The Building Safety Regulator has given a local authority in England a serious contravention notice, and the local authority appears to be continuing to exercise their building control functions below the expected standard, putting the safety of persons at risk. The Building Safety Regulator considers that the appropriate next step is to recommend to the Secretary of State to make an order to transfer the authority's functions to another local authority. The Building Safety Regulator notifies the local authority that it is considering taking such action and explain its reasons. The local authority is invited to make any representations within 14 days in respect of this proposed action. After representations have been made, the Building Safety Regulator considers it appropriate to proceed to act and it notifies the authority that it has done so and provides a statement explaining why the decision has been taken. The local authority chooses not to appeal this decision to the First-tier Tribunal.

COMMENTARY

27. Section 42 is one of the most substantial provisions in the Act. It inserts a new Part 2A into the Building Act 1984 (new sections 58A to 58Z10), creating a detailed system for the regulation of the building control profession. Part 2A establishes two registers: (a) a register of building inspectors, who carry out building control functions on behalf of registered building control approvers; and (b) a register of building control approvers (replacing the former “approved inspectors”).

28. The system of registration includes: (a) requirements for registration (competence, conduct, insurance); (b) codes of conduct and professional conduct rules; (c) investigation and disciplinary procedures (including interim suspension); (d) offences for unregistered practice; and € operational standards rules. The regulatory authority for registered building control approvers is the Building Safety Regulator; for registered building inspectors, it is a body designated by the Secretary of State.
29. The replacement of the approved inspector regime with registered building control approvers subject to statutory regulation is a direct response to the Hackitt Review's finding that the existing system of self-certification by approved inspectors was inadequate and lacked sufficient regulatory oversight.
30. There has been no reported case law on section 42 as at September 2026.

SECTION 43 – TRANSFER OF APPROVED INSPECTORS’ FUNCTIONS TO REGISTERED BUILDING CONTROL APPROVERS

STATUTORY TEXT

Schedule 4 amends the Building Act 1984 so as to—

- (a) transfer the functions of approved inspectors to registered building control approvers, and
- (b) make other provision consequential on section 42.

EXPLANATORY NOTES

Section 43: Transfer of approved inspectors’ functions to registered building control approvers

Effect

427. Part 2 of the Building Act 1984 currently provides for Approved Inspectors (including organisations and individuals) to supervise building work. This section, and Schedule 4, makes a number of consequential amendments to provisions in the Building Act 1984, mainly in Part 2, so that references to Approved Inspectors are changed to become references to registered building control approvers. Current “Approved Inspectors” (i.e. organisations) wishing to undertake building control work will have to meet minimum criteria to become registered as building control approvers, becoming subject to the oversight of the regulatory authority (the Building Safety Regulator in relation to England, and the Welsh Ministers in relation to Wales).

428. An individual who is currently an Approved Inspector could register: • as a registered building inspector (which would allow them to provide advice to others); • as a registered building control approver (which would allow them to undertake building control work under Part 2 of the Building Act 1984, but they would need to obtain advice from a registered building inspector before exercising prescribed functions); or • as both (which would allow them to undertake Part 2 work and rely on their own expert advice before exercising the prescribed functions).

429. Local authorities will not have to register as building control approvers and will continue to perform their building control functions. This is because local authorities have a statutory duty to enforce building regulations in their area under section 91(2) of the Building Act 1984. It should be noted that under section 116 of the Building Act 1984 (as amended by section 45) where a local authority is failing, its building control functions can be transferred by the Secretary of State to another local authority.

430. Schedule 4 amends references to “Approved Inspector” in the Building Act 1984 to “registered building control approver”. Paragraph 12 of the Schedule amends an existing requirement for notification by the magistrates’ court. Currently under section 57(3) of the

Building Act 1984 the court has to notify the approval body (ie CICAIR), after the amendment the court will need to notify the relevant authority (ie Building Safety Regulator in relation to England or Welsh Ministers in relation to Wales, or the body delegated).

431. This section and Schedule 4 will apply equally in Wales.

Background

432. This section makes a number of amendments to the Building Act 1984 which are consequential on Approved Inspectors being replaced by registered building control approvers. Example In future initial notices etc. for building control work under Part 2 of the Building Act 1984 will need to be issued by a registered building control approver instead of an Approved Inspector.

COMMENTARY

31. Section 43 makes transitional provision for the transfer of functions from approved inspectors (the former regime under Part 2 of the Building Act 1984) to registered building control approvers (the new regime under Part 2A inserted by section 42). Approved inspectors' existing approvals and initial notices are to be treated as registrations and initial notices under the new system, subject to transitional arrangements.
32. There has been no reported case law on section 43 as at September 2026.

SECTION 44 – FUNCTIONS EXERCISABLE ONLY THROUGH, OR WITH ADVICE OF, REGISTERED BUILDING INSPECTORS

STATUTORY TEXT

- (1) The Building Act 1984 is amended as follows.
- (2) After section 46 insert—

Building control authorities: restricted activities and functions

46A Building control authorities: restricted activities and functions

- (1) A building control authority may carry out a restricted activity in relation to any work only through a registered building inspector, acting on the authority's behalf, whose registration has effect in relation to work of that description.
 - (2) Before each exercise of a restricted function in relation to any work, a building control authority must obtain and consider the advice of a registered building inspector whose registration has effect in relation to work of that description.
 - (3) The registered building inspector who carries out the restricted activity, or advises on the exercise of the restricted function, may (but need not) be employed by the authority.
 - (4) In this section—
 - “restricted activity” means an activity that is prescribed for the purposes of this section;
 - “restricted function” means a function of a building control authority under—
 - (a) this Part,
 - (b) Part 3, or
 - (c) regulations made under this Part or Part 3,that is prescribed for the purposes of this section.
- (3) After section 54A (inserted by section 47) insert—

Registered building control approvers: restricted activities and functions

54B Registered building control approvers: restricted activities and functions

- (1) This section applies to a registered building control approver who is not a registered building inspector.

- (2) The approver may carry out a restricted activity in relation to any work only through a registered building inspector, acting on the approver's behalf, whose registration has effect in relation to work of that description.
- (3) Before each exercise of a restricted function in relation to any work, the approver must obtain and consider the advice of a registered building inspector whose registration has effect in relation to work of that description.
- (4) The registered building inspector who carries out the restricted activity, or advises on the exercise of the restricted function, may (but need not) be employed by the approver.
- (5) In this section—
 - “restricted activity” means an activity that is prescribed for the purposes of this section;
 - “restricted function” means a function of a registered building control approver under this Part, or regulations made under this Part, that is prescribed for the purposes of this section.
- (6) A registered building control approver who contravenes subsection (2) or (3) without reasonable excuse commits an offence.
- (7) An offence under this section is punishable on summary conviction by a fine.

(3) After section 54A (inserted by section 47) insert -

EXPLANATORY NOTES

Section 44: Functions exercisable only through, or with advice of, registered building inspectors

Effect

433. This section amends the Building Act 1984 to insert new sections 46A and 54B.

434. In relation to building control authorities (defined in section 120A as the Building Safety Regulator and the relevant local authority (section 120A was inserted into the Building Act 1984 by section 32)), section 46A provides that prescribed building control functions will be specified as functions which building control authorities will only be able to carry out having first obtained and considered the advice of a registered building inspector. New section 54B makes the same provision in relation to registered building control approvers. The purpose of these provisions is to ensure that the Building Safety Regulator, local authorities and registered building control approvers take advice from individuals who have demonstrated relevant expertise before important building control decisions are taken. These restricted functions will be set out in secondary legislation.

435. In relation to building control authorities, new section 46A provides that building control authorities must only carry out certain restricted activities through using an

appropriately registered building inspector. These activities will be set out in secondary legislation and is likely to include activities like formal building control inspections. New section 54B makes the same provision in relation to registered building control approvers. The purpose of these provisions is to ensure that individuals who have demonstrated relevant competence are carrying out the important activities that are part of the building control process.

436. Building control authorities have a statutory duty to supervise and enforce building regulations in their area under section 91(2) of the Building Act 1984 in the case of local authorities, and the new building control regime for higher-risk buildings (and other buildings where a regulator's notice is in force (see section 32) in the case of the Building Safety Regulator. It is not intended that all of the work they do under this duty will be specified as a function which they must not exercise before they have obtained and considered a registered building inspector's advice. It is intended that the specified functions of a building control authority will be broadly equivalent to those of a registered building control approver.

437. Some examples of local authority functions that could be specified in secondary legislation as functions which an authority can only exercise after obtaining and considering advice from a registered building inspector may include approval or rejection of full building plans and issuing completion certificates. Some examples of Building Safety Regulator functions that might be specified include approving a construction Gateway application for a higher-risk building or issuing a completion certificate. Some examples of registered building control approver functions that could be specified in secondary legislation include sending initial notices and issuing plans and final certificates.

438. This section requires that building control authorities and registered building control approvers must obtain and consider the advice of a registered building inspector each time they want to make a decision on a restricted function and to use an appropriately registered building inspector to carry out restricted activities on their behalf. If a registered building control approver breaches these requirements it can be prosecuted and, if found guilty, fined. For building control authorities, in the case of failure to use a registered building inspector to carry out restricted activities or to seek advice from a registered building inspector, their building control decision could be called into question and subject to judicial review for failing to follow the legislative process.

439. This section will operate similarly in Wales such that some building control authority functions will be specified as functions which building control authorities (defined as relevant local authorities for Wales) or registered building control approvers will only be able to carry out having first obtained and considered the advice of a registered building inspector. For higher-risk buildings the relevant local authority will be the building control authority, not the Building Safety Regulator.

Background

440. This section inserts new sections 46A and 54A into the Building Act 1984. Example 1: Local authority A local authority wishes to issue a final completion certificate on a building. The local authority will be required to obtain advice from a registered building

inspector (who may or may not be directly employed by them) who provides advice. Some local authorities will have an in-house team who will provide all such advice, but some local authorities who do not have significant amounts of certain building developments may obtain this advice from the inspector employed in another local authority or in the private sector. The local authority will then consider the advice received and make a decision on whether or not to issue the completion certificate. Example 2: Building Safety Regulator The Building Safety Regulator is reviewing full plans and giving building control approval under the new construction Gateway two arrangements for higher-risk buildings. Before deciding whether to allow construction to start, it will be required to obtain advice from a registered building inspector on whether the work to create a higher-risk building shown in the Gateway two application (the proposed plans etc.) complies with the technical requirements of the building regulations. The Building Safety Regulator will then consider the registered building inspector's advice before making a decision on whether or not to grant building control approval. Example 3: Registered building control approver A registered building control approver wishes to issue a plans certificate for a building. It will be required to obtain advice from a registered building inspector on whether the building work shown in the proposed plans complies with the technical requirements of the building regulations. The registered building control approver will then consider the registered building inspector's advice before making a decision on whether or not to issue the plans certificate. Example 4: Restricted Activities A registered building control approver wishes to carry out an inspection to check for compliance of an element of the work with the technical requirements of the building regulations. Where such an inspection is a prescribed activity, the registered building control approver must use a registered building inspector who has the appropriate registration type for the building work and building to be inspected, to carry out the inspection.

COMMENTARY

33. Section 44 provides that certain building control functions may be exercised only through, or with the advice of, a registered building inspector. This ensures that building control decisions of substance are taken or informed by qualified professionals.
34. There has been no reported case law on section 44 as at September 2026.

SECTION 45 – DEFAULT POWERS OF APPROPRIATE NATIONAL AUTHORITY

STATUTORY TEXT

- (1) The Building Act 1984 is amended as follows.
- (2) In section 116 (power to transfer local authority functions to appropriate national authority)—
 - (a) in the heading for “Secretary of State” substitute “appropriate national authority”;
 - (b) in subsection (1)—
 - (i) for “Secretary of State” substitute “appropriate national authority”;
 - (ii) for “he” substitute “it”;
 - (c) in subsection (2)—
 - (i) for “Secretary of State” substitute “appropriate national authority”;
 - (ii) for the words from “make an order” to the end substitute “make a transfer order in respect of the body in default.”;
 - (d) after subsection (2) insert—
 - (3) The Secretary of State must consult the regulator before making an order under subsection (1) or (2).
 - (4) The Secretary of State may also make a transfer order in respect of a local authority if—
 - (a) under section 58Z7(2) the regulator recommends that the Secretary of State make a transfer order in respect of the authority, and
 - (b) the Secretary of State is satisfied that the way in which the authority exercises its functions under this Act—
 - (i) falls short of the standards expected, and
 - (ii) puts, or may put, the safety of persons in or about buildings at risk,and is likely to continue to do so.
 - (5) The Welsh Ministers may also make a transfer order in respect of a local authority if the Welsh Ministers are satisfied that the way in which the authority exercises its functions under this Act—
 - (a) falls short of the standards expected, and
 - (b) puts, or may put, the safety of persons in or about buildings at risk, and is likely to continue to do so.

- (6) A “transfer order”, in respect of a local authority or joint board, is an order transferring to the appropriate national authority, or to another local authority, such functions of the authority or board as may be specified in the order.
- (3) In section 117 (expenses)—
 - (a) in the heading for “Secretary of State” substitute “appropriate national authority”;
 - (b) before subsection (1) insert—
 - (A1) This section applies where the appropriate national authority has transferred functions to itself by a transfer order under section 116.
 - (A2) Any expenses incurred by the Secretary of State in discharging the transferred functions are to be paid in the first instance out of money provided by Parliament.
 - ;
 - (c) in subsection (1)—
 - (i) for the words before paragraph (a) substitute “The amount of any expenses certified by the appropriate national authority as having been incurred by the authority in discharging the transferred functions”;
 - (ii) in paragraph (a) for “him” substitute “the authority”;
 - (iii) in paragraph (b) for the words from “him” to the end substitute “the authority from the body as a debt due to the authority”;
 - (d) in subsection (2) for “Secretary of State” substitute “appropriate national authority”.
- (4) In section 118 (variation or revocation of transfer order)—
 - (a) in subsection (1)—
 - (i) for “Secretary of State” substitute “appropriate national authority”;
 - (ii) for “an order under section 116(2)” substitute “a transfer order under section 116”;
 - (iii) for “he” substitute “it”;
 - (b) after subsection (1) insert—
 - (1A) The Secretary of State must consult the regulator before making an order under subsection (1).
 - ;
 - (c) in subsection (2)—
 - (i) for “Secretary of State” substitute “appropriate national authority”;

- (ii) for “him”, in the first place it occurs, substitute “it”;
- (iii) for the words from “by him” to the end substitute “, by the person to whom the revoked order transferred functions, in discharging those functions.”

EXPLANATORY NOTES

Section 45: Default powers of appropriate national authority

Effect

441. This section amends sections 116 to 118 of the Building Act 1984. The existing sections 116 to 118 apply in England and Wales, some of the amendments in this section are clarifying what powers the Welsh Ministers already have had transferred to them. Section 116 provides that if the appropriate national authority (i.e. in England, the Secretary of State or in Wales, Welsh Ministers) is satisfied that a local authority has failed to perform their functions under the Act, it may make an order which declares them to be in default and instruct them to discharge their functions in a specific way and within a specific timeframe. If a local authority fails to comply with this order, the appropriate national authority may make a transfer order to assign to itself specified building control functions belonging to the body in default. The substantive change made to section 116 by this section is to provide that in England, the Secretary of State must first consult the Building Safety Regulator before making any orders. The Secretary of State may also make a transfer order if the Building Safety Regulator makes a recommendation and if he is satisfied that the authority is exercising its functions below the standard expected, which puts, or may put, the safety of persons in or about buildings at risk and is likely to continue to do so.

442. This section also amends section 117 of the Building Act 1984. The effect of the amendments is to restate that the Secretary of State’s expenses incurred in carrying out functions transfer to him under section 116 can be paid from money provided by Parliament. Further the amendments restate that the amount of expenses incurred by the appropriate national authority is recoverable as a debt due to the authority and is to be paid by the body in default.

443. This section also amends section 118 of the Building Act 1984. The appropriate national authority may at any time vary or revoke a transfer order. A substantive change is that the Secretary of State must first consult with the Building Safety Regulator. The appropriate national authority may make any provisions to deal with the transfer, vesting and discharge of any property or liabilities incurred by the person to whom the functions were transferred to, either through the revoking order or a new order.

444. This section will operate similarly in Wales. Welsh Ministers, as the “appropriate national authority” for Wales may also make a transfer order in respect of a local authority if the Welsh Ministers are satisfied that the way in which the authority exercises its functions under the Act falls short of the standards expected.

Background

445. This section amends sections 116, 117 and 118 of the Building Act 1984, to clarify the powers of the appropriate national authority to intervene where a local authority has failed to perform their functions under the Building Act 1984, and to recognise the role of the Building Safety Regulator in advising the Secretary of State in relation to this power. Example 1 A local authority has failed to perform its building control functions to the required standard. To remedy the situation, the Secretary of State first consults with the Building Safety Regulator and makes an order which declares the authority to be in default and directs them to carry out their functions in a specific way within a period of 28 days. The authority fails to comply with a requirement of this order within the timeframe. The Secretary of State considers that the appropriate next step is to make a transfer order and first consults with the Building Safety Regulator. The Secretary of State proceeds to make the transfer order which assigns to another local authority specified building control functions that belong to the authority in default. Example 2 The Building Safety Regulator notices that a local authority is failing to perform its functions to the required standard and recommends to the Secretary of State that a transfer order should be made. The Secretary of State reviews this recommendation and is satisfied that this authority is likely to continue to exercise its functions below the standard expected and put the safety of people at risk. The Secretary of State proceeds to make the order which assigns the functions of the authority in default to himself. Example 3 The Secretary of State considers that the circumstances of the local authority which led to the transfer of its functions has now been resolved. The Secretary of State first consults with the Building Safety Regulator on this issue and then proceeds to make an order to revoke the transfer order. Within this revoking order, the Secretary of State sets out any steps to be taken to deal with the assignment and release of any property or liabilities incurred as a result of the original transfer.

COMMENTARY

35. Section 45 amends and extends the default powers of the Secretary of State (and Welsh Ministers) under the Building Act 1984, enabling the national authority to exercise building control functions directly where a building control authority has failed to perform its functions adequately. This is a backstop power of last resort.
36. There has been no reported case law on section 45 as at September 2026.

SECTION 46 – HIGHER-RISK BUILDING WORK: REGISTERED BUILDING CONTROL APPROVERS

STATUTORY TEXT

- (1) In section 47 of the Building Act 1984 (giving and acceptance of initial notice), in subsection (1)(a)—
 - (a) after “prescribed form” insert “relating to work that is not higher-risk building work”;
 - (b) after “carry out” insert “the”.
- (2) In section 51A of the Building Act 1984 (variation of work to which initial notice relates), for subsection (1) substitute—
 - (1) This section applies where—
 - (a) it is proposed that the work to which an initial notice relates should be varied, and
 - (b) the work as varied is not higher-risk building work.
- (3) After section 52 of the Building Act 1984 insert—

52A Cancellation of initial notice when work becomes higher-risk building work

- (1) If, at a time when an initial notice is in force, it appears to the registered building control approver that some or all of the work has become higher-risk building work, the registered building control approver must, as soon as is reasonably practicable, cancel the relevant part of the initial notice by notice in the prescribed form given to—
 - (a) the local authority concerned, and
 - (b) the person carrying out or intending to carry out the work.
- (2) If, at a time when an initial notice is in force, it appears to the person carrying out or intending to carry out the work that some or all of the work has become higher-risk building work, the person must, as soon as is reasonably practicable, cancel the relevant part of the initial notice by notice in the prescribed form given to—
 - (a) the local authority concerned, and
 - (b) the registered building control approver.
- (3) Where a person is required to give a notice under subsection (1) or (2) in relation to higher-risk building work in England, the person must, as soon as is reasonably practicable, give a copy of that notice to the regulator.

- (4) If, at a time when an initial notice is in force, it appears to the local authority concerned that some or all of the work has become higher-risk building work, the authority must cancel the relevant part of the initial notice by notice in the prescribed form given to—
- (a) the registered building control approver, and
 - (b) the person shown in the initial notice as the person intending to carry out the work.
- (5) Where a local authority is required to give a notice under subsection (4) in relation to higher-risk building work in England, the local authority must give a copy of that notice to the regulator.
- (6) A person commits an offence if they fail without reasonable excuse to—
- (a) give to a local authority a notice that the person is required to give by subsection (1) or (2);
 - (b) give to the regulator a copy of a notice that the person is required to give by subsection (3).
- (7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine.
- (8) Where a notice is given under any of subsections (1), (2) and (4) (a “cancellation notice”)—
- (a) the part of the initial notice to which the cancellation notice relates is cancelled with effect from the day on which the cancellation notice is given, and
 - (b) a new initial notice may not be given in relation to any of the work to which the cancelled part of the initial notice related.
- (9) In this section “the relevant part of the initial notice” means so much of the initial notice as relates to work that has become higher-risk building work.

52B Effect of initial notice ceasing to be in force where work becomes higher-risk building work

- (1) This section applies where an initial notice ceases to be in force, whether in whole or in part, by virtue of section 47(4)(b)(ia) (higher-risk building work).
- (2) If, before the day on which the relevant part of the initial notice ceased to be in force, a final certificate—
- (a) was given in respect of part of the work to which the relevant part of the initial notice relates, and
 - (b) was accepted by the local authority,

the fact that the relevant part of the initial notice has ceased to be in force does not affect the continuing operation of section 51(3) in relation to that part of the work.

- (3) The building control authority in relation to any of the uncertified work is—
 - (a) in England, the regulator, and
 - (b) in Wales, the relevant local authority (within the meaning of section 121A(2)).
 - (4) In subsection (3), the “uncertified work” means any of the work—
 - (a) to which the relevant part of the initial notice relates, and
 - (b) in respect of which no final certificate has been accepted by the local authority as mentioned in subsection (2).
 - (5) Sections 91(3) (duties of the regulator) and 121A(1) (meaning of “building control authority”) apply as if, in each case, the reference to section 91ZA or 91ZB were a reference to section 52B, 91ZA or 91ZB.
 - (6) In any case where this section applies, the reference in subsection (4) of section 36 to the date of the completion of the work in question has effect, in relation to a notice under subsection (1) of that section, as if it were a reference to the date on which the relevant part of the initial notice ceased to be in force.
 - (7) In this section “the relevant part of the initial notice” means so much of the initial notice as was cancelled by a notice under section 52A (cancellation of initial notice when work becomes higher-risk building work).
- (4) In section 47 of the Building Act 1984 (giving and acceptance of initial notice), in subsection (4)(b)—
- (a) omit the “or” after sub-paragraph (i);
 - (b) after sub-paragraph (i) insert—
 - (ia) it is cancelled, in whole or in part, by a notice under section 52A,
- .
- (5) In section 55 of the Building Act 1984 (appeals), after subsection (2) insert—
- (2A) Where a local authority cancels an initial notice, in whole or in part, by giving a notice (a “cancellation notice”) under section 52A(4)—
- (a) the person shown in the initial notice as the person intending to carry out the work, or
 - (b) the registered building control approver,
- may appeal to the appropriate court or tribunal.

- (2B) On an appeal under subsection (2A), the court or tribunal must determine whether the relevant part of the initial notice was properly cancelled.
- (2C) In a case where the court or tribunal determines that the relevant part of the initial notice was not properly cancelled—
- (a) the determination does not have the effect of reinstating the relevant part of the initial notice;
 - (b) section 52B(2) and (6) continue to apply in relation to the relevant part of the initial notice;
 - (c) a new initial notice relating to any of the work to which the relevant part of the original initial notice related (the “original work”) may be given only if the new initial notice—
 - (i) is given before the end of the period of seven days beginning with the day on which the appeal is determined or such other period as may be prescribed, and
 - (ii) relates to all of the original work, except for any work in respect of which a final certificate has been accepted by the local authority;
 - (d) the court or tribunal may give such directions as it considers appropriate in consequence of the determination (which may include giving directions to the regulator).
- (2D) Where—
- (a) a plans certificate has been given in respect of any of the original work,
 - (b) the conditions in paragraphs (a) and (b) of section 53(2) are fulfilled with respect to that certificate, and
 - (c) a new initial notice as referred to in subsection (2C)(c) is accepted,
- section 50(1C) does not apply in relation to so much of the work to which the new initial notice relates as is work specified in the plans certificate.
- (2E) Where—
- (a) a new initial notice is given in accordance with subsection (2C)(c), and
 - (b) the registered building control approver shown in the new initial notice is different to the registered building control approver shown in the original initial notice,
- sections 53B to 53E apply as if any reference in those sections to a new initial notice given in accordance with section 53(7)(a) were a reference to a new initial notice given in accordance with section 55(2C)(c).
- (2F) In this section the “relevant part of the initial notice” means so much of the initial notice as was subject to the cancellation notice.

EXPLANATORY NOTES

Section 46: Higher-risk building work: registered building control approvers

Effect

446. This section amends Part 2 of the Building Act 1984 in relation to higher-risk building work. Part 2 sets out the building control regime where building work is supervised by an Approved Inspector (to be renamed as registered building control approver by section 44 of this Act).

447. The amendments to sections 47 and 51A of the Building Act 1984 remove the ability for persons carrying out any building work which is higher-risk building work to choose their own building control body. (Higher-risk building work is defined in section 91ZA(3), inserted by section 32, e.g. work to create a higher-risk building or any building work to a higher-risk building). Technically this change is achieved by prohibiting the submission of an initial notice or an amendment notice in relation to higher-risk building work.

448. The effect of the amendments in this section is to provide that any initial notice (or other notice or certificate under Part 2) which specifies building work which is higher-risk building work will be invalid (i.e. will be void and have no legal effect) and Part 2 (including the immunity from enforcement action) would not apply if that building work is carried out. For the avoidance of doubt any work carried out in these circumstances will not have the enforcement protection provided for in sections 48(1), 51(3) or 53(2) of the Building Act 1984. Further it is irrelevant whether the local authority purported to accept the initial notice – as it is void *ab initio* any acceptance of it will also have no effect.

449. Only the Building Safety Regulator can carry out supervision of higher-risk building work (see section 91ZA of the Building Act 1984, inserted by section 32). A person wishing to carry out building work which is higher-risk building work is unable to use a registered building control approver (currently known as Approved Inspectors) or a local authority to supervise that work.

450. New section 52A is inserted into the Building Act 1984 to deal with the situation where there are changes to original plans after an initial notice has been submitted i.e. where the original initial notice did not specify higher-risk building work but plans are changed later so that the work, if built, would result in some or all of the works being higher-risk building work. In this scenario the registered building control approver (or the person carrying out or intending to carry out the work) must cancel the relevant part of the original initial notice. The local authority is also required to cancel the relevant part of the initial notice if it becomes aware that some or all of the work is higher-risk building work.

451. Additionally, in England only, where the relevant part of an initial notice is cancelled under new section 52A the registered building control approver, person carrying out or intending to carry out work or local authority who cancelled it is under a duty to inform the Building Safety Regulator of the cancellation.

452. It is a criminal offence if without reasonable excuse the body or the person fails to cancel the relevant part of the notice or, in England, fails to give a copy of the notice to the regulator.

453. New section 52B is inserted into the Building Act 1984. It applies only where an initial notice is cancelled under new section 52A i.e. where the original initial notice did not specify any higher-risk building work, but plans subsequently changed. Section 52B(2) provides that where the relevant part of an initial notice is cancelled under section 52A and a final certificate has been given and accepted in relation to some or all of the work, then that work will have enforcement protection. The new section 52B also provides that the Building Safety Regulator will enforce building regulations in respect of all of the uncertified work, regardless of whether it is in relation to a period before or after the work became higher-risk building work.

454. Subsection (5) of section 46 creates a right of an appeal where a local authority cancels an initial notice under section 52A(4). The person carrying out the work or the registered building control approver may appeal to the magistrates' court (in Wales) or the First-tier Tribunal (in England) on the grounds that the initial notice was not properly cancelled. Where the court or tribunal rules that the local authority has wrongly cancelled the notice, the original notice is not reinstated, however any issued final certificate persists, if accepted prior to the cancellation. The person carrying out the work and a registered building control approver may submit a new initial notice within seven days of the court or tribunal's ruling being handed down. This can be with either the original registered building control approver or another one. If the registered building control approver of the new initial notice is different to the registered building control approver of the original initial notice, then the certificate and transfer report process in sections 53B to 53E apply.

455. This section will operate in the same way in Wales where choice of building control body is similarly removed for higher-risk building work. For such work only the local authority for the area or as designated by Welsh Ministers will be able to act as building control authority. Where changes result in work becoming higher-risk building work, cancellation of the original notice and notification to the local authority will be required.

Background

456. This section amends sections 47, 51A and 53 of the Building Act 1984 and inserts new provisions, section 52A and 52B into that Act. The current provisions in the Building Act 1984 allow for supervision of plans and building work to be undertaken either by local authority building control or by an Approved Inspector (or by a public body itself – see section 47).

457. This section amends the Building Act 1984 to prevent a dutyholder in relation to higher-risk building work from choosing their building control body, as recommended by the Independent Review. The amendments ensure the new Building Safety Regulator is the building control body for this type of building work and is able to apply the new regulatory arrangements to improve the safety of such buildings. The definition of “higher-risk building work” is dealt with in section 31. Example 1 A registered building control approver inadvertently specifies some higher-risk building work in an initial notice.

Whether or not the notice is accepted by the local authority the notice would be void and have no legal effect as section 47(1)(a) (as amended by this section) makes it unlawful for an initial notice to relate to a higher-risk building work. The whole notice would be void. The following examples apply in circumstances where there is a new non-higher-risk building due to be constructed, and there is a change to the use or the height of, or number of storeys in the building such that after the works the building is a higher-risk building. In these scenarios, the dutyholder for the building work must follow the regulatory process for higher-risk buildings, and only the Building Safety Regulator can supervise the building work relating to such buildings.

Example 2: Registered Building Control Approver A registered building control approver may have submitted an initial notice for a building which did not specify any higher-risk building work, but with a change of plans the work subsequently becomes higher-risk building work. They will be required to submit a cancellation notice to the local authority. The supervision of building work in relation to higher-risk building work is to then be the role of the Building Safety Regulator (see section 91ZA of the Building Act 1984 as inserted by section 32) and the construction Gateways or refurbishments etc. processes must be used.

Example 3: Person(s) carrying out the work The person(s) carrying out the work under an existing initial notice wishes to change their building plans for a development to such an extent that it results in the building, if built, being a higher-risk building. If the change requires planning permission, then planning Gateway one will apply and the local planning authority will inform them that the development will be required to be submitted with a Fire Statement. If the change is possible without a new planning permission, then their existing registered building control approver (currently known as Approved Inspector) should inform the person(s) that this will result in the works becoming higher-risk building work. If the person(s) carrying out the work wishes to continue with the change they should then cancel the existing initial notice and follow the new Gateway etc. process.

Example 4: Local authority A local authority may receive an amendment notice which amends the original initial notice so that some or all of the works become higher-risk building work. An amendment notice that relates to proposed higher-risk building work would be invalid and the local authority should explain this to the registered building control approver/person intending to carry out the works. The local authority has no power to accept or reject the amendment notice as it is void. If the local authority becomes aware that the higher-risk building work has started, then it must cancel the relevant part of the original initial notice under the power in section 52A notifying the registered building control approver and person(s) carrying out the work. The supervision of building work in relation to higher-risk buildings is the role of the Building Safety Regulator (see section 91ZA of the Building Act 1984 as inserted by section 32) and the construction Gateways etc. processes must be used.

Example 5: Part cancellation of an initial notice A local authority receives an initial notice for a building project containing five buildings that are not higher-risk building work. Later the developer changes the plans for one of the buildings to be a higher-risk building and for the other four to remain non-higher-risk buildings. The initial notice would be partially cancelled, remaining valid for the four non-higher-risk buildings but not valid for the fifth, higher-risk building.

COMMENTARY

37. Section 46 amends the Building Act 1984 to set out the framework for registered building control approvers carrying out building control functions in relation to higher-risk building work. The section modifies the existing initial notice regime to accommodate the new registration system and the Regulator's supervisory role.
38. There has been no reported case law on section 46 as at September 2026.

SECTION 47 – HIGHER-RISK BUILDING WORK: PUBLIC BODIES

STATUTORY TEXT

After section 54 of the Building Act 1984 insert—

54A Public bodies and higher-risk building work

- (1) The appropriate national authority may by regulations make such amendments of the provisions listed in subsection (2) as the authority considers appropriate in connection with higher-risk building work.
- (2) The provisions are—
 - (a) section 5;
 - (b) section 54;
 - (c) Schedule 4.

EXPLANATORY NOTES

Section 47: Higher-risk building work: public bodies

Effect

458. This section amends the Building Act 1984 by inserting a new section 54A into the Act. Section 54A gives the Secretary of State the power to make regulations amending sections 5, 54 and Schedule 4 to the Act in relation to higher-risk buildings. This power would enable the Secretary of State to create a modified higher-risk buildings regime for public bodies, for example, prevent a public body from submitting a public body notice (a notice given to the local authority to supervise their own building work instead of the local authority) for higher-risk building work.

459. This section will apply equally in Wales providing the equivalent power to Welsh Ministers

Proposed use of power

460. This provision allows the Secretary of State to make regulations as to how the new regulatory regime for higher-risk buildings will be applied (if at all) to a public body designated under sections 5 and 54 of the Building Act 1984.

Background

461. A public body is defined in section 54 of the Building Act 1984 as a body (corporate or unincorporated) that acts under an enactment for public purposes and not for its own profit and is, or is of a description that is, approved by the Secretary of State in accordance with building regulations. There are currently no public bodies approved by the Secretary of State under section 54.

462. Historically, provision for public body notices under section 54 of the Building Act 1984 allowed public bodies to carry out supervision of their own building work. This means

it is allowed to supervise its own building work only where a public notice has been accepted.

463. Moreover, section 5 of the Building Act 1984 enabled public bodies to benefit from an exemption from procedural requirements of the building regulations. This meant that an “exempt body” does not have to notify a local authority when starting any works.

464. Were such a public body to supervise their own higher-risk building work and/or have the ability not to notify the Building Safety Regulator there would be a potential conflict of interest.

Example

The Secretary of State becomes aware that a public body is proposing to build a residential building of 18 metres or higher, and the Secretary of State decides it is not appropriate for the public body to supervise its own higher-risk building work without the regulatory oversight of the Building Safety Regulator. The Secretary of State decides to make regulations that prevent such public bodies from doing this and the body would be required to follow the construction Gateways etc. and proceed under the supervision of the Building Safety Regulator.

COMMENTARY

39. Section 47 inserts new section 54A into the Building Act 1984, making provision for public body building control in relation to higher-risk building work. Public bodies that formerly relied on their own building control arrangements must now use the Regulator or a registered building control approver for higher-risk building work. This is a significant change to how building control, will work “on the ground”
40. There has been no reported case law on section 47 as at September 2026.

SECTION 48 – INSURANCE: REMOVAL OF REQUIREMENTS

STATUTORY TEXT

- (1) The Building Act 1984 is amended as follows.
- (2) In section 47 (giving and acceptance of initial notice)—
 - (a) in subsection (1) omit paragraph (c) (but not the “and” at the end of it);
 - (b) omit subsections (6) and (7).
- (3) In section 51A(2) (variation of work to which initial notice relates) omit paragraph (c) (but not the “and” at the end of it).
- (4) In section 56 (recording and furnishing of information) omit subsection (2).

EXPLANATORY NOTES

Section 48: Insurance: Removal of requirements

Effect

465. This section removes the requirement in the Building Act 1984 for Approved Inspectors to hold insurance through a Government-approved scheme. Instead, Approved Inspectors will be required to adequately cover their own liabilities, including through insurance if necessary.

466. In section 42 of this Act, the Building Safety Regulator is also given powers to sanction any Approved Inspector who fails to meet standards set out by the professional conduct rules, which may include requirements on insurance.

Background

467. The existing Building Act 1984 requires Approved Inspectors to hold insurance through a DLUHC Secretary of State-approved scheme. This is supported by regulations which require Approved Inspectors to provide proof of adequate insurance when performing a number of their statutory functions, such as the signing of final certificates.

468. Removing the requirement for Government-approved insurance is designed to: • Make the Approved Inspectors sector more resilient and flexible in the face of insurance market fluctuations, and • Create alignment with insurance requirements between Approved Inspectors and other professions.

469. Secondary legislation will remove the requirement for Approved Inspectors to provide proof of adequate insurance when performing their statutory functions.

Example

Examples of Approved Inspector statutory functions include the submission of initial notices to local authorities, and the signing of part-final and final certificates. Secondary legislation will remove the requirement for Approved Inspectors to provide proof of insurance when performing these functions. Checking proof of insurance is currently

undertaken by local authorities, and consequently these changes will reduce burden on LAs. The Approved Inspector regulatory body CICAIR will also no longer be required to check insurance for its register of Approved Inspectors.

COMMENTARY

41. Section 48 removes certain insurance requirements previously imposed on approved inspectors under the Building Act 1984, replacing them with the new regulatory requirements for registered building control approvers under Part 2A. The insurance requirements are now dealt with as part of the conditions of registration.
42. There has been no reported case law on section 48 as at September 2026.

SECTION 49 – PLANS CERTIFICATES

STATUTORY TEXT

- (1) The Building Act 1984 is amended as follows.
- (2) In section 50 (plans certificates)—
 - (a) for subsection (1) substitute—
 - (1) In this Part a “plans certificate” means a certificate by a registered building control approver that the relevant conditions are met in relation to the work specified in the certificate (which must be work in relation to which the approver has given an initial notice).
 - (1A) The relevant conditions are that the registered building control approver—
 - (a) has inspected—
 - (i) full plans of the work, or
 - (ii) plans of the work that the approver is satisfied are sufficient for the purposes of giving a plans certificate in relation to the work,
 - (b) is satisfied that the plans are not defective,
 - (c) is satisfied that work carried out in accordance with the plans would not contravene any provision of building regulations, and
 - (d) has complied with any prescribed requirements as to consultation or otherwise.
 - (1B) Subsection (1C) applies if the person intending to carry out work to which an initial notice relates asks the registered building control approver who gave the initial notice to give a plans certificate in respect of the work.
 - (1C) If the relevant conditions are met, the approver must give a plans certificate to the local authority and the person intending to carry out the work.
 - (1D) A plans certificate must be in the prescribed form.
- ;
- (b) in subsection (4) for “certificate under subsection (1) above” substitute “plans certificate”;
- (c) after subsection (7) insert—
 - (7A) Building regulations may make further provision in connection with plans certificates, including in particular provision—

- (a) requiring a plans certificate to be given to the local authority in prescribed cases;
 - (b) about the consequences of failing to comply with such a requirement (for example, for an initial notice to cease to have effect in whole or in part);
 - (c) requiring a plans certificate stating that the condition in subsection (1A)(a)(ii) is met to include prescribed information about the further plans that the registered building control approver considers need to be provided.
- (3) In paragraph 2 of Schedule 4 (public body's plans certificates)—
 - (a) for sub-paragraph (1) substitute—
 - (1) In this Part a “public body's plans certificate” means a certificate by a public body that the relevant conditions are met in relation to the work specified in the certificate (which must be work in relation to which the public body has given a public body's notice).
 - (1A) The relevant conditions are that the public body—
 - (a) is satisfied that—
 - (i) a competent person has inspected full plans of the work, or
 - (ii) a competent person has inspected plans of the work which the public body is satisfied, in the light of that inspection, are sufficient for the purposes of giving a public body's plans certificate in relation to the work,
 - (b) is satisfied in the light of that inspection that the plans are not defective,
 - (c) is satisfied in the light of that inspection that work carried out in accordance with the plans would not contravene any provision of building regulations, and
 - (d) has complied with any prescribed requirements as to consultation or otherwise.
 - (1B) “Competent person” means a servant or agent of the public body who is competent to assess the plans.
 - (1C) If the relevant conditions are met, the public body may give a public body's plans certificate to the local authority.
 - (1D) A public body's plans certificate must be in the prescribed form.
 - ;
 - (b) after sub-paragraph (6) insert—

- (7) Building regulations may make further provision about public body's plans certificates, including in particular provision—
- (a) requiring a public body's plans certificate to be given to the local authority in prescribed cases;
 - (b) about the consequences of failing to comply with such a requirement (for example, for a public body's notice to cease to have effect in whole or in part);
 - (c) requiring a public body's plans certificate stating that the condition in sub-paragraph (1A)(a)(ii) is met to include prescribed information about the further plans that the public body considers need to be provided.

EXPLANATORY NOTES

Section 49: Plans Certificates

Effect

470. This section amends section 50 of the Building Act 1984 on plans certificates.

471. Section 48(2)(a) inserts into the Act new section 50(1A), which sets out the conditions which must be met for a registered building control approver to issue a plans certificate. These are that the registered building control approver must have inspected the full plans or such plans as are sufficient for the purposes of issuing a plans certificate for the work (new section 50(1A)(a)(i) and (ii)); that the plans are not defective (new section 50(1A)(b)); that the registered building control approver is satisfied that the work covered by the plans, if carried out in accordance with the plans, will comply with building regulations' requirements (new section 50(1A)(c)); and that relevant consultation requirements have been met ((new section 50(1A)(d)).

472. Where the conditions are met, and the person carrying out the work so requests, new sections 50(1B) and (1C) require that the registered building control approver must issue a plans certificate.

473. New section 50(1D) requires that plans certificates must be provided in the prescribed form.

474. Section 48(2)(c) also inserts new section 50(7A) into the Building Act 1984 which enables building regulations to prescribe circumstances in which a plans certificate must be issued and the consequences if a plans certificate is not issued in those prescribed circumstances, for example that the initial notice which has been issued for the work ceases to have effect. It is expected, for example, that plans certificates will be required for buildings covered by the Regulatory Reform (Fire Safety) Order 2005.

475. It also enables building regulations to prescribe that, where the registered building control approver issues a plans certificate in the circumstances set out in subsection (1A)

(a)(ii), prescribed information needs to be included on the plans certificate about further plans which the registered building control approver considers need to be provided.

476. Section 48(3) amends paragraph 2 of Schedule 4 to the Building Act 1984 to make similar provision in respect of a public body's notice plans certificate.

477. This section applies in Wales.

Background

478. New section 50 of the Building Act 1984 enables a registered building control approver, at the request of a person intending to carry out building work, to issue a plans certificate to the local authority if they have inspected plans of work covered by an Initial Notice, and are satisfied that if the work is carried out in accordance with the plans, the work will comply with building regulations' requirements. Under section 53 of the Act and Regulation 15 of the Building (Approved Inspectors) Regulations 2010, a plans certificate has the effect that a local authority cannot take action under sections 35 and 36 of the Building Act 1984 if the work covered by the certificate has been carried out in accordance with the plans.

479. A local authority can reject a plans certificate only on prescribed grounds, which are set out in Schedules 2 and 3 of the Approved Inspectors Regulations. The form of a plans certificate is set out in Schedule 1 of the Approved Inspectors Regulations.

480. Paragraph 2 of Schedule 4 to the Building Act 1984 provides that a public body's notice plans certificate can be issued for work covered by a public body's notice if the same conditions as apply to the issue of a plans certificate are met. A public body's plans certificate is the same as for a plans certificate. The grounds for rejecting a public body's notice plans certificate, and the form of a public body's notice plans certificate, are set out in Schedules 1, 5 and 6 of the Approved Inspectors Regulations.

481. The Government consulted in Summer 2020 on proposals that plans certificates should be mandated in certain circumstances. Following the consultation, the Government announced that it would proceed with these plans. See Part 3 of [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/970325/](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/970325/UPDATED_FINAL_Government_Response_to_Fire_Safety_Consultation.pdf)

[UPDATED FINAL Government Response to Fire Safety Consultation.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/970325/UPDATED_FINAL_Government_Response_to_Fire_Safety_Consultation.pdf) Example
A person carries out building work on a building covered by the Fire Safety Order 2005. A registered building control approver is appointed as the building control body for the work. The registered building control approver has to check the plans of the work to ensure that if work is carried out in accordance with the plans it will comply with building regulations' requirements and issue a plans certificate to the local authority using the prescribed form. However, not all the plans for the work are available to be checked at the point at which the plans certificate is issued. Therefore, although the registered building control approver considers the plans are sufficient to issue a plans certificate, they require further plans to be provided and this is set out on the plans certificate.

COMMENTARY

43. Section 49 amends the provisions of the Building Act 1984 relating to plans certificates to reflect the replacement of approved inspectors with registered building control approvers. Plans certificates are documents certifying that plans submitted for building work comply with building regulations.
44. There has been no reported case law on section 49 as at September 2026.

SECTION 50 – CANCELLATION OF INITIAL NOTICE

STATUTORY TEXT

- (1) Section 52 of the Building Act 1984 (cancellation of initial notice) is amended in accordance with this section.
- (2) In subsection (1)—
 - (a) omit the “or” after paragraph (b);
 - (b) after paragraph (c), insert—
 - (d) the registered building control approver is given a disciplinary order under section 58U(2)(b) (variation of registration) such that the registered building control approver is no longer able to carry out the registered building control approver’s functions with respect to the work to which the initial notice relates,
 - (e) the registered building control approver is given a disciplinary order under section 58U(2)(c) (suspension of registration) or an order under section 58V (interim suspension for suspected serious contravention), or
 - (f) it appears to the registered building control approver that a prescribed circumstance exists,
 - ;
 - (c) for “approved inspector shall” substitute “registered building control approver, or in the case of paragraph (e) the person shown in the initial notice as the registered building control approver, must”.
- (3) For subsection (3) substitute—
 - (3) If, at a time when an initial notice is in force, it appears to the person carrying out or intending to carry out the work to which the notice relates that—
 - (a) the registered building control approver is no longer willing or able to carry out the registered building control approver’s functions with respect to any of that work, or
 - (b) a prescribed circumstance exists,the person must cancel the initial notice by notice in the prescribed form given to the local authority concerned and, if it is practicable to do so, to the registered building control approver.
- (4) In subsection (4), after “subsection” insert “(1) or”.
- (5) After subsection (5) insert—

- (5A) If, at a time when an initial notice is in force, it appears to the local authority concerned that a condition in subsection (5B) is satisfied, the authority must cancel the initial notice by notice in the prescribed form given to—
 - (a) the person shown in the initial notice as the registered building control approver, and
 - (b) the person shown in the initial notice as the person intending to carry out the work.
- (5B) The conditions are—
 - (a) the registered building control approver is given a disciplinary order under section 58U(2)(b) (variation of registration) such that the registered building control approver is no longer able to carry out the registered building control approver's functions with respect to the work to which the initial notice relates;
 - (b) the registered building control approver is given a disciplinary order under section 58U(2)(c) (suspension of registration) or an order under section 58V (interim suspension for suspected serious contravention);
 - (c) the registered building control approver is given a disciplinary order under section 58U(2)(d) (cancellation of registration);
 - (d) the registered building control approver has their registration cancelled under section 58Z6(2) (serious contravention notices);
 - (e) a prescribed circumstance exists.
- (6) After subsection (6) insert—
- (7) Before cancelling an initial notice under subsection (5A) based on a condition in subsection (5B)(a), (b) or (e), the local authority must—
 - (a) give the person shown in the initial notice as the registered building control approver a notice in the prescribed form at least seven days before the day on which the initial notice is to be cancelled, and
 - (b) have regard to any representations made to the local authority during that period.

EXPLANATORY NOTES

Section 50: Cancellation of initial notice

Effect

482. This section amends section 52 of the Building Act 1984 to make new provision in relation to cancellation of initial notices by registered building control approvers, local authorities and the person intending to carry out the work.

483. New section 52(1) is amended to require a registered building control approver to cancel its relevant initial notices where it is subject to disciplinary sanction from the Building Safety Regulator in relation to the work – this links to the new sanctions in relation to registration.

484. The existing offence under this section has been extended to registered building control approvers so that failure to act in regard to cancelling initial notices will result, if found liable on summary conviction, to a fine.

485. New section 52(3) is also amended to insert a new power to prescribe further circumstances where a person carrying out work is required to cancel the initial notice for the work. This is a reserve power. There are no current plans to use this power but as the regime is changing it is considered important to have this flexibility.

486. New section 52 is also amended to insert a new subsection (5A) which provides that a local authority must cancel an initial notice where it becomes aware that the registered building control approver has had its registration varied (such that it is not registered in relation to the work), suspended or cancelled, and in other circumstances to be prescribed.

487. This section will apply equally in Wales. For example, disciplinary action from Welsh Ministers or their designated body in respect of an Approver under section 42 will require cancellation of an initial notice.

Background

488. At present, if an Approved Inspector/registered building control approver ceases to operate and has not cancelled its initial notices, only the person(s) carrying out the work is able to do so. This has been a significant problem in transitioning such work to local authority building control. This section amends section 52 of the Building Act 1984 to introduce new powers and obligations on the person shown on the initial notice as the registered building control approver (even if they are no longer registered), local authority and person carrying out the work to cancel initial notices and ensure that this process can happen efficiently in the future. *Example 1: Registered building control approver* It is expected that the Building Safety Regulator might use one of its disciplinary powers for a registered building control approver where the body does not have insurance for the type of work covered by an initial notice. Where the registered building control approver has insurance only to supervise domestic projects, if the Building Safety Regulator finds out that it is working on commercial projects without insurance, then its registration may be suspended in relation to commercial projects pending the approver obtaining insurance cover. The Building Safety Regulator will notify the body and all local authorities. Under new section 52(1) the body will be required to cancel its own initial notices, in this case for commercial projects. Under the amendments to section 52(5) local authorities will also be required to cancel initial notices in this scenario. The local authority must give the registered building control approver seven days' notice of the intended cancellation to give the body an opportunity to make representations to the local authority. *Example 2: Local authority* A registered building control approver may be subject to a disciplinary sanction by the Building Safety Regulator (or its designated body), for example because there had been a significant breach in their registration such as failing to carry out inspections which

resulted in property damage or personal injury. The local authority is required to cancel the initial notice when it was informed by the Building Safety Regulator of the suspension or cancellation of the approver's registration. A seven-day notice is required to the registered building control approver so that it can make any representations to the local authority (for instance to correctly identify the initial notices affected). Following this, the local authority must cancel the initial notice.

COMMENTARY

45. Section 50 amends the Building Act 1984 provisions on the cancellation of initial notices. An initial notice is the document by which a registered building control approver assumes building control responsibility for a particular project. The amendments ensure that cancellation procedures reflect the new registration system and the Regulator's supervisory role.
46. There has been no reported case law on section 50 as at September 2026.

SECTION 51 – NEW INITIAL NOTICES

STATUTORY TEXT

- (1) In section 53 of the Building Act 1984 (effect of initial notice ceasing to be in force), for subsection (7) substitute—
 - (7) A new initial notice relating to any of the work to which the original initial notice related (the “original work”) may be given only if—
 - (a) in the case of an initial notice that ceases to be in force by virtue of—
 - (i) being cancelled under section 52(1)(d) or (e),
 - (ii) being cancelled under section 52(5A) based on a condition in section 52(5B)(a) to (d), or
 - (iii) such other provision as may be prescribed,
 - (b) in any other case, the conditions in subsection (8) are met, or
 - (8) The conditions referred to in subsection (7)(a) are that the new initial notice—
 - (a) is given before the end of the period of seven days beginning with the day on which the original initial notice ceased to be in force or such other period as may be prescribed,
 - (b) relates to all of the original work, except for any work in respect of which a final certificate has been accepted by the local authority, and
 - (c) is not a combined initial notice and plans certificate given in accordance with section 50(4).
 - (9) The conditions referred to in subsection (7)(b) are that—
 - (a) before the original initial notice ceases to be in force, the original registered building control approver has given a final certificate under section 51 in respect of any part of the work which they are satisfied has been completed, and
 - (b) the new initial notice relates to all of the original work, except for any work in respect of which a final certificate has been accepted by the local authority.
 - (10) Where—
 - (a) a plans certificate has been given in respect of any of the original work,
 - (b) the conditions in paragraphs (a) and (b) of subsection (2) are fulfilled with respect to that certificate, and

- (c) a new initial notice as referred to in subsection (7) is accepted, section 50(1C) does not apply in relation to so much of the work to which the new initial notice relates as is work specified in the plans certificate.
- (11) Section 53B applies in relation to a new initial notice given in accordance with subsection (7)(a).
- (12) The appropriate national authority may issue guidance about the process for —
 - (a) the giving of a new initial notice under subsection (7);
 - (b) the giving of a transfer certificate and a transfer report under section 53B;
 - (c) the consideration of a transfer certificate and a transfer report under section 53C.
- (13) The appropriate national authority may revise or withdraw any issued guidance.
- (14) The following must have regard to guidance issued under subsection (12)—
 - (a) a local authority;
 - (b) a registered building control approver;
 - (c) a person carrying out or intending to carry out work to which a new initial notice given under subsection (7) relates.
- (2) After section 53A of the Building Act 1984 (inserted by section 36) insert—

53B New initial notice: change of registered building control approver

 - (1) This section applies where a new initial notice is given in accordance with section 53(7)(a) (change of registered building control approver in certain cases).
 - (2) Where the new initial notice is accepted by the local authority the registered building control approver must take all reasonable steps to determine whether the unfinished work contravenes any provision of building regulations (including where necessary by carrying out inspections and laying open any work).
 - (3) If the registered building control approver determines that the unfinished work does not contravene any provision of building regulations, the approver must give a transfer certificate and a transfer report to the local authority before the end of the relevant period.
 - (4) If the registered building control approver is unable to make the determination referred to in subsection (3), the approver must—
 - (a) give the person carrying out or intending to carry out the work a notice setting out why they were unable to make the determination, and

- (b) give a copy of that notice to the local authority.
- (5) A transfer certificate must—
 - (a) confirm that the registered building control approver has determined that the unfinished work up to the date of the certificate does not contravene any provision of building regulations, and
 - (b) contain the prescribed information.
- (6) A transfer report must contain any plans, documents or other information related to the confirmation in subsection (5)(a).
- (7) In this section the “relevant period” means—
 - (a) the period of 21 days beginning with the day on which the new initial notice is accepted or such other period as may be prescribed, or
 - (b) such longer period as may be agreed by the local authority following a request from the registered building control approver.
- (8) A transfer certificate given by a registered building control approver—
 - (a) does not impose any liability, whether civil or criminal, on the registered building control approver for any work carried out by the previous registered building control approver, and
 - (b) does not affect any liability, whether civil or criminal, of the previous registered building control approver for work carried out by that approver.
- (9) In this section “unfinished work” means all of the work to which the original initial notice related, except for any work in respect of which a final certificate was accepted by the local authority.

53C Consideration of transfer certificate and report

- (1) This section applies where a registered building control approver gives a transfer certificate and a transfer report to a local authority in accordance with section 53B(3).
- (2) The local authority must, by notice, accept or reject the certificate and report before the end of the relevant period.
- (3) The local authority may reject the certificate and report only if—
 - (a) any of the prescribed grounds exist, or
 - (b) the registered building control approver fails to comply with a requirement in subsection (4) to give information to the local authority.
- (4) During the period of 21 days beginning with the day on which the transfer certificate and transfer report is given to the local authority or such other period as may be prescribed, the local authority may, by notice, require the

registered building control approver to give to the local authority such information as may be specified in the notice.

- (5) The registered building control approver must give the information specified in the notice to the local authority before the end of the period of seven days beginning with the day on which the notice is given or such other period as may be prescribed.
- (6) In this section the “relevant period” means—
 - (a) the period of 21 days beginning with the day on which the transfer certificate and transfer report is given to the local authority or such other period as may be prescribed, or
 - (b) such longer period as is determined in accordance with subsection (7).
- (7) Where—
 - (a) a local authority requires a registered building control approver to give information to the local authority under subsection (4), and
 - (b) the day by which the information is required to be given would (but for this subsection) fall within the final seven days of the relevant period or would fall outside the relevant period,

the relevant period is to be extended to the end of the period of seven days beginning with the day after the day by which the information is required to be given.
- (8) Where a local authority requires a registered building control approver to give information to the local authority under subsection (4), the local authority must give a copy of the notice to the person shown in the initial notice as the person intending to carry out the work.

53D Cancellation of initial notice: change of registered building control approver

- (1) This section applies where—
 - (a) a new initial notice is given in accordance with section 53(7)(a) (change of registered building control approver in certain cases), and
 - (b) the notice is accepted by the local authority.
- (2) If, at a time when the initial notice is in force—
 - (a) the registered building control approver does not give the local authority a transfer certificate and transfer report in accordance with section 53B(3), or
 - (b) the local authority rejects the transfer certificate and transfer report in accordance with section 53C,

the local authority must cancel the initial notice by notice in the prescribed form given to the registered building control approver and the person shown in the initial notice as the person intending to carry out the work.

- (3) The person carrying out or intending to carry out the work to which the initial notice relates may, at a time—
 - (a) when the initial notice is in force, and
 - (b) before the local authority accepts or rejects the transfer certificate and report in accordance with section 53C,
cancel the initial notice by notice in the prescribed form given to the local authority and, if it is practicable to do so, to the registered building control approver.
- (4) A notice under subsection (2) or (3) has the effect of cancelling the initial notice to which it relates with effect from the day on which the notice is given.
- (5) Where an initial notice ceases to be in force by virtue of subsection (2) or (3), a new initial notice may not, except in prescribed circumstances, be given in relation to any of the work to which the cancelled notice related.
- (6) Where an initial notice ceases to be in force by virtue of subsection (2) or (3)
—
 - (a) for the purpose of enabling the local authority to perform the functions referred to in section 48(1) in relation to any part of the work, building regulations may require the local authority to be provided with plans that relate to that part of the work, and
 - (b) section 53(5) applies in relation to the notice as it applies in relation to an initial notice that ceases to be in force as referred to in section 53(1).
- (7) This section is without prejudice to any other provisions of this Part relating to when an initial notice ceases to be in force.

53E Restriction on functions of registered building control approvers

- (1) This section applies where—
 - (a) a new initial notice is given in accordance with section 53(7)(a) (change of registered building control approver in certain cases), and
 - (b) the notice is accepted by the local authority.
- (2) During the period in respect of which—
 - (a) the notice is in force, but
 - (b) a transfer certificate and a transfer report have not been accepted by the local authority,

the registered building control approver may not exercise the relevant functions.

- (3) In this section the “relevant functions” are the functions of a registered building control approver under, or under regulations made under—
 - (a) section 50 (plans certificates);
 - (b) section 51 (final certificates);
 - (c) section 51A (amendment notices).
- (3) In section 47 of the Building Act 1984 (giving and acceptance of initial notice)—
 - (a) in subsection (4)(b), after sub-paragraph (ia) (inserted by section 46) insert—
 - (ib) it is cancelled by a notice under section 53D, or
 - ;
 - (b) after subsection (7) insert—
 - (8) This section is subject to sections 53 and 53B (new initial notices).
- (4) In section 55 of the Building Act 1984 (appeals)—
 - (a) in subsection (1)—
 - (i) omit the “or” after paragraph (a);
 - (ii) after paragraph (b) insert
 - or
 - (c) a transfer certificate and a transfer report,
 - ;
 - (b) in subsection (2)(a), after “notice” insert “, report”;
 - (c) in subsection (2)(b), after “notice” insert “, report”.

(2) After section 53A of the Building Act 1984 (inserted by section 36) insert -
(a) in subsection (4)(b), after sub-paragraph (ia) (inserted by section 46) insert -

EXPLANATORY NOTES

Section 51: New initial notices

Effect

489. This section amends sections 47, 53 and 55 of the Building Act 1984 and inserts new sections 53B to 53E.

490. The amendments to section 53(7) of the Building Act 1984 allows a new initial notice to be given where an initial notice is cancelled by virtue of either disciplinary action taken by Building Safety Regulator, cancellation of initial notice, or where the initial notice lapses. In cases of a cancellation referred to in section 53(7)(a) the new initial notice must follow the process in section 53B is followed.

491. The process in section 53B requires the registered building control approver, once the initial notice has been accepted, to submit a transfer certificate which must confirm that unfinished work up to the date of the certificate do not contravene any provision of building regulations. Conversely, If the registered building control approver is unable to determine whether the unfinished work meets building regulations, they must set out why in a notice to the person carrying out or intending to carry out the work and provide a copy of that notice to the local authority.

492. The registered building control approver must submit a transfer report with any plans, documents or other information related to the confirmation of the transfer certificate.

493. This must be submitted to the local authority within the relevant period set out in this section (21 days or such other period prescribed in regulations) or any agreed extension to that period as agreed with the local authority. Under section 53C the local authority must, by notice, accept or reject the certificate and report before the end of the relevant period. This provision also allows the local authority, by notice, to request further information and require the registered building control approver to give to the local authority such information as may be specified in the notice within the relevant period. Where the local authority requests further information, a copy of the notice must also be given to the person carrying out the work.

494. The registered building control approver must give the information specified in the notice to the local authority before the end of the period of seven days beginning with the day on which the notice is given, or such other period as may be prescribed in regulations. The registered building control approver can request for this period to be extended with the agreement of the local authority.

495. Section 53D sets out the effect of a cancellation of an initial notice where a new initial notice has been submitted. Section 53D requires the local authority to cancel the initial notice where the registered building control approver does not give the local authority a transfer certificate and transfer report in accordance with section 53B(2) or the local authority rejects the transfer certificate and transfer report in accordance with section 53C.

496. Section 53D also gives powers to the person carrying out the work to cancel the initial notice before the local authority accepts or rejects the transfer certificate and report in accordance with section 53B, i.e. voluntarily withdraw from the transfer process. Where a transfer certificate is rejected, or the developer withdraws from the transfer process then the transfer process ends and any work becomes subject to local authority enforcement and supervision.

497. Section 53E restricts the functions of registered building control approver where an initial notice has been accepted following a change of registered building control approver and a cancellation of initial notice as a result of disciplinary action. During the transfers period the “transfer process” removes the ability for the registered building control approver to issue plans, a final certificate or an amendment notice.

498. The amendments made to section 47 cross refer to the new provisions and amendments to section 55 ensuring that there is a right of appeal against rejection by a local authority of a transfer certificate or report.

499. Additionally, this section amends section 53 of the Building Act 1984 to allow the Secretary of State to issue guidance in relation to the new transfer process to assist in the smooth operation of the regime.

500. This section will apply in Wales. Power to issue guidance will rest with Welsh Ministers.

Background

501. Currently if a registered building control approver is unable to undertake their function, their work reverts to local authority supervision unless another initial notice has been accepted. A few Approved Inspectors were unable to secure insurance and went into liquidation in 2019, and the consequential unplanned transfers to the local authorities caused disruptions to clients and some local authorities.

502. Similar circumstances such as this could also arise in the future. The measures in this section create greater flexibility and capacity for the building control system to address such issues, while satisfying the local authorities that any work by a new registered building control approver is adequate. Example 1: Person(s) carrying out the work A registered building control approver is subject to disciplinary action from the Building Safety Regulator or, in relation to Wales, the Welsh Ministers and as a result loses their ability to continue their function and the initial notice is cancelled. The person(s) carrying out the work wishes to continue with the private building control route and has seven days to submit a new initial notice with another registered building control approver. Example 2: New registered building control approver The new registered building control approver submits a new initial notice and must carry out necessary activities and verify works. If satisfied, the new registered building control approver submits a transfer certificate and transfer report to the relevant local authority within 21 days or the prescribed period in regulations. It is able to ask for an extension to the local authority (which they should not unreasonably withhold). The certificate must have the prescribed information and be accompanied by a transfer report. This transfer certificate and report must be submitted to the new national register. Example 3: Local authority The local authority receives an initial notice from the person(s) carrying out the work and the new registered building control approver. Once a transfer certificate and accompanying report have been received by the local authority, they can either request more information from the registered building control approver, by notice, which should also go to the person carrying out the work; or they can accept or reject under prescribed grounds in building regulations. When further information is requested by the local authority, the registered building control approver must provide the specified information within a prescribed period. The local authority will then have a prescribed period of time in which to accept or reject the certificate/report under prescribed grounds. If the registered building control approver fails to provide information within the prescribed time, the local authority must reject the

transfer certificate and transfer report and cancel the initial notice. The project will then revert to the relevant local authority building control.

COMMENTARY

47. Section 51 amends the Building Act 1984 provisions on new initial notices, including the insertion of new sections 53B, 53C, and 53E. These provisions govern the situation where a new registered building control approver takes over from a previous one, including requirements for transfer certificates and reports on the state of the building work.
48. There has been no reported case law on section 51 as at September 2026.

SECTION 52 – INFORMATION GATHERING

STATUTORY TEXT

- (1) In section 53 of the Building Act 1984 (effect of initial notice ceasing to be in force), after subsection (4) insert—
- (4A) For the purpose of enabling the local authority to perform the functions referred to in section 48(1), the local authority may by notice require the person shown in the initial notice as the registered building control approver to give the local authority—
- (a) any information the authority would have obtained if the authority had performed the function of enforcing building regulations in relation to the work to which the initial notice relates during the period in which the initial notice was in force, and
 - (b) any other information the local authority may reasonably require.
- (4B) Where a person is required to give information under subsection (4A), the information must be given before the end of the prescribed period.
- (4C) The person shown in the initial notice as the registered building control approver (the “outgoing approver”) must, before the end of the prescribed period, give the person carrying out or intending to carry out the work to which the initial notice relates—
- (a) any information given to a local authority under subsection (4A),
 - (b) any other information that the outgoing approver obtained or created in relation to the work during the period in which the initial notice was in force, and
 - (c) any other information that the person carrying out or intending to carry out the work may by notice reasonably require for the purpose of enabling a person other than the outgoing approver to perform the functions referred to in section 48(1) in relation to the work.
- (4D) A notice under subsection (4C)(c)—
- (a) may only require information to be given in relation to work carried out during the period in which the initial notice was in force;
 - (b) may require information to be provided in a specified format.
- (2) In section 57 of the Building Act 1984 (offences), in subsection (1)—
- (a) omit the “or” after paragraph (a);
 - (b) after paragraph (a) insert—
 - (aa) fails without reasonable excuse to comply with a requirement under section 53(4A) to give information, or

EXPLANATORY NOTES

Section 52: Information gathering

Effect

503. This section amends section 53 of the Building Act 1984 in order to enable a local authority to seek information from the person shown on the initial notice as the registered building control approver where it has ceased to supervise a project. This could include requiring a person who is no longer a registered building control approver to provide all its records of supervision of building work. The provision requires that any information provided to the local authority must also be copied to the person carrying out the work. New subsection (4C)(c) also gives the person carrying out the work with a power, by notice, to require other information which a new registered building control approver may need.

504. This section also amends section 57 of the Building Act 1984 to make it a criminal offence to fail, without a reasonable excuse, to provide the local authority with the information requested.

505. This section will apply in Wales.

Proposed use of power

506. This provision allows the Secretary of State to make regulations to the prescribed period by which the registered building control approver must furnish information to the local authority and the person carrying out or intending to carry out the work, which they may by notice reasonably require.

Background

507. This section is a new power in response to issues arising from a number of Approved Inspectors that went into administration in 2019. In some cases, administrators have refused to provide information to local authorities and even to the clients of the Approved Inspector because they considered they were under no duty to do so in the Building Act 1984. This section places the person shown on the initial notice as the registered building control approver (formerly Approved Inspectors) under a new duty to provide all information requested by a local authority whether or not the person is still a registered building control approver and also to the person carrying out or intending to carry out the work. Example 1: Local authority A registered building control approver has its registration suspended and as a result a local authority cancels a number of its initial notices for work in the local authority's area and the work becomes subject to building control supervision by the local authority. In order to facilitate its building control functions, the local authority may issue a notice to the person shown on the cancelled initial notice as the registered building control approver requiring it to provide the local authority with the relevant information it holds on the building works. A copy of any information provided must also be sent to the person carrying out the work. Example 2: Person carrying out the work A registered building control approver has its initial notice cancelled as it

appears to the person carrying out the work that the registered building control approver is no longer willing or able to carry out its functions with respect to any of that work. As directly interested in the building control information relating to works, the person intending to carry them out is entitled to receive certain information from the former registered building control approver including any information sent to the local authority and any other information they may by notice reasonably require.

COMMENTARY

49. Section 52 inserts new information-gathering powers into the Building Act 1984, enabling building control authorities to require information from persons involved in building work. This strengthens the information base on which building control decisions are made.
50. There has been no reported case law on section 52 as at September 2026.

SECTION 53 – INFORMATION

STATUTORY TEXT

- (1) After section 56 of the Building Act 1984 insert—

56A Giving information by electronic means: England

- (1) The regulator must establish and maintain a facility (the “facility”) to enable a specified person to give specified relevant information to another person by electronic communication.
- (2) The Secretary of State may by regulations require or authorise a specified person to use the facility when giving specified relevant information to another person.
- (3) Any information given to a person in accordance with regulations made under subsection (2) is to be treated for the purposes of section 56B (requirement to keep register) as also having been given to the regulator.
- (4) Regulations under this section may require a person who is given specified relevant information otherwise than through the facility to give that information to the regulator using the facility.
- (5) Regulations under this section may make provision treating specified relevant information that is given using the facility as having been given in the prescribed form for the purposes of this Part.
- (6) In this section—

“relevant information” means information that is required or authorised to be given by this Part or regulations made under it;

“specified” means specified in regulations made by the Secretary of State under this section.
- (7) In this section and section 56B—

“information” includes documents;

“documents” includes notices, certificates, orders, consents, demands and plans.
- (8) The Secretary of State may make regulations under this section only in relation to England.

56B Requirement to keep register: England

- (1) The regulator must keep a register of specified relevant information.
- (2) The information that may be specified for the purposes of subsection (1) includes in particular information given, or treated as having been given, to the regulator using the facility established under section 56A(1).

- (3) The regulator—
- (a) must maintain the register in electronic form;
 - (b) must ensure that any specified parts of the register are available for inspection by members of the public;
 - (c) must, in specified circumstances, provide to members of the public, on request, copies of information kept in the register.
- (4) In this section—
- “relevant information” means information that is required or authorised to be given by this Part or regulations made under it;
- “specified” means specified in regulations made by the Secretary of State under this section.
- (5) The Secretary of State may make regulations under this section only in relation to England.

56C Delegation of functions

- (1) The regulator may by written notice delegate to a person, to such extent and subject to such conditions as the regulator considers appropriate, the functions conferred on the regulator by—
- (a) section 56A(1);
 - (b) section 56B(1) and (3) (including the ability to charge fees in connection with the exercise of those functions).
- (2) In subsection (1) “fees” means fees that are prescribed by, or determined by the regulator in accordance with, regulations under section 105B.
- (3) The regulator may delegate different functions to different persons under subsection (1).
- (4) The regulator may delegate functions under subsection (1) only with the consent of the Secretary of State.
- (5) The regulator may revoke a delegation of functions to a person by giving a written notice to the person.
- (6) The regulator may revoke a delegation under subsection (5) only with the consent of the Secretary of State.
- (7) Schedule 3 to the Building Safety Act 2022 (information sharing) applies as if references to the regulator included references to a person to whom the regulator has delegated functions under subsection (1)(b).
- (2) In section 55 of the Building Act 1984 (appeals), after subsection (3) insert—
- (4) On an appeal under subsection (1), the local authority must give the specified information to the regulator.

- (5) In this section “specified” means specified in regulations made by the Secretary of State under this section.
- (6) The Secretary of State may make regulations under this section only in relation to England.
- (3) In section 56 of the Building Act 1984 (recording and furnishing of information)—
 - (a) in subsection (1)—
 - (i) after “authority” insert “in Wales”;
 - (ii) after “public body’s notices” insert “, transfer reports”;
 - (iii) after “such notices” insert “, reports”;
 - (b) in subsection (3), after “plans certificates, final certificates” insert “, transfer certificates”;
 - (c) in subsection (4), after “section” insert “by a local authority in Wales”.

EXPLANATORY NOTES

Section 53: Information

Effect

508. This section amends the Building Act 1984 by inserting sections 56A to 56C.

509. This section, which mainly applies to England only, repeals the requirement under section 56 of the Building Act 1984 for local authorities to hold local registers of information received from registered building control approvers (although regulations provide for existing information held on the current registers to be saved in their historic form for a long transitional period or uploaded to the new electronic register/portal).

510. Under new section 56A the Building Safety Regulator must establish and maintain a facility which is the national electronic portal.

511. The provision gives the Secretary of State the power to set out in regulations a requirement for a specified person such as the registered building control approver, the person carrying out the work or the local authority to use the national electronic portal to submit information. This power also enables the Secretary of State to authorise specified persons to submit information through other means such as physical documents.

512. Under section 56B the Building Safety Regulator must keep a register of specified information. The register must be maintained in electronic form and ensure that any specified parts of the register are available for inspection by members of the public. In specified circumstances, where a request has been made for copies of documents, these must be made available to members of the public. The information covered will be set out in regulations and is likely to include, but is not limited to, notices, certificates, orders, consents, demands and plans.

513. Under section 56C the Building Safety Regulator is given the power to delegate another body to carry out the function of setting up and running the new electronic portal/register.

514. This section also makes a number of consequential amendments.

515. Regulations will need to be laid to provide details on the prescribed portal, information and persons in order to implement this section.

Background

516. The Building Act 1984 provides for registers of documentation in the Approved Inspector system to be held locally by each local authority. In some cases, local authorities have developed their own electronic registers, but in many cases these registers are still maintained in paper form, and it is difficult to access and utilise the information they contain.

517. These provisions are designed to modernise the sections of the Building Act 1984 which facilitate the efficient functioning of the new registered building control approver system and its oversight.

518. Whilst no new information will be added to existing registers once the new national register comes into force, the existing local registers will need to be kept and accessible to the public for a long period or historic information may be uploaded to the electronic register/portal. Example: Submitting an initial notice A registered building control approver and person(s) carrying out the works submit an initial notice under section 47 of the Building Act 1984. They will submit the prescribed information via the new electronic portal set up by the Building Safety Regulator. The local authority will be notified immediately of the submission by the electronic portal and can accept or reject the initial notice via the electronic portal, or the initial notice might be deemed to be accepted by virtue of the prescribed time period elapsing (in section 47 of the Building Act 1984). If the local authority accepts the initial notice with conditions or rejects it under prescribed grounds, it will be required to file this acceptance or rejection via the electronic portal.

COMMENTARY

51. Section 53 inserts new provisions into the Building Act 1984 (sections 56A to 56C) concerning the giving and keeping of information by electronic means, requirements to maintain public registers, and the delegation of certain functions. These provisions modernise the information-handling framework for building control.
52. There has been no reported case law on section 53 as at September 2026.

SECTION 54 – FUNCTIONS UNDER PART 3 OF BUILDING ACT 1984

STATUTORY TEXT

In the Building Act 1984 after section 90 insert—

90A Functions under this Part: the regulator etc

- (1) The Secretary of State may by regulations provide that in specified cases, a specified function under this Part of local authorities in England is to be a function of the regulator instead of, or in addition to, the local authority in question.
- (2) The Secretary of State may by regulations provide that in specified cases, a relevant authority proposing to exercise a specified function under this Part must notify a specified relevant authority of specified matters.
- (3) The notification must be made in the specified way and by the specified time.
- (4) In this section—

“relevant authority” means the regulator or a local authority for an area in England;

“specified” means specified by regulations under this section.

EXPLANATORY NOTES

Section 54: Functions under Part 3 of Building Act 1984

Effect

519. This section inserts new section 90A into the Building Act 1984 to provide powers for the Secretary of State, by regulations, to allocate responsibilities in respect of functions provided to local authorities in Part 3 of the Building Act 1984 between the Building Safety Regulator and local authorities.

520. Subsections (2) and (3) of new section 90A allow for notification requirements to be imposed on the regulator and/or local authorities. It is expected that this power will be used to require that, where the local authority retains the function in respect of higher-risk buildings, it must notify the regulator before taking action, and vice versa.

521. Regulations will be subject to the affirmative procedure (see new section 120A in Schedule 5).

522. This section applies to England only.

Background

523. Part 3 of the Building Act 1984 places a number of functions on local authorities in relation to buildings. These include the ability to issue a notice to the building owner requiring work to be undertaken on the building relating to matters such as drains, sanitary conveniences, provision of food storage, and means of escape. Functions are also placed

on local authorities to enable them to require action to be taken, or take action themselves in relation to dangerous, defective and dilapidated buildings. Part 3 also provides functions for local authorities in relation to demolitions of buildings. Example There is a potential overlap in respect of higher-risk buildings between some of the functions placed on local authorities under Part 3 of the Building Act 1984 and the Building Safety Regulator's regulatory role for higher-risk buildings in occupation. A specific example is the ability under section 72 of the Building Act 1984 for a local authority to issue a notice requiring extra means of escape from the building in a fire. For higher-risk buildings, the Accountable Person will have needed to demonstrate the adequacy of the means of escape in the safety case for the building. To avoid any confusion and potential duplication of regulation, therefore, the Secretary of State will be able to allocate functions under Part 3 for higher-risk buildings formally to the Building Safety Regulator. Alternatively, those functions may continue to rest with the local authority or be exercised jointly. This approach may be needed for matters where there are links with local authority responsibilities under the Housing Act 2004 or environmental health legislation. It will be important that where the local authority retains responsibility for certain matters, it informs the Building Safety Regulator if it intends to exercise the relevant function(s) so that there is effective coordination between the two.

COMMENTARY

53. Section 54 inserts new provisions after section 90 of the Building Act 1984 relating to the Regulator's functions under Part 3 of that Act. This includes provisions about the Regulator's relationship with other building control authorities and its powers to monitor and enforce compliance.
54. There has been no reported case law on section 54 as at September 2026.

SECTION 55 – MINOR AND CONSEQUENTIAL AMENDMENTS

STATUTORY TEXT

Schedule 5 contains—

- (a) minor amendments of the Building Act 1984, and
- (b) amendments consequential on provision made by this Part.

EXPLANATORY NOTES

Section 55: Minor and consequential amendments

524. The provisions of Part 3 of the Act involve changes to the Building Act 1984. Minor and consequential amendments which flow from those changes are set out in Schedule 5.

525. See the explanatory note for Schedule 5 for effects in Wales.

COMMENTARY

- 55. Section 55 gives effect to Schedule 5 to the Act, which contains minor and consequential amendments to the Building Act 1984 and other legislation arising from Part 3.
- 56. There has been no reported case law on section 55 as at September 2026.

SECTION 56 – APPEALS

STATUTORY TEXT

Schedule 6 makes provision about appeals under the Building Act 1984, including provision providing for—

- (a) certain appeals to be made to the regulator instead of the Secretary of State,
- (b) certain appeals relating to buildings in England to be made to the tribunal instead of a magistrates’ court, and
- (c) a right of appeal against a decision of a local authority not to consider certain applications or notices on the ground that they are in respect of higher-risk building work.

EXPLANATORY NOTES

Section 56: Appeals

Effect

526. *This section relates to Schedule 6, which makes provision for changes to the appeals process under the Building Act 1984.*

527. *It sets out that that Schedule 6 to this Act contains amendments to provisions in the Building Act 1984 where appeals and other decisions currently sit with the Secretary of State or the magistrates’ court. These are amended to sit with the Building Safety Regulator and First-tier Tribunal respectively.*

528. *The Schedule also makes provision for a right of appeal against a local authority decision not to consider an application for building control approval or initial notice where it relates to higher-risk building work.*

529. *See the explanatory notes to Schedule 6 for the effect in Wales.*

Background

530. *The Building Safety Regulator’s functions will include overseeing the safety and performance of all buildings. The Building Safety Regulator will be overseeing the performance of other building control bodies (local authorities and Approved Inspectors), so appeals should go to it, rather than the Secretary of State.*

531. *Appeals on building control matters have historically been heard in the Magistrates’ court, but they are civil issues. The Act creates routes of appeal to the First-tier Tribunal in England. Example A developer wishes to appeal a decision made by the Building Safety Regulator on a building control matter in England; this will be heard by the First-tier Tribunal rather than the Secretary of State or the magistrates’ court. This will create a level of expertise within the First-tier Tribunal in England to deal with building safety hearings, which previously would have been heard by a local magistrate who might hear no more*

than one construction related case per year. Further notes are provided for this section in Schedule 6.

COMMENTARY

57. Section 56 amends the appeal provisions in the Building Act 1984 to reflect the new building control regime. Appeals against decisions of the Regulator or a registered building control approver may be brought before the appropriate tribunal – the First Tier Tribunal.
58. There has been no reported case law on section 56 as at September 2026.

SECTION 57 – FEES AND CHARGES

STATUTORY TEXT

In the Building Act 1984 after section 105A (inserted by paragraph 29 of Schedule 6) insert—

Fees, charges and levies

105B Fees and charges

- (1) The appropriate national authority may by regulations make provision authorising a relevant authority—
 - (a) to charge fees, and
 - (b) to recover charges,for or in connection with the performance of any of its functions under, or under an instrument made under, this Act.
- (2) The regulations may—
 - (a) prescribe a fee or charge, or
 - (b) provide for the amount of any fee or charge to be determined by the relevant authority in accordance with the regulations;and may make provision about the effect of failing to pay a fee or charge in accordance with the regulations.
- (3) The regulations may in particular—
 - (a) provide that the amount of any charge is to be determined by the relevant authority in accordance with a scheme made and published by it, and
 - (b) make provision about such schemes, including the principles to be embodied in such schemes.
- (4) In this section “relevant authority” means—
 - (a) in relation to England, the regulator or a local authority for an area in England;
 - (b) in relation to Wales, the Welsh Ministers or a local authority for an area in Wales.

In the Building Act 1984 after section 105A (inserted by paragraph 29 of Schedule 6) insert -

EXPLANATORY NOTES

Section 57: Fees and charges

Effect

532. This section inserts new section 105B into the Building Act 1984 to allow, in England, the Secretary of State to make regulations to enable fees and charges to be levied by both the Building Safety Regulator and local authorities in connection with the exercise of their respective functions under the Building Act 1984 and regulations made under it.

533. The power allows for regulations to prescribe the levels of fees and charges and to make provisions for schemes under which charges are fixed; the principles to be followed in setting up schemes; and to enable different levels of fees and charges to be levied for different purposes.

534. This section applies in Wales where Welsh Ministers will, as the “appropriate national authority” have powers to prescribe fee and charge levels chargeable by Welsh Ministers or Welsh local authorities for Building Act 1984 functions.

Background

535. Paragraphs 5 and 9 of Schedule 1 to the Building Act 1984 provide powers for building regulations to be made to enable local authorities to make schemes to set charges for functions which they undertake under the Building Regulations 2010. These powers have been used to make the Building (Local Authority Charges) Regulations 2010 (the “Charging Regulations”).

536. New section 105B of the Building Act 1984 extends these powers to cover all functions exercised by local authorities in England and Wales, the Building Safety Regulator in England, and the Welsh Ministers in Wales, under the Building Act 1984 and regulations made under it. The power in new section 105B enables levels of fees and charges to be prescribed in the regulations or to be fixed in schemes drawn up by local authorities, the Welsh Ministers or the Building Safety Regulator in accordance with principles set out in the regulations. This will allow the relevant authority to set levels of fees and charges to take account of their different circumstances. Fees and charges set in schemes will need to adhere to the principles of Managing Public Money (in England) and Managing Welsh Public Money (in Wales). Regulations will be subject to the negative procedure, as are the current Charging Regulations.

537. Paragraph 82 of Schedule 5 to this Act consequentially repeals paragraphs 5 and 9 of Schedule 1 to the Building Act 1984. Example The regulations made using this power will allow local authority charges to include not only specified building regulations functions but all functions they perform under the Building Act 1984 and building regulations. For example, local authorities have functions related to demolitions under Part 3 of the Act, including issuing demolition notices, for which currently they cannot levy charges. Extending the power will enable activities such as this to be covered by charging schemes. The Building Safety Regulator will have a significant number of functions in England under the Building Act 1984 and regulations made under it, including acting as building control

authority for higher-risk buildings and certain other buildings, and overseeing the performance and competence of building control professionals. The Independent Review recommended that the Building Safety Regulator for higher-risk buildings should be funded through a full cost recovery approach. It is therefore expected that the Building Safety Regulator will charge fees for its activities as a building control authority and will charge fees where appropriate for other functions it performs under the Building Act 1984 (for instance, applications for registration as a registered building inspector).

COMMENTARY

59. Section 57 inserts new section 105B into the Building Act 1984, enabling building control authorities to charge fees for the exercise of building control functions. The fee-charging power is essential to the self-financing model of the new building control regime.
60. There has been no reported case law on section 57 as at September 2026.

SECTION 58 – LEVY ON APPLICATIONS FOR BUILDING CONTROL APPROVAL ETC

STATUTORY TEXT

In the Building Act 1984 after section 105B (inserted by section 57) insert—

105C Levy on certain applications for building control approval etc

- (1) The Secretary of State may by regulations make provision for and in connection with the imposition, in respect of relevant applications or notices or specified descriptions of relevant applications or notices, of a levy for the purpose of meeting any building safety expenditure.
- (2) The levy is payable to the Secretary of State or a person designated by the Secretary of State.
- (3) The regulations may in particular make provision about—
 - (a) the amount of the levy;
 - (b) the person by whom it must be paid;
 - (c) when the levy must be paid;
 - (d) the provision of information or documents to, or by, the Secretary of State or designated person;
 - (e) the consequences of a failure to pay the levy in accordance with the regulations;
 - (f) the determination of disputes (including provision conferring a right to appeal to the tribunal and provision about appeals).
- (4) The different provision that may be made by the regulations by virtue of section 120A(2)(b) includes in particular different provision in relation to—
 - (a) persons who are eligible to be members of a building industry scheme and are not members of that scheme, and
 - (b) other persons.
- (5) The regulations may contain exemptions, for specified descriptions of person.
- (6) The regulations may provide that, unless the building control authority is given a notification under subsection (7) in relation to a relevant application or notice (or a relevant application or notice of a specified description), the authority—
 - (a) may not take a specified step in relation to the application or notice (for example, may not grant an application, accept a notice or give a specified certificate in relation to works connected with the application or notice), or

- (b) must take a specified step in relation to the application or notice (for example, must reject a notice).
- (7) A notification under this section is a notification given by the Secretary of State or designated person—
 - (a) that the levy payable in respect of the application or notice has been paid, or
 - (b) that no levy is payable in respect of the application or notice.
- (8) The regulations must provide for any amount received by a designated person by way of a levy to be paid to the Secretary of State, subject to retention of an amount, determined by or in accordance with the regulations, in respect of the costs of administering the levy.
- (9) A designation under this section must be published in such way as the Secretary of State considers appropriate.
- (10) In this section “relevant application or notice” means—
 - (a) an application for building control approval,
 - (b) an initial notice,
 - (c) an amendment notice, or
 - (d) a public body’s notice,

relating to a relevant building or proposed relevant building (including any such application or notice relating to work that causes a building to become a relevant building or causes a relevant building to cease to be such a building).

- (11) In this section—
 - “amendment notice, “initial notice” and “public body’s notice” have the same meaning as in Part 2 (see section 58);
 - “building industry scheme” means a scheme established under section 126 of the Building Safety Act 2022;
 - “building safety expenditure” means expenditure incurred by the Secretary of State (whether before or after the passing of this Act) in providing financial assistance to persons (whether by way of grant, loan or otherwise) for the purposes of enabling them to improve the safety of persons in or about buildings in England;
 - “relevant building” means a building in England consisting of or containing —
 - (a) one or more dwellings, or
 - (b) other accommodation,
 (and “accommodation” here includes temporary accommodation, for example in a hotel or hospital);

“specified” means specified in the regulations.

Levy on applications for building control approval etc In the Building Act 1984 after section 105B (inserted by section 57) insert -

PROSPECTIVE

EXPLANATORY NOTES

Section 58: Levy on applications for building control approval

Effect

538. This section amends the Building Act 1984 to confer powers on the Secretary of State to impose a new building safety levy in England, that will contribute to the government’s costs of remediating building safety defects. This will apply to persons making certain applications for building control approval.

539. The types of buildings and building work affected will be prescribed in secondary legislation. This section allows the Secretary of State to distinguish in setting the levy between persons eligible to join a building industry scheme but who do not join a scheme and others.

540. The levy will be paid to the Secretary of State, or a body designated by the Secretary of State. A percentage of levy funds may also be set aside to cover the costs of administering the levy.

541. Regulations will set out the detailed design of the levy. This will include the basis for the levy and rates; who must pay and when; the consequences of non-payment; refunds; and disputes. Provision will be made to allow the withholding of building control approvals unless the levy has been paid.

Background

542. This is a new levy, contributing to the government’s investment in building safety to protect leaseholders from unaffordable remediation costs.

543. The levy will be paid as part of the building control process and will apply to all new residential developments, unless otherwise excluded. Example A developer makes an application to the building control body about a new residential development. At the same time, they self-assess their levy liability and make the payment to the designated levy administrator, along with providing the necessary supporting information. The calculation is checked by the levy administrator. Where the levy is paid in full and assessed as correct, the building process continues. Where the levy is liable and not paid, the building control body will have the powers in regulations to refuse the application or not grant it until the levy is paid.

COMMENTARY

61. Section 58 inserts new section 105C into the Building Act 1984, enabling the imposition of a levy on applications for building control approval. The levy is designed

to fund the Regulator's activities and may be set at different levels for different descriptions of building work.

62. There has been no reported case law on section 58 as at September 2026.
63. The levy is no longer prospective. It applies to applications for building control approval made on or after 1 October 2026: Building Safety Levy (England) Regulations 2025 (SI 2025/1236). Amending regulations were laid in draft on 2 July 2026 to come into force on the same day, correcting defects in the 2025 Regulations (previously developed land, purpose-built student accommodation, spot-check deadlines among them), and the consolidated MHCLG guidance was updated on 2 July 2026. The practical point for developers pricing schemes across the commencement date is which side of 1 October 2026 the building control application falls.

SECTION 59 – CROWN APPLICATION

STATUTORY TEXT

In Part 5 of the Building Act 1984 before section 132 insert—

131A Crown application

- (1) The following provisions bind the Crown—
 - (a) Part 1 except sections 35B to 37, 39A and 40;
 - (b) Part 2;
 - (c) Part 2A except sections 58I to 58K, 58U, 58V and 58Z4 to 58Z6;
 - (d) Part 4 so far as it relates to a provision within any of the preceding paragraphs.
- (2) No contravention by the Crown of a provision within subsection (1)(a) to (d) makes the Crown criminally liable.
- (3) Subsection (2) does not affect the criminal liability of persons in the service of the Crown.
- (4) Subsection (5) applies where—
 - (a) a contravention of a provision within subsection (1)(a) or (b), or of Part 4 so far as it relates to such a provision, occurs in relation to a building or proposed building for which a local authority is the building control authority, or
 - (b) a contravention of a provision within subsection (1)(c), or of Part 4 so far as it relates to such a provision, occurs in relation to Wales,and the Crown would, but for subsection (2), be criminally liable under this Act in respect of the contravention.
- (5) The High Court may, on the application of—
 - (a) the local authority (in a case within subsection (4)(a)), or
 - (b) the Welsh Ministers (in a case within subsection (4)(b)),declare unlawful the act or omission constituting the contravention.
- (6) In this section a reference to a provision includes any instrument made under it.
- (7) For the application to the Crown of Part 3, and Part 4 so far as it relates to that Part, see section 87.

PROSPECTIVE

EXPLANATORY NOTES

Section 59: Crown application

Effect

544. *This section introduces a new section to the Building Act 1984 that makes provision about the application of Parts 1 (with certain exceptions), 2 and 2A (with exceptions) of the Building Act 1984 to the Crown. It also makes provision about the application of Part 4 of that Act so far as relating to provisions in the Parts mentioned above.*

Background

545. *This is a new section.*

COMMENTARY

64. Section 59 inserts new section 131A into Part 5 of the Building Act 1984, extending the application of building regulations to the Crown. Prior to the BSA, Crown buildings were exempt from building regulations in many respects. Section 59 removes most Crown exemptions, reflecting the principle that the Crown should not be above the safety standards that apply to all other building owners.
65. There has been no reported case law on section 59 as at September 2026.

SECTION 60 – APPLICATION TO PARLIAMENT

STATUTORY TEXT

- (1) The Building Act 1984 is amended as follows.
- (2) In section 95 (power to enter premises) after subsection (4) insert—
- (5) This section does not apply in relation to the Parliamentary Estate (as defined by section 131B).
- (3) After section 131A (inserted by section 59) insert—

131B Parts 1 and 2 etc: application to Parliament

- (1) In their application in relation to the Parliamentary Estate, Parts 1 and 2, and Part 4 so far as it relates to those Parts, have effect with the following modifications—
 - (a) sections 35B to 37, 39A and 40 (enforcement etc) do not apply;
 - (b) any reference to the owner or occupier of a building or of any premises is be read as a reference to—
 - (i) the Corporate Officer of the House of Lords,
 - (ii) the Corporate Officer of the House of Commons, or (as the case may be)
 - (iii) the Corporate Officers acting jointly.
- (2) In the following provisions—
 - “Corporate Officer” means—
 - (a) the Corporate Officer of the House of Lords,
 - (b) the Corporate Officer of the House of Commons, or
 - (c) the Corporate Officers acting jointly;
 - “relevant provision” means—
 - (a) any provision of, or of an instrument made under, Part 1 or 2, or
 - (b) any provision of Part 4 or of an instrument made under Part 4, so far as the provision relates to Part 1 or 2.
- (3) No contravention by a Corporate Officer of a relevant provision makes the Corporate Officer criminally liable.
- (4) Subsection (3) does not affect the criminal liability of relevant members of the House of Lords staff or of the House of Commons staff (as defined by sections 194 and 195 of the Employment Rights Act 1996).

- (5) Where a contravention of a relevant provision occurs which, but for subsection (3), would result in a Corporate Officer being criminally liable, the High Court may, on the application of the local authority, declare unlawful the act or omission constituting the contravention.
- (6) In this section “the Parliamentary Estate” means any building or other premises occupied for the purposes of either House of Parliament.
- (3) After section 131A (inserted by section 59) insert -

EXPLANATORY NOTES

Section 60: Application to Parliament

Effect

546. This section makes provision about the application of the Building Act 1984 to Parliament.

547. This Section provides that section 95 of the Building Act 1984, concerning the power to enter premises, does not apply to the Parliamentary Estate.

548. This section also inserts a new section 131B into the Building Act 1984. That section concerns the application of Parts 1 and 2 of the Building Act 1984, and Part 4 of that Act (in relation to these Parts), to the Parliamentary Estate.

549. Section 131B provides that sections 35B to 37, 39A and 40 of the Building Act 1984 do not apply to the Parliamentary Estate.

550. It also provides that no contravention by a Corporate Officer of a relevant provision makes the Corporate Officer criminally liable. The exclusion from criminal liability does not affect the criminal liability of an individual member of staff. Where a contravention would render a Corporate Officer liable the local authority may apply to the High Court to declare the actions of the Corporate Officer unlawful.

Background

551. This is a new provision.

COMMENTARY

66. Section 60 inserts new section 131B into the Building Act 1984, making provision for the application of Parts 1 and 2 of that Act to buildings forming part of the Palace of Westminster and other Parliamentary buildings. This is a rare example of the Parliamentary estate being brought within a general regulatory regime.
67. There has been no reported case law on section 60 as at September 2026.

THE BUILDING SAFETY ACT 2022

A Section-by-Section Commentary and Case Digest

PART 4 – HIGHER-RISK BUILDINGS (SECTIONS 61–115)

SECTION 61 – OVERVIEW OF PART

STATUTORY TEXT

- (1) This Part contains provisions about the management of building safety risks as regards occupied higher-risk buildings.
- (2) In this Part—
 - (a) sections 62 to 64 define “building safety risk” and make related provision;
 - (b) sections 65 to 70 define “higher-risk building”, make related provision, and confer power to modify this Part as it applies in relation to any description of higher-risk building;
 - (c) sections 71 to 75 contain other key definitions, including—
 - (i) when a building is “occupied”;
 - (ii) the definition of “accountable person” and “principal accountable person”; and provide that the First-tier Tribunal may determine who is an accountable person or the principal accountable person for a higher-risk building;
 - (d) sections 76 to 82 make provision about the registration of higher-risk buildings and about building assessment certificates;
 - (e) sections 83 to 86 make provision about the assessment and management of building safety risks, including provision requiring a safety case report to be prepared and revised;
 - (f) sections 87 to 90 contain provisions about the keeping and giving of information and documents to the regulator, other accountable persons, residents and others;
 - (g) sections 91 to 94 contain provisions about engagement with residents etc, including—
 - (i) provision requiring a residents’ engagement strategy to be prepared and revised;
 - (ii) provision requiring complaints systems to be established and operated;
 - (h) sections 95 to 97 impose duties on residents and make provision for the enforcement of those duties;
 - (i) section 98 to 101 contain provisions about the enforcement of this Part;
 - (j) section 102 and Schedule 7 provide for the appointment of a special measures manager, to undertake duties under this Part in place of an accountable person, and make further provision in connection with that appointment;
 - (k) sections 103 to 107 contain provisions about appeals;

- (l) sections 108 to 111 contain miscellaneous provisions, including provision about cooperation and coordination;
- (m) sections 112 to 114 provide for certain terms to be implied into leases, and contain other provisions affecting the relationship between landlord and tenant or affecting commonholds;
- (n) section 115 contains definitions applying for the purposes of this Part.

EXPLANATORY NOTES

Section 61: Overview of Part

Effect

552. This section is intended to assist the reader of the Act to understand the provisions that follow. It sets out the main elements of Part 4 of the Act. This section is not intended to have legal effect; rather it guides the reader through the remaining provisions of this part of the Act, which are intended to have legal effect.

Background

553. This is a new provision.

COMMENTARY

1. Section 61 provides an overview of Part 4, which establishes the regulatory regime for occupied higher-risk buildings. Part 4 is the core of the Act’s safety framework for buildings that are already in use. It imposes duties on “accountable persons” and “principal accountable persons” to assess and manage building safety risks, maintain safety case reports, engage with residents, and comply with the Regulator’s oversight.
2. The regime applies only to “occupied” higher-risk buildings as defined in section 71. Note: it does not apply during construction (which is governed by Part 3) or to unoccupied buildings.
3. There has been no reported case law on section 61 as at September 2026.

SECTION 62 – MEANING OF “BUILDING SAFETY RISK”

STATUTORY TEXT

- (1) In this Part “building safety risk” means a risk to the safety of people in or about a building arising from any of the following occurring as regards the building—
 - (a) the spread of fire;
 - (b) structural failure;
 - (c) any other prescribed matter.
- (2) Before making regulations under subsection (1)(c), the Secretary of State must consult—
 - (a) the regulator, and
 - (b) such other persons as the Secretary of State considers appropriate.
- (3) But the regulator need not be consulted if—
 - (a) the regulations give effect to a recommendation made by the regulator under section 63, or
 - (b) the Secretary of State has under section 64 asked the regulator for its advice in relation to a proposal to make the regulations.

EXPLANATORY NOTES

Section 62: Meaning of “building safety risk”

Effect

554. The new regulatory regime will regulate “building safety risks” in higher-risk buildings. These are the risks that the Accountable Person will manage in occupation, via the safety case, in order to prevent an incident involving these risks.

555. This section defines those “building safety risks” as risks to the safety of persons in or about buildings with regards to risks arising from the building resulting from the occurrence of: fire spread, structural failure, and any other risk that may be prescribed by regulations in the future.

556. This section is drafted using fire spread as the intention is that the fire must have spread from one part of the building to another in order to be considered a building safety risk. For example, this includes a fire spreading from one compartment to another within the building or from inside the building to the outside of the building. The intention is not to capture a fire spreading within a compartment.

557. The intention behind the term structural failure as a building safety risk is to capture when the structural integrity of the building fails in doing so poses a risk to the safety of people. This is likely to manifest as part or all of the building collapsing.

558. This section is drafted to capture risks inside and outside the building such as fire spreading on the external wall of a building but is limited to risks that are associated with the building and/or arising from the building itself. Risks are also limited to those affecting people in and about buildings.

559. This section provides a power for the Secretary of State to define, in regulations, new “building safety risks” which, once prescribed, would then need to be regulated in higher-risk buildings. This section will therefore allow the future scope of the regulatory regime to remain flexible should evidence emerge, for example, that another risk arising from a building has the potential to cause a major incident (serious injury or death to a significant number of people).

560. The power to prescribe a new building safety risk will be by regulations subject to the affirmative procedure in both Houses of Parliament. Before making any regulations prescribing new building safety risks, the Secretary of State must consult with the Building Safety Regulator. The Secretary of State must also consult any persons that they consider appropriate.

561. In addition to the requirement to consult in this section, the Secretary of State can ask the Building Regulator to advise them as to whether a particular new building safety risk should be prescribed and the Building Safety Regulator is obliged to provide such advice on request (section 64). Alternatively, the Building Safety Regulator may proactively recommend to the Secretary of State to specify a new building safety risk (section 63).

562. In prescribing a new building safety risk, if the Secretary of State is giving effect to regulatory advice or recommendation the requirement to consult the Building Safety Regulator is switched off, although the Secretary of State still must consult such other persons as they consider appropriate.

563. Schedule 5 will support this function of the Building Safety Regulator and requires the Building Safety Regulator to keep the safety of people in and about buildings in relation to risks arising from buildings under review.

564. Once prescribed, the Secretary of State will have the power, by regulations, to remove a prescribed risk from the definition of building safety risks. This power will apply only to prescribed risks and not to the risks expressly set out on the face of the Act: fire spread and structural failure – these will remain at the heart of the building safety regime.

Proposed use of power

565. It is not proposed to prescribe any additional building safety risks using the power in this section at this time.

Background

566. This is a new provision.

567. The Independent Review focused on fire and structural safety risks and recommended these were the initial scope for building safety risks in the new regime.

568. The Government sought research from the Health and Safety Executive in relation to risks that are considered to be catastrophic to verify our approach and focus. The conclusions of this research are that the major accident hazards in scope for safety management in a higher-risk building would largely be rapid onset escalating fire, structural, or explosion events. Explosion events can trigger a rapid onset escalating fire or structural event. Example The following is a hypothetical example. After the new occupation regime has been operating for two years, the Secretary of State may feel that changing weather systems mean high winds pose a risk to windows of higher-risk buildings which does not relate to the structural integrity of the building. If the Secretary of State comes to this view, they must consult the Building Safety Regulator before making regulations to prescribe high winds as a new building safety risk. The Building Safety Regulator is under a duty to provide advice if requested to do so and may proactively recommend that high winds should be prescribed as a new building safety risk. The Secretary of State will also consult other appropriate bodies – in this scenario this might include structural engineers, environmental and weather experts. If, following a consultation on including a new risk, the Secretary of State decides to add the new risk, regulations will be laid in Parliament under the affirmative procedure. Subject to Parliament’s approval, the occupation regime will then regulate for risk of fire spread, structural integrity and risk of high winds in higher-risk buildings.

Section 63: Recommendations about regulations under Section 62; and Section 64: Advice about regulations under section 62

Effect

569. The new regulatory regime will regulate building safety risks in higher-risk buildings – building safety risks are defined in section 62. The Act provides a power for the Secretary of State to prescribe new building safety risks in section 62. This may be done only following consultation with the Building Safety Regulator and appropriate persons.

570. Section 63 sets out that the Building Safety Regulator may proactively recommend to the Secretary of State that a new “building safety risk” should be prescribed. Before making a recommendation, the Building Safety Regulator must be satisfied that if a new “building safety risk” occurred in a higher-risk building or a particular type of higher-risk building, it would have the potential to cause a major incident (serious injury or death for a significant number of people).

571. The Building Safety Regulator may also recommend to the Secretary of State to specify a new “building safety risk” and a new class of higher-risk building simultaneously. Before making such a recommendation, the Building Safety Regulator must be satisfied that if the new building safety risk occurred in the new class of higher-risk building it would have the potential to cause a major incident (serious injury or death to a significant number of people), that the risk of it occurring in the new class of higher-risk building is higher than in other buildings, and that the new occupation regulatory regime should apply to the new class of “higher-risk building”.

572. The Building Safety Regulator may also recommend the removal of a previously prescribed building safety risk on the grounds that it would not cause a major incident. The

Regulator is unable to recommend under this section that fire spread or structural safety are removed from the definition of building safety risks.

573. When making a recommendation, the Building Safety Regulator must include details of the issues that have been considered to reach the recommendation.

574. Supplementary to section 62 and section 63 is section 64. In addition to the requirement to consult in section 62, the Secretary of State can ask the Building Safety Regulator to advise them as to whether a particular new “building safety risk” should be prescribed. The Building Safety Regulator is obliged to provide the requested advice.

575. Schedule 5 will support this function of the Building Safety Regulator and requires the Building Safety Regulator to keep the safety of people in and about buildings in relation to risks arising from buildings under review.

576. If the Secretary of State does not follow the recommendation of the Building Safety Regulator under section 63, then they must publish a document which sets out the Regulator’s recommendation, the Secretary of State’s decision not to follow the recommendation and the reasons for that decision.

Background

577. These are new provisions. Example The following example is purely hypothetical. Several years after the new regulatory regime is transitioned in, the Building Safety Regulator, through its duty to keep the safety and standard of buildings under review, becomes aware of a construction product with previously unknown consequences which has the potential to cause a major incident. This could be a similar scenario to the historical issues of using asbestos. One of the actions the Building Safety Regulator may take is to provide a recommendation to prescribe a new building safety risk and regulate the risk through this regime. It would also recommend that the categories of buildings affected become higher-risk buildings. If the Secretary of State accepts these recommendations, they must consult other appropriate people and, undertake a cost benefit analysis of the addition of a new category of building to the definition of higher risk building before they can make regulations to put the recommendation into effect. After some time, protocols for dealing with the product may have become widely known and the product may be less prevalent in buildings. Therefore, the Building Safety Regulator may recommend to the Secretary of State to remove the product as a prescribed risk, as it is no longer appropriate for it to remain a building safety risk within this regime. The Secretary of State may make regulations to put this recommendation into effect after consulting other persons they consider appropriate.

COMMENTARY

4. Section 62 defines “building safety risk” as the risk to the safety of persons in or about the building arising from the spread of fire or structural failure. This definition is narrower than the general concept of building safety and focuses on the two principal catastrophic risks identified by the Hackitt Review.

5. The significance of this definition is that the duties imposed on accountable persons under Part 4 - to assess risks (s.83), manage risks (s.84), and prepare safety case reports (s.85) - are all directed at “building safety risks” as defined in section 62. Risks that do not fall within this definition (such as slips and trips, water ingress, or noise) are not within the scope of Part 4, though they may be addressed by other regulatory regimes.
6. There has been no reported case law on section 62 as at September 2026.

SECTION 63 – RECOMMENDATIONS ABOUT REGULATIONS UNDER SECTION 62

STATUTORY TEXT

- (1) The regulator may recommend that the Secretary of State makes regulations under section 62.
- (2) The regulator may make a recommendation to prescribe a matter under section 62(1)(c) for any higher-risk building only if it considers that if the matter occurred as regards a higher-risk building it would have the potential to cause a major incident.
- (3) The regulator may make a recommendation to prescribe a matter under section 62(1)(c) for a description of higher-risk building only if it considers that if the matter occurred as regards a higher-risk building of that description it would have the potential to cause a major incident.
- (4) The regulator may make a recommendation to prescribe a matter under section 62(1)(c) for a description of building that is not a higher-risk building only if—
 - (a) it considers that—
 - (i) if the matter occurred as regards a building of that description it would have the potential to cause a major incident,
 - (ii) the risk of the matter occurring is greater for that description of buildings than it is for buildings that are not of that description, and
 - (iii) this Part should apply (with or without modifications) in relation to buildings of that description, and
 - (b) it also recommends that buildings of that description should be higher-risk buildings for the purposes of this Part (and, if section 69(2)(b) applies, makes a recommendation of the kind mentioned there).
- (5) The regulator may make a recommendation to make regulations that would result in a matter ceasing to be prescribed under section 62(1)(c) only if—
 - (a) where the matter is prescribed for any higher-risk building, it considers that if the matter occurred as regards a higher-risk building it would not have the potential to cause a major incident;
 - (b) where the matter is prescribed for a description of higher-risk building, it considers that if the matter occurred as regards a higher-risk building of that description it would not have the potential to cause a major incident.
- (6) When making a recommendation, the regulator must give the Secretary of State a statement of its assessment of the issues it considered when deciding to make the recommendation.

- (7) If following a recommendation the Secretary of State decides not to make the regulations, the Secretary of State must publish a document setting out—
 - (a) the regulator’s recommendation,
 - (b) the Secretary of State’s decision not to make the regulations, and
 - (c) the reasons for that decision.
- (8) In this Part “major incident” means an incident resulting in—
 - (a) a significant number of deaths, or
 - (b) serious injury to a significant number of people.

EXPLANATORY NOTES

Section 63: Recommendations about regulations under Section 62; and Section 64: Advice about regulations under section 62

Effect

569. *The new regulatory regime will regulate building safety risks in higher-risk buildings – building safety risks are defined in section 62. The Act provides a power for the Secretary of State to prescribe new building safety risks in section 62. This may be done only following consultation with the Building Safety Regulator and appropriate persons.*

570. *Section 63 sets out that the Building Safety Regulator may proactively recommend to the Secretary of State that a new “building safety risk” should be prescribed. Before making a recommendation, the Building Safety Regulator must be satisfied that if a new “building safety risk” occurred in a higher-risk building or a particular type of higher-risk building, it would have the potential to cause a major incident (serious injury or death for a significant number of people).*

571. *The Building Safety Regulator may also recommend to the Secretary of State to specify a new “building safety risk” and a new class of higher-risk building simultaneously. Before making such a recommendation, the Building Safety Regulator must be satisfied that if the new building safety risk occurred in the new class of higher-risk building it would have the potential to cause a major incident (serious injury or death to a significant number of people), that the risk of it occurring in the new class of higher-risk building is higher than in other buildings, and that the new occupation regulatory regime should apply to the new class of “higher-risk building”.*

572. *The Building Safety Regulator may also recommend the removal of a previously prescribed building safety risk on the grounds that it would not cause a major incident. The Regulator is unable to recommend under this section that fire spread or structural safety are removed from the definition of building safety risks.*

573. *When making a recommendation, the Building Safety Regulator must include details of the issues that have been considered to reach the recommendation.*

574. *Supplementary to section 62 and section 63 is section 64. In addition to the requirement to consult in section 62, the Secretary of State can ask the Building Safety Regulator to advise them as to whether a particular new “building safety risk” should be prescribed. The Building Safety Regulator is obliged to provide the requested advice.*

575. *Schedule 5 will support this function of the Building Safety Regulator and requires the Building Safety Regulator to keep the safety of people in and about buildings in relation to risks arising from buildings under review.*

576. *If the Secretary of State does not follow the recommendation of the Building Safety Regulator under section 63, then they must publish a document which sets out the Regulator’s recommendation, the Secretary of State’s decision not to follow the recommendation and the reasons for that decision.*

Background

577. *These are new provisions. Example The following example is purely hypothetical. Several years after the new regulatory regime is transitioned in, the Building Safety Regulator, through its duty to keep the safety and standard of buildings under review, becomes aware of a construction product with previously unknown consequences which has the potential to cause a major incident. This could be a similar scenario to the historical issues of using asbestos. One of the actions the Building Safety Regulator may take is to provide a recommendation to prescribe a new building safety risk and regulate the risk through this regime. It would also recommend that the categories of buildings affected become higher-risk buildings. If the Secretary of State accepts these recommendations, they must consult other appropriate people and, undertake a cost benefit analysis of the addition of a new category of building to the definition of higher risk building before they can make regulations to put the recommendation into effect. After some time, protocols for dealing with the product may have become widely known and the product may be less prevalent in buildings. Therefore, the Building Safety Regulator may recommend to the Secretary of State to remove the product as a prescribed risk, as it is no longer appropriate for it to remain a building safety risk within this regime. The Secretary of State may make regulations to put this recommendation into effect after consulting other persons they consider appropriate.*

COMMENTARY

7. Section 63 enables the Regulator to make recommendations to the Secretary of State about regulations defining “building safety risk” under section 62. This advisory function ensures that the scope of the regime can be adapted as new risks are identified.
8. There has been no reported case law on section 63 as at September 2026.

SECTION 64 – ADVICE ABOUT REGULATIONS UNDER SECTION 62

STATUTORY TEXT

Where the Secretary of State asks the regulator to provide advice about a proposal to make regulations under section 62, it must provide that advice.

EXPLANATORY NOTES

Section 63: Recommendations about regulations under Section 62; and Section 64: Advice about regulations under section 62

Effect

569. *The new regulatory regime will regulate building safety risks in higher-risk buildings – building safety risks are defined in section 62. The Act provides a power for the Secretary of State to prescribe new building safety risks in section 62. This may be done only following consultation with the Building Safety Regulator and appropriate persons.*

570. *Section 63 sets out that the Building Safety Regulator may proactively recommend to the Secretary of State that a new “building safety risk” should be prescribed. Before making a recommendation, the Building Safety Regulator must be satisfied that if a new “building safety risk” occurred in a higher-risk building or a particular type of higher-risk building, it would have the potential to cause a major incident (serious injury or death for a significant number of people).*

571. *The Building Safety Regulator may also recommend to the Secretary of State to specify a new “building safety risk” and a new class of higher-risk building simultaneously. Before making such a recommendation, the Building Safety Regulator must be satisfied that if the new building safety risk occurred in the new class of higher-risk building it would have the potential to cause a major incident (serious injury or death to a significant number of people), that the risk of it occurring in the new class of higher-risk building is higher than in other buildings, and that the new occupation regulatory regime should apply to the new class of “higher-risk building”.*

572. *The Building Safety Regulator may also recommend the removal of a previously prescribed building safety risk on the grounds that it would not cause a major incident. The Regulator is unable to recommend under this section that fire spread or structural safety are removed from the definition of building safety risks.*

573. *When making a recommendation, the Building Safety Regulator must include details of the issues that have been considered to reach the recommendation.*

574. *Supplementary to section 62 and section 63 is section 64. In addition to the requirement to consult in section 62, the Secretary of State can ask the Building Safety Regulator to advise them as to whether a particular new “building safety risk” should be prescribed. The Building Safety Regulator is obliged to provide the requested advice.*

575. Schedule 5 will support this function of the Building Safety Regulator and requires the Building Safety Regulator to keep the safety of people in and about buildings in relation to risks arising from buildings under review.

576. If the Secretary of State does not follow the recommendation of the Building Safety Regulator under section 63, then they must publish a document which sets out the Regulator's recommendation, the Secretary of State's decision not to follow the recommendation and the reasons for that decision.

Background

577. These are new provisions. Example The following example is purely hypothetical. Several years after the new regulatory regime is transitioned in, the Building Safety Regulator, through its duty to keep the safety and standard of buildings under review, becomes aware of a construction product with previously unknown consequences which has the potential to cause a major incident. This could be a similar scenario to the historical issues of using asbestos. One of the actions the Building Safety Regulator may take is to provide a recommendation to prescribe a new building safety risk and regulate the risk through this regime. It would also recommend that the categories of buildings affected become higher-risk buildings. If the Secretary of State accepts these recommendations, they must consult other appropriate people and, undertake a cost benefit analysis of the addition of a new category of building to the definition of higher risk building before they can make regulations to put the recommendation into effect. After some time, protocols for dealing with the product may have become widely known and the product may be less prevalent in buildings. Therefore, the Building Safety Regulator may recommend to the Secretary of State to remove the product as a prescribed risk, as it is no longer appropriate for it to remain a building safety risk within this regime. The Secretary of State may make regulations to put this recommendation into effect after consulting other persons they consider appropriate.

COMMENTARY

9. Section 64 requires the Regulator to give advice to the Secretary of State about the effect of proposed regulations under section 62 on existing building safety risks. This complements the recommendation power in section 63.
10. There has been no reported case law on section 64 as at September 2026.

SECTION 65 – MEANING OF “HIGHER-RISK BUILDING” ETC

STATUTORY TEXT

- (1) In this Part “higher-risk building” means a building in England that—
 - (a) is at least 18 metres in height or has at least 7 storeys, and
 - (b) contains at least 2 residential units.
- (2) The Secretary of State may by regulations make provision supplementing this section.
- (3) The regulations may in particular—
 - (a) define “building” or “storey” for the purposes of this section;
 - (b) make provision about how the height of a building is to be determined for those purposes;
 - (c) provide that “higher-risk building” does not include a building of a prescribed description.
- (4) Regulations made by virtue of subsection (3)(a) may in particular define “building” so as to provide that it includes—
 - (a) any other structure or erection of any kind (whether temporary or permanent);
 - (b) any vehicle, vessel or other movable object of any kind, in such circumstances as may be prescribed.
- (5) The Secretary of State may by regulations amend this section (other than subsection (2) or this subsection).
- (6) For the meaning of “residential unit” see section 115.

EXPLANATORY NOTES

Section 65: Meaning of “higher-risk building” etc and Section 66: Regulations under section 65: procedure and Section 67: Regulations under section 65: additional procedure in certain cases

Effect

578. The new regulatory regime will regulate building safety risks in “higher-risk buildings” in England. Section 65 defines the “higher-risk buildings”, which will be regulated by the new occupation regime, as at least 18 metres in height or having at least 7 storeys and containing at least two residential units. Residential units are either a dwelling or any other unit of living accommodation, for example student accommodation where basic amenities, such as cooking facilities, a toilet and personal washing facilities are shared with others in the building.

579. Section 65 gives the Secretary of State the power, by regulations, to supplement this definition (subsections (2) and (3)), for example by defining building, storey and technical details such as the method for measuring the height of a building. Subsection (4) provides that the definition of “building” in regulations may include other structures, erections or movable objects. The ability to have a broad definition aligns with section 121 of the Building Act 1984. Regulations made under this power are subject to the negative resolution procedure.

580. Section 65 also gives the Secretary of State the power (used in the way described in (3) (c), by regulations, to exclude classifications of building from the definition of “higher-risk building”. This means a building may be caught by the definition in this section but then excluded through regulations made under this power and therefore not defined as a “higher-risk building”. Regulations made under this power are subject to the affirmative resolution procedure, i.e. they must be laid in draft, debated and approved in both Houses of Parliament before they can be made.

581. Section 65 gives the Secretary of State the power to amend section 65, apart from subsections (2) and (5). This power could be used to amend the definition of “higher-risk building”. Regulations made under this power are subject to the affirmative resolution procedure, i.e. they must be laid in draft, debated and approved in both Houses of Parliament before they can be made.

582. When making regulations to amend the definition of “higher-risk building”, this can be done by reference to a building’s size, design, use, purpose or other characteristic (section 166).

583. Section 66 stipulates that the Secretary of State must consult the Building Safety Regulator and any other appropriate persons before making regulations. It also states that the Secretary of State does not need to repeat this consultation with the Building Safety Regulator if they have received a recommendation or requested advice. This includes when the Secretary of State proposes to make regulations to remove a category of building from the definition of higher-risk building.

584. Section 67 further stipulates the requirements at when the Secretary of State must meet when they proposes to make regulations which would result in a description of building being added to the definition of “higher-risk building”, and therefore subject to the new occupation regulatory regime, They must have received a recommendation from the Regulator (section 69) or request advice from the Regulator (section 70) and they must undertake and publish a cost benefit analysis. If the costs or benefits cannot be reasonably or practicably estimated, then the Secretary of State must provide an explanation of this

Proposed use of power

585. At the start of the new regulatory regime, it is proposed to supplement the definition of “higher-risk building”.

Background

586. This is a new provision.

587. *The Independent Review identified that it is important to ensure that the Government can respond in the future, where necessary, to amend the definition of “higher-risk buildings” in light of either critical new information emerging or experience of operating the new regime.*

588. *Following pre-legislative scrutiny, the Housing, Communities and Local Government Committee recommended including the definition of “higher-risk buildings” within the Act, rather than in regulations. Example The following example is purely hypothetical. After the new regime has been operating for two years the Secretary of State may decide that consideration is needed as to whether single storey premises in areas of high flood risk should be higher-risk buildings because of a concern about structural failure following recent flooding incidents. If the Secretary of State came to this view, they must request advice from the Building Safety Regulator. The Building Safety Regulator must consider whether single storey premises in areas of high flood risk meet the three conditions specified in section 70(2). In this hypothetical example, the Regulator considers the conditions are met. The Building Safety Regulator must also consider whether the application of Part 4 of this Act should be modified if it is applied to single storey premises in areas of high flood risk. The Regulator does not consider that the application of part 4 should be modified. The Regulator must then make a recommendation to the Secretary of State to amend the definition of a “higher-risk building” and provide a statement of the issues it considered in coming to that recommendation. Having considered the recommendation, the Secretary of State may be minded to agree and make regulations to amend the definition of “higher-risk buildings”. They must then consult any other persons the Secretary of State considers appropriate and undertake a cost benefit analysis, if they have not already done so whilst requesting advice from the Regulator. Having considered the recommendation, the representations made and the cost benefit analysis, the Secretary of State will decide whether to amend the definition of “higher-risk building”. If the Minister chooses to make the amendment, the regulations will be laid in Parliament using the affirmative procedure and be accompanied by the requisite documentation. If the Secretary of State chooses not to make the amendment, then the Secretary of State must publish a document setting out the Regulator’s recommendation, their decision not to implement it and the reasons for their decision.*

COMMENTARY

11. Section 65 defines “higher-risk building” for the purposes of Part 4. A higher-risk building is a building in England that (a) is at least 18 metres in height or has at least 7 storeys, and (b) contains at least two residential units. The Secretary of State may by regulations amend or add to this definition.
12. The definition is critical because it determines the scope of the entire Part 4 regime. The 18-metre / 7-storey threshold was chosen to align with the Hackitt Review’s original recommendation, though the Government has indicated that it may be expanded over

time. The two-residential-unit requirement means that single dwellings, even those meeting the height threshold, are excluded.

13. There has been no reported case law on section 65 as at September 2026.

SECTION 66 – REGULATIONS UNDER SECTION 65: PROCEDURE

STATUTORY TEXT

- (1) Before making regulations under section 65, the Secretary of State must consult—
 - (a) the regulator, and
 - (b) such other persons as the Secretary of State considers appropriate.
- (2) But the regulator need not be consulted if—
 - (a) the regulations give effect to a recommendation made by the regulator under section 63(4) or 69, or
 - (b) the Secretary of State has under section 70 asked the regulator for advice about the description of building in question.

EXPLANATORY NOTES

Section 65: Meaning of “higher-risk building” etc and Section 66: Regulations under section 65: procedure and Section 67: Regulations under section 65: additional procedure in certain cases

Effect

578. The new regulatory regime will regulate building safety risks in “higher-risk buildings” in England. Section 65 defines the “higher-risk buildings”, which will be regulated by the new occupation regime, as at least 18 metres in height or having at least 7 storeys and containing at least two residential units. Residential units are either a dwelling or any other unit of living accommodation, for example student accommodation where basic amenities, such as cooking facilities, a toilet and personal washing facilities are shared with others in the building.

579. Section 65 gives the Secretary of State the power, by regulations, to supplement this definition (subsections (2) and (3)), for example by defining building, storey and technical details such as the method for measuring the height of a building. Subsection (4) provides that the definition of “building” in regulations may include other structures, erections or movable objects. The ability to have a broad definition aligns with section 121 of the Building Act 1984. Regulations made under this power are subject to the negative resolution procedure.

580. Section 65 also gives the Secretary of State the power (used in the way described in (3) (c), by regulations, to exclude classifications of building from the definition of “higher-risk building”. This means a building may be caught by the definition in this section but then excluded through regulations made under this power and therefore not defined as a “higher-risk building”. Regulations made under this power are subject to the affirmative resolution procedure, i.e. they must be laid in draft, debated and approved in both Houses of Parliament before they can be made.

581. Section 65 gives the Secretary of State the power to amend section 65, apart from subsections (2) and (5). This power could be used to amend the definition of “higher-risk building”. Regulations made under this power are subject to the affirmative resolution procedure, i.e. they must be laid in draft, debated and approved in both Houses of Parliament before they can be made.

582. When making regulations to amend the definition of “higher-risk building”, this can be done by reference to a building’s size, design, use, purpose or other characteristic (section 166).

583. Section 66 stipulates that the Secretary of State must consult the Building Safety Regulator and any other appropriate persons before making regulations. It also states that the Secretary of State does not need to repeat this consultation with the Building Safety Regulator if they have received a recommendation or requested advice. This includes when the Secretary of State proposes to make regulations to remove a category of building from the definition of higher-risk building.

584. Section 67 further stipulates the requirements at when the Secretary of State must meet when they proposes to make regulations which would result in a description of building being added to the definition of “higher-risk building”, and therefore subject to the new occupation regulatory regime, They must have received a recommendation from the Regulator (section 69) or request advice from the Regulator (section 70) and they must undertake and publish a cost benefit analysis. If the costs or benefits cannot be reasonably or practicably estimated, then the Secretary of State must provide an explanation of this

Proposed use of power

585. At the start of the new regulatory regime, it is proposed to supplement the definition of “higher-risk building”.

Background

586. This is a new provision.

587. The Independent Review identified that it is important to ensure that the Government can respond in the future, where necessary, to amend the definition of “higher-risk buildings” in light of either critical new information emerging or experience of operating the new regime.

588. Following pre-legislative scrutiny, the Housing, Communities and Local Government Committee recommended including the definition of “higher-risk buildings” within the Act, rather than in regulations. Example The following example is purely hypothetical. After the new regime has been operating for two years the Secretary of State may decide that consideration is needed as to whether single storey premises in areas of high flood risk should be higher-risk buildings because of a concern about structural failure following recent flooding incidents. If the Secretary of State came to this view, they must request advice from the Building Safety Regulator. The Building Safety Regulator must consider whether single storey premises in areas of high flood risk meet the three conditions specified in section 70(2). In this hypothetical example, the Regulator considers the conditions are met. The Building Safety Regulator must also consider whether the

application of Part 4 of this Act should be modified if it is applied to single storey premises in areas of high flood risk. The Regulator does not consider that the application of part 4 should be modified. The Regulator must then make a recommendation to the Secretary of State to amend the definition of a “higher-risk building” and provide a statement of the issues it considered in coming to that recommendation. Having considered the recommendation, the Secretary of State may be minded to agree and make regulations to amend the definition of “higher-risk buildings”. They must then consult any other persons the Secretary of State considers appropriate and undertake a cost benefit analysis, if they have not already done so whilst requesting advice from the Regulator. Having considered the recommendation, the representations made and the cost benefit analysis, the Secretary of State will decide whether to amend the definition of “higher-risk building”. If the Minister chooses to make the amendment, the regulations will be laid in Parliament using the affirmative procedure and be accompanied by the requisite documentation. If the Secretary of State chooses not to make the amendment, then the Secretary of State must publish a document setting out the Regulator’s recommendation, their decision not to implement it and the reasons for their decision.

COMMENTARY

14. Section 66 prescribes the procedure for making regulations under section 65. Draft regulations must be laid before Parliament and approved by resolution of each House (the affirmative procedure). This provides a higher level of Parliamentary scrutiny given the significance of the definition in determining the scope of the Part 4 regime.
15. There has been no reported case law on section 66 as at September 2026.

SECTION 67 – REGULATIONS UNDER SECTION 65: ADDITIONAL PROCEDURE IN CERTAIN CASES

STATUTORY TEXT

- (1) This section applies if the Secretary of State proposes to make regulations under section 65 that would result in a description of building (including anything within subsection (4) of that section) becoming a higher-risk building for the purposes of this Part.
- (2) The Secretary of State must ask the regulator under section 70(1) for advice about the description of building, except where the regulations would give effect to a recommendation under section 69(2).
- (3) The Secretary of State must carry out a cost-benefit analysis and publish it.
- (4) In this section “cost-benefit analysis” means—
 - (a) an analysis of the costs together with an analysis of the benefits that will arise if the regulations are made, and
 - (b) an estimate of those costs and of those benefits (subject to subsection (5)).
- (5) If, in the opinion of the Secretary of State—
 - (a) the costs or benefits cannot reasonably be estimated, or
 - (b) it is not reasonably practicable to produce an estimate,the cost-benefit analysis need not estimate them, but must include a statement of the Secretary of State’s opinion and an explanation of it.

EXPLANATORY NOTES

Section 65: Meaning of “higher-risk building” etc and Section 66: Regulations under section 65: procedure and Section 67: Regulations under section 65: additional procedure in certain cases

Effect

578. The new regulatory regime will regulate building safety risks in “higher-risk buildings” in England. Section 65 defines the “higher-risk buildings”, which will be regulated by the new occupation regime, as at least 18 metres in height or having at least 7 storeys and containing at least two residential units. Residential units are either a dwelling or any other unit of living accommodation, for example student accommodation where basic amenities, such as cooking facilities, a toilet and personal washing facilities are shared with others in the building.

579. Section 65 gives the Secretary of State the power, by regulations, to supplement this definition (subsections (2) and (3)), for example by defining building, storey and technical details such as the method for measuring the height of a building. Subsection (4) provides

that the definition of “building” in regulations may include other structures, erections or movable objects. The ability to have a broad definition aligns with section 121 of the Building Act 1984. Regulations made under this power are subject to the negative resolution procedure.

580. Section 65 also gives the Secretary of State the power (used in the way described in (3) (c), by regulations, to exclude classifications of building from the definition of “higher-risk building”. This means a building may be caught by the definition in this section but then excluded through regulations made under this power and therefore not defined as a “higher-risk building”. Regulations made under this power are subject to the affirmative resolution procedure, i.e. they must be laid in draft, debated and approved in both Houses of Parliament before they can be made.

581. Section 65 gives the Secretary of State the power to amend section 65, apart from subsections (2) and (5). This power could be used to amend the definition of “higher-risk building”. Regulations made under this power are subject to the affirmative resolution procedure, i.e. they must be laid in draft, debated and approved in both Houses of Parliament before they can be made.

582. When making regulations to amend the definition of “higher-risk building”, this can be done by reference to a building’s size, design, use, purpose or other characteristic (section 166).

583. Section 66 stipulates that the Secretary of State must consult the Building Safety Regulator and any other appropriate persons before making regulations. It also states that the Secretary of State does not need to repeat this consultation with the Building Safety Regulator if they have received a recommendation or requested advice. This includes when the Secretary of State proposes to make regulations to remove a category of building from the definition of higher-risk building.

584. Section 67 further stipulates the requirements at when the Secretary of State must meet when they proposes to make regulations which would result in a description of building being added to the definition of “higher-risk building”, and therefore subject to the new occupation regulatory regime, They must have received a recommendation from the Regulator (section 69) or request advice from the Regulator (section 70) and they must undertake and publish a cost benefit analysis. If the costs or benefits cannot be reasonably or practicably estimated, then the Secretary of State must provide an explanation of this

Proposed use of power

585. At the start of the new regulatory regime, it is proposed to supplement the definition of “higher-risk building”.

Background

586. This is a new provision.

587. The Independent Review identified that it is important to ensure that the Government can respond in the future, where necessary, to amend the definition of “higher-risk

buildings” in light of either critical new information emerging or experience of operating the new regime.

588. Following pre-legislative scrutiny, the Housing, Communities and Local Government Committee recommended including the definition of “higher-risk buildings” within the Act, rather than in regulations. Example The following example is purely hypothetical. After the new regime has been operating for two years the Secretary of State may decide that consideration is needed as to whether single storey premises in areas of high flood risk should be higher-risk buildings because of a concern about structural failure following recent flooding incidents. If the Secretary of State came to this view, they must request advice from the Building Safety Regulator. The Building Safety Regulator must consider whether single storey premises in areas of high flood risk meet the three conditions specified in section 70(2). In this hypothetical example, the Regulator considers the conditions are met. The Building Safety Regulator must also consider whether the application of Part 4 of this Act should be modified if it is applied to single storey premises in areas of high flood risk. The Regulator does not consider that the application of part 4 should be modified. The Regulator must then make a recommendation to the Secretary of State to amend the definition of a “higher-risk building” and provide a statement of the issues it considered in coming to that recommendation. Having considered the recommendation, the Secretary of State may be minded to agree and make regulations to amend the definition of “higher-risk buildings”. They must then consult any other persons the Secretary of State considers appropriate and undertake a cost benefit analysis, if they have not already done so whilst requesting advice from the Regulator. Having considered the recommendation, the representations made and the cost benefit analysis, the Secretary of State will decide whether to amend the definition of “higher-risk building”. If the Minister chooses to make the amendment, the regulations will be laid in Parliament using the affirmative procedure and be accompanied by the requisite documentation. If the Secretary of State chooses not to make the amendment, then the Secretary of State must publish a document setting out the Regulator’s recommendation, their decision not to implement it and the reasons for their decision.

COMMENTARY

16. Section 67 imposes additional procedural requirements where regulations under section 65 would alter the definition of higher-risk building in a way that would bring additional buildings within the scope of Part 4. The Secretary of State must consult relevant persons before making such regulations.
17. There has been no reported case law on section 67 as at September 2026.

SECTION 68 – MODIFICATION OF PART IN RELATION TO CERTAIN KINDS OF HIGHER-RISK BUILDING

STATUTORY TEXT

- (1) The Secretary of State may make regulations modifying this Part as it applies in relation to a prescribed description of higher-risk building.
- (2) Before making the regulations, the Secretary of State must consult—
 - (a) the regulator, and
 - (b) such other persons as the Secretary of State considers appropriate.
- (3) But the regulator need not be consulted if the regulations give effect to a recommendation under section 63(4), 69 or 70.

EXPLANATORY NOTES

Section 68: Modification of Part in relation to certain kinds of higher-risk building

Effect

589. The new regulatory regime in Part 4 of the Act will regulate building safety risks in higher-risk buildings. Section 65 provides for the definition of “higher-risk building” in Part 4 of the Act to be amended by regulations.

590. This section provides some further flexibility. It gives the Secretary of State the power to modify Part 4 of this Act in relation to particular categories of higher-risk buildings. This power could be used at the same time as bringing a new type of building within the definition of higher-risk building or could be used in relation to an existing type of higher-risk building. The power is needed as there might be cases where it is not appropriate to apply every provision set out in Part 4 of this Act to all types of higher-risk buildings, and in such cases the Secretary of State may decide to modify how Part 4 applies to that type of building.

591. When providing advice under section 70 or making its recommendation under section 69 regarding the definition of “higher-risk building”, the Building Safety Regulator must also consider whether it is appropriate to make modifications to how Part 4 should apply to that description of building.

592. This power to modify parts of the regime applies with respect to the in-occupation regime only. Amendments to the Building Act 1984 already provide for a power to have different provision in building regulations for higher-risk buildings. This includes applying differing requirements for specific types of higher-risk buildings where appropriate.

593. The power to amend section 65: Meaning of “higher-risk building” etc. apart from subsections (2) and (5), the power to exclude categories of building from the definition of “higher-risk building” by regulations (section 66) and the power to modify the application

of the regime to higher-risk buildings (this Section) will all be subject to the affirmative procedure.

594. Before making any new regulations under this Section the Secretary of State must consult with the Building Safety Regulator, as well as any other persons the Secretary of State considers appropriate.

Proposed use of power

595. See section 65 above for the definition of “higher-risk building” in relation to Part 4 of this Act. It is not proposed to make any modifications under this section to the regulatory regime for the types of building falling within this definition.

Background

596. This is a new provision. Example The following example is purely hypothetical. After the occupation regime has been operating for two years, the Secretary of State may feel that it is not appropriate for the resident engagement requirements to apply to higher-risk buildings which consist of boarding school accommodation which only houses minors, given the nature of the occupants. If the Secretary of State comes to this view, they must consult the Building Safety Regulator and other appropriate persons before making regulations. Having considered the consultation responses, the Secretary of State will then decide whether or not to make the regulations making the modification.

COMMENTARY

18. Section 68 enables the Secretary of State by regulations to modify the application of Part 4 in relation to certain kinds of higher-risk building. This provides flexibility to tailor the regime where a strict one-size-fits-all approach would be disproportionate.
19. There has been no reported case law on section 68 as at September 2026.

SECTION 69 – RECOMMENDATIONS ABOUT DEFINITION OF “HIGHER-RISK BUILDING” ETC
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STATUTORY TEXT

- (1) Subsection (2) applies if, in respect of any description of building that is not a higher-risk building, the regulator considers—
 - (a) that a building safety risk is greater for that description of buildings than it is for buildings that are not of that description,
 - (b) that if the risk materialised as regards a building of that description it would have the potential to cause a major incident, and
 - (c) that this Part should apply (with or without modifications) in relation to buildings of that description.
- (2) The regulator must—
 - (a) recommend to the Secretary of State that buildings of that description should be higher-risk buildings for the purposes of this Part,
 - (b) if it considers that regulations under section 68 should be made modifying this Part as it applies in relation to that description of building, make a recommendation to the Secretary of State to that effect, and
 - (c) give the Secretary of State a statement of its assessment of the issues it considered when deciding to make the recommendation under paragraph (a) and any recommendation under paragraph (b).
- (3) Subsection (4) applies if—
 - (a) following a recommendation under subsection (2)(a) the Secretary of State decides not to make regulations under section 65 giving effect to the recommendation, or
 - (b) following a recommendation under subsection (2)(b) the Secretary of State decides not to make regulations under section 68 giving effect to the recommendation.
- (4) The Secretary of State must publish a document setting out—
 - (a) the regulator’s recommendation,
 - (b) the Secretary of State’s decision not to make the regulations, and
 - (c) the reasons for that decision.
- (5) If the regulator considers that this Part should not apply in relation to a particular description of higher-risk building, it must recommend to the Secretary of State that buildings of that description should cease to be higher-risk buildings for the purposes of this Part.

- (6) For the meaning of “major incident” see section 63.

EXPLANATORY NOTES

Section 69: Recommendations about definition of “higher-risk building” etc

Effect

597. The new in occupation regime will regulate building safety risks in higher-risk buildings. Section 65 sets out the definition of “higher-risk building” for Part 4 of this Act.

598. This section provides that the Building Safety Regulator must recommend to the Secretary of State that a particular description of buildings should be subject to regulation under the regime if the conditions of the section are met. The conditions are: the Building Safety Regulator must be of the view that building safety risks in the type of building in question are higher than in buildings in general, that if the building safety risks arose in the type of building in question it could cause a major incident (serious injury or death to a significant number of people), and that the Regulator considers it appropriate for the regulatory regime to apply.

599. In making recommendations, the Building Safety Regulator must also make a recommendation as to whether the application of Part 4 should be modified for the description of building which it has recommended should come into scope of the regulatory regime (using the power in section 68). This is because there might be cases where it is not appropriate to apply every provision of the regime in occupation to a certain description of building, and so when making its recommendation about bringing a description of building into scope of the regulatory regime, the Building Safety Regulator must also consider which provisions it thinks are appropriate to apply to that description of building.

600. When making a recommendation to add a description of building to the definition of “higher-risk building”, the Building Safety Regulator must provide the Secretary of State with a statement of the issues considered.

601. If the Secretary of State chooses not to follow a recommendation of the Building Safety Regulator, then they must publish a document which sets out the Regulator’s recommendation, the Secretary of State’s decision not to follow the recommendation, and the reasons for that decision.

602. The Building Safety Regulator may also recommend the removal of a description of higher-risk building from the regulatory regime.

603. Schedule 5 will support this function of the Building Safety Regulator as it requires the Building Safety Regulator to keep the safety of people in and about buildings in relation to risks arising from buildings under review.

604. The Building Safety Regulator would use the powers in this section if, following the commencement of the regulatory regime, the Building Safety Regulator independently considers, either through evidence or experience of operating the regime, it needs to make recommendations to the Secretary of State to amend the definition of “higher-risk building”, because the tests in subsection (1) are met.

Background

605. This is a new provision. *Example* The following is a hypothetical example. Two years after the regime comes into force, with experience of operating the regime, the Building Safety Regulator may decide that consideration is needed as to whether single-storey premises in areas of high flood risk should be higher-risk buildings because of a concern about structural failure following recent flooding incidents. In order to make a recommendation to the Secretary of State, the Building Safety Regulator must consider that the building safety risks in relation to this type of building are higher than in buildings in general and that if the risk materialised it has the potential to cause a major incident. If that is the case, and if the Regulator thinks it appropriate, the Regulator must recommend to the Secretary of State that single-storey premises in areas of high flood risk, should be considered higher-risk buildings. In this example the Building Safety Regulator must also consider whether Part 4 should apply in its entirety to single-storey premises in areas of high flood risk, or whether it should be modified or disapplied in part. The Secretary of State would then consider this recommendation. In this example, if the Secretary of State agreed with the recommendation, they would then have to consult other appropriate persons and undertake and publish a cost benefit analysis. Following that, if the Secretary of State chooses to make regulations under Section 65 to bring single-storey premises in areas of high flood risk into scope of the in-occupation elements of the regulatory regime, the regulations would be subject to the affirmative resolution procedure in both Houses of Parliament. Subject to Parliament's approval, this type of building would then be regulated by the Building Safety Regulator subject to a suitable transition period. If the Secretary of State disagreed with the Building Safety Regulator and chose not to prescribe single-storey premises in areas of high flood risk as higher-risk buildings, the Secretary of State would be required to publish a document setting out the original recommendation, and stating both their decision not to follow the recommendation and reasons why.

COMMENTARY

20. Section 69 enables the Regulator to make recommendations to the Secretary of State about the definition of “higher-risk building” and the descriptions of building to which Part 4 should apply.
21. There has been no reported case law on section 69 as at September 2026.

SECTION 70 – ADVICE ABOUT DEFINITION OF “HIGHER-RISK BUILDING” ETC

STATUTORY TEXT

- (1) Subsections (2) to (6) apply if the Secretary of State asks the regulator for advice as to whether a specified description of building should be a higher-risk building for the purposes of this Part.
- (2) The regulator must consider whether the following conditions are met—
 - (a) the first condition is that a building safety risk is greater for that description of buildings than it is for buildings that are not of that description;
 - (b) the second condition is that, if the risk materialised as regards a building of that description, it would have the potential to cause a major incident;
 - (c) the third condition is that buildings of that description should be higher-risk buildings for the purposes of this Part.
- (3) The regulator must—
 - (a) if the conditions mentioned in subsection (2) are met, recommend to the Secretary of State that buildings of that description should be higher-risk buildings for the purposes of this Part;
 - (b) otherwise, recommend to the Secretary of State that buildings of that description should not be higher-risk buildings for those purposes.
- (4) Where the regulator—
 - (a) makes a recommendation under subsection (3)(a), and
 - (b) considers that regulations under section 68 should be made modifying this Part as it applies in relation to buildings of the specified description,it must make a recommendation to the Secretary of State to that effect.
- (5) The regulator must give the Secretary of State a statement of its assessment of the issues it considered when deciding to make the recommendation under subsection (3) and any recommendation under subsection (4).
- (6) If, following a recommendation under subsection (3)(a), the Secretary of State decides not to make regulations under section 65 giving effect to the recommendation, the Secretary of State must publish a document setting out—
 - (a) the regulator’s recommendation,
 - (b) the Secretary of State’s decision not to make the regulations, and
 - (c) the reasons for that decision.
- (7) If requested, the regulator must provide advice to the Secretary of State as to whether higher-risk buildings of a specified description should cease to be higher-risk buildings for the purposes of this Part.

- (8) In this section “specified” means specified by the Secretary of State in the request.

EXPLANATORY NOTES

Section 70: Advice about definition of “higher-risk building” etc

Effect

606. The new in occupation regulatory regime will regulate building safety risks in higher-risk buildings in England. The Secretary of State can ask the Building Safety Regulator to advise them as to whether a type of building should become a higher-risk building, or a type of building should be removed from that definition. The Building Safety Regulator is obliged to provide such advice on request.

607. This section sets out that if the Secretary of State asks the Building Safety Regulator to provide advice as to whether a new description of building should be added to the definition of “higher-risk building”, the Regulator must consider whether the conditions at subsection (2) (a) - (c) of the section are met. The conditions are: the Building Safety Regulator must be of the view that building safety risks in the type of building in question are higher than in buildings in general, that if the building safety risks arose in the type of building in question it could cause a major incident (serious injury or death to a significant number of people) and that the Regulator considers it appropriate for the regulatory regime to apply.

608. If the Building Safety Regulator considers the conditions are met, it must consider which parts of the occupation regulatory regime should apply. The Regulator must then recommend to the Secretary of State that the new description of building is added to the definition of “higher-risk building”, specify whether Part 4 should be modified and provide a statement of the issues it considered alongside the recommendation.

609. If the Building Safety Regulator considers the conditions are not met, it must provide advice that the new description of building should not be added to the definition of “higher-risk building”, and provide a statement of the issues it considered.

610. This section also sets out that the Building Safety Regulator must provide advice as to whether a description of building should be removed from the definition of “higher-risk building”, if the Secretary of State requests it.

611. Section 65 provides for the Secretary of State to amend the definition of higher-risk buildings in regulations. The power is flexible because section 68 gives the Secretary of State a power, by regulations, to apply only parts of the in occupation regulatory regime to descriptions of higher-risk buildings.

612. Schedule 5 will support this function of the Building Safety Regulator as it requires the Building Safety Regulator to keep the safety of people in and about buildings in relation to risks arising from buildings under review.

Background

613. This is a new provision.

614. *The Independent Review identified that it is important to ensure that the Government can respond quickly in the future, where necessary, to broaden the definition of higher-risk buildings in light of either critical new information emerging or experience of operating the new regime.*

615. *The Building Safety Regulator will oversee the building safety regulatory system and will analyse data from the operating regime to be able to fulfil this duty. Example The following is a hypothetical example. After the new occupation regime has been operating for two years, the Secretary of State may decide that consideration is needed as to whether single-storey premises in areas of high flood risk should be higher-risk buildings because of a concern about structural failure following recent flooding incidents. To understand more about the issue the Secretary of State could formally request advice from the Building Safety Regulator on inclusion of this type of building in the definition of higher-risk buildings. The Building Safety Regulator would be required to provide the Secretary of State with advice. If the Regulator considered the three conditions set out in this section, subsections (2) (a) - (c) were met, it would also be required to explain whether any modifications should be made to the regulatory regime, as set in in Part 4 of this Act, in relation to its application to the proposed new type of building. Following this, the Regulator must recommend to the Secretary of State that single-storey premises in areas of high flood risk should be higher-risk buildings, whether any modifications to the regulatory regime should be made and provide the Secretary of State a statement of the issues it considered in coming to that recommendation. Where the Secretary of State is proposing to make regulations to give effect to the advice of the Building Safety Regulator then the Secretary of State would not be required to re-consult the Building Safety Regulator, but would have to consult such other persons as the Secretary of State considers appropriate. The Secretary of State must also undertake and publish a cost benefit analysis. If the Secretary of State chooses to make the amendment, the regulations will be laid in Parliament using the affirmative procedure. If the Secretary of State chooses not to make the amendment, then they must publish a document setting out the Regulator's recommendation, their decision not to implement it and the reasons for their decision.*

COMMENTARY

22. Section 70 requires the Regulator to give advice to the Secretary of State about the practical impact of proposed changes to the definition of “higher-risk building”.
23. There has been no reported case law on section 70 as at September 2026.

SECTION 71 – MEANING OF “OCCUPIED” HIGHER-RISK BUILDING ETC

STATUTORY TEXT

- (1) The following provisions apply for the purposes of this Part.
- (2) A higher-risk building is “occupied” if there are residents of more than one residential unit in the building.
- (3) A reference to a resident of a higher-risk building is to a resident of a residential unit in such a building.
- (4) The Secretary of State may by regulations—
 - (a) amend the definition of a higher-risk building being “occupied”;
 - (b) amend the definition of a “resident” of a higher-risk building;
 - (c) define, for the purposes of this Part, the meaning of being a “resident” of a residential unit.
- (5) See—
 - (a) section 65 for the meaning of “higher-risk building”;
 - (b) section 115 for the meaning of “residential unit”.

EXPLANATORY NOTES

Section 71: Meaning of “occupied” higher risk building etc

Effect

616. The majority of this part of the regulatory regime will apply only to buildings which meet the definition of “higher-risk buildings” (section 65) which are “occupied”. This section defines the meaning of “occupied” and requires that the building is in multi-occupation by residents of two or more residential units.

617. This section also creates a power for the Secretary of State to amend the definition of “occupied” and the definition of a “resident” of a higher-risk building. There is also a power to define the meaning of being a “resident” of a residential unit. These powers ensure that the regime could be adapted in the future.

Background

618. This is a new provision.

619. The Independent Review identified that there should be a clear dutyholder during occupation who will have statutory obligations to maintain the fire and structural safety of the building. These will take effect on occupation of a building in scope.

COMMENTARY

24. Section 71 defines when a higher-risk building is “occupied” for the purposes of Part 4. A building is occupied when a completion certificate has been given under building regulations or, in the case of an existing building, when it has at least two residential units that are occupied. This is the trigger for the application of the ongoing building safety management regime.
25. There has been no reported case law on section 71 as at September 2026.

SECTION 72 – MEANING OF “ACCOUNTABLE PERSON”

STATUTORY TEXT

- (1) In this Part an “accountable person” for a higher-risk building is—
 - (a) a person who holds a legal estate in possession in any part of the common parts (subject to subsection (2)), or
 - (b) 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.
- (2) A person (“the estate owner”) who holds a legal estate in possession in the common parts of a higher-risk building or any part of them (“the relevant common parts”) is not an accountable person for the building by virtue of subsection (1)(a) if—
 - (a) each long lease of which the estate owner is lessor provides that a particular person, who does not hold a legal estate in any part of the building, is under a relevant repairing obligation in relation to all of the relevant common parts, or
 - (b) all repairing obligations relating to the relevant common parts which would otherwise be obligations of the estate owner are functions of an RTM company.
- (3) Subsection (4) applies where—
 - (a) under a lease, a person (“the estate owner”) holds a legal estate in possession in the common parts of a higher-risk building or any part of them (“the relevant common parts”), and
 - (b) a landlord under the lease is under a relevant repairing obligation in relation to any of the relevant common parts.
- (4) For the purposes of this section and section 73—
 - (a) the legal estate in possession in so much of the relevant common parts as are within subsection (3)(b) is treated as held by the landlord (instead of the estate owner), and
 - (b) if (and so far as) the landlord’s actual legal estate in those common parts is held under a lease, the legal estate in possession mentioned in paragraph (a) is treated as held under that lease (and, accordingly, subsection (3) and this subsection may apply in relation to it).
- (5) Where a higher-risk building is on commonhold land, the commonhold association is the accountable person for the building for the purposes of this Part.
- (6) For the purposes of this section—

“common parts”, in relation to a building, means—

 - (a) the structure and exterior of the building, except so far as included in a demise of a single dwelling or of premises to be occupied for the purposes of a business, or

- (b) any part of the building provided for the use, benefit and enjoyment of the residents of more than one residential unit (whether alone or with other persons);

“commonhold association” and “commonhold land” have the same meaning as in Part 1 of the Commonhold and Leasehold Reform Act 2002 (see sections 34 and 1 respectively);

“long lease”: for the meaning of “long lease” see section 115;

“possession”: a reference to “possession” does not include the receipt of rents and profits or the right to receive the same;

“relevant repairing obligation”: a person is under a relevant repairing obligation in relation to anything if the person is required, under a lease or by virtue of an enactment, to repair or maintain that thing;

“RTM company” has the same meaning as in Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 (right to manage).

- (7) The Secretary of State may by regulations amend this section (other than this subsection).

EXPLANATORY NOTES

Section 72: Meaning of “Accountable Person” etc

Effect

620. This section sets out the definition of an Accountable Person. For the purposes of this part of the Act the Accountable Person is the entity responsible for meeting the statutory obligations under Part 4 for occupied higher-risk buildings.

621. Subsection (1) states that the Accountable Person is the person who is under a relevant repairing obligation for any part of the common parts of the building under a lease or by virtue of an enactment. This will normally be the landlord or a superior landlord. But where there is no person with a relevant repairing obligation the Accountable Person is the person who has the legal estate in possession of any part of the common parts of the building

622. It therefore makes provision for management bodies to be defined as Accountable Persons. In circumstances where the lease sets out repair and maintenance obligations on that management body, this includes Right to Manage Companies.

623. Subsection (2) sets out circumstances when a person who would have been an Accountable Person under subsection (1)(a) would no longer be considered an Accountable Person for the building. This may occur when another person is under a relevant repairing obligation for all the relevant common parts or if their repairing obligations in relation to all the common parts are subsequently obligations of a Right to Manage Company.

624. Subsections (3) and (4) identifies the person with the relevant repairing obligation for the common parts of the higher-risk building as an Accountable Person where the ownership arrangements consist of a complex chain of leases. This may occur when for example, a person who holds a legal estate in possession in any of the common parts has a superior landlord or landlord who has agreed, in a superior lease, to keep the common parts of the building in repair. lease, to keep the common parts of the building in repair. lease, to keep the common parts of the building in repair. lease, to keep the common parts of the building in repair.

625. Where this is be the case, the superior landlord or landlord will be an Accountable Person for those parts of the building, instead of the person who holds a legal estate in possession of those common parts.

626. Subsection (5) provides that where the title to a higher-risk building is held in commonhold, the commonhold association will always be the Accountable Person for the building.

627. Subsection (6) defines the key terms used within this section.

628. Notably, common parts include the structure and exterior of the building and any part of the building which is provided for the use of the residents in the building, except for those demised to individual dwellings.

629. It also clarifies in accordance with Section 114 references to a lease as being: • a lease granted for a term certain exceeding 21 years, whether it is (or may become) terminable before the end of that term by notice given by the tenant or by re-entry or forfeiture; or • a lease for a term fixed by law under a grant with a covenant or obligation for perpetual renewal, other than a lease by sub-demise from one which is not a long lease.

630. Subsection (7) gives powers to the Secretary of State to amend the definition of an Accountable Person by way of regulations.

Background

631. This is a new provision.

632. The Independent Review identified that there should be a clear dutyholder during occupation who can be held to account and will have statutory obligations to maintain the fire and structural safety of the building. Building ownership in the UK is complex and the definition has been devised to ensure that the right person is defined as the Accountable Person according to their obligations that have been demised under concepts in property law.

Example

From commencement of this part of the Act, the Accountable Person(s) will be defined as such and therefore responsible for the statutory obligations under the building safety regime. This will in the main be the freeholder of the property, but in the case where the interest of the building has been demised to other lessees, and they retain the obligation to repair and maintain a common part as defined in this section, the definition will also make those persons Accountable Persons. This will include individuals, investment companies,

local authorities and housing associations. In the future the Government may take the decision to widen the scope of the regime and the Secretary of State will, by regulations change the definition to identify the appropriate Accountable Person for those new buildings brought into the scope of the Building Safety Regime.

COMMENTARY

26. Section 72 defines “accountable person”. An accountable person is a person who holds a legal estate in possession in any part of the common parts of the building, or who does not hold such an estate but is under a relevant repairing obligation in relation to any part of the common parts. In practice, the accountable person is typically the freeholder, a head lessee, or a management company with a repairing obligation.
27. The identification of the accountable person is of fundamental importance under Part 4 because accountable persons bear the primary statutory duties to assess risks, manage safety, and engage with residents. There may be more than one accountable person for a single building where different persons hold interests in different parts of the common parts.
28. Section 72 has now been authoritatively considered. In **Solomon Unsдорfer v Octagon Overseas Ltd** [2024] UKUT 59 (LC) the Upper Tribunal (Martin Rodger KC, Deputy Chamber President) held that a manager appointed under s.24 of the Landlord and Tenant Act 1987 is not an accountable person, not least because he holds no legal estate in the common parts, and obligations imposed by a management order are not repairing obligations “under a lease or by virtue of an enactment” within s.72(6) (the FTT’s conclusion recorded at [66], upheld at [85]). The decision exposes what the Deputy Chamber President called an “uncomfortable and impractical overlap” [111]: a manager appointed before 6 April 2023 remains bound by the order to perform building safety functions which are simultaneously the statutory duties of the accountable persons, and the Act contains no transitional provisions to resolve the duplication. The costs sequel, **Canary Riverside Estate Management Ltd v Abrahart** [2025] UKUT 320 (LC), records that eighteen months on the overlap was “proving to be anything but temporary” [27], and that the accountable persons’ attempt to short-circuit it through a hopeless case management appeal attracted adverse costs orders [31]-[35], [45]. Practitioners advising either a s.24 manager or an accountable person for a building subject to a pre-

Act management order should seek FTT directions rather than self-help: see further the commentary on s.110.

CASE DIGEST

Case Name: **Solomon Unsdorfer v Octagon Overseas Ltd**

Case Reference: [2024] UKUT 59 (LC)

Judge: Martin Rodger KC, Deputy Chamber President

Date: 15 March 2024 (hearing 29 February 2024)

Key Issues: Whether a manager appointed under s.24 of the Landlord and Tenant Act 1987 is an accountable person under s.72; the overlap between pre-Act management orders and Part 4 duties

Held:

1. A tribunal-appointed manager under s.24 of the Landlord and Tenant Act 1987 is not an accountable person within s.72: that conclusion reflects the clear intention of Parliament and the proper construction of the section [85].
2. The manager holds no legal estate in the common parts, and his obligations under a management order are not repairing obligations “under a lease or by virtue of an enactment” within s.72(6): the FTT’s conclusion to that effect is recorded at [66] and upheld at [85].
3. Part 4 was designed to fix responsibility on a single class of duty holders (the accountable persons); s.110 (inserting s.24(2E) into the 1987 Act) and paragraph 8 of Schedule 7 keep building safety functions discrete from tribunal-appointed management [81], [107].
4. Section 24(2E) operates prospectively: it prevents new management orders from conferring accountable person functions, but nothing in the Act stripped a manager appointed before 6 April 2023 of building safety functions conferred by an existing order “at a stroke” [107]-[108].
5. There is therefore a temporary but uncomfortable overlap: the manager remains obliged to perform the functions in the pre-Act order, including building safety responsibilities

which are simultaneously the statutory duties of the accountable persons, until the order expires or the FTT varies it [111], [116].

6. The practical consequences are real: the manager's Building Safety Fund application failed because he is not an accountable person [115].
7. Appeal dismissed [119].

Link: <https://caselaw.nationalarchives.gov.uk/ukut/lc/2024/59>

Case Name: Canary Riverside Estate Management Ltd v Abrahart

Case Reference: [2025] UKUT 320 (LC)

Judge: Martin Rodger KC, Deputy Chamber President

Date: 30 September 2025 (decision on written representations)

Key Issues: Costs of the landlords' failed appeal against FTT case management; the s.72/s.24 overlap persisting in practice

Held:

1. The landlords (the accountable persons at Canary Riverside) had appealed a pure case management decision of the FTT in an attempt to have the accountable person/manager overlap resolved urgently; the appeal was dismissed in April 2025 ([2025] UKUT 246 (LC)) [1]-[2].
2. The landlords' own explanation was that what the Tribunal here called the "temporary and uncomfortable overlap" arising from *Solomon Unsdorfer v Octagon Overseas Ltd* [2024] UKUT 59 (LC) "is proving to be anything but temporary": it remained unclear who was responsible for what, while the Secretary of State, the local authority and the leaseholders criticised the landlords for slow progress on fire safety [27].
3. The appeal never had a realistic prospect of success: it challenged a case management decision on a basis never put to the FTT, and was in substance an impermissible collateral challenge to the **Unsdorfer** decision itself after the leaseholders had discontinued their appeal to the Court of Appeal [31]-[33].
4. Bringing and pursuing the appeal was unreasonable conduct within rule 10(3)(b) of the 2010 Rules, notwithstanding the grant of permission by the FTT [34]-[35].
5. Costs orders were made in favour of all three respondents: £17,760 to the leaseholders, £5,000 to Circus Apartments Ltd and £30,000 to the tribunal-appointed manager [45].

Link: <https://caselaw.nationalarchives.gov.uk/ukut/lc/2025/320>

SECTION 73 – MEANING OF “PRINCIPAL ACCOUNTABLE PERSON”

STATUTORY TEXT

- (1) In this Part the “principal accountable person” for a higher-risk building is—
 - (a) in relation to a building with one accountable person, that person;
 - (b) in relation to a building with more than one accountable person, the accountable person who—
 - (i) holds a legal estate in possession in the relevant parts of the structure and exterior of the building, or
 - (ii) is within section 72(1)(b) because of a relevant repairing obligation (within the meaning of that section) in relation to the relevant parts of the structure and exterior of the building.
- (2) For the purposes of this section—
 - (a) the reference to “the relevant parts of the structure and exterior” of a building is to its structure and exterior except so far as included in a demise of a single dwelling or of premises to be occupied for the purposes of a business;
 - (b) the reference to “possession” does not include the receipt of rents and profits or the right to receive the same.
- (3) Subsection (1)(b) is subject to section 75(2) (powers of tribunal where more than one accountable person is within subsection (1)(b)).

EXPLANATORY NOTES

Section 73: Meaning of “principal accountable person”

Effect

633. This section sets out the definition of a Principal Accountable Person. For the purposes of this part of Act they will be responsible for meeting specific statutory obligations for the whole of the occupied higher-risk building where there are either more than one Accountable Person or where they are the sole Accountable Person.

634. Subsection (1) sets out that the persons who may therefore be the Principal Accountable Person for a higher-risk building are either: the only Accountable Person in the building; or when there is more than one Accountable Person, they are the entity that is either the owner of or has the repairing obligations for the structure and exterior of the building.

635. Subsection (2) sets out that the relevant parts of the structure and exterior of a building refers to its structure and exterior except so far as parts included in a demise of a single dwelling or of premises to be occupied for the purposes of a business.

636. Subsection (3) sets out that the First tier Tribunal has the power to define who is the Principal Accountable Person for the building where there is more than one owner who meets the definition for being a Principal Accountable Person under subsection (1)(b). The First tier Tribunal will be able to determine any such definition under the powers set out in section 72(2).

637. This section is linked to section 109 as each Accountable Person must cooperate and coordinate with every other Accountable Person in the building.

638. Under Section 93, the Secretary of State will put into regulations a requirement for each Accountable Person for the building who is aware of a lack of cooperation from another Accountable Person, to have their own duty to report such lack of cooperation to the Building Safety Regulator.

Background

639. This is a new provision.

640. The Independent Review identified that there should be a clearly defined dutyholder during occupation who can be held to account and will have statutory obligations for ensuring that fire and structural safety is being effectively managed for the whole building. Building ownership in the UK is complex and the definition of a Principal Accountable Person will ensure that there is a lead Accountable Person, the Principal Accountable Person, specifically responsible for various obligations under the regime. This will include applying for registration, and preparing the safety case report, avoiding the possibility of any relevant parties being able to absolve themselves of obligations and duties under this part.

Example

In a building with a single Accountable Person, that Accountable Person will be responsible for all the Accountable Person duties in Part 4. Where there are two or more Accountable Persons, provisions are in place to determine that one of them will be assigned as the Principal Accountable Person with overall responsibility for meeting specific statutory obligations for the whole building. The Principal Accountable Person will have the same statutory obligations for assessing and managing building safety risks in their own area of the building as other Accountable Persons in the building. In a building where there is a freeholder which retains repairing obligations for the exterior and structure of the property, and there is a superior leaseholder which retains repairing obligations for all the other “inner” common parts, both entities will be Accountable Persons and the freeholder will be the Principal Accountable Person. In a building where there is a freeholder which does not retain repairing obligations, a superior leaseholder with repairing obligations for the exterior and structure of the property and a management company where every lease in the property states that the management company is responsible for the remainder of the common parts, the superior leaseholder and the management company will be Accountable Persons. The superior leaseholder will be the Principal Accountable Person.

COMMENTARY

29. Section 73 defines the “principal accountable person” as the accountable person who holds a legal estate in possession in the relevant part of the structure and exterior of the building. Where there is more than one accountable person, the principal accountable person is the one with primary responsibility for the building’s structural safety. The principal accountable person has additional duties, including the duty to register the building (s.78) and to apply for a building assessment certificate (s.79).
30. There has been no reported case law on section 73 as at September 2026.

SECTION 74 – PART OF BUILDING FOR WHICH AN ACCOUNTABLE PERSON IS RESPONSIBLE

STATUTORY TEXT

In this Part, any reference to the part of a higher-risk building for which an accountable person is responsible is to such part of the building (including all of it) as is determined by or in accordance with regulations.

EXPLANATORY NOTES

Section 74: Part of building for which an accountable person is responsible

Effect

641. This section sets out that the parts of a higher-risk building for which an Accountable Person is responsible for will be determined in accordance with regulations.

642. These regulations will provide clarity to Accountable persons about the areas that fall under their remit for the purposes of fulfilling their duties under the Act.

Background

643. This is a new provision.

COMMENTARY

31. Section 74 identifies the part of the building for which each accountable person is responsible. Each accountable person is responsible for the part of the common parts in which they hold a legal estate or in respect of which they have a repairing obligation.
32. There has been no reported case law on section 74 as at September 2026.

SECTION 75 – DETERMINATIONS BY THE TRIBUNAL

STATUTORY TEXT

- (1) An interested person may apply to the tribunal for a determination, as regards a higher-risk building, of any of the following—
 - (a) the person or persons who are accountable persons for the building;
 - (b) the person who is the principal accountable person for the building;
 - (c) the part of the building for which any accountable person for the building is responsible.
- (2) Where, on an application under subsection (1)(b), it appears to the tribunal that there is more than one accountable person within section 73(1)(b), the principal accountable person is such one of those accountable persons as the tribunal considers appropriate.
- (3) In this section “interested person” means—
 - (a) the regulator,
 - (b) a person who holds a legal estate in any part of the common parts (or who claims to hold such an estate), or
 - (c) a person who is under a relevant repairing obligation in relation to any part of the common parts (or who claims to be under such an obligation).
- (4) In subsection (3) “relevant repairing obligation” and “common parts” have the same meaning as in section 72.

EXPLANATORY NOTES

Section 75: Determinations by the Tribunal

Effect

644. This section sets out that an “interested party” may apply to the tribunal for a determination as to who is the Accountable Person(s) for the building, who the Principal Accountable Person is, or to determine the parts of the higher-risk building for which any Accountable Person is responsible for.

645. Subsection (2) sets out that where upon application to the tribunal for a determination as to who the Principal Accountable Person, and where it appears that there is more than one Accountable Person that satisfies the definition in Section 73, the tribunal can make the decision as to who the Principal Accountable is as it considers appropriate. This could be in circumstances where they hold a legal estate in possession of the structure and exterior or have a relevant repairing obligation in relation to the relevant parts of the structure and exterior of the building), the tribunal will decide as it considers appropriate, who the Principal Accountable Person for the building is.

646. Subsection (3) defines an interested person that may apply to the tribunal for such a determination as being either the regulator, a person who holds a legal estate in any part of the common parts of the building or, a person who is under a relevant repairing obligation in relation to any part of the common parts (or who claims to be under such an obligation).

647. Subsection (4) aligns the definition of relevant repairing obligation and common parts with the definition as set out in section 72.

Background

648. This is a new provision.

649. The Independent Review identified that there should be a clearly defined dutyholder during occupation who can be held to account and will have statutory obligations to maintain the fire and structural safety of the building. This section provides certainty through the tribunal of where it is unclear who is the Accountable Person(s) for the building are, who the Principal Accountable Person is, or the parts of the higher-risk building for which any Accountable Person is responsible for.

Example

If no one is clearly identified as the Principal Accountable Person or refuses to acknowledge that they are the Principal Accountable Person, the Regulator can apply to the tribunal for a determination as to who meets the statutory test for being Principal Accountable Person in the building. The tribunal's determination would bind that person to act as the Principal Accountable Person and be liable for the obligations on a Principal Accountable Person. There may also be complex questions from a person who holds a legal estate in some part of the common part of the building such who the Accountable Person is for that part - this section can be invoked in these circumstances to allow the tribunal to decide and resolve complex issues

COMMENTARY

33. Section 75 enables the First-tier Tribunal to make determinations about who is the accountable person or principal accountable person for a higher-risk building. This provides a formal mechanism for resolving disputes about responsibility, which may be complex where ownership is fragmented or where repairing obligations are unclear.
34. There has been no reported case law on section 75 as at September 2026.

SECTION 76 – REQUIREMENT FOR COMPLETION CERTIFICATE BEFORE OCCUPATION

STATUTORY TEXT

- (1) This section applies if any of the following works are carried out—
 - (a) the construction of a higher-risk building;
 - (b) the creation of additional residential units in such a building;
 - (c) works to a building that cause it to become a higher-risk building.
- (2) If a relevant residential unit is occupied before a completion certificate relating to a relevant part of the building is issued, the relevant accountable person commits an offence.
- (3) It is a defence for a person charged with an offence under this section to prove that the person had a reasonable excuse for the residential unit being occupied before such a completion certificate was issued.
- (4) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding the maximum summary term for either-way offences or a fine (or both);
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both).
- (5) In this section—

“completion certificate” means a certificate of a prescribed description that is issued under regulations made under section 1(1) of the Building Act 1984 (building regulations);

“occupied”: a residential unit is occupied if there is a resident of it;

“relevant accountable person”, in relation to a residential unit, means the accountable person who is responsible for a relevant part of the building;

“relevant part” of a building, in relation to a residential unit, means a part of the building containing the residential unit;

“relevant residential unit” means—

 - (a) in the case of works within subsection (1)(a), any residential unit in the building;
 - (b) in the case of works within subsection (1)(b), any additional residential unit;
 - (c) in the case of works within subsection (1)(c), any residential unit in the building except one that existed before the works began.

EXPLANATORY NOTES

Section 76: Requirement for completion certificate before occupation

Effect

650. This Section creates an offence for an Accountable Person, as defined in section 72. This offence is allowing occupation of a single residential unit or more in part of a higher-risk building, as defined in section 65, for which they are the responsible Accountable Person, without a relevant completion certificate. This certificate will be evidence that the relevant building work complies with all applicable building regulations' requirements. This will apply to new builds; extensions to higher-risk buildings; and to building work that creates a higher-risk building.

651. Subsection (5) of this section gives the Secretary of State the power by regulations to set out the description of the completion certificates to which the offence in this section will apply.

Background

652. The Independent Review of Building Regulations and Fire Safety made several recommendations for stringent new building control procedures to increase regulatory oversight of the design and construction of higher-risk buildings and of building work subsequently carried out on them. Dame Judith Hackitt's recommendation was that duty holders meet applicable building regulations' requirements before starting building work and before occupation begins.

653. Under the new regime, Gateway two will take place at the current deposit of plans stage before building work starts. Gateway three will take place at the current completion certificate stage when building work is complete. At Gateway three, the duty holder will make a completion certificate application reflecting the "as-built" building. The Building Safety Regulator will assess the application, carry out a final inspection of the building work and, if satisfied, issue a completion certificate as evidence that the building work complies with all applicable building regulations' requirements.

654. A completion certificate must be issued before the Principal Accountable Person can subsequently register the building for occupation as required under section 76 of the Act. It will be an offence to occupy a building that has not been registered. The Act therefore creates a "hard stop" to occupation via section 76. The registration of higher-risk buildings however will be a one-off process. As buildings are often occupied in stages, this means that registration would not be a "hard stop" for subsequent phases of occupation.

655. This section ensures that the "hard stop" to occupation intended at Gateway three applies to high-rise residential buildings which are 18 metres or more in height, or at least seven storeys, including when buildings are occupied in phases. Example A new higher-risk building is to be occupied in phases where occupation commences in the completed part of the building while building work continues in the other parts of the building. The Building Safety Regulator has issued a completion certificate for the completed part of the building under the Gateway 3 completion certificate application process. The Principal

Accountable Person has then been able to register the building for occupation as it has the necessary completion certificate. The building has multiple Accountable Persons and one of them begins to occupy another part of the building for which there is not a requisite completion certificate as evidence that the relevant building work complies with all applicable building regulations' requirements. The Accountable Person who has permitted occupation of this specific part of the building without the necessary completion certificate can be prosecuted.

COMMENTARY

35. Section 76 prohibits the occupation of a new higher-risk building unless a completion certificate has been given under the building control regime. This ensures that the building has been assessed as complying with building regulations before residents move in.
36. The occupation prohibition now has enforcement teeth beyond prosecution: in **HSE v Integritas Property Group Ltd** [2025] EWHC 2613 (TCC) the regulator obtained an interim injunction restraining occupation of a higher-risk building marketed for occupation without completion certification (digested under s.38).
37. There has been no reported case law on section 76 as at September 2026.

SECTION 77 – OCCUPATION: REGISTRATION REQUIREMENT

STATUTORY TEXT

- (1) The principal accountable person for a higher-risk building commits an offence if the building is occupied but not registered.
- (2) It is a defence for a person charged with an offence under this section to prove that the person had a reasonable excuse for the building being occupied but not registered.
- (3) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding the maximum summary term for either-way offences or a fine (or both);
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);and (in either case) is liable on summary conviction to a further fine not exceeding level 1 on the standard scale for each day on which the default continues after the initial conviction.
- (4) In this section “registered” means registered under section 78.

EXPLANATORY NOTES

Section 77: Occupation: registration requirement

Effect

656. The Principal Accountable Person, as defined in section 73, must ensure that the higher-risk building is registered before it becomes occupied and commits an offence if they fail to do so. Subsection (2) sets out that is a defence for a Principal Accountable Person charged with an offence under this section to prove that they had a reasonable excuse for failing to register the building.

657. Subsection (3) sets out the maximum penalty for the criminal offence of breaching the registration requirement. The offence will be triable either way; the broad range of sentencing outcomes gives the courts options to address the different degrees of culpability possible with a strict liability offence. If tried by magistrates, the offence will carry a maximum penalty of an unlimited fine and/or 12 months’ imprisonment (six months until the commencement of paragraph 24(2) of Schedule 22 of the Sentencing Act 2020). If tried in the Crown court, the maximum penalty will be an unlimited fine and/or two years’ imprisonment. Any fine placed on the Principal Accountable Person for a breach of this requirement would not be recoverable from residents (i.e. through service charges), as set out in the implied terms.

Background

658. This is a new provision.

659. It enables the Building Safety Regulator to take a systematic approach to the oversight of buildings in scope of the new regime. The obligations on Accountable Persons in Part 4 of the regime apply where higher-risk residential buildings become occupied. The meaning of “occupied” for these purposes is set out in section 71. Registration will provide information about the building to the Building Safety Regulator who will then be able to use this for the effective regulation of higher-risk buildings.

Example

For new buildings, the Principal Accountable Person will be required to register their building before it becomes occupied. If the Principal Accountable Person fails to do so, they will commit an offence, as detailed above, unless they have a reasonable excuse. For existing occupied buildings, the Principal Accountable Person will be required to register their building within a transitional period following the new regulatory regime coming into force. If the Principal Accountable Person fails to register the building within that period, they will commit an offence, as detailed above, unless they have a reasonable excuse. Information required in the registration process will be set out in regulations and will likely include core details of the building, details of the Accountable Persons, Principal Accountable Person, and an address in England or Wales at which notices can be served on the Principal Accountable Person/Accountable Persons. Regulations will also set out a requirement for the Principal Accountable Person to inform the regulator in the event of any updates or changes to information provided in the initial registration application, which the regulator will use to keep the register up to date. The process is likely to be digitalised. Information obtained from registration will allow the regulator to produce the national register of higher-risk buildings, and will also ensure the Accountable Persons are identified to the regulator. This information will also be used to support the regulator in prioritising its notifications to the Principal Accountable Person requiring an application for a Building Assessment Certificate, as set out in section 79.

COMMENTARY

36. Section 77 provides that a higher-risk building must not be occupied unless it is registered under section 78. Contravention is an offence. This is one of the gateway requirements for the Part 4 regime: registration triggers the application of the ongoing safety management duties.
37. There has been no reported case law on section 77 as at September 2026.

SECTION 78 – REGISTRATION OF HIGHER-RISK BUILDINGS

STATUTORY TEXT

- (1) On an application by the principal accountable person for a higher-risk building the regulator may register the building.
- (2) The regulator must publish the register in such way as it considers appropriate.
- (3) The regulator may remove a building from the register if it appears to the regulator that—
 - (a) the building is not occupied, or
 - (b) the building is not a higher-risk building.
- (4) The Secretary of State may by regulations make provision about the register, including in particular provision about—
 - (a) the information to be contained in the register;
 - (b) the updating or other revision of information in the register;
 - (c) the procedure for removing buildings from the register.
- (5) The Secretary of State may by regulations make provision in relation to applications under this section, including in particular provision about—
 - (a) the form and content of an application;
 - (b) the information and documents that must accompany an application;
 - (c) the way in which an application, and anything that is to accompany it, is to be given;
 - (d) the circumstances in which an application may be withdrawn or treated as withdrawn;
 - (e) the way in which an application may be withdrawn.

EXPLANATORY NOTES

Section 78: Registration of higher-risk buildings

Effect

660. This Section makes provisions for registration, and applications that must be made by the Principal Accountable Person.

661. The Building Safety Regulator may include a building on the register of higher-risk buildings if the required information has been provided and must also publish a copy of the register in a manner it considers appropriate. Buildings may be removed from the register where they are no longer occupied or are no longer a higher-risk building as set out in section 65.

662. Subsection (4) allows the Secretary of State, through regulations, to make provision about the register, including the information that it contains the procedure for updating or otherwise revising the register and the procedure for removing a building from the register.

663. Subsection (5) gives the Secretary of State a regulation-making power to set out the requirements of the registration application. This includes the form and content, information, and documents to be provided, the way in which the application needs to be made and the circumstances and method for withdrawal of an application.

Background

664. This is a new provision.

665. The Independent Review identified that there should be clear dutyholders during occupation who will have statutory obligations to maintain the fire and structural safety of the building. The registration system ensures that dutyholders identify themselves to the Building Safety Regulator, who is then able to use this information to operationalise compliance and enforcement activity.

666. An important recommendation from the Independent Review was that the name and UK contact information of the dutyholder(s) in occupation should be notified to the Building Safety Regulator and to residents and any other landlords of dwellings in the building. Notification of this information to the Building Safety Regulator will likely be accomplished through secondary legislation made under this section. The regulator will also be responsible for keeping the register up to date should any information provided at registration subsequently change.

Example

Before new buildings become occupied, the Principal Accountable Person will need to come forward and register their details and that of the higher-risk building with the Building Safety Regulator. For existing occupied buildings, the Principal Accountable Person will be required to register their building following a transitional period once the new regulatory regime comes into force. Once the applicant has met the requirements of registration, the Building Safety Regulator will add them to the building register. The Building Safety Regulator will publish the register. Information required in the registration process will be set out in regulations and will include core details of the building, details of the Accountable Persons, Principal Accountable Person, and an address in England or Wales at which notices can be served on the Principal Accountable Person/Accountable Persons. The process is likely to be digitalised. Information obtained from registration will allow the regulator to produce the national register of higher-risk buildings, and will also ensure the Accountable Persons are identified to the regulator. This information will also be used to support the regulator in prioritising its notifications to the Principal Accountable Person requiring an application for a Building Assessment Certificate, as set out in section 79.

COMMENTARY

38. Section 78 imposes a duty on the principal accountable person to apply to the Regulator for registration of an occupied higher-risk building. The application must include prescribed information about the building, the accountable persons, and the building's safety. The Regulator must register the building if satisfied that the prescribed requirements are met.
39. There has been no reported case law on section 78 as at September 2026.

SECTION 79 – OCCUPIED BUILDING: DUTY TO APPLY FOR BUILDING ASSESSMENT CERTIFICATE

STATUTORY TEXT

- (1) This section applies where the regulator directs the principal accountable person for an occupied higher-risk building to apply to the regulator for a building assessment certificate in relation to the building.
- (2) The principal accountable person for the building must make the application within the period of 28 days beginning with the day on which the direction is given.
- (3) A person who, without reasonable excuse, contravenes subsection (2) commits an offence.
- (4) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding the maximum summary term for either-way offences or a fine (or both);
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);and (in either case) is liable on summary conviction to a further fine not exceeding level 1 on the standard scale for each day on which the default continues after the initial conviction.
- (5) In this section “building assessment certificate” means a certificate issued under section 81.

EXPLANATORY NOTES

Section 79: Occupied building: duty to apply for building assessment certificate

Effect

667. As part of the new building safety regime, the Principal Accountable Person will be responsible for registering the higher-risk buildings that they are responsible for with the Building Safety Regulator (see section 77 for the obligation to do so). The Principal Accountable Person will also be required to apply for a Building Assessment Certificate as per this section.

668. This section allows the Building Safety Regulator to require applications for the Building Assessment Certificate. This section will enable the regulator to issue a notification to the Principal Accountable Person, directing them to apply for the Building Assessment Certificate. The Principal Accountable Person must then apply for the Building Assessment Certificate within 28 days of the notice being given.

669. Failing to apply for a certificate in the requisite timescale, when directed to do so by the Building Safety Regulator, without a reasonable excuse, will be an offence. If found

liable on summary conviction a Principal Accountable Person can face an unlimited fine or imprisonment up to 12 months, or both; and on conviction on indictment can face a fine, imprisonment for up to 2 years, or both. In relation to an offence committed before paragraph 24(2) of Schedule 22 to the Sentencing Act 2020 comes into force, the reference to 12 months is to be read as a reference to 6 months.

Background

670. This is a new provision.

671. The Independent Review identified that there should be clear dutyholders during occupation who will have statutory obligations to maintain the fire and structural safety of the building. The requirement to apply for a Building Assessment Certificate, and the building assessment that follows, provides a mechanism for the Building Safety Regulator to assess whether the dutyholders are, at that point in time, complying with the relevant Part 4 duties. The Building Assessment Certificate provides a transparent outcome to that assessment. Example Building Assessment Certificates issued by the Building Safety Regulator are intended to provide an indication to residents that the regulator assessed the Accountable Person(s) for their building to be meeting specified statutory requirements at the time of assessment. The statutory requirements include, among others, that reasonable steps are being taken under section 84 to prevent building safety risks materialising and to reduce the severity of any incident resulting from such a risk materialising. The circumstances and likely timings under which a Principal Accountable Person can expect the Regulator to issue the notice requiring them to apply for certification (the “call-in”) will be set out in the regulator’s Strategic Plan, which the regulator must follow, and which will be approved by the Secretary of State. For any building that passes through Gateway three and is registered, the call-in will likely be within a defined period following occupation. For existing occupied buildings, the regulator will be able to create tranches of buildings, for assessment according to tranche, calling in buildings in stages over an extended period. Existing buildings will likely be trached according to factors such as height and other risk factors. It is intended that all existing occupied buildings will be initially assessed over a 5-year period. The Building Safety Regulator’s approach to calling in existing buildings in tranches will necessarily be flexible to accommodate emerging risk factors and intelligence, allowing buildings to be called in earlier than originally outlined in the Strategic Plan in some cases, if necessary. Should the regulator’s overarching approach to tranching shift as a result, the regulator would revise its Strategic Plan to reflect the updated operational timescales. The Building Safety Regulator will also be responsible for calling in buildings for reassessment periodically. A maximum period by which the regulator must assess any given building for its Building Assessment Certificate will be set out in regulations made by the Secretary of State. Within this maximum period, the regulator will be able to take a risk-based approach to calling in buildings for reassessment, and this approach will be outlined in the Strategic Plan. There may be scenarios under which reassessment is automatically triggered, such as a significant refurbishment, and these circumstances will also be set out in the Strategic Plan. A Building Assessment Certificate will not be issued by the Building Safety Regulator if the Accountable Person(s) are failing to meet the specified statutory obligations, save for

where the regulator considers that the breach can be remedied promptly and is done so, further to the terms of a notice issued pursuant to subsection (4) of this section.

COMMENTARY

40. Section 79 imposes a duty on the principal accountable person for an occupied higher-risk building to apply to the Regulator for a building assessment certificate within a prescribed period after registration. The building assessment certificate is the Regulator's confirmation that it is satisfied that the accountable person is managing building safety risks in the building.
41. There has been no reported case law on section 79 as at September 2026.

SECTION 80 – APPLICATIONS FOR BUILDING ASSESSMENT CERTIFICATES

STATUTORY TEXT

- (1) An application under section 79 must be accompanied by—
 - (a) a copy of the most recent safety case report for the building unless a copy of that report has been provided under section 86(2);
 - (b) prescribed information about the mandatory occurrence reporting system operated by the principal accountable person;
 - (c) prescribed information demonstrating compliance by each accountable person for the building with their duties under section 89;
 - (d) a copy of any residents’ engagement strategy.
- (2) The Secretary of State may by regulations make further provision about applications under section 79, including in particular provision about—
 - (a) the form and content of an application;
 - (b) the way in which an application, and anything which is to accompany it, is to be given;
 - (c) the circumstances in which an application may be withdrawn or treated as withdrawn;
 - (d) the way in which an application may be withdrawn.
- (3) In this section—

“mandatory occurrence reporting system” has the same meaning as in section 87;

“residents’ engagement strategy” has the same meaning as in section 91;

“safety case report” has the same meaning as in section 85.

EXPLANATORY NOTES

Section 80: Applications for building assessment certificates

Effect

672. This section sets out the requirements with regards to the types of information and documentation that needs to be submitted by the Principal Accountable Person with their application for a Building Assessment Certificate as set out in Section 79. Subsection (1) sets out that the application must include: a copy of the most recent Safety Case Report, prescribed information about the Mandatory Occurrence Reporting System, prescribed information that demonstrates the Accountable Persons are meeting their duties with regards to provision of information, and a copy of the resident engagement strategy, as set out in section 91. The Secretary of State has the power to make regulations prescribing the

information set out in this subsection. Subsection (2) allows the Secretary of State to make further provisions regarding the application process by regulations. This includes the form and content, the way in which the application should be made, and anything that must accompany it and circumstances and method of withdrawal of applications.

Background

673. The Independent Review recommended that there needs to be a Building Safety Regulator for the whole of the building (referred to as the Joint Competent Authority in the Review) in relation to fire and structural safety in occupation which can hold dutyholders to account with robust sanctions where necessary. The Building Assessment Certificate is a mechanism that allows the Building Safety Regulator to assess whether, at the time the application is considered, the Accountable Persons are complying with the relevant duties placed on them. The issuance of the certificate by the regulator provides assurance that the Accountable Persons are meeting their requisite statutory obligations at that time. Example This section sets out some of the documents that must be provided with an application for a Building Assessment Certificate, including a Safety Case Report, where the most recent one has not already been provided to the Regulator. It is intended that the Secretary of State will also make regulations setting out other documents and information that will be required, along with practical details such as how an application will be made. The Building Safety Regulator will assess the documents provided as part of the application for the Building Assessment Certificate and decide whether Accountable Persons are complying with all relevant duties.

COMMENTARY

42. Section 80 makes provision about applications for building assessment certificates, including the information that must accompany an application and the Regulator's powers to request further information.
43. There has been no reported case law on section 80 as at September 2026.

SECTION 81 – BUILDING ASSESSMENT CERTIFICATES

STATUTORY TEXT

- (1) This section applies where—
 - (a) the principal accountable person for an occupied higher-risk building applies under section 79 for a certificate in relation to the building (a “building assessment certificate”),
 - (b) the application is made pursuant to a direction of the regulator under that section, and
 - (c) the building is registered under section 78.
- (2) The regulator must assess whether the relevant duties are being complied with (and may inspect the building in connection with that assessment).
- (3) The regulator—
 - (a) must give a building assessment certificate if satisfied that all relevant duties are being complied with;
 - (b) if not so satisfied, must (subject to subsection (4)) refuse the application and notify the principal accountable person of the refusal.
- (4) If the regulator considers that a contravention of a relevant duty can be remedied promptly—
 - (a) the regulator may give a notice under this subsection to the principal accountable person containing a brief description of the contravention and specifying a period for remedying the contravention, and
 - (b) if it does so, and the contravention is remedied within that period, it may give a building assessment certificate (instead of refusing the application).
- (5) In this section “relevant duty” means a duty of an accountable person for the building under, or under prescribed regulations made under, any of the following—
 - (a) section 83 (duty to assess building safety risks);
 - (b) section 84 (management of building safety risks);
 - (c) section 85 (duties relating to safety case report);
 - (d) section 87(5) (duties relating to mandatory occurrence reporting system);
 - (e) section 89 (provision of information to regulator, residents etc);
 - (f) section 91 (duty to produce a residents’ engagement strategy).
- (6) The Secretary of State may by regulations make further provision about building assessment certificates and notices under this section, including in particular provision about—

- (a) the period in relation to which a certificate may be given;
- (b) the form and content of a certificate or notice;
- (c) the way in which a certificate or notice is to be given.

EXPLANATORY NOTES

Section 81: Building assessment certificates

Effect

674. Once the Principal Accountable Person has applied for a Building Assessment Certificate, pursuant to a direction and as required by section 79, subsection (2) of this section requires the Building Safety Regulator to assess whether the relevant duties are being complied with. This subsection also enables the Building Safety Regulator to inspect the building in connection with that assessment.

675. The Building Safety Regulator must issue a Building Assessment Certificate if it is satisfied that, at the time of assessment, the Accountable Persons for the building are complying with the relevant statutory obligations. If the Building Safety Regulator is not so satisfied, it must refuse to issue the Building Assessment Certificate, unless subsection (4) applies; if so, it must notify the Principal Accountable Person. Subsection (3) details these duties on the regulator.

676. Subsection (4) makes provision for the regulator to issue a notice to the Principal Accountable Person if it finds that a relevant duty is not being complied with on assessment, but the regulator considers that it can be remedied promptly. This allows for the Building Safety Regulator to issue a Building Assessment Certificate if, notwithstanding a breach of relevant compliance, the contravention is rectified promptly according to the terms of the regulator's notice.

677. The obligations on the Principal Accountable Person and Accountable Persons are detailed in subsection (5) and include duties to: assess building safety risks under section 83; manage building safety risks under section 84; produce a Safety Case Report under section 85; comply with the Mandatory Occurrence Reporting System under section 87(4); provide information to the regulator, residents and other persons under section 88; and produce a Residents' Engagement Strategy under section 91.

678. Subsection (6) gives a power to the Secretary of State to set out, in regulations, the matters pertaining to the notices in this section and the Building Assessment Certificate, including form and content, and the way in which they are to be given, and the period in relation to which a certificate must be given.

Background

679. The Independent Review identified that residents in higher-risk buildings need assurance in terms of the fire and structural safety of their buildings. Provisions relating to a Building Assessment Certificate help to ensure statutory obligations under the new regime are being met, by confirming that at the time of assessment, the regulator was

satisfied that the Accountable Persons were complying with the relevant statutory obligations.

Example

The way in which the Principal Accountable Person can expect to be issued notices and certificates by the regulator, under this section, will be set out in regulations. The information that will be included on the Building Assessment Certificate will also be set out in regulations. This is likely to include the date on which the assessment was carried out by the regulator, and details of the Accountable Person(s) at the time of assessment. Once the Principal Accountable Person has applied for the Building Assessment Certificate by submitting the prescribed information and documents to the Building Safety Regulator, the regulator will consider the application and decide whether the relevant statutory duties are being complied with at the time of assessment. The regulator may also undertake an inspection of the building before making its decision. If the Building Safety Regulator is satisfied that all relevant duties are being complied with at the time of assessment, then the regulator must issue the Building Assessment Certificate. If the regulator finds a relevant duty is not being complied with on assessment, but the regulator considers that it can be remedied promptly, then it may issue a notice to the Principal Accountable Person instead of immediately refusing the application for the Building Assessment Certificate. The notice to the Principal Accountable Person will briefly describe the contravention and specify a short period by which the contravention should be remedied. If the Principal Accountable Person complies with the notice, and the contravention is remedied within the specified period, then the regulator may issue the Building Assessment Certificate. If the contravention is not remedied within the specified period, then the regulator must refuse to issue the certificate. Under section 82, once the Building Assessment Certificate has been issued by the Building Safety Regulator, it must be displayed in a prominent place within the building.

COMMENTARY

44. Section 81 makes provision about the grant, refusal, and revocation of building assessment certificates. The Regulator may grant a certificate only if satisfied that the building safety risks in the building are being managed in accordance with the requirements of Part 4. A certificate may be revoked if the Regulator is no longer satisfied.
45. There has been no reported case law on section 81 as at September 2026.

SECTION 82 – DUTY TO DISPLAY BUILDING ASSESSMENT CERTIFICATE ETC

STATUTORY TEXT

- (1) The principal accountable person for an occupied higher-risk building must ensure that the following are displayed together, in a conspicuous position in the building—
 - (a) a notice in the prescribed form containing prescribed information about accountable persons for the building;
 - (b) the most recent building assessment certificate relating to the building;
 - (c) any relevant compliance notice (see subsection (5)).
- (2) Where a special measures order is in force in relation to an occupied higher-risk building—
 - (a) subsection (1) has effect as if paragraph (b) were omitted, and
 - (b) the principal accountable person for the building must ensure that no building assessment certificate relating to the building is displayed in the building.
- (3) A person who, without reasonable excuse, contravenes subsection (1) or (2)(b) commits an offence.
- (4) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding the maximum summary term for either-way offences or a fine (or both);
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);and (in either case) is liable on summary conviction to a further fine not exceeding level 1 on the standard scale for each day on which the default continues after the initial conviction.
- (5) In this section—

“building assessment certificate” has the same meaning as in section 81;

“relevant compliance notice”: a compliance notice is “relevant” if—

 - (a) it has been given to an accountable person for the building,
 - (b) if it was not given to the principal accountable person for the building, the regulator has given a copy of it to the principal accountable person, and
 - (c) the regulator has not notified the principal accountable person that the notice has been withdrawn.

EXPLANATORY NOTES

Section 82: Duty to display building assessment certificate etc

Effect

680. This section places a duty on the Principal Accountable Person to display the building's most recent Building Assessment Certificate, any relevant compliance notice, and a prescribed notice.

681. Subsection (1) places a duty on the Principal Accountable Person to display together several documents in a conspicuous position within the building. Paragraph (a) requires that a notice, in a form and containing information prescribed in regulations made by the Secretary of State, about the Accountable Person, is displayed. Paragraph (b) requires that the most recent Building Assessment Certificate for the building is displayed. Paragraph (c) requires that any relevant compliance notices issued by the Building Safety Regulator are displayed.

682. Subsection (5) defines a "relevant" compliance notice as a compliance notice that has been given to an Accountable Person, where the regulator has provided a copy to the Principal Accountable Person (if the notice was not given to the Principal Accountable Person), and where the regulator has not notified the Principal Accountable Person that the notice has been withdrawn.

683. The Building Safety Regulator may place a building in special measures by applying to the First-tier Tribunal for an order appointing a Special Measures Manager. Subsection (2) places a duty on the Principal Accountable Person not to display the Building Assessment Certificate for the building when such an order is in force. The requirements to display a notice about the Accountable Persons still applies.

684. Failure by the Principal Accountable Person to comply with the requirements to display in subsection (1) or the requirement to not display a Building Assessment Certificate in special measures in (2)(b), without a reasonable excuse, is an offence. If found liable on summary conviction the Principal Accountable Person can face an unlimited fine or imprisonment up to 12 months, or both; and on conviction on indictment can face a fine, imprisonment for up to 2 years, or both. In relation to an offence committed before paragraph 24(2) of Schedule 22 to the Sentencing Act 2020 comes into force, the reference to 12 months is to be read as a reference to 6 months. In either case, the Principal Accountable Person would be liable to pay a daily fine following conviction until the duty is complied with.

Background

685. This is a new provision.

686. The Independent Review identified that residents in higher-risk buildings need assurance in terms of the fire and structural safety of their buildings. Provisions relating to a Building Assessment Certificate help to ensure statutory obligations under the new regime have been met, by confirming that at the time of assessment, the regulator was

satisfied that the Accountable Persons were complying with all the relevant statutory obligations.

687. The duty to display the Building Assessment Certificate ensures that residents are informed about the Building Safety Regulator's most recent assessment of their building, and are assured that at the time of assessment, the regulator was satisfied that all relevant statutory duties were being complied with.

688. The duty to display a notice containing the name and contact details of the Accountable Persons ensures residents know who is responsible for oversight and managing the building safety risks for their building, and how to contact them to raise any concerns.

689. The duty to display a relevant compliance notice ensures that residents are informed about any subsisting concerns of the Building Safety Regulator about the building.

Example

This section requires the Principal Accountable Person to display several documents in a conspicuous position within the building, primarily so that they can be viewed by residents. Once the Building Safety Regulator has issued the Building Assessment Certificate, the Principal Accountable Person must display it in a conspicuous position within the building. Alongside the Building Assessment Certificate, the Principal Accountable Person will need to display a notice containing prescribed information about the Accountable Persons. The information to be contained in the notice and the form it must take will be specified in regulations. It is intended that it will specify the name(s) and contact details of the Accountable Person. This will provide transparency to residents and owners of residential units in the building, so that they know who is responsible for managing the building safety risks for their building, and how to contact them to raise any concerns. Finally, the Principal Accountable Person must display any relevant compliance notices issued by the Building Safety Regulator. A "relevant compliance notice" is defined in this section as a compliance notice that has been given to an Accountable Person, one which the regulator has provided a copy of to the Principal Accountable Person, and a compliance notice where the regulator has not informed the Principal Accountable Person that it is withdrawn. If the compliance notice is issued to an Accountable Person who is not the Principal Accountable Person, the regulator will issue a copy of the notice to the Principal Accountable Person, who will have a duty to display it in the building. The Building Safety Regulator may place a building in special measures by applying to the First-tier Tribunal for the appointment of a Special Measures Manager. The Tribunal may issue a Special Measures Order, as detailed in Schedule 7. This section ensures that, while a Special Measures Order is in place, the building's Building Assessment Certificate is not displayed, thereby signalling clearly that the Special Measures Order prevails over any previous assessment of the building by the regulator. Similarly, the Special Measures Order causes any previous compliance notices to cease to have effect, save for the liability prior to the order being made, as detailed in Schedule 7. Any withdrawn compliance notices would no longer be displayed. The Building Safety Regulator will undertake building re-assessments periodically. When a re-assessment is undertaken, the regulator

will issue a new certificate if it is satisfied that all relevant duties were being complied with. The Principal Accountable Person must display the most recent Building Assessment Certificate in lieu of the old one, so that any previous certificates issued will be taken down, having been superseded by the most recent certificate

COMMENTARY

46. Section 82 requires the principal accountable person to display a copy of the building assessment certificate in a conspicuous position in the building, together with other prescribed information. This ensures that residents and visitors are aware of the building's safety status.
47. There has been no reported case law on section 82 as at September 2026.

SECTION 83 – ASSESSMENT OF BUILDING SAFETY RISKS

STATUTORY TEXT

- (1) An accountable person for an occupied higher-risk building must as soon as reasonably practicable after the relevant time assess the building safety risks as regards the part of the building for which they are responsible.
- (2) Further such assessments must be made—
 - (a) at regular intervals,
 - (b) at any time that the accountable person has reason to suspect that the current assessment is no longer valid, and
 - (c) at the direction of the regulator, within a period specified in the direction.
- (3) An assessment under subsection (1) or (2) must be suitable and sufficient for the purposes of enabling the accountable person to comply with their duties under section 84.
- (4) In this section “the relevant time” means—
 - (a) the time when the building becomes occupied, or
 - (b) if later, the time when the person becomes an accountable person for the building.

EXPLANATORY NOTES

Section 83: Assessment of building safety risks

Effect

690. This section provides that every Accountable Person is under an ongoing obligation to carry out an assessment of the building safety risks in/of/arising from, and relevant to, the part of the higher-risk building for which they are responsible. The definition of building safety risks is that provided for in section 65.

691. The assessment must be suitable and sufficient so that the Accountable Person is able to comply with their safety duties imposed by this Part of the Bill, including managing building safety risks and providing information about the building to other persons (under section 84 and section 89 respectively). The assessment must include consideration of hazards that originate in an area outside their responsibility developing into a risk which enters the area for which they are responsible.

692. This duty will apply as soon as the building is in multiple occupation by residents, and the first assessment must be carried out as soon as it is reasonably practicable after that point. New Accountable Persons must carry out their risk assessment as soon as it is reasonably practicable to do so after having become the Accountable Person.

693. Further assessments must be carried out by the Accountable Person at regular intervals, when directed to do so by the Building Safety Regulator, when the Accountable Person suspects the assessment is no longer valid, or they become aware of a significant change to the building.

694. The Accountable Person is defined in section 72 as a person with a legal estate in possession of any part of the common parts of a higher-risk building or a person who does not hold legal estate but is under a relevant repairing obligation in relation to any common parts. The definition of occupied is set out in section 71.

695. Where there are multiple Accountable Persons within a building it is expected that they will co-operate and co-ordinate with every other Accountable Person carrying out their obligations. This includes their carrying out their risk assessment duties under this clause and sharing information about building safety risks relating to the whole building in good time.

Background

696. This is a new provision.

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

698. The Independent Review recommended new responsibilities be placed on dutyholders to proactively manage risks and work with residents (both those residing in the property and, depending on the ownership model, the landlord or leaseholder of the flat) to ensure that the building remains safe throughout its life cycle. Example 1 Both higher-risk buildings that have passed through the Gateway process and are recently occupied, as well as existing higher-risk buildings that have long been occupied by residents will be covered by this clause. Undertaking a suitable and sufficient risk assessment of the building safety risks is the initial step of a systematic approach that the Accountable Person will need to adopt, to achieve the outcome of managing the building safety risks. That is to say the Accountable Person will follow a set process of identifying the hazards within their building, deciding who might be harmed by those hazards, evaluating the likelihood and consequence of those hazards developing into a building safety risk, deciding on the measures that are needed to lower the risks of the hazards becoming a building safety risk to an acceptable level, deciding what measures are needed to mitigate further risk of harm to residents in the event a building safety risk is realised and ensuring those measures remain fit for purpose whilst the building is occupied. The Accountable Person should review their assessment of the risks where there has been a significant change to matters which may impact on the spread of fire or structural collapse, and their management of those risks. Even where they are of the opinion that a change to the building would not alter the level of risk, the assessment should be undertaken to verify if that assumption is correct. Example 2 The following would be appropriate in terms of a regular review where a building is fully occupied (and settled) and/or the building has been occupied for some

time. The Accountable Person has scheduled a review of the building's risk assessment to comply with the duty and checks that the assessment of the potential causes of fire remain valid. The potential causes of the outbreak of fire or rapid fire development beyond a single fire compartment are confirmed by the assessment to be: hoarding, uncontrolled combustible materials in the common corridors; unchecked fire spread through voids and penetrations; uncontrolled or unreported penetrations through walls by residents (or their contractors); uncontrolled changes to front doors of flats (meaning they are no longer 30 minutes fire resisting), damage to fire resisting doors in the common areas; obstructed open vents (especially in winter when common areas can get very cold and windy). No new foreseeable causes of escalation are found and that the existing control and mitigation measures are adequate to deal with the identified potential causes of fire spread, and their cumulative effect. They schedule a further review in 3 months. Example 3 The Accountable Person reassesses the building safety risks when there has been a significant change in the building, for instance when refurbishment work was carried out, such that a previously in-use alarm system was taken out of use; or when new residents with mobility impairments move in meaning that assumed compartmentation that relied on residents having the ability to escape fire/respond to emergencies in certain ways which no longer applied. Example 4 The Accountable Person reviews their assessment of the risks as there has been a significant change to matters which may impact on the spread of fire or structural collapse and their management of those risks, due to the change to the timing of bin collections which means that a bin store is no longer big enough to store all the building's cumulative waste for the whole period between collections, with the potential for rubbish bags to be left outside, increasing the risk of fire spread. In that case, the Accountable Person would make a new assessment of risks and the ways of managing those risks given the likely build-up of bin bags, and to update their steps/actions to ensure the risks do not materialise.

COMMENTARY

48. Section 83 imposes a duty on each accountable person for an occupied higher-risk building to assess building safety risks in the part of the building for which they are responsible. The assessment must be suitable and sufficient, must be kept under review, and must be revised whenever the accountable person has reason to suspect that it is no longer valid. This duty is modelled on the risk assessment obligations in the Management of Health and Safety at Work Regulations 1999.
49. There has been no reported case law on section 83 as at September 2026.

SECTION 84 – MANAGEMENT OF BUILDING SAFETY RISKS

STATUTORY TEXT

- (1) An accountable person for an occupied higher-risk building must take all reasonable steps for the following purposes—
 - (a) preventing a building safety risk materialising as regards the part of the building for which they are responsible;
 - (b) reducing the severity of any incident resulting from such a risk materialising.
- (2) Those steps may in particular involve the accountable person carrying out works to the part of the building for which they are responsible.
- (3) When taking the steps the accountable person must act in accordance with prescribed principles.
- (4) The steps must be taken promptly.
- (5) The accountable person must make and give effect to arrangements for the purpose of ensuring the effective planning, organisation, control, monitoring and review of steps taken under this section.

EXPLANATORY NOTES

Section 84: Management of building safety risks

Effect

699. This clause imposes an ongoing duty on Accountable Persons to take all reasonable steps and actions necessary to manage building safety risks, (which are defined in Clause 62, preventing them materialising in their building and to mitigate the severity of such an incident if it does occur.

700. The duty to take the necessary steps will apply as soon as the building is occupied. Any necessary steps must be taken promptly.

701. This duty will run parallel to that of needing to undertake a suitable and sufficient risk assessment, under clause 82.

702. To make informed decisions, the Accountable Person should have identified the relevant hazards to their building in accordance with their risk assessment duty, decided who might be harmed by those hazards and evaluated the likelihood and consequence of those hazards developing into a building safety risk within the part of the building for which they are responsible. This clause then requires the Accountable Person to decide on and take all those steps or measures that are reasonably needed to both prevent the risk of fire spreading, structural collapse and any other prescribed matter and to mitigate the severe impact of such an incident on those in or around the part of the building for which they are responsible.

703. When deciding on the measures needed to meet the duty, Accountable Persons must have regard to a set of principles, set out in regulations, ordered to form a best practice approach to risk management, from most efficient to least efficient, the most efficient being to avoid risk.

704. Where those measures prove insufficient, the Building Safety Regulator will have the power to direct Accountable Persons to take the steps needed in order to comply with the duty through a compliance notice issued under Clause 99.

705. The Accountable Person is under an ongoing duty to ensure these measures are kept under review and Subsection (5) requires a systematic approach, that is used in other risk management frameworks, to be adopted to ensure the Accountable Person fully understands the measures employed and that those measures remain appropriate and effective whilst the building is occupied.

706. Where there are multiple Accountable Persons within a building it is expected that they will co-operate and co-ordinate with every other Accountable Person carrying out their obligations. This includes taking steps under this clause jointly/in co-ordination with other Accountable Persons, and jointly setting up and agreeing processes for adopting a systematic approach to ensuring the measures employed remain effective. The outcome should be that the safety arrangements across the whole building will work together (or at a minimum not conflict) to manage building safety risks.

Background

707. This is a new provision.

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

709. The Independent Review recommended new responsibilities be placed on dutyholders to proactively manage risks and work with residents (both those residing in the property and, depending on the ownership model, the landlord or leaseholder of flats) to ensure that the building remains safe throughout its life cycle. Example 1 Both higher-risk buildings that have passed through the Gateway process and are recently occupied as well as existing higher-risk buildings that have long been occupied by residents will be covered by this clause. The Building Safety Regulator will have the power to issue guidance as to how those building safety risks may be managed and mitigated to an acceptable level and relevant factors to be taken into account in assessing what it is reasonable/ practicable to do and what circumstances may be relevant. For example, the Accountable Person takes on management of a higher-risk building and when the first residents move in, sets about assessing the building safety risks. They undertake an assessment of building safety in accordance with the duty to undertake a suitable and sufficient risk assessment. Golden thread and Gateway information is used to gather intelligence on the safety measures designed into the building and confirms the suitability of those measures by inspecting the premises and understanding how residents are using the building. They consult guidance

issued by the Building Safety Regulator as to how those building safety risks may be managed and mitigated, the likely relevant factors to be taken into account in assessing what it is reasonable to do and what circumstances might be relevant. A key control measure, to ensure that the existing protective measures continue to provide safety, is to subject contractors to a building safety induction, tailored to the specific building. On checking the induction pack, the Accountable Person realises that the training materials are out of date and require updating. The induction pack is updated across the organisation and tailored to accurately reflect specific buildings. The Accountable Person makes resident safety the focus of the induction pack and uses the content to populate sections of the Resident Engagement Strategy. As part of the system for ongoing management of risk, the Accountable Person includes a regular review of training materials to make sure they remain relevant and up to date.

Example 2 There may be instances where the Accountable Person, as a first step, needs to gather intelligence on the safety measures designed into the building. The building may be a stock transfer from a housing association that was subject to a management takeover. The building safety information handed over might be incomplete. There might be no evidence supporting the fire resistance of fire compartments, which have been assumed based on what should be there, rather than what is actually present. In this instance, they might contract for invasive structural surveys to give them a reliable starting point and evidence for the baseline resistance of the building to a major fire or structural collapse. In this instance, the Accountable Person knows that the building is designed to operate a stay-put strategy in the event of a fire. The invasive survey provides evidence that the compartmentation is reliable and has not been compromised. However, the survey identifies that the electronic security doors to the residential floors do not release in the event of power failure, for instance resulting from a fire in the electrical circuits. This finding would potentially lock residents on their respective floor plate. This security feature was part of the original building design but did not take fire safety into account. The entrapment risk is assessed as a high consequence, low likelihood event, but the Accountable Person decides to install a green break-glass box to over-ride the electronic locks from the residential side, to put any potential likelihood beyond doubt. Residents are informed of the reason for the override being installed. Inspection of the override feature is included in the maintenance and auditing schedule once the works are complete.

Example 3 The Accountable Persons undertakes ongoing steps to meet the section 84 duty: A resident notifies the Accountable Person that combustible materials are being stored in common areas. A spot check is undertaken, and empty cardboard boxes are found stacked in a stairwell. The boxes are removed, and a reminder notice is put on the resident's internet pages, the preventative signage prohibiting storage in common areas is improved scheduled walkthroughs of the common areas are increased both in terms of time and frequency.

Example 4 The risk assessment undertaken for the purposes of complying with clause 82 highlights the necessary steps to reduce (or further reduce) building safety risks. The building safety risks are assessed as a part of a planned regular assessment. It is clear that the bin store is the likeliest source of a fire and there have been several incidents of residents dropping discarded cigarettes butts down the bin chutes, which have resulted in the fire brigade needing to be called out. As this is a building from the 1960s, the chutes are located in common areas and the store is next to the

entrance and smoke often comes up the chute when there has been a fire. Having consulted guidance issued by the Building Safety Regulator as to best practice, fire shutters on fusible links are fitted to the base of the chute, and open sprinkler heads directed into the bin beneath the chute, and fusible link sprinkler heads above the other bins stored against the walls within the bin store are installed. The resident internet pages are updated to advise residents of the actions taken and to remind them not to throw any hot materials (including cigarettes) down the chutes. The safety signs in each chute room are also improved. At a regular site inspection, it is identified that one of the anti-vehicle barriers installed close to the building has been knocked out of position and needs to be replaced, to be fit for purpose and to reduce any risk of accidental mechanical damage to the building structure from vehicular transport. Residents are notified that the barrier will be replaced, a competent company is contracted to replace the barrier, and, in the meantime, cones are put out to ensure vehicles are kept a safe distance from the building to reduce the risk of damage. As part of the ongoing management of building safety, the maintenance team undertake regular inspections of service risers into the building. They note on their inspection that the padlock has been removed on the electrical supply room and people have been able to gain access. The padlock is replaced with a keypad system, the scheduled inspections are made more frequent, the resident internet pages are updated and all warning signage on services risers are made more prominent.

COMMENTARY

50. Section 84 imposes a duty on each accountable person to take all reasonable steps to manage building safety risks in their part of the building. The duty is informed by the risk assessment under section 83. Accountable persons must take such steps as are reasonably practicable to prevent the occurrence of a major incident or to reduce the severity of any such incident.
51. The standard of “all reasonable steps” is significant. It is **not** an absolute duty to eliminate risk, but it imposes a proactive obligation that goes beyond merely reacting to identified defects. It is likely that that this will become the subject of significant debate and possibly litigation.
52. There has been no reported case law on section 84 as at September 2026.

SECTION 85 – SAFETY CASE REPORT

STATUTORY TEXT

- (1) The principal accountable person for an occupied higher-risk building must as soon as reasonably practicable after the relevant time prepare a report (a “safety case report”) containing—
 - (a) any assessment of the building safety risks made under section 83 by an accountable person for the building, and
 - (b) a brief description of any steps taken under section 84 by an accountable person for the building.
- (2) The principal accountable person must revise a safety case report if they consider it necessary or appropriate to do so following—
 - (a) any further assessment under section 83 made by an accountable person for the building, or
 - (b) the taking of further steps under section 84 by an accountable person for the building.
- (3) The Secretary of State may by regulations make further provision about the content and form of safety case reports.
- (4) In this section “the relevant time” means—
 - (a) the time when the building becomes occupied, or
 - (b) if later, the time when the person becomes the principal accountable person for the building.

EXPLANATORY NOTES

Section 85: Safety Case Report

Effect

710. This section provides that the Principal Accountable Person is under a duty to produce a Safety Case Report that demonstrates that building safety risks have been both assessed and all reasonable steps have been taken to prevent building safety risks, defined in section 65, materialising in the building and to mitigate the severity of such an incident if it does occur.

711. The duty to prepare a Safety Case Report containing an assessment of the building safety risks relating to the building and any steps taken under clause 83 starts to apply as soon as the building is occupied. Regulations may also be made by the Secretary of State under the power in subsection (3) to set out other requirements about the form and content of Safety Case Reports.

712. Once the Principal Accountable Person has written their Safety Case Report, they must notify the Building Safety Regulator, under clause 86.

713. The Safety Case Report will be the vehicle through which Accountable Persons are able to demonstrate compliance with their ongoing duty to prevent fire spread and structural collapse and reduce the severity of any incident. The clause provides a duty on the Principal Accountable Person to revise it following any further assessments of the building safety risks relating to the building under section 83 and following the taking of any further steps under section 84. The intention is that at any point the Safety Case Report demonstrates that the arrangements Principle Accountable Person/Accountable Persons have in place are reasonable for managing the specific building. Where there is a change to the Principal Accountable Person, it is expected that the new Principal Accountable Person will prepare a revised Safety Case Report, reflecting their assessment and risk management practices, including policies and procedures, as soon as reasonably practicable after becoming the Principal Accountable Person.

714. The Safety Case Report can be reviewed and revised under a Principal Accountable Person's own volition, however the Building Safety Regulator, under this clause, can direct an Accountable Person to undertake an assessment of building safety risks, which in turn may result in additional safety arrangements being required and the Safety Case Report having to be reviewed and revised.

715. Where there are multiple Accountable Persons in a building, it is required that there should be a single Safety Case Report to be produced by the Principal Accountable Person for that building. It is intended that all Accountable Persons in the building should co-operate and co-ordinate carrying out their obligations. This includes carrying out their risk assessment and risk management duties and sharing information about building safety risks relating to the whole building in good time to enable a single Safety Case Report to be produced.

Background

716. This is a new provision.

717. The Independent Review recommended new responsibilities should be placed on dutyholders to proactively manage risks and work with residents to ensure that the building remains safe throughout its life cycle. It sets out that the dutyholder should do this by undertaking regular safety case reviews of the building, in which they must demonstrate to a regulator that they are reducing and managing building safety risks.

718. The new "safety case review" system is therefore the main way that the Building Safety Regulator will hold the Principle Accountable Person/Accountable Persons to account for identifying the hazards and risks in their building, describing how risks are controlled and the safety management system in place, so that building safety risks are reduced and all reasonable steps are taken to prevent major incidents arising from building safety risks, and reduce the impact should an incident occur. Safety case reports will be reviewed by the Building Safety Regulator as part of the Building Assessment Certificate application process.

719. Safety case requirements are employed in many high hazard industries. They provide the means by which dutyholders demonstrate to themselves and regulators that they are effectively identifying and managing risks to an acceptable level. In a safety case review system, the dutyholder provides information to the regulator to demonstrate that they have considered what could go wrong, what the worst-case scenarios are, the consequences if those scenarios are realised and to show that they have preventive, protective and reactive measures in place to manage the risks of the scenarios occurring. This is an ongoing process, and the safety case is reviewed often and when a significant change has occurred to ensure the management systems in place remain relevant. .

720. As part of their Safety Case report, the Accountable Person will need to set out that the building is safe for occupation (i.e, meets the outcome of clause 84), through the sum of the measures they have in place to support that claim, that decisions have been taken in accordance with the prescribed principles and direct the reader to the evidence that supports that argument. Overview In safety case review systems, there are two key terms: • Safety case – the full body of evidence, comprising a comprehensive and structured set of documents. It will often include evidence from test results, detailed safety analysis reports etc. For the purposes of the regulation of higher-risk buildings this may also be referred to as the golden thread information (the concept of golden thread goes further, to include specific digital standards). • Safety Case Report – a summary of the key components derived from the full body of evidence, with appropriate references to supporting evidential documents, which makes the claim of and argument for safety. It is the Safety Case Report in this regime that is the key document and will be required for all occupied high-rise residential buildings. The Accountable Person will produce a safety case report following an assessment of building safety risks and the taking of reasonable and proportionate steps to ensure those risks are managed on an ongoing basis. The Report should provide a summary of the risk assessment and safety measures across the building and will need to comply with the content requirements set out in secondary legislation. It will need to be submitted to the Building Safety Regulator, most often as part of an application for a Building Assessment Certificate.

Example

The Principal Accountable Person has written their safety case report, submitted it to the Building Safety Regulator and obtained a Building Assessment Certificate. After a period of time, they undertake a scheduled review of their assessment of building safety risks in the building. This review identifies an issue not previously accounted for, and the Principal Accountable Person concludes that they should introduce an additional safety measure to ensure the risk is controlled. The documentation and data created as part of the revised risk assessment and introduction of reasonable additional safety measures are part of the wider safety case, so the Principal Accountable Person revises the Safety Case Report to ensure it presents an accurate reflection of the building. They then notify the Building Safety Regulator that they have updated their safety case report. The Building Safety Regulator requests that the report be submitted for review, as the changes made regarding the assessment of building safety risks and steps in place to manage them have changed significantly.

COMMENTARY

53. Section 85 requires the principal accountable person to prepare and maintain a safety case report for the building. The safety case report must set out the assessment of building safety risks, the steps being taken to manage those risks, and the basis for concluding that those steps are adequate. The concept of a safety case report is borrowed from the offshore oil and gas industry and the nuclear sector, where similar documents are required.
54. There has been no reported case law on section 85 as at September 2026.

SECTION 86 – NOTIFICATION AND PROVISION OF REPORT TO THE REGULATOR

STATUTORY TEXT

- (1) The principal accountable person for an occupied higher-risk building must notify the regulator as soon as reasonably practicable after preparing or revising a safety case report.
- (2) Where the regulator asks the principal accountable person to provide it with a copy of the safety case report, the principal accountable person must give a copy of it to the regulator as soon as reasonably practicable.
- (3) The Secretary of State may by regulations make provision about—
 - (a) the content and form of notifications under this section;
 - (b) the way in which a notification or copy of a report must be given.
- (4) In this section “safety case report” has the same meaning as in section 85.

EXPLANATORY NOTES

Section 86: Notification and provision of report to the regulator

Effect

721. As soon as the Principal Accountable Person has complied with the duty to produce a Safety Case Report as described in section 85, they must notify the Building Safety Regulator. The notification must be sent as soon as reasonably practicable.

722. When a Safety Case Report is revised, owing to a change in the assessment of building safety risks, a change to an Accountable Person in the building, or a change to the steps being taking to manage building safety risks, the Principal Accountable Person must notify the Building Safety Regulator.

723. This section also provides a power for the Building Safety Regulator to require the Principal Accountable Person to send in their Safety Case Report for review by the Building Safety Regulator. If requested by the Building Safety Regulator, the Safety Case Report must be provided by the Principal Accountable Person as soon as is reasonably practicable.

724. This section also gives a power to the Secretary of State to set out in secondary legislation, with accompanying guidance, the form and process that a notification will need to follow in order to enable the Building Safety Regulator to make a decision as to whether the Safety Case Report needs to be called in for assessment.

Background

725. This is a new provision.

726. *The Independent Review recommended new responsibilities should be placed on dutyholders to proactively manage risks and work with residents to ensure that the building remains safe throughout its life cycle.*

727. *The Building Safety Regulator's assessment of safety case reports is one of the main ways Accountable Persons will be held to account. Safety case reports will need to demonstrate that potential building safety risks have been properly assessed and that proportionate measures are in place to reduce and control them on an ongoing basis. Safety case reports will be reviewed by the Building Safety Regulator as part of an application for a Building Assessment Certificate. Example 1 In the context of a high-rise residential building already in possession of a Building Assessment Certificate, following a change in the assessment of building safety risks, the Principal Accountable Person updates their safety case report. Once the report has been amended, the Principal Accountable Person notifies the Building Safety Regulator. The Building Safety Regulator decides to assess the Safety Case Report at this stage, rather than waiting until the Principal Accountable Person is required to apply for a renewal of the Building Assessment Certificate, as described in Section 80, due to the extent of the changes made to the Safety Case Report. Example 2 The Building Safety Regulator requests a copy of a Safety Case Report from a Principal Accountable Person, because an incident in another building for which they are responsible reveals that building safety risks had not been properly considered and as a result of the incident, recommendations have been made. If the Building Safety Regulator requests a copy of the Safety Case Report, it is likely that an update will be required. The review of the Safety Case Report by the Building Safety Regulator requires there to be an update to the current assessment of building safety risks for that building, and where needed further steps are taken to manage the risks. Example 3 An Accountable Person notifies the Building Safety Regulator that they have made revisions to the Safety Case Report for a building for which they are responsible, to accommodate new steps they have taken in the light of recommendations from an inquiry. Upon receiving the notification, the Building Safety Regulator requests submission of the revised Safety Case Report and assesses it. The regulator is not confident from their assessment that the steps taken are sufficient and decides to inspect the building to investigate further. The inspection confirms that the steps employed are insufficient and the Building Safety Regulator works with the Accountable Person to ensure all reasonable steps are in place. If needed the regulator could direct the Accountable Person to take these measures under section 84 and/or to issue a compliance notice under section 99 which requires that contraventions of the Accountable Person's obligations are remedied, but in this instance these enforcement actions are not needed.*

COMMENTARY

55. Section 86 requires the principal accountable person to notify the Regulator of the preparation of a safety case report and to provide the report to the Regulator on request. The Regulator may use the report to assess whether the building's safety risks are being adequately managed.

56. There has been no reported case law on section 86 as at September 2026.

SECTION 87 – MANDATORY REPORTING REQUIREMENTS

STATUTORY TEXT

- (1) An accountable person for an occupied higher-risk building must, in prescribed circumstances, give prescribed information to the regulator by the prescribed time and in the specified way.
- (2) The information that may be prescribed is information that relates to a building safety risk as regards the part of the building for which an accountable person is responsible.
- (3) In subsection (1) “specified” means specified in a direction given and published by the regulator.
- (4) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on summary conviction to a fine.
- (5) The principal accountable person for an occupied higher-risk building must establish and operate an effective mandatory occurrence reporting system which complies with prescribed requirements.
- (6) A “mandatory occurrence reporting system” is a system for the giving of information to accountable persons for the building for the purpose of enabling them to comply with subsection (1).
- (7) Information provided by a person under subsection (1) is not admissible in evidence against that person in criminal proceedings except—
 - (a) in proceedings for an offence under section 24 or this section,
 - (b) in proceedings for an offence of perverting the course of justice, or
 - (c) if in the proceedings—
 - (i) in giving evidence the person makes a statement inconsistent with the information, and
 - (ii) evidence as to the information that was provided is adduced, or a question relating to it is asked, by or on behalf of the person.

EXPLANATORY NOTES

Section 87: Mandatory reporting requirements

Effect

728. This clause will place a duty on the Principal Accountable Person to establish and operate an effective mandatory occurrence reporting system and a further duty on Accountable Persons to ensure reportable information related to the safety of an occupied building is given to the Building Safety Regulator in a manner specified by the Building

Safety Regulator. The system will be assessed as part of the Building Assessment Certificate application.

729. The power is flexible as it is expected that reportable information may be varied and subject to change over time in line with developments of the safety landscape of buildings.

730. Information submitted in an occurrence report cannot be used as evidence in criminal proceedings against any person, except in relation to specific circumstances as laid out in the clause. Information from reports can be used by defendants in their own defence. An equivalent provision will be made in building regulations for the design and construction phases.

Proposed use of power

731. It is intended that the power given to the Secretary of State will be used to require Accountable Persons to report certain structural and fire safety occurrences to the Building Safety Regulator, similar to those duties that exist in other industries such as aviation. This will involve reporting to the Building Safety Regulator any structural or fire safety event that occurs in or about the part of a higher-risk building for which the Accountable Person is responsible and which represents a significant risk to life safety. Mandatory occurrence reporting will complement voluntary occurrence reporting, which will capture safety occurrences not of a high enough risk to be required reporting under mandatory occurrence reporting.

732. Secondary legislation will prescribe which occurrences which must be reported to the Building Safety Regulator. This will be based on occurrences which, if they were to occur within a higher-risk building, would likely meet the threshold of a significant risk to life safety. Guidance will be provided to Accountable Persons to assist them in determining whether an occurrence must be reported as laid out in secondary legislation.

733. The specified manner of reporting will likely be via an online portal. Current proposals for the timeframe for reporting are an immediate notification to the regulator as soon as a mandatory occurrence is identified, followed by a full report as soon as practicable and not later than ten calendar days from the time of the occurrence being identified.

734. The occurrences specified in secondary legislation may include the discovery of a structural safety or fire safety related defect.

Background

735. This is a new provision.

736. The Independent Review recommended that it should be mandatory for key dutyholders to report particularly dangerous safety-related events to the Building Safety Regulator. This section contributes to the fulfilment of this recommendation. Example A discarded cigarette starts a fire in the bin room of a higher-risk residential building. Smoke is detected by sensors and the bin chute plates automatically close to provide compartmentation, but the plates have not been appropriately tested and are not of the correct specification. As a result, smoke is allowed to pass up the bin chutes and into

resident's rooms. This presents a significant risk to life safety. A resident reports the incident through the building's mandatory occurrence reporting system. The Accountable Person responsible for the area where the incident occurred immediately notifies the Building Safety Regulator that a mandatory occurrence has been identified, and a full report is sent to the regulator as soon as is practicable and no later than ten calendar days from the occurrence being identified. Upon receiving the report, the regulator could, at its own discretion, use it as a basis for further investigation or enforcement measures. Such a report would also help the regulator to identify potential trends of similar such incidents across the sector. Additionally, valuable lessons learnt contained within the report could be shared with industry by the regulator, helping others to proactively identify and resolve similar issues on other sites and improve best practices across the sector.

COMMENTARY

57. Section 87 provides for mandatory reporting requirements, enabling the Secretary of State by regulations to require accountable persons to report specified safety occurrences to the Regulator. This is analogous to the RIDDOR reporting requirements in health and safety law.
58. There has been no reported case law on section 87 as at September 2026.

SECTION 88 – KEEPING INFORMATION ABOUT HIGHER-RISK BUILDINGS

STATUTORY TEXT

- (1) An accountable person for a higher-risk building must—
 - (a) keep prescribed information in accordance with prescribed standards, and
 - (b) so far as possible keep such information up to date.
- (2) An accountable person for a higher-risk building must keep copies of prescribed documents in accordance with prescribed standards.
- (3) Where an accountable person does not hold prescribed information or a copy of a prescribed document, they must obtain it except where it is not practicable to do so.
- (4) The Secretary of State may by regulations make provision as to when the duties in subsections (1) to (3) apply.

EXPLANATORY NOTES

Section 88: Keeping information about higher-risk buildings

Effect

737. The new regulatory regime will regulate building safety risks in higher-risk buildings. This section places requirements about information keeping on the person responsible for higher-risk buildings – the Accountable Person. Higher-risk building is defined in section 65.

738. This section imposes a requirement that the Accountable Person must keep and maintain certain required information about the building (the prescribed information) and ensure it is up to date as far as possible. If the Accountable Person does not have the prescribed information this section imposes a requirement that they obtain this information, unless it is not practicable for them to do so.

739. The prescribed information is also called the “golden thread” of information. The specific documents, data and information that will make up the prescribed information will be set out in regulations.

740. The prescribed information will generally be information about the building and information relevant to the management and reduction of building safety risks (as defined in section 62) in the building.

741. This section also imposes a requirement that the prescribed information must be kept in accordance with prescribed standards. Regulations will set out the principles to which the information should be stored and kept, to ensure the information is accessible.

742. The Building Safety Regulator will also be able to issue statutory guidance about how to comply with the duties in this section under the power set out in section 108(1)(c). The

guidance will provide best practice examples and detail to support the Accountable Person in fulfilling their duties under this section and the regulations.

743. Regulations may also be made under this section to set out when the duties to keep and obtain the prescribed information will apply.

Proposed use of power

744. Regulations made under this section will set out what the “prescribed information” is and what “prescribed standards” it needs to be stored/kept in accordance with, and when the duties to do so will apply.

Background

745. This is a new provision.

746. The Independent Review identified that a golden thread of information would ensure more effective building safety management throughout a building’s life cycle. Therefore, it is important to ensure that the persons responsible for building safety maintain and have access to accurate and up to date information.

747. Requiring the prescribed information to be stored to the prescribed standards will improve the accessibility of this important information which is likely to be key in enabling compliance by the Accountable Person with their safety case-related duties in sections 83-86. Example Information that must be obtained, kept up to date and in accordance with prescribed standards could for example include information about the alarm system that is installed in the building and when it was last tested or information about where the fire stopping is in the building. This information must be stored digitally (to the required prescribed standards set out in regulations and exemplified in statutory guidance). This information can then be used for example to inform the Accountable Person’s risk assessment under section 83. Capturing the information and storing it in an accessible fashion will also ensure that those working on the building can be made aware of key aspects of the building that may be affected by their work.

COMMENTARY

59. Section 48 imposes a duty on each accountable person to keep prescribed information about the higher-risk building for which they are responsible. This is part of the “golden thread” of building information - the requirement that accurate, up-to-date information is maintained throughout the building’s lifecycle.
60. There has been no reported case law on section 88 as at September 2026.

**SECTION 89 – PROVISION OF INFORMATION ETC TO THE REGULATOR,
RESIDENTS AND OTHER PERSONS**

STATUTORY TEXT

- (1) The Secretary of State may by regulations make provision requiring an accountable person for a higher-risk building to give prescribed information or a copy of a prescribed document to—
 - (a) the regulator,
 - (b) another accountable person for the building,
 - (c) residents of the building,
 - (d) owners of residential units in the building, or
 - (e) any other prescribed person.
- (2) The regulations may in particular make provision about—
 - (a) when information or a copy of a document must be given;
 - (b) the way in which information or copy of a document must be given;
 - (c) the form in which information must be given (and may in particular require that the information is given in an accessible form);
 - (d) the standards in accordance with which information or a copy of a document must be given.
- (3) The regulations may make exceptions to any duty imposed under the regulations.
- (4) Subject to subsection (5), the regulations may provide that the disclosure of information under this section does not breach—
 - (a) any obligation of confidence owed by the accountable person in relation to that information;
 - (b) any other restriction on the disclosure of information (however imposed).
- (5) This section does not authorise a disclosure of information if the disclosure would contravene the data protection legislation (but in determining whether a disclosure would do so, take into account the powers conferred by this section).
- (6) Where the regulations provide that any information or document must be given to the regulator, they may make provision about the admissibility in any criminal proceedings of the information or document.

EXPLANATORY NOTES

Section 89: Provision of information etc to the regulator, residents and other persons

Effect

748. This section sets out that the Secretary of State may make regulations requiring the Accountable Person to share prescribed information and documentation about their building in certain prescribed circumstances. This section enables the Secretary of State to make regulations to set out the manner, form and standards which must be met in provision of this information and documentation.

749. This section sets out that the Accountable Person may be required to provide prescribed information, or copies of that information, to the Building Safety Regulator, to other Accountable Persons in the building, to residents of the building and owners of flats in the building, or other prescribed persons. This section allows regulations to be made setting out the other prescribed persons which means the other types of person who the information and documentation should be supplied to.

750. This section also enables the Secretary of State to make regulations to set out exceptions to any duty imposed under any regulations made under this section.

751. Residents means all adults (aged 16 or over) lawfully residing at the property. This section also extends to the legal owner (where this is not the same as the residential occupier) of an individual residential unit, for example a non-occupying leasehold landlord who is renting out an individual flat.

752. Regulations under this section will set out the circumstances in which an Accountable Person for a higher-risk building must provide others with prescribed information and documentation about the building. This will include a requirement that the Accountable Person has to provide all new residents with a range of building safety information. Regulations will also set out other circumstances in which the Accountable Person is required to provide residents with information and, requirements for the Accountable Person to provide the regulator with information about the building.

753. Regulations will also detail information that will need to be shared with the Regulator to enable it to effectively regulate and oversee buildings in scope. This will include a provision requiring the Accountable Person to notify the Regulator when it appoints an insolvency practitioner (administrator, trustee in bankruptcy, liquidator) under the Insolvency Act 1986. This will help enable the Regulator to effectively regulate and oversee buildings in scope

754. Regulations under this section will also lay out what information or documentation must be shared, the form of the prescribed information, the way in which it must be given, the standard to which it must be given, and any exceptions to any duty imposed under the regulations.

755. Regulations will also detail information that will need to be shared with the Regulator to enable it to effectively regulate and oversee buildings in scope. This will include a provision requiring the Accountable Person to notify the Regulator when it appoints an

insolvency practitioner (administrator, trustee in bankruptcy, liquidator) under the Insolvency Act 1986.

Background

756. This is a new provision.

757. The Independent Review identified the importance of accurate and up to date information for ensuring building safety. Access to information is essential and this provision ensure that the Accountable Person is required to share prescribed information in certain circumstances.

758. Regulations will include requirements on the Accountable Person to share specified information with residents, the regulator and other prescribed persons. The availability and accessibility of this information to the regulator and residents is crucial to ensure people feel safe in their homes and ensure those responsible for building safety are held to account. This section and section 88 are intended to help ensure that residents, the regulator and other persons have this information, and those who need to be are provided with relevant information about that particular building.

759. Regulations will include a requirement on the Accountable Person to share specified details about the Insolvency Practitioner with the Regulator to ensure that it has a complete picture the state of affairs of the individual or company and to help to ensure the ongoing safety management of the building whilst insolvency proceedings are progressed.

760. Regulations under this section will also set out the circumstances when the Accountable Person must provide information to the regulator and the form in which this information should be submitted. Regulations may also make requirements to ensure information is presented to the regulator in a standard format as this will enable the regulator to more easily review and analyse the information. This will support the regulator in their role in ensuring building safety and holding Accountable Persons to account.

Example

The Accountable Person for a higher-risk residential building must collect and maintain information relevant to the safety of that building (prescribed information). They must provide prescribed information from this to their residents. When a person purchases a leasehold flat within their property, the building owner must ensure the new leaseholder is provided with the prescribed information.

COMMENTARY

61. Section 89 imposes duties on accountable persons to provide information to the Regulator, to residents, and to other persons as prescribed. The duty to provide information to residents is a significant innovation, reflecting the Hackitt Review's emphasis on transparency and resident engagement.

62. There has been no reported case law on section 89 as at September 2026.

**SECTION 90 – PROVISION OF INFORMATION ETC ON CHANGE IN
ACCOUNTABLE PERSON**

STATUTORY TEXT

- (1) This section applies where at any time (“the relevant time”) an accountable person for a higher-risk building (the “outgoing person”) ceases to be responsible for all or any part of the building.
- (2) The outgoing person must give prescribed information and a copy of any prescribed document to any person who, immediately after the relevant time—
 - (a) is an accountable person for the building, and
 - (b) is responsible for a part of the building for which the outgoing person ceased to be responsible at the relevant time.
- (3) The information and documents must be given—
 - (a) by the prescribed time,
 - (b) in the prescribed way, and
 - (c) in accordance with prescribed standards.
- (4) The outgoing person must give prescribed information to the regulator in the prescribed way, as soon as reasonably practicable after the relevant time.
- (5) Subject to subsection (6), regulations made by the Secretary of State under this section may provide that the disclosure of information under this section does not breach—
 - (a) any obligation of confidence owed by the outgoing person in relation to that information;
 - (b) any other restriction on the disclosure of information (however imposed).
- (6) This section does not authorise a disclosure of information if the disclosure would contravene the data protection legislation (but in determining whether a disclosure would do so, take into account the powers conferred by this section).
- (7) A person who, without reasonable excuse, contravenes subsection (2) or (4) commits an offence and is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding the maximum summary term for either-way offences or a fine (or both);
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);

and (in either case) is liable on summary conviction to a further fine not exceeding level 1 on the standard scale for each day on which the default continues after the initial conviction.

EXPLANATORY NOTES

Section 90: Provision of information etc on change in Accountable Person

Effect

761. This section applies where the Accountable Person for a higher-risk building changes. It relates to section 88, and regulations made under that section which will set out “prescribed information” that must be obtained, kept up to date and kept in accordance with specified standards. This prescribed information is also known as the golden thread.

762. This section sets out requirements on the “outgoing Accountable Person” i.e. one who is selling or otherwise changing their interest in the building so that they are no longer an Accountable Person. These requirements are that outgoing Accountable Person must provide certain information, or copies of certain documents, to their successor, the “incoming” Accountable Person and to the Regulator. This section gives the Secretary of State the power to issue regulations setting out the information and documents (or copies of documents) that must be provided by the outgoing Accountable Person to their successor Accountable Person, the circumstances when they must provide it, the timescale within which they must do so and any standards that the information must be provided in accordance with.

763. This section also allows the Secretary of State to issue regulations to set out what information needs to be given by the outgoing Accountable Person to the Regulator.

764. This section also gives the Secretary of State the power to issue regulations setting out that disclosure of information to the “incoming” Accountable Person or the Regulator under this section does not breach— any obligations of confidence owed by the outgoing person in relation to that information. Not complying with these requirements will be an offence with a maximum penalty of an unlimited fine and/or 12 months’ imprisonment in the magistrates’ court (six months until the commencement of paragraph 24(2) of Schedule 22 of the Sentencing Act 2020). If tried in the Crown Court, the maximum penalty will be an unlimited fine and/or two years’ imprisonment. If the breach continues after conviction, the court will also be able to impose an ongoing penalty until such time as the breach is remedied; that penalty will be set at a daily rate of no more than a level 1 fine (currently £200).

Proposed use of power

765. Regulations under this section will set out the circumstances in which an Accountable Person for a higher-risk building must hand over the prescribed information and documents (or copied of documents) about the building. In particular, these will provide for when an outgoing Accountable Person must provide the prescribed information and documents (or copies of documents) to the incoming Accountable Person, what that information should contain and standards that it must accord with.

766. Regulations will also set out what information an outgoing Accountable Person must provide to the Regulator, when they have to provide it and in what manner. This will

include informing the Regulator when there is a change in Accountable Person or Principal Accountable Person or changes in their contact details.

Background

767. This is a new provision.

768. The Independent Review identified that a “golden thread” of good quality information would ensure more effective building safety management throughout a building’s life cycle. Therefore, it is important to ensure that provisions are made so that golden thread information and documentation is provided by one Accountable Person to those who purchase or obtain an interest in the building from them. Penalties are available where the Accountable Person does not comply.

769. It is also important that the Regulator is informed when there is a change in Accountable Person or change of Designated Accountable Person or a change to their contact details. Provisions made under this section will ensure that the Regulator is aware who is responsible for the safety of the building and has up to date contact details for this person or persons.

Example

The Accountable Person for a higher-risk building has to collect and maintain information relevant to the safety of that building (prescribed information). When they sell the building, they must ensure that all this information is handed over to the buyer. Requirements setting out how the information is stored, and the format of the information are intended to make this information accessible to new owners.

COMMENTARY

63. Section 90 requires the outgoing accountable person, on a change of accountable person, to pass on prescribed building safety information to the incoming accountable person and to notify the Regulator of the change. This ensures continuity of the golden thread.
64. There has been no reported case law on section 90 as at September 2026.

SECTION 91 – RESIDENTS’ ENGAGEMENT STRATEGY

STATUTORY TEXT

- (1) The principal accountable person for an occupied higher-risk building must—
 - (a) as soon as reasonably practicable after the relevant time prepare a strategy (a “residents’ engagement strategy”) for promoting the participation of relevant persons in the making of building safety decisions;
 - (b) review the strategy at prescribed times, and revise it if they consider it necessary or appropriate to do so;
 - (c) in prescribed circumstances, consult relevant persons and prescribed persons on the strategy and take any representations made on the consultation into account when next reviewing the strategy;
 - (d) act in accordance with the strategy.
- (2) “Building safety decision” means a decision by an accountable person for the building that—
 - (a) is about the management of the building, and
 - (b) is made in connection with the performance of a duty of the accountable person under, or under regulations made under, this Part.
- (3) The strategy must include information about—
 - (a) the information that will be provided to relevant persons about decisions relating to the management of the building,
 - (b) the aspects of those decisions that relevant persons will be consulted about,
 - (c) the arrangements for obtaining and taking account of the views of relevant persons, and
 - (d) how the appropriateness of methods for promoting participation will be measured and kept under review.
- (4) As soon as reasonably practicable after the strategy is prepared or revised, each accountable person for the building must give a copy of the strategy to—
 - (a) each resident of the building who—
 - (i) is aged 16 or over, and
 - (ii) resides in a residential unit in the part of the building for which the accountable person is responsible;
 - (b) each owner of a residential unit in that part of the building;
 - (c) any prescribed person.

- (5) The duty under subsection (4)(a) does not apply in relation to a resident if the accountable person—
- (a) is not aware of the resident, and
 - (b) has taken all reasonable steps to make themselves aware of persons who reside in residential units in the part of the building for which the accountable person is responsible.
- (6) The Secretary of State may by regulations—
- (a) make further provision about the content of a residents’ engagement strategy;
 - (b) make provision about the preparation, review or revision of a residents’ engagement strategy, in cases where there is more than one accountable person for the building;
 - (c) make provision about the way in which a copy of the strategy is to be given;
 - (d) make provision about consultations under this section.
- (7) In this section—
- “relevant persons” are—
- (a) residents of the higher-risk building who are aged 16 or over, and
 - (b) owners of residential units in the building;
- “the relevant time” has the meaning given by section 85.

EXPLANATORY NOTES

Section 91: Residents’ engagement strategy

Effect

770. This section requires the Principal Accountable Person, to produce and act in accordance with a Residents’ Engagement Strategy. This is a strategy that should promote the participation of residents and owners of a residential unit (e.g. flat owners) in decision-making about building safety risks in their building. In preparing and implementing the Residents’ Engagement Strategy we expect every other Accountable Person in the building (if there is more than one) to cooperate with the Principal Accountable Person as much as possible. The high-level requirements for the content of the Residents’ Engagement Strategy are set out in subsection (3) and confirm that the strategy will need to contain: • the information that will be provided to residents about decisions relating to the management of the building; • the scope of what residents will be consulted on; • the methods that will be used to seek residents’ views; and • details of how the appropriateness of the strategy will be measured and reviewed.

771. The Principal Accountable Person must review (and where necessary or appropriate revise) the Residents’ Engagement Strategy at specified times which can be set out by the Secretary of State in regulations.

772. This section also requires the Principal Accountable Person to consult residents and owners of a residential unit on the Residents' Engagement Strategy itself in prescribed circumstances. Any representations received as part of this consultation must be considered when the strategy is next reviewed. The Secretary of State has the power to establish in regulations in what circumstances the strategy will be consulted on.

773. Each Accountable Person is responsible for providing a copy of the strategy to residents and owners of residential units in the part of the building for which they are responsible.

774. The Secretary of State has the power to make regulations to add to the requirements around the content of the Residents' Engagement Strategy. It is envisaged that these provisions will also be supported by Good Practice Guidance to provide practical help to Principal Accountable Persons in developing their Residents' Engagement Strategy including worked examples and templates, for which the Residents Panel should be one of the statutory consultees (see section 11).

Background

775. The purpose of the Residents' Engagement Strategy is to promote the participation of residents in building safety decisions that affect them and to make it clear to residents when and how they can expect to be involved.

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

777. This requirement is designed to tackle that by placing an obligation on Principal Accountable Persons to have a Residents' Engagement Strategy that sets out how they will deliver inclusive and effective resident participation and involvement in relevant building safety decisions. Where there is more than one Accountable Person it is expected that Accountable Persons will cooperate with the Principle Accountable Person to agree the content of the Residents' Engagement Strategy and play a role in promoting participation in line with the strategy.

COMMENTARY

65. Section 91 requires the principal accountable person to prepare and implement a residents' engagement strategy for the building. The strategy must describe how the accountable persons will promote the participation of residents in decisions relating to the management of building safety risks, and how they will provide information to residents about those risks and the steps being taken to manage them.
66. The residents' engagement strategy is one of the Act's most distinctive features. It reflects the finding that residents of Grenfell Tower had repeatedly raised safety

concerns that were not adequately addressed, and that a structural mechanism for meaningful engagement was needed.

67. There has been no reported case law on section 91 as at September 2026.

SECTION 92 – REQUESTS FOR FURTHER INFORMATION

STATUTORY TEXT

- (1) This section applies where—
 - (a) a resident of an occupied higher-risk building who is aged 16 or over, or
 - (b) an owner of a residential unit in the building,makes a request to an accountable person for the building to give them prescribed information or a copy of a prescribed document.
- (2) The accountable person must as soon as reasonably practicable give the resident or owner the information or document requested.
- (3) The Secretary of State may by regulations make provision about—
 - (a) the way in which information or a copy of a document must be given under this section;
 - (b) the form in which information must be given under this section (and may in particular require that the information is given in an accessible form).
- (4) The Secretary of State may by regulations provide that in prescribed circumstances an accountable person is not required by subsection (2) to provide a copy of a document or some or all of the information requested.
- (5) Subject to subsection (6), the regulations may provide that the disclosure of information under this section does not breach—
 - (a) any obligation of confidence owed by the person making the disclosure, or
 - (b) any other restriction on the disclosure of information (however imposed).
- (6) This section does not authorise a disclosure of information if the disclosure would contravene the data protection legislation (but in determining whether a disclosure would do so, take into account the powers conferred by this section).

EXPLANATORY NOTES

Section 92: Requests for further information

Effect

778. This section provides that an Accountable Person shall provide certain information or a copy of certain documentation to a resident or an owner of a residential unit (e.g. a flat owner) in a higher-risk building on request. This will supplement the building safety information that residents and owners of flats will be provided with automatically under section 89. A list of this building safety information and documentation that can be obtained on request will be set out in regulations to be made by the Secretary of State. The

regulations may also make provision about the way and form in which information is provided.

779. The Secretary of State may also make regulations which set out the circumstances when an Accountable Person is exempt from the requirement to provide the information or document requested.

780. In a building managed by multiple Accountable Persons, each Accountable Person will be responsible for providing the requested information or copy of documents to residents and owners of residential units in the part of the building for which they are responsible. Accountable Persons have a duty under section 109 to co-operate and co-ordinate with the Principal Accountable Person in discharging their duties.

Background

781. The purpose of this section is to ensure that residents and owners of residential units in a higher-risk building can request additional information on building safety beyond the information they receive automatically. This is intended to allow residents and owners to access this information without making the initial provision of information overly burdensome on Accountable Persons.

782. In addition to recommending that residents should automatically receive key building safety information (see section 89), the Independent Review also recommended that further and more detailed information about the safety of their building should be made available to any resident on request. The further building safety information that may be requested by residents of higher-risk buildings under this section will be set out in regulations and is currently envisaged to include the following: • Fire risk assessments for the higher-risk building; • Outcomes of Building Safety inspection checks for the higher-risk building; • The detail as to how any details as to how building safety assets in the higher-risk building are managed; • The detail of any details of preventive measures in place for the higher-risk building to prevent fire spread and/ or other building safety risks from occurring; • Information on the maintenance of fire safety systems within the higher-risk building; • The fire strategy for the higher-risk building; • Any recent structural assessments for the higher-risk building; and • Planned and historical changes to the higher-risk building which are relevant to building safety.

783. This section also provides that the Secretary of State may make regulations setting out the circumstances when an Accountable Person is exempt from the requirement to make some or all of this information or documentation available. The purpose of this section is to ensure that providing of this information does not create new safety, security or privacy risks. The exemptions are anticipated to include information related to: • the security of the building and/or the residents of that building. For example, technical and operational information about the lifts in a building. That information could be misused by someone who wanted to cause damage to the building and/or harm to residents; • the security of other buildings in the vicinity. For example, information about the technical system that controls sprinklers in a building. Disabling the sprinkler system could have a negative impact on surrounding buildings because of the risk of fire spread.

784. Any disclosure made under this section will also have to comply with relevant data protection legislation.

COMMENTARY

- 68. Section 92 enables residents and owners of flats in a higher-risk building to request information from the principal accountable person about the management of building safety risks. The principal accountable person must comply with the request within a prescribed period or explain why the information cannot be provided.
- 69. There has been no reported case law on section 92 as at September 2026.

SECTION 93 – COMPLAINTS PROCEDURE OPERATED BY PRINCIPAL ACCOUNTABLE PERSON

STATUTORY TEXT

- (1) The principal accountable person for an occupied higher-risk building must as soon as reasonably practicable after the relevant time establish and operate a system for the investigation of relevant complaints.
- (2) The Secretary of State may by regulations make provision about the establishment and operation of complaints systems under this section.
- (3) The regulations may in particular make provision—
 - (a) about the way in which complaints may be made;
 - (b) about the period within which a complaint must be considered and dealt with;
 - (c) requiring the principal accountable person to refer a complaint to the regulator.
- (4) In this section—

“relevant complaint” means a complaint relating to—

 - (a) a building safety risk as regards the building, or
 - (b) the performance by an accountable person for the building of any duty under, or under regulations made under, this Part;

“the relevant time” has the meaning given by section 85.

EXPLANATORY NOTES

Section 93: Complaints procedure operated by principal accountable person

Effect

785. This section requires the Principal Accountable Person to establish and operate a complaints system for the investigation of relevant complaints.

786. A relevant complaint in this section is defined in the Act as a complaint that relates to a building safety risk (as defined in section 62) as regards the building or the performance by an Accountable Person for the building of any duty under Part 4 of the or regulations made under it.

787. More detail on the requirements of the complaints system will be set out in secondary legislation, such as, but not limited to, how a complaint can be made, the way in which complaints must be handled and investigated and how a complaint can be escalated to the regulator.

788. Though the requirement for establishing and operating the complaints procedure sits with the Principal Accountable Person, in buildings managed by multiple Accountable

Persons, we expect each Accountable Person to work with the Principal Accountable Person where necessary. Accountable Persons will be responsible for putting right any issues relating to the performance of their building safety duties or issues in the part of the building they are responsible for.

Background

789. The purpose of this section is to make sure there is a clear route for escalating concerns about building safety in higher-risk buildings.

790. The Independent Review found that residents did not have a strong enough voice in the safe management of their homes and specifically that they often struggled to get their complaints addressed. This requirement is designed to tackle that by placing an obligation on Principal Accountable Persons to have a system in place to receive and investigate relevant complaints, including the ability to refer a complaint to the regulator.

COMMENTARY

- 70. Section 93 requires the principal accountable person to operate a complaints procedure for complaints about the management of building safety risks. The procedure must be accessible, transparent, and fair.
- 71. There has been no reported case law on section 93 as at September 2026.

SECTION 94 – COMPLAINTS PROCEDURE OPERATED BY THE REGULATOR

STATUTORY TEXT

- (1) The regulator must establish and operate a system for the investigation of relevant complaints that are made, or referred under section 93, to the regulator.
- (2) The regulator must consult the committee mentioned in section 11 (residents' panel) —
 - (a) before the complaints system is established or, if the committee has not been established at the time the complaints system is established, as soon as reasonably practicable after the committee is established, and
 - (b) before making any significant change to the complaints system.
- (3) The Secretary of State may by regulations make provision about the establishment and operation of the complaints system under this section.
- (4) The regulations may in particular make provision about—
 - (a) the period within which a complaint must be considered and dealt with;
 - (b) action that the regulator must consider taking in response to a complaint.
- (5) In this section “relevant complaint” means a complaint relating to—
 - (a) a building safety risk as regards an occupied higher-risk building,
 - (b) the performance by an accountable person for an occupied higher-risk building of any duty under, or under regulations made under, this Part, or
 - (c) the performance by a special measures manager of any function conferred on the manager by a special measures order.

EXPLANATORY NOTES

Section 94: Complaints procedure operated by the regulator

Effect

791. This section requires the Building Safety Regulator to establish and operate a complaints system for the investigation of relevant complaints, as defined in the Act, that are referred to the regulator through the Principal Accountable Person's complaints procedure or that are made directly to the regulator. Although complaints may be made to the regulator, the onus will always be on the appropriate Accountable Person to put right building safety issues that they are responsible for.

792. In establishing or making significant changes to their complaints system the Building Safety Regulator must consult with the Residents' Panel which will be established as one of the regulator's Advisory Committees – see section 11 for more detail.

793. The Secretary of State may by regulations make provision in relation to the establishment and operation of the regulator's complaints system.

794. A relevant complaint in this section is defined in the Act as a complaint that relates to a building safety risk (as defined in section 62) as regards the building, the performance by an Accountable Person of any duty under Part 4 of the Building Safety Act (or regulations made under it) or the performance by a Special Measures Manager for the building of a function conferred by a special measures order.

Background

795. The purpose of this provision is to increase access and transparency with regard to building safety redress, providing a clear route of accountability for building safety complaints to be addressed.

796. It is expected that building safety complaints will be handled by the Principal Accountable Person's complaint system and issues put right by the appropriate Accountable Person. This provision ensures that where this is not possible or the system fails, that building safety concerns will still be heard by the Building Safety Regulator.

797. The Independent Review found that residents did not have a strong enough voice in the safe management of their homes and specifically that they often struggled to get their complaints addressed. The duties on the Principal Accountable Person and the Building Safety Regulator contained in the Act are designed to tackle that by requiring relevant complaints to be properly handled and investigated. Where building safety complaints are not resolved satisfactorily under the Principal Accountable Person's procedure this section allows for there to be a clear escalation route to the Building Safety Regulator.

COMMENTARY

72. Section 94 provides for a complaints procedure operated by the Regulator. Residents may complain to the Regulator if they are dissatisfied with the response of the principal accountable person to a complaint under section 93, or if they consider that building safety risks are not being adequately managed. The Regulator may investigate and take enforcement action.
73. There has been no reported case law on section 94 as at September 2026.

SECTION 95 – DUTIES ON RESIDENTS AND OWNERS

STATUTORY TEXT

- (1) This section applies to—
 - (a) a resident of a residential unit in an occupied higher-risk building who is aged 16 or over;
 - (b) an owner of a residential unit in such a building.
- (2) A person to whom this section applies—
 - (a) must not act in a way that creates a significant risk of a building safety risk materialising;
 - (b) must not interfere with a relevant safety item;
 - (c) must comply with a request, made by the appropriate accountable person, for information reasonably required for the purposes of a duty under section 83 or 84.
- (3) For the purposes of subsection (2)(b) a person “interferes” with a relevant safety item if they, without reasonable excuse—
 - (a) damage it,
 - (b) remove it, or
 - (c) do anything to, or in relation to, it that interferes with its intended function.
- (4) In this section—

“appropriate accountable person” means the accountable person for the building who is responsible for the part of the building comprising the residential unit;

“relevant safety item” means—

 - (a) anything that—
 - (i) is in, or forms part of, the common parts (as defined by section 72), and
 - (ii) is intended to improve the safety of people in or about the building in relation to a building safety risk, or
 - (b) any other prescribed thing.

EXPLANATORY NOTES

Section 95: Duties on residents and owners

Effect

798. This section provides that residents of a higher-risk building (aged 16 or over) and owners of residential units in higher-risk building must: • not act in a way that creates a

significant risk of a building safety risk materialising; • not interfere with a relevant safety item; and • comply with a request made by the appropriate Accountable Person for information reasonably required to perform their duties to carry out an assessment of building safety risks and to manage those risks.

799. The duties apply to residents of all tenures living in the building including but not limited to leaseholders, social housing tenants, and private renters; the duties also apply to non-resident owners of residential units. The duties are about residents' behaviours and actions, including in responding to requests for information from the appropriate Accountable Person to ensure they can assess and manage building safety risks.

800. The provision places a set of clear responsibilities on residents in relation to helping to keep their building safe, including ensuring that Accountable Persons can carry out their building safety duties. The Accountable Person is, by virtue of sections 95 and 96, able to enforce these duties by issuing contravention notices, which can be enforced through application to the courts.

801. "Relevant safety item" means anything in or which forms part of the common parts (as defined in section 71) of a higher-risk building that is intended to improve the safety of anyone in the building or in its vicinity in relation to a building safety risk. For example, signage, sprinklers, fire extinguishers etc. All residents (and owners of residential units) are required not to interfere with a relevant safety item, this means damaging it, removing it, or interfering with its intended function. This applies unless the resident has a reasonable excuse to "interfere" with the relevant safety item, for example: using a fire extinguisher to put out a fire.

Background

802. The purpose of this section is to ensure residents and owners of residential units in higher-risk buildings play their part in keeping buildings safe. The Independent Review recommended that residents should have a clear understanding of their responsibilities in relation to helping to keep their building safe. Example A resident's items are being stored in front of a fire exit in the common parts and are blocking access to the fire exit. This would be considered a breach of a resident's duties, as in the event of a fire, residents may not be able to safely evacuate through this fire exit due to the blockage, thereby interfering with the intended function of a safety item, the fire exit. In this instance the Accountable Person may investigate the matter in order to make sure residents' safety isn't being put at risk. As part of this investigation the Accountable Person would be able to require the resident to take action to address the breach of their building safety duties. This could include the Accountable Person issuing a contravention notice to the resident who has breached their duties. Residents are required to comply with a request made by the appropriate Accountable Person for information reasonably required to perform their building safety duties. For example - An owner of a flat has replaced their front door which is a fire door. The owner did not inform their Accountable Person prior to carrying out these works and has not provided the Accountable Person with any information on the specification of the new door. Replacing a fire door could affect the passive fire safety systems and compartmentation. The Accountable Person in this instance would be able to request the

specification of the door and any other pertinent information from the owner of the flat in order to assess whether the new door poses a building safety risk.

COMMENTARY

74. Section 95 imposes duties on residents and owners of flats in higher-risk buildings. Residents must not act in a way that creates a significant risk of a building safety risk materialising, must comply with requests from accountable persons for information or access, and must not interfere with relevant safety items. These reciprocal duties recognise that building safety is a shared responsibility.
75. There has been no reported case law on section 95 as at September 2026.

SECTION 96 – CONTRAVENTION NOTICES

STATUTORY TEXT

- (1) This section applies where it appears to the appropriate accountable person that a relevant person has contravened or is contravening a duty under section 95(2).
- (2) The appropriate accountable person may give a contravention notice to the relevant person.
- (3) A “contravention notice” is a notice that—
 - (a) specifies the alleged contravention;
 - (b) specifies any steps that the appropriate accountable person considers the relevant person should take in order to remedy the contravention, and a reasonable time for the taking of those steps;
 - (c) specifies anything that the appropriate accountable person considers the relevant person should refrain from doing, to avoid further contraventions of the duty;
 - (d) contains an explanation of the steps that the appropriate accountable person may take under this section if the notice is not complied with.
- (4) Where it appears to the appropriate accountable person that the relevant person has contravened or is contravening the duty under section 95(2)(b), the contravention notice may require the relevant person to pay to the appropriate accountable person a sum specified in the notice.
- (5) A sum may be specified in a contravention notice under subsection (4) only if—
 - (a) it is necessary to repair or replace the relevant safety item as a result of the contravention, and
 - (b) the sum specified does not exceed the reasonable cost of repairing or replacing (as the case may be) that item.
- (6) The Secretary of State may by regulations make provision about contravention notices, including—
 - (a) provision about the form of a notice and the way a notice is to be given, and
 - (b) further provision about the content of a notice.
- (7) The county court may, on an application made by the appropriate accountable person, make an order under this section if satisfied that—
 - (a) a contravention notice has been given,
 - (b) the contravention alleged in the notice occurred, and
 - (c) it is necessary to make the order.

- (8) An order under this section may—
- (a) require a relevant person to provide specified information or do a specified thing, by a specified time;
 - (b) prohibit a relevant person from doing a specified thing;
 - (c) where a contravention notice requires a sum to be paid under subsection (4), require a relevant person to pay to the appropriate accountable person a specified sum.
- (9) A sum specified in an order under subsection (8)(c) may not exceed the sum specified in the contravention notice.
- (10) In this section—
- “appropriate accountable person” has the same meaning as in section 95;
 - “relevant person” means a person who is subject to the duties under section 95 (see subsection (1) of that section).

EXPLANATORY NOTES

Section 96: Contravention Notices

Effect

803. This section enables an Accountable Person for an occupied higher-risk building to serve a notice on a resident or owner of a residential unit in their part of the building, where it appears to them that the person in question has not complied with one or more of the residents’ duties under section 95. A notice under this section is a notice that specifies: • the alleged breach of a duty; • what the resident should do so that they are no longer in breach and a reasonable time for doing so; • anything the resident should not do to avoid further breaches of the duty; and • what may happen next if the resident fails to comply with the notice.

804. Where the Accountable Person believes that a resident or owner has breached section 94(2)(b) (interfering with a relevant safety item) they may ask the resident to pay for the repair or replacement of that item if the repair or replacement is necessary. That sum must not exceed the reasonable costs of repair or replacement.

805. Following service of a notice on the resident, the appropriate Accountable Person may apply to the county court to make an order. The court may make an order provided that it is satisfied that: • a contravention notice has been given; • the resident or owner of the residential unit has breached the duty alleged in that notice; and • it is necessary to make the order.

806. An order made by the county court under this section may require a person: • to provide specified information, or do a specified thing, within a certain time; • not to do a specified thing; or • to pay a sum if that has been requested, that sum cannot exceed the sum in the original notice.

807. *The Secretary of State may by regulations make provision about contravention notices under this section, including: • details about the form of a notice and the way it is to be given; and • further provision about the content of a notice.*

Background

808. *The purpose of this section is to allow the Accountable Person to make sure residents and owners of residential units comply with their duties under section 95 in order to keep the higher-risk building safe. In many cases where a resident is in breach of their duties, it would be reasonable for Accountable Persons to discuss an alleged contravention with the resident first to try to resolve the matter before issuing a contravention notice.*

809. *The Independent Review recommended that residents should have a clear understanding of their roles and responsibilities to help to keep their building safe. Residents need to be made aware of the impact of their actions and their role in keeping their building safe. It is important for residents to understand that in certain circumstances their actions may pose a risk to the safety of their dwelling, their fellow residents, and the building they live in and that the Accountable Person has the ability to ensure residents comply with these duties.*

810. *The focus is on resident behaviours (and the behaviour of residential unit owners) and their co-operation with the Accountable Person in keeping the building safe. Where this fails the Accountable Person is able to investigate and enforce those duties. Example A resident continues to block a corridor with their belongings, despite previous communications from the Accountable Person on this matter. The corridor is an important escape route from the higher-risk building in the event of a fire. The Accountable Person issues a contravention notice. This notice sets out that the resident has breached one of their duties by blocking an escape route and requests that the resident removes their belongings immediately. The notice also mentions that failure to comply with the request in the notice would mean that the Accountable Person may make an application to the courts for an order.*

COMMENTARY

76. Section 96 enables the Regulator to issue a contravention notice where it is satisfied that a relevant duty under Part 4 has been contravened. A contravention notice requires the recipient to remedy the contravention within a specified period. It is the first step in the Regulator's graduated enforcement toolkit.
77. There has been no reported case law on section 96 as at September 2026.

SECTION 97 – ACCESS TO PREMISES

STATUTORY TEXT

- (1) This section applies where —
 - (a) an accountable person for an occupied higher-risk building makes a request to a relevant person to enter relevant premises,
 - (b) the request is made for the purpose of—
 - (i) facilitating the performance of a duty under section 83 or 84 (assessment of building safety risk etc), or
 - (ii) determining whether a duty under section 95 (duties on residents and owners) has been contravened,
 - (c) the request is within subsection (2), and
 - (d) entry to the premises is not given.
- (2) A request is within this subsection if it—
 - (a) is in writing,
 - (b) sets out the purpose for which it is made,
 - (c) contains an explanation of why it is necessary to enter the premises for that purpose,
 - (d) requests access to the premises at a reasonable time, and
 - (e) is made at least 48 hours before the time mentioned in paragraph (d).
- (3) The accountable person may apply to the county court for an order—
 - (a) requiring the relevant person to allow the accountable person, or a person authorised by the accountable person, to enter the relevant premises at a reasonable time for the purpose mentioned in the request, and
 - (b) if necessary for that purpose, authorising the taking of measurements, photographs, recordings or samples by the accountable person or authorised person.
- (4) The county court—
 - (a) may make an order under subsection (3)(a) or (b) if satisfied that it is necessary to do so for the purpose mentioned in the request;
 - (b) must, if it does so, specify a date on which, or in a period within which, the accountable person or authorised person may enter the relevant premises for that purpose.
- (5) In this section—

“relevant person” in relation to relevant premises means—

- (a) a resident of those premises who is aged 16 or over;
 - (b) where those premises are controlled but not occupied, a person controlling those premises;
 - (c) in any other case, an owner of those premises;
- “relevant premises” means any premises in the part of the building for which the accountable person is responsible that are occupied or controlled by—
- (a) a resident of a residential unit in the building, or
 - (b) an owner of a residential unit in the building.

EXPLANATORY NOTES

Section 97: Access to Premises

Effect

811. *This section provides that the county court may, following an application by the Accountable Person for an occupied higher-risk building, make an order to allow entry in respect of any premises in the part of the building for which the Accountable Person is responsible.*

812. *The premises referred to in this section refer to residential units or other spaces controlled by the owner or resident such as a garage or storage cupboard that does not form part of the residential unit.*

813. *The court must be satisfied that the order is necessary for the purpose as set out in the request. In requesting access, the Accountable Person must do so in accordance with principles prescribed in regulations under section 83.*

814. *Before the court makes an order it must ensure that it is satisfied that:* • *the Accountable Person has made a written request, setting out its purpose and an explanation for why access is needed. It must also provide at least 48 hours’ notice before access is required and access must be requested at a reasonable time;* • *the request has been made in connection with the Accountable Person’s duties under sections 83 or 84 to assess or manage building safety risks or in connection with a potential breach of a duty on residents and owners of residential units under section 95; and* • *it is necessary to make the order for the purpose mentioned in the request for access.*

815. *An order made under this section may permit access for the purpose requested and, if necessary for that purpose, may permit the taking of measurements, photographs, recordings or samples.*

816. *If an order is made, it must specify a date or a time period during which the relevant person must allow the Accountable Person, or a person authorised by them, access to the premises.*

817. *A relevant person (aged 16 or over) includes the resident, or if the premises is not occupied, it may be the owner or a person controlling the premises.*

Background

818. The purpose of this provision is to make sure the Accountable Person is able to secure access to a residential unit when required for managing or assessing a building safety risk. It is expected that in the majority of cases, residents and Accountable Persons will be able to agree on whether access is necessary and how it should be granted without a formal request under this provision.

819. Residents (aged 16 or over) and owners of residential units in higher-risk buildings are required, by virtue of section 95, to comply with three duties designed to ensure that residents play their role in ensuring the safety of the building they live in and to ensure the Accountable Person is able to discharge their duty to effectively manage the risk of fire or structural failure. Those duties are: • Not to act in a way that creates a significant risk of a building safety risk materialising; • Not to interfere with a relevant safety item; and • To comply with a request, made by the appropriate Accountable Person for information reasonably required for the purposes of their duty to assess and manage building safety risks.

820. The Accountable Person may need access to one or more spaces in the higher-risk building that are controlled or occupied by a resident or by an owner of a residential unit. This access may be required so that the Accountable Person can confirm whether a resident has breached a specified duty, or in order to perform their own duties to assess and manage building safety risks and take reasonable steps to minimise them.

Example

An Accountable Person is informed by one of their residents that they will be carrying out a renovation of their flat. The flat has a supporting column within its footprint. The Accountable Person in this situation may want to inspect the work in order to ensure that the column has not been compromised and could therefore request access. If the resident refused to grant access, the Accountable Person could apply for access to assess whether this work poses a building safety risk.

COMMENTARY

78. Section 97 confers powers of access on the Regulator and authorised officers for the purpose of assessing building safety risks and monitoring compliance with Part 4. The power extends to entering common parts and, with appropriate notice, individual dwellings.
79. There has been no reported case law on section 97 as at September 2026.

SECTION 98 – DUTY ON REGULATOR TO ENFORCE PART

STATUTORY TEXT

The regulator must enforce the provisions of this Part and regulations made under it.

EXPLANATORY NOTES

Section 98: Duty on regulator to enforce Part

Effect

821. This section is self-explanatory.

COMMENTARY

80. Section 98 imposes a duty on the Regulator to enforce the provisions of Part 4 and regulations made under it. This is the statutory enforcement mandate that underpins the Regulator's compliance and enforcement activities.
81. There has been no reported case law on section 98 as at September 2026.

SECTION 99 – COMPLIANCE NOTICES

STATUTORY TEXT

- (1) The regulator may give a compliance notice to an accountable person for a higher-risk building who appears to the regulator to have contravened, be contravening or be likely to contravene a relevant requirement.
- (2) A “compliance notice” is—
 - (a) a notice requiring the accountable person to take specified steps within a specified period, or
 - (b) a notice requiring the accountable person to remedy the contravention or the matters giving rise to it within a specified period.
- (3) A notice of a kind mentioned in subsection (2)(a) may specify any steps relating to—
 - (a) the remedying of the contravention, or
 - (b) avoiding the contravention occurring.
- (4) Where it appears to the regulator that the contravention has placed or will place people in or about the building in imminent danger, the regulator may specify that the compliance notice is a notice to which this subsection applies (an “urgent action notice”).
- (5) A person who, without reasonable excuse, contravenes a compliance notice commits an offence.
- (6) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding the maximum summary term for either-way offences or a fine (or both);
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);and (in either case) is liable on summary conviction to a further fine not exceeding level 1 on the standard scale for each day on which the default continues after the initial conviction.
- (7) In this section—

“relevant requirement” means any requirement on an accountable person under, or under regulations made under, this Part except one that is prescribed for the purposes of this section;

“specified” means specified in the notice.

EXPLANATORY NOTES

Section 99: Compliance notices

Effect

822. This section enables the Building Safety Regulator to issue a compliance notice to an Accountable Person where they are contravening, or appear likely to contravene, a “relevant requirement” under this Part of the Act or a requirement set out in regulations made under it. Regulations may set out requirements that are excluded from enforcement action under this section. The notice will either require that particular, specified steps are taken within a period of time set out in the notice or will require the relevant person to remedy the contravention in question within the period of time set out in the notice.

823. If the contravention is one that places people in or about the building in imminent danger, in the Building Safety Regulator’s view, the compliance notice is termed an “urgent action notice”. The consequences of this are i) that the regulator is likely to set a shorter period to rectify the contravention and ii) any appeal against the notice will not suspend its effect unless the Tribunal determines that it should (see section 103(3)).

824. If the person issued with a compliance or urgent action notice does not comply by the date specified, or otherwise breaches the notice, the Building Safety Regulator will be able to prosecute for the breach. The offence of breaching a notice will be triable either way, reflecting that not only will a contravention have occurred, but a formal opportunity to rectify it will have been refused. If tried by magistrates, the offence will carry a maximum penalty of an unlimited fine and/or 12 months’ imprisonment (six months until the commencement of paragraph 24(2) of Schedule 22 of the Sentencing Act 2020). If tried in the Crown court, the maximum penalty will be an unlimited fine and/or two years’ imprisonment. Under section 161, certain corporate officers could also be liable for prosecution.

825. These notices will be appealable to the First-tier Tribunal (see section 103 for further detail).

Background

826. This section introduces a power for the Building Safety Regulator to address non-compliance with the new regime for the safety of higher-risk buildings without having to resort immediately to criminal prosecution.

827. These measures have been modelled on notices under section 21 of the Health and Safety at Work etc Act 1974 and are intended to be used in similar circumstances.

Example

The Building Safety Regulator becomes aware that an Accountable Person has not been maintaining the information as required by section 88 and regulations made under it. The Regulator issues a compliance notice to the Accountable Person identifying the contravention in question and setting a period of time for the Accountable Person to rectify that contravention.

COMMENTARY

82. Section 99 enables the Regulator to issue a compliance notice requiring a person to take specified steps to comply with a relevant duty under Part 4. A compliance notice is a more formal enforcement tool than a contravention notice under section 96, and non-compliance is an offence.
83. There has been no reported case law on section 99 as at September 2026.

SECTION 100 – COMPLIANCE NOTICES: SUPPLEMENTARY

STATUTORY TEXT

- (1) The Secretary of State may by regulations make further provision about compliance notices.
- (2) The regulations may in particular make provision about—
 - (a) the form and content of notices;
 - (b) the giving of notices;
 - (c) the amendment or withdrawal of notices;
 - (d) the extension of any period specified in a compliance notice for the doing of a thing.
- (3) Subsection (4) applies where the regulator has given a compliance notice to an accountable person for a higher-risk building.
- (4) The regulator must take reasonable steps to notify—
 - (a) the local authority for the area in which the building is situated;
 - (b) the fire and rescue authority for the area in which the building is situated;
 - (c) where the accountable person for the building is a registered provider of social housing, the Regulator of Social Housing;
 - (d) any other prescribed person.

EXPLANATORY NOTES

Section 100: Compliance notices: supplementary

Effect

828. This section enables the making of regulations to set out further detail as to how compliance notices will work in practice, including what should be specified in notices; how notices should be given to relevant persons; how notices can be amended or withdrawn; and how arrangements can be made to extend the set period for compliance.

829. This section also requires the Building Safety Regulator to notify other relevant bodies where it serves a compliance notice, including the local authority, relevant Fire and rescue authority, the Regulator of Social Housing (in appropriate cases) and any other body prescribed in regulations.

COMMENTARY

84. Section 100 contains supplementary provisions relating to compliance notices, including the power to vary or withdraw a notice and the duty on the recipient to notify the Regulator when the required steps have been taken.
85. There has been no reported case law on section 100 as at September 2026.

SECTION 101 – OFFENCE: CONTRAVENTION GIVING RISE TO RISK OF DEATH AND SERIOUS INJURY

STATUTORY TEXT

- (1) An accountable person for a higher-risk building commits an offence if—
- (a) without reasonable excuse, the accountable person contravenes a relevant requirement, and
 - (b) the contravention places one or more people in or about the building at critical risk.
- (2) In subsection (1)—
- “critical risk” means a significant risk of death or serious injury arising from a building safety risk;
- “relevant requirement” means any requirement on an accountable person under, or under regulations made under, this Part except one that is prescribed for the purposes of this section.
- (3) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding the maximum summary term for either-way offences or a fine (or both);
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
- and (in either case) is liable on summary conviction to a further fine not exceeding level 1 on the standard scale for each day on which the default continues after the initial conviction.

EXPLANATORY NOTES

Section 101: Offence: contravention giving rise to risk of death and serious injury

Effect

830. This section creates an offence of breaching a “relevant requirement” under the new regime set out in this Part of the Act, or regulations made under it, without reasonable excuse, where that failure places those in or about the building at a significant risk of death or serious injury arising from a building safety risk. A “relevant requirement” is defined as a requirement that is not excluded from enforcement action by secondary legislation. “Building safety risks” are defined in section 62.

831. The offence is triable either way, with a maximum penalty of an unlimited fine and/or 12 months’ imprisonment (six months until the commencement of paragraph 24(2) of Schedule 22 of the Sentencing Act 2020). If tried in the Crown court, the maximum penalty will be an unlimited fine and/or two years’ imprisonment. If the breach continues after

conviction, the court will also be able to impose an ongoing penalty until such time as the breach is remedied; that penalty will be set at a daily rate of a level 1 fine (currently £200).

Background

832. Where a requirement under the new regime is breached, the Building Safety Regulator would normally be expected to use a compliance notice as described in the previous sections to secure compliance from the Accountable Person – or an urgent action notice, where the contravention places people in or about the building in imminent danger. For the most serious breaches of these requirements, where the failure places those in or about the building at a significant risk of death or serious injury, the Building Safety Regulator will be able to move directly to prosecution for the offence described in this section, if it considers that to be the most effective and appropriate course of action. Example On a first inspection of an existing higher-risk building, the Building Safety Regulator finds evidence that, while the building’s main exit route is in constant use, the emergency exit at the foot of the stairs is seldom used and, over time, has warped to the point where it has become stuck in the frame and cannot be opened, even by putting a shoulder to it. In addition, the building’s office is on the ground floor and has no self-closing device on the door, with numerous ignition sources in the office and deliveries stored there, giving a high risk of fire open to the living accommodation. This means that a fire in the office would affect the means of escape for anyone wanting to evacuate because, due to the stuck emergency exit, they have to pass the office and, for the accommodation on the ground floor, the fire and smoke will be right outside their front doors. Given the potential seriousness of these risks, the Building Safety Regulator issues the Accountable Person with an urgent action notice (as described in section 99), requiring the issues to be rectified within seven days. In addition, as the Building Safety Regulator has found similar failings in other buildings under the control of the Accountable Person, and given the significant risk of death or serious injury to those living in the building, the Building Safety Regulator decides it would be appropriate to prosecute the Accountable Person for this offence and seek a significant penalty from the courts to punish this non-compliance.

COMMENTARY

86. Section 101 creates a specific offence where a contravention of Part 4 gives rise to a risk of death or serious injury to any person. This is the most serious criminal offence created by Part 4 and is triable either way. On conviction on indictment, the maximum penalty is an unlimited fine and/or imprisonment for a term not exceeding two years.
87. There has been no reported case law on section 101 as at September 2026.

SECTION 102 – SPECIAL MEASURES

STATUTORY TEXT

Schedule 7 provides for the appointment of a special measures manager, to undertake duties under this Part in place of an accountable person, and makes further provision in connection with that appointment.

EXPLANATORY NOTES

Section 102: Special measures

Effect

833. This section provides for the special measures regime as detailed in Schedule 7.

Background

834. This is a new provision.

835. Schedule 7 details the procedure that the Building Safety Regulator must follow before applying for a special measures order; the appointment of a special measure manager by the First-Tier tribunal and further provisions in relation the operation of the special measures regime.

COMMENTARY

88. Section 102 enables the Regulator to take special measures in relation to a higher-risk building where it considers that there is a serious risk to the safety of persons. Special measures may include the appointment of a special measures manager to take over the management of building safety risks. This is a power of last resort, analogous to the appointment of a manager under Part 2 of the Landlord and Tenant Act 1987.
89. There has been no reported case law on section 102 as at September 2026.

SECTION 103 – APPEALS AGAINST COMPLIANCE NOTICE ETC

STATUTORY TEXT

- (1) A person to whom a compliance notice has been given may appeal to the tribunal.
- (2) An appeal may be on the grounds—
 - (a) that the person has not contravened, is not contravening, or is not likely to contravene, a relevant requirement;
 - (b) that it is unreasonable to require the person to do any thing specified to be done in the notice.
- (3) Where an appeal under subsection (1) is made and the compliance notice is not an urgent action notice—
 - (a) the compliance notice is of no effect pending the final determination or withdrawal of the appeal, and
 - (b) the specified period mentioned in section 99(2)(a) is treated as extended by the period—
 - (i) beginning with the day on which the appeal is made, and
 - (ii) ending with the day on which the appeal is finally determined or withdrawn.
- (4) Where an appeal under subsection (1) is made and the compliance notice is an urgent action notice—
 - (a) the appellant may apply to the tribunal for a direction that the compliance notice is of no effect pending the final determination or withdrawal of the appeal, and
 - (b) unless and until any such direction is given, the compliance notice continues to have effect despite the making of the appeal.
- (5) A person to whom a compliance notice has been given may apply to the tribunal for an extension of the period for the doing of any thing specified to be done in the notice.
- (6) Subsections (3) and (4) apply to such an application as they apply to an appeal under subsection (1).
- (7) In this section “urgent action notice” has the meaning given by section 99(4).

EXPLANATORY NOTES

Section 103: Appeals against compliance notice etc

Effect

836. This section sets out that a person receiving a compliance notice (as described in section 99 above) may appeal against that notice to the First-tier Tribunal, and that an appeal of a compliance notice that is not an urgent action notice (see section 99(4)) will

suspend the effect of the notice pending the resolution of the appeal (subsection (3)). As set out in the note above in respect of section 99, given the greater seriousness of the issues justifying the issue of an urgent action notice, this section sets out that an appeal against such a notice will not suspend its effect (subsection (4)(b)) unless the First-tier Tribunal determines that it should (subsection (4)(a)).

837. Subsection (2) sets out the grounds on which an appeal can be made, while subsection (5) provides that the recipient of a compliance notice can apply to the Tribunal for an extension of any time limit set by the regulator in the notice, whether or not an appeal is lodged.

COMMENTARY

90. Section 103 provides for appeals to the First-tier Tribunal against compliance notices issued under section 99. The appeal may be brought on the ground that the notice was issued in error, that the steps required are unreasonable, or that the time allowed for compliance is insufficient.
91. There has been no reported case law on section 103 as at September 2026.

**SECTION 104 – APPEALS AGAINST DECISIONS OF THE REGULATOR MADE
UNDER THIS PART**

STATUTORY TEXT

- (1) This section applies in relation to a decision of the regulator—
 - (a) not to register a building on an application under section 78(1);
 - (b) to remove a building from the register under section 78(3);
 - (c) to refuse an application for a building assessment certificate under section 81(3);
 - (d) to give a direction under section 83(2).
- (2) An affected person may appeal the decision.
- (3) An appeal may be on the grounds—
 - (a) that the decision was based on an error of fact;
 - (b) that the decision was wrong in law;
 - (c) that the decision was unreasonable.
- (4) In this section “an affected person” means—
 - (a) in relation to a decision of the regulator mentioned in paragraph (a) or (b) of subsection (1), an accountable person for the higher-risk building (or a person who would be an accountable person for the building if the building were a higher-risk building);
 - (b) in relation to a decision of the regulator mentioned in paragraph (c) of subsection (1), an accountable person for the higher-risk building;
 - (c) in relation to a decision of the regulator mentioned in paragraph (d) of subsection (1), the accountable person subject to the direction.

EXPLANATORY NOTES

Section 104: Appeals against decisions of the regulator made under this Part

Effect

838. This section relates to Part 4 only and sets out that affected persons (defined in subsection (4)) have the right to appeal certain decisions made by the Regulator.

839. These decisions are: • where the regulator declines to register a higher-risk building or removes one from the register; • where an application for certification is refused; and • where the regulator gives a direction to the Accountable Person.

840. This section also sets out on what grounds an appeal may be made.

Background

841. This section provides a right of appeal for certain decisions the Regulator will make for higher-risk buildings under this legislation.

Example

The Building Safety Regulator has declined to issue a Building Assessment Certificate for a higher-risk building due to non-compliance with prescribed criteria. This is appealed by the Accountable Person to the First-tier Tribunal on one of the grounds specified in this section. The Tribunal, under this section, can either confirm, vary or quash the Regulator's decision.

COMMENTARY

92. Section 104 provides for appeals to the First-tier Tribunal against other decisions of the Regulator made under Part 4, including decisions about registration, building assessment certificates, and contravention notices.
93. There has been no reported case law on section 104 as at September 2026.

SECTION 105 – APPEALS AGAINST DECISIONS OF THE REGULATOR MADE UNDER REGULATIONS

STATUTORY TEXT

- (1) This section applies in relation to a prescribed decision of the regulator made under regulations made under this Part.
- (2) A prescribed person may appeal to the tribunal against the decision.
- (3) An appeal may be made only on prescribed grounds.

EXPLANATORY NOTES

Section 105: Appeals against decisions of the regulator made under regulations

Effect

842. This section relates to Part 4 only and creates a provision to give a right of appeal to prescribed persons regarding decisions made by the Regulator that are set out in secondary legislation.

Background

843. This section is intended to be used to provide a comprehensive right of appeal for the decisions the Regulator will make for higher-risk buildings under this legislation that are created in regulations.

Example

The Building Safety Regulator may wish to create new duties or requirements in regulations as the regime settles in. New duties and components will require a route of appeal. This section provides a degree of flexibility in introducing of the building safety regime where it sees fit through the making of regulations under this Part of the Act.

COMMENTARY

94. Section 105 provides for appeals against decisions of the Regulator made under regulations under Part 4. This complements the general appeal provisions in section 104.
95. There has been no reported case law on section 105 as at September 2026.

SECTION 106 – APPEALS: SUPPLEMENTARY

STATUTORY TEXT

- (1) This section applies in relation to an appeal to the tribunal under section 103(1), 104 or 105.
- (2) The tribunal—
 - (a) must consider afresh the decision appealed against, and
 - (b) may take into account evidence that was not available to the regulator.
- (3) The tribunal may confirm, vary or quash the decision of the regulator.
- (4) The Secretary of State may, by regulations—
 - (a) provide for the suspension during the appeal period of the effect of a notice (other than a compliance notice) given or other thing done by the regulator;
 - (b) make other provision about the effect during the appeal period of an appeal (including provision conferring powers on the tribunal).
- (5) In subsection (4) “the appeal period” means the period beginning with the making of the appeal and ending with the final determination or withdrawal of the appeal.

EXPLANATORY NOTES

Section 106: Appeals: supplementary

Effect

844. This section is supplementary to: • Section 103: Appeals against compliance notice etc; • Section 104: Appeals against decisions of the regulator made under this Part; and • Section 105: Appeals against decisions of the regulator made under regulations

845. It sets out what the tribunal can do on determining an appeal, how the tribunal must consider an appeal, and that new evidence and information can be presented.

846. This section also allows regulations to make provision about the effect of an appeal on a regulatory decision; for example, they may provide that bringing an appeal suspends, or does not suspend, the effect of a regulatory decision.

Background

847. This section supplements the overall package of appeal provisions for decisions made by the Regulator under this legislation.

Example

The Building Safety Regulator has decided to remove a building from the register because it appears to the regulator that the building is not occupied. The Accountable Person for the building appeals against that decision. During the period of the appeal, regulations may specify that the building remains on the register until the appeal decision is reached.

COMMENTARY

96. Section 106 contains supplementary provisions about appeals under Part 4, including provision about the suspension of decisions pending appeal and the Tribunal's powers on determining an appeal.
97. There has been no reported case law on section 106 as at September 2026.

SECTION 107 – ENFORCEMENT OF DECISIONS OF THE FIRST-TIER AND UPPER TRIBUNAL

STATUTORY TEXT

- (1) A decision of the First-tier Tribunal or Upper Tribunal made under or in connection with this Part is enforceable with the permission of the county court in the same way as an order of that court.
- (2) Subsection (1) does not apply to a decision of the First-tier Tribunal or Upper Tribunal ordering the payment of a sum (as to which see section 28 of the Tribunals, Courts and Enforcement Act 2007 (enforcement)).

EXPLANATORY NOTES

Section 107: Enforcement of decisions of the First-tier and Upper Tribunal

Effect

848. This section ensures that tribunal decisions are enforceable. In practice, it means that any decision of the First-tier or Upper Tribunal under or in connection with Part 4 of the Act, other than a decision ordering the payment of a sum, will be enforceable with the permission of the county court in the same way as orders of the county court.

Background

849. The general position is that the tribunal does not have enforcement powers of its own, other than powers to enforce payment for a sum of money. As such, where it is necessary to have powers to enforce tribunal decisions, it is usual to insert a provision in legislation to enable the county court to enforce those decisions.

Example

The Regulator issues a direction to an Accountable Person to carry out an assessment of building safety risks under section 83. In the event of an appeal by the Accountable Person, the tribunal's decision on the appeal can be enforced with the permission of the county court in the same way as orders of the county court.

COMMENTARY

98. Section 107 provides for the enforcement of decisions of the First-tier Tribunal and the Upper Tribunal under Part 4. A decision of the Tribunal may be enforced as if it were a decision of the county court.
99. There has been no reported case law on section 107 as at September 2026.

SECTION 108 – GUIDANCE

STATUTORY TEXT

- (1) The regulator may issue guidance about any of the following matters—
 - (a) the performance of any duties under section 87 (mandatory reporting requirements);
 - (b) the performance of any duties under section 88 or 89 (duty to keep or give information);
 - (c) the performance of any duties under section 92 (duty to give further information to residents);
 - (d) the performance of any duties under section 93 (complaints procedure).
- (2) The regulator may revise or withdraw any issued guidance.
- (3) Where in any proceedings it is alleged that a person has contravened a provision mentioned in subsection (1)—
 - (a) proof of a failure to comply with any applicable guidance may be relied on as tending to establish that there was such a contravention, and
 - (b) proof of compliance with any applicable guidance may be relied on as tending to establish that there was no such contravention.
- (4) In any proceedings, a document purporting to be guidance under this section is to be taken to be such guidance unless the contrary is proved.
- (5) Guidance under this section may be issued, revised or withdrawn only with the consent of the Secretary of State.
- (6) In this section any reference to a provision includes regulations made under the provision.

EXPLANATORY NOTES

Section 108: Guidance

Effect

850. This section sets out the areas of the building safety regime where the Building Safety Regulator may issue guidance with statutory force, including the process to be followed in relation to the guidance and the potential consequences of complying – or not complying – with the content of that guidance.

851. Subsection (1) sets out the areas where the Building Safety Regulator may issue guidance; they are: • mandatory reporting requirements for Accountable Persons; • duties to keep or give information to residents and others; and • how an Accountable Person should operate a complaints procedure for residents.

852. Subsections (1), (2) and (5) set out that the regulator may issue, withdraw or amend guidance, but only with the consent of the Secretary of State. Subsection (3) makes clear that, as with the approved documents issued in accordance with Part 1 of the Building Act 1984, compliance with the guidance can be relied on in court or Tribunal proceedings as tending to establish compliance with the provision to which the guidance relates, while not following the guidance will tend to establish non-compliance with the relevant provision.

Background

853. Historically, there has always been detailed guidance (the Approved Documents) to give further detail in respect of the functional requirements set out in Building Regulations. This section sets out those areas of this Act where similar guidance, with statutory force, is needed to give guidance to those with duties under the new occupation regime. *Example 1* In order to assist Accountable Persons with setting up and operating a complaints procedure for the residents of higher-risk buildings, the Building Safety Regulator will have the power to set out in guidance with statutory force the key features of such a scheme. Even if the Accountable Person does not have particular experience in operating such a scheme, if they stick to the requirements set out in the regulator's guidance, they will have comfort that, because of subsection (3), they will be able to rely in court or tribunal proceedings on compliance with the guidance as tending to establish compliance with the legal requirements.

COMMENTARY

100. Section 108 enables the Regulator to issue guidance about the exercise of functions under Part 4. Accountable persons and principal accountable persons must have regard to such guidance in exercising their duties. Approved codes of practice may also be issued.
101. There has been no reported case law on section 108 as at September 2026.

SECTION 109 – COOPERATION AND COORDINATION

STATUTORY TEXT

- (1) Subsection (2) applies if there is more than one accountable person for an occupied higher-risk building.
- (2) When carrying out their duties under, or under regulations made under, this Part, each accountable person must so far as possible—
 - (a) cooperate with every other accountable person for the building, and
 - (b) coordinate with every other accountable person for the building.
- (3) Subsection (4) applies to an accountable person for an occupied higher-risk building if there are one or more other persons who are responsible persons within the meaning of article 3 of the Regulatory Reform (Fire Safety) Order 2005 in relation to the building.
- (4) The accountable person must cooperate with each responsible person for the purpose of each responsible person carrying out their duties under the Order.

EXPLANATORY NOTES

Section 109: Cooperation and coordination

Effect

854. Subsection (1) and (2) set out that where there is more than one Accountable Person for an occupied higher-risk building that they must, when carrying out their duties, cooperate and coordinate with all other Accountable Persons for that building as far as possible.

855. This section requires the Accountable Person for a higher-risk building to assist a Responsible Person who, within the same building, also has responsibilities for the fire safety of the occupants and people who might be affected by a fire. The Accountable Person must therefore cooperate with each Responsible Person so that they can carry out their duties under the Regulatory Reform (Fire Safety) Order 2005.

856. Responsible Person(s) are defined under Article 3 of the Regulatory Reform (Fire Safety) Order 2005.

Background

857. This is a new provision. Example Higher-risk buildings are often mixed use, owned and managed by more than one entity, and include commercial areas that are not for residential use, such as shops, gyms, restaurants etc. There are many different ownership models, many of them complex with different bodies responsible for managing the same or similar risks within different part of the building or its structure, such as roofs or individual floors. To support the “whole building” approach set out in the Independent Review, this section requires Accountable Persons and Responsible Persons under the Fire Safety

Order to work together to share relevant fire safety information. The duty on Accountable Persons to cooperate with each other is crucial to the success of the regime in, for instance, running a single Residents' Engagement Strategy for the whole building and enabling the golden thread to operate effectively. The Accountable Person and Responsible Person should proactively share the results of their risk assessments, including providing an overview of the risks and safety measures that are in place to control the identified risks. The Accountable Person should factor these results into their own decision making and ensure that the safety arrangements they have are suitable for controlling any additional risks that may arise from a part of the building which is out of their direct responsibility. Furthermore, both the Accountable Person and Responsible Person are dutybound to ensure that their safety arrangements do not have the effect of rendering the others' arrangements ineffective.

COMMENTARY

102. Section 109 imposes duties of cooperation and coordination on accountable persons where there is more than one accountable person for a building. This is essential for buildings with complex ownership structures where effective safety management requires coordinated action.
103. There has been no reported case law on section 109 as at September 2026.

SECTION 110 – MANAGERS APPOINTED UNDER PART 2 OF THE LANDLORD AND TENANT ACT 1987

STATUTORY TEXT

- (1) Section 24 of the Landlord and Tenant Act 1987 (appointment of a manager by a tribunal) is amended as follows.
- (2) After subsection (2ZA) insert—
 - (2ZB) Subsection (2)(a) does not apply in respect of a breach of a building safety obligation by an accountable person for a higher-risk building.
 - (2ZC) In this section—
 - “accountable person” has the meaning given in section 72 of the Building Safety Act 2022;
 - “building safety obligation” means an obligation of an accountable person under Part 4 of the Building Safety Act 2022 or regulations made under that Part;
 - “higher-risk building” has the meaning given in section 65 of the Building Safety Act 2022.
- (3) After subsection (2D) (inserted by paragraph 8(3) of Schedule 7) insert—
 - (2E) An order under this section may not provide for a manager to carry out a function in relation to a higher-risk building where Part 4 of the Building Safety Act 2022 or regulations made under that Part provide for that function to be carried out by an accountable person for that building.

After subsection (2D) (inserted by paragraph 8(3) of Schedule 7) insert -

EXPLANATORY NOTES

Section 110: Managers appointed under Part 2 of the Landlord and Tenant Act 1987

Effect

858. This section makes amendments to section 24 of the Landlord and Tenant Act to ensure that building safety is kept discrete from other management functions and that any failings on the part of an Accountable Person are dealt with via the Building Safety Regulator. Accordingly, this section provides that a tribunal cannot appoint a manager under section 24 where the breach of obligations complained of by tenants is a breach of the Accountable Person’s building safety obligations. It further provides that when appointing a manager under section 24 the tribunal cannot confer upon that manager any building safety functions which are due to be carried out by an Accountable Person.

Background

859. Section 24 of the Landlord and Tenant Act 1987 allows tenants to apply to the tribunal for appointment of a “manager” of their choosing to take over management functions where a landlord has failed to comply with its obligations. If that principle were to be carried through into building safety, it could compromise the authority of the Building Safety Regulator. The amendments to section 24 ensure that the new regime is compatible with existing legislation and provides clarity as to avenues of redress for breach of obligations. Under the Act, redress should be sought through the residents’ complaints mechanism to the Building Safety Regulator who can arrange for the appointment of a Special Measures Manager if there have been persistent breaches of building safety obligations by the Accountable Person. Example If the residents of a building are unhappy with their Accountable Person, they will be unable to circumvent the regulator by going to the Tribunal to obtain the appointment of their own manager, whose responsibilities would then overlap with those of the Accountable Person. . In the event that there are breaches of the implied building safety terms, it will be for the Building Safety Regulator to take enforcement action and/or make arrangements for the appointment of a Special Measures Manager, as it deems appropriate.

COMMENTARY

104. Section 110 amends s.24 of the Landlord and Tenant Act 1987 in two respects: (a) a tribunal may not appoint a manager in respect of a breach of a building safety obligation by an accountable person for a higher-risk building (new s.24(2ZB)); and (b) a management order may not confer on a manager any function which Part 4 assigns to an accountable person (new s.24(2E)). The policy is to keep building safety discrete from ordinary management and to route complaints about accountable persons to the Building Safety Regulator, which may procure a special measures manager under Schedule 7. The earlier suggestion in some commentary that a s.24 manager “may be treated as an accountable person” is wrong: **Solomon Unsdorfer v Octagon Overseas Ltd** [2024] UKUT 59 (LC) is authority for the proposition that the opposite is the case (see the digests under s.72).
105. **Unsdorfer** also decides that s.24(2E) is prospective only: it does not strip building safety functions from management orders made before 6 April 2023, which continue until varied or expired [107]-[108], [116]. The resulting overlap between manager and accountable persons, and its costs consequences, are addressed in the s.72 commentary and in **Canary Riverside Estate Management Ltd v Abrahart** [2025] UKUT 320 (LC).

SECTION 111 – BUILDING SAFETY DIRECTORS OF RESIDENT MANAGEMENT COMPANIES

STATUTORY TEXT

- (1) This section applies in relation to a resident management company that is an accountable person for a higher-risk building.
- (2) The articles of association of the resident management company have effect as if they included such provision as may be prescribed relating to—
 - (a) eligibility for appointment as a director of the company, for a building safety purpose;
 - (b) the appointment of a director for such a purpose;
 - (c) the entitlement to remuneration of a director appointed for such a purpose;
 - (d) the removal of a director so appointed.
- (3) Subsection (2) has effect—
 - (a) whether or not the provision is adopted by the company;
 - (b) whether the company was formed before or after the coming into force of this section;
 - (c) notwithstanding anything in the company’s articles of association.
- (4) In this section—

“building safety purpose” means the purpose of supporting the resident management company in complying with its duties under this Part or under regulations made under this Part;

“resident management company” has the meaning given by regulations made by the Secretary of State.

EXPLANATORY NOTES

Section 111: Building safety directors of resident management companies

Effect

860. This section enables resident management companies that are Accountable Persons under Part 4 of the building safety regime to appoint a building safety director for the purpose of supporting them in meeting their Part 4 building safety duties if they wish to do so. This section has retrospective effect as it amends existing articles of association.

861. Subsection (2) provides that the articles of association of a resident management company which is an Accountable Person have effect as if they allowed: • the appointment

of a director of the company, for a building safety purpose; • the fact that any such director can be paid; and • the removal of any such director.

862. The details of all of these will be set out in regulations.

863. Subsection (3) sets out that the changes to the articles of association mentioned above will affect all new and existing resident management companies notwithstanding anything in the company's articles of association.

864. Subsection (4) defines "building safety purpose" as the purpose of supporting the resident management company in complying with its duties under this Part or under regulations made under this Part. It also sets out that a resident management company will be defined in regulations made by the Secretary of State.

865. This section is linked to section 112, which inserts section 30E into the Landlord and Tenant Act 1987 to enable this section to function by implying terms into relevant leases so that costs incurred by a residents' management company in remunerating a director appointed under this section can be recoverable as a service charge under the lease.

866. This section is also linked to section 161(4) that sets out that where a "relevant company" (which includes a resident management company) appoints a paid director for a building safety purpose, all unpaid directors of the company will be relieved of their personal criminal liability for breaches of Part 4 duties.

Background

867. This is a new provision.

868. The Independent Review identified that there should be a clearly defined dutyholders during occupation who can be held to account and will have statutory obligations for ensuring that fire and structural safety is being effectively managed. The Independent Review was also clear that accountability must always remain with the dutyholders.

869. This section ensures that responsibility for building safety duties will remain with the resident management company Accountable Person and that they are empowered to continue managing their buildings while also giving them the option to appoint a professional building safety director to support them in managing their Part 4 duties where necessary.

COMMENTARY

106. Section 111 requires certain resident management companies to appoint a building safety director. The building safety director has the function of ensuring that the company complies with its duties under Part 4. This provision addresses the concern that resident management companies may lack the expertise to manage building safety risks effectively.

107. There has been no reported case law on section 111 as at September 2026.

**SECTION 112 – IMPLIED TERMS IN LEASES AND RECOVERY OF SAFETY
RELATED COSTS**

STATUTORY TEXT

- (1) The Landlord and Tenant Act 1985 is amended in accordance with subsections (2) to (6).

- (2) After section 30B insert—

Higher-risk buildings in England

30C Implied terms relating to building safety

- (1) This section applies to a lease of premises which consist of or include a dwelling in a higher-risk building.
- (2) In the lease there is implied a covenant by the landlord—
- (a) where the landlord is an accountable person for the higher-risk building, to comply with their building safety duties;
 - (b) to cooperate with any person in connection with a relevant person complying with their building safety duties;
 - (c) where a special measures order in relation to the higher-risk building is in force, to comply with that order so far as it relates to the landlord.
- (3) In the lease there is implied a covenant by the tenant—
- (a) to allow the landlord, a relevant person or a person authorised in writing by the landlord or a relevant person to enter the premises for a relevant building safety purpose;
 - (b) where the tenant is a resident of the higher-risk building, to comply with their duties under sections 95 and 97 of the Building Safety Act 2022;
 - (c) where a special measures order in relation to the higher-risk building is in force, to comply with that order so far as it relates to the tenant.
- (4) In the covenant implied by subsection (2)(b), “cooperate”, in relation to a person, includes—
- (a) taking any steps which are reasonably required by the person to facilitate compliance by a relevant person with their building safety duties;
 - (b) where the person is a relevant person (or a person authorised in writing by a relevant person), providing any information (including names and contact details of residents and tenants of the premises) to the person which is reasonably required in connection with the relevant person complying with their building safety duties.

- (5) In the covenant implied by subsection (3)(a), a relevant building safety purpose means—
- (a) inspecting the premises in connection with a relevant person complying with their building safety duties;
 - (b) carrying out works to the premises, where such works are required to be carried out in connection with a relevant person complying with their building safety duties;
 - (c) accessing a part of the higher-risk building that is not let to the tenant in order to—
 - (i) inspect that part of the building in connection with a relevant person complying with their building safety duties;
 - (ii) carry out works to that part of the building, where such works are required to be carried out in connection with a relevant person complying with their building safety duties.
- (6) The covenant implied by subsection (3)(a) requires entry to the premises to be allowed—
- (a) only at reasonable times, and
 - (b) only if the tenant has been given at least 48 hours’ notice in writing.
- (7) Except as provided by subsection (8), the disclosure of information in accordance with subsections (2)(b) and (4)(b) does not breach—
- (a) any obligation of confidence owed by the landlord in relation to that information;
 - (b) any other restriction on the disclosure of information (however imposed).
- (8) Subsections (2)(b) and (4)(b) do not require a disclosure of information if the disclosure would contravene the data protection legislation (but in determining whether a disclosure would do so, take into account the duty imposed by subsections (2)(b) and (4)(b)).
- (9) In this section—
- “building safety duties”—
- (a) in relation to an accountable person, means any duties of the accountable person under Part 4 of the Building Safety Act 2022, or regulations made under that Part of that Act;
 - (b) in relation to a special measures manager, means any duties of the manager included in the special measures order appointing the manager;

“the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);

“relevant person” means—

- (a) an accountable person for the higher-risk building;
- (b) a special measures manager for the higher-risk building;

“resident” and “resident of a higher-risk building” have the same meaning as in Part 4 of the Building Safety Act 2022 (see section 71(3) and (4)(c) of that Act);

“works” includes alterations, improvements and installations.

30D Liability for building safety costs

- (1) This section applies to a relevant lease of premises which consist of or include a dwelling in a higher-risk building.
- (2) In this section “relevant lease”—
 - (a) means a lease—
 - (i) that is granted for a term certain of 7 years or more, whether or not it is (or may become) terminable before the end of that term by notice given by the tenant or by re-entry or forfeiture, and
 - (ii) under which the tenant is liable to pay a service charge (within the meaning of section 18), but
 - (b) does not include a relevant social housing tenancy.
- (3) The relevant lease has effect—
 - (a) as if the matters for which the service charge is payable under the lease included the taking of building safety measures by or on behalf of a relevant person (insofar as this would not otherwise be the case), and
 - (b) where the lease contains different methods for apportioning different relevant costs (within the meaning of section 18), as if it provided for any costs for which the tenant is liable by virtue only of paragraph (a) to be apportioned in the same way as costs incurred in connection with insuring the building.
- (4) “Building safety measure” means any of the following—
 - (a) applying for registration of a higher-risk building in accordance with section 78 of the Building Safety Act 2022;
 - (b) applying for a building assessment certificate in accordance with section 79 of that Act;
 - (c) displaying a building assessment certificate in accordance with section 82 of that Act;

- (d) assessing building safety risks in accordance with section 83 of that Act;
 - (e) 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);
 - (f) preparing and revising a safety case report in accordance with section 85 of that Act;
 - (g) 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;
 - (h) establishing and operating a mandatory occurrence reporting system, and giving information to the regulator, in accordance with section 87 of that Act;
 - (i) keeping information and documents in accordance with section 88 of that Act;
 - (j) giving information and documents to any person in accordance with section 89, 90 or 92 of that Act;
 - (k) complying with any duty under section 91 of that Act (residents' engagement strategy);
 - (l) establishing and operating a system for the investigation of complaints in accordance with section 93 of that Act;
 - (m) giving a contravention notice to a resident, and making an application to the county court, in accordance with section 96 of that Act;
 - (n) 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).
- (5) For the purposes of this section any of the following incurred in connection with the taking of a building safety measure are to be regarded as incurred in taking the measure—
- (a) legal and other professional fees;
 - (b) fees payable to the regulator;
 - (c) management costs.
- (6) In this section—
- “landlord” includes any person who has a right under the lease to enforce payment of a service charge (within the meaning of section 18);
- “relevant person” means—
- (a) if the landlord is an accountable person for the building, the landlord or a special measures manager for the building;

- (b) otherwise, any superior landlord who is an accountable person for the building or a special measures manager for the building;
“relevant social housing tenancy” has the meaning given in section 132 of the Land Registration Act 2002;
“tenant” includes any person who has an obligation under the lease to pay a service charge (within the meaning of section 18).
- (7) The Secretary of State may by regulations made by statutory instrument amend subsection (4) so as to add, remove or modify a building safety measure.
- (8) The regulations may make incidental, transitional or saving provision.
- (9) A statutory instrument containing regulations under subsection (7) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

30E Liability for remuneration of building safety director of resident management company etc

- (1) This section applies to a lease of premises which consist of or include a dwelling in a higher-risk building if—
 - (a) the landlord is an accountable person for the building,
 - (b) the landlord is—
 - (i) a resident management company within the meaning of section 111 of the Building Safety Act 2022, or
 - (ii) an RTM company within the meaning of Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 (right to manage), and
 - (c) the tenant is liable to pay a service charge.
- (2) The lease has effect—
 - (a) as if it contained provision authorising the appointment of a person (whether or not a leaseholder or a resident of the building) as a director of the landlord for a building safety purpose,
 - (b) as if the matters for which the service charge is payable under the lease included remunerating any director of the landlord appointed for a building safety purpose (insofar as this would not otherwise be the case), and
 - (c) where the lease contains different methods for apportioning different relevant costs (within the meaning of section 18), as if it provided that any costs for which the tenant is liable by virtue only of paragraph (b) to be apportioned in the same way as costs incurred in connection with insuring the building.

(3) In this section—

“building safety purpose” means the purpose of supporting the landlord in complying with its duties under Part 4 of the Building Safety Act 2022 or under regulations made under that Part;

“landlord” includes any person who has a right under the lease to enforce payment of a service charge;

“service charge” has the meaning given by section 18;

“tenant” includes any person who has an obligation under the lease to pay a service charge.

30F Restrictions on contracting out of sections 30C to 30E

- (1) A covenant or agreement, whether contained in a lease to which section 30C (implied terms) applies or in an agreement collateral to such a lease, is void in so far as it purports—
 - (a) to exclude or limit the obligations of the landlord or the tenant under section 30C, or
 - (b) to authorise any forfeiture or impose on the tenant any penalty, disability or obligation in the event of the tenant enforcing or relying upon the obligations of the landlord.
- (2) A covenant or agreement, whether contained in a lease to which section 30D or 30E applies or in an agreement collateral to such a lease, is void insofar as it purports to modify the effect of section 30D(3) or 30E(2).

30G Jurisdiction of county court

The county court has jurisdiction to deal with any claim or other proceedings arising under or in connection with any of sections 30C to 30E (implied terms etc) notwithstanding that by reason of the amount of the claim or otherwise the case would not, apart from this section, be within the jurisdiction of the county court.

30H Specific performance of implied terms

In proceedings relating to a breach of a covenant in section 30C(2) or (3) (implied building safety terms), the court may order specific performance of the covenant—

- (a) notwithstanding any equitable rule restricting the scope of the remedy, whether on the basis of a lack of mutuality or otherwise, and
- (b) in the case of a breach of a covenant in section 30C(2) or (3)(b) or (c), whether or not the breach relates to a part of the higher-risk building let to the tenant.

30I Interpretation of building safety provisions

In sections 30C to 30H—

“accountable person” has the meaning given in section 115 of the Building Safety Act 2022;

“higher-risk building” has the meaning given in section 115 of that Act;

“lease” does not include a mortgage term;

“special measures manager” has the meaning given in paragraph 1 of Schedule 7 to the Building Safety Act 2022;

“special measures order” has the meaning given in paragraph 1 of Schedule 7 to that Act.

- (3) After section 20E (inserted by section 133) insert—

20F Limitation of service charges: excluded costs for higher-risk buildings

- (1) This section applies in relation to a lease to which section 30D (higher-risk buildings: building safety costs) applies.
- (2) Excluded costs are not to be regarded as relevant costs to be taken into account in determining the amount of service charge payable by a tenant under the lease.
- (3) In this section “excluded costs” means any of the following incurred in connection with Part 4 of the Building Safety Act 2022 or regulations made under that Part—
 - (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 their behalf;
 - (d) costs of a description prescribed by regulations made by the Secretary of State that are incurred or to be incurred by or on behalf of an accountable person or special measures manager for the building in connection with the taking of building safety measures.
- (4) In this section—

“building safety measures” has the meaning given by section 30D;

“enforcement action” means action taken with a view to, or in connection with—

- (a) securing compliance with Part 4 of the Building Safety Act 2022 or regulations made under that Part, or
 - (b) the imposition of a sanction in respect of a contravention of that Part or those regulations;
- “the regulator” has the meaning given by section 115 of the Building Safety Act 2022;
- “relevant person” means—
- (a) where the landlord under the lease is an accountable person for the higher-risk building, the landlord or a special measures manager for the higher-risk building;
 - (b) where the 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;
- “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 Schedule 7 to the Building Safety Act 2022 (including any appeals in relation to such proceedings).
- (5) Regulations under this section are to be made by statutory instrument.
 - (6) A power to make regulations includes power to make—
 - (a) incidental, transitional or saving provision;
 - (b) different provision for different purposes.
 - (7) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) In section 21 (service charge information) after subsection (6) insert—
- (6A) In particular, regulations which make provision about higher-risk buildings (within the meaning of Part 4 of the Building Safety Act 2022) need not contain provision of a kind mentioned in subsection (2) or (3).
- (5) In section 30 (meaning of “landlord” and “tenant”)—
- (a) after the definition of “landlord” insert—

“services” includes, in relation to a dwelling in a higher-risk building (as defined by section 30I), building safety measures within the meaning of section 30D;

;
 - (b) in the heading for ““flat”, “landlord” and “tenant”” substitute ““landlord”, “tenant” etc”.
- (6) In section 32(1) (business tenancies), after the entry relating to section 17 insert—

section 30C (implied terms relation to building safety),

section 30D (building safety costs),

section 30E (liability for remuneration of building safety director of resident management company etc).

(7) In section 172(1)(a) of the Commonhold and Leasehold Reform Act 2002 (application to Crown)—

(a) for “30B” substitute “30I”;

(b) after “agents” insert “and building safety”.

(3) After section 20E (inserted by section 133) insert -

EXPLANATORY NOTES

Section 112: Implied terms in leases and recovery of safety related costs

Effect

870. This section refers to the implied building safety terms in relevant leases.

871. All written leases set out obligations on the part of the landlord, and on the part of the tenant. These are usually in the form of “covenants”; the landlord covenants with (promises) the tenant to do “X” and the tenant covenants with the landlord to do “Y”.

872. The Landlord and Tenant Act 1985 has implied covenants into short leases in relation to repair and human habitation. As a result, even if an agreement is signed to the contrary or if there is no written agreement, the landlord is always under an obligation to keep in repair the structure and exterior of the property and the installations for essential services in the property, and to keep the property fit for human habitation. At the same time, there is an implied covenant on the part of the tenant to grant access for repairs.

873. This section amends the 1985 Act to provide new implied covenants in relation to building safety. These apply to all leases of dwellings in higher-risk buildings in England.

874. The landlord covenants with the tenant to comply with their building safety duties if they are an Accountable Person, to co-operate with any Accountable Person and to comply with any relevant terms of a special measures order. 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 any relevant terms of any special measures order.

875. This section makes additional provision for “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 provision will enable the landlord to pass on the running/management costs of the new regime to the tenant through the service charge.

876. This section amends the Landlord and Tenant Act (1985) in accordance with the changes set out below.

877. This section sets out implied terms (covenants) for the landlord and tenant. In the lease there is implied a covenant by the landlord: • where the landlord is an Accountable Person for the higher-risk building, to comply with their building safety duties; • to cooperate with any person in connection with a relevant person (an Accountable Person or Special Measures Manager) complying with their building safety duties; and • where an special measures order made under Schedule 7 as introduced by section 102 of this Act for the higher-risk building is in force, to comply with that order so far as it relates to the landlord.

878. In the lease there is implied a covenant by the tenant: • to allow the landlord, an Accountable Person or a Special Measures Manager or a person authorised by one of those persons to enter the premises for a relevant building safety purpose; • where the tenant is a resident of the higher-risk building, to comply with their duties under sections 95 and 97 of this Act; and • where an special measures order made under Schedule 7 as introduced by section 102 of the this Act , to comply with that order so far as it relates to the tenant.

879. Subsections (4), (5) and(9) give definitions for what is meant by terms including “cooperate”, “a relevant building safety purpose”, “building safety duty”, “relevant person” and “resident”.

880. Subsection (6) confirms that entry is required only at reasonable times and if the tenant has been given at least 48 hours notice.

881. Subsection (7) states that the disclosure of information should not breach any obligation of confidence owed by the landlord in relation to that information and any other restriction on the disclose of information.

882. Sub section (8) confirms that the disclosure of information is not required if it would contravene data protection legislation.

883. This section applies to relevant leases of premises which consist of or include a dwelling in a higher-risk building. It provides that for those leases, the cost of taking building safety measures will always be recoverable under the service charge.

884. In this section, relevant lease means a lease: • that is granted for a term certain 7 years or more, whether or not it is (or may become) terminable before the end of that term by notice given by the tenant or by re-entry or forfeiture; and • under which the tenant is liable to pay a variable service charge.

885. Subsection 4 sets out a list of activities deemed building safety measures for the purpose of this section.

886. Subsection (5) sets out that legal and other professional fees, fees payable to the regulator and management costs can be incurred and charged as part of building safety measures to the extent that they are incurred in connection with taking those measures.

887. Section 30E implies terms into relevant leases with the effect that costs incurred by residents’ management companies or right to manage companies in remunerating a director appointed for the purpose of supporting them with their Part 4 duties can be recoverable as a service charge. It also ensures that there is no barrier in leases to such an appointment taking place.

888. This provides that a covenant in a lease, or other agreement, intending to contract out, or restrict, certain provisions in section 30C, 30D or 30E has no effect.

889. This provides that the county court is the court for determining any question or issue under sections 30C to 30E.

890. This provides that the court may order a party to a lease to comply with the obligations (implied covenants in the lease) under section 30C(2) or (3). The order can apply in relation to parts of the building not let to the leaseholder and notwithstanding any rule that would otherwise restrict the remedy.

891. New section 20F lists certain costs incurred in connection with Part 4 of this Act that cannot be taken into account in determining the amount of service charge payable by a tenant under the lease.

Background

892. This is a new section to align the Landlord and Tenant Act 1985 with Part 4 of the Building Safety Act. It ensures that there are dedicated provisions in relevant leases of dwellings in higher-risk buildings dealing with the putting in place and operation of building safety measures, the recovery of associated costs, where appropriate, and the securing of access to all dwellings for building safety purposes.

COMMENTARY

108. Section 112 inserts new sections 30C to 30I into the Landlord and Tenant Act 1985, implying terms into leases of higher-risk buildings relating to building safety and the recovery of safety-related costs. The implied terms include an obligation on the landlord to keep the building safe and an entitlement for the landlord to recover costs reasonably incurred in complying with building safety duties. The provisions also restrict the passing on of certain costs, including remediation costs falling within the scope of the leaseholder protections in Schedule 8 to the BSA.
109. This section mirrors the similar approach to Adjudication pioneered by the HGCRA 1996 is of considerable practical importance for the management of service charge disputes in higher-risk buildings. It creates a statutory framework for building safety costs that operates alongside the existing service charge provisions in the Landlord and Tenant Act 1985.
110. There has been no reported case law on section 112 as at September 2026.

SECTION 113 – PROVISION OF BUILDING SAFETY INFORMATION

STATUTORY TEXT

- (1) The Landlord and Tenant Act 1987 is amended in accordance with subsections (2) to (4).

- (2) After section 47 insert—

47A Building safety information to be contained in demands for rent etc: England

- (1) Where premises to which this Part applies are premises in England which consist of or include a dwelling in a higher-risk building, any written demand given to a tenant of the premises must contain the relevant building safety information.
- (2) Where—
- (a) a tenant of such premises is given such a demand, but
 - (b) the demand does not contain the relevant building safety information,
- any part of the amount demanded which consists of a service charge or an administration charge (“the relevant amount”) is to be treated for all purposes as not being due from the tenant to the landlord at any time before the landlord gives the relevant building safety information to the tenant.
- (3) But the relevant amount is not to be so treated in relation to any time when—
- (a) by virtue of an order of any court or tribunal there is in force an appointment of a receiver or manager whose functions include the receiving of service charges or administration charges from the tenant, or
 - (b) a special measures order (within the meaning of Schedule 7 to the Building Safety Act 2022) is in force.
- (4) In this section—
- “demand” has the meaning given in section 47;
 - “higher-risk building” has the meaning given in section 115 of the Building Safety Act 2022;
 - “relevant building safety information” has the meaning given in section 49A.
- (3) After section 49 insert—

49A Notification by landlord of building safety information: England

- (1) Where premises to which this Part applies are premises in England which consist of or include a dwelling in a higher-risk building, the landlord must give the tenant a notice containing the relevant building safety information.
- (2) Where a landlord fails to give a notice to a tenant in accordance with subsection (1), any rent, service charge or administration charge otherwise due from the tenant to the landlord is to be treated for all purposes as not being due from the tenant to the landlord at any time before the landlord gives the notice to the tenant.
- (3) But any such rent, service charge or administration charge is not to be so treated in relation to any time when—
 - (a) by virtue of an order of any court or tribunal there is in force an appointment of a receiver or manager whose functions include the receiving of rent, service charges or administration charges from the tenant, or
 - (b) a special measures order (within the meaning of Schedule 7 to the Building Safety Act 2022) is in force.
- (4) The requirement to give a notice to a tenant under subsection (1) may be satisfied by giving the notice to them at a time when they are a prospective tenant.
- (5) In this section “relevant building safety information” means—
 - (a) the fact that the premises consist of or include a dwelling in a higher-risk building;
 - (b) the name of each person listed in subsection (6);
 - (c) an email address and telephone number through which each person listed in subsection (6) may be contacted;
 - (d) a postal address in England and Wales at which notices (including notices in proceedings) may be served by the tenant on the principal accountable person for the higher-risk building;
 - (e) a postal address for the regulator;
 - (f) such other information as may be prescribed in regulations made by the Secretary of State.
- (6) The persons are—
 - (a) the principal accountable person for the higher-risk building;
 - (b) any special measures manager for the higher-risk building;
 - (c) the regulator.
- (7) In this section—

“higher-risk building” has the meaning given in section 115 of the Building Safety Act 2022;

“principal accountable person” has the meaning given in section 115 of that Act;

“the regulator” has the meaning given in section 115 of that Act;

“special measures manager” has the meaning given in paragraph 1 of Schedule 7 to that Act.

- (4) In section 53(2)(b) (regulations and orders), after “42A” insert “or 49A”.
- (5) In section 172(1)(d) of the Commonhold and Leasehold Reform Act 2002 (application to Crown), for “49” substitute “49A”.

EXPLANATORY NOTES

Section 113: Provision of building safety information

Effect

893. This section inserts into the Landlord and Tenant Act 1987 two new sections applying to dwellings in higher-risk buildings. Section 47A requires certain building safety information to be included in certain demands, for example, for rent or service charges. Section 49A places a duty on landlords to give tenants notice of that building safety information.

894. When serving a written demand for rent, service charges or an administrative charge, the demand must include the relevant building safety (see below).

895. If the information is not provided then any service charge or administration charge demanded will not be treated as due until such time as the information is supplied. This section only postpones the requirement to make payment and those sums become payable once the information is provided. This rule does not apply where there is a court-or tribunal-appointed receiver or manager in place, whose functions include the receiving of service charges or administration charges or a special measures order is in place for the building.

896. Under section 49A the landlord must give written notification of the relevant building safety information. The requirement may be fulfilled by giving such notice to a prospective tenant before the tenancy commences.

897. Where a landlord fails to give such notice to a tenant, this section states that any rent, service charge or administration charge due from the tenant to the landlord is not due before the landlord gives the notice to the tenant. This section only postpones the requirement to make payment and those sums (including any arrears accrued) become payable once the information is provided. This rule does not apply where there is a court or tribunal-appointed receiver or manager in place whose functions include the receiving of rent, service charges or administration charges or a special measures order is in place for the building.

898. The requirement applies to landlords of dwellings in higher-risk buildings (other than those to which Part II Landlord and Tenant Act 1954 (business tenancies) apply) and applies regardless of the length of the lease or tenancy.

899. The relevant building safety information in both sections 47A and 49A is (a) a statement the premises consist of or include a dwelling in a higher-risk building and (b), the name and contact details of the principal accountable person, any special measures manager and the regulator.

900. The provisions will apply to all existing leases (including tenancies) in affected buildings when they come into force.

Background

901. This section amends the Landlord and Tenant Act 1987 to ensure tenants of higher-risk buildings, including those who may be subletting from a long leaseholder, are adequately informed by the landlord about those persons that are responsible for building safety in their building and are able to contact them.

COMMENTARY

111. Section 113 inserts new section 49A into the Landlord and Tenant Act 1987, requiring landlords of higher-risk buildings to provide building safety information to tenants. This complements the information duties imposed on accountable persons under Part 4.
112. There has been no reported case law on section 113 as at September 2026.

SECTION 114 – COMMONHOLDS

STATUTORY TEXT

- (1) The Commonhold and Leasehold Reform Act 2002 is amended as follows.
- (2) In section 13(3) (joint unit-holders), after paragraph (fa) insert—
 - (faa) section 38A(1),
 - .
- (3) In section 14 (use and maintenance)—
 - (a) in the heading, for “and maintenance” substitute “, maintenance and building safety”;
 - (b) after subsection (3) insert—
 - (4) A commonhold community statement for a higher-risk commonhold must make provision requiring the commonhold association to comply with its duties under Part 4 of the Building Safety Act 2022, or regulations made under that Part of the Act, in relation to each commonhold unit.
- (4) In section 26 (use and maintenance)—
 - (a) in the heading, for “and maintenance” substitute “, maintenance and building safety”;
 - (b) the existing subsection becomes subsection (1);
 - (c) after that subsection insert—
 - (2) A commonhold community statement for a higher-risk commonhold must make provision requiring the commonhold association to comply with its duties under Part 4 of the Building Safety Act 2022, or regulations made under that Part of that Act, in relation to the common parts.
- (5) In section 31(5) (form and content of commonhold community statement), after paragraph (d) insert—
 - (da) to give information;
 - (db) to apply for grants or other funding;
 - .
- (6) In section 32(5)(a) (regulations), after “38,” insert “38A,”.
- (7) In section 38 (commonhold assessment), after subsection (2) insert—
 - (3) In subsection (1)(a) “expenses of the association” does not include building safety expenses of the association (within the meaning of section 38A).

(8) After section 38 insert—

38A Building safety assessment

(1) A commonhold community statement for a higher-risk commonhold must make provision—

- (a) requiring the directors of the commonhold association to make an annual estimate of the income required to be raised from unit-holders to meet the building safety expenses of the association,
- (b) enabling the directors of the commonhold association to make estimates from time to time of income required to be raised from unit-holders in addition to the annual estimate,
- (c) specifying the percentage of any estimate made under paragraph (a) or (b) which is to be allocated to each unit,
- (d) requiring each unit-holder to make payments in respect of the percentage of any estimate which is allocated to their unit, and
- (e) requiring the directors of the commonhold association to serve notices on unit-holders specifying payments required to be made by them and the date on which each payment is due.

(2) For the purpose of subsection (1)(c)—

- (a) the percentages allocated by a commonhold community statement to the commonhold units must amount in aggregate to 100;
- (b) a commonhold community statement may specify 0 per cent in relation to a unit.

(3) In this section—

“building safety expenses of the association” means the expenses incurred by the commonhold association or special measures manager for the higher-risk building in connection with taking measures that the association or manager is required or permitted to take under Part 4 of the Building Safety Act 2022, or regulations made under that Part of that Act;

“special measures manager” means a person appointed under paragraph 4 of Schedule 7 to the Building Safety Act 2022.

(9) In section 69(1) (interpretation), before the definition of “instrument” insert—

“higher-risk building” has the meaning given by section 115 of the Building Safety Act 2022,

“higher-risk commonhold” means a commonhold in England that includes all or any part of a higher-risk building,

EXPLANATORY NOTES

Section 114: Commonholds

Effect

902. *This section amends the Commonhold and Leasehold Reform Act 2002, ensuring building safety is adequately considered.*

903. *In the case of land held on a commonhold basis, the commonhold association will be the Accountable Person. This section makes amendments making it mandatory for a commonhold community statement for a higher-risk commonhold in England to make provisions requiring the commonhold association to comply with its duties under Part 4 of this Act in relation to each commonhold unit and in relation to the common parts.*

904. *It also ensures that the commonhold community statement for a higher-risk commonhold must make provision requiring the directors of the commonhold association to make an annual estimate of the income required to be raised from unit-holders to meet the building safety expenses of the association, and requiring each unit-holder to make payments in respect of the percentage of any estimate which is allocated to their unit in relation to building safety expenses.*

905. *Subsection (8) part (3) provides that “building safety expenses of the association” includes expenses incurred by the commonhold association or special measures managers in relation to measures required or permitted to be undertaken by Part 4 of this Act or regulations under this Act.*

906. *Subsection (9) includes interpretations of terms made in amendments to the Commonhold and Leasehold Reform Act 2002 and ensures they align with the Building Safety Act.*

Background

907. *This is a new section to align the Commonhold and Leasehold Reform Act 2002 with the Building Safety Act ensuring building safety and the costs associated adequately extend to higher-risk commonholds.*

COMMENTARY

113. Section 114 inserts new section 38A into the Commonhold and Leasehold Reform Act 2002, making provision for building safety assessments in commonhold developments that include higher-risk buildings. The commonhold association takes on equivalent duties to those imposed on accountable persons under Part 4.
114. There has been no reported case law on section 114 as at September 2026.

SECTION 115 – INTERPRETATION OF PART 4

STATUTORY TEXT

In this Part—

“accountable person” has the meaning given by section 72;

“building safety risk” has the meaning given by section 62;

“compliance notice” has the same meaning as in section 99;

“contravention” includes a failure to comply;

“the data protection legislation” has the meaning given by section 30;

“fire and rescue authority” has the meaning given by section 30;

“higher-risk building” has the meaning given by section 65;

“local authority” has the meaning given by section 30;

“long lease” means—

- (a) a lease granted for a term certain exceeding 21 years, whether or not it is (or may become) terminable before the end of that term by notice given by the tenant or by re-entry or forfeiture, or
- (b) a lease for a term fixed by law under a grant with a covenant or obligation for perpetual renewal, other than a lease by sub-demise from one which is not a long lease;

“major incident” has the meaning given by section 63;

“maximum summary term for either-way offences” has the meaning given by section 30;

“occupied”: any reference to an “occupied” higher-risk building is to be read in accordance with section 71;

“owner” means the person—

- (a) for the time being receiving the rackrent of the premises in question, whether on the person’s own account or as agent or trustee for another person, or
- (b) who would so receive it if those premises were let at a rackrent;

and for this purpose “rackrent” has the meaning given by section 126 of the Building Act 1984;

“prescribed” means prescribed by regulations made by the Secretary of State;

“principal accountable person” has the meaning given by section 73;

“registered provider of social housing” has the meaning given by section 80 of the Housing and Regeneration Act 2008;

“the regulator” has the meaning given by section 2;

“resident” and “resident of a higher-risk building” have the meaning given by section 71;

“residential unit” means—

- (a) a dwelling, or
- (b) any other unit of living accommodation;

“responsible”: any reference to the part of a higher-risk building for which an accountable person is responsible is to be read in accordance with section 74;

“special measures manager” has the meaning given by paragraph 1 of Schedule 7;

“special measures order” has the meaning given by paragraph 1 of Schedule 7;

“the tribunal” means the First-tier Tribunal.

EXPLANATORY NOTES

Section 115: Interpretation of Part 4

Effect

908. This section provides definitions of key terms used in Part 4 of the Act. It also clarifies that the requirements in Part 4 do not apply to the Palace of Westminster.

COMMENTARY

115. Section 115 defines key terms used in Part 4, including “accountable person”, “principal accountable person”, “higher-risk building”, “building safety risk”, “resident”, “common parts”, and “special measures manager”. These definitions are essential to the operation of the Part and should be the starting point for construing any provision within it.

116. There has been no reported case law on section 115 as at September 2026.

THE BUILDING SAFETY ACT 2022

A Section-by-Section Commentary and Case Digest

PART 5 – OTHER PROVISION ABOUT SAFETY AND STANDARD OF BUILDINGS (SECTIONS 116–160)

INTRODUCTION

1. Part 5 of the Act is the longest and most heterogeneous Part of the BSA. It encompasses all of (1) the leaseholder protection regime, (2) building industry schemes, (3) building liability orders, (4) service charge reform, (5) a dramatic and far reaching extension of the Defective Premises Act 1972, (6) radical changes to limitation periods, (7) the new homes ombudsman, (8) construction products liability, (9) costs contribution orders, (10) fire safety amendments, and (11) miscellaneous provisions relating to architects and the housing ombudsman.¹³
2. It is therefore not surprising that Part 5 has been by far the most litigated part of the BSA: Since the Act's principal provisions came into force on 28 June 2022:
 - (a) the Upper Tribunal (Lands Chamber) the Technology and Construction Court, and the First-tier Tribunal (Property Chamber) have delivered a substantial body of decisions interpreting its provisions;¹⁴ and
 - (b) The Supreme Court has delivered one landmark judgment: **URS Corporation Ltd v BDW Trading Ltd** [2025] UKSC 21;
 - (c) There have been numerous cases in the TCC; and
 - (d) As at the date of this commentary two further appeals are pending
3. This commentary draws on the author's experience in a number of the key cases, together with the leading practitioner texts, including Keating on Construction Contracts (12th ed., 2024), Hudson's Building and Engineering Contracts (14th ed.,

¹³ For the leaseholder protection provisions, see Schedule 8 to the BSA 2022, which supplements ss.116–125A.

¹⁴ **Adriatic Land 3 Ltd v Long Leaseholders** [2024] UKUT 113 (LC); **Triathlon Homes LLP v Stratford Village Development Partnership** [2024] UKUT 55 (LC).

2023). Where relevant, amendments made by the Leasehold and Freehold Reform Act 2024 and the Levelling-up and Regeneration Act 2023 are noted. ¹⁵¹⁶¹⁷¹⁸

4. For each section, this commentary sets out: (a) the statutory text (with amendment annotations where applicable); (b) the relevant explanatory notes; (c) commencement and amendment information; (d) a detailed commentary with cross-references to practitioner textbooks; (e) a case digest listing all reported decisions addressing that section, with hyperlinked URLs to BAILII and (f) for the most heavily litigated sections, a thematic analysis of emerging principles.

CHAPTER 1: LEASEHOLDER PROTECTIONS (SECTIONS 116–125A)

5. Sections 116 to 125A constitute the core of the BSA’s leaseholder protection regime. They establish the framework of “relevant buildings,” “qualifying leases,” “relevant defects,” and the hierarchy of protections that limit or exclude the ability of landlords to pass building safety remediation costs through to qualifying leaseholders. These provisions must be read together with Schedule 8 to the BSA, which contains the detailed rules governing building safety costs, remediation contributions, and the liability waterfall. Section 125A, inserted by the Leasehold and Freehold Reform Act 2024, creates a new power for building remediation schemes.

¹⁵ *Keating on Construction Contracts*, 12th ed. (2024), paras 14-165A, 15-060 to 15-068.

¹⁶ *Hudson’s Building and Engineering Contracts*, 14th ed. (2023).

¹⁷ Leasehold and Freehold Reform Act 2024 (c. 22).

¹⁸ Levelling-up and Regeneration Act 2023 (c. 55).

SECTION 116 – REMEDIATION OF CERTAIN DEFECTS

STATUTORY TEXT

- (1) Sections 117 to 124 and Schedule 8 make provision in connection with the remediation of relevant defects in relevant buildings.
- (2) In those sections—
 - (a) sections 117 to 121 define “relevant building”, “qualifying lease”, “the qualifying time”, “relevant defect” and “associate”;
 - (b) section 122 and Schedule 8 contain protections for tenants in respect of costs connected with relevant defects, and impose liabilities on certain landlords;
 - (c) section 123 makes provision about remediation orders, under which a landlord in a relevant building is required to remedy certain relevant defects;
 - (d) section 124 makes provision about remediation contribution orders, under which an associate of a landlord in a relevant building is required to contribute towards the costs of remedying certain relevant defects;
 - (e)

Word in s. 116(1) substituted (24.7.2024) by Leasehold and Freehold Reform Act 2024 (c. 22), ss. 118(2)(a), 124(2)(c)

S. 116(2)(e) omitted (24.7.2024) by virtue of Leasehold and Freehold Reform Act 2024 (c. 22), ss. 118(2)(b), 124(2)(c)

EXPLANATORY NOTES

Section 116 – Remediation of certain defects

Effect

909. Section 116 provides an overview of sections 117 to 125, and Schedule 8, which make provision about the remediation of certain defects in relevant buildings.

910. The section does not have any legal effect, rather it guides the reader through the relevant provisions.

Background

911. Sections 116 to 125 and Schedule 8 make provision about the remediation of certain defects in certain buildings. They are collectively referred to as the “leaseholder protections”, as they protect leaseholders in multi-occupied residential buildings from certain costs associated with remediating historical building safety defects.

912. Most multi-occupied residential buildings in England, such as blocks of flats, are owned by a freeholder, with the individual flats owned on long leases. A leasehold property is owned by the leaseholder for the length of the lease agreement with the freeholder, after which point the ownership of the property returns to the freeholder. The freeholder typically owns the land on which the building is built, as well as the structure and common

parts of the building (such as the staircases and hallways). Leases of over 21 years are generally known as long leases and it is not uncommon for 999-year leases to be granted. Leaseholders have certain rights to extend the length of their lease if they wish to do so.

913. The ownership structures of multi-occupied residential buildings can be complex with multiple additional landlords who own the building or parts of it, separate to the freeholder of the land on which the building sits. In the most straightforward cases, there will be a freeholder who owns the land and the building itself, and leaseholders who own the long leases of dwellings contained within the building; this explanatory note uses that straightforward case for illustrative purposes.

914. It is the freeholder's responsibility to ensure the safety of the building and the upkeep of the structure and common parts, and the costs associated with these responsibilities can normally be charged to leaseholders through the service charge, as per the terms of the lease. The service charge will commonly cover the costs associated with routine maintenance and repairs.

915. Since the Grenfell Tower fire in 2017, it has become apparent that a number of residential blocks of flats have serious historical fire safety defects, often, but not always, associated with their original construction. Most notably this has included the use of unsafe cladding on the external walls of these buildings. Due to the risk to life posed by these defects, extensive and often costly remediation work to make buildings safe can be needed.

916. The terms of most leases, which are contractual agreements between the leaseholder and freeholder, will allow the costs associated with this remediation work to be passed on to individual leaseholders through the service charge. The costs per lease to remediate historical building safety defects have sometimes been very high and frequently run into the tens or hundreds of thousands of pounds. These costs have put strain on leaseholders who are often unable to meet these costs.

917. The Government has brought forward a series of interventions to protect leaseholders from the costs associated with remediating historical building safety defects, including direct grant funding for the costs of remediating unsafe cladding on certain buildings, and agreeing with developers that they will fix buildings they have had a role in developing or refurbishing. This Act also contains a number of provisions to allow those directly responsible for creating building safety defects to be held accountable through the Courts.

918. The leaseholder protections measures further protect certain leaseholders in law by preventing altogether, or otherwise limiting, the costs that can be passed through the service charge to the leaseholder in respect of certain historical building safety defects.

COMMENTARY

1. Section 116 is the gateway provision for the leaseholder protection regime: the “remediation of certain defects”. It introduces ss.117 to 124 and Schedule 8, and signposts the key defined terms (“relevant building”, “qualifying lease”, “the qualifying

time”, “relevant defect” and “associate”) by cross-reference to the operative sections that follow. It contains no substantive obligation of its own.

2. The section has been amended twice by the Leasehold and Freehold Reform Act 2024, in each case consequentially: the reference to s.125 was removed on the repeal of that section, and s.116(2)(e) was omitted (both with effect from 24 July 2024: LFRA 2024, ss.118(2), 124(2)(c)).
3. Two points of interpretation deserve mention:
 - (a) Section 116 is descriptive, not definitive. In **Almacantar Centre Point Nominee No.1 Ltd v de Valk** [2025] UKUT 298 (LC) the Upper Tribunal rejected the argument that the introductory words of s.116(1) (“provision in connection with the remediation of relevant defects in relevant buildings”) operate to confine every paragraph of Schedule 8 to relevant defects: the descriptive words “are general and not definitive” (at [59]). A practitioner cannot, therefore, read the scope of the Schedule off the face of s.116.
 - (b) The provisions which s.116 introduces are to be construed purposively. The Court of Appeal in **Triathlon Homes LLP v Stratford Village Development Partnership** [2025] EWCA Civ 846 described the remediation provisions as a one-off response to the building safety crisis, designed to answer the “who pays” question through a hierarchy of liability with the developer at the top and the leaseholder at the bottom, and the taxpayer outside it altogether. That framing now runs through every decision under this Chapter. The tribunals are applying it consistently; parties who advance narrow, literal constructions that would shift costs back onto leaseholders have so far lost, and in my view will continue to lose.

CASE DIGEST

Case Name: **Almacantar Centre Point Nominee No.1 Ltd and No.2 Ltd v de Valk and others**

Case Reference: [2025] UKUT 298 (LC)

Judge: Judge Siobhan McGrath and Mrs D Martin TD MRICS FAAV

Date: 16 September 2025

Key Issues: Whether the descriptive words of section 116 confine the scope of the provisions which that section introduces, and in particular paragraph 8 of Schedule 8.

Held:

1. The introductory words of section 116(1) do not restrict how Schedule 8 is to be read, either as a whole or as to paragraph 8. “The descriptive words in either section 116 or 120” do not assist in the interpretation of paragraph 8: “They are general and not definitive” [59].
2. The structural argument built on sections 116 and 122 — that the scheme is confined throughout to relevant defects — was rejected. Paragraph 8 provides a different protection, for a limited group of qualifying leaseholders where the relevant building has unsafe cladding, and there is no reason to impose a restriction on it [50] to [53].

The decision is digested more fully, on the paragraph 8 issues, in the case digest to section 122.

Link: <https://caselaw.nationalarchives.gov.uk/ukut/lc/2025/298>

Case Name: Triathlon Homes LLP v Stratford Village Development Partnership

Case Reference: [2025] EWCA Civ 846; on appeal to the Supreme Court, UKSC/2025/0156 (permission granted 6 November 2025 on retrospectivity only; listed for hearing 19 November 2026)

Judge: Nugee LJ (Holgate and Newey LJJ concurring)

Date: 8 July 2025

Key Issues: The character of the provisions introduced by section 116, and the approach to their construction.

Held:

1. Sections 116 to 125 and Schedule 8 are together “the remediation provisions”. Unlike Parts 2 to 4, which are forward-looking and set up regulatory provision for the future, the remediation provisions were designed to deal with a one-off problem, the building safety crisis [9].
2. That characterisation drives the construction of the sections which section 116 introduces: they are a one-off, essentially non-fault-based response to an existing crisis, and are to be read purposively in that light.

The decision is digested more fully, on the section 124 issues, in the case digest to section 124.

Link: <https://caselaw.nationalarchives.gov.uk/ewca/civ/2025/846>

SECTION 117 – MEANING OF “RELEVANT BUILDING”

STATUTORY TEXT

- (1) This section applies for the purposes of sections 119 to 124 and Schedule 8.
- (2) “Relevant building” means a self-contained building, or self-contained part of a building, in England that contains at least two dwellings and—
 - (a) is at least 11 metres high, or
 - (b) has at least 5 storeys.
- (3) “Relevant building” does not include a self-contained building or self-contained part of a building—
 - (a) in relation to which a right under Part 1 of the Landlord and Tenant Act 1987 (tenants’ right of first refusal) or Part 3 of that Act (compulsory acquisition by tenants of landlord’s interest) has been exercised,
 - (b) in relation to which the right to collective enfranchisement (within the meaning of Chapter 1 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993) has been exercised,
 - (c) if the freehold estate in the building or part of the building is leaseholder owned (within the meaning of regulations made by the Secretary of State), or
 - (d) which is on commonhold land.
- (4) For the purposes of this section a building is “self-contained” if it is structurally detached.
- (5) For the purposes of this section a part of a building is “self-contained” if—
 - (a) the part constitutes a vertical division of the building,
 - (b) the structure of the building is such that the part could be redeveloped independently of the remainder of the building, and
 - (c) the relevant services provided for occupiers of that part—
 - (i) are provided independently of the relevant services provided for occupiers of the remainder of the building, or
 - (ii) could be so provided without involving the carrying out of any works likely to result in a significant interruption in the provision of any such services for occupiers of the remainder of the building.
- (6) In subsection (5) “relevant services” means services provided by means of pipes, cables or other fixed installations.

S. 117 applied (4.7.2023) by The Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023 (S.I. 2023/753), regs. 1(1), 3(4)(a)

Word in s. 117(1) substituted (24.7.2024) by Leasehold and Freehold Reform Act 2024 (c. 22), ss. 118(2)(c), 124(2)(c)

EXPLANATORY NOTES

Section 117 – Meaning of “relevant building”

Effect

919. This section defines a “relevant building” for the purposes of section 119 to 125 and Schedule 8; it defines the types of building to which the leaseholder protections apply.

920. A “relevant building” is defined as a self-contained building or part of a building containing at least two dwellings which is at least 11 metres in height, or which has at least five storeys.

921. Subsection (3) sets out that leaseholder-owned buildings are not included in the definition of “relevant building”. Those types of buildings that are not included in the definition are those in which the building has undergone collective enfranchisement, or which are on commonhold land.

922. Subsections (3)(a) and (3)(b) capture the statutory routes by which a building can undergo collective enfranchisement. These are under Parts 1 or 3 of the Landlord and Tenant Act 1987, and under Chapter 1 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993. Subsection (3)(c) provides a power for the Secretary of State to specify, by regulations, other routes by which a building can become leaseholder owned, and which will also not be included in the definition of “relevant building”. Subsection (3)(d) captures buildings which are on commonhold land, which has the same meaning as in the Commonhold and Leasehold Reform Act 2002.

923. Subsections (4), (5), and (6) set out the meaning of “self-contained”. A building is self-contained if one part of it could be redeveloped independently of the rest of the building.

Background

924. The problems associated with historical building safety defects in multi-occupied residential buildings are concentrated in medium-and high-rise buildings. There is a greater risk to life in taller buildings when fire does spread, and so defects in taller buildings are more likely to need to be remediated, and it is leaseholders in those buildings that have found themselves more likely to face significant remediation costs. Section 117 defines a relevant building (one that is within scope of the protections) as a building containing at least two or more dwellings and which is at least 11 metres in height or has at least five storeys.

925. Buildings which are below 11 metres in height, and which have fewer than five storeys are not within the scope of the leaseholder protections as evidence shows that there is no systemic issue with historical fire safety defects in these buildings. Costly remediation is unlikely to be needed, and there are likely to be more proportionate mitigations, such as the installation of fire alarms. It is not, therefore, necessary for low-rise buildings to be included within the definition of relevant building.

926. The ownership structures of multi-occupied residential buildings are discussed in the explanatory note for section 116 and set out that (in simple terms) in most cases the

building and the land on which it sits is owned by the freeholder, and the long leases of the individual dwellings are owned by the leaseholders. The freeholder (that is, the owner of the freehold) can be, for example, a private company, an individual, a local authority, or a charity.

927. It is also possible for some or all of the leaseholders to purchase their building's freehold; this is known as collective enfranchisement. Where enfranchisement occurs, the leaseholders become the owner of the freehold. There are several statutory routes to collective enfranchisement. The statutory routes are under Parts 1 or 3 of the Landlord and Tenant Act 1987, and under Chapter 1 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993. It is also possible for leaseholders to purchase the freehold of their building through non-statutory means.

928. An alternative to the leasehold model of ownership of multi-occupied residential buildings is commonhold. When a building is on commonhold land, each unit-holder (owner of a dwelling) within the building also owns the freehold of the unit. Commonhold is a different model of ownership to leasehold, but commonhold buildings are similar to those which have collectively enfranchised in the sense that the building, and the land which the building is on, are collectively owned by the owners of the dwellings contained within the building in both circumstances. The legal framework which governs commonhold is the Commonhold and Leasehold Reform Act 2002. There are far fewer commonhold buildings in England than multi-occupied leasehold buildings.

929. The leaseholder protections measures work at a fundamental level by limiting or preventing the costs that can be passed through the service charge to leaseholders by the freeholder. When costs cannot be passed on through the service charge, the freeholder, who is responsible for undertaking works to maintain the building, becomes liable for these costs. In situations where the building is collectively owned by the leaseholders, there is no separate entity to bear the costs – the leaseholders are the freeholder. Consequently, the definition of “relevant building” does not include leaseholder-owned buildings.

Proposed use of power

930. The power at subsection (6)(c) will be used to make regulations setting out other circumstances (other than those set out in subsections (6)(a) and (6)(b)) where a building can be leaseholder-owned. Example A block of flats is 15 metres high and contains 50 flats. It is not collectively owned by the leaseholders. The block falls within the definition of “relevant building” and is in scope of the leaseholder protections. A block of flats is 18 metres tall. It contains primarily office space and shops but contains three flats near the top. It is not collectively owned by the leaseholders. The block falls within the definition of “relevant building” and is in scope of the leaseholder protections

Section 118 – Section 117: height of buildings and number of storeys

Effect

931. This section applies for the purposes of section 117. Section 117 sets out that a building is defined as a “relevant building” if it contains at least two dwellings and is at

least 11 metres in height or has at least five storeys. Section 118 details how the height of the building and its number of storeys is to be determined.

932. Subsection (2) sets out how the height of a building is to be determined. The height is measured from ground level to the floor of the top storey.

933. Subsection (3) sets out how the number of storeys is to be determined. Any storey below ground level (such as a basement) is to be disregarded. A mezzanine floor counts as a storey if the floor area is at least half the floor area of the largest storey in the building.

934. Subsections (4) and (5) make further provision as to how “ground level” is to be determined and what is to count as a storey “below ground level” for the purposes of this section.

Background

935. This section sets out the definition of a “relevant building” in terms of the building’s height and the number of storeys it has. This section sets out important detail that will allow these factors to be determined.

936. A higher-risk building, as defined in section 31 (for the purposes of Part 3) and section 65 (for the purposes of Part 4), is one that is at least 18 metres in height or has at least seven storeys. For the purposes of Parts 3 and 4 of the Act, the details of how height and number of storeys are to be determined as set out in regulations made under sections 31 and 65. The concept of a higher-risk building does not apply for the purposes of the leaseholder protections, but the method by which a building’s height and number of storeys are to be determined is the same as set out in the draft Higher-Risk Building (Descriptions and Supplementary Provisions) Regulations which were published alongside the Building Safety Bill. Example A building is 10.5 metres tall and has five storeys all of which are above ground level. Although the building is under 11 metres tall, because it has five storeys it falls within the definition of a “relevant building” provided the other criteria within section 117 are met

COMMENTARY

4. Section 117 is a definitional provision of central importance:
 - (a) It establishes the gateway criterion for the leaseholder protections in sections 119 to 124 (as amended by the Leasehold and Freehold Reform Act 2024, s.118(2)(c), substituting “124” for “125”) and Schedule 8.
 - (b) Unless a building falls within the definition of a “relevant building”, neither the protections against service charge contributions for remediation costs nor the remediation order and remediation contribution order regimes under sections 123 and 124 can be engaged; and
 - (c) The definition therefore performs a critical threshold function.

5. The two limbs of the definition in subsection (2) are disjunctive: a building qualifies if it is at least 11 metres high or has at least five storeys. The 11-metre threshold was chosen to align with the height at which external wall fire spread becomes a material risk, reflecting the policy position adopted by government following the Independent Review of Building Regulations and Fire Safety (the Hackitt Review, Cm 9607, May 2018). The five-storey alternative addresses the fact that some building configurations - particularly those with high floor-to-ceiling heights or raised ground floors - may reach a significant height without attaining 11 metres as conventionally measured. Section 118 supplements this provision by prescribing the methodology for measuring height and counting storeys.
6. The building must also be “self-contained” and contain “at least two dwellings”. Whether or not a building meets this aspect of the definition can be more complicated than it might appear at first glance:
 - (a) Subsections (4), (5) and (6) elaborate the meaning of “self-contained”:
 - (i) A structurally detached building is self-contained by definition (subsection (4)).
 - (ii) A part of a building is self-contained if it constitutes a vertical division capable of independent redevelopment and its relevant services (defined in subsection (6) as services provided by pipes, cables or other fixed installations) are either already provided independently of the remainder of the building or could be so provided without significant service interruption to the remainder (subsection (5)).
 - (b) This formulation draws heavily on the concept of a “self-contained part” in section 3(1) of the Leasehold Reform, Housing and Urban Development Act 1993 and section 72(3) of the Commonhold and Leasehold Reform Act 2002, adapted for the specific purposes of the BSA.
 - (c) That may be important because there is significant caselaw under those Acts as to precisely how the test of “self-contained” is to be applied: see for example **No.1 Deansgate (Residential) Ltd v No.1 Deansgate RTM Co Ltd** [2013] UKUT 580 (LC) and **Albion Residential Ltd v Albion Riverside Residents RTM Co Ltd** [2014] UKUT 6 (LC). As those cases make clear, the question is one of fact, and in borderline cases may require expert evidence.

- (d) The leading modern statement is now **The Courtyard RTM Co Ltd v Rockwell (FC103) Ltd** [2025] UKUT 39 (LC), in which the Deputy Chamber President (Martin Rodger KC) expressly noted (at [7]) that substantially the same language as s.72(3) of the 2002 Act is found in s.117(5) of the BSA. The test is a purely physical one, concerned only with the built envelope, its internal structure, and the separability of services (at [9], adopting **Assethold Ltd v Eveline Road RTM Co Ltd** [2024] EWCA Civ 187). The five-step approach in **Oakwood Court (Holland Park) Ltd v Daejan Properties Ltd** [2007] 1 EGLR 121 governs the services limb. In my view the tribunals will apply the RTM and enfranchisement caselaw to s.117(5) without material modification; that is exactly what has now happened at first instance.
7. The first contested application of s.117(4) and (5) under the Act itself is the FTT’s preliminary issue decision in **A2Dominion South Ltd v BDW Trading Ltd** (Pieris House) (LON/00AT/BSB/2025/0608, 2 April 2026). A three-storey low-rise section of a mixed-use development was said by the developer to be structurally detached from the qualifying higher-rise part, and so outside the RCO jurisdiction. The FTT disagreed: walkways and transfer beams created direct and indirect structural attachment, and structural interdependence was “a clear indicator that there is not structural detachment” (at [102]). The decision confirms three practical points: (a) “structurally detached” means detached in a structural sense, not merely physically separate (**No.1 Deansgate** applied); (b) the question is one of fact and degree, on which expert structural evidence will usually be decisive; and (c) a low-rise wing that fails the detachment test is simply part of the wider relevant building, with the consequence that its leaseholders share in the protections. Developers seeking to carve buildings up so as to shrink the regime’s footprint face an uphill task.
8. The practical significance of the “self-contained part” concept is that a large mixed-use or multi-block development may contain discrete vertical sections, each of which independently qualifies (or fails to qualify) as a relevant building. This avoids the absurdity of treating an entire sprawling estate as a single building, but equally ensures that a qualifying residential tower attached to a lower commercial podium is not excluded merely because it forms part of a larger structure.
9. Subsection (3) excludes buildings that are effectively leaseholder-owned. Four routes to exclusion are identified:

- (a) Exercise of the right of first refusal under Part 1 of the Landlord and Tenant Act 1987;
 - (b) Exercise of the right to a compulsory acquisition order under Part 3 of that Act;
 - (c) Collective enfranchisement under Chapter 1 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993; and
 - (d) Buildings on commonhold land (within the meaning of the Commonhold and Leasehold Reform Act 2002).
10. The rationale for the leaseholder-ownership exclusion is straightforward: the leaseholder protections are designed to shield leaseholders from costs which are properly attributable to the defaults of others - principally developers and building owners. Where the leaseholders themselves hold the freehold (whether collectively or through commonhold), the same problem does not arise: the leaseholders are the building owners: they control the remediation process and bear its costs as a natural incident of their ownership, rather than as an imposed liability passed down through a service charge mechanism over which they have no meaningful control.
11. Two recent TCC decisions illustrate what happens outside the s.117 perimeter:
- (a) In **Essendi UK Hotels 2 Ltd v London Property Company Ltd** [2026] EWHC 1354 (TCC) (HHJ Stephen Davies, 5 June 2026), the Ibis London Wembley - a 16-storey hotel tower clad in category 3 ACM - was outside the regime: a hotel contains no dwellings and so cannot be a relevant building. The tenant hotel operator therefore had to achieve what the judge described as, in substance, a building safety remediation order by other means: it succeeded on the landlord's "good condition" covenant and the legal obligations covenant (via the Regulatory Reform (Fire Safety) Order 2005), obtaining specific performance requiring removal of the ACM panels. The case shows that for non-residential stock the ordinary law of landlord and tenant, energised by fire safety regulation, can deliver remediation outcomes the BSA does not.
 - (b) In **Into Nominee One Ltd v Study Group UK Ltd** [2026] EWHC 1201 (TCC) (Roger ter Haar KC, 21 May 2026), the tenant of a purpose-built residential training school in Brighton, rendered unusable by combustible-insulation and fire-stopping defects, argued that its 25-year lease had been frustrated. The argument failed on conventional frustration principles: the defects did not

render performance radically different from the bargain, and the tenant remained liable for rent exceeding £9 million. Outside the regime there is no statutory reallocation of remediation risk: the contractual allocation in the lease prevails, however painful.

(c) The lesson of both cases is the same:

Section 117 draws a bright line.

Inside it, Parliament has rewritten the cost allocation;

Outside it, the parties are left with their contractual bargain and the general law.

12. The Leasehold and Freehold Reform Act 2024 amended subsection (1) to substitute the reference to “sections 119 to 125” with “sections 119 to 124”, consequential upon the repeal of section 125. The amendment was brought into force on 24 July 2024 by s.124(2)(c) of the 2024 Act. The scope of the definition is otherwise unchanged since enactment.
13. The definition of “relevant building” in section 117 should be distinguished from the definition of a “higher-risk building” in section 65, which applies to Part 4 of the Act (the higher-risk building regime administered by the Building Safety Regulator). Although both definitions employ height and storey thresholds, the Part 4 threshold is 18 metres or seven storeys and requires registration; Part 5 uses 11 metres or five storeys and requires none. Part 4 imposes ongoing regulatory obligations on accountable persons in occupation; Part 5 addresses the retrospective allocation of remediation costs for historical defects. A building may be within one regime and not the other. Care must be taken not to read the caselaw on one definition across to the other without checking the statutory language.

Practical note: When advising leaseholders, the first question is always whether the building meets the s.117 threshold. Mixed-use buildings containing residential and commercial elements may qualify if the residential part is “self-contained” and meets both the dimensional and dwelling criteria. Care must be taken with the concept of a “self-contained part”: that phrase imports the definitions used in the Leasehold Reform, Housing and Urban Development Act 1993 and the Commonhold and Leasehold Reform Act 2002, and the substantial caselaw under those Acts - now including **The Courtyard RTM Co Ltd v Rockwell (FC103) Ltd**

and, under the BSA itself, **A2Dominion South Ltd v BDW Trading Ltd** - will govern its application.

CASE DIGEST

Case Name: **A2Dominion South Ltd v BDW Trading Ltd** (Pieris House)

Case Reference: LON/00AT/BSB/2025/0608 (preliminary issue decision)

Judge: Deputy Regional Judge Nikki Carr, Regional Surveyor Elizabeth Ratcliff MRICS, Mr Andrew Gee RIBA

Date: 2 April 2026

Key Issues: Whether a three-storey low-rise section of a mixed-use development was structurally detached from the higher-rise part, and so outside the “relevant building” at Pieris House for RCO purposes under s.117.

Held:

1. Flats 29–40 Pieris House form part of the “relevant building” at 1–40 Pieris House in respect of which a remediation contribution order may be made [1].
2. The lower-rise part is not structurally detached from the higher-rise part [90]: external walkways depend on the stair B steel structure for support, and transfer beams connect that structure to both the higher-rise concrete frame and the lower-rise commercial rooftops [97]-[102].
3. Structural interdependence is “a clear indicator that there is not structural detachment” [102]; the question is one of fact and degree, resolved on the structural evidence.
4. The RTM and enfranchisement caselaw governs the s.117(4)-(5) tests: **The Courtyard RTM Co Ltd v Rockwell (FC103) Ltd** [2025] UKUT 39 (LC), **No.1 Deansgate (Residential) Ltd v No.1 Deansgate RTM Co Ltd** [2013] UKUT 580 (LC) and **Assethold Ltd v Eveline Road RTM Co Ltd** [2024] EWCA Civ 187 applied; self-containment is a purely physical test.
5. On vertical division, the premises must form a slice of the building “with substance and dimensions”; the only relevant boundaries are those connected to the rest of the building [103]-[105].

Link:

https://assets.publishing.service.gov.uk/media/69d8b429f09c8a1610d8d885/260402_Preliminary_Issue_Decision.pdf

Case Name: **The Courtyard RTM Co Ltd v Rockwell (FC103) Ltd; 14 Park Crescent Ltd v 14 Park Crescent RTM Co Ltd**

Case Reference: [2025] UKUT 39 (LC)

Judge: Martin Rodger KC, Deputy Chamber President

Date: 7 February 2025

Key Issues: Meaning of “self-contained part of a building” under s.72(3)-(4) of the Commonhold and Leasehold Reform Act 2002 - language which, as the Tribunal noted, is substantially reproduced in s.117(5) of the BSA. A cross-reference authority for s.117 purposes.

Held:

1. Whether premises satisfy the definition of a self-contained building or part is a purely physical test, concerned only with the built envelope, internal structure, and separability of services (**Assethold Ltd v Eveline Road RTM Co Ltd** adopted) [9].
2. Substantially the same language as s.72(3) of the 2002 Act appears in s.117(5) of the Building Safety Act 2022, with the clarification that “it” refers to “the part” [7]; the analysis therefore reads across to the BSA.
3. Vertical division requires the premises to be a vertical slice of the building; a de minimis departure from the vertical plane may be ignored but the requirement is otherwise unqualified (**Re Holding and Management (Solitaire) Ltd** considered) [10]-[11].
4. On the services limb, the five-step approach of HHJ Hazel Marshall QC in **Oakwood Court (Holland Park) Ltd v Daejan Properties Ltd** [2007] 1 EGLR 121 is to be applied: identify the non-independent services; ask whether they can be provided independently; ascertain the separation works; assess the interruption those works would cause to the remainder; and decide whether that interruption would be “significant” [15].

Link: <https://caselaw.nationalarchives.gov.uk/ukut/lc/2025/39>

SECTION 118 – SECTION 117: HEIGHT OF BUILDINGS AND NUMBER OF STOREYS

STATUTORY TEXT

- (1) This section applies for the purpose of section 117.
- (2) The height of a building is to be measured from ground level to the finished surface of the floor of the top storey of the building (ignoring any storey which is a roof-top machinery or plant area or consists exclusively of machinery or plant rooms).
- (3) When determining the number of storeys in a building—
 - (a) any storey below ground level is to be disregarded;
 - (b) any mezzanine floor is to be regarded as a storey if its internal floor area is at least half of the internal floor area of the largest storey in the building which is not below ground level.
- (4) In subsection (2) “ground level”, in relation to a building, means—
 - (a) the level of the surface of the ground immediately adjacent to the building, or
 - (b) where the level of the surface of the ground on which the building is situated is not uniform, the level of the lowest part of the surface of the ground immediately adjacent to it.
- (5) For the purposes of subsection (3) a storey is “below ground level” if any part of the finished surface of the ceiling of the storey is below the level of the surface of the ground immediately adjacent to that part of the building.

EXPLANATORY NOTES

Section 118 – Section 117: height of buildings and number of storeys

Effect

931. This section applies for the purposes of section 117. Section 117 sets out that a building is defined as a “relevant building” if it contains at least two dwellings and is at least 11 metres in height or has at least five storeys. Section 118 details how the height of the building and its number of storeys is to be determined.

932. Subsection (2) sets out how the height of a building is to be determined. The height is measured from ground level to the floor of the top storey.

933. Subsection (3) sets out how the number of storeys is to be determined. Any storey below ground level (such as a basement) is to be disregarded. A mezzanine floor counts as a storey if the floor area is at least half the floor area of the largest storey in the building.

934. Subsections (4) and (5) make further provision as to how “ground level” is to be determined and what is to count as a storey “below ground level” for the purposes of this section.

Background

935. This section sets out the definition of a “relevant building” in terms of the building’s height and the number of storeys it has. This section sets out important detail that will allow these factors to be determined.

936. A higher-risk building, as defined in section 31 (for the purposes of Part 3) and section 65 (for the purposes of Part 4), is one that is at least 18 metres in height or has at least seven storeys. For the purposes of Parts 3 and 4 of the Act, the details of how height and number of storeys are to be determined as set out in regulations made under sections 31 and 65. The concept of a higher-risk building does not apply for the purposes of the leaseholder protections, but the method by which a building’s height and number of storeys are to be determined is the same as set out in the draft Higher-Risk Building (Descriptions and Supplementary Provisions) Regulations which were published alongside the Building Safety Bill. Example A building is 10.5 metres tall and has five storeys all of which are above ground level. Although the building is under 11 metres tall, because it has five storeys it falls within the definition of a “relevant building” provided the other criteria within section 117 are met

COMMENTARY

14. Section 118 sets out the methodology for determining height and storey count for the purposes of the “relevant building” definition in section 117. It contains no independent substantive obligation: rather it governs the application of section 117(2) by specifying what is to be measured, from where, and how anomalous features are to be treated. The section was brought into force on 28 June 2022 alongside the remainder of Part 5, and has not been amended.
15. Subsection (2) provides that the height of a building is to be measured from ground level to the finished surface of the floor of the top storey. The measurement point is therefore the floor surface, not the ceiling or roof. This is a deliberate departure from other height measurement conventions in planning and building regulations, which may measure to the ridge, eaves, or overall structural height. The BSA measure is designed to capture the critical parameter for fire safety purposes: the height at which a person may be located on the top habitable floor in the event of a fire.
16. Subsection (2) also provides that any storey which is a roof-top machinery or plant area, or which consists exclusively of machinery or plant rooms, is to be ignored in identifying the “top storey”.

17. The effect is that a building with habitable floors reaching 10 metres but a plant room on the roof at 13 metres will not be treated as 13 metres high. The exclusion is limited to areas that are exclusively machinery or plant: a mixed-use top floor that serves partly as plant and partly for other purposes would not be excluded.
18. Subsection (3) governs how storeys are counted. There are two significant rules:
 - (a) First, any storey below ground level is to be disregarded (subsection (3)(a)). A basement or sub-basement therefore does not count towards the five-storey threshold. Subsection (5) defines “below ground level” by reference to the ceiling of the storey: a storey is below ground level if any part of the finished surface of the ceiling is below the surface of the ground immediately adjacent to that part of the building. This is a generous definition which excludes a storey from the count even if only part of the ceiling is below ground - the entire storey is then disregarded.
 - (b) Second, a mezzanine floor is to be regarded as a storey if its internal floor area is at least half of the internal floor area of the largest storey in the building which is not below ground level (subsection (3)(b)). This prevents the avoidance of the five-storey threshold through the use of intermediate floors described as mezzanines. The 50% test is measured against the largest above-ground storey, not the average: a small mezzanine in a building with one very large floor is therefore less likely to be counted.
19. Subsection (4) defines “ground level” for the purposes of the height measurement. Where the ground is uniform, it is the surface immediately adjacent to the building. Where it is not uniform (as will frequently be the case on sloping sites) the measurement is taken from the lowest part of the adjacent ground surface. This is significant: a building constructed on a slope will be measured from its lowest point, which may bring it above the 11-metre threshold even where, from the higher side of the site, it appears to be a low-rise structure. The choice of the lowest point reflects the fire safety rationale: it is the maximum height above ground at which occupants may need to escape that matters, and that height is at its greatest where the ground is lowest.
20. This may appear very technical: it gives rise, however, to some real difficulties:
 - (a) In **Smoke House and Curing House, 18 Remus Road, London E3** (LON/00BG/HYI/2023/0024), the First-tier Tribunal had to consider whether a

rooftop terrace containing a garden and plant equipment should count as a storey. The issue was sufficiently important to warrant leading counsel appearing to argue that it should not.

- (b) The FTT nonetheless concluded that the terrace counted as a storey, reasoning that the relevant consideration was whether people might be located in the area in the event of a fire. This analysis conflicted with government guidance, which had stated that open rooftops such as rooftop gardens are not to be counted as storeys. The Building Safety Regulator subsequently indicated that regulatory bodies should continue to follow existing guidance pending formal clarification. The point remains unresolved at appellate level and is likely to be the subject of further litigation, particularly in relation to buildings close to the five-storey threshold where the characterisation of a rooftop area may be determinative.
21. Buildings near the margins of the s.117(2) thresholds will repay careful measurement. Somerville Court (CAM/26UG/BSA/2025/0003, 9 February 2026) concerned a five-storey block measuring 11.4 metres, so both limbs of s.117(2) were satisfied. Had the block been of four storeys, 40 centimetres the other way would have taken the entire remediation order jurisdiction away. In cases of that kind the s.118 rules - the treatment of sloping ground, part-buried storeys and mezzanines - are not conveyancers' trivia; they are the whole dispute. A measured survey conducted to the s.118 methodology, rather than to any planning or Part 4 convention, should be obtained at the outset.
22. The section must also be read with the Building Safety (Leaseholder Protections) (England) Regulations 2022 (SI 2022/711), which supplement the definition of "relevant building" in section 117. Practitioners should note that the height measurement prescribed by section 118 differs in its ancillary rules from the methodology used for "higher-risk buildings" under Part 4 of the Act and the Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023: a survey commissioned for Building Safety Regulator registration purposes cannot simply be recycled for Part 5.

CASE DIGEST

Case Name: Ladaya v Hightown Housing Association Ltd and Nicholas King Homes Plc (Somerville Court)

Case Reference: CAM/26UG/BSA/2025/0003 (First-tier Tribunal (Property Chamber))

Judge: Judge Wayte, Judge MacQueen and Tribunal Member Williams

Date: 9 February 2026

Key Issues: A remediation order in respect of a building at the margin of the section 117(2) thresholds: five storeys and 11.4 metres.

Held:

1. The building satisfied both limbs of section 117(2) — it was of five storeys and it measured 11.4 metres — so no question of measurement under section 118 arose for decision.
2. The decision is nonetheless the clearest illustration of why the section 118 methodology matters. On a building of four storeys, 40 centimetres would have decided whether the remediation order jurisdiction existed at all.

The decision is digested more fully, on the section 120 issues, in the case digest to section 120.

Link: https://assets.publishing.service.gov.uk/media/69d7858847eb6fd98375fa05/Somerville_Court.pdf

Case Name: **Monier Road Ltd v Blomfield** (Smoke House and Curing House, 18 Remus Road, London E3)

Case Reference: [2025] UKUT 157 (LC), on appeal from the First-tier Tribunal, ref. LON/00BG/HYI/2023/0024

Judge: Upper Tribunal Judge Elizabeth Cooke and Mrs Diane Martin TD MRICS FAAV

Date: 28 May 2025 (corrected 4 June 2025)

Key Issues: Whether a rooftop terrace counted as a storey for the purposes of section 118(3) — decided at first instance only.

Held:

1. The storey question was determined by the First-tier Tribunal. That decision is not reported and is not available on any public source; the reference is confirmed by the Upper Tribunal's own record of the appeal.
2. On the appeal the building's status as a relevant building was not in dispute [10], so the Upper Tribunal did not revisit the point. The appeal succeeded on the different ground that the First-tier Tribunal had included in the order defects which neither party had raised.
3. The position on rooftop terraces accordingly rests on an unreported first-instance decision and should be cited with that caveat.

The Upper Tribunal decision is digested more fully, on the section 123 issues, in the case digest to section 123.

Link: <https://caselaw.nationalarchives.gov.uk/ukut/lc/2025/157>

SECTION 119 – MEANING OF “QUALIFYING LEASE” AND “THE QUALIFYING TIME”

STATUTORY TEXT

- (1) This section applies for the purposes of sections 122 to 124 and Schedule 8.
- (2) A lease is a “qualifying lease” if—
 - (a) it is a long lease of a single dwelling in a relevant building,
 - (b) the tenant under the lease is liable to pay a service charge,
 - (c) the lease was granted before 14 February 2022, and
 - (d) at the beginning of 14 February 2022 (“the qualifying time”)—
 - (i) the dwelling was a relevant tenant’s only or principal home,
 - (ii) a relevant tenant did not own any other dwelling in the United Kingdom, or
 - (iii) a relevant tenant owned no more than two dwellings in the United Kingdom apart from their interest under the lease.
- (3) Where a dwelling was at the qualifying time let under two or more leases to which subsection (2)(a) and (b) apply, any of those leases which is superior to any of the other leases is not a “qualifying lease”.
- (3A) A connected replacement lease (see section 119A) is also a “qualifying lease”.
- (4) For the purposes of this section—
 - (a) “long lease” means a lease granted for a term of years certain exceeding 21 years, whether or not it is (or may become) terminable before the end of that term by notice given by or to the tenant or by re-entry, forfeiture or otherwise;
 - (b) a person “owns” a dwelling in England, Wales or Northern Ireland if the person has a freehold interest in it or is a tenant under a long lease of it;
 - (c) “relevant tenant” means a person who, at the qualifying time, was the tenant, or any of the tenants, under the lease mentioned in subsection (2);
 - (d) “service charge” has the meaning given by section 18 of the Landlord and Tenant Act 1985.

S. 119(3A) inserted (retrospectively) by Levelling-Up and Regeneration Act 2023 (c. 55), s. 243(2) (5) (with s. 247)

Word in s. 119(1) substituted (24.7.2024) by Leasehold and Freehold Reform Act 2024 (c. 22), ss. 118(2)(d), 124(2)(c)

EXPLANATORY NOTES

Section 119 – Meaning of “qualifying lease” and the “qualifying time”

Effect

937. This section sets out the meaning of “qualifying lease” and “the qualifying time” which apply for the purposes of sections 122 to 125 and Schedule 8.

938. The “qualifying time” is defined in subsection (2) as the beginning of 14 February 2022.

939. A “qualifying lease”, defined in subsection (2), is a lease to which the leaseholder protections measures apply. For a lease to be qualifying, it must be a long lease of a single dwelling within a relevant building (see section 117 for the definition of “relevant building”). A “long lease” is defined in subsection (4)(a) as one which exceeds 21 years in length. The tenant under the lease must also be liable to pay a service charge, where “service charge” has the meaning given under section 18 of the Landlord and Tenant Act 1985. The lease must also have been granted before the qualifying time.

940. Subsection (2)(d) sets out the categories of leases that are qualifying. For a lease to be qualifying, at the qualifying time the lease must have been the tenant’s only or principal home, or it must have been the only property they owned in the United Kingdom (even if it was not their only or principal home), or the relevant tenant must have owned no more than two additional properties in the United Kingdom in total. A “relevant tenant” is defined in subsection (4)(c) as a person who is a tenant under the lease (in other words, a leaseholder) at the qualifying time.

941. The provision at subsection (2)(d) means that a leaseholder will qualify for the leaseholder protections for their properties if they own up to three properties in the United Kingdom in total. If more than three properties in total are owned, then the principal home qualifies for the protections, but the other properties do not.

942. Subsection (4)(b) sets out that a person “owns” a dwelling in England, Wales, or Northern Ireland if they have either a freehold or leasehold interest in it (capturing the two types of property ownership in those jurisdictions). The word “owns” suffices for property in Scotland because Scotland does not have a system of leasehold; ownership in Scotland is a generally understood term which does not need a separate definition. This means that all types of residential property ownership count against the total of three properties in the United Kingdom for the purposes of the leaseholder protections.

943. Subsection (3) makes provision for the situation where a dwelling was let under two or more leases at the qualifying time. It sets out that any lease which is superior to any other lease is not a qualifying lease. This ensures that it is always the lease at the end of any chain of demised leases that qualifies for the protections, rather than any superior landlord (see the explanatory note to paragraph 12 of Schedule 8 for more detail about superior landlords and demised leases).

944. This section makes clear the terms on which a lease becomes a qualifying lease. It is not a leaseholder that becomes a qualifying leaseholder – it is the leasehold interest itself

that is qualifying. Because whether a lease is qualifying is determined as regards the position as at the qualifying time, the status of the lease (as qualifying or otherwise) became fixed on 14 February 2022. That status will then transfer automatically to future buyers of the lease should it be sold. This means that if a lease is qualifying, it will be automatically qualifying for any future buyer of that lease. Similarly, if a lease is non-qualifying, it will also be non-qualifying for any future buyer.

Background

945. The leaseholder protections apply to leasehold dwellings in multi-occupied buildings in England that are at least 11 metres tall or have at least five storeys. Further detail on the leasehold model of ownership in England is set out in the explanatory note to section 116. Subsections (2)(a) and (2)(b) of this section set the parameters for what is to be determined as a leasehold dwelling for the purposes of the leaseholder protections. It applies to a lease which is at least 21 years in length; this type of lease is generally known as a “long lease”.

946. The leaseholder protections do not apply to all leasehold dwellings. They are designed to protect leaseholders living in their own homes as well as those who may have moved out and are subletting due to building safety issues in their property or for other reasons. In addition, the protections apply to people owning small numbers of additional properties, with people owning up to three residential properties in total in the United Kingdom qualifying. For people who own more than three properties in total, their principal home always qualifies for the protections if it is otherwise in scope.

947. The section also defines the “qualifying time” as the beginning of 14 February 2022; the qualifying time is relevant elsewhere in the leaseholder protections and applies to a number of different tests which are applied under the provisions. Liability under the leaseholder protections became fixed and immutable at the qualifying time. This is important to give certainty to all parties who will be affected by the leaseholder protections provisions and to the housing market, which is important to ensure, for example, that lending on properties can take place with confidence.

948. The “qualifying time” is defined as the beginning of 14 February 2022, as that was the date on which the leaseholder protections provisions were first tabled as amendments to the Building Safety Bill at Committee stage during the Bill’s passage through the House of Lords, and as such the point at which the provisions first become public knowledge. Although the leaseholder protections only take legal effect at commencement, two months after Royal Assent, the choice of qualifying time means that the provisions could not be manipulated or preemptively avoided in the period between the original publication of the amendments and the provisions becoming law. Example 1 A person owns three flats in England, all of which are contained within relevant buildings. They do not own any other property in the United Kingdom. All three flats are qualifying leases and qualify for the leaseholder protections. Example 2 A person owns two flats in England which are contained within relevant buildings, and a house in Scotland. As three properties in the United Kingdom are owned in total, the two flats fall within the definition of qualifying lease and qualify for the leaseholder protections. Example 3 A person owns four flats in England which are contained within relevant buildings, one of which they live in (and lived

in on 14 February 2022). The flat the person lives in qualifies for the leaseholder protections as it was their principal home at the qualifying time. The other three flats do not qualify, as the person owned more than three properties in the United Kingdom in total. Example 4 A person owns two flats in England and two houses in Wales. They live in one of the houses. As the person owns more than three properties in the United Kingdom in total, neither of which was their principal home at the qualifying time, the flats do not qualify for the leaseholder protections. Example 5 A person owns a flat which has a qualifying lease. The lease is qualifying because the flat was their principal home on 14 February 2022. They sell the flat on. The leaseholder protections automatically transfer to the future buyer of the flat. The protections transfer irrespective of the identity of the buyer, because the status of the lease as qualifying was determined with respect to the position on 14 February 2022. Example 6 A person owns a flat which has a non-qualifying lease because on 14 February 2022 they owned nine flats in total in England. They sell it on to a buyer who intends to live in the flat. Even though the flat will be the buyer's principal home, the lease remains non-qualifying because on 14 February 2022 it was not a qualifying lease

COMMENTARY

23. Section 119 draws the line between qualifying and non-qualifying leaseholders. It matters because the most valuable protections in Schedule 8 - the contribution condition (para 3), the low-value exemption (para 4), the capped contributions (paras 5 to 7), the cladding remediation protection (para 8) and the legal costs protection (para 9) - are available only under a “qualifying lease”. Only the paragraph 2 protection (developer-landlords and their associates) applies to all leases in a relevant building.
24. A lease is a qualifying lease if four conditions are met (s.119(2)):
 - (a) it is a long lease (a term exceeding 21 years: s.119(4)(a)) of a single dwelling in a relevant building;
 - (b) the tenant is liable to pay a service charge (as defined by s.18 of the Landlord and Tenant Act 1985);
 - (c) the lease was granted before 14 February 2022; and
 - (d) at the beginning of 14 February 2022 (“the qualifying time”) the dwelling was a relevant tenant’s only or principal home, or a relevant tenant owned no other dwelling in the UK, or a relevant tenant owned no more than two other UK dwellings apart from the lease.
25. Three drafting points on subsection (2)(d) should be noted:

- (a) The three limbs are alternatives: any one of them will suffice. As the Upper Tribunal observed in **Lehner v Lant Street Management Co Ltd** [2024] UKUT 135 (LC) at [82], the conditions “are not as clear as they might be”, and the second limb appears to be entirely subsumed within the third and so redundant.
 - (b) The status of the lease is fixed once and for all at the qualifying time. A subsequent sale, change of use, or expansion of the tenant’s portfolio is immaterial: the Upper Tribunal in **Almacantar Centre Point Nominee No.1 Ltd v de Valk** [2025] UKUT 298 (LC) at [90] said in terms that the FTT’s suggestion that qualifying status “could change” with a later change of use or portfolio “cannot be correct as the status of ‘qualifying lease’ is fixed as at 14th February 2022”.
 - (c) Where a dwelling was let under two or more leases each satisfying (2)(a) and (b), any lease superior to another is not a qualifying lease (s.119(3)): the protection attaches at the occupational level, not to intermediate investment interests.
26. The policy is clear enough:
- (a) the BSA aims to protect individual residential leaseholders - typically homeowners and small landlords - from the financial burden of remediating defects caused by others;
 - (b) investor-leaseholders with larger portfolios are in a different economic position: their liability is capped by paragraphs 5 to 7 of Schedule 8 rather than excluded, and they take the benefit of paragraph 2 where the developer remains in the ownership chain.
27. The deeming provision: paragraph 13 of Schedule 8. In practice, the most important thing about s.119 is not the definition itself but the presumption which attaches to it:
- (a) By paragraph 13(2) of Schedule 8, a lease which satisfies conditions (a) to (c) of s.119(2) is to be treated as a qualifying lease unless the landlord has taken all reasonable steps (and any prescribed steps) to obtain a qualifying lease certificate from a tenant, and no certificate has been provided. The certificate (in practice the leaseholder deed of certificate under the Building Safety

(Leaseholder Protections) (England) Regulations 2022, SI 2022/711) certifies that the s.119(2)(d) condition was met at the qualifying time.

- (b) The burden is therefore on the landlord, not the leaseholder. In **Lehner** the FTT had held that the leaseholder “produced no evidence” that his lease was qualifying; the Upper Tribunal held that approach “clearly wrong” (at [84]): since no steps had been taken to obtain a certificate, the lease had to be treated as qualifying, and the leaseholder protections analysed accordingly.
 - (c) **Almacantar** (Ground 5) shows the other side of the coin. The FTT there applied the paragraph 13 presumption to twelve flats; the landlord’s complaint that this amounted to an unqualified finding of fact was dismissed, the Upper Tribunal holding that the FTT “did not make any determination on evidence, it simply applied the presumption” (at [97]). A landlord who chooses not to take the reasonable steps required of it cannot then complain that the presumption bites. Whether a determination made on the presumption alone binds for all future purposes was expressly left open: in my view it does not, and a landlord who later obtains certificates showing non-qualification will be entitled to reopen the question for future demands; but the point awaits decision.
 - (d) The Upper Tribunal in **Lehner** at [16] described the Part 5 deeming provisions generally as “a trap for unwary parties and decision makers”. That warning is not rhetorical. The presumptions displace the ordinary burden of proof, and they have been decisive in most of the contested Schedule 8 cases to date.
28. Section 119A: connected replacement leases. As originally enacted, s.119 contained a serious trap of its own: because condition (c) requires grant before 14 February 2022, a leaseholder who extended or varied their lease after that date - a lease extension taking effect in law as a surrender and regrant - was granted a new lease outside the definition and lost the protections entirely. Parliament cured this by s.243 of the Levelling-up and Regeneration Act 2023, which inserted s.119(3A) and the new s.119A with retrospective effect:
- (a) s.119(3A) provides that a “connected replacement lease” is also a qualifying lease;
 - (b) s.119A defines a connected replacement lease, in essence, as a lease granted on or after 14 February 2022 which replaces (alone or with others) a qualifying

lease, or a lease in an unbroken chain of such replacements, in respect of the same or substantially the same demise. As Newey LJ put it in **Adriatic Land 5 Ltd v Long Leaseholders at Hippersley Point** [2025] EWCA Civ 856 at [16], the new section “extend[s] the protection for leaseholders where a ‘qualifying lease’ has been extended, varied or replaced by a new lease”;

- (c) the insertion is retrospective (LURA 2023, s.243(2), (5)), so a leaseholder who extended in the window between 14 February 2022 and the amendment is protected as if the protections had never lapsed.
29. Conveyancers acting on lease extensions in relevant buildings should nonetheless record the qualifying status of the predecessor lease and preserve the deed of certificate: the s.119A chain must be capable of proof years later.
30. The corollary of qualifying status is that costs stripped out of the service charge do not vanish: they are redirected up the chain. Regulation 3 of the Building Safety (Leaseholder Protections) (Information etc.) (England) Regulations 2022 (SI 2022/859) permits a landlord who has paid, or is liable to pay, remediation costs which would have been recoverable through the service charge but for Schedule 8 to recover those amounts from the developer or an associated superior landlord by notice. The first substantial decision on the mechanism is **Stratford Village Property Holdings 1 Ltd v East Village Management Ltd** (16 January 2026), where the FTT held that: (a) the tribunal has jurisdiction to determine whether the regulation 3 conditions are met and whether notices are valid [36]; (b) the “but for” condition looks only to what would have been payable under the lease absent Schedule 8 - Building Safety Fund grant funding is irrelevant to it [50]; (c) the mechanism reaches costs incurred before the Regulations commenced [93]; but (d) it does not extend to estimated or contingent future liabilities: “liable to pay” connotes a liability which has already arisen [83]. Permission to appeal to the Upper Tribunal was granted on 13 March 2026, and the appeal should settle the working of the recovery machinery. My expectation is that the core holdings - jurisdiction, the lease-focused “but for” test and retrospective reach - will survive; the tribunal’s reading is the only one consistent with the hierarchy of liability described in **Triathlon Homes LLP v Stratford Village Development Partnership** [2025] EWCA Civ 846.

Practical note: The 14 February 2022 snapshot means that post-qualifying-time disposals and acquisitions are irrelevant, subject only to s.119A replacement leases. The practitioner must establish the position as at the snapshot date, which may require Land Registry disclosure. Landlords should institute a standing system for seeking deeds of certificate whenever a Schedule 8 issue is in prospect: a landlord who has not taken all reasonable steps to obtain certificates will find every colourable lease treated as qualifying.

CASE DIGEST

Case Name: **Lehner v Lant Street Management Co Ltd**

Case Reference: [2024] UKUT 135 (LC)

Judge: Martin Rodger KC, Deputy Chamber President, and Peter D McCrea FRICS FCI Arb

Date: 17 May 2024

Key Issues: Qualifying lease status and the paragraph 13 Schedule 8 deeming provision; the burden of establishing qualification; the tribunal's duty to apply the leaseholder protections of its own motion.

Held:

1. The Part 5 deeming provisions displace the usual burden of proof: facts not certified are assumed in favour of leaseholders unless the landlord has taken the required steps, and they are “a trap for unwary parties and decision makers” [16].
2. Where a lease satisfies s.119(2)(a)-(c), paragraph 13(2) of Schedule 8 requires it to be treated as a qualifying lease unless the landlord has taken all reasonable steps to obtain a qualifying lease certificate and none has been provided; the FTT's conclusion that the leaseholder had failed to prove qualification was “clearly wrong” [84]-[85].
3. The leaseholder protections apply to service charges which became payable before the Act's commencement, following **Adriatic Land 5 Ltd v Long Leaseholders at Hippersley Point** [2023] UKUT 271 (LC) and **Triathlon Homes** [85].
4. It is for the FTT in every s.27A case to consider whether the leaseholder protections apply, whether or not the parties raise them; the burden is particularly heavy where a party is unrepresented [43], [49].
5. The three limbs of s.119(2)(d) are alternatives, and the second appears redundant as wholly contained within the third [82].

Link: <https://caselaw.nationalarchives.gov.uk/ukut/lc/2024/135>

Case Name: Stratford Village Property Holdings 1 Ltd and Stratford Village Property Holdings 2 Ltd v East Village Management Ltd

Case Reference: LON/00BB/BSD/2024/0601; LON/00BB/BSA/2025/0002-0003 (FTT); permission to appeal to the Upper Tribunal granted 13 March 2026

Judge: Judge S McGrath and Judge A Sheftel

Date: 16 January 2026

Key Issues: The working of regulation 3 of the Building Safety (Leaseholder Protections) (Information etc.) (England) Regulations 2022: landlord-to-developer recovery of remediation costs rendered irrecoverable from leaseholders by Schedule 8.

Held:

1. The FTT has jurisdiction to determine whether the conditions in regulation 3(1) are met and whether a landlord’s notice is valid [36]-[40].
2. The “but for” condition asks only whether a service charge would have been payable under the lease but for Schedule 8; the availability of Building Safety Fund grant is irrelevant to that question [50].
3. Regulation 3 reaches only costs for which the remediating party is presently liable: “the phrase ‘liable to pay’ most easily sits with the concept of a liability which has already arisen”; estimated future or contingent costs are excluded [83].
4. Regulation 3 applies to costs incurred before the Regulations commenced on 21 July 2022: retrospectivity is central to achieving the aims of the BSA [93].
5. Save on the future-costs ground, the appeals against the notices failed [95].

Link:

https://assets.publishing.service.gov.uk/media/698367e720fe1bb69ac24411/260129_J_McGrath_Regulation_3_Decision_corrected.pdf

SECTION 119A – MEANING OF “CONNECTED REPLACEMENT LEASE”

STATUTORY TEXT

- (1) For the purposes of section 119 (and this section) a lease (the “new lease”) is a “connected replacement lease” if—
 - (a) the new lease is a lease of a single dwelling in a relevant building,
 - (b) the tenant under the new lease is liable to pay a service charge,
 - (c) the new lease was granted on or after 14 February 2022,
 - (d) the new lease replaces—
 - (i) one other lease, which is a qualifying lease (whether under section 119(2) or (3A)), or
 - (ii) two or more other leases, at least one of which is a qualifying lease (whether under section 119(2) or (3A)), and
 - (e) there is continuity in the property let.
- (2) For the purposes of subsection (1)(d), the new lease replaces another lease if—
 - (a) the term of the new lease begins during the term of the other lease, and the new lease is granted in substitution of the other lease, or
 - (b) the term of the new lease begins at the end of the term of the other lease (regardless of when the lease is granted).
- (3) For the purposes of subsection (2)(a), the circumstances in which the new lease is granted in substitution of another lease include circumstances where—
 - (a) the new lease is granted by way of a surrender and regrant of the other lease (including a deemed surrender and regrant, whether deemed under an enactment or otherwise);
 - (b) the new lease is granted under—
 - (i) section 24 of the Landlord and Tenant Act 1954 (renewed business leases),
 - (ii) section 14 of, or Schedule 1 to, the Leasehold Reform Act 1967 (extension of leases of houses), or
 - (iii) section 56 of the Leasehold Reform, Housing and Urban Development Act 1993 (extension of leases of flats),in a case where that provision of that Act applies by virtue of the other lease.
- (4) For the purposes of subsection (1)(e) there is continuity in the property let if—
 - (a) the newly let property is exactly the same as the already let property,

- (b) the newly let property consists of some or all of the already let property, together with other property (whether or not that other property was previously let) (a “property combination”), or
 - (c) the newly let property consists of some, but not all, of the already let property (but no other property) (a “property reduction”).
- (5) But there is no continuity in the property let by virtue of a property reduction if, as respects any lease in the relevant chain of qualifying leases, there was continuity in the property let by virtue of a property combination.
- (6) For that purpose, the “relevant” chain of qualifying leases is the chain of qualifying leases of which the new lease would be part were it a connected replacement lease.
- (7) For the purposes of subsection (1)(e) there is also continuity in the property let if the new lease is granted to rectify any error in the lease, or any lease, which the new lease replaces.
- (8) Where a dwelling is at any time on or after 14 February 2022 let under two or more leases to which subsection (1)(a) and (b) apply, any of the leases which is superior to any of the other leases is not a connected replacement lease.
- (9) For the purposes of sections 122 to 124 and Schedule 8, all of the leases in a chain of qualifying leases are to be treated as a single qualifying lease which has a term that —
- (a) began when the term of the initial qualifying lease in that chain began, and
 - (b) ends when the term of the current connected replacement lease in that chain ends.
- (10) The Secretary of State may by regulations make provision about the meaning of “connected replacement lease” (including provision changing the meaning).
- (11) The provision that may be made in regulations under this section includes—
- (a) provision which amends this section;
 - (b) provision which has retrospective effect.
- (12) Provision in regulations under this section made by virtue of section 168(2)(a) (consequential provision etc) may (in particular) amend this Act.
- (13) In this section—
- “already let property”, in relation to a new lease, means the property let by the lease or leases which the new lease replaces;
 - “chain of qualifying leases” means—
 - (a) an initial qualifying lease which is the preceding qualifying lease in relation to a connected replacement lease (the “first replacement lease”),
 - (b) the first replacement lease, and

(c) any other connected replacement lease if the preceding qualifying lease in relation to it is—

- (i) the first replacement lease, or
- (ii) any other connected replacement lease which is in the chain of qualifying leases;

and a chain of qualifying leases may accordingly consist of different leases at different times (if further connected replacement leases are granted);

“current connected replacement lease”, in relation to a particular time, means a connected replacement lease during the term of which that time falls;

“initial qualifying lease” means a lease which is a qualifying lease under section 119(2);

“new lease” has the meaning given in subsection (1);

“newly let property” means the property let by the new lease;

“preceding qualifying lease”, in relation to the new lease, means—

- (a) in a case within subsection (1)(d)(i), the lease which the new lease replaces;
- (b) in a case within subsection (1)(d)(ii), a lease which—
 - (i) the new lease replaces, and
 - (ii) is a qualifying lease.

(14) The definitions in section 119(4) also apply for the purposes of this section.

S. 119A inserted (retrospectively) by Levelling-Up and Regeneration Act 2023 (c. 55), s. 243(3)(5) (with s. 247)

Word in s. 119A(9) substituted (24.7.2024) by Leasehold and Freehold Reform Act 2024 (c. 22), ss. 118(2)(e), 124(2)(c)

COMMENCEMENT AND AMENDMENTS

Inserted retrospectively by the Levelling-Up and Regeneration Act 2023, s. 243(3) and (5), with the saving in s. 247. Amended by the Leasehold and Freehold Reform Act 2024, s. 118(2)(e), with effect from 24 July 2024.

EXPLANATORY NOTES

Section 119A was inserted after Royal Assent and is not covered by the Explanatory Notes to the Building Safety Act 2022. The notes below are paragraphs 1817 to 1836 of the Explanatory Notes to the Levelling-Up and Regeneration Act 2023, which deal with section 243 of that Act.

Levelling-Up and Regeneration Act 2023, Section 243: Qualifying leases under the Building Safety Act 2022

Background

1817. Prior to the commencement of this section, most of the leaseholder protections in Part 5 of and Schedule 8 to the Building Safety Act 2022 only applied to long leases of dwellings that were granted before 14 February 2022. These are called ‘qualifying leases’ under the Building Safety Act. This meant that, where leaseholders were granted leases after 14 February 2022 to replace their qualifying leases, those new leases were not in scope of the protections.

1818. To rectify this issue, this section amends section 119 of the Building Safety Act 2022 by providing that a “connected replacement lease” is also a qualifying lease, and inserts into that Act a new section 119A which defines “connected replacement lease”. A connected replacement lease is a qualifying lease even though it was granted on or after 14 February 2022 so long as it meets the other conditions in the section.

1819. Now, where a leaseholder has extended their qualifying lease, varied their qualifying lease to add property to the lease or has replaced their former qualifying lease with an entirely new lease, that extended/varied/new lease will be in scope of the statutory protections by virtue of this section. The permitted maximum (capping leaseholder contributions) and all other provisions in relation to the statutory protections provided by the Act will apply to the new lease (as if a new lease had not been granted).

1820. The protections will apply even if there are successive replacement leases. This is described as a ‘chain of qualifying leases’ in new section 119A. This is where, for example, a qualifying leaseholder under the Building Safety Act extends their lease (first replacement lease) and a few years later adds a parking space to their flat and is thus granted another new lease (second replacement lease). The protections will apply to all of these leases as if there was a single long lease, provided the conditions in the new section 119A are met.

1821. This section has retrospective effect from 14 February 2022. This means that, where leaseholders have varied or extended their previously qualifying leases since that date, their new lease is also in scope of the statutory protections. This section will also override any new leases that contain terms inferior to the statutory protections.

Effect

1822. This section amends the definition of ‘qualifying lease’ under section 119 of the Building Safety Act 2022 by inserting a new section 119A into the Act, which defines a ‘connected replacement lease’, as well as a new section 119(3A) to introduce the new section. The amendment applies the protections set out in sections 122 to 125 of and Schedule 8 to the Building Safety Act to connected replacement leases.

1823. Subsection (1) of the new section 119A defines a ‘connected replacement lease’.

1824. Subsection (2) specifies that a replacement lease can only replace an existing lease/s if the replacement lease substitutes for the existing lease/s (i.e. begins during the term of the

existing lease) or begins immediately after the end of the term of that lease. Example 1 A leaseholder owns a qualifying lease for their flat which was granted before 14 February 2022. On 1 January 2023, the leaseholder is granted a replacement lease because the term remaining on the original lease has fallen below 70 years. The new lease is a ‘connected replacement lease’ and therefore retains its qualifying status.

1825. Subsection (3) specifies some of the circumstances in which a replacement lease substitutes for an existing lease within the scope of the protections, including where there is a surrender and regrant of the existing lease.

1826. Subsection (4) provides a definition of ‘continuity in the property let’ under subsection (1)(e), to account for scenarios where new property is added to existing property under a replacement lease, where that expands the property (a property combination) or diminishes the property (a property reduction).

1827. Subsection (5) clarifies, using the definitions set out in subsection (4) of a “property combination” and a “property reduction”, that there is no continuity let in certain chains of replacement leases (i.e. where there is a series of successive replacement leases including where a lease which was previously a property combination lease is subsequently replaced with a new lease which reduces the scope of the lease of the property). The resultant separate leases will not be qualifying leases for the purposes of the building safety protections.

1828. Subsection (6) relates back to subsection (5) and provides detail on what counts as a relevant chain of qualifying leases.

1829. Subsection (7) provides that, if a new lease is specifically granted to rectify an error in relation to the previous lease, the new lease is in scope of the building safety protections.

1830. Subsection (8) replicates section 119(3) of the Building Safety Act 2022. This provides that where a dwelling was let under two or more leases after 14 February 2022, any lease which is superior to any other lease is not a qualifying lease. This ensures that it is always the lease at the end of any chain of leases that qualifies for the protections, rather than any superior landlord.

1831. Subsection (9) provides that the protections apply where there is a chain of qualifying leases.

1832. Subsections (10) and (11) set out a regulation-making power by which the Secretary of State may amend the meaning of ‘connected replacement lease’.

1833. Subsection (12) allows for regulations made under new section 119A to include consequential amendments to the Building Safety Act 2022.

1834. Subsection (13) defines the terminology used in the new section 119A.

1835. Section 243(4) provides that Regulations under new section 119A(10) will be subject to the affirmative procedure.

1836. Section 243(5) provides that the amendments made by section 243 are to be treated as having come into force on 28 June 2022.

COMMENTARY

31. Section 119A was inserted retrospectively by section 243(3) of the Levelling-Up and Regeneration Act 2023, together with section 119(3A). It cures a defect in the original drafting of the qualifying lease test.
32. The defect was this. Section 119(2)(c) requires the lease to have been granted before 14 February 2022. Lease extensions are routine. A leaseholder who held a qualifying lease at the qualifying time, and who then took a new lease — on a statutory extension, on a business lease renewal, or by an ordinary surrender and regrant — held a lease granted after the qualifying time. On the Act as enacted that leaseholder lost the Schedule 8 protections altogether. The loss was permanent and it turned on nothing more than when the extension happened to complete.
33. Section 119A answers that by making a “connected replacement lease” a qualifying lease: section 119(3A).
34. Five conditions must be satisfied (subsection (1)):
 - (a) the new lease is of a single dwelling in a relevant building;
 - (b) the tenant under it is liable to pay a service charge;
 - (c) it was granted on or after 14 February 2022;
 - (d) it replaces a lease which was itself a qualifying lease, or two or more leases at least one of which was; and
 - (e) there is continuity in the property let.
35. Subsections (2) and (3) define what it is to replace a lease. There are two routes: the term of the new lease begins during the term of the old one and is granted in substitution for it, or the term of the new lease begins when the old term ends. Subsection (3) then puts three statutory routes beyond argument — section 24 of the Landlord and Tenant Act 1954, section 14 of and Schedule 1 to the Leasehold Reform Act 1967, and section 56 of the Leasehold Reform, Housing and Urban Development Act 1993 — and confirms that a deemed surrender and regrant counts.
36. Continuity in the property let is dealt with by subsections (4) to (7). There is continuity where the newly let property is the same as the property already let, where it is the same

plus other property (a “property combination”), and where it is part only of the property already let and nothing else (a “property reduction”). Subsection (5) imposes a limit: there is no continuity by virtue of a property reduction if there was a property combination anywhere in the relevant chain. A lease granted to rectify an error is within subsection (7).

37. Subsection (9) is easy to overlook and repays attention. All the leases in a chain of qualifying leases are treated, for sections 122 to 124 and Schedule 8, as a single qualifying lease with a term beginning when the initial lease began and ending when the current replacement lease ends. That is the provision to cite wherever an argument turns on the identity or the duration of the lease rather than on its terms.
38. Subsections (10) to (12) confer a wide power to make regulations about the meaning of “connected replacement lease”, including power to amend the section itself and to do so retrospectively. No regulations had been made under it as at September 2026.
39. There is no authority on the section. I think the fight, when it comes, will be about continuity in the property let rather than about what it is to replace a lease. Leaseholders commonly take in a loft, a store cupboard or part of a corridor on an extension, and subsection (5) then denies continuity to any later reduction. A tribunal faced with that will have to decide whether to read the subsection narrowly. My own view is that most tribunals will construe section 119A purposively and in favour of the leaseholder: Parliament legislated retrospectively here in order to preserve protection, not to remove it, and that is consistent with the approach the Court of Appeal took to this group of provisions in **Triathlon Homes LLP v Stratford Village Development Partnership** [2025] EWCA Civ 846.

Practical note: *where a client’s lease post-dates 14 February 2022, the first question is not whether the lease qualifies under section 119 but whether it is a connected replacement lease. That requires the earlier lease, and where there has been more than one extension it requires the whole chain. Ask for the lease history at the outset: the answer to the Schedule 8 question may depend on a surrender and regrant that completed years ago.*

SECTION 120 – MEANING OF “RELEVANT DEFECT” AND “RELEVANT STEPS”

STATUTORY TEXT

- (1) This section applies for the purposes of sections 122 to 124 and Schedule 8.
- (2) “Relevant defect”, in relation to a building, means a defect as regards the building that—
 - (a) arises as a result of anything done (or not done), or anything used (or not used), in connection with relevant works, and
 - (b) causes a building safety risk.
- (3) In subsection (2) “relevant works” means any of the following—
 - (a) works relating to the construction or conversion of the building, if the construction or conversion was completed in the relevant period;
 - (b) works undertaken or commissioned by or on behalf of a relevant landlord or management company, if the works were completed in the relevant period;
 - (c) works undertaken after the end of the relevant period to remedy a relevant defect (including a defect that is a relevant defect by virtue of this paragraph).
- (4) In subsection (2) the reference to anything done (or not done) in connection with relevant works includes anything done (or not done) in the provision of professional services in connection with such works.
- (4A) “Relevant steps”, in relation to a relevant defect, means steps which have as their purpose—
 - (a) preventing or reducing the likelihood of a fire or collapse of the building (or any part of it) occurring as a result of the relevant defect,
 - (b) reducing the severity of any such incident, or
 - (c) preventing or reducing harm to people in or about the building that could result from such an incident.
- (5) For the purposes of this section—

“building safety risk”, in relation to a building, means a risk to the safety of people in or about the building arising from—

 - (a) the spread of fire, or
 - (b) the collapse of the building or any part of it;

“conversion” means the conversion of the building for use (wholly or partly) for residential purposes;

“relevant landlord or management company” means a landlord under a lease of the building or any part of it or any person who is party to such a lease otherwise than as landlord or tenant.

Word in s. 120(1) substituted (24.7.2024) by Leasehold and Freehold Reform Act 2024 (c. 22), ss. 118(2)(f), 124(2)(c)

Words in s. 120 heading inserted (31.10.2024) by Leasehold and Freehold Reform Act 2024 (c. 22), ss. 114(2), 124(3); S.I. 2024/1018, reg. 2(a)

S. 120(4A) inserted (31.10.2024) by Leasehold and Freehold Reform Act 2024 (c. 22), ss. 114(3), 124(3); S.I. 2024/1018, reg. 2(a)

EXPLANATORY NOTES

Section 120 – Meaning of “relevant defect”

Effect

949. This section defines “relevant defect” for the purposes of sections 122 to 125 and Schedule 8. Schedule 8 provides that the costs associated with remediation of historical building safety defects cannot be passed to qualifying leaseholders through the service charge. This section defines the types of defects to which the Schedule, and other relevant sections, apply.

950. In subsection (2) a “relevant defect”, in relation to a building, is defined as anything done (or not done), or anything used (or not used) in connection with relevant works that also causes a building safety risk. The reference to anything done (or not done) in this subsection would capture a defect arising due to, for example, shoddy building work. Subsection (4) sets out that the reference to anything done (or not done) includes the provision of professional services, for example those of an architect. The reference to used (or not used) would capture, for example, the use of inappropriate or defective construction products in the building.

951. For a defect to be a “relevant defect” it must cause a building safety risk. A “building safety risk” is defined in subsection (5) as a risk to the safety of people in or about a building arising from the spread of fire or the collapse of the building or any part of it.

952. Subsection (3) defines “relevant works” and “the relevant period” which apply for the purposes of the definition of “relevant defect”. “The relevant period” is defined as the 30- year period prior to commencement of this section, which is two months after Royal Assent of this Act.

953. Relevant works are those that have resulted in the creation of a relevant defect and are defined as works relating to the initial construction of the building, or its conversion into a residential building; or those undertaken or commissioned by or on behalf of the building’s landlord or management company (which are defined in subsection (5)), where the works were completed in the relevant period.

954. In addition to works completed in the 30 years prior to commencement, works which were done after commencement for the purpose of remedying a relevant defect are also relevant works. This means that where work has been done after commencement to fix a

defect, if that work is faulty and further work is subsequently needed, then that work is also defined as relevant works.

Background

955. As described in the explanatory note to section 116, since the Grenfell Tower fire in 2017, it has become apparent that many blocks of flats have serious historical building safety defects which require often costly remediation. Most flats in multi-occupied residential buildings in England are owned as leaseholds, meaning that the building and the land which it is on are owned by a freeholder, and the long leases of the dwellings within the building are owned by the leaseholders. The freeholder is responsible for the safety and upkeep of the building. The terms of most leases, which are contractual agreements between the freeholder and leaseholder, allow the costs associated with maintaining the building to be passed through the service charge by the freeholder to leaseholders.

956. The leaseholder protections provisions protect leaseholders by preventing or otherwise limiting the costs associated with historical building safety defects being passed through the service charge. Section 120 defines the defects which fall within the scope of the leaseholder protections.

957. The leaseholder protections deal only with historical building safety defects; they are backward-looking only. They are a one-off intervention designed to deal with the current serious problems with historical building safety defects in medium-and high-rise buildings. The protections afforded only apply to defects created in the 30-year period prior to commencement of the provision, so in practice between mid-1992 and mid-2022. A 30-year period has been chosen as evidence shows that this period captures all buildings affected by the relevant safety issues. It aligns with changes this Act makes to the limitation period under section 1 of the Defective Premises Act 1972 (to which see section 135) and the relevant limitation period under the new cause of action relating to cladding products (sections 150 and 151). The Government has also agreed with major residential property developers that they will remediate buildings they had a role in developing or refurbishing in the past 30 years.

958. Subsections (2) and (5) define what is meant by a “relevant defect” and set out that for a defect to be a relevant defect, it must give rise to a building safety risk. A “building safety risk” is one that puts people’s safety at risk due to either the risk of the spread of fire or structural collapse of a building.

959. The definition of building safety risk mirrors the definition in section 62. The Independent Review focused on fire and structural safety risks and recommended that these were the initial scope for building safety risks in the new regime, as the spread of fire and structural failure represent the most serious risks to safety in and about buildings. This definition of building safety risk is mirrored for the purposes of the leaseholder protections, as fire and structural safety risks represent the most serious risks to safety in and about buildings and are therefore the risks that are most likely to need to be mitigated, often through costly remediation – the costs associated with which leaseholders need protection from.

960. Section 62 includes a power to prescribe other matters within the definition of a building safety risk. Although it is not proposed to expand that definition at this time, that power gives important flexibility for the future regime in Parts 3 and 4 of this Act should new building safety risks materialise. The leaseholder protections are backward-looking only, in the sense that they only apply to historical building safety defects. They are a one-off intervention designed to deal with current issues associated with historical defects in certain buildings and so it is not necessary to mirror a power to expand the definition of building safety risk in this section. Example 1 A fire safety risk in a high-rise building was created due to the installation of flammable cladding in 2005. The cladding gives rise to a fire safety risk, as it could put people's safety at risk by accelerating the spread of fire. The cladding would fall within the definition of a relevant defect, as the defect was created within the past 30 years and gives rise to a building safety risk. The leaseholder protections would therefore apply to the costs associated with mitigating against the risk posed. Example 2 A contractor built a medium-rise block of flats with defective foundations in 1995 which now need remedial work to mitigate against the risk of structural collapse of part of the building. The defects in the foundations fall within the definition of a relevant defect as the building was completed within the past 30 years and give rise to a building safety risk. The leaseholder protections therefore apply to the costs associated with remediating the foundations

COMMENTARY

40. The definition of “relevant defect” is central to the operation of the leaseholder protection regime: it controls the reach of the Schedule 8 protections, the remediation order jurisdiction under s.123 and the remediation contribution order jurisdiction under s.124.
41. A relevant defect has two cumulative requirements (s.120(2)):
 - (a) it must arise as a result of anything done (or not done), or anything used (or not used), in connection with “relevant works”; and
 - (b) it must cause a “building safety risk” - a risk to the safety of people in or about the building arising from the spread of fire or the collapse of the building or any part of it (s.120(5)). Defects affecting only amenity, comfort or appearance are excluded.
42. “Relevant works” (s.120(3)) comprise three categories:
 - (a) works relating to the construction or conversion of the building, if completed in the relevant period - the 30 years ending on 28 June 2022, so in practice works completed between 28 June 1992 and 28 June 2022;

- (b) works undertaken or commissioned by or on behalf of a relevant landlord or management company, if completed in that period; and
 - (c) works undertaken after the end of the period to remedy a relevant defect - including a defect which is a relevant defect only by virtue of this paragraph. The third category is a deliberate bootstrap: botched remediation of a relevant defect is itself a relevant defect, however recent.
43. Subsection (4) extends the net to anything done (or not done) in the provision of professional services in connection with relevant works: negligent design and negligent fire engineering advice are within the definition.
44. “Defect” itself is not defined. It is not confined to non-compliance with the building regulations in force at the time of construction. In **Edgewater (Stevenage) Ltd v Grey GR LP** [2026] UKUT 18 (LC) the FTT had concluded, and the President noted without disapproval at [35], that non-compliance with the building regulations is merely one way, and not the only way, in which something can be a defect for the purposes of the Act. The FTT in **Secretary of State for Housing, Communities and Local Government v Canary Riverside Estate Management Ltd** (6 January 2026) took the same approach, treating compliance as evidentially weighty but not conclusive, and assessing the position at the hearing date in the light of current knowledge.
45. “Building safety risk”: the “any risk” holding. The severity question - how big must the risk be? - has now been answered at Upper Tribunal level:
- (a) In **Edgewater** the FTT had held that any risk “above low” qualified; the appellants argued that only an “intolerable” risk would do. The President (Edwin Johnson J) rejected both positions. The reference to “a risk” in s.120(5) “means what it says. It refers to any risk” ([253(1)]); it “does not refer to any particular level of risk and is not gradated”. There is no qualifying adjective - no “significant”, no “intolerable”, no “low” ([241]).
 - (b) That reading does not leave the definition unrestrained. The risk must be a risk to the safety of people, in or about the building, arising from the spread of fire or from collapse, and it must be caused by a defect arising from relevant works: “These conditions impose considerable restraints upon what can qualify as a building safety risk” ([241]).

- (c) The contrary arguments were dispatched shortly: Parliament defined levels of risk elsewhere in the Act where it wanted to (s.101 “critical risk”), which tells against implying one here ([245]); a tolerability threshold would make the Part 4 assessment machinery and the Schedule 8 restrictions unworkable ([246]); the Explanatory Notes cannot supply words “which are simply not there” ([250]); nor can the principle that expropriatory legislation is construed to leave property rights intact ([251]). PAS 9980 is a code of practice, not a guide to the meaning of the subsection ([252]).
- (d) The severity of the risk is not thereby banished from the analysis: it returns at the remedial stage, when the tribunal decides what, if anything, must be done. The level of risk “will, or at least may be a relevant factor in the decision of the FTT as to what works are required” ([247]), and that is a reason not to impose an initial filter ([247], [254]).
46. **Canary Riverside** applied **Edgewater** within weeks. The FTT held there is “no threshold test in s.120” [37], and adopted a usefully practical method [36]: identify the risk profile without the defect; identify it with the defect in place; ask whether the profile has shifted in the wrong direction; if it has, the defect causes a building safety risk. PAS 9980 assessments are “clearly relevant evidence” but not determinative [41]; and - significantly - the tribunal disagreed with any suggestion that a “low” PAS 9980 rating renders a defect incapable of amounting to a building safety risk [41]. The tribunal also read “the spread of fire” as including the spread of smoke: “fire” encompasses flames, heat, light, gases and smoke generated from burning material [96]. Applying all this, masonry cavity walls with missing cavity barriers, curtain walling with combustible insulation and EPS-rendered balcony walls were held to be relevant defects; a reconstituted stone cladding type failed only for want of evidence.
47. The limits should not be overlooked. In **Somerville Court** (CAM/26UG/BSA/2025/0003, 9 February 2026) the FTT accepted that “any risk is sufficient”, but insisted that the risk must still arise from the spread of fire or collapse of the building or part of it: compressed roof tiles and poorly fixed timber battens that might fall and injure someone were not relevant defects, because falling components are neither fire spread nor collapse of the building [105]. The definition is wide as to degree but strict as to kind.

48. The practical consequence of the “any risk” interpretation is twofold. First, more defects, more buildings and more works fall within the protections and the ss.123-124 jurisdictions. Second, and in the opposite direction, identifying a relevant defect does not compel remediation: as Canary Riverside put it, the making of a remediation order is discretionary, and a tribunal “may decide that it is inappropriate to order remediation if it considers that the level of risk posed by a relevant defect does not warrant it” [43]. Arguments about tolerable risk have not disappeared; they have migrated from the definition to the remedy. In my view that is where they belong, and where the real battles will now be fought - with PAS 9980 evidence deployed on proportionality of works rather than on jurisdiction.
49. “Relevant steps”: s.120(4A). With effect from 31 October 2024 the Leasehold and Freehold Reform Act 2024 (s.114; SI 2024/1018, reg. 2(a)) amended the section heading and inserted subsection (4A), defining “relevant steps” as steps whose purpose is: (a) preventing or reducing the likelihood of a fire or collapse occurring as a result of the relevant defect; (b) reducing the severity of any such incident; or (c) preventing or reducing harm to people in or about the building that could result from it. The definition captures interim and mitigating measures - waking watches, common alarm systems, simultaneous evacuation strategies, decant arrangements - as distinct from permanent remediation. Its significance is felt downstream: remediation orders may now require relevant steps (s.123(2)); RCOs may cover their cost (s.124(3)(a)); and Schedule 8’s “relevant measure” concept embraces them, so that the cost of a waking watch is subject to the same service charge protections as the cost of recladding. The amendment reversed the practical effect of authority which had confined the FTT to ordering the remedying of defects strictly so called.

Practical note: Cast the net wide when identifying relevant defects: even modest fire stopping deficiencies qualify if they shift the risk profile at all. But plead kind, not just degree - the risk must arise from fire spread (including smoke) or collapse. Distinguish in every schedule of defects between (a) the defect, (b) the building safety risk it causes, (c) the relevant works from which it arises and their completion date, and (d) the works or relevant steps said to respond to it. Expect the proportionality of the remedial scheme, not the existence of the defect, to be the contested ground.

CASE DIGEST

Case Name: Secretary of State for Housing, Communities and Local Government v Canary Riverside Estate Management Ltd

Case Reference: LON/00BG/BSA/2024/0005 and LON/00BG/BSB/2024/0009 (FTT, preliminary issues)

Judge: Judge Vance, Judge Rushton KC and Mr Andrew Thomas FRICS MIFireE

Date: 6 January 2026

Key Issues: Which external wall types at Canary Riverside constitute “relevant defects” under s.120 on combined remediation order and RCO applications; whether s.120(5) imposes any threshold of risk; the role of PAS 9980.

Held:

1. There is no threshold test in s.120: the reference to “a risk” is to any risk however small, and the argument that a risk below a “tolerable” level is excluded was rejected [34], [37].
2. The correct approach is to compare the building’s risk profile with and without the defect: if the defect shifts the risk profile in the wrong direction, it causes a building safety risk [36].
3. PAS 9980 assessments are relevant evidence but not determinative; insofar as the FTT in Vista Tower treated a “low” PAS 9980 rating as incapable of amounting to a building safety risk, the tribunal respectfully disagreed [41].
4. “The spread of fire” in s.120(5)(a) includes the spread of smoke: fire encompasses flames, heat, light, gases and smoke generated from burning material [96].
5. Finding a relevant defect does not compel remediation: the making of a remediation order is discretionary, and low risk may justify declining to order works [43]-[44].
6. On the facts, the masonry cavity wall (missing cavity barriers, combustible phenolic insulation), the curtain wall and spandrel panels, and EPS render on balcony blockwork were relevant defects [74]-[120]; the reconstituted stone cladding was not established as such on the evidence [121]-[127].

Link: https://assets.publishing.service.gov.uk/media/6968cbeb6958e5645144b08e/260106_J_Vance_Canary_Riverside_BSA_BSB_Decision.pdf

Case Name: Edgewater (Stevenage) Ltd v Grey GR LP

Case Reference: [2026] UKUT 18 (LC)

Judge: Mr Justice Edwin Johnson, Chamber President

Date: 27 January 2026

Key Issues: The s.120 aspects of the Vista Tower RCO appeal: the meaning of “building safety risk” in s.120(5) and of “defect” in s.120(2). (For the full digest of this decision, including joint and several liability and the “just and equitable” discretion, see section 124 below.)

Held:

1. “A risk” in s.120(5) means any risk: the reference is not gradated and no qualifying adjective - “significant”, “intolerable” or “low” - appears in the subsection [241], [253].
2. Both the FTT’s “any risk above low” formulation and the appellants’ “intolerable risk” argument were rejected [254]-[255].
3. The definition is nonetheless constrained: the risk must be to the safety of people in or about the building, arising from the spread of fire or collapse, and caused by a relevant defect [238], [241].
4. The level of risk remains relevant at the remedial stage, when deciding what works are required; that is a further reason not to impose an initial severity filter [247], [254].
5. PAS 9980 is a code of practice, not a guide to the meaning of s.120(5) [252]; the Explanatory Notes cannot justify reading in words which are not there [250].
6. Non-compliance with building regulations is one way, not the only way, in which something can be a “defect” for the purposes of the Act (FTT holding noted without disapproval) [35].

Link: <https://caselaw.nationalarchives.gov.uk/ukut/lc/2026/18>

Case Name: Ladaval v Hightown Housing Association Ltd and Nicholas King Homes

Plc (Somerville Court)

Case Reference: CAM/26UG/BSA/2025/0003 (FTT)

Judge: Judge Wayte, Judge MacQueen and Tribunal Member Williams

Date: 9 February 2026

Key Issues: Remediation order for a marginal-height building (11.4 metres, five storeys); which alleged defects qualified as “relevant defects” under s.120.

Held:

1. A remediation order was made requiring the landlord to remedy twelve relevant defects, including ACM cladding removal, cavity barrier installation and fire stopping, by 4 October 2027.
2. “Any risk” is sufficient for s.120(5), but the risk must arise from the spread of fire or the collapse of the building or any part of it [105].
3. Defective roof tiles and poorly fixed timber battens liable to fall were not relevant defects: falling components engage neither limb of s.120(5) [105].
4. Deficient window reveal plasterboard was a relevant defect notwithstanding that the experts assessed the risk as low [106].
5. A s.20C order was made preventing recovery of the proceedings costs through the service charge.

Link: https://assets.publishing.service.gov.uk/media/69d7858847eb6fd98375fa05/Somerville_Court.pdf

SECTION 121 – ASSOCIATED PERSONS

STATUTORY TEXT

- (1) For the purposes of sections 122 to 124 and Schedule 8, a partnership or body corporate is associated with another person in the circumstances mentioned in subsections (2) to (5).
- (2) Where a person's interest in a relevant building was held on trust at the qualifying time, any partnership or body corporate which was a beneficiary of the trust at that time is to be regarded, for the purposes of the provisions mentioned in subsection (1) as they apply in relation to the relevant building, as associated with the person.
- (3) A partnership is associated with any person who was a partner in the partnership, other than a limited partner, at any time in the period of 5 years ending at the qualifying time ("the relevant period").
- (4) A body corporate is associated with any person who was a director of the body corporate at any time in the relevant period.
- (5) A body corporate is associated with another body corporate if—
 - (a) at any time in the relevant period a person was a director of both of them, or
 - (b) at the qualifying time, one of them controlled the other or a third body corporate controlled both of them.
- (6) A body corporate (X) controls a company (Y) if X possesses or is entitled to acquire —
 - (a) at least half of the issued share capital of Y,
 - (b) such rights as would entitle X to exercise at least half of the votes exercisable in general meetings of Y,
 - (c) such part of the issued share capital of Y as would entitle X to at least half of the amount distributed, if the whole of the income of Y were in fact distributed among the shareholders, or
 - (d) such rights as would, in the event of the winding up of Y or in any other circumstances, entitle it to receive at least half of the assets of Y which would then be available for distribution among the shareholders.
- (7) A body corporate (X) controls a limited liability partnership (Y) if X—
 - (a) holds a majority of the voting rights in Y,
 - (b) is a member of Y and has a right to appoint or remove a majority of other members, or
 - (c) is a member of Y and controls alone, or pursuant to an agreement with other members, a majority of the voting rights in Y.

- (8) A body corporate (X) controls another body corporate (Y) if X has the power, directly or indirectly, to secure that the affairs of Y are conducted in accordance with X's wishes.
- (9) In subsection (7) a reference to "voting rights" is to the rights conferred on members in respect of their interest in a limited liability partnership to vote on those matters which are to be decided on by a vote of the members of the limited liability partnership.
- (10) In determining whether one body corporate (X) controls another, X is treated as possessing—
- (a) any rights and powers possessed by a person as nominee for it, and
 - (b) any rights and powers possessed by a body corporate which it controls (including rights and powers which such a body corporate would be taken to possess by virtue of this paragraph).
- (11) In this section "partnership" means—
- (a) a partnership within the meaning of the Partnership Act 1890, or
 - (b) a limited partnership registered under the Limited Partnerships Act 1907, or a firm or entity of a similar character formed under the law of a country or territory outside the United Kingdom (and the reference to "limited partner" is to be read accordingly).
- (12) The Secretary of State may by regulations provide that, in relation to a prescribed reference in a provision mentioned in subsection (1) to anyone associated with another person, subsections (2) to (5) have effect with prescribed modifications.
- S. 121(2)-(5) modified (20.7.2022) by The Building Safety (Leaseholder Protections) (England) Regulations 2022 (S.I. 2022/711), regs. 1(1), 3 (as amended (9.2.2023) by The Building Safety (Leaseholder Protections) (England) (Amendment) Regulations 2023 (S.I. 2023/126), reg. 2(2))
- Word in s. 121(1) substituted (24.7.2024) by Leasehold and Freehold Reform Act 2024 (c. 22), ss. 118(2)(g), 124(2)(c)

EXPLANATORY NOTES

Section 121 – Associated persons

Effect

961. *This section sets out the circumstances in which a person is associated with a partnership or body corporate for the purposes of sections 122 to 125 and Schedule 8.*

962. *Subsection (2) sets out that if an interest in a relevant building is held on trust at the qualifying time, then any body corporate or partnership which is a beneficiary of the trust at the qualifying time is considered associated. The "qualifying time" is defined in section 119 as the start of 14 February 2022. The five-year period leading up to the qualifying time is defined as "the relevant period". Subsection (11) defines partnership for the purposes of this section.*

963. Subsections (3) and (4) set out the circumstances in which a person is associated with a body corporate. Subsection (5) sets out the circumstances in which a body corporate is associated with another body corporate.

964. Subsection (3) sets out that a partnership is associated with any person who was a partner, other than a limited partner, in the partnership in the five years ending at the qualifying time.

965. Subsection (4) provides that a body corporate is associated with any person who was a director of the body corporate in the five years leading up to the qualifying time.

966. Subsection (5) sets out the circumstances in which a body corporate is associated with another body corporate. Subsection (5)(a) sets out that two bodies corporate are associated if, in the five years leading up to 14 February 2022, they had a director in common. Subsection (5)(b) sets out that two bodies corporate are associated if, before 14 February 2022, one of them controlled the other or a third body corporate controlled both of them.

967. Subsections (6) to (8) set out the cases in which a body corporate is regarded as controlling another body corporate by looking at the ownership of the share capital and setting out how differing voting rights at general meetings have an impact on whether or not the companies are associated.

968. Subsection (6) sets out what control looks like between differing companies. In particular, it sets out that one body corporate controls another if one of them possesses or is entitled to acquire: at least half of the issued share capital of the other; half the voting rights exercisable in the general meetings of the other; at least half of the other's income if all the income was distributed amongst the shareholders; or, rights which would entitle it to half the assets of the other which are available for distribution amongst the shareholders in the event of the other winding up.

969. Subsection (7) sets out how to work out the circumstances when a body corporate (X) controls a limited liability partnership (Y). In this case, X has control of Y if: X holds the majority of the voting rights in Y; X is a member of Y and has the right to appoint or remove a majority of other members; or, X is a member of Y and controls the majority of the voting rights in Y (either alone or through agreements with other members).

970. Subsection (8) sets out if a body corporate has the power to ensure another acts in the way in which it wishes, then that body corporate has control of the other.

971. Subsection (9) defines voting rights for the purposes of subsection (7). Voting rights are the rights conferred on members in respect of their interest in Y to vote on matters decided on by a vote by members of Y.

972. Subsection (10) sets out that a body corporate is treated as possessing any rights and powers possessed by a person as nominee for it (such as a director) and any rights and powers possessed by a body corporate which it controls. The effect of subsection (9) is that bodies corporate which are not directly associated can be taken as associated if there is a chain of associated bodies corporate which connects them.

973. Subsection (12) provides a power for the Secretary of State to set out in regulations that the application of subsections (3) to (5) can be modified for the purposes of sections 122 to 125 and Schedule 8. This allows the application of this section to be modified in relation to any reference to associated persons.

Background

974. Sections 122 to 125 and Schedule 8 include several references to associated persons. Sections 124 and 125 give powers to the courts to require persons associated with freeholders, superior landlords, and developers to make certain payments in respect of relevant defects. Paragraph 2 of Schedule 8 provides that no service charge is payable in respect of a relevant defect for which a relevant landlord, or a person associated with a relevant landlord, is responsible. Paragraph 3 provides that no service charge is payable if the landlord's group meets the contribution condition, where the landlord group is defined as the relevant landlord and any person associated with the relevant landlord.

975. It is common practice for owners of freehold and superior lease interests in multi-occupied residential buildings to use thinly capitalised subsidiary companies, often termed special purpose vehicles, to hold these interests. This can result in highly complex corporate structures where the ultimate beneficial owner of the interest is obscured.

976. The leaseholder protections provisions impose new liabilities on freeholders and superior landlords (defined in paragraph 2 of Schedule 8 as "relevant landlords") to pay in full for or contribute to the costs of the remediation of relevant defects. It will often be the case that the entity that owns the interest in the building is a thinly capitalised company with limited assets but is part of a well capitalised wider group structure. The associated persons provision, when taken alongside the relevant provisions in sections 124 and 125 and Schedule 8 allow the assets of the wider group structure to be accessed in connection with the remediation of relevant defects.

977. As well as allowing companies associated with freeholders and superior landlords to be required to make payments in respect of relevant defects, section 124 also gives the First-tier Tribunal the ability to require developers and their associated companies to make payments. It is also common practice for developers to use special purpose vehicles which are wound up after the completion of the development. The associated persons provision similarly allows the assets of the wider group structure to be accessed.

978. The definitions used within this section have a basis in the Petroleum Act 1998 and the Corporation Tax Act 2010. Section 131 of this Act contains a similar definition of associated persons which applies for the purpose of allowing the High Court to make building liability orders (to which see section 130).

Proposed use of power

979. The power at section 121(12) will allow modifications to be made to subsections (3) to (5) in respect of the application of those subsections to the application of the associated persons tests in sections 122 to 125 and Schedule 8. This is because a slightly different definition of associated persons may be appropriate to the circumstances in which the test is used. Example A body corporate A shares all of its directors with a body corporate B. It

could be argued that A is able to ensure that B acts how A wishes B to conduct its affairs. B controls 100% of the voting rights exercisable in the general meetings of body corporate C. C is a member of a limited liability partnership of which bodies corporate D and E are also members. D controls the majority of the voting rights in the limited liability partnership. Due to these connections and subsection (6), A, B, C, D and E are associated under section 121. If B is the freeholder of a building for which A was the developer, then B is classed as being associated with the developer. For the purposes of paragraph 2 of Schedule 8, this means that B is responsible for any initial defects contained within the building. If a relevant building contains relevant defects, and any of A, B, C, D or E had an interest in the building, then the First-tier Tribunal could require A, B, C, D and E to make payments in respect of remediating the relevant defects through a remediation contribution order under section 124

COMMENTARY

What the section does

50. Section 121 defines “associated” for the purposes of the leaseholder protection provisions: sections 122 to 124 and Schedule 8. It determines how far beyond the developer or landlord itself the Act’s remediation liabilities reach. In practice it is the engine of the remediation contribution order jurisdiction: the First-tier Tribunal may make an RCO against any person associated with a relevant landlord or developer (s.124(3)), and it is s.121 that supplies the net.
51. The reach is considerable. In the Vista Tower litigation, 76 of 96 corporate respondents were found to be associated with the developer and were made jointly and severally liable for £13,262,119.08: **Grey GR Limited Partnership v Edgewater (Stevenage) Ltd** (FTT, CAM/26UH/HYI/2023/0003, 24 January 2025), upheld on appeal in **Edgewater (Stevenage) Ltd v Grey GR Limited Partnership** [2026] UKUT 18 (LC) (Edwin Johnson J, Chamber President). In **Secretary of State v EDR Builders Ltd (in liquidation)** (Hallings Wharf Studios) (FTT, LON/00BB/BSB/2024/0011, 21 May 2026) an RCO for the full remediation cost was made against the associate of a developer which had been in liquidation since 2018 and had no continuing involvement with the building. Association is where these cases are won and lost.

The five routes to association

52. The section establishes five routes. Dealing with each in turn:
 - (a) Trust beneficiaries: where a person’s interest in a relevant building was held on trust at the qualifying time (the start of 14 February 2022: s.119), any

partnership or body corporate which was then a beneficiary of the trust is associated with the trustee (s.121(2)).

- (b) Partners: a partnership is associated with any person who was a partner, other than a limited partner, at any time in the five years ending at the qualifying time (s.121(3)).
- (c) Directors: a body corporate is associated with any person who was a director of it at any time in that five-year period (s.121(4)).
- (d) Common directors: two bodies corporate are associated if at any time in that period one person was a director of both (s.121(5)(a)).
- (e) Control: two bodies corporate are associated if, at the qualifying time, one controlled the other or a third body corporate controlled both (s.121(5)(b)).

53. Control under route (e) operates at three levels:

- (a) the share-capital tests in s.121(6): X controls Y if X possesses or is entitled to acquire at least half of Y's issued share capital, half the votes exercisable in general meeting, half the income on a notional full distribution, or half the assets available to shareholders on a winding up;
- (b) the limited liability partnership tests in s.121(7): majority voting rights, or membership plus the right to appoint or remove a majority of other members, or membership plus control of a majority of the voting rights; and
- (c) the general test in s.121(8): X controls Y if X has the power, directly or indirectly, to secure that Y's affairs are conducted in accordance with X's wishes. This third limb gives the section its reach. It is considered separately below.

54. Two supplementary provisions are important in group cases:

- (a) Subsection (10) attributes to a body corporate the rights and powers of its nominees and of any body corporate it controls, so control is traced through chains.
- (b) Subsection (12) allows the Secretary of State to modify the association tests by regulations: none have been made as at July 2026.

55. The temporal anchors are fixed. The five-year relevant period ends, and control is tested, at 14 February 2022. Restructuring after that date does not undo an association that then existed; nor does a later connection create one. The drafting draws on the Petroleum Act 1998 and the Corporation Tax Act 2010, as the Explanatory Notes acknowledge, and the object is stated there with unusual candour: interests in residential buildings are commonly held through thinly capitalised special purpose vehicles, and these provisions are designed to stop wider groups sheltering behind them.

Guidance from the cases

56. **Edgewater** is the leading appellate authority. Four points stand out:

- (a) Association and discretion are separate exercises. The applicant must first establish the gateway conditions, of which association is one; it must then show something more, namely that it is just and equitable to make the order against each respondent: [176]–[179]. Satisfying s.121 gets the applicant to the door. It does not open it.
- (b) Bare association is not enough. The Upper Tribunal endorsed the FTT’s self-direction that there is no “automatic presumption that any associate must be made liable unless they can show good reasons why they should not have to pay”: [199]. What carried the day were “linking factors” beyond bare association: common beneficial ownership, presentation to funders as a single group, interlinked finances, opaque or unreliable records: [201]–[203].
- (c) Evidence decides these cases. The legal burden stays with the applicant, but each side must prove the matters on which it relies, and adverse inferences may be drawn where the respondents’ evidence of their own affairs is unsatisfactory: [182], [224]. The FTT’s finding that the respondents were run not as carefully separated SPVs but as “a fluid, disorganised and blurred network or structure” controlled by two individuals was decisive, and the UT would not disturb it: [208]–[209]. The postscript at [314] is a message to respondents: explain the true nature and extent of the relationships, or expect the worst.
- (d) The outcome is respondent-specific. Joint and several liability is not the starting point; for any given associate the just and equitable answer may be joint and several liability, an apportioned sum, or nothing: [316].

57. The Court of Appeal’s decision in **Triathlon Homes LLP v Stratford Village Development Partnership** [2025] EWCA Civ 846 supplies the purpose against which s.121 is read. Nugee LJ endorsed the FTT’s statement that the obvious purpose of the association provisions is to ensure that where a development has been carried out by a thinly capitalised or insolvent development company, “a wealthy parent company or other wealthy entity which is caught by the association provisions cannot evade responsibility for meeting the cost of remedying the relevant defects by hiding behind the separate personality of the development company”: FTT [266], endorsed at [72] and [119]. An investor which buys the company rather than the land takes the risk of the company’s liabilities, including liabilities later imposed by what the Court accepted was very far-reaching legislation: [119]. The one note of caution is also Nugee LJ’s: a company caught only by a stray common directorship, with no other connection to the landlord or its group, may well not face a just and equitable order: [65].
58. **Hallings Wharf** shows the section doing precisely what it was designed to do. The developer had been in liquidation since 2018 and the claim against it was stayed. Association (common ownership and control by one family) was conceded on the pleadings; the associate pleaded that its position was “materially distinguishable” but called no evidence in support; the FTT was “unable to conclude” that the pleaded distinctions displaced the case for an order, and ordered the full £3,682,997.78, VAT included: [159]–[162]. The lesson is short: an associate that will not condescend to particulars about its own independence will lose.
59. Three further points from the current authorities:
- (a) Partnerships: whether a company associated with each corporate partner of a limited partnership is thereby associated with the partnership itself was left open in **Triathlon**; the FTT declined to decide it and the point was not pursued on appeal: [48]–[49]. It will matter in fund structures.
 - (b) Individuals: the directorship routes make individuals associates of the body corporate. The reported cases have so far pursued corporate respondents only, and whether it will be just and equitable to make an RCO against an individual director remains untested.
 - (c) Foreign entities: there is no territorial limit on the face of s.121, and in the parallel s.130 context the TCC has held that the associate provisions are apt to

reach foreign group companies: **HB (WM) Ltd v Sto Ltd** [2026] EWHC 1833 (TCC) at [75]–[88]. The same reasoning applies here.

The section 121(8) question: what is “control”?

60. The deepest unresolved question in this part of the Act is the scope of s.121(8): the power, “directly or indirectly, to secure that the affairs of Y are conducted in accordance with the wishes of X”. The words have a statutory pedigree. Materially identical language appears in s.30(8D) of the Petroleum Act 1998, which performs the same anti-avoidance function for offshore decommissioning liability, and in the control provisions of the Corporation Tax Act 2010 (ss.450–451, 1124). No reported BSA decision has yet had to construe the subsection: in **Edgewater** association was not challenged on appeal, and in **Hallings Wharf** and **Crest Nicholson** it was conceded. The first contested control case will have to decide the framework. One can anticipate that three sources of guidance will be relied upon:
61. First, the tax cases. The CTA 2010 control test is expressed through specified mechanisms (shareholding, voting power, constitutional documents), and s.121(8) is, if anything wider, since it names no mechanism at all. Two practical tools developed in the tax cases are likely to cross over:
- (a) the “minimum controlling combination” method: identify the smallest group of participators which has control and which would not have control if any member were removed (**Ghelanis Superstore & Cash & Carry Ltd v HMRC** [2013] TC03251); and
 - (b) “substantial commercial interdependence” as the touchstone for attributing the rights of associates: financial, economic or organisational interdependence, any sufficient one of which will do. The assessment is practical and fact-heavy, not formal. That is exactly the exercise the FTT in fact performed in Vista Tower under the label of “linking factors”.
62. Second, the “decommissioning” learning. The Petroleum Act uses a similar concept of associated bodies corporate and in materially the same words. The practice under Part IV of that Act shows a regime willing to reach back through former group structures to find an entity able to bear the cost. The parallel matters because the two statutes answer the same mischief: liabilities stranded in an impecunious vehicle while the group that stood behind it walks away.

63. Third, the sanctions cases. The “owned or controlled” jurisprudence under SAMLA 2018 and the Russia Regulations has produced a structured taxonomy of control: de jure and de facto, present and potential. *Mints v PJSC National Bank Trust* [2023] EWCA Civ 1132 took an expansive view, Sir Julian Flaux C finding no limit to the “means or mechanism” of control and asking whether the putative controller was “calling the shots”; *Litasco SA v Der Mond Oil and Gas Africa SA* [2023] EWHC 2866 (Comm) took a narrower view; and *Hellard v OJSC Rossiysky Kredit Bank* [2024] EWHC 1783 (Ch) synthesised the authorities into the four categories, reflected in the OFSI and FCDO guidance of November 2023 and now in HM Treasury’s February 2026 call for evidence. No tribunal has yet drawn on this taxonomy in a BSA case. In my view it supplies the structure the BSA authorities so far lack: s.121(8) and the sanctions test pose the same underlying question, namely who can, in law or in fact, make this company do what they want.
64. Transposed to s.121(8), this smorgasbord generates the questions a tribunal is likely to work through in the first contested control case:
- (a) Does X hold at least half the shares, votes, income or winding-up assets of Y, or is it entitled to acquire them? (De jure control: s.121(6)–(7), including latent rights such as options and convertibles.)
 - (b) Is X in fact directing Y’s affairs: strategy, finance, key appointments? (Present de facto control within s.121(8).)
 - (c) Could X direct Y’s affairs if it chose, through family relationships, economic dependency, common officers or otherwise? (Potential de facto control: the most contested category, and the one the breadth of “power ... to secure” most naturally invites.)
 - (d) Are there indicators of shadow direction: a person in accordance with whose directions Y’s directors are accustomed to act?
 - (e) If the corporate respondent asserts independence, has it proved it? After **Edgewater** at [182] and [224], a respondent which fails to adduce clear evidence of financial and operational independence should expect the tribunal to draw the adverse inference.

Where the law is likely to go

65. The direction of travel is not in doubt. Tribunals are treating the association provisions as a purposive anti-avoidance mechanism, and I would expect them to continue to do so:
- (a) De facto control will be read widely. The absence of any specified mechanism in s.121(8), the Act's accountability purpose as stated by the Supreme Court in **URS Corporation Ltd v BDW Trading Ltd** [2025] UKSC 21 at [104], [106] and [274], and the sanctions analogy all point the same way.
 - (b) "Linking factors" will remain fact-sensitive. The tribunals are unlikely to adopt a closed list, and structure alone can become the linking factor where a group is run as a blurred network with interchangeable funds.
 - (c) The trust route (s.121(2)) awaits its first case. Offshore and nominee structures are the natural territory.
 - (d) The asymmetry between s.121 and s.131 will be tested: see the commentary to s.131.
 - (e) The s.121(12) power is a safety valve. If avoidance structures emerge that defeat the current tests, expect regulations rather than strained construction.
66. For those structuring or advising corporate groups the position is uncomfortable but clear. The association net is wide, the discretion behind it is wider, and the evidence decides both.

CASE DIGEST

Case Name: **Edgewater (Stevenage) Ltd v Grey GR Limited Partnership**

Case Reference: [2026] UKUT 18 (LC)

Judge: Edwin Johnson J, Chamber President

Date: 27 January 2026

Key Issues: Association as gateway condition; linking factors beyond bare association; evidential approach to group structures

Held:

1. Establishing association under s.121 and establishing that an order is just and equitable are two separate exercises: satisfying the gateway conditions is not sufficient [176]-[179].

2. There is no automatic presumption that an associate must be made liable unless it shows good reason why not; the tribunal looks for linking factors beyond bare association, such as common beneficial ownership, presentation to funders as one group and interlinked finances [199]-[203].
3. The legal burden stays with the applicant, but each party must prove the matters on which it relies, and adverse inferences may be drawn from unsatisfactory evidence about the respondents' own affairs [182], [224].
4. Respondents to a multi-respondent application should explain clearly the nature and extent of their relationships; joint and several liability is not the starting point, and the just and equitable outcome for a given associate may be apportioned liability or no liability at all [314], [316].
5. The full digest of the decision, including the joint and several liability holding under s.124, appears under section 124.

Link: <https://caselaw.nationalarchives.gov.uk/ukut/lc/2026/18>

Case Name: Secretary of State v EDR Builders Ltd (in liquidation) and Hollybrook (UK) Ltd (Hallings Wharf Studios)

Case Reference: FTT LON/00BB/BSB/2024/0011

Judge: Judge Sheftel, Judge Powell, Ms H C Bowers MRICS

Date: 21 May 2026

Key Issues: RCO against a s.121 associate of a developer in liquidation since 2018

Held:

1. Association under s.121(5) was conceded: the developer and the second respondent were owned and controlled by members of the same family [159]-[160].
2. The associate pleaded that its position was materially distinguishable from the developer's but called no evidence in support; the tribunal was unable to conclude that the pleaded distinctions displaced the case for an order [161]-[162].
3. An RCO was made against the associate for the full remediation cost of £3,682,997.78, VAT included, notwithstanding that the developer had been in liquidation since 2018 [162], [177].
4. The full digest, including the litigation costs holding, appears under section 124.

Link: [https://assets.publishing.service.gov.uk/media/6a19922eb95db968c8f3bc56/
Hallings Wharf Studios 1 Channelsea Road E15 2SX.pdf](https://assets.publishing.service.gov.uk/media/6a19922eb95db968c8f3bc56/Hallings_Wharf_Studios_1_Channelsea_Road_E15_2SX.pdf)

SECTION 122 – REMEDIATION COSTS UNDER QUALIFYING LEASES ETC

STATUTORY TEXT

Schedule 8—

- (a) provides that certain service charge amounts relating to relevant defects in a relevant building are not payable, and
- (b) makes provision for the recovery of those amounts from persons who are landlords under leases of the building (or any part of it).

EXPLANATORY NOTES

Section 122 – Remediation costs under qualifying leases

Effect

980. This section inserts new Schedule 8 – Remediation costs under qualifying leases etc.

981. Schedule 8 makes provision about the payment of service charge amounts relating to relevant defects (defined in section 120). It provides that certain service charge amounts relating to relevant defects in relevant buildings are not payable under certain leases.

982. Schedule 8 also makes provision for the recovery of amounts which are not recoverable under leases from landlords of the building.

Background

983. The explanatory note to section 116 sets out the context of the leaseholder protections provisions. Most flats in multi-occupied residential buildings in England are owned on long leases, where (in the simplest cases) a freeholder owns the building and the land it sits on, and the leaseholders own the units within the building on long leases. The freeholder is responsible for the maintenance and upkeep of the building. The leases, which are contractual agreements between the leaseholder and freeholder, allow the costs associated with maintenance to be passed by the freeholder through the service charge to the leaseholders. Since the Grenfell Tower fire in 2017 it has become apparent that a large number of multi-occupied residential buildings have serious building safety defects which need to be remediated, often at significant cost to the leaseholders.

984. Schedule 8 makes provision for service charge payments in respect of relevant defects not to be payable by leaseholders in certain circumstances. By limiting or preventing altogether the amounts that are payable in respect of these defects from being passed on to the leaseholders through the service charge, leaseholders are protected from the costs associated with their remediation.

985. Schedule 8 removes the existing legal presumption under most leases that leaseholders are liable in full for the costs associated with remediating relevant defects. The Schedule and powers contained within it make provision for liability to sit in the first instance with landlords who are deemed to be responsible for the creation of those defects,

and then with landlords that can afford to meet the costs in full. Where neither of these circumstances applies in respect of any relevant landlord, the Schedule provides for an equitable spread of costs, commensurate with a party's likely ability to contribute to costs, by allowing for capped leaseholder contributions to be recovered (up to "the permitted maximum") in certain circumstances; and for relevant landlords to be liable for any amounts that are not recoverable from leaseholders.

986. The Schedule sets out that, in relation to historical building safety defects, "no service is payable" in certain circumstances, and in other circumstances that the service charge is only payable if it "does not exceed the permitted maximum". These provisions in the Schedule apply from commencement (two months after Royal Assent of the Act, or 28 June 2022): from that date, the service charge protections apply. The protections apply equally irrespective of when any service charge demands were issued by landlords or managing agents. This means that, even if a valid service charge demand was issued prior to commencement, provided that the service charge had not already been paid by the leaseholder, the demand is no longer valid after commencement insofar as it does not comply with the provisions set out in the Schedule. In practice, this means that managing agents and landlords will need to rescind service charge demands issued prior to commencement where they relate to historical building safety defects. Where landlords are entitled to recover some costs from leaseholders according to the Schedule, they will need to issue new service charge demands which comply with the provisions set out in the Schedule.

987. Further detail on the provisions contained within Schedule 8 are set out in the explanatory notes to the Schedule.

COMMENTARY

67. Section 122 is the shortest operative provision in this Chapter and carries the greatest weight: it gives effect to Schedule 8, which (a) provides that certain service charge amounts relating to relevant defects in a relevant building are not payable, and (b) makes provision for the recovery of those amounts from landlords. The Schedule is where the money moves. Its protections are mandatory: they operate on the words "no service charge is payable", they override the terms of the lease, and they cannot be contracted out of. This is a deliberate, policy-driven reallocation embedded at the heart of the statutory scheme, and imaginative attempts to circumvent it have uniformly failed.
68. As for the architecture of Schedule : The protections form a descending series:
- (a) Paragraph 2 (all leases): no service charge is payable in respect of a relevant measure relating to a relevant defect if the landlord or a superior landlord at 14 February 2022 was responsible for the defect (as developer, or having

undertaken or commissioned the works, or in a joint venture with the developer) or was associated (s.121) with a person responsible. This is the widest protection: it is not confined to qualifying leases.

- (b) Paragraph 3 (qualifying leases): no service charge is payable in respect of relevant measures if the landlord at the qualifying time met the “contribution condition” - a landlord group net worth exceeding £2 million per relevant building.
- (c) Paragraph 4 (qualifying leases): no service charge is payable if the value of the lease at the qualifying time was below £325,000 (Greater London) or £175,000 (elsewhere).
- (d) Paragraphs 5 to 7 (qualifying leases): where charges are otherwise payable, they are capped at a “permitted maximum” keyed to lease value (£15,000 in Greater London / £10,000 elsewhere for leases under £1 million; £50,000 up to £2 million; £100,000 above), spread over a period reaching back five years, with an annual limit of one tenth.
- (e) Paragraph 8 (qualifying leases): no service charge is payable in respect of “cladding remediation” - the removal or replacement of any part of a cladding system that forms the outer wall of an external wall system and is unsafe.
- (f) Paragraph 9 (qualifying leases): no service charge is payable in respect of legal or other professional services relating to the liability or potential liability of any person incurred as a result of a relevant defect.
- (g) “Relevant measure” (para 1(1)) means a measure taken to remedy the relevant defect or a relevant step (s.120(4A)) taken in relation to it: interim measures such as waking watches are within the protections.

69. The Upper Tribunal in **Lehner v Lant Street Management Co Ltd** [2024] UKUT 135 (LC) supplied a sequence of questions, with a fuller appendix, which every decision maker should follow as something of a route map: (1) relevant building; (2) relevant defect; (3) relevant measure; (4) paragraph 2; (5) qualifying lease (with the paragraph 13 presumption); (6) paragraph 3 (with the paragraph 14 presumption); (7) paragraph 4; (8) paragraph 8; (9) paragraph 9; (10) the caps in paragraphs 5 to 7. Two points from **Lehner** bear emphasis:

- (a) The FTT must work through the protections itself, whether or not the parties raise them: it is “incumbent on the FTT to consider whether there is some statutory provision (of which the parties may be unaware) which affects the answer” (at [43]). A suggestion that leaseholders could “reserve” the protections for a later occasion was disapproved (at [48]).
 - (b) The deeming provisions are very important: under paragraph 13 a lease meeting s.119(2)(a)-(c) is treated as qualifying unless the landlord has taken all reasonable steps to obtain a certificate; under paragraph 14 and regulation 6 of SI 2022/711 the paragraph 2 condition and the contribution condition are treated as met unless a compliant landlord’s certificate has been given. A certificate, where given, is not evidence of the facts it states ([76]); and the presumptions do not bite on demands made before the Regulations came into force on 20 July 2022 ([71]-[74]) - although a leaseholder may still prove responsibility as a fact, and may trigger the presumption by requesting a certificate ([77]-[78]).
70. With regard to Paragraph 8 and the width of “cladding system”. **Lehner** decides that the paragraph 8 protection is generous in three respects:
- (a) A “cladding system” is not merely the outer decorative skin. Any system has a number of components, and paragraph 8(2) catches the removal or replacement of “any part” of it ([101]). Construing the term as it is understood in the fire safety field - including the Building Safety Fund prospectus and PAS 9980 - the system includes insulation, membranes, cavity barriers, fixings and supporting framework behind the external screen ([102]-[108]). The FTT’s contrary, narrow view was wrong ([100], [109]).
 - (b) “Replacement” need not be like for like: replacing combustible insulation with a superior material, and installing cavity barriers that were never there, was in its entirety the replacement of part of a cladding system ([110]-[111]). Dividing a single remedial package into “replacement” and “new” elements would frustrate the policy of the Act.
 - (c) It is the cladding system as a whole, not the individual component removed, which must form the outer wall of the external wall system and be unsafe ([116]-[117]). “Unsafe” was satisfied where the system failed the standards in the government’s consolidated advice ([118]).

71. As for Paragraph 8 and the no “relevant defect” requirement: **Almacantar Centre Point Nominee No.1 Ltd v de Valk** [2025] UKUT 298 (LC) takes paragraph 8 a decisive step further. Centre Point House was built in 1963-66: its defective timber-framed glazed façade fell outside the 30-year “relevant works” window, so its defects could not be relevant defects. The Upper Tribunal nonetheless held:
- (a) Paragraph 8 is not limited by reference to “relevant defect”, and no such qualification is to be imported ([50]). Its words are clear and unambiguous, and they give effect to the ministerial statement that no leaseholder living in their own flat “would pay a penny to fix dangerous cladding” ([51]).
 - (b) The descriptive words of ss.116 and 122 do not restrict the Schedule ([59]); paragraph 8 sits outside the 30-year package as a distinct protection concerned only with who pays to make unsafe cladding safe ([55]). The corollary - that neither leaseholders nor landlords can invoke the ss.123-124 machinery for such cladding - is explicable, not anomalous ([56]).
 - (c) Whether a building has “cladding” is a question of fact ([69]): the FTT’s finding that the 1960s glazed façade was a cladding system forming the outer wall of an external wall system was unassailable ([70], [75]). There is no requirement of two separate systems; where an external wall system comprises an outer and an inner wall, only the outer is within paragraph 8 ([74]-[75], adopting **Lehner**).
 - (d) “Unsafe” bears its ordinary and natural meaning. It is not confined to fire risk or to inherently dangerous Grenfell-type cladding: it is wide enough to include a façade so degraded that windows may detach and fall on passers-by ([81]). As for the consequences for landlords of older buildings, the Tribunal adopted the observation that “what might be seen as unfair results are simply a reflection of life in the new world of the 2022 Act” ([82]).
 - (e) The combined effect of **Lehner** and **Almacantar** is stark: a qualifying leaseholder in a relevant building of any age has an absolute protection against the cost of removing or replacing any part of an unsafe cladding system, with no time limit, no severity threshold beyond “unsafe”, and no requirement that the works respond to a relevant defect. I would expect landlords of pre-1992 stock to press for a restrictive appellate answer; but the reasoning of **Almacantar** is

orthodox and, in my view, the Court of Appeal is likely to uphold it if the point travels further.

72. As for Paragraph 9: legal and professional costs, and retrospectivity: Paragraph 9 was the first of the protections to reach appellate level, in **Adriatic Land 5 Ltd v Long Leaseholders at Hippersley Point**:

- (a) The Upper Tribunal ([2023] UKUT 271 (LC), Edwin Johnson J, Chamber President) held that paragraph 9 barred recovery, through the service charge, of the legal costs of a s.20ZA dispensation application relating to remediation of relevant defects - and that the protection applied to service charges demanded before the Act's commencement where liability was determined after it (at [119]-[170]).
- (b) The Court of Appeal ([2025] EWCA Civ 856, 8 July 2025) dismissed the landlord's appeal. Newey LJ analysed the retrospectivity principles (at [53]-[59]; see also Nugee LJ at [134]-[139]) and, at [170]-[172], identified paragraphs 8 and 9 as a third feature of the scheme: categories of cost which Parliament decided should not be claimable at all from qualifying leaseholders. The court also settled the status of the post-enactment Explanatory Notes: they may have persuasive value but cannot have informed Parliamentary decision-making, and enjoy no special legal status.
- (c) The Supreme Court granted permission to appeal on 6 November 2025 (UKSC/2025/0157); the appeal is listed for hearing on 18 November 2026. The retrospectivity of the Schedule 8 protections - and, by extension, the temporal reasoning in **Lehner, Triathlon Homes** and the regulation 3 line - will then receive a final answer. My prediction, for what it is worth: the Supreme Court will affirm. The structure of the remediation provisions is remedial and backward-looking by design, the Court of Appeal's reasoning aligns with the purposive analysis in **URS Corporation Ltd v BDW Trading Ltd** [2025] UKSC 21, and a contrary result would fracture the scheme. But prudent advisers will continue to distinguish pre- and post-commencement costs in every schedule until judgment.

73. **Princess Court** (HAV/00MW/LSC/2025/0774, 6 July 2026) shows the Schedule working at ordinary scale. Fire door remediation costs of £18,705.83 were held

irrecoverable: hidden installation faults - poor packing of door frames, oversized structural openings, inadequate closers - were “an inherent (but hidden) ‘relevant defect’ ... caused by poor workmanship” [170], the works were relevant measures, the leases were qualifying [137], and “if there is any ‘risk to life’ then the BSA provisions apply” [174]. The decision confirms that the protections are not confined to cladding: compartmentation defects of the most routine kind are within them, and management fees associated with remediating a relevant defect fall with the principal costs [184]. Landlords and managing agents should assume that any fire-safety-related workstream in a relevant building will attract Schedule 8 scrutiny before a demand is made.

74. Schedule 8 does not merely extinguish liabilities; it redirects them. Paragraph 12 and the Building Safety (Leaseholder Protections) (Information etc.) (England) Regulations 2023 allow prescribed recovery between landlords, and regulation 3 of SI 2022/859 permits a landlord who bears costs by reason of the Schedule to pass them to the developer or associated superior landlord: see the **East Village** decision digested under s.119 above. The Court of Appeal in **Triathlon Homes LLP v Stratford Village Development Partnership** [2025] EWCA Civ 846 described the resulting structure as a hierarchy or cascade of liability with the developer who retains an interest at the top, and the taxpayer-funded Building Safety Fund outside the Act as a last resort. Section 122 and Schedule 8 are the foundation of that cascade: paragraph 2 answers the “who does not pay” question, and the recovery machinery and s.124 answer “who does”.
75. as a result the Schedule 8 caselaw to date supports the following propositions:
 - (a) the protections are engaged automatically and must be considered by the FTT of its own motion (**Lehner**);
 - (b) the deeming provisions in paragraphs 13 and 14 place the initiative, and the risk of inaction, squarely on landlords: no certificate, no recovery;
 - (c) paragraph 8 stands apart from the relevant-defect scheme, protects against unsafe cladding of any age, and takes a wide view of both “cladding system” and “unsafe” (**Lehner**; **Almacantar**);
 - (d) the protections reach costs incurred and demanded before commencement, subject to the Supreme Court’s decision in **Adriatic Land 5**;

- (e) the definitional gateways (ss.117, 119, 120) are being construed to widen, not narrow, the protection: “any risk” (**Edgewater**; **Canary Riverside**), deemed qualification (**Almacantar**), structural attachment (**Pieris House**); and
- (f) unfairness to landlords is no answer: it is “simply a reflection of life in the new world of the 2022 Act” (**Almacantar** at [82], adopting the Upper Tribunal in **Adriatic**).

Practical note: For landlords: serve compliant landlord’s certificates and seek leaseholder deeds of certificate as a matter of standing procedure; audit every service charge demand in a relevant building against the Lehner route map before it goes out; and ring-fence legal and professional costs relating to relevant defects, which are simply irrecoverable from qualifying leaseholders. For leaseholders: check the demand against each protection in turn, and remember that the absence of a landlord’s certificate may itself decide the case. For both: watch the Supreme Court in **Adriatic Land 5** (listed 18 November 2026) and the Upper Tribunal in the **East Village** regulation 3 appeal, which between them will fix the temporal reach and the recovery mechanics of the entire Schedule.

CASE DIGEST

Case Name: **Almacantar Centre Point Nominee No.1 Ltd and No.2 Ltd v de Valk and others**

Case Reference: [2025] UKUT 298 (LC)

Judge: Judge Siobhan McGrath and Mrs D Martin TD MRICS FAAV

Date: 16 September 2025

Key Issues: Whether the paragraph 8 Schedule 8 cladding remediation protection is confined to “relevant defects”; the meaning of “cladding”, “cladding system”, “outer wall of an external wall system” and “unsafe”; the paragraph 13 qualifying lease presumption.

Held:

1. Paragraph 8 is not limited by reference to “relevant defect” and no qualification to that effect is to be imported: its words are clear and unambiguous and accord with the ministerial statement that no leaseholder living in their own flat “would pay a penny to fix dangerous cladding” [50]-[51].

2. Paragraph 8 sits outside the 30-year remediation package: it is concerned only with who pays to make unsafe cladding safe, and it mitigates the bright-line cut-off for buildings completed before 28 June 1992 [55].
3. The consequence that neither remediation orders nor RCOs are available for such cladding is explicable: work to remediate unsafe cladding which is not a relevant defect is outside the main scheme for both leaseholders and landlords [56].
4. Whether a building includes cladding is a question of fact; the FTT’s finding that the 1960s glazed timber-framed façade of Centre Point House was a cladding system forming the outer wall of an external wall system was one it was entitled to make and was unassailable on appeal [69]-[70], [75].
5. “Unsafe” bears its ordinary and natural meaning and is not confined to fire risk or inherent Grenfell-type defects: serious degradation creating a risk of windows detaching and falling sufficed [76]-[81].
6. Resulting hardship to landlords “simply accords with the policy of the BSA”: unfair results “are simply a reflection of life in the new world of the 2022 Act” [82].
7. On Ground 5, the FTT had made no evidential determination of qualifying lease status but had simply applied the paragraph 13 presumption where the landlord took no reasonable steps to obtain certificates; the new point was not admitted, though qualifying status is fixed at 14 February 2022 and cannot change with later events [90], [97]-[98].

Link: <https://caselaw.nationalarchives.gov.uk/ukut/lc/2025/298>

Case Name: Lehner v Lant Street Management Co Ltd

Case Reference: [2024] UKUT 135 (LC)

Judge: Martin Rodger KC, Deputy Chamber President, and Peter D McCrea FRICS FCI Arb

Date: 17 May 2024

Key Issues: The structure and sequential application of the Schedule 8 protections; the width of “cladding system” in paragraph 8; the operation of the landlord’s certificate and deeming provisions on pre-Regulations demands.

Held:

1. The Tribunal set out a step-by-step route map (with a detailed appendix) for applying the leaseholder protections: relevant building; relevant defect; relevant measure; paragraph 2; qualifying lease; contribution condition; low-value leases; cladding remediation; legal costs; and the paragraph 5-7 caps [44]-[45].
2. The FTT must consider the protections in every service charge case whether or not the parties raise them [43], [49].
3. The regulation 6(7) deeming provisions do not treat the paragraph 2 condition as met in respect of demands made before the Leaseholder Protections Regulations came into force on 20 July 2022; but a leaseholder may still prove responsibility as a fact, or trigger the presumption by requesting a certificate [71]-[78].
4. A “cladding system” includes the insulation, cavity barriers, membranes, fixings and supporting framework behind the external screen, construed in accordance with technical usage including PAS 9980 [99]-[108].
5. “Replacement” need not be like for like: a single package removing combustible insulation and installing new cavity barriers was in its entirety the replacement of part of a cladding system [110]-[111].
6. The conditions that the cladding system form the outer wall of an external wall system and be unsafe apply to the system as a whole, not merely the part removed or replaced [113]-[117]; the system was unsafe where it failed the applicable government advice [118].
7. The service charge was in any event not due because the demand misidentified the landlord, contrary to s.47 of the Landlord and Tenant Act 1987 [61], [121].

Link: <https://caselaw.nationalarchives.gov.uk/ukut/lc/2024/135>

Case Name: **Leaseholders of Princess Court v Captiva Homes Ltd and ERMCLtd**

(Princess Court)

Case Reference: HAV/00MW/LSC/2025/0774 (FTT)

Judge: Judge Tessa Hingston and Ms Jane Herrington

Date: 6 July 2026

Key Issues: Whether fire door remediation costs were irrecoverable under Schedule 8 as relevant measures relating to a relevant defect; application of the protections to compartmentation (non-cladding) defects.

Held:

1. Hidden faults in the installation of fire door frames and packing were “an inherent (but hidden) ‘relevant defect’ which was caused by poor workmanship” during construction [170].
2. The fire door remediation costs of £18,705.83 arose from a relevant defect within s.120 and Schedule 8, and were not payable by the qualifying leaseholders [135], [175].
3. On building safety risk, the tribunal applied the “any risk” approach: “if there is any ‘risk to life’ then the BSA provisions apply” [174].
4. The leases were qualifying leases [137]; no separate order concerning the landlord’s certificate was required on the facts [189]-[191].
5. A management fee associated with the defect remediation was likewise not payable by way of service charge [184]; s.20C and Schedule 11 paragraph 5A orders were made limiting recovery of the costs of the proceedings.

Link: https://assets.publishing.service.gov.uk/media/6a4cd7cbc5aa1b17abab410f/2026_July_6_-_Decision.pdf

Case Name: Adriatic Land 5 Ltd v Long Leaseholders at Hippersley Point

Case Reference: [2023] UKUT 271 (LC); [2025] EWCA Civ 856; Supreme Court permission granted 6 November 2025 (UKSC/2025/0157), listed for hearing 18 November 2026

Judge: Edwin Johnson J, Chamber President (UT); Newey, Nugee LJ and others (CA)

Date: 2023 (UT); 8 July 2025 (CA)

Key Issues: Whether paragraph 9 of Schedule 8 bars recovery through the service charge of legal and professional costs relating to relevant defects, including costs incurred or demanded before the BSA’s commencement; the status of post-enactment Explanatory Notes.

Held:

1. Paragraph 9 protects qualifying leaseholders against service charges in respect of legal or other professional services relating to liability or potential liability incurred as a

result of a relevant defect, including the costs of a s.20ZA dispensation application relating to remediation.

2. The Upper Tribunal held that the protection applies to service charges demanded before the commencement of the Act where liability falls to be determined after commencement (at [119]-[170], as summarised in **Lehner** at [78]).
3. The Court of Appeal dismissed the appeal, analysing the presumption against retrospectivity (Newey LJ at [53]-[59]; Nugee LJ at [134]-[139]) and holding that the degree of retrospective effect was within Parliament's clearly expressed scheme.
4. Paragraphs 8 and 9 together show that certain categories of cost - cladding remediation costs and relevant legal and professional costs - are not claimable at all from qualifying leaseholders, whether or not the landlord meets the contribution condition [170]-[172] (CA).
5. Post-enactment Explanatory Notes cannot have informed Parliamentary decision-making; they may be of persuasive authority but enjoy no particular legal status.
6. The Supreme Court granted permission to appeal on 6 November 2025; the hearing is listed for 18 November 2026, and the decision will fix the temporal reach of the Schedule 8 protections generally.

Link: <https://caselaw.nationalarchives.gov.uk/ewca/civ/2025/856>

SECTION 123 – REMEDIATION ORDERS

STATUTORY TEXT

- (1) The Secretary of State may by regulations make provision for and in connection with remediation orders.
- (2) A “remediation order” is an order, made by the First-tier Tribunal on the application of an interested person, requiring a relevant landlord to do one or both of the following by a specified time—
 - (a) remedy specified relevant defects in a specified relevant building;
 - (b) take specified relevant steps in relation to a specified relevant defect in a specified relevant building.
- (3) In this section “relevant landlord”, in relation to a relevant defect in a relevant building, means a landlord under a lease of the building or any part of it who is required, under the lease or by virtue of an enactment, to repair or maintain anything relating to the relevant defect.
- (4) In subsection (3) the reference to a landlord under a lease includes any person who is party to the lease otherwise than as landlord or tenant.
- (5) In this section “interested person”, in relation to a relevant building, means—
 - (a) the regulator (as defined by section 2),
 - (b) a local authority (as defined by section 30) for the area in which the relevant building is situated,
 - (c) a fire and rescue authority (as defined by section 30) for the area in which the relevant building is situated,
 - (d) a person with a legal or equitable interest in the relevant building or any part of it, or
 - (e) any other person prescribed by the regulations.
- (6) In this section—

“relevant building”: see section 117;

“relevant defect”: see section 120;

“relevant steps”: see section 120;

“specified” means specified in the order.
- (7) A decision of the First-tier Tribunal or Upper Tribunal made under or in connection with this section (other than one ordering the payment of a sum) is enforceable with the permission of the county court in the same way as an order of that court.

- (8) In proceedings for a remediation order, a direction given by the First-tier Tribunal requiring a relevant landlord to provide or produce an expert report is to be regarded as a decision for the purposes of subsection (7).
- (9) In subsection (8), “expert report” means an expert report or survey relating to—
 - (a) relevant defects, or potential relevant defects, in a relevant building;
 - (b) relevant steps taken or that might be taken in relation to a relevant defect in a relevant building.

S. 123(8)(9) inserted (31.10.2024) by Leasehold and Freehold Reform Act 2024 (c. 22), ss. 115(4), 124(3) (with s. 115(5)); S.I. 2024/1018, reg. 2(b)

S. 123(6) substituted (31.10.2024) by Leasehold and Freehold Reform Act 2024 (c. 22), ss. 115(3), 124(3) (with s. 115(5)); S.I. 2024/1018, reg. 2(b)

Words in s. 123(2) substituted (31.10.2024) by Leasehold and Freehold Reform Act 2024 (c. 22), ss. 115(2), 124(3) (with s. 115(5)); S.I. 2024/1018, reg. 2(b)

EXPLANATORY NOTES

Section 123 – Remediation orders

Effect

988. This section makes provision about remediation orders. Subsection (1) provides a power for the Secretary of State to make regulations for and in connection with remediation orders. Subsections (2) to (7) make further provision about remediation orders.

989. Subsection (2) sets out that a remediation order is made by the First-tier Tribunal. A remediation order can be made by the Tribunal on the application of an interest person (defined in subsection (5)). A remediation order can require a landlord to remedy specified relevant defects in a specified time (the meaning of “specified” is set out at subsection (6)). This means that the Tribunal can order a landlord to undertake certain work to remediate their building within a specified timeframe.

990. Subsections (3) and (4) define a “relevant landlord” against which the Tribunal may make a remediation order. “Relevant landlord” means a landlord who has an obligation to repair or maintain the building and subsection (4) sets out that the term includes, for the purposes of this section, persons who are party to the lease even if they are not a landlord or tenant. This means that remediation orders can be made against management companies with repairing obligations, as well as against freeholders and superior landlords such as head lessees with repairing obligations.

991. Subsection (5) provides a definition of “interested person” meaning the persons who are eligible to apply for to the First-tier Tribunal for a remediation order against a relevant landlord. These persons are the Building Safety Regulator, the local authority for the area in which the building is located, the fire and rescue authority for the area in which the building is located, and any person with a legal or equitable interest in the building or any part of it. A person with a legal or equitable interest in the building will include, for example, leaseholders of flats within the building, as well as the freeholder and other

relevant landlords for the building. Subsection (5)(e) provides that the list of interested persons may be expanded through regulations made by the Secretary of State.

992. Subsection (6) provides that “specified” means specified in the order, which means that the First-tier Tribunal can determine, for example, to whom a remediation order applies, to which relevant defects it applies, and the period in which defects need to be remediated.

993. Subsection (7) ensures that decisions made by the First-tier Tribunal in connection with remediation orders are enforceable. It means that any decision of the First-tier or Upper Tribunal under or in connection with a remediation order, other than a decision ordering the payment of a sum, will be enforceable with the permission of the county court in the same way as orders of the county court. The general position is that the Tribunal does not have enforcement powers of its own, other than powers to enforce payment for a sum of money. As such, where it is necessary to have powers to enforce other decisions of the Tribunal, it is usual to insert a provision in legislation to enable the county court to enforce those decisions.

Background

994. As discussed in the explanatory note to section 116, flats in most multi-occupied residential buildings in England are owned on long leases. The building itself and the land on which it is located are owned by a freeholder, and the flats within the building are owned on long leases by the leaseholders. The freeholder is responsible for the maintenance and upkeep of the building and the terms of most leases allow the costs associated with the building’s maintenance and upkeep to be passed through the service charge to leaseholders.

995. Significant decision-making power rests with the landlord responsible for maintaining the building in determining whether a building should be remediated, and the extent of work that is to be commissioned. Where leaseholders have been liable in full for these costs this has at times resulted in some landlords taking an overly risk-averse approach and commissioning costly remediation which may not be needed. At the same time, some landlords have been slow to commission and undertake even life-safety critical work on buildings, even where the Government is providing funding for the work.

996. Schedule 8 makes changes to the preexisting legal position that leaseholders are liable in full for these costs by limiting the costs that can be passed through the service charge in respect of relevant defects. Landlords will now be liable for some or all these costs. It is expected that this change will reduce instances of the commissioning of unnecessary work as landlords will now be disincentivised from taking an overly risk-averse approach to remediation, due to being liable to at least part-fund the work themselves.

997. Remediation orders will ensure that essential remediation work needed to remedy relevant defects can take place, especially where landlords are not fulfilling their obligations as regards the safety of the building. Remediation orders will allow interested parties to apply to the First-tier Tribunal for an order requiring a relevant landlord to remedy specified relevant defects. This will redress the balance of power in favour of

leaseholders by allowing leaseholders and other interested parties to apply to the Tribunal to insist on remediation work being done.

998. Parties with the ability to apply for remediation orders are those with a regulatory or oversight function – the Building Safety Regulator, the relevant local authority, and the relevant fire and rescue service; and those with a direct interest in the building, including leaseholders.

Proposed use of power

999. The power at subsection (1) allows the Secretary of State to make regulations for and in connection with remediation orders. This will allow further detail in connection with remediation orders to be set out. The power also provides important flexibility for the future. It is expected that the Government will monitor progress with remediation following the commencement of these provisions. Should further provision need to be made in connection with remediation orders to facilitate the remediation of buildings with relevant defects, this power will provide that flexibility to respond.

1000. The power at subsection (5)(e) will allow the Secretary of State to prescribe further persons who can apply for a remediation order, should the need to do so become apparent. Example A high-rise residential building has a number of historical cladding and non-cladding defects. Despite the remediation of these defects being life-safety critical, work to remediate them has not yet started, three years after they have been identified. The fire and rescue authority inspects the building and considers that the work needs to begin to make the building safe. The landlord does not undertake the work despite leaseholders and the fire and rescue authority attempting to contact them to insist on the work getting underway. The fire and rescue authority applies to the First-tier Tribunal for a remediation order. The Tribunal issues a remediation order, ordering the landlord to remedy the defects within a specified period.

COMMENTARY

76. Section 123 creates the remediation order (“RO”) jurisdiction: a power in the First-tier Tribunal, on the application of an “interested person”, to require a “relevant landlord” to remedy specified relevant defects in a specified relevant building, or to take specified “relevant steps” in relation to such a defect, by a specified time. It is the works-focused half of the Part 5 enforcement machinery. Section 124 answers the question “who pays”; section 123 answers the prior question “who must do the work, and by when”. The two are frequently deployed together, and the FTT has shown itself willing to hear RO and RCO applications concerning the same building in the same proceedings: **Empire Square** is the leading example.
77. The jurisdiction is now well used and the shape of the case law is settled. Three features stand out: (a) the gateway conditions are construed generously in favour of applicants;

(b) the discretion whether to make an order is protective of residents, not punitive of landlords; and (c) the FTT has developed a supervisory, outcome-focused practice in relation to the form, variation and enforcement of its orders. I address each below.

Who may apply: section 123(5)

78. The list of “interested persons” in s.123(5) is wide: (a) the Building Safety Regulator; (b) a local authority for the area; (c) a fire and rescue authority for the area; (d) any person with a legal or equitable interest in the relevant building or any part of it; and (e) any person prescribed by regulations. Three points arise from the decided cases:
- (a) Leaseholders are the typical applicants under s.123(5)(d), and most of the early orders (**Waite v Kedai Ltd**; **Monier Road** below) were obtained by them.
 - (b) A freeholder may apply against its own tenant where the repairing obligations sit with an intermediate landlord. In **Purbeck House** the freeholder, Barclays Nominees (George Yard) Ltd, obtained an order against the leaseholder LDC (Oxford Road Bournemouth) Ltd, part of the Unite group, which let the blocks to students. Standing was conceded, and rightly so: the freehold is the clearest possible “legal interest” within s.123(5)(d) (**Purbeck House** at [3]). The same configuration appeared in **Empire Square**, where the freeholder applied against the head leaseholder.
 - (c) Public authorities have begun to use the jurisdiction in their own right. In **Oyster Bay** the applicant was Bournemouth, Christchurch and Poole Council, applying as local authority against a registered provider, Sovereign Network Group; the resulting consent order is discussed at paragraph 81 below. The Secretary of State has also applied (the Vista Tower RO, which became the **Grey GR/Edgewater** litigation under s.124). In my view the public-authority route will grow: an RO application is a far more direct instrument than an improvement notice under the Housing Act 2004, it is enforceable in the county court, and **One The Brayford** (see section 124 below) shows local authorities pursuing the financial consequences of unsafe buildings with increasing confidence.

The respondent: “relevant landlord”

79. The respondent must be a “relevant landlord” under s.123(3): a landlord under a lease of the building or part of it who is required, under the lease or by virtue of an enactment, to repair or maintain anything relating to the relevant defect. Section 123(4) extends the concept to management companies and others who are party to the lease otherwise than as landlord or tenant. The definition is jurisdictional, and it has teeth. In **Thanet Lodge** the FTT dismissed an application against a freeholder who had been frozen out of maintenance functions by a right to manage transfer: a landlord with no current repairing obligation is not a “relevant landlord”, and no order can be made against it. Practitioners must therefore identify, before issue, precisely where the repairing covenants sit. **Somerville Court** illustrates the converse trap: the developer, Nicholas King Homes, was joined and had agreed to carry out the works, but the tribunal was clear that “a remediation order cannot be made against NKH” because it was not a relevant landlord; the order had to be made against the housing association freeholder, with the developer’s commitments recorded in the decision rather than the order (**Somerville Court** at [107]).

“Relevant steps” after the 2024 Act

80. The Leasehold and Freehold Reform Act 2024 (“LFRA 2024”) amended s.123(2) with effect from 31 October 2024 so that an RO may now require the taking of specified “relevant steps” as well as, or instead of, the remedying of specified defects. “Relevant steps”, defined in s.120(4A), are steps which have as their purpose: (a) preventing or reducing the likelihood of a fire or collapse occurring as a result of the relevant defect; (b) reducing the severity of any such incident; or (c) preventing or reducing harm to people in or about the building that could result from it. This is a significant widening. It allows the FTT to order interim and mitigating measures (waking watches, alarm systems, evacuation changes) on a mandatory basis without waiting for the full remedial scheme to be defined. The amendment matches the parallel insertion of s.124(2A)(a), which makes the costs of relevant steps recoverable under an RCO. LFRA 2024 also inserted s.123(8) and (9), under which a direction requiring a relevant landlord to provide or produce an expert report or survey is treated as a decision for enforcement purposes: a useful tool where a landlord is starving the proceedings of technical information.

The content and form of the order

81. The FTT’s practice on the form of orders has matured, and the **Purbeck House** and **Oyster Bay** orders are now good templates. The consistent features are these:
- (a) A schedule of the relevant defects and the works required to remedy them, drafted at a level of particularity that a contractor could price, but framed by an outcome obligation: the works must be carried out in compliance with the Building Regulations current at the time they are done, “so that the relevant defects no longer exist”, with a satisfactory post-works FRAEW under PAS 9980 (**Purbeck House** order, Schedule paras 7 to 9; **Oyster Bay** order, para 4).
 - (b) Alternative works provisions. **Oyster Bay** permits the respondent to comply either by the agreed schedule of works or by “such other means... as shall effectively ensure the remediation of the Relevant Defects” (order, para 2). **Purbeck House** achieves the same result through a tailored permission to apply: the respondent may seek to substitute different works if investigation by a suitably qualified consultant shows that reasonable alternative works will remedy the defects (order, para 2). **Somerville Court** adds a notification route: the landlord may propose variations, must explain them to the leaseholders, and any dispute returns to the tribunal (order, para 2). In my view this flexibility is essential. An RO is not a JCT specification; it is a statutory command to achieve a state of affairs, and the tribunal should not chain the parties to a scheme that later investigation shows to be wrong.
 - (c) Liberty to apply, in structured form: applications on the tribunal’s “Order 1” form, supported by detailed evidence and a draft order, with permission to rely on expert evidence and a realistic time estimate (**Purbeck House** order, para 3; **Oyster Bay** order, paras 6 to 7).
 - (d) Evidencing compliance. The orders now require positive proof that the work is done: notification within one month of certified practical completion, supported in **Purbeck House** by a Building Regulations declaration of compliance, a statement that all remediation works are complete, and the post-works fire risk assessment (order, para 4). **Somerville Court** adds monthly progress reports to leaseholders during the works (order, para 1). I regard these provisions as at least as important as the works schedule itself: they convert the order from a one-off command into a monitored programme.

82. The specified time is a matter of evidence, not aspiration. **Purbeck House** allowed 24 months and rejected the landlord’s argument for a lengthy contingency period ([240]); **Oyster Bay**, a consent order for a large phased scheme, ran to August 2030. Once set, time limits are policed: extensions were refused in **Centrillion Point**, where the landlord had made no Gateway 2 application and could point to no firm completion date, and the distinction drawn from that case in the **Waite v Kedai** variation decision (paragraph 10 below) shows exactly what a respondent must demonstrate to obtain more time.

Discretion: protective, not punitive

83. Section 123 confers a power, not a duty. The FTT is not obliged to make an order merely because a relevant defect exists (**Grey GR** (Vista Tower RO), where the order was made “as a backstop to give reassurance” alongside a Building Safety Fund programme). The purpose of the discretion was put well in **Purbeck House**: “the making of a Remediation Order is not a punitive step. It is an aim of the Act to improve the safety of all residential buildings” ([227] on the irrelevance of cost to defect status; [235] on the non-punitive character). Two consequences follow:
- (a) Cost is irrelevant at the definitional stage. Whether a defect is a “relevant defect” causing a “building safety risk” is answered by s.120 alone: “The test makes no reference to cost” (**Purbeck House** at [227]). Cost and proportionality enter, if at all, at the discretionary and remedial stages. This is consistent with the President’s construction of “building safety risk” in **Edgewater**: any risk, of the closely defined statutory kind, suffices ([253]), a construction the FTT applied in **Somerville Court** at [105] to [106] while still excluding items (loose tiles, detached trim) that posed no risk of fire spread or collapse.
 - (b) The discretion is exercised by reference to resident safety and delivery, not blame. In **Purbeck House** the order was made because the landlord had known of the defects for some five years, work had not begun, and there was no certainty as to when it would ([232], [237], [239]). In **Empire Square** the FTT went the other way on mechanics while reaching the same goal: it made both an RO and an RCO but suspended them, as a “constant threat of consequence” to hold the developer and freeholder to their agreed programme ((236) to (239)). The common thread is that the order is calibrated to produce remediation, not to

punish. I expect tribunals to keep making orders even where works are underway or funded (The Chocolate Box; Grey GR): the order costs a compliant landlord little and protects residents against slippage.

Procedural fairness: the limits of the FTT's role

84. Monier Road Ltd v Blomfield is a corrective to any idea that the RO jurisdiction licenses a free-ranging safety audit. The FTT had made an order covering balconies, bin stores, walkways and other items that neither party had put in issue, contrary to the expert evidence, under the heading “The Tribunal’s issues”. The Upper Tribunal (Judge Elizabeth Cooke and Mrs Diane Martin) set that part of the order aside. The decision states the law in five propositions ([39] to [44]): the FTT may raise a point the parties have not raised; but proceedings are adversarial, not inquisitorial, and the tribunal must not “step out of its proper role and into the arena of dispute” ([40]); new points are properly raised only where jurisdiction is in doubt, where statute requires it, or to clarify a party’s case ([41]); the decision to raise a new point is discretionary but appealable if no reasonable tribunal could have taken it ([42]); and if a new point is raised the tribunal must follow a fair procedure: the point must be pleaded by a party, both sides heard, and evidence permitted ([43] to [44]). On the facts the FTT had exceeded its discretion ([49]), adopted an unfair procedure ([50]), and its decision was vitiated by serious procedural irregularity and breach of natural justice ([51]); it was also contrary to the unchallenged expert evidence ([52], [66]). The lesson for practitioners is simple: the schedule of defects in the statement of case defines the outer boundary of the order. The lesson for tribunals is equally simple: expertise is for evaluating the parties’ cases, not for constructing a different one.

Variation: the supervisory jurisdiction and the Gateway 2/3 problem

85. The 2026 variation decision in Waite v Kedai is, in my view, the most instructive recent decision on what happens after an RO is made. The original order (9 August 2023, the first contested RO) required completion by 19 September 2025. Kedai’s Gateway 2 application to the Building Safety Regulator, submitted in July 2025, then sat undetermined past the statutory eight-week period, through two extorted extensions, before being treated as deemed rejected under regulation 55 of the Higher-Risk Buildings Procedures Regulations 2023: an operation of the regulations the BSR itself had overlooked until the tribunal intervened ([13]). The FTT’s response repays study:

- (a) It refused to vary the order in an informational vacuum, and instead summonsed the Acting CEO of the BSR under rule 20 to explain the delay and commit to a realistic timescale ([10] to [11]).
- (b) It extracted concrete commitments: transfer of sufficient elements of the old application, continuity of personnel, prioritisation on re-application, and evidence that a well-prepared Gateway 2 application could be determined in nine weeks ([18] to [19]).
- (c) It extended time to 29 July 2027, but against a milestone programme (resubmission, determination, construction, Gateway 3 application) expressly described as “strong guidance to the parties and the BSR as a yardstick”, with minor slippage to be agreed between the parties without troubling the tribunal ([26], [33]).
- (d) It distinguished **Centrillion Point**: an extension is earned by demonstrated progress, an agreed scope, an engaged regulator and a firm completion date, not by mere difficulty ([22]); and it aligned itself with **Junestead (Cypress Point)**, where unanticipated BSR approval requirements justified variation ([23]).

86. Two points follow.

- (a) First, the RO jurisdiction is now openly supervisory: the tribunal sets the programme, monitors it, and will haul in third parties, including the regulator, where the programme is threatened.
- (b) Second, the interface between RO deadlines and the Gateway 2/3 regime is the single greatest practical risk for respondents. A landlord subject to an RO should build BSR determination periods, realistically assessed, into any proposed timetable, apply to vary before the deadline passes, and document every step of its engagement with the BSR. The tribunal is likely to be sympathetic to delay caused by the regulator; it is unlikely to be sympathetic to a respondent who allowed matters within its own control to slip (**Empire Square** at (241) to (242) makes the same point).

Enforcement

87. By s.123(7), a decision of the FTT or Upper Tribunal under or in connection with s.123 (other than one ordering payment of a sum) is enforceable, with the permission of the

county court, in the same way as an order of that court. The standard-form orders now recite this on their face (**Purbeck House** order, para 5; **Oyster Bay** order, final recital). Breach therefore exposes the landlord, ultimately, to contempt proceedings. Sixteen or so orders in, no committal application has yet been reported, and I expect the suspended-order and milestone techniques described above to keep it that way in most cases: the architecture of the modern RO is designed to make enforcement unnecessary by making non-compliance visible early.

88. Remediation agreements have now produced their first litigation. In **Durkan Estates Ltd v Wallace Estates Ltd** [2026] EWHC 2003 (TCC) the freeholder of Centrillion Point, Croydon terminated the remediation agreement it had made with the developer and then sought summary judgment that the termination was lawful. It did so on the basis that the FTT had refused to vary the deadline in the remediation order for the building. Constable J refused to award such summary judgment. He did so on the basis that:

- (a) Time was not of the essence [28]-[29];
- (b) Whether the delay was repudiatory was fact-sensitive [20]-[21]; and
- (c) “[W]here time is not of the essence and where the party said to be in breach by delay is nevertheless making an effort to perform the contract, it is intrinsically difficult for the other party to establish a fundamental breach”: [33];
- (d) In addition the developer had various other arguable cases open to it such as whether the completion date had been superseded by agreement or whether estoppel by convention arose or whether there had been an affirmation of the contract: the freeholder had told the FTT two days before terminating that it wished to continue working with the developer [34]-[35], [41]-[43].

89. Two important points may arise from this with respect to s.123:

- (a) First the case reinforces the point that even if a remediation agreement is made as a result of a remediation order it is still a contract, subject to normal contractual principles; and
- (b) Where the works await gateway approval, the parties’ shared working assumption may, depending on the communications passing between them, itself set time at large.

90. Note that the same dispute has produced the first joint TCC/FTT management of BSA proceedings: see the commentary to s.124.

CASE DIGEST

Case Name: **Barclays Nominees (George Yard) Ltd v LDC (Oxford Road Bournemouth) Ltd (Purbeck House)**

Case Reference: HAV/00HN/BSA/2024/0001 and 0002, First-tier Tribunal (Property Chamber)

Judge: Regional Judge Whitney, Regional Surveyor A Clist MRICS, Mr A Thomas RBI FRICS MBAMIFireE

Date: 8 May 2025 (corrected 16 May 2025)

Key Issues: Freeholder standing under s.123(5)(d); relevance of cost to “relevant defect”; discretion to make an RO where the landlord has delayed; form of order.

Held:

1. The freeholder applicant was an “interested person” and the Unite-group leaseholder, which let the student accommodation, was the “relevant landlord”; both points were agreed [3].
2. Cost is irrelevant to whether a defect is a “relevant defect”: the experts’ references to cost-risk analysis were rejected because “the test makes no reference to cost”; the question is whether the defect causes a building safety risk, here the spread of fire [227].
3. Exposed combustible PIR cores in the terracotta rainscreen and Kingspan panels, and the absence of cavity barriers, were relevant defects causing a building safety risk [228] to [229].
4. The making of an RO is discretionary [231] but “not a punitive step”; the aim of the Act is to improve the safety of all residential buildings [235].
5. Discretion was exercised in favour of an order: the landlord had known of the defects for some five years, no works had begun, and there was no certainty when board approval or works would follow [232], [237], [239].
6. The order gave 24 months, permission to apply to substitute reasonable alternative works on suitably qualified evidence or to extend time, structured requirements for any

application, and compliance evidencing by Building Regulations declaration, completion statement and post-works fire risk assessment; enforceable via the county court under s.123(7) (order, paras 1 to 5).

Link: https://assets.publishing.service.gov.uk/media/682dc416b33f68eaba9538e9/Purbeck_House.pdf

Case Name: **Bournemouth, Christchurch and Poole Council v Sovereign Network Group (Oyster Bay Apartments)**

Case Reference: HAV/00HQ/BSA/2025/0002, First-tier Tribunal (Property Chamber)

Judge: Judge J Dobson

Date: 10 April 2026

Key Issues: Local authority application under s.123; remediation order made by consent; alternative works and compliance machinery.

Held:

1. A local authority applied for an RO in its own right as an “interested person” against a registered provider landlord; the respondent consented to the order and admitted the scheduled relevant defects (recitals).
2. The order requires remediation of the scheduled defects either by the agreed works or by “such other means... as shall effectively ensure the remediation of the Relevant Defects” (paras 1 to 2).
3. Completion was ordered by 14 August 2030, in compliance with the Building Regulations applicable at the time of the works and with a post-works FRAEW under PAS 9980:2022 (paras 3 to 4).
4. Permission to apply was given, including to extend time, with applications to be made on Form Order 1, evidenced, served on the lessees, and supported by expert evidence where relevant (paras 5 to 7).
5. The respondent must notify the tribunal and the applicant of compliance within one month of certified practical completion (para 8); the order is enforceable with the permission of the county court under s.123(7) (final recital).

Link: https://assets.publishing.service.gov.uk/media/6a32a71f6422bec01b1176d8/2026-Apr-10_Remediation_Order.pdf

Case Name: Waite v Kedai Ltd (variation of remediation order)

Case Reference: LON/00AY/HYI/2022/0005 & 0016, First-tier Tribunal (Property Chamber); original remediation order dated 9 August 2023

Judge: Regional Judge Timothy Powell, Mrs Helen Bowers MRICS

Date: 24 March 2026

Key Issues: Variation of an RO completion date; interaction with the Building Safety Regulator's Gateway 2 process; use of a witness summons against the regulator; milestone supervision.

Held:

1. The original order (the first contested RO, made 9 August 2023) required completion by 19 September 2025; Kedai applied to extend after its Gateway 2 application, submitted 11 July 2025, remained undetermined by the BSR beyond the statutory period and two extensions [6] to [9].
2. The tribunal declined to set a new timetable without information from the BSR, adjourned, and summonsed the BSR's Acting CEO under rule 20 to explain the delay and give a realistic timescale [10] to [11].
3. The Gateway 2 application had been deemed rejected under regulation 55 of the Higher-Risk Buildings Procedures Regulations 2023, a consequence the BSR had overlooked until the summons prompted closer examination [13]; the tribunal questioned that interpretation but accepted it was not the forum to challenge the regulatory decision [16].
4. The BSR committed to transferring sufficient elements of the original application, continuity of personnel and prioritisation on re-application, and gave evidence that a well-structured Gateway 2 application could be determined in nine weeks [18] to [19].
5. Time was extended to 29 July 2027 against an agreed milestone programme through revised Gateway 2 submission, construction and Gateway 3 application; the milestones are indicative but "strong guidance to the parties and the BSR as a yardstick", with minor slippage to be agreed without further application [26], [29] to [33].
6. **Centrillion Point** was distinguished: unlike the applicant there, Kedai had carried out substantial preparatory work, agreed a scope, made a Gateway 2 application and could

point to a firm completion date; the case was closer to **Junestead (Cypress Point) Ltd v Goodwin**, where regulatory change and BSR delay justified variation [22] to [24].

Link: [https://assets.publishing.service.gov.uk/media/69c3c6a3cdfd19de13d0f577/260324 -
Combined Decision and Variation Order.pdf](https://assets.publishing.service.gov.uk/media/69c3c6a3cdfd19de13d0f577/260324-_Combined_Decision_and_Variation_Order.pdf)

Case Name: **Monier Road Ltd v Blomfield**

Case Reference: [2025] UKUT 157 (LC)

Judge: Upper Tribunal Judge Elizabeth Cooke, Mrs Diane Martin TD MRICS FAAV

Date: 28 May 2025 (corrected 4 June 2025)

Key Issues: Whether the FTT may include in an RO defects raised of its own motion; the adversarial character of FTT proceedings; procedural fairness.

Held:

1. FTT proceedings are adversarial, not inquisitorial: it is for the parties to present their cases and for the tribunal to decide between them; a tribunal that suggests or argues a case for either party steps “into the arena of dispute”, which is unfair because it involves taking sides [40].
2. A tribunal may properly raise a new point only where jurisdiction is in doubt or there is a fundamental problem with a party’s case, where statute requires a matter to be addressed, or to clarify a party’s case [41].
3. The decision to raise a new point is discretionary and will be interfered with on appeal only if no reasonable tribunal could have taken it [42]; if a point is raised, a fair procedure must follow: pleading by amendment, argument by the party taking the point, and evidence from both sides [43] to [44].
4. The FTT’s inclusion of “Additional Items” (balconies, bin stores, walkways, roof terrace, planters) that neither party had raised, and which the applicants’ own expert report had concluded were not relevant defects, exceeded its discretion: the Act “does not require or enable the FTT to conduct a building safety audit” [49].
5. The procedure adopted was unfair: the FTT became a party to the dispute, sought evidence only from the respondent, and decided the items under the heading “The Tribunal’s issues”; the decision was vitiated by serious procedural irregularity and breach of natural justice and was set aside [50] to [51], [66].

6. The decision was in any event contrary to the unchallenged expert evidence, with no reasons given for the disagreement [52], [55].

Link: <https://caselaw.nationalarchives.gov.uk/ukut/lc/2025/157>

Case Name: Durkan Estates Ltd v Wallace Estates Ltd

Case Reference: [2026] EWHC 2003 (TCC)

Judge: Constable J

Date: 30 July 2026

Key Issues: Termination of a remediation agreement; summary judgment; time of the essence; affirmation

Held:

1. The freeholder terminated the remediation agreement for Centrillion Point, Croydon two days after the FTT refused to vary the remediation order deadline; its application for summary judgment on the lawfulness of that termination was dismissed.
2. Time was not of the essence [28]-[29]; whether the delay deprived the freeholder of substantially the whole benefit of the contract was acutely fact-sensitive [20]-[21]; where the party said to be in breach is still making an effort to perform, it is intrinsically difficult to establish a fundamental breach [33].
3. Arguable cases that the completion date had been superseded by agreement or estoppel by convention, both parties having proceeded on the basis that no fixed date could run until Building Safety Regulator approval [41]-[43], and of affirmation [34]-[35].
4. Claim and counterclaim to trial; see the joint case-management decision digested under section 124.

Link: <https://caselaw.nationalarchives.gov.uk/ewhc/tcc/2026/2003>

SECTION 124 – REMEDIATION CONTRIBUTION ORDERS

STATUTORY TEXT

- (1) The First-tier Tribunal may, on the application of an interested person, make a remediation contribution order in relation to a relevant building if it considers it just and equitable to do so.
- (2) “Remediation contribution order”, in relation to a relevant building, means an order requiring a specified body corporate or partnership to make payments to a specified person, for the purpose of meeting costs incurred or to be incurred in remedying , or otherwise in connection with, relevant defects (or specified relevant defects) relating to the relevant building.
- (2A) The following descriptions of costs, among others, fall within subsection (2)—
 - (a) costs incurred or to be incurred in taking relevant steps in relation to a relevant defect in the relevant building;
 - (b) costs incurred or to be incurred in obtaining an expert report relating to the relevant building;
 - (c) temporary accommodation costs incurred or to be incurred in connection with a decant from the relevant building (or from part of it) that took place or is to take place—
 - (i) to avoid an imminent threat to life or of personal injury arising from a relevant defect in the building,
 - (ii) (in the case of a decant from a dwelling) because works relating to the building created or are expected to create circumstances in which those occupying the dwelling cannot reasonably be expected to live, or
 - (iii) for any other reason connected with relevant defects in the building, or works relating to the building, that is prescribed by regulations made by the Secretary of State.
- (2B) The Secretary of State may make regulations for the purposes of this section specifying descriptions of costs which are, or are not, to be regarded as falling within subsection (2).
- (3) A body corporate or partnership may be specified as a person required to make payments only if it is—
 - (a) a landlord under a lease of the relevant building or any part of it,
 - (b) a person who was such a landlord at the qualifying time,
 - (c) a developer in relation to the relevant building, or
 - (d) a person associated with a person within any of paragraphs (a) to (c).
- (4) An order may—

- (a) require the making of payments of a specified amount, ...;
 - (aa) if it does not require the making of payments of a specified amount, determine that a specified body corporate or partnership is liable for the reasonable costs of specified things done or to be done;
 - (b) require a payment to be made at a specified time, or to be made on demand following the occurrence of a specified event.
- (5) In this section—
- “associated”: see section 121;
- “developer”, in relation to a relevant building, means a person who undertook or commissioned the construction or conversion of the building (or part of the building) with a view to granting or disposing of interests in the building or parts of it;
- “expert report” has the meaning given by section 123(9);
- “interested person”, in relation to a relevant building, means—
- (a) the Secretary of State,
 - (b) the regulator (as defined by section 2),
 - (c) a local authority (as defined by section 30) for the area in which the relevant building is situated,
 - (d) a fire and rescue authority (as defined by section 30) for the area in which the relevant building is situated,
 - (e) a person with a legal or equitable interest in the relevant building or any part of it, or
 - (f) any other person prescribed by regulations made by the Secretary of State;
- “partnership” has the meaning given by section 121;
- “relevant building”: see section 117;
- “relevant defect”: see section 120;
- “relevant steps”: see section 120;
- “specified” means specified in the order.
- “temporary accommodation costs”, in relation to a decant from a relevant building, means—
- (a) the costs of the temporary accommodation, and
 - (b) other costs resulting from the decant, including removal costs, storage costs and reasonable travel costs;
- “works” means works—
- (a) to remedy a relevant defect in a relevant building, or

- (b) in connection with the taking of relevant steps in relation to such a defect.
- (6) The Secretary of State may by regulations provide that this section applies, with or without modifications, in relation to a building that would, but for section 117(3), be a relevant building.

S. 124 applied (with modifications) (20.7.2022) by The Building Safety (Leaseholder Protections) (England) Regulations 2022 (S.I. 2022/711), regs. 1(1), 4

S. 124(2A)(2B) inserted (31.10.2024) by Leasehold and Freehold Reform Act 2024 (c. 22), ss. 116(3), 124(3); S.I. 2024/1018, reg. 2(c)

Words in s. 124(2) inserted (31.10.2024) by Leasehold and Freehold Reform Act 2024 (c. 22), ss. 116(2), 124(3); S.I. 2024/1018, reg. 2(c)

Words in s. 124(3) inserted (31.10.2024) by Leasehold and Freehold Reform Act 2024 (c. 22), ss. 116(4), 124(3) (with s. 116(7)); S.I. 2024/1018, reg. 2(c)

S. 124(4)(aa) inserted (31.10.2024) by Leasehold and Freehold Reform Act 2024 (c. 22), ss. 116(5)(b), 124(3) (with s. 116(7)); S.I. 2024/1018, reg. 2(c)

Words in s. 124(4)(a) omitted (31.10.2024) by virtue of Leasehold and Freehold Reform Act 2024 (c. 22), ss. 116(5)(a), 124(3) (with s. 116(7)); S.I. 2024/1018, reg. 2(c)

Words in s. 124(5) inserted (31.10.2024) by Leasehold and Freehold Reform Act 2024 (c. 22), ss. 116(6)(a), 124(3) (with s. 116(7)); S.I. 2024/1018, reg. 2(c)

Words in s. 124(5) inserted (31.10.2024) by Leasehold and Freehold Reform Act 2024 (c. 22), ss. 116(6)(b), 124(3) (with s. 116(7)); S.I. 2024/1018, reg. 2(c)

Words in s. 124(5) inserted (31.10.2024) by Leasehold and Freehold Reform Act 2024 (c. 22), ss. 116(6)(c), 124(3) (with s. 116(7)); S.I. 2024/1018, reg. 2(c)

EXPLANATORY NOTES

Section 124: Remediation contribution orders

Effect

1001. This section makes provision about remediation contribution orders. Subsection (1) sets out that a remediation contribution order can be made by the First-tier Tribunal (the Tribunal) if it considers it just and equitable to do so.

1002. Subsection (2) provides that the Tribunal can make a remediation contribution order in relation to a relevant building (defined in section 117). A remediation contribution order can be made by the Tribunal on the application of an interested person (to which see subsection (5)) to require a company to make payments in connection with the remediation of relevant defects.

1003. Subsection (3) sets out that a remediation contribution order can be made against a landlord for the building, a person who was a landlord at the qualifying time (the start of 14 February 2022), or the building's developer; as well as any person associated with any of these parties (where "associated" has the meaning given in section 121).

1004. Subsection (4) sets out that a remediation contribution order can require payments to be made to fix relevant defects in a building and at a specified time.

1005. Subsection (5) sets out definitions that are relevant to the section. "Associated", "partnership", "relevant building" and "relevant defect" are all defined in the preceding sections. "Developer" is defined as a person who built or commissioned the construction of

the building or part of the building, with a view to granting or disposing of interests in the building or parts of it, for example by selling flats in the building following its construction. “Specified” means specified in the order, which means that the Tribunal can determine, for example, to whom a remediation contribution order applies, to which relevant defects it applies, and to whom payments under the order need to be made.

1006. An “interested person” is defined in subsection (5). An interested person is a person who may apply to the Tribunal for a remediation contribution order. These persons are the Secretary of State, the Building Safety Regulator, the local authority for the area in which the building is located, the fire and rescue authority for the area in which the building is located, and any person with a legal or equitable interest in the building or any part of it. A person with a legal or equitable interest in the building will include, for example, leaseholders of flats within the building, as well as the freeholder and other relevant landlords for the building. Paragraph (f) provides that the list of interested persons may be expanded through regulations made by the Secretary of State.

1007. Subsection (6) allows the Secretary of State to expand, by regulations, the provision under this section to buildings that would be relevant buildings but for section 117(3). Section 117(3) provides an exemption from the definition of “relevant building” for collectively enfranchised buildings and those which are on commonhold land. The effect of subsection (6) is to allow the Secretary of State to provide that remediation contribution orders can apply to this class of buildings, in addition to those which are defined as relevant buildings in section 117.

Background

1008. The explanatory note to section 121 discusses how it is common practice for owners of freeholds of multi-occupied residential buildings (as well as owners of other superior lease interests in those buildings) to use thinly capitalised companies such as special purpose vehicles to hold the interests. While the freeholder itself often has very limited capital, these entities are often part of well-resourced wider group structures.

1009. The explanatory note to section 122 explains how the leaseholder protections provisions in Schedule 8 operate. The provisions protect leaseholders by preventing altogether or otherwise limiting the costs that can be passed through the service charge to leaseholders in connection with relevant defects. Where costs are not otherwise recoverable under leases, the Schedule, and powers made under it, make provision for those amounts to be recovered from landlords under leases of the building including the freeholder and superior landlords such as headlessees. This means that under the provisions of Schedule 8, landlords, including freeholders and headlessees, are liable for some or all of the costs connected with remediating their buildings.

1010. It is important that, where costs in relation to relevant defects are not recoverable from leaseholders, that funding is made available so that work to remediate defects can take place promptly and buildings can be made safe. Remediation contribution orders support this aim in two ways.

1011. The first way in which remediation contribution orders are intended to contribute to the timely remediation of buildings is by providing a new legal remedy to require developers to pay for the costs of remediation. If the Tribunal considers it just and equitable, it can require a developer for the building to make payments in connection with remedying relevant defects. A wide range of parties can apply for remediation contribution orders: as well as the Secretary of State and regulatory bodies such as the Building Safety Regulator, persons with a legal or equitable interest in the building can apply for an order. Persons with a legal or equitable interest include, for example, the freeholder of the building, superior landlords such as headlessees, and leaseholders.

1012. As discussed above, freeholders and landlords will have new liabilities to pay for remediation costs under Schedule 8. Remediation contribution orders will allow landlords to seek to recover these costs from the building's developer by applying to the Tribunal for an order against the developer. Similarly, leaseholders would have the ability to apply for an order against the developer; for example, if leaseholder contributions are required under Schedule 8, or if leaseholders have already paid costs towards remediation before the coming into force of the leaseholder protections, they may wish to seek to recover these costs using a remediation contribution order.

1013. As discussed in the explanatory note to section 121, it is also common practice for residential property developers to use special purpose vehicles which are wound up on completion of the project. Remediation contribution orders can also be made against persons associated with the developer; this will include, for example, parent companies where developments have been run through special purpose vehicles which are thinly capitalised or have since been wound up.

1014. The term "developer" is defined at subsection (5). The Government has agreed with large residential property developers that they will remediate buildings that they had a role in refurbishing or developing in the past 30 years. It is therefore unlikely that remediation contribution orders would need to be made against this group of developers. However, developers who have not made an agreement with the Government will be in scope of remediation contribution orders.

1015. Remediation contribution orders made against developers complement other legal remedies expanded and created by this Act, which allow those responsible for building safety defects to be held to account. These other remedies include the extension of the limitation period under section 1 of the Defective Premises Act (section 135), building liability orders (sections 130 to 132), and the new cause of action against the manufacturers of defective construction products (sections 147 to 151).

1016. The second way in which remediation contribution orders are intended to contribute to timely remediation is by ensuring landlords meet their obligations under the leaseholder protections provisions. Schedule 8 makes provision for liability in connection with the remediation of historical building safety defects to sit with freeholders and landlords. This liability applies irrespective of whether costs can be recovered from a third party such as a developer. Where the developer does not step forward or cannot be identified, and external sources of funding cannot be found, this means that building owners and landlords will

need to meet the costs of remediation from their own resources. Even where legal claims are possible, the Government has been clear that seeking to recover costs from third parties cannot delay remediation taking place, and that building owners and landlords must not wait until the outcome of legal claims before commencing building work, meaning that in some circumstances, freeholders will need to forward-fund remediation to ensure that work can take place.

1017. It is expected that landlords will comply with their new obligations to forward-fund, or fund in full from their own resources, the remediation of their own buildings. Should a party with a liability in relation to building safety remediation be failing to meet its obligations, remediation contribution orders will allow the Tribunal to require payments to be made. In particular, remediation contribution orders will allow companies associated with relevant landlords to be required to make payments in connection with remediation; this will allow, for example, well-capitalised wider group structures of thinly capitalised special purpose vehicles to be ordered to contribute to remediation costs.

1018. A wide range of parties are able to apply for remediation contribution orders. This includes the Government and regulatory bodies with a role in monitoring, regulating, and enforcing building safety – the Secretary of State, the Building Safety Regulator, the relevant fire and rescue authority and the relevant local authority. In addition, those with a legal or equitable interest in the building can apply for an order. This includes leaseholders as well as freeholders and landlords for the building. Remediation contribution orders will ensure that all relevant landlords with a liability to pay for remediation under the Schedule meet their obligations.

1019. Subsection (1) provides that the Tribunal can only make a remediation contribution order if it considers it just and equitable to do so. This is intended to ensure fairness in proceedings while giving the Tribunal a wide decision-making remit which it is expected will allow it to take all appropriate factors into account when determining whether an order should be made, including the wider public interest in securing the safety of buildings, as well as the rights and interests of the individual against whom an order might be made.

Proposed use of power

1020. The power at subsection (5)(f) will allow the Secretary of State to prescribe further persons who can apply for a remediation contribution order, should the need to do so become apparent. Example 1 The freeholder for a building is liable for the costs of remediating it under Schedule 8. Having forward funded the remediation, they apply for a remediation contribution order against the parent company of the developer who developed the building. The Tribunal considers that it would be just and equitable to order the developer to make payments to the freeholder in connection with the remediation of the building. The Tribunal issues an order against the company, ordering it to make payments in connection with fixing specified relevant defects. The order specifies that the payments must be made within a specified timeframe. Example 2 The freeholder for a building is liable for the costs of remediating it under Schedule 8. Two years after the identification of the relevant defects, the freeholder has failed to commission or pay for the work that is

needed. The freeholder is a thinly capitalised shell company which is part of a wider group of companies that own multiple freeholds. The fire and rescue authority applies to the Tribunal for a remediation contribution order. The Tribunal consider that it is just and equitable to issue a remediation contribution order and orders the freeholder's parent company to make payments to remediate the defects in the building.

COMMENTARY

91. Section 124 is, with the building liability order provisions in ss.130 to 132, the Act's principal mechanism for making developers, landlords and their associates pay for remediation. The FTT may, on the application of an interested person, make a remediation contribution order ("RCO") in relation to a relevant building "if it considers it just and equitable to do so" (s.124(1)). The order requires a specified body corporate or partnership to make payments to a specified person "for the purpose of meeting costs incurred or to be incurred in remedying, or otherwise in connection with, relevant defects" (s.124(2)). The jurisdiction is not fault-based. It is, as the Upper Tribunal has confirmed, "a new form of statutory liability" in respect of which Parliament simply did not concern itself with matters, such as contribution between respondents, that a fault-based regime would have to address (**Edgewater** at [158]). Every argument that seeks to read into s.124 a limitation drawn from the general law has so far failed, and I expect that pattern to continue.
92. There are now three controlling authorities: **Triathlon Homes LLP v Stratford Village Development Partnership** [2025] EWCA Civ 846, which settled the purposive framework and (subject to the Supreme Court) retrospectivity; **Edgewater (Stevenage) Ltd v Grey GR Limited Partnership** [2026] UKUT 18 (LC), the decision of the Chamber President (Edwin Johnson J) which settled joint and several liability and the structure of the just and equitable enquiry; and **URS Corporation Ltd v BDW Trading Ltd** [2025] UKSC 21, which supplies the Supreme Court's account of the Act's purpose: to remediate historic building safety defects quickly, to protect leaseholders from physical and financial risk, and to hold those responsible to account (at [84]).

The two separate exercises

93. **Edgewater** establishes that an RCO application involves two separate exercises ([176]):

- (a) First, the gateway conditions: the building must be a relevant building; the respondent must be a current landlord, a landlord at the qualifying time, a developer, or a person associated with any of them (s.124(3)); and the costs must be within s.124(2) ([177]). The burden of proving the gateway conditions is on the applicant ([178]).
 - (b) Second, the just and equitable question. This is a distinct determination: it is not sufficient for the applicant simply to satisfy the gateway conditions; “there has to be something more” ([179]). The applicant bears an initial burden of stating its case on why the order is just and equitable, but that burden must not be overstated: once the applicant has stated its case, each side proves the matters on which it relies, and there is no general evidential burden on the applicant ([181] to [182]).
94. The President declined, deliberately, to catalogue the factors relevant to the just and equitable question: the discretion is “very wide”, the factors “are not... capable of exhaustive classification”, and any attempt at a judicial list would risk rewriting s.124(1) ([180]). Decisions are “very fact-sensitive” ([216]). Practitioners should resist the temptation to treat any single decision as a checklist.

The content of the just and equitable discretion

95. The cases nevertheless establish a set of firm propositions:
- (a) There is no requirement of participation or profit. Participation in the development, or receipt of remuneration from it, is not a minimum requirement or touchstone; these are matters that may be taken into account, no more (**Edgewater** at [219] to [220]). Nor is there any requirement of a “clear or rational nexus” beyond what s.124(1) itself requires ([216]). The purpose of the association gateway is to ensure that a wealthy parent or other associated entity cannot evade responsibility “by hiding behind the separate personality of the development company” ([217], [220]), and in **Triathlon** itself Get Living had neither built the development nor taken its profits.
 - (b) Association is relevant but not sufficient. There is no automatic presumption that an associate must pay unless it shows good reason otherwise (**Edgewater** at [199], approving the FTT at its paragraph 357). What justified the orders in **Edgewater** were additional “linking factors” beyond bare common

directorship: findings that the respondents formed a wider corporate structure with shared beneficial owners, blurred finances and unreliable records, through which the controlling individuals conducted their business ([200] to [203]). Where such factors exist they “call for an explanation and/or evidence of countervailing factors”.

- (c) Respondents who say nothing do so at their peril. The tribunal was entitled to draw adverse inferences from the unsatisfactory state of the respondents’ evidence (**Edgewater** at [224]), and the President’s postscript makes the practice point express: associates facing a joint and several claim should “explain clearly to the FTT the nature and extent of their relationship”; failure to do so was plainly a factor in the outcome ([314]). **Hallings Wharf** is the same lesson in miniature: the associate pleaded that its position was materially distinguishable from the developer’s but called no evidence, and the tribunal held it was “unable to conclude” that the pleaded matters displaced the applicant’s case ([161] to [162]).
- (d) The Act creates a hierarchy, and public money sits outside it. Section 124 and the Leaseholder Protections Regulations create “a hierarchy or cascade of liability” with the developer at the top (**Triathlon** at [61], approving the FTT); the Building Safety Fund “does not take its place in the hierarchy... it stands outside the Act”, and is properly characterised as a last resort ([87] to [88]). It is therefore no answer to an RCO that the works are already funded by the taxpayer: if the statutory mechanisms can be operated, they should be.
- (e) Motive and the identity of the applicant are irrelevant. Applicants with legal rights are entitled to pursue them without explaining why; what matters is a legitimate interest, and a leaseholder-landlord plainly has one (**Triathlon** at [78]). The substantive question, whether the respondent should pay, does not change according to who applies ([80] to [81]).
- (f) There is no requirement to exhaust other remedies. Section 124 is “a new and independent remedy, which is essentially non-fault based”; Parliament did not intend applicants to become embroiled in, or await the outcome of, complex multi-party construction litigation before seeking an RCO (**Triathlon** at [95] to

[97], approving the FTT at its paragraphs 261 to 262). Parties cannot contract out of the regime.

Joint and several liability

96. The first argument in **Edgewater** was that s.124(2), by referring to “a specified body corporate or partnership” in the singular, precluded a single RCO imposing joint and several liability on multiple respondents. The President rejected it in a passage of sustained statutory analysis ([124] to [167]):

- (a) The singular reference is read as including the plural under s.6(c) of the Interpretation Act 1978 unless a contrary intention appears; none does ([124], [165]). The contrast with the express joint and several language of s.130 was not persuasive: s.130 is a different jurisdiction working by transmission of an existing liability ([127]).
- (b) The purposive argument was decisive. If the FTT could make only separately apportioned orders, an applicant facing insolvent respondents “will be left with something resembling a colander, in terms of their ability to recover the total sum ordered to be paid” ([136]). That result would be “completely at odds” with the remediation purpose of Part 5 ([137]); a construction denying the power “seems to me to be in direct conflict with the scheme and purpose of Section 124” ([149]). The very case for bringing associates in at all is often the risk that the developer cannot pay; it would be perverse if that same risk defeated effective recovery ([146]).
- (c) The absence of any statutory contribution machinery between co-respondents does not tell against the power. Section 124 is a new statutory liability; the Civil Liability (Contribution) Act 1978 does not apply, and Parliament simply did not address inter-respondent contribution ([156] to [158]). In practice, joint and several orders will be made where the linkage between respondents makes it reasonable to leave them to sort out contributions themselves, and respondents can always argue at the just and equitable stage that joint liability would work unfairness between them ([159]).

97. The power is confirmed; its exercise is not automatic. The President’s second postscript point deserves to be quoted in every skeleton for an RCO respondent: where there are multiple respondents, “joint and several liability is not the starting point in every case”.

The FTT must consider carefully, respondent by respondent, what the just and equitable outcome is: it may be joint and several liability, an apportioned liability, or no liability at all (**Edgewater** at [316]). In **Edgewater** itself some of the 96 original respondents escaped entirely, and the “all or nothing” outcome for the 76 specified respondents rested on specific findings about a blurred and fluid corporate network ([208] to [210]). On different evidence, apportionment will be the right answer, and I expect to see more argued apportionment cases now that the jurisdictional question is closed.

What is recoverable: section 124(2) and (2A)

98. The costs recoverable are those “incurred or to be incurred in remedying, or otherwise in connection with, relevant defects”. LFRA 2024 inserted s.124(2A) with effect from 31 October 2024, giving a non-exhaustive list: (a) costs of taking relevant steps (which brings in interim measures via s.120(4A)); (b) costs of obtaining an expert report relating to the building; and (c) temporary accommodation costs in connection with a decant. The words “among others” matter: the list illustrates, it does not confine (**Empire Square** at (178); **Hallings Wharf** at [135]). The decided cases now give a reasonably full picture of the categories:

- (a) Works costs, including making good and consequential items. **Hallings Wharf** allowed the fire stopping of service penetrations as a natural incident of the remedial works ([99] to [103]), a London Underground access invoice which on the balance of probabilities would not have been incurred but for the works ([104] to [106]), investigation invoices incurred “in connection with” the defects they identified ([107] to [108]), and access hatches installed as good practice in the course of the works ([109] to [113]).
- (b) Interim measures. Waking watch and temporary alarm costs are recoverable: **Empire Square** ordered payment of the waking watch costs “in short order” ((229)), and **Hallings Wharf** allowed the temporary detection system that stood down the waking watch ([114] to [117]). Since 31 October 2024 these sit comfortably within s.124(2A)(a) as relevant steps.
- (c) Expert reports: expressly within s.124(2A)(b), with “expert report” defined by reference to s.123(9).
- (d) Temporary accommodation. **One The Brayford** is the first decision on s.124(2A)(c). The FTT held: (i) “decant” bears its ordinary meaning; a

prohibition notice rendering the building unusable for sleeping, followed by residents leaving, was a decant even though the notice was not served on or enforced against individual residents and some remained ([27] to [31]); (ii) the prohibition notice was prima facie evidence of an imminent threat to life or of personal injury for gateway purposes, though the existence of the threat remained to be proved at final hearing ([43] to [45]); (iii) the s.124(5) definition of “temporary accommodation costs” has two limbs: the direct costs of the accommodation, and other costs resulting from the decant of the ejusdem generis kind listed (removal, storage, reasonable travel), which are “outward facing costs” of the displaced occupiers ([54] to [56]); (iv) the applicant council’s staff overtime and the legal costs of procuring accommodation agreements fell outside both limbs, as administrative expenditure one step removed from the decant, and could not be rescued by re-characterisation as relevant steps under s.124(2A)(a), which is directed to physical and operational measures in respect of the building ([58] to [68]); and (v) the fact that the council acted under statutory homelessness and civil contingencies duties was no bar to recovery: the connection with the decant is not displaced because the authority was legally obliged to respond, and Parliament “clearly intended to add a string to the bow of local authorities” ([83] to [90]).

- (e) VAT. **Hallings Wharf** confirmed that the VAT element of remediation costs (£624,557.83 in that case) is recoverable. The double recovery argument failed: the Building Safety Fund had paid out sums including VAT, the contractors had accounted to HMRC, and the net effect to government was neutral, so an RCO including VAT produces recovery, not double recovery; the position might differ if the paying entity were VAT-registered, but there was no evidence of that ([118] to [123]).

Litigation costs: the divergence in the cases.

99. Whether the legal costs of the RCO (and any linked RO) proceedings themselves can be included in an RCO is an open question with the first-instance authorities now squarely opposed.
 - (a) In **Empire Square** the FTT (Judge Carr) held that it had jurisdiction. “Costs” in s.124(2) is unlimited; “in connection with” is very wide; the s.124(2A) list is

non-exhaustive ((176) to (178)). Enforcement of the parties' obligations through the tribunal could itself be seen as a relevant step ((180)); paragraph 9 of Schedule 8 shows the Act associating legal costs with remediation ((184) to (186)); and it would be absurd if costs that leaseholders are protected from paying under Schedule 8 could not be passed to the developer at the top of the waterfall ((187) to (192)). On the facts, "it is only this litigation that has driven any progress... we would not be here but for those defects" ((195)), and an RCO for legal costs was made, with assessment in the county court if not agreed ((196), (231)).

- (b) In **Hallings Wharf** a differently constituted FTT (Judge Sheftel presiding) doubted the jurisdiction and refused the Secretary of State's claim for costs exceeding £1 million. The tribunal found the proposed machinery, an order under s.124(4)(aa) for "reasonable costs" to be assessed by a court with no knowledge of the proceedings, "wholly impractical" ([132]). On construction, it was "striking" that Parliament, having given illustrative examples in s.124(2A), made no reference to litigation costs when conferring the jurisdiction on a body that is for the most part a no-costs jurisdiction under rule 13; "it seems unlikely that properly construed [the words 'in connection with'] could extend to litigation costs of the type now sought" ([146]). Even applying **Empire Square**'s own logic, the case was distinguishable: the works were complete before the application was issued, so the litigation could not be said to have achieved the remediation ([146]). In the further alternative, it would not have been just and equitable to award costs given the applicant's very late amendment, seven months after **Empire Square**, in litigation both sides had conducted on the basis that costs were not in issue ([147] to [149]).

100. The point will have to be resolved by the Upper Tribunal. In my view **Hallings Wharf** is to be preferred on the general question, and the Upper Tribunal is likely to hold that the ordinary legal costs of RCO proceedings are not recoverable as part of the order. There are four reasons for that:

- (a) The FTT is a no-costs jurisdiction by design, and rule 13 already states the exceptions; a construction of s.124(2) that smuggles full costs-shifting into every RCO application would transform the jurisdiction in a way Parliament does not appear to have intended;

- (b) When Parliament revisited s.124 in 2024 it specified interim measures, expert reports and temporary accommodation, and said nothing about litigation costs, an omission that is telling precisely because expert reports, the closest analogue, were dealt with expressly;
- (c) **One The Brayford** supports that analysis: legal costs of procuring the statutory outcome were held to be “one step removed” and not recoverable, and I can see no principled distinction between the legal costs of procuring accommodation and the legal costs of procuring the order itself; and
- (d) The **Empire Square** assessment machinery is, as the **Hallings Wharf** tribunal said, unworkable.

That said, I do not expect **Empire Square** to be wholly repudiated. Where tribunal proceedings were themselves a necessary step in achieving remediation of an unremediated building, the costs of those proceedings have a respectable claim to be costs incurred “in connection with” relevant defects, and the Upper Tribunal may preserve a narrow category on those facts while rejecting recovery where, as in **Hallings Wharf**, the works were done and the litigation merely reallocates the bill. Until the point is settled, applicants should plead litigation costs from the outset if they intend to seek them: the late amendment in **Hallings Wharf** was fatal on discretion even before jurisdiction was reached, and that part of the decision is unimpeachable.

The standard of remediation: range of reasonable responses

101. How good does the remedial scheme have to be, and how cheap? The emerging answer is a “range of reasonable responses” standard, borrowed in substance from landlord and tenant repair authority:

- (a) **Hallings Wharf** states it directly: provided the remediation carried out was within the band of reasonable responses, the fact that it could have been done more cheaply is not of itself a basis for reducing the RCO ([55]). Where an obligation to pay is framed by the cost of works, the choice between reasonable alternatives belongs to the party doing or commissioning the works (**Plough Investments v Manchester CC**; **Fluor Daniel v Shortlands**, applied at [56] to [58]). A £1.4 million cheaper alternative scheme therefore did not reduce the

order, particularly where there were real doubts about the alternative’s viability under regulation 7(2) of the Building Regulations ([59], [95] to [96]). The tribunal also refused to penalise the decision not to pause a well-advanced project for a PAS 9980 reassessment when CAN was withdrawn: there was no obligation to start again, and a pause meant delay ([51] to [53]), though a project in its infancy might be judged differently ([53]).

- (b) **Edgewater** ground 4 is to the same effect at appellate level. The experts had agreed that full replacement of the Type 1 wall was, “from a purely technical perspective”, not proportionate; the FTT nonetheless included the full cost, because the landlord had acted reasonably in relying on its consultant’s advice under significant time pressure, with residents living in unsafe conditions and the Secretary of State pressing for works without further delay ([258] to [259]). The President dismissed the appeal: the experts themselves had agreed that wider considerations (building control requests, information gaps, stakeholder pressure for cautious or rapid solutions) were for the tribunal ([300] to [301]), and the findings were explained and grounded in the evidence ([310]). Technical disproportion, without more, does not make costs unreasonable.
- (c) Betterment is not excluded in principle but must be proved with rigour. **Hallings Wharf** accepted that betterment can be relevant to the just and equitable test, but made no deduction where the evidence established neither the extent of the betterment nor a defensible valuation methodology ([171] to [175]).

- 102. The practical consequence favours doers over quibblers. A respondent who wishes to attack the scheme must do more than produce a cheaper design after the event: it must show that the scheme actually adopted fell outside the range of reasonable responses, judged at the time and on the professional advice then available. That will rarely succeed where the works were done on competent advice, and never merely because hindsight offers savings.

Retrospectivity: awaiting the Supreme Court

- 103. **Triathlon** decided that s.124 permits an RCO in respect of costs incurred before the Act’s commencement on 28 June 2022. Nugee LJ accepted that the statutory words alone “do not take one very far” ([150]), but held that the purposive case was overwhelming: Schedule 8 protects only against future service charge demands, so

leaseholders and management companies who had already paid would otherwise be left without remedy, an incoherence Parliament cannot have intended ([151] to [154]); and the Supreme Court's analysis in URS, describing all the main Part 5 changes as retrospective, was a carefully considered statement to be followed unless clearly wrong ([145] to [149]). The just and equitable filter is itself the safety valve against any unfairness in stale cases ([153]).

104. That holding is now before the Supreme Court (UKSC/2025/0156). Permission was granted on 6 November 2025 on the retrospectivity ground only; permission on the just and equitable grounds was refused, so the Court of Appeal's analysis of the hierarchy, motive, and exhaustion points summarised above stands whatever happens. The appeal is listed for hearing on 19 November 2026, the day after, and before the same five-justice panel as, the Schedule 8 appeal in *Adriatic Land 5* (18 November 2026). My expectation, for what it is worth, is that the Court of Appeal will be affirmed: the reasoning in *URS* at [86] to [87], adopted by both judgments below, leaves little room for a different answer, and Newey LJ, the author of the leading judgment favouring the presumption against retrospectivity in *Adriatic*, was himself persuaded in *Triathlon*. Prudent practice in the meantime is unchanged: costs schedules should distinguish pre- and post-28 June 2022 expenditure, and tribunals may be asked to state the split in their orders so that no re-hearing is needed whichever way the Supreme Court goes.

Insolvency

105. The RCO regime is built for insolvency. Hallings Wharf is the standard fact pattern: the developer, EDR Builders Ltd, had been in liquidation since 2018 and played no part; the claim against it was stayed; and the order for £3,682,997.78 was made against the associated company, Hollybrook (UK) Ltd, connected through common family ownership and control ([6] to [7], [160] to [162], [177]). Three points follow: (a) the insolvency of the primary target is a reason for, not against, pursuing associates, and for joint and several orders where there are several (Edgewater at [146]); (b) no respondent can pray in aid its own insolvency risk to escape an order (Edgewater at [146]); and (c) the applicant need not first prove in the liquidation, sue contractors, or exhaust any other remedy (Triathlon at [95] to [97]). The repeal of s.125 (see below) confirms that s.124,

together with the building liability order jurisdiction, is now the whole of the statutory answer to the insolvent landlord or developer.

PRACTICAL NOTE

16. When preparing an RCO application: (a) map the corporate group early, using Companies House filings to establish association under s.121 and, more importantly, the additional linking factors that **Edgewater** shows will carry the just and equitable question; the author has used AI agents for this exercise with success; (b) plead the just and equitable case properly: gateway facts alone will not do (**Edgewater** at [179]); (c) plead every head of cost from the outset, including any claim to litigation costs, and split the schedule at 28 June 2022; (d) for respondents: engage with the evidence. Silence about group relationships invites adverse inferences (**Edgewater** at [224], [314]), and unevicenced pleaded distinctions achieve nothing (**Hallings Wharf** at [162]). The respondent's best points are now [316] apportionment arguments and range-of-reasonable-responses challenges supported by contemporaneous, not hindsight, evidence.
17. A s.124 application about a building will often run in parallel with High Court proceedings concerning the same building. There has until recently been some debate about how those parallel proceedings might or should be managed. That debate has now been largely resolved by **Wallace Estates Ltd v Durkan Estates Ltd** [2026] EWHC 2133 (TCC). In **Wallace**, Constable J, sitting with Judge Siobhan McGrath, ordered that the relevant FTT remediation contribution order application and the TCC claim concerning termination of the remediation agreement for the same building should be jointly managed and tried together: the findings of fact at the joint trial bind in both sets of proceedings; documents, witness statements and expert reports may be used across both; and pre-trial management may be conducted by a single judge able to sit in both jurisdictions. The approach "plainly has the effect of avoiding inconsistent findings, and duplicative costs": [22]. Whether the FTT could itself have determined the termination question was expressly left open: [23].
18. This is very likely to become the standard direction wherever an RCO application and a High Court claim share an overlapping factual background.

CASE DIGEST

Case Name: Edgewater (Stevenage) Ltd v Grey GR Limited Partnership

Case Reference: [2026] UKUT 18 (LC)

Judge: Mr Justice Edwin Johnson, Chamber President

Date: 27 January 2026

Key Issues: Joint and several RCOs; structure of the s.124 enquiry; meaning of “building safety risk”; reasonableness of technically disproportionate remedial costs.

Held:

1. The FTT has power under s.124 to make a remediation contribution order against multiple respondents on a joint and several basis: the singular “a specified body corporate or partnership” is read as including the plural under s.6(c) of the Interpretation Act 1978, no contrary intention appearing [124], [165], [167]; a contrary construction would leave applicants facing impecunious respondents “with something resembling a colander” and would conflict with the scheme and purpose of Part 5 [136], [149].
2. An RCO application involves two separate exercises: proof of the gateway conditions, on which the burden lies on the applicant, and the distinct just and equitable determination, for which gateway satisfaction alone is not enough [176] to [179]; the applicant bears only an initial burden of stating its just and equitable case [181] to [182].
3. The just and equitable discretion is very wide and its factors are not capable of exhaustive classification; the Chamber President declined to give general guidance [180].
4. There is no requirement that a respondent participated in the development or received remuneration from it, and no requirement of a “clear or rational nexus”; the purpose of the association gateway is to prevent wealthy associated entities hiding behind the developer’s separate personality [216] to [220].
5. Association alone is not sufficient: the FTT properly relied on additional linking factors showing a wider corporate structure with shared beneficial owners and blurred finances, calling for explanation [199] to [203]; adverse inferences from the respondents’ unsatisfactory evidence were legitimate [224].

6. “A risk” in the s.120(5) definition of building safety risk means any risk satisfying the closely defined statutory conditions; neither an “intolerable” nor an “above low” threshold is to be implied [241], [253] to [255].
7. Inclusion of the full cost of replacing the Type 1 wall was upheld although the experts agreed the works were technically disproportionate: the FTT was entitled to find it reasonable to proceed on consultant advice given time pressure and residents’ unsafe conditions, and its findings were grounded in the evidence [259], [300] to [310].
8. Postscript: associates facing joint and several claims should explain their relationships clearly to the FTT [314]; joint and several liability “is not the starting point in every case”, and the FTT must consider, respondent by respondent, whether the just and equitable outcome is joint and several liability, apportionment, or no liability at all [316].

Link: <https://caselaw.nationalarchives.gov.uk/ukut/lc/2026/18>

Case Name: **Triathlon Homes LLP v Stratford Village Development Partnership**

Case Reference: [2025] EWCA Civ 846; on appeal to the Supreme Court, UKSC/2025/0156 (permission granted 6 November 2025 on retrospectivity only; listed for hearing 19 November 2026)

Judge: Nugee LJ (Holgate and Newey LJJ concurring)

Date: 8 July 2025

Key Issues: Retrospectivity of s.124; the hierarchy of liability and the Building Safety Fund; relevance of the applicant’s motive and identity; whether other remedies must be exhausted.

Held:

1. Section 124 permits an RCO in respect of costs incurred before 28 June 2022: the FTT’s purposive reasoning was persuasive and received significant support from the Supreme Court’s analysis in **URS**, which described all the main Part 5 changes as retrospective [145] to [150]; leaseholders and management companies who had already paid would otherwise be left without remedy, which Parliament cannot have intended [151] to [154]; the just and equitable requirement is the safety valve against unfairness in stale cases [153].

2. Section 124, with the Leaseholder Protections Regulations, creates a hierarchy or cascade of liability with the developer at the top; the policy of the Act is to place primary responsibility on the developer [59] to [61].
3. Public funding through the Building Safety Fund stands outside the Act and is a matter of last resort; it is no reason to refuse an RCO that the works are already funded by the Fund [87] to [88].
4. An applicant's motive is irrelevant where it has a legitimate interest; Triathlon's standing as leaseholder-landlord was undoubted, and the substantive just and equitable question does not depend on who the applicant is [78] to [81].
5. Section 124 is a new and independent, essentially non-fault-based remedy; an applicant need not pursue or await the outcome of other claims (contractual or against contractors), and parties cannot contract out of the regime [95] to [97].
6. The Supreme Court will consider retrospectivity only; permission to appeal the just and equitable grounds was refused, so the propositions at 2 to 5 above stand irrespective of the outcome.

Link: <https://caselaw.nationalarchives.gov.uk/ewca/civ/2025/846>

Case Name: Secretary of State for Housing, Communities and Local Government v EDR Builders Ltd and Hollybrook (UK) Ltd (Hallings Wharf Studios)

Case Reference: LON/00BB/BSB/2024/0011, First-tier Tribunal (Property Chamber)

Judge: Judge Sheftel, Judge Powell, Ms H C Bowers

Date: 21 May 2026

Key Issues: RCO against an associate of a developer in liquidation; range of reasonable responses; quantum items and VAT; recoverability of litigation costs.

Held:

1. An RCO of £3,682,997.78 was made against the associate (Hollybrook (UK) Ltd) of the developer, which had been in liquidation since 2018 and against which the claim was stayed [7], [177]; the associate's unevidenced pleaded distinctions from the developer could not displace the just and equitable case founded on close family ownership and control [160] to [162].

2. Provided the remediation carried out was within the band of reasonable responses, the fact that it could have been done more cheaply is not of itself a basis for reducing an RCO; the choice between reasonable alternatives belongs to the party commissioning the works (**Plough Investments; Fluor Daniel** applied) [55] to [58].
3. It was not unreasonable to complete a well-advanced CAN-based project without pausing for a PAS 9980 reassessment, though a project at an earlier stage might be judged differently [51] to [53]; the £1.4 million cheaper alternative scheme was in any event of doubtful viability under regulation 7(2) of the Building Regulations [59], [95] to [96].
4. Fire stopping of service penetrations, a London Underground access invoice, investigation invoices, access hatches and temporary fire detection costs were all recoverable as incurred in or in connection with remedying relevant defects [99] to [117].
5. The VAT element (£624,557.83) was recoverable: government funding of costs including VAT, with contractors accounting to HMRC, is fiscally neutral, so an RCO including VAT is recovery, not double recovery [118] to [123].
6. The tribunal doubted that s.124(2) can be construed to include litigation costs: the omission of litigation costs from the illustrative s.124(2A) list, in a jurisdiction that is for the most part no-costs under rule 13, is striking, and the **Empire Square** machinery of county court assessment is wholly impractical [132], [139] to [146]; **Empire Square** was in any event distinguishable because the works were complete before the application was issued [146].
7. In the further alternative, it would not have been just and equitable to award litigation costs given the applicant's amendment to claim them only on 5 February 2026, the parties having conducted the litigation on the basis that there was no adverse costs risk [147] to [149].
8. Betterment can in principle be relevant to the just and equitable test, but no deduction was made absent sufficient evidence of its extent or value [175].

Link: https://assets.publishing.service.gov.uk/media/6a19922eb95db968c8f3bc56/Hallings_Wharf_Studios_1_Channelsea_Road_E15_2SX.pdf

Case Name: **City of Lincoln Council v Plantview Ltd (One The Brayford)**

Case Reference: MAN/32UD/BSB/2025/0002, First-tier Tribunal (Property Chamber)
(preliminary issues)

Judge: Judge S Westby, Judge J Hadley

Date: 15 June 2026

Key Issues: Temporary accommodation costs under s.124(2A)(c) and s.124(5); meaning of “decant”; whether a local authority’s statutory duties bar recovery.

Held:

1. “Decant” is undefined and bears its ordinary meaning; the MHCLG regulators’ guidance is non-binding [27]. A prohibition notice stating the premises “must not be used for sleeping or resting”, followed by residents leaving, was a decant in substance, notwithstanding that the notice was not served on or enforced against individual residents and some remained [28] to [31].
2. The prohibition notice was prima facie evidence of an imminent threat to life or of personal injury arising from a relevant defect, sufficient for the statutory gateway at the preliminary stage; whether the threat in fact existed remains for the final hearing [43] to [45].
3. The s.124(5) definition of “temporary accommodation costs” has two limbs: the direct costs of the accommodation, and other costs resulting from the decant of the kind listed (removal, storage, reasonable travel), which are outward-facing costs referable to the displaced occupiers [54] to [56].
4. The council’s staff overtime and the legal costs of drafting the accommodation agreement fell outside both limbs: they are administrative or professional costs one step removed from the decant, and to allow them would introduce indeterminacy Parliament did not sanction [58] to [61]; where Parliament intends recovery of administrative costs it says so (**Leicester City Council v Morjaria** applied by analogy) [60].
5. Such costs cannot be re-characterised as costs of “relevant steps” under s.124(2A)(a), which is directed to physical or operational measures in respect of the building and its risks [63] to [68].
6. The fact that the costs were incurred pursuant to the council’s duties under the Civil Contingencies Act 2004 and the Housing Act 1996 is no bar: “in connection with a decant” is deliberately broad, does not require sole or proximate causation, and

Parliament intended to widen the class from whom a local authority can recover [83] to [90].

Link:

https://assets.publishing.service.gov.uk/media/6a310a26c39255c595b50907/2026.06.15_Preliminary_Issues_Decision_final_.pdf

Case Name: **Zampetti v Fairhold Athena Ltd; Fairhold Athena Ltd v The Berkeley Group Holdings plc (Empire Square)**

Case Reference: LON/00BE/HYI/2023/0013 and LON/00BE/BSB/2024/0602, First-tier Tribunal (Property Chamber)

Judge: Judge Nikki Carr, Mrs Helen Bowers MRICS, Mr Andrew Gee RIBA

Date: Decision and orders dated 5 June 2025 (hearing 23 to 25 and 28 April 2025); permission to appeal refused

Key Issues: Combined RO and RCO proceedings; suspended orders; recoverability of litigation costs under s.124(2); the Developer Pledge “tolerable risk” standard.

Held:

1. RO and RCO applications concerning the same building were heard together: the leaseholders sought an RO against the freeholder, which in turn sought an RCO against the developer, Berkeley.
2. The FTT has jurisdiction to include legal costs in an RCO: “costs” in s.124(2) is unlimited, “in connection with” is very wide, and the s.124(2A) list is expressly non-exhaustive (176) to (178); enforcement of the parties’ Act obligations through the tribunal can be seen as relevant steps (180); paragraph 9 of Schedule 8 shows the Act associating legal costs with remediation, and a contrary reading would produce absurdity (184) to (192).
3. On the facts “it is only this litigation that has driven any progress”; the proceedings were brought about by the poor construction, and an RCO for legal costs was made, with detailed assessment in the county court if not agreed (195) to (196), (231).
4. The self-remediation terms standard of “tolerable risk”, a term without definition or supporting standard, is different from and lower than the Act’s requirement that works be carried out so that the relevant defects no longer exist (228).

5. Both the RO and the RCO (save the crystallised waking watch and report costs) were suspended: a novel course within the breadth of the ss.123 and 124 discretions, agreed by all parties to be permissible, giving the developer a final opportunity to fund and carry out the works, with the orders biting immediately on non-compliance (233) to (239).
6. A variation mechanism was built in, recognising in particular that Building Safety Regulator delays at Gateway 2 are outside the parties' control; matters within the parties' control that are allowed to slip will be viewed unfavourably (240) to (242).

Link:

https://assets.publishing.service.gov.uk/media/6841b4f141cb2525c1211d02/250506_Empire_Square_Decision_FINAL.pdf

Case Name: **Ladaya v Hightown Housing Association Ltd (Somerville Court)**

Case Reference: CAM/26UG/BSA/2025/0003, First-tier Tribunal (Property Chamber)

Judge: Judge Wayte, Judge MacQueen, Tribunal Member Williams

Date: 9 February 2026

Key Issues: RO against a housing association landlord with the developer joined; application of **Edgewater** on building safety risk; parallel RCO application.

Held:

1. A remediation order was made against the housing association freeholder as relevant landlord in respect of a timber-framed block with ACM and timber cladding; the developer (Nicholas King Homes) was joined to assist on scope and programme, but no RO could be made against it as it was not a relevant landlord [26], [107].
2. Applying the Upper Tribunal's guidance in the Vista Tower appeal (**Edgewater**), any risk suffices, but it must be a risk to the safety of people arising from fire spread or collapse: brittle tiles and loose trim posed no such risk and were not relevant defects, while the newly discovered window reveal issue was, even though the risk was low [105] to [106].
3. The order runs to 4 October 2027 on the basis of the developer's programme and its agreement to carry out the works at its own risk, with monthly progress reports to

leaseholders and a post-works FRAEW and EWS1 (order, paras 1 to 3; [107], [110] to [111]).

4. Hightown's separate RCO application against the developer under s.124 was issued on 14 November 2025 and adjourned to a later date [27].
5. A section 20C order was made so that none of the costs of the proceedings could be passed to the participating leaseholders by service charge, the landlord having agreed more widely not to recover remediation-connected costs from any leaseholder [115].

Link: https://assets.publishing.service.gov.uk/media/69d7858847eb6fd98375fa05/Somerville_Court.pdf

Case Name: Wallace Estates Ltd v Durkan Estates Ltd

Case Reference: [2026] EWHC 2133 (TCC)

Judge: Constable J, sitting with Judge Siobhan McGrath

Date: 10 August 2026

Key Issues: Joint TCC/FTT management and trial of parallel s.124 and contract proceedings

Held:

1. The FTT remediation contribution order application and the TCC claim about termination of the remediation agreement for the same building are to be jointly managed and tried together.
2. Findings of fact at the joint trial are binding in both sets of proceedings and against all three parties; cross-use of documents, witness statements and expert reports permitted.
3. The joint approach avoids inconsistent findings and duplicative costs in disclosure, evidence and trial [22].
4. Whether the FTT has jurisdiction to decide the lawfulness of the termination was left open, the point not being in dispute [23].
5. Trial listed for 31 January 2028 (12 sitting days), with an earlier window of 11 October 2027 if court capacity allows.

Link: <https://caselaw.nationalarchives.gov.uk/ewhc/tcc/2026/2133>

SECTION 125 – MEETING REMEDIATION COSTS OF INSOLVENT LANDLORD

STATUTORY TEXT

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S. 125 omitted (24.7.2024) by virtue of Leasehold and Freehold Reform Act 2024 (c. 22), ss. 118(1), 124(2)(c)

EXPLANATORY NOTES

Section 125 – Meeting remediation costs of insolvent landlords

Effect

1021. This section makes provision in connection with the insolvency process as it applies to landlords under leases of relevant buildings.

1022. Subsection (1) sets out the circumstances under which section 125 applies. Section 125 applies in relation to the winding up of a company which is also a landlord under a lease of a relevant building (to which see section 117) or any part of it, for example the freeholder or headlessee of the building. There are a number of different ways in which a company can be “wound up” including compulsory liquidation and company voluntary arrangements.

1023. Subsections (1)(a) and (1)(b) set out that section 125 applies if, in the winding up of the company that is a landlord under a lease of a relevant building, there are relevant defects (to which see section 120) relating to the building, and the company is under an obligation to remedy those defects or is liable to pay costs in relation to remedying the defects.

1024. Subsection (2) sets out that section 154 applies when the insolvency practitioner in relation to the winding up of the company makes an application to the court. “Insolvency practitioner” is defined in subsection (4) as having the same meaning as in section 388 of the Insolvency Act 1986. “The court” means the court with the jurisdiction to wind up the company.

1025. On the application of the insolvency practitioner, the court can make an order against a body corporate or partnership (which has the meaning given in section 121) associated with the company being wound up.

1026. The order made by the court can either require the associated company to make contributions to the assets of the company being wound up, or to make payments for the purpose of meeting the costs associated with remedying relevant defects. In both cases, the court must consider that it is just and equitable to make the order.

Background

1027. The explanatory note to section 122 discusses how Schedule 8 protects leaseholders from costs associated with remediating historical building safety defects, and imposes

liability on landlords under leases of relevant buildings, in connection with costs associated with relevant defects that are not recoverable from leaseholders.

1028. It is important that, where costs cannot be recovered from leaseholders, funding is available to ensure the timely remediation of defects. Section 125 is intended to secure funding for remediation should a company with an obligation to remediate or pay for the remediation of relevant defects go through the insolvency process.

1029. Insolvency is the process by which a company stops doing business. The insolvency process in the United Kingdom is governed by the Insolvency Act 1986. There are a number of different ways a company can be “wound up” which are covered by the Act including compulsory liquidation, where a company cannot pay its debts; and voluntary liquidation, where a company can pay its debts, but its directors choose to close it down. Section 125 covers all these processes.

1030. When a company is wound up, an insolvency practitioner will be appointed to manage the insolvency process. There are different types of insolvency practitioner depending on the type of insolvency process the company is going through – these are set out in section 388 of the Insolvency Act and include liquidators and administrators.

1031. The explanatory notes to sections 121 and 124 discuss how it is common for freehold interests in multi-occupied residential buildings to be held as thinly capitalised special purpose vehicles which are part of much bigger group structures, which are often well-capitalised. Section 121 defines “associated company” for the purposes of this section.

1032. Section 125 mitigates against the use of the insolvency process for freeholders and landlords to avoid responsibilities to pay for remediation of defects for which they are liable under Schedule 8 of this Act. In the process of winding up a company, it allows the insolvency practitioner to apply to the court to make an order requiring companies associated with the landlord to make contributions in connection with the remediation of relevant defects.

1033. The order can be made in one of two ways. First, it can require an associated company to contribute directly to the assets of the company being wound up. However, if the company has debts not related to the remediation of relevant defects, the contribution would in these circumstances preferentially be directed towards meeting the company’s debts, and this would not secure the remediation of the building. Therefore, the second way in which the order can be made allows the court to order that the associated company must make specified payments directly in connection with the remediation of those defects. This will ensure that the payments made by the associated company pay towards remediating the building.

1034. Similar to the provisions at section 124, the court can make an order under section 125 if it considers that it is just and equitable to do so. This is intended to ensure fairness in proceedings while giving the court a wide decision-making remit which it is expected will allow it to take all appropriate factors into account when determining whether an order should be made, including the wider public interest in securing the safety of buildings, as well as the rights and interests of the individual against whom an order might be made.

Example A freeholder for a relevant building has a liability to pay for the remediation of certain defects in a relevant building. The company which owns the freehold goes insolvent. An insolvency practitioner is appointed to oversee the insolvency process. Because the building has a number of defects which are yet to be remediated, the insolvency practitioner applies to the court for an order against the parent company of the freeholder. The court considers that it would be just and equitable to make the order against the parent company and orders the company to make payments to remediate the defects for which the freeholder is responsible.

COMMENCEMENT AND AMENDMENTS

In force 28 June 2022 (s. 170(3)(a)). Repealed by the Leasehold and Freehold Reform Act 2024, s. 118(1), with effect from 24 July 2024.

COMMENTARY

106. Section 125, as enacted, addressed the insolvency of landlord companies. Where a company that was a landlord under a lease of a relevant building was being wound up, and there were relevant defects which the company was obliged to remedy or pay for, the insolvency practitioner could apply to the court with winding-up jurisdiction for an order against an associated body corporate or partnership, requiring it either to contribute to the assets of the company in liquidation or to make payments towards the cost of remedying the relevant defects, in each case where the court considered it just and equitable (Explanatory Notes, paras 1021 to 1030). It was, in short, a court-based, insolvency-specific analogue of the s.124 jurisdiction against associates.
107. The section was omitted by LFRA 2024, s.118(1), with effect from 24 July 2024. It was never, so far as I am aware, the subject of any reported application. Its repeal is no loss. The work it was designed to do is done better elsewhere: (a) s.124 reaches associates of an insolvent landlord or developer directly, without the intermediation of an insolvency practitioner, as **Hallings Wharf** (developer in liquidation since 2018; order against the associate) demonstrates; (b) the applicant class under s.124(5) is far wider than the insolvency practitioner to whom s.125 was confined; and (c) building liability orders under s.130 transmit relevant liabilities to associates through the High Court where a money judgment framework is needed. The practical message for insolvency practitioners is that they hold no special statutory remedy: an office-holder of a company with an interest in a relevant building will participate in this regime, if at all, as an ordinary interested person or as a respondent.

SECTION 125A – NOTIFICATIONS BY INSOLVENCY PRACTITIONERS

STATUTORY TEXT

- (1) This section applies if an insolvency practitioner is appointed in relation to a responsible person for a higher-risk building or a relevant building.
- (2) For the purposes of this section, a person is “a responsible person” for a building if —
 - (a) in the case of a higher-risk building, the person is an accountable person for the building (see section 72 for the meaning of “accountable person” for a higher-risk building);
 - (b) in the case of a relevant building that is not a higher-risk building, the person would be an accountable person for the building if section 72 were read as applying to such a building (and as if the reference in that section to a residential unit were a reference to a dwelling).
- (3) The insolvency practitioner must give the information in subsection (6) (“the required information”) to—
 - (a) the local authority for the area in which the building for which the person is a responsible person is situated, or (if applicable) each local authority in whose area a building for which the person is a responsible person is situated, and
 - (b) the fire and rescue authority for the area in which the building for which the person is a responsible person is situated, or (if applicable) each fire and rescue authority in whose area a building for which the person is a responsible person is situated.
- (4) If the insolvency practitioner is appointed in relation to an accountable person for a higher-risk building, the practitioner must also give the required information to the regulator.
- (5) The required information must be provided within the period of 14 days beginning with the day on which the insolvency practitioner is appointed.
- (6) The information is as follows—
 - (a) the name and address of the person in relation to whom the insolvency practitioner is appointed;
 - (b) the address of each higher-risk building or relevant building for which the person is a responsible person (but see subsection (7));
 - (c) an official copy of the register of title and title plan relating to each registered estate or interest the person holds in such a building, if any (but see subsection (7));
 - (d) the nature of the practitioner’s appointment;

- (e) the practitioner’s name, address, telephone number and email address (if any);
 - (f) so much of the information set out in the table in rule 1.6 of the Insolvency (England and Wales) Rules 2016 (S.I. 2016/1024) as is known to the practitioner.
- (7) A local authority or fire and rescue authority need only be notified about buildings, or registered estates or interests in buildings, in their area.
- (8) In this section “insolvency practitioner” means—
- (a) an administrator;
 - (b) an administrative receiver;
 - (c) a receiver appointed by the courts or by a mortgagee;
 - (d) a liquidator;
 - (e) a trustee in bankruptcy.
- (9) In this section—
- “fire and rescue authority” has the meaning given by section 30;
 - “higher-risk building” has the same meaning as in Part 4 (see section 65);
 - “local authority” has the meaning given by section 30;
 - “register of title” means the register kept under section 1 of the Land Registration Act 2002;
 - “the regulator” has the meaning given by section 2;
 - “relevant building” has the meaning given by section 117;
 - “title plan” means a plan based on the Ordnance Survey map and referred to in the register of title.

S. 125A inserted (24.7.2024) by Leasehold and Freehold Reform Act 2024 (c. 22), ss. 119, 124(2)(d)

COMMENCEMENT AND AMENDMENTS

Inserted by the Leasehold and Freehold Reform Act 2024, s. 119. In force 24 July 2024 (s. 124(2)(d)). No amendments to date.

EXPLANATORY NOTES

Section 125A was inserted after Royal Assent and is not covered by the Explanatory Notes to the Building Safety Act 2022. The notes below are paragraphs 702 to 709 of the Explanatory Notes to the Leasehold and Freehold Reform Act 2024, which deal with section 119 of that Act.

Leasehold and Freehold Reform Act 2024, Section 119: Higher-risk and relevant buildings: notifications in connection with insolvency

702. Section 119 is aimed at improving regulator awareness of buildings where the person with repairing obligations relating to a relevant or higher risk building is insolvent.

703. This Section inserts Section 125A before Section 126 of the Building Safety Act 2022. Section 125A imposes a new duty on insolvency practitioners to notify local and fire and rescue authorities and, in relation to higher risk (18m+) buildings, the Building Safety Regulator - if they are appointed in relation to the insolvency of a person with repairing obligations for a relevant or higher risk building (known as a “responsible person”). This allows local and fire and rescue authorities and the Building Safety Regulator, at their discretion, to meet with the insolvency practitioner and/or leaseholders and inspect the building to make sure it is being managed appropriately and that leaseholders are safe.

704. Subsection (2) sets out who the responsible person is for a higher risk building and, separately, a relevant building (which is not a higher risk building).

705. Subsection (3) sets out that the required information must be given to the local authority and fire and rescue authority for the area in which the building for which the person is responsible, is situated. Subsection (5) requires that the required information must be provided within 14 days of the insolvency practitioner’s appointment.

706. Subsection (4) provides that the insolvency practitioner must also inform the Building Safety Regulator where the building for which the person is responsible is a higher-risk building. Subsection (5) also applies to this subsection.

707. Subsection (6) describes the required information that the insolvency practitioner must provide under subsections (3) and (4).

708. Subsection (7) clarifies that a local authority or fire and rescue authority need only be notified about buildings, or registered estates or interests in buildings, in their area.

709. Subsections (8) and (9) set out definitions which apply to this Section.

COMMENTARY

108. Section 125A was inserted by section 119 of the Leasehold and Freehold Reform Act 2024 and came into force on 24 July 2024. It imposes a notification duty on insolvency practitioners.
109. The duty is straightforward. Where an insolvency practitioner is appointed in relation to a responsible person for a higher-risk building or a relevant building, the practitioner must give the required information within 14 days to the local authority and to the fire and rescue authority for the area. Where the appointment is in relation to an accountable person for a higher-risk building, the practitioner must give it to the Regulator as well: subsections (3) to (5).

110. Two definitions do the work:
- (a) A “responsible person” is, for a higher-risk building, an accountable person within section 72. For a relevant building which is not a higher-risk building, it is the person who would be an accountable person if section 72 applied to such a building, reading the reference to a residential unit as a reference to a dwelling: subsection (2). The second limb matters, because it brings in the great majority of buildings within the leaseholder protection regime.
 - (b) An “insolvency practitioner” is defined at subsection (8) and is wider than the expression suggests. It covers an administrator, an administrative receiver, a receiver appointed by the court or by a mortgagee, a liquidator and a trustee in bankruptcy.
111. The required information is listed at subsection (6). It includes the name and address of the insolvent person, the address of each building, an official copy of the register of title and the title plan for each registered estate or interest held in such a building, the nature of the appointment, the practitioner’s contact details, and so much of the rule 1.6 information under the Insolvency (England and Wales) Rules 2016 as the practitioner knows.
112. The purpose is obvious enough. The whole of the building safety regime depends on there being an identifiable person answerable for the building. Insolvency is the point at which that breaks down, and it is also the point at which the building is most likely to be left without anyone attending to it. Section 125A gives the local authority, the fire and rescue authority and (for higher-risk buildings) the Regulator notice at that moment rather than months later.
113. For those advising on remediation, the section has a second use which is not its purpose but is valuable. The information goes to the local authority and the fire and rescue authority. Both are interested persons for the purposes of section 123 and both may apply for a remediation contribution order under section 124. The register of title copy identifies the estate; the rule 1.6 information identifies the appointment and the officeholder. That is the material from which an application is built, and it is now delivered to those authorities as of right.

114. There is, however, no sanction. Section 125A creates no offence and no civil remedy for breach, and the Act attaches no consequence to a failure to notify. A practitioner who does not comply is exposed to professional sanction and to nothing else. I expect that to be the first point taken whenever a local authority complains of late notice, and it is a gap that a future amendment may well close.
115. There is no authority on the section as at September 2026.

SECTION 126 – BUILDING INDUSTRY SCHEMES

STATUTORY TEXT

- (1) The Secretary of State may by regulations—
 - (a) establish a scheme to be maintained by the Secretary of State, or a person designated by the Secretary of State and acting on the Secretary of State’s behalf, and
 - (b) make provision about the scheme.
- (2) A scheme may be established for any purpose connected with—
 - (a) securing the safety of people in or about buildings in relation to risks arising from buildings, or
 - (b) improving the standard of buildings,
including securing that safety, or improving that standard, by securing that persons in the building industry remedy defects in buildings or contribute to costs associated with remedying defects in buildings.
- (3) Regulations that establish a scheme must prescribe—
 - (a) the descriptions of persons in the building industry who may be members of the scheme (“eligible persons”), and
 - (b) the conditions that an eligible person must meet in order to become, and remain, a member of the scheme (“membership conditions”),and may provide for different categories of membership.
- (4) The membership conditions that may be prescribed include in particular conditions relating to—
 - (a) the remedying of defects in buildings with which an eligible person has a connection of a prescribed kind;
 - (b) the making of financial contributions towards meeting costs associated with remedying defects in buildings (including buildings with which an eligible person has no connection);
 - (c) the use (or use in prescribed cases) of construction products (or construction products of a prescribed description) of prescribed persons carrying out activities in relation to construction products;
 - (d) the provision of information to the Secretary of State or any other person;
 - (e) the competence or conduct of any individual connected with an eligible person (for example, any director or senior manager of an eligible person) or any person with whom an eligible person contracts;

- (f) whether persons with whom an eligible person contracts are members of a scheme.
- (5) The descriptions of persons prescribed by virtue of subsection (4)(c) may in particular be prescribed by reference to—
 - (a) being eligible to be members of a scheme and not being members of that scheme;
 - (b) their conduct in relation to remedying defects in buildings or contributing to costs associated with remedying defects in buildings.
- (6) The membership conditions that may be prescribed by virtue of subsection (4)(c) include in particular a condition requiring an eligible person to ensure that no prescribed product of prescribed persons carrying out activities in relation to construction products is used in prescribed cases.
- (7) The Secretary of State must ensure that a list of members of a scheme is kept and published (and may publish a list of persons who are eligible persons but are not members of a scheme).
- (8) Regulations may make provision about the keeping and publication of other lists.

EXPLANATORY NOTES

Section 126: Building industry schemes

Effect

1035. This section gives the Secretary of State a power to establish through affirmative regulations a scheme or schemes for the building industry.

1036. A scheme may be established for any purpose connected with securing the safety of persons in or about buildings in relation to risks arising from buildings, or improving the standard of buildings, including by securing those persons in the building industry remedy defects in buildings or contribute to costs associated with remedying defects in buildings.

1037. Regulations under this section may, among other things, prescribe eligibility for a scheme, the conditions eligible persons must meet to become and remain members of a scheme and may provide for different categories of membership.

1038. The measures set out in section 58, which covers the Building Safety Levy, and sections 128 and 129, which cover the planning and building control prohibitions, may be applied to persons who are eligible for membership of a scheme but who are not members.

Background

1039. This is a new provision.

Proposed use of power

1040. This provision gives Government a wide power to establish a building industry scheme. Such a scheme may distinguish between building industry actors that have committed to act responsibly and make buildings safe, and irresponsible actors who have

failed to do so. A scheme supports the objective of holding industry to account with regard to fixing building safety defects and in respect of other obligations which may be prescribed in connection with membership of a scheme. Conditions for membership may include, for instance, conditions relating to the remedying of defects in buildings to which an industry actor has a connection and making financial contribution towards remediation of defects in other buildings. The existence of a scheme and its membership will enable the Government and other parties to identify industry actors who are acting in a responsible way with respect to building safety, including in connection with remedying historic safety defects.

1041. Secondary legislation will be laid as soon as practicable. Regulations to establish a scheme will define who is eligible to be a member and set out membership conditions which may include conditions relating to the matters mentioned above; conditions restricting or prohibiting members' use of prescribed construction products; conditions relating to the provision of information to the Secretary of State; and to the competence or conduct of individuals connected with a person who is eligible for scheme membership. This section also allows for differential membership categories and for the maintaining of lists, including in relation to scheme eligibility and scheme membership.

Example

The Secretary of State may set up a building industry scheme for residential property developers (or a specified group of residential property developers). The Secretary of State may in regulations set the eligibility criteria and membership conditions for this scheme. Developers who meet the eligibility criteria but who elect not to join the scheme because, for example, they do not wish to comply with the applicable membership conditions may be subject to the measures in Sections 128 and 129.

COMMENCEMENT AND AMENDMENTS

In force: 1 September 2022 (SI 2022/927, reg. 2). No amendments to date.
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COMMENTARY

116. Section 126 empowers the Secretary of State by regulations to establish schemes for the building industry, for any purpose connected with securing the safety of people in or about buildings or improving the standard of buildings, including by securing that persons in the industry remedy defects or contribute to the costs of remedying them. The membership conditions which may be prescribed are wide: they extend to the remedying of defects in buildings with which the eligible person has a prescribed connection, to financial contributions towards buildings with which the person has no connection at all (s.126(4)(b)), and to conduct occurring before the section came into force (s.126(5)). The scheme power is, in short, deliberately retrospective in reach and redistributive in effect.

117. The power has been exercised once: but with very significant effect. The Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023 (SI 2023/753), in force from 4 July 2023, establish the Responsible Actors Scheme (“RAS”). The architecture is as follows: (a) regulations 6 to 8 set the eligibility criteria, and regulation 7 treats a company as responsible for the development or refurbishment of a building if another company in the same group is responsible; (b) regulations 13 and 14 permit the Secretary of State to “invite” eligible persons to join, whereupon the person must within 60 days either enter into a self-remediation contract or show that neither it nor any group company is eligible; (c) regulation 21 requires a member to contract with the Secretary of State on the Self-Remediation Terms (“SRTs”) published on 16 March 2023; and (d) a person who is eligible but does not join is placed on the prohibitions list, engaging the development prohibition (regulation 29) and the building control prohibitions (regulation 33) made under ss.128 and 129. The “voluntary” character of the scheme is therefore nominal: an eligible developer that declines to join cannot, in practice, carry on major residential development in England.
118. The one authority on these provisions is **R (Rydon Group Holdings Ltd) v Secretary of State for Levelling Up, Housing and Communities** [2025] EWHC 2182 (Admin). Rydon, having signed the SRT contract, was designated a “Designated Participant Developer” and thereby treated as “unfit” to carry out remediation of three buildings for which it was the developer, with remediation directed through the Building Safety Fund instead. Choudhury J dismissed its judicial review claim. The critical holding is that decisions made pursuant to the contract and the SRTs are in substance contractual: they are amenable to judicial review only on the limited grounds of fraud, corruption or bad faith, none of which was alleged (at [75], [134]). The statutory architecture behind the scheme, and the express reference to the contract in regulation 21, did not convert the exercise of contractual powers into public law decision-making attracting the full range of judicial review grounds.
119. Two further points from **Rydon** deserve attention:
- (a) First, the element of practical compulsion did not assist the claimant: the SRTs were the product of an industry-wide negotiation in which Rydon chose not to participate, and the court declined to treat the absence of commercial choice as expanding the scope of review.

- (b) Second, “unfitness” under the SRT definition of Designated PD is not confined to remediation competence: it extends to trust and confidence, the wider public interest, and conduct under consideration by a public inquiry, assessed on a group basis (at [99], [108]). The fact that Rydon was successfully remediating other buildings did not make its designation irrational.
120. The consequences for practitioners are stark and startling. A developer within the RAS holds its ability to trade at the discretion of the Secretary of State, exercised through contractual machinery which the Administrative Court will not police beyond fraud, corruption or bad faith. Remedies for scheme members aggrieved by decisions under the SRTs are contractual: the answer lies in the dispute resolution provisions of the contract itself, not in public law. In my view the courts will hold this line: the Government’s model of giving statutory schemes effect through standard-form contracts was upheld in **Rydon** precisely because it preserves the ordinary contractual allocation of risk, and a differently constituted court is unlikely to depart from it.
121. The scheme regulations have been amended once: the Building Safety (Responsible Actors Scheme and Prohibitions) (Amendment) Regulations 2026 (SI 2026/509) tidy the drafting of the 2023 Regulations and adjust the building control prohibitions, extending the exceptions for emergency repairs and for work to occupied buildings and allowing purchasers, as well as applicable persons, to apply for an exception.

CASE DIGEST

Case Name: **R (Rydon Group Holdings Ltd) v Secretary of State for Levelling Up, Housing and Communities**

Case Reference: [2025] EWHC 2182 (Admin)

Judge: Choudhury J

Date: 29 August 2025

Key Issues: Scope of judicial review of decisions under the Self-Remediation Terms contract made pursuant to the Responsible Actors Scheme established under ss.126-129 BSA 2022; “unfitness” designation of a developer connected with the Grenfell Tower refurbishment.

Held:

1. The Secretary of State made three decisions concerning three buildings developed by Rydon: a designation of Rydon as a Designated Participant Developer “unfit” to carry out remediation, a direction under clause 7.7(B) of the SRTs that remediation proceed through the Building Safety Fund, and a decision under clause 13.2 that the buildings would not in any event be transferred to Rydon [1].
2. The RAS Regulations (SI 2023/753) establish the scheme; regulation 21 requires members to contract on the SRTs; eligible persons who do not join face the development and building control prohibitions [15]-[19].
3. Decisions made pursuant to the contract and the SRTs are amenable to judicial review only on the limited grounds of fraud, corruption or bad faith, none of which was alleged or extant. The statutory background to the SRTs does not render the contractual obligations public [75].
4. “Unfitness” within the Designated PD definition is not confined to competence: it includes trust and confidence and other matters relevant to the public interest, and may legitimately be assessed on a group basis. Successful remediation of other buildings did not render the designation irrational [99], [108].
5. Even if the full range of judicial review grounds had been available, the claim failed on the merits on every ground; the claim was dismissed [134]-[135].

Link: <https://caselaw.nationalarchives.gov.uk/ewhc/admin/2025/2182>

SECTION 127 – BUILDING INDUSTRY SCHEMES: SUPPLEMENTARY

STATUTORY TEXT

- (1) This section supplements section 126.
- (2) Regulations may make provision about—
 - (a) applications for membership of a scheme;
 - (b) renewal of membership at prescribed intervals;
 - (c) termination of a person’s membership;
 - (d) the suspension of a person from membership.
- (3) Regulations may provide for the charging of fees, in connection with—
 - (a) an application for membership;
 - (b) renewal of membership;
 - (c) a review;
 - (d) any other prescribed matter.
- (4) Regulations may provide for membership conditions to be framed by reference to—
 - (a) standards, or a document, from time to time published by any person;
 - (b) the opinion of the Secretary of State, or a designated person, in relation to any matter.
- (5) Regulations may make provision about the determination of disputes.
- (6) Regulations may make provision about the termination of a scheme.
- (7) In section 126 and this section—

“building” means a building in England;

“building industry”: a reference to persons in the building industry is to persons carrying on, for business purposes, activities connected with the design, construction, management or maintenance of buildings, including persons carrying out activities in relation to construction products in England;

“construction product” has the meaning given by regulations;

“persons carrying out activities in relation to construction products” include (without limitation)—

 - (a) a manufacturer of construction products,
 - (b) a person who markets or supplies construction products to others, and
 - (c) a person who imports construction products into the United Kingdom for use, marketing or supply;

“prescribed” means prescribed by the regulations;
“regulations” means regulations under section 126;
“scheme” means a scheme established under section 126;
“standard” (except in subsection (4) of this section) is to be read in accordance with section 30.

EXPLANATORY NOTES

Section 127: Building industry schemes: supplementary

Effect

1042. This section is supplementary to section 126 and provides further detail of regulations which may be made in connection with the establishment of a building industry schemes under section 126.

Background

1043. This is a new provision.

Proposed use of power

1044. Regulations will provide further detail on how a building industry scheme/s may operate, including membership processes (such as those relating to joining, suspension and termination of membership) and further detail on membership conditions, as well as provision for the charging of fees, the determination of disputes relating to a scheme and winding down a scheme/s once its aims have been achieved.

1045. This section also sets out the meaning of key words in relation to this section.

COMMENTARY

122. Section 127 supplements s.126. It permits regulations to deal with the machinery of a scheme: applications, renewal, termination and suspension of membership; the charging of fees; the determination of disputes; and the termination of a scheme itself. Section 127(4) is of particular practical significance: membership conditions may be framed by reference to standards or documents published from time to time by any person, or by reference to the opinion of the Secretary of State or a designated person. The content of members’ obligations can therefore evolve without further parliamentary scrutiny.
123. Section 127(6) supplies the definitions for both sections. “Building” means a building in England, and the “building industry” reaches all persons carrying on, for business purposes, activities connected with the design, construction, management or maintenance of buildings, including those carrying out activities in relation to

construction products. The scheme power is accordingly not confined to developers: manufacturers, suppliers and importers of construction products are within its scope, though the RAS as presently constituted is directed at residential property developers.

124. The dispute-determination power in s.127(5) matters in light of **R (Rydon Group Holdings Ltd) v Secretary of State for Levelling Up, Housing and Communities** [2025] EWHC 2182 (Admin) (digested under s.126). Judicial review of decisions under the SRT contract being confined to fraud, corruption or bad faith, the contractual and scheme-level dispute mechanisms are, for most purposes, the only recourse a scheme member has. In my view any future scheme regulations will attract close attention on precisely this point.

SECTION 128 – PROHIBITION ON DEVELOPMENT FOR PRESCRIBED PERSONS

STATUTORY TEXT

- (1) The Secretary of State may by regulations prohibit a person of a prescribed description from carrying out development of land in England (or a prescribed description of such development).
- (2) The descriptions of persons which may be prescribed include in particular persons who—
 - (a) are eligible to be members of a scheme established under section 126, and
 - (b) are not members of that scheme.
- (3) A prohibition under the regulations may be imposed for any purpose connected with—
 - (a) securing the safety of people in or about buildings in relation to risks arising from buildings, or
 - (b) improving the standard of buildings,
including securing that safety, or improving that standard, by securing that persons in the building industry remedy defects in buildings or contribute to costs associated with remedying defects in buildings.
- (4) A prohibition under the regulations applies despite planning permission (or any prescribed description of planning permission) having been granted.
- (5) The regulations may provide that, in prescribed cases, no prescribed certificate under the 1990 Act may be granted (and any purported grant is of no effect).
- (6) The regulations may require a person of a prescribed description to give a notification relating to development (and may make provision about the content and form of a notification and the way in which it is to be given).
- (7) The regulations may contain exceptions.
- (8) The regulations may make provision about enforcement, including in particular provision applying (with or without modifications), in relation to a breach of the regulations, any provision of Part 7 of the 1990 Act (enforcement).
- (9) For the purposes of this section—
 - (a) “the 1990 Act” means the Town and Country Planning Act 1990;
 - (b) “building” means a building in England;
 - (c) “development” has the meaning given by section 55 of the 1990 Act;
 - (d) “planning permission” has the meaning given by section 336 of the 1990 Act;
 - (e) “prescribed” means prescribed by regulations under this section;

- (f) “standard” is to be read in accordance with section 30.

EXPLANATORY NOTES

Section 128: Prohibition on development for prescribed persons

Effect

1046. This section confers power on the Secretary of State to prohibit a person of a prescribed description from carrying out development of land in England, including where development has planning permission, through affirmative Regulations. This includes persons who are eligible to be members of a Building Industry Scheme (sections 126 and 127) but are not members of that scheme.

1047. This section also sets out other provisions that the regulations may make, including that they may make provision for enforcement, including applying, with or without modifications, the enforcement provisions of Part 7 of the Town and Country Planning Act 1990.

1048. This provision, together with the powers to make regulations to impose building control prohibitions detailed in section 129, may be imposed on persons who are eligible to join a building industry scheme but who do not join (because, for example, they do not meet or comply with the scheme membership conditions prescribed) and will encourage eligible persons to join and remain members of a scheme.

1049. A prohibition may be imposed for any purpose connected with securing the safety of persons in or about buildings in relation to risks arising from buildings, or improving the standards of buildings, including by securing that persons in the building industry remedy defects in buildings or contribute to costs associated with remedying defects in buildings.

1050. This section also sets out other provisions that the regulations may make, including that they may make provision for enforcement, including applying, with or without modifications, the enforcement provisions of Part 7 of the Town and Country Planning Act 1990.

Background

1051. This is a new provision.

Proposed use of power

1052. This power will enable the Government to impose a prohibition on a person for any purpose connected with securing the safety of persons in or about buildings or improving the standards of buildings, including by securing the remedying of defects in buildings or contribution to costs associated with remedying defects in buildings. It may be used to support the above principle and ensure that the industry responsible for building unsafe buildings takes responsibility for remedying defects in buildings and contributes to costs associated with building remediation

1053. This provision, together with the powers to make regulations to impose building control prohibitions detailed in section 128, may be imposed on persons who are eligible to

join a building industry scheme but who do not join (because, for example, they do not meet or comply with the scheme membership conditions prescribed) and will encourage eligible persons to join and remain members of a scheme.

Example

The Secretary of State may, in particular, make Regulations to prohibit persons who are eligible to be members of a Building Industry Scheme (sections 126 and 127) but are not members of that scheme from carrying out development of land in England through affirmative Regulations. These Regulations may also require developers to submit a notification relating to development and may make provision about the content and form of a notification and the way in which it is to be given. For example, a notification requirement could include information about when development is expected to begin or has begun and who the persons carrying out development will be or are, and if different persons will be carrying out development. Another example is that they could require persons to identify their status in relation to a building industry scheme and whether they are controlled by any other persons and those persons' scheme status. Regulations may also specify the prescribed development that will be affected by a prohibition; for example, they may limit a prohibition to different types of development based on size of a proposed development or a proposed use. Regulations may make provision for enforcement, including applying, with or without modifications, Part 7 of the Town and Country Planning Act 1990. For example, by making the carrying out of development in breach of a prohibition a breach of planning control to which the enforcement powers in Part 7 apply, including the powers to issue a notice requiring cessation of development. The Regulations may also provide that a certificate under the Town and Country Planning Act 1990 may not be granted in particular circumstances. For example, they could remove the ability to obtain a certificate of lawful development in respect of development carried out in breach of the prohibition.

COMMENTARY

125. Section 128 permits the Secretary of State to prohibit a person of a prescribed description from carrying out development of land in England. The typical target, identified in s.128(2), is the person who is eligible to be a member of a s.126 scheme but is not a member. A prohibition applies despite the grant of planning permission (s.128(4)), and the regulations may apply the enforcement machinery of Part 7 of the Town and Country Planning Act 1990 and may provide that prescribed planning certificates cannot be granted (s.128(5), (8)).
126. The power is in force and has been exercised. Under the Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023 (SI 2023/753), a person on the prohibitions list is prohibited by regulation 29 from carrying out major development of land in England (development of ten dwellings or more): see **R (Rydon Group**

Holdings Ltd) v Secretary of State for Levelling Up, Housing and Communities

[2025] EWHC 2182 (Admin) at [18]-[19]. The prohibition is the enforcement engine of the RAS: it converts a nominally voluntary scheme into one that no substantial residential developer can realistically decline to join.

127. The prohibition has not itself been the subject of direct challenge. Given the analysis in **Rydon**, a challenge to the making or content of the prohibition regulations would be a conventional public law challenge to secondary legislation; but a challenge to the consequences of non-membership for a particular developer will in substance be a challenge to eligibility or invitation decisions under the RAS Regulations, and the courts can be expected to keep any such challenge within narrow bounds.

SECTION 129 – BUILDING CONTROL PROHIBITIONS

STATUTORY TEXT

- (1) The Secretary of State may by regulations impose a building control prohibition, as regards buildings or proposed buildings, in relation to persons of a prescribed description.
- (2) The descriptions of persons which may be prescribed include in particular persons who—
 - (a) are eligible to be members of a scheme established under section 126, and
 - (b) are not members of that scheme.
- (3) A building control prohibition may be imposed for any purpose connected with—
 - (a) securing the safety of people in or about buildings in relation to risks arising from buildings, or
 - (b) improving the standard of buildings,
including securing that safety, or improving that standard, by securing that persons in the building industry remedy defects in buildings or contribute to costs associated with remedying defects in buildings.
- (4) A “building control prohibition”, in relation to a person, prohibits—
 - (a) the person from applying for building control approval or from depositing plans,
 - (b) the person from giving an initial notice (whether or not jointly with anyone else) or a public body’s notice, public body’s plans certificate or public body’s final certificate,
 - (c) the granting of building control approval to the person,
 - (d) the passing of plans deposited by the person,
 - (e) the acceptance of an initial notice given by the person (whether or not jointly with anyone else) or a public body’s notice, public body’s plans certificate or public body’s final certificate given by the person,
 - (f) the giving of a final certificate in relation to works carried out by the person,
 - (g) the person from giving a prescribed document,
 - (h) the giving of a prescribed document to the person or in respect of works carried out by the person, or
 - (i) the acceptance of any prescribed document given by the person or in respect of works carried out by the person.
- (5) A building control prohibition applies despite any provision made by or under the Building Act 1984.

- (6) The regulations may contain exceptions.
- (7) The regulations may provide that anything done in contravention of the regulations is of no effect.
- (8) Any reference in this section to a building or proposed building is to a building or proposed building in England.
- (9) In this section—
- “building” and “building control approval”, and references to the deposit and passing of plans, are to be read in accordance with Part 1 of the Building Act 1984;
- “initial notice”, “final certificate”, “public body’s notice”, “public body’s plans certificate” and “public body’s final certificate” have the same meaning as in Part 2 of that Act;
- “prescribed” means prescribed by regulations under this section;
- “standard” is to be read in accordance with section 30.

EXPLANATORY NOTES

Section 129: Building control prohibitions

Effect

1054. This section gives the Secretary of State powers to impose a building control prohibition in relation to a person of a prescribed description.

1055. The persons who may be prescribed under this section may include persons who are eligible to be a member of a building industry scheme (as detailed in sections 126 and 127) but are not members of such a scheme.

1056. A building control prohibition according to this section will apply despite any provision made by or under the Building Act 1984. This section also details that the regulations may contain exceptions and may provide that anything done in contravention of the regulations is of no effect.

1057. This section is not retrospective. Building control approval that has already been granted to a prescribed person will not be revoked.

Background

1058. This is a new provision.

Proposed use of power

1059. This power will enable the Government to impose a building safety prohibition on a person for any person connected with securing the safety of persons in or about buildings or improving the standards of buildings, including by securing the remedying of defects in buildings or contribution to costs associated with remedying defects in buildings. It may be used to support the above principle and ensure that the industry responsible for building

unsafe buildings takes responsibility for remedying defects in buildings and contributes to costs associated with building remediation.

1060. The building control prohibitions, together with the prohibition on development detailed in section 128, may be imposed on persons who are eligible to join a building industry scheme but who do not join (because, for example, they do not meet or comply with the scheme membership conditions prescribed) and will encourage eligible persons to join and remain members of a scheme.

Example

The Secretary of State will have the authority to provide those local authorities (and approved inspectors/registered building control approvers) must refuse building control approval to person prescribed under this section. For example, if a developer who is eligible to join a building industry scheme but is not a member applies for building control approval, by giving an initial notice or depositing plans for a development, this will not be granted where that developer has been prescribed by regulations made under this section. Prescribed persons will also be prevented from obtaining a certificate of completion or final certificate for developments which have received other building control approval at earlier stages.

COMMENTARY

128. Section 129 is the companion of s.128. It permits regulations imposing a “building control prohibition” on persons of a prescribed description, again with non-members of a s.126 scheme as the paradigm. The prohibition operates on every stage of the building control process: applying for building control approval, depositing plans, giving initial notices and certificates, and the granting or acceptance of any of them (s.129(4)). It applies despite any provision of the Building Act 1984, and the regulations may provide that anything done in contravention is of no effect (s.129(5), (7)). The prohibition is not retrospective: approvals already granted are not revoked.
129. The power is exercised in regulation 33 of the Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023 (SI 2023/753), which subjects listed persons to a range of building control prohibitions affecting current and future developments: see **Rydon** at [19]. Sections 128 and 129 thus operate as a dual mechanism: s.128 removes the right to carry out major development; s.129 removes the ability to take any project through building control. The combination is commercially fatal, which is its point.
130. No separate authority exists on s.129. The observations at paragraph 127 above (section 128) apply equally here.

SECTION 130 – BUILDING LIABILITY ORDERS

STATUTORY TEXT

- (1) The High Court may make a building liability order if it considers it just and equitable to do so.
- (2) A “building liability order” is an order providing that any relevant liability (or any relevant liability of a specified description) of a body corporate (“the original body”) relating to a specified building is also—
 - (a) a liability of a specified body corporate, or
 - (b) a joint and several liability of two or more specified bodies corporate.
- (3) In this section “relevant liability” means a liability (whether arising before or after commencement) that is incurred—
 - (a) under the Defective Premises Act 1972 or section 38 of the Building Act 1984, or
 - (b) as a result of a building safety risk.
- (4) A body corporate may be specified only if it is, or has at any time in the relevant period been, associated with the original body.
- (5) A building liability order—
 - (a) may be made in respect of a liability of a body corporate that has been dissolved (including where dissolution occurred before commencement);
 - (b) continues to have effect even if the body corporate is dissolved after the making of the order.
- (6) In this section—

“associate”: see section 131;

“building safety risk”, in relation to a building, means a risk to the safety of people in or about the building arising from the spread of fire or structural failure;

“commencement” means the time this section comes into force;

“the relevant period” means the period—

 - (a) beginning with the beginning of the carrying out of the works in relation to which the relevant liability was incurred, and
 - (b) ending with the making of the order;

“specified” means specified in the building liability order.

EXPLANATORY NOTES

Section 130: Building liability orders

Effect

1061. This section confers a power on the High Court to grant building liability orders if they consider it just and equitable to do so.

1062. Subsection (2) provides that a building liability order will extend a relevant liability of a body corporate (A) so that it will also be a liability of another specified body corporate (B) and that A and B can be made joint and severally liable for the relevant liability.

1063. The effect will be that a person with a claim arising from a relevant liability can sue both A and B and, if the claim is successful, the assets of both A and B can be considered when damages are awarded.

1064. Subsection (3) defines which liabilities are relevant liabilities for the purposes of building liability orders. The relevant liabilities are liabilities under the Defective Premises Act 1972, section 38 of the Building Act 1984, or liabilities which are incurred as a result of a building safety risk. A building safety risk is a risk to the safety of people in or about a building arising from the spread of fire or structural failure.

1065. Apart from under the Defective Premises Act 1972, which relates to the provision and refurbishment of dwellings, there is no constraint on the types of buildings a relevant liability can be incurred in relation to and therefore no constraint on the types of buildings for which a building liability order may be requested.

1066. Building liability orders may be granted in relation to a relevant liability which was incurred prior to this section commencing as long as the limitation period for the relevant liability has not expired.

1067. Subsection (4) states that B can only have a building liability order applied to it if it has been associated with A at any point between the time when A started carrying out the works which incurred the relevant liability and the building liability order being applied. The definition of “associates” is provided by section 131 of this Act.

1068. Subsection (5) states that a building liability order can be applied to B even when A has dissolved. A building liability order also continues to apply to B if A dissolves after the order has been made.

1069. Subsection (6) defines terms used in this section.

1070. This section applies to England and Wales.

Background

1071. This is a new provision.

1072. A practice used in property development is where a subsidiary company (which may be thinly capitalised) is set up to own and manage a development on the behalf of the corporate group it is a part of. The subsidiary company is often wound up once the

development has been completed. A consequence of this practice is that the corporate group has no long-term liability for its developments.

1073. Building liability orders have been designed to address the consequence described above, given the context of the wider building safety issues which have been discovered within medium and high-rise buildings.

1074. The assessment is that relying upon English common law to address this consequence would be insufficient. Example A 14 storey residential building is developed by a body corporate A. A few years after it is completed later, it is discovered that there are serious fire compartmentation issues within the building and the local fire and rescue authority order the building to be evacuated until the risk from fire is reduced. To seek recompense for the remediation costs, the freeholder speaks to lawyers about whether they can make a civil claim. The lawyers advise the freeholder that they can make a claim under the Defective Premises Act as the building is unfit for habitation. The freeholder discovers the development company was dissolved once the building was completed and the freehold sold off. The freeholder's lawyers advise that they can establish that the development company's parent company is associated, as the parent company directly controlled the actions of the development company. The freeholder applies to the High Court for a building liability order to be applied to the parent company. The freeholder must show that the parent company is associated with the development company. The High Court must consider whether it is just and equitable to grant the building liability order, for example whether the parent company can receive a fair trial. In this example, the request for a building liability order is granted. The freeholder can now make a claim under the Defective Premises Act against the parent company. The court proceedings would then proceed as normal.

COMMENTARY

What the section does

131. Section 130 gives the High Court a new power: one to order that where a body corporate is liable for Building Safety Defects another body corporate related to it is also liable. The key filter on that power posed by the section is that it is to be exercised only where the Court considers it “just and equitable” to do so. Moody J’s description of the power in **HB (WM) Ltd v Sto Ltd** [2026] EWHC 1833 (TCC) at [82] is elegant: the section **“may perhaps be likened to vicarious liability, since it is a mechanism whereby one party can be made liable for the wrong of another for reasons of policy”**. The ambitious, unusual and far reaching nature of the power conferred by the Statute is difficult to overstate.

The policy which underlies the Section

132. The policy in question is clear:

- (a) Introducing the clause in Grand Committee on 28 February 2022, Lord Greenhalgh said that the orders would allow claims against associated companies **“including when the original company no longer exists”**, would address **“the lack of ongoing liability that large developers have due to their use of special purpose vehicles”**, and would be **“an important tool in holding ‘polluters’ to account and making them pay for their past misdeeds”**;
 - (b) That reflected in the Explanatory Notes at paragraphs 1072 to 1074: those paragraphs describe the thinly capitalised development subsidiary wound up after practical completion and record the assessment that “relying upon English common law to address this consequence would be insufficient”; and
 - (c) The Supreme Court has since treated accountability of those responsible for historical defects as the central purpose of the Act: **URS Corporation Ltd v BDW Trading Ltd** [2025] UKSC 21 at [104]–[108] and, per Lord Leggatt, at [274].
133. But the section is not confined to a situation where in SPV is involved and arguments that it should be have been consistently rejected. That has culminated in Constable J’s finding at [75]–[76] in **Crest Nicholson Regeneration Ltd v Ardmore Construction Ltd (in Administration)** [2026] EWHC 789 (TCC) Constable J that if the Act’s purpose were limited to SPVs and shell companies it **“would substantially, if not wholly, be met by the scheme for ROs and RCOs”**; the purpose of s.130 is wider, **“ensuring those who caused historical building safety defects should pay for their remediation”**. Going further, Constable J distilled seven propositions at [61], and the judgment decides more points of principle than everything that came before it:
- (a) Anticipatory BLOs. The power includes a BLO ordered before any finding of relevant liability. There is no precise test, but “the greater the Court’s confidence that the same order would be made following a trial, the more inclined it will be to grant an anticipatory BLO”: [64]. Prematurity is not a freestanding objection; it folds into the just and equitable assessment: [65]. The good reason for an anticipatory order lies in allowing the BLO to function as an indemnity, and the benefit is not one-sided: associates gain certainty about whether to resource the defence: [81], agreeing with HHJ Keyser KC.
 - (b) Adjudication decisions. An unpaid adjudicator’s decision is capable of being a relevant liability. It is binding until finally determined; “[i]ts interim status does not mean that, pending any trial, it somehow does not create a liability. It plainly

does”: [135]. Alternatively, the failure to comply is itself a relevant liability: [140]. And there is no incompatibility between adjudication and the BLO regime: to hold otherwise “would deprive the construction industry of the use of one of the most important dispute resolution tools”: [192]–[193].

- (c) Partial transmission. “Any relevant liability of a specified description” permits the Court to transmit part of a liability, leaving relative blameworthiness to trial: [108]–[111].
 - (d) The applicant’s identity is no objection. That the applicant is itself a commercial developer does not weigh against an order; the legislative purpose “is in ensuring those who caused historical building safety defects, not those with the deepest pockets, pay for their remediation”: [86]–[87], [92].
 - (e) The associates’ means will rarely matter. Following **Triathlon** at [255] and **Click St Andrews**, “it will be an unusual case in which the source or extent of a respondent’s assets or liabilities will carry much weight”: [97].
 - (f) Group restructuring will be examined without sentiment. ACL was placed into administration, for the benefit of the wider group, with the specific purpose of avoiding “the very specific liabilities that Parliament has purposefully targeted within section 130”: [73].
134. The consequential judgment, **Crest Nicholson v Ardmore (No 2)** [2026] EWHC 1069 (TCC), is as significant for enforcement as the first judgment is for principle. Permission to appeal was refused on all five grounds; a stay of execution was refused on **Goldtrail** principles, decisively because there was no evidence at all from the ultimate individual owner whose fortune was more than sufficient to fund payment: [33]; payment was ordered within 14 days; and interest ran from non-payment of the adjudicator’s decision without any separate order, because the BLO attaches to the liability of the original body and that liability includes the interest: [46]. BLO liabilities, in short, are enforced with full adjudication-enforcement rigour.
135. Those key points being made, it is helpful to deal with s. 130 by considering what is required before the Section applies before then turning to consider the “just and equitable” test.

The elements of the section

136. What must be shown before the Section can be triggered? Five things:

(1) A relevant liability of the body corporate.

137. **“Relevant liability”** is defined in s.130(3) as a liability, **“whether arising before or after commencement”**, that is incurred (a) under the Defective Premises Act 1972 or s.38 of the Building Act 1984¹⁹, or (b) as a result of a building safety risk.

138. That definition gives rise to four important points:

- (a) First, the DPA limb does not require a building safety risk at all. A dwelling that is unfit for habitation because of damp, a failed roof or a structural defect gives rise to a relevant liability under limb (a) without any inquiry into fire or structural failure.
- (b) Limb (b) (**“as a result of a building safety risk”**) is defined in turn by s.130(6): **“a risk to the safety of people in or about the building arising from the spread of fire or structural failure”**. That definition is similar but not identical to the s.120(5) definition that governs Part 5 (**“the collapse of the building or any part of it”**). Whilst it is possible to envisage some fact patterns which might make that difference in wording relevant, in most cases it is unlikely to be;
- (c) Satisfying Limb (b) is not a gateway to every loss. In **381 Southwark Park Road RTM Co Ltd v Click St Andrews Ltd (in liquidation)** [2024] EWHC 3569 (TCC) Jefford J refused to extend the order to the leaseholders’ water-ingress losses: **“It makes no sense to treat the ‘relevant liability’ as a gateway to recovery of all losses arising from any liability that might have been found on the part of Click St Andrews. That is not what the Act provides for”**: [27]–[28]; and
- (d) The real power of the Section is therefore given by the 30-year period for DPA claims introduced by s.135²⁰: the combined effect of defining Relevant Liability as including one arising from the DPA and retrospectively extending the Limitation Period for such claims in that way is to create what might be regarded

¹⁹ As Section 38 of the 1984 Act is not yet in force in practice limb (a) means the DPA.

²⁰ The Explanatory Notes add at paragraph 1066 that an order may be made in relation to a pre-commencement liability **“as long as the limitation period for the relevant liability has not expired”**.

as a previously unpredicted “perfect storm” of liability for historic projects within corporate groups.

139. How the Relevant Liability of the Body Corporate comes to exist matters less than one might expect. Four routes are now recognised:

- (a) **A judgment against the original body**, as in Click St Andrews, where liability was found at trial ([2024] EWHC 3179 (TCC)) – and the Blo followed thereafter;
- (b) **An adjudicator’s decision**. In Crest the associates argued that a decision which is only temporarily binding cannot be a “liability”, and relied by analogy on the guarantee cases (Beck Interiors Ltd v Russo [2009] EWHC 3861 (TCC)). Constable J rejected the argument at [135]: **“the Adjudicator’s Decision is binding until the dispute is finally determined by the Court. Its interim status does not mean that, pending any trial, it somehow does not create a liability. It plainly does.”** Alternatively, he said, the failure to pay the decision is itself a liability incurred as a result of a building safety risk, **“by reason of a sufficient causal nexus”** between the determined liability and the consequent one: [140]. He also made clear that the court will look at the substance of what the adjudicator decided to see whether it falls within s.130(3), even if the decision does not use the statutory words: [138]–[139].
- (c) **An agreement**. Jefford J in Willmott Dixon Construction Ltd v Prater [2024] EWHC 1190 (TCC) at [18] observed that **“the legislation assumes that the associated company will not be able to challenge a finding or even an agreement establishing liability of the original entity”**. An interesting question is whether a settlement agreement which does not accept (or even denies) liability but settles the claim asserted can be said to be such an agreement – such settlement agreements are common. One sensible view might be that such a non-admission a settlement of a DPA claim does count as a liability incurred under the Act in the relevant sense, in the same way that a settled contribution claim is a liability for the purposes of the Civil Liability (Contribution) Act 1978, but the associated company against whom a BLO is sought might have a strong argument on discretion where it was not consulted and/or it could show that the settlement was inappropriate.

- (d) No determination at all, where the order is anticipatory: see paragraphs 153 to 157 below.

(2) Relating to a specified building

140. The order is made building by building. It “cannot make associated companies liable for the entire liability of the original body to the applicant across a number of developments”: **BDW Trading Ltd v Ardmore Construction Ltd** [2025] EWHC 434 (TCC), HHJ Keyser KC at [13]. A claimant with several developments against the same contractor needs an order for each, though the applications can be heard together.

(3) An original body which is a body corporate

141. Both the original body and the specified body must be bodies corporate. Individuals are outside the section entirely; the route against a director who has stripped a company is in company and insolvency law, not here. It is important also to note that (a) Limited liability partnerships are bodies corporate and are dealt with expressly in s.131(3). But (b) Limited partnerships are not: a relevant factor in many private-equity structures.

(4) An (i) associate (ii) within the relevant period

142. The specified body must be either associated with the original body, or have been so associated at any time in the “relevant period”, s.130(4).
143. Association is governed exclusively by s.131: it is therefore discussed in more detail in this Book under that section. In short, though:
- (a) The relevant period is defined in s.130(6);
 - (b) As that sub section sets out, it runs from **“the beginning of the carrying out of the works in relation to which the relevant liability was incurred”** to **“the making of the order”**.
 - (c) In other words:
 - (i) A company that joined the group after the works, or acquired the original body years later, is within the period and can be an associate; and
 - (ii) A company that controlled the original body during the works and has since sold it remains within the period: a disposal does not take the vendor outside s.130(4).

(5) Dissolution is no obstacle

144. An order may be made in respect of the liability of a body that has been dissolved, including before commencement, and continues to have effect if the original body is dissolved afterwards: s.130(5). HHJ Keyser KC drew the obvious inference at [14](6) of **BDW v Ardmore**: the subsection “**clearly envisages that the original body does not have to be restored to the register — if it were restored, mention of its dissolution would be pointless**”, and s.130 “**is clearly designed to catch the situation where the original body has passed into history and either could not be restored to the register or, if it were restored, would be a mere empty shell**”.²¹

Forum, procedure and timing

145. The jurisdiction is the High Court’s alone. In practice/reality the Jurisdiction is that of the Technology and Construction Court.
146. The Fourth Edition of the TCC Guide (1 July 2026) now has a section on Building Safety Act business. It is an important reference point:
- (a) Section 9.1.3 defines claims under ss.130 and 132 as “TCC BSA Proceedings” and says they “are appropriate to bring as TCC claims”; the claim-value guidance does not apply to them (9.1.4).
 - (b) Every such claim form or application must be accompanied by the Appendix L questionnaire, identifying the building and every other commenced or contemplated proceeding in the FTT or TCC about it, and by the applicant’s proposals for case management where more than one set of proceedings is likely (9.2.3).
 - (c) The claim is referred to the Judge in Charge, who may hold an “Allocation CMC” by Teams within 28 days, limited to one hour (9.2.4, 9.2.7), and may direct that FTT and TCC proceedings about the same building be heard together by a TCC judge sitting also as a judge of the FTT, with the concurrence of the President of the Property Chamber (9.2.5).
147. As discussed above, the first joint hearing has already occurred: see **Wallace Estates Ltd v Durkan Estates Ltd** [2026] EWHC 2133 (TCC), where the court chose a two-

²¹ Restoration under s.1030 of the Companies Act 2006 is in any event closed after six years for anything other than personal injury claims.

- judge composition (a TCC judge and the President of the Property Chamber sitting together) rather than a single TCC judge sitting also as a judge of the FTT: [25]–[27].
148. The application may be made within the proceedings against the original body or on its own. The associate need not be a party to the main claim: **Willmott Dixon v Prater** at [17]; **Click St Andrews** at [22] (“**the Act does not require a party to be identified in pleadings or joined into proceedings before such an order is made**”). It will, though, “**generally be sensible and efficient**” to join the associate and hear the application with the main claim, so that the associate can cross-examine and make submissions on whether there is a relevant liability: **Prater** at [17], [25]. Constable J adopted that as proposition (6) of his distillation in **Crest** at [61].
 149. When the application is heard is a matter of case management. Some commentators had interpreted **Prater** as saying that the application should be left to the end in any case: Constable J corrected that reading at [53] of **Crest**.
 150. The information order under s.132 is the proper first step where the group is opaque. It is available only against the body subject to the relevant liability, not against the associates directly; the applicant must show that the body “is” subject to a relevant liability, not that it might be; and the application should be “**short and uncomplicated**”: **BDW v Ardmore** [2025] EWHC 434 (TCC). The TCC Guide now suggests that the court will expect that the information will have been requested in writing first, with a response within 14 days and production within 28 (2.2.3).
 151. Where the original body is in administration, it appears to be accepted by the Court that the application against its associates is not “**legal process ... against the company**” within paragraph 43(6) of Schedule B1 to the Insolvency Act 1986 and needs no permission. That is how **Crest** proceeded, with Ardmore Construction Ltd in administration throughout, and no point was taken. Where the associates themselves obtain a Part A1 moratorium, as the Ardmore group companies did in June 2026, the position is different and undecided: an application to make a BLO against the company in moratorium is on its face “legal process ... against the company” within s.A21(1)(e) and needs the court’s permission, and enforcement of an order already made is barred where the liability is a pre-moratorium debt with a payment holiday (s.A18(3), s.A21(2)). When a BLO liability is “incurred” for those purposes, on the making of the order or when the original body incurred it, has not been decided.

152. The liability under a BLO is a debt, not damages: **Crest Nicholson v Ardmore (No 2)** [2026] EWHC 1069 (TCC) at [47]. This is important for numerous reasons. In particular it means that the liability is provable in the associate’s own insolvency under rule 14.2 of the Insolvency (England and Wales) Rules 2016 once the order is made, and it carries interest from the original body’s default without any separate order, because **“the BLO attaches to the liability of ACL and that liability includes interest arising out of the non-payment of the Adjudicator’s decision”**: at **Crest Nicholson v Ardmore (No 2)** at [46]. Whether an applicant holding only an anticipatory order is a creditor for voting purposes in a CVA of the associates, and at what value, is undecided; it appears from public records that seven Ardmore companies obtained creditor approval for CVAs in September 2026 while the Court of Appeal appeal was pending, and the question may be answered there.

Anticipatory orders

153. One of the most important developments since the section came into force is the recognition that an order may be made before the original body’s liability has been established:

- (a) At [14] of **BDW v Ardmore** [2025] EWHC 434 (TCC) HHJ Keyser KC found that:
 - (i) Nothing in s.130 makes prior establishment of liability a precondition; the section speaks of “any” relevant liability;
 - (ii) S. 130(5) contemplates dissolved bodies against which liability will seldom have been established; and the order can function as an indemnity in the form **“If this original body has any relevant liability in respect of this specified building, this associate shall also have that liability”**.
- (b) Constable J adopted that reasoning in full in **Crest** at [54]–[55], adding:
 - (i) in those paragraphs that the **“convenience to the party prosecuting the claim against the original body, who will benefit from knowing whether the litigation is worth the candle”**;
 - (ii) at [59], that the Explanatory Notes’ worked example of a freeholder proceeding against the parent of a dissolved developer **“is clearly**

describing an anticipatory BLO”: Jurisdiction was not in dispute in Crest ([60]) and was not appealed ((No 2) at [8]); and

(iii) that any the argument that a BLO target would be exposed to an order whose quantum it could not test, was met by the facts that

(1) The anticipatory order transmits **whatever liability is found** ([109]–[110]);

(2) In that sense the order is “writ in water” if the original body turns out not to be liable ([83]); and

(3) the benefit is not one-sided: without an order, associates that expected to lose **“would no doubt decide not to resource the defence and allow judgment to be entered against ACL knowing that there could be no effective monetary enforcement”**: [81].

154. In Crest the “Anticipatory BLO” provided that any liability the contractor may have to the claimants under s.1 of the DPA or as a result of a building safety risk, “or any liability of a specified description”, is also the joint and several liability of seven group companies. The “Adjudication BLO” made the same companies jointly and severally liable for the £14,928,320.40 awarded by an adjudicator against the contractor, which had gone into administration the day before the decision.

155. What then must be shown/what evidence must be led in order to obtain such an Anticipatory BLO? That key question does not have a fully developed answer:

(a) Constable J declined to adopt any analogy with the test for summary judgment, Part 8 or preliminary issues ([63]–[64]), and held at [65] that the fact that the Blo is being sought on an anticipatory basis is not to be considered as a threshold question but as part of the weighing up process: for each factor the court asks **“not just the relevance and weight to be given to any particular factor, but the extent to which the Court considers, in relation to that factor, that it is in a position to determine the matter now, or whether the picture may be materially different at the end of the liability trial”**; and

- (b) At [64] he said **“the greater the Court’s confidence that the same order would be made following a trial, the more inclined it will be to grant an anticipatory BLO”**; and
 - (c) In particular he adopted a technique of assuming the best case for the associates on each unresolved issue and ask whether the order would still be made: the associates’ means ([97]), Crest’s own alleged fault ([111]), the Building Safety Fund ([115]) and insurance ([119]). On each the answer was that the factor would not carry weight after trial either, so nothing was lost by deciding now.
156. This reasoning from the Head of the TCC is significant. It means that it is unlikely that a Court going forward is likely to be attracted to a bare assertion that a BLO should not be made until after a trial of the underlying liability of the body corporate: rather it seems likely that a Court will be interested in whether the target of an anticipatory BLO can persuade it with evidence, that there is a real prospect of the picture being materially different,
157. Permission to Appeal has been given in Crest. Nonetheless, it is likely that anticipatory BLOs will be the subject of numerous claims going forward.

The just and equitable discretion

158. The discretion is a wide one – and the Courts have treated it as such:
- (a) Edwin Johnson J, in the RCO context, said at [180] of Edgewater that it is neither **“possible or sensible to seek to catalogue the factors”** that go into it, that the discretion **“is very wide”**, and that the factors **“are not, in my view, capable of exhaustive classification”**;
 - (b) Constable J’s proposition (5) at [61] of Crest is similar; and
 - (c) At [65] in Triathlon Homes LLP v Stratford Village Development Partnership [2025] EWCA Civ 846 Nugee LJ kept open the possibility that there might be cases where an order against an associate is not just and equitable even if the public purse then pays.
159. That said, some signposts as to how the discretion is likely to be exercised are now clearly emerging from the fog: they are as follows (in roughly descending order of importance):

160. **First**, it is clear that a key factor for most Courts exercising the discretion will be the understood statutory purpose of the Section: that liability should rest with those who caused the defect and the group behind them, not with leaseholders, the public purse or whoever has the deepest pockets: URS v BDW at [104]–[108]; Crest at [76]. Once the gateway conditions are met this factor appears to decide most cases.
161. **Second**, once one moves beyond that, it does appear that the Court may regard as relevant the relationship between the original body and the associate, and in particular what the group did when the liabilities arose:
- (a) Constable J found at [73] of Crest that Ardmore Construction “**was placed into administration, for the benefit of the wider group, with the specific purpose of avoiding (amongst other things) the very specific liabilities that Parliament has purposefully targeted within section 130**”. The restructuring was lawful. It was nonetheless “**plainly of weight**” that when the liabilities arose the group restructured and placed the contractor in administration “**with, at least from that point onwards, the same effect**” as an SPV structure.
 - (b) Prater is to the same effect on its facts: the business was sold within the group after the claim was intimated and a £17.99m dividend paid ([13]). Whilst not reflected in the Judgment it certainly appeared from the discussion between Jefford J and counsel during argument that she regarded that fact as relevant.
162. **Third**, the court’s confidence that a relevant underlying liability will be found: Crest suggests that that issue will be of real importance when the court considers whether to exercise its discretion to make an anticipatory BLO.
163. **Fourth**, fair trial. This is the factor Parliament had in mind – see the Minister’s statement at Report on 29 March 2022 that the court would consider “**whether a fair trial can take place**”. Moreover:
- (a) At [19]–[20] in Click St Andrews Jefford J observed that “**one of the few reasons that might militate against it being just and equitable to make the order would be if the body against whom that order was sought had not had the opportunity to have a fair trial in respect of the making of the order**”;
 - (b) In Prater at [18] she observed that the associate might argue that “**the circumstances in which that liability was established mean that it is not just and equitable**” to make an order;

- (c) In **Crest** the associates lost an argument that they had not had a proper chance to contest the underlying adjudication because they **“took a decision at a certain point to focus on ringfencing the potential liabilities of ACL from the wider group rather than continue to ‘invest’ in substantive engagement on the underlying dispute”**: [208]: that suggests that had the position been different, the inability of the associate to contest the adjudication might have been relevant.
164. **Fifth** - but, it appears, of less importance - the associate’s financial position:
- (a) The Tribunal in **Triathlon** at [255] said that “it would be an unusual case in which the source or extent of a respondent’s assets or liabilities will carry much weight”.
 - (b) That observation was applied in **Crest** at [97] and [203];
 - (c) The absence of a wealthy parent does not matter: in **Click St Andrews** at [13]–[15] Jefford J made the order against a holding company of doubtful means because the emphasis **“should be on the financial position of the first defendant rather than on the parent company”**, and the order gave the leaseholders **“a direct route to claim”** they otherwise lacked ([24]).
165. It may also be helpful to note the factors which so far appear to carry little weight:
- (a) **The identity of the applicant**: See **Crest** at [87]. **“At least on the facts of this case, that Crest is a commercial developer does not weigh against the making of a BLO”**:
 - (b) **Comparative profitability**. Ardmore’s evidence that it made a net loss on the development while Crest made £7.2m, and that Crest’s group had earned £1.2bn against Ardmore’s £60m since 2006, was given **“little weight”**: [90]–[92]. Otherwise **“commercially unsuccessful builders were able to avoid the application of the BSA, whilst commercially successful ones could not”**, and the purpose is that **“those who caused historical building safety defects, not those with the deepest pockets, pay”**. A granular profit inquiry **“would rarely be anything other than an enormously wasteful distraction”**: [93]. One might, however, be careful here: it is possible to imagine cases where the Court might have a selection of potential associate companies to choose from when considering making BLO’s: in such a case it might be that the Court might take into account the question of which of those companies did profit from the

defective works and which did not when choosing which companies should have BLOs visited upon them.

- (c) **The applicant's insurance.** The purpose is **“to hold those directly responsible for historical building safety defects to account, and not their respective insurers”**, who would in any event be subrogated: [118]–[119].
- (d) **Motive.** **“Parties who have legal rights or remedies are entitled to pursue them without having to explain why”**: Triathlon (CA) at [78], applied in Crest at [80].
- (f) **Asserted market consequences** such as a “queue” of other applicants, difficulty raising bonds) advanced by submission without evidence: See Crest at [98]. **“The anticipatory nature of the BLO does not of itself make it unjust or inequitable, even in circumstances where making such an order has a negative financial impact on the BLO Defendants.”**
- (g) **The group's spending on fire safety elsewhere.** See Crest at [123]: £100m across 49 projects, most of it from insurers, was “of no weight” when it came to the Court considering how its discretion might be exercised.

Partial transmission: “any relevant liability of a specified description”

- 166. Section 130(2) allows the order to attach to **“any relevant liability (or any relevant liability of a specified description)”**. Until 2026 many commentators assumed that the phrase no more than the selection of particular defects. In Crest the associates argued, that the words permitted the Court to transmit a proportion or sub-set of a liability. Constable J agreed: at [108] he said that there is **“nothing in the language of the statute which requires such a binary outcome”**; the words **“convey the ability to specify some part of a relevant liability which is to be transmitted, and by implication leave some part or parts of a relevant liability which are not being transmitted”**; and a broad reading **“is also preferable as it allows the Court, to the extent it is just and equitable to do so, a way to limit the potential exposure of associate companies to the erosion and elision of corporate identity which the BSA entails”**.
- 167. Strictly speaking this finding was obiter, because on the facts no reduction was made. The wording of the order made by the Court does, however, track that finding: (**“any liability or any liability of a specified description”**): see [125]

168. This element of the **Crest** decision might be regarded as the TCC equivalent of the President’s postscript in **Edgewater** at [316]: that joint and several liability “**is not the starting point in every case**” and that the tribunal must consider, respondent by respondent, whether the outcome should be joint and several, or be apportioned, or no liability at all, or, as he put it, “**It may be something else**”. It may well turn out to be just as important as the Court’s approval of anticipatory BLO’s. That is because:
- (a) What the Court appeared to have in mind was the applicant’s own conduct such as (Crest’s approval of the design through its consultants: [101], [103]) which made it just and equitable to reduce the BLO liability which the associates should take – the Court said such cases “are likely to be rare” ([111]).
 - (b) However, the ambit may be wider. As mentioned above, the Court may well in due course have to deal with cases where there are a number of potential associates who are vulnerable to BLOs made against them, and where the Court does not need to make BLO’s - or 100% BLO’s – against all such associates in order to satisfy the policy behind the Section of ensuring that remedying Building Safety Defects are paid for by the companies who did the work and their associates, rather than by the public purse: a BLO of less than 100% for each associate would serve that purpose;
 - (c) In such cases if a BLO for only a proportion of the underlying liability is available to the Court, the Court may well think it more appropriate to “split” such BLO’s between associates, so that each associate meets a proportion of the liability, rather than each associate simply being liable for 100% of that liability. That may well appeal to the court, for example, where the associates belong to a number of different corporate groups, such as where the company who actually did the works was sold from one group to another; and
 - (d) In such cases the Court might take into account a whole range of factors in applying its “just and equitable” discretion to choose precisely what BLO’s – 100% of the underlying liability? Or a proportion of that liability? Are imposed on each associate.
 - (e) It should be noted, however, that Constable J’s own approach was anticipatory order now, proportion (if any) after the facts are found (see [109]–[110]).

Adjudication and the BLO

169. The combination of adjudication and s.130 is now the fastest route to an enforceable judgment for a BLO against a corporate group. That route arises by reason of **BDW Trading Ltd v Ardmore Construction Ltd** [2024] EWHC 3235 (TCC), in which Joanna Smith J at [41]–[80], applying **Fiona Trust** found that a claim under the DPA is a dispute “under” the construction contract for the purposes of s.108 of the Housing Grants, Construction and Regeneration Act 1996, so that it can be referred to adjudication:
- (a) Coulson LJ gave permission to appeal **BDW Trading Ltd v Ardmore Construction Ltd** on 11 February 2025 but did so using language which did not suggest unbridled optimism regarding the prospects of success for the Appeal. The appeal was later abandoned; and
 - (b) Constable J “**endorse[d] and adopt[ed]**” the reasoning at [162] of **Crest** after rejecting a fresh **Pepper v Hart** argument ([164]–[171]).

Foreign associates

170. Nothing in the section expressly confines it to bodies corporate incorporated in England and Wales. Hansard is silent on the point. Nonetheless, in **HB (WM) Ltd v Sto Ltd** [2026] EWHC 1833 (TCC), where three developers sued the German parent of an insolvent Scottish cladding supplier, and the parent’s own family holding company, for s.149 liability, contribution and BLOs, and the German defendants applied to set aside service out. By the hearing they had abandoned any extra-territoriality argument as against the trading parent, leaving it only for the non-trading holding company ([68]–[69]).
171. Moody J held that the claimants had a real prospect of establishing that the right approach is the orthodox one in **Cox v Ergo Versicherung AG** [2014] UKSC 22 at [28]: identify the applicable law of the liability, and if it is English law “no question of extra territorial application arises”; only then ask whether a mandatory rule of the forum displaces it ([75]–[79]). Section 130 is a mechanism of policy by which one party is made liable for the wrong of another, like vicarious liability, and such liability is incurred where the primary wrong is committed ([82]–[83]). The insolvency and criminal cases relied on by the defendants (**Re Paramount Airways Ltd** [1993] Ch 223; **R (KBR Inc) v SEO** [2021] UKSC 2) were distinguished, insolvency being sui

generis ([84]) and the criminal and public-law cases raising no question of civil liability ([85]). And even on an extra-territoriality analysis the claimants had a real prospect: “The construction industry is international. The Grenfell Tower Inquiry established that foreign companies could be responsible for building defects identified in England ... it would be odd if it was not intended to apply to foreign entities who would otherwise fall within section 131”: [81], [87].

172. The judge expressly declined to decide the point finally ([86]), so it remains open. In my view the applicable-law analysis is plainly right. The section does not legislate for conduct abroad; it attaches an English statutory liability, in respect of an English building, to a body which the English statute defines as an associate. Where the parent sits is irrelevant to that. The practical consequences for international groups are these: association is a question of control under s.131 and is exercised from wherever the parent is; on a jurisdiction challenge the court will not conduct a mini-trial of the merits of the s.149 or s.130 claim ([45]–[48]); and default is not a strategy, because in **Mulalley & Co Ltd v Sto Ltd** [2026] EWHC 1552 (TCC) the same German parent, having taken no part, was held liable under a BLO for 87.5% of the remedial cost, £1,772,312.17, with interest and costs ([21]–[24]). Enforcement of an English judgment in Germany is a matter of German law on the recognition of foreign judgments; the 2019 Hague Judgments Convention applies between the United Kingdom and the European Union only to proceedings begun after 1 July 2025.

The BLO and the construction products causes of action

173. The combination of ss.148 and 149 with s.130 deserves separate notice, because it is the route by which a claim reaches a foreign manufacturer. The person liable under s.149 is the person who marketed, supplied or manufactured the product, which will usually be the UK subsidiary; the UK subsidiary is often insolvent; and the parent that wrote the data sheets and held the certificates is both potentially liable in its own right and an associate of the subsidiary. **Mulalley** is the first case to run the whole chain: s.149 liability of the subsidiary (deemed by default), a BLO against the German parent, assessment of damages, and judgment. **HB (WM)** is the contested version and is the case to watch.

The Court of Appeal

174. The Court of Appeal granted the Ardmore associates permission to appeal **Crest** on or about 9 June 2026, after Constable J had refused permission on all five grounds and refused to certify a leapfrog appeal (**Crest (No 2)** at [5]–[14]). The grounds are that the court was wrong to find it just and equitable to grant an anticipatory order now; wrong to make a two-stage order leaving the specified description to trial; wrong to hold that the adjudicator’s decision gave rise to a relevant liability; wrong on the adjudicator’s jurisdiction over the DPA claim; and wrong on the adjudication BLO generally ((No 2) at [4]). At the time of writing no hearing date had been reported beyond an indication that it would be listed before October 2027, and the group’s construction arm had entered administration with seven group companies in CVAs. My expectation is that the core of the judgment will be upheld: the anticipatory jurisdiction, the treatment of an adjudicator’s decision as a relevant liability, and the approach to the discretion all fit the purpose the Supreme Court identified in **URS v BDW**, and the Supreme Court has refused permission on the application of the just and equitable test in **Triathlon**. The points most exposed are the timing holding and the weight given to the restructuring, and it would not be surprising if the Court of Appeal said something about conditions, in particular undertakings as to repayment where an adjudication liability is transmitted.

Practice points

175. For applicants:

- (a) Plead the association route company by company and period by period, with the Companies House document relied on for each; a generic “member of the same group” plea invites a request for further information.
- (b) Use s.132 first where the structure is opaque, and expect to have asked in writing before applying.
- (c) Complete Appendix L to the TCC Guide with the claim form and put the case management proposals in the bundle on day one; the Allocation CMC comes within 28 days and lasts an hour.
- (d) Where the original body is insolvent or close to it, consider an anticipatory application at the outset, and consider adjudicating the DPA claim first. Offer an undertaking as to repayment.

- (e) Plead the relevant liability with full particularity: the court's confidence in the outcome is the factor that decides an anticipatory application.

176. For respondents:

- (a) Attack the gateway before the discretion. Association under s.131 is a hard-edged test; if it fails on the documents the discretion never arises.
- (b) Do not run comparative profitability, insurance or public funding: each has been rejected and each invites a costs order.
- (c) Concentrate on the two things that have moved judges: an absence of involvement in the works, and a positive case on the underlying liability that the court cannot dismiss without a trial.
- (d) If resisting enforcement, produce coherent financial evidence from the ultimate owner, not from a finance director.
- (e) Where relative blameworthiness is real, ask for the "specified description" to be determined at trial rather than resisting the order outright.

Open questions

177. After **Crest**, **HB (WM)** and **Mulalley**, the open questions of construction have narrowed to these: whether a compromise in which liability is denied is a liability "incurred under" the DPA; whether a time-barred liability can be transmitted, and if so how the associate raises limitation; the outer limit of "as a result of a building safety risk" in s.130(3)(b); when a BLO liability is "incurred" for the purposes of the associate's own moratorium or insolvency; whether an associate that has paid can use s.130 against another associate rather than the Contribution Act; and whether a BLO liability is a liability "of" the associate for the purposes of its own insurance. None of them touches the direction of travel, which is settled: the section is applied purposively, and the corporate veil arguments have lost every time they have been run.

CASE DIGEST

Case Name: **Willmott Dixon Construction Ltd v Prater and others**

Case Reference: [2024] EWHC 1190 (TCC)

Judge: Jefford J

Date: 21 March 2024

Key Issues: Whether a claim for a BLO against a contractor's transferee and German parent companies should be stayed until after judgment in the main claim; whether the associate must be a party to the main claim.

Held:

- (a) The legislation does not require the body against whom a BLO is sought to be a party to the main claim, and "the company against whom the order is sought may be one that does not even exist at the time of the proceedings"; but it will generally be sensible and efficient for the associate to be joined and the application heard with the main claim, without binding the judge to determine it as part of the main claim: [17].
- (b) The Act assumes the associate cannot challenge a finding "or even an agreement" establishing the original body's liability, but the associate may argue that "the circumstances in which that liability was established mean that it is not just and equitable" to make the order: [18].
- (c) An undertaking by the associates to be bound by the main judgment was not an adequate substitute, because whether there is a "relevant liability" is not simply a matter of law and is not, almost by definition, part of the main claim: [21].
- (d) Stay refused; the additional claim to proceed to be heard with the main claim: [29]–[31].

Link: <https://caselaw.nationalarchives.gov.uk/ewhc/tcc/2024/1190>

Case Name: 381 Southwark Park Road RTM Company Ltd and others v Click St Andrews Ltd (in liquidation) and Click Group Holdings Ltd

Case Reference: [2024] EWHC 3569 (TCC)

Judge: Jefford J

Date: 19 December 2024

Key Issues: The first BLO. Whether it was just and equitable to transmit the liability of a freeholder SPV in liquidation to its holding company; whether the order must quantify the liability; whether the associate must have been joined; the scope of the "relevant liability".

Held:

- (a) Relevant liability found under s.130(3)(b) in respect of inadequate fire protection and structurally inadequate beams (main judgment [2024] EWHC 3179 (TCC) at [194], [198], [219]): [3].
- (b) Association established under s.131: the holding company controlled the SPV indirectly, and the same individual was the directing mind of both: [6]–[7].
- (c) Just and equitable: the SPV was “a special purpose vehicle whose sole existence was to acquire the freehold” and “was inevitably thinly capitalised”; the emphasis is on the financial position of the original body rather than on the parent, applying Triathlon (FTT) at [255]; doubt about the parent’s own means was no bar: [12]–[15].
- (d) “One of the few reasons that might militate against it being just and equitable to make the order would be if the body against whom that order was sought had not had the opportunity to have a fair trial in respect of the making of the order”: [19]–[20].
- (e) The Act does not require the associate to be identified in pleadings or joined before the order is made: [22].
- (f) The relevant liability is not a gateway to recovery of all losses; the leaseholders’ water-ingress losses were excluded: [27]–[28].
- (g) The court need not quantify the liability at the point of making the order: [29].

Link: <https://caselaw.nationalarchives.gov.uk/ewhc/tcc/2024/3569>

Case Name: **BDW Trading Ltd v Ardmore Construction Ltd**

Case Reference: [2024] EWHC 3235 (TCC)

Judge: Joanna Smith J

Date: 16 December 2024

Key Issues: Enforcement of an adjudicator’s decision of £14,454,914.45 on a DPA claim; whether a claim under the Defective Premises Act 1972 is a dispute “under” the construction contract for the purposes of s.108 of the Housing Grants, Construction and Regeneration Act 1996.

Held:

- (a) A DPA claim arising out of the works is a dispute “under the contract” and may be referred to adjudication, applying the approach in *Fiona Trust* by analogy: [41]–[80].
- (b) Summary judgment entered for £14,539,243.45 plus interest and costs: [153]–[154].
- (c) Permission to appeal was granted by Coulson LJ on 11 February 2025 but the appeal was abandoned by the administrators (*Crest Nicholson v Ardmore* [2026] EWHC 789 (TCC) at [147]). The reasoning was endorsed and adopted by Constable J in *Crest* at [162].

Link: <https://caselaw.nationalarchives.gov.uk/ewhc/tcc/2024/3235>

Case Name: **BDW Trading Ltd v Ardmore Construction Ltd and others**

Case Reference: [2025] EWHC 434 (TCC); [2025] 1 WLR 3101

Judge: HHJ Keyser KC sitting as a High Court judge

Date: 27 February 2025

Key Issues: Information orders under s.132; obiter, whether a BLO may be made before the original body’s liability is established.

Held:

- (a) An information order may be made only against the body subject to the relevant liability, not against its associates directly; the applicant must show that the body “is” subject to a relevant liability, though it need not have been established by judgment; the application should be short and uncomplicated.
- (b) A BLO relates to a relevant liability “relating to a specified building”; it “cannot make associated companies liable for the entire liability of the original body to the applicant across a number of developments”: [13].
- (c) Nothing in s.130 makes it a precondition that the original body’s liability has already been established. Seven reasons are given, including the words “any relevant liability” in s.130(2), s.130(5) (which “clearly envisages that the original body does not have to be restored to the register”), and the function of the order as an indemnity: “If this original body has any relevant liability in

respect of this specified building, this associate shall also have that liability”: [14].

- (d) “There is no difficulty if the relevant liability has been established by judgment, arbitration award, adjudication decision or admission”: [29] (a s.132(3)(a) observation: Crest at [133]).

Link: <https://caselaw.nationalarchives.gov.uk/ewhc/tcc/2025/434>

Case Name: Crest Nicholson Regeneration Ltd and others v Ardmore Construction Ltd (in Administration) and others

Case Reference: [2026] EWHC 789 (TCC)

Judge: Constable J

Date: 1 April 2026

Key Issues: Anticipatory BLO before any finding of liability; whether an adjudicator’s decision is a relevant liability; the timing of the just and equitable assessment; the weight of the factors relied on by associates; partial transmission under “any relevant liability of a specified description”.

Held:

- (a) Facts: 19 residential buildings at Admiralty Quarter, Portsmouth; external wall and internal fire safety defects; adjudicator’s decision of 29 August 2025 for £14,928,320.40 against the contractor on DPA s.1 and Part B breaches; the contractor entered administration the day before the decision; the group had been restructured from 2016 “for the purposes of creating a structure capable of isolating the historic liabilities”: [7]–[27].
- (b) Distillation of principle at [61]: the just and equitable test is broad and fact specific; the power is discretionary and exercised having regard to the purpose of the Act; it includes the power to make an anticipatory BLO; the purpose is to allow those directly responsible for defective work to be pursued through their associates and is not limited to SPVs and shell companies; the court should not set out an exhaustive list of factors; the application will generally be case managed within the main proceedings; and whenever it is heard, the order may be made only if just and equitable “at the point it is making the BLO”.

- (c) Timing: “the ultimate question remains the just and equitable exercise of discretion at the point in time the application is determined”; “the greater the Court’s confidence that the same order would be made following a trial, the more inclined it will be to grant an anticipatory BLO”: [64]. Prematurity is not a separate anterior question but part of the weighing of each factor: [65]. An associate with no involvement in or opportunity to investigate the underlying facts may defeat an anticipatory order: [70].
- (d) The administration of the contractor “for the benefit of the wider group, with the specific purpose of avoiding ... the very specific liabilities that Parliament has purposefully targeted within section 130” was lawful but “plainly of weight”: [73].
- (e) The purpose of s.130 is not confined to SPVs and shell companies: [75]–[77]. The anticipatory order functions as an indemnity and its benefit is not one-sided: [78]–[85].
- (f) Factors given no or little weight: the applicant being a commercial developer ([86]–[88]); comparative profitability ([89]–[93]); the associates’ means, the court assuming the worst ([94]–[98]); Building Safety Fund receipts ([113]–[115]); the applicant’s insurance ([116]–[119]); the group’s fire safety spending elsewhere ([123]).
- (g) Partial transmission (obiter): “any relevant liability of a specified description” permits the court to transmit part of a liability, if justice and equity demand it, leaving the proportion to trial: [105]–[112].
- (h) An adjudicator’s decision is a relevant liability: “Its interim status does not mean that, pending any trial, it somehow does not create a liability. It plainly does”: [135]; alternatively the failure to comply is itself a relevant liability by reason of a sufficient causal nexus: [140]; the court looks at the substance of what was decided: [138]–[139].
- (i) Adjudication is not incompatible with the BLO regime; “the High Court remains the guardian”; it may be unjust to transmit an adjudication liability “where the effect of granting the BLO would be to make the adjudicator’s decision de facto final, in view of the financial standing of the applicant”: [191]–

[193]. Inequality of arms in the adjudication rejected where the associates chose to ring-fence rather than fund the defence: [206]–[208].

- (j) Anticipatory BLO granted ([125]) and Adjudication BLO granted, the seven associates being jointly and severally liable for the adjudicator’s decision ([214]).

Link: <https://caselaw.nationalarchives.gov.uk/ewhc/tcc/2026/789>

Case Name: Crest Nicholson Regeneration Ltd and others v Ardmore Construction Ltd (in Administration) and others (No 2)

Case Reference: [2026] EWHC 1069 (TCC)

Judge: Constable J

Date: 8 May 2026

Key Issues: Permission to appeal; leapfrog certificate; stay of execution; time to pay; interest on a BLO liability.

Held:

- (a) Permission to appeal refused on all five grounds (anticipatory BLO; two-stage order; adjudicator’s decision as relevant liability; adjudicator’s jurisdiction over the DPA claim; the adjudication BLO), applying the high hurdle for interfering with a discretion: [4]–[13]. Leapfrog certificate refused, noting that the Supreme Court had refused permission on the application of the just and equitable test in Triathlon: [14].
- (b) Stay of execution refused on Goldtrail principles: the financial evidence was “deeply unsatisfactory” and there was “no evidence at all” from the ultimate individual owner, whose fortune was “(significantly) more than sufficient” to fund payment: [23]–[35].
- (c) Time to pay refused; “Were insolvency impending, the debtor must face the usual consequences of that impending fact”; payment within 14 days: [41]–[43].
- (d) Interest runs from non-payment of the adjudicator’s decision without a separate order, because “the BLO attaches to the liability of ACL and that liability includes interest”; the sum due under the BLO “is a debt, not damages”: [46]–[47].

- (e) Subsequent history (not part of the judgment): the Court of Appeal granted permission to appeal on or about 9 June 2026, with the hearing to be listed before October 2027 (Construction News, 15 June 2026).

Link: <https://caselaw.nationalarchives.gov.uk/ewhc/tcc/2026/1069>

Case Name: Mulalley & Co Ltd v Sto Ltd and Sto SE & Co KGaA

Case Reference: [2026] EWHC 1552 (TCC)

Judge: Pepperall J

Date: 22 June 2026

Key Issues: Assessment of damages after default judgment against the German parent of an insolvent cladding supplier under a BLO; reasonableness of remedial costs; contribution under the Civil Liability (Contribution) Act 1978 on a s.149 liability.

Held:

- (a) Sto Ltd entered administration on 17 January 2025 and the claim against it was stayed; the claim against the German parent was for a BLO; default judgment was entered by Waksman J on 8 December 2025 for damages to be assessed: [3]–[4].
- (b) The right to damages derives from the default judgment but the claimant must prove its loss by evidence; the particulars of claim are “a proxy for the judgment”: [6].
- (c) Costs incurred assessed at £3,431,633.53; apportioned by the share of the works attributable to the Sto system (85.83% of the tower external walls; 69.03% of the development), and reduced by concession to £2,025,499.62: [10]–[16]. Courts are “generally reluctant to criticise, with the benefit of hindsight, the reasonableness of the claimant’s expenditure on remedial works” (Martlet at [422]): [14].
- (d) Contribution: the court “might typically award a contribution against an architect in respect of a design breach of between 67% and 80%”; the principal cause was that Sto “marketed and supplied an inherently defective product”; contribution fixed at 87.5%, “and therefore Sto Germany pursuant to the building liability order in this case”: [17]–[21].

- (e) Judgment for £1,772,312.17 with interest at 1% over base and costs on the standard basis, £175,000 on account: [22]–[24].

Link: <https://caselaw.nationalarchives.gov.uk/ewhc/tcc/2026/1552>

Case Name: **HB (WM) Ltd and others v Sto Ltd, Sto SE & Co KGaA and Stotmeister Beteiligungs GmbH**

Case Reference: [2026] EWHC 1833 (TCC)

Judge: Moody J

Date: 14 May 2026 (published 17 July 2026)

Key Issues: Applications by German defendants to set aside service out of the jurisdiction; whether s.149 claims and BLO claims against a foreign parent and a foreign family holding company have a real prospect of success; extra-territoriality of s.130.

Held:

- (a) Three developers (Redrow, Lendlease and Barratt) claim about £90m across 18 buildings with the StoTherm Classic external wall system; BLOs sought against the German parent for the subsidiary’s liabilities and against the family holding company for the liabilities of both: [2], [4]–[7], [18]–[26]. Association was not disputed: [33].
- (b) Section 149 is “a new statutory tort (with a 30-year retrospective limitation period)” on which “there has, to date, been no case”; the points taken on Conditions A to D were fact-sensitive and for trial; the claimants had a real prospect of success: [42]–[48].
- (c) A contribution claim may be issued before the cause of action has accrued: [57]–[62]; a BLO liability is capable of being “the same damage” for the purposes of the 1978 Act: [65].
- (d) Extra-territoriality: the correct approach is to identify the applicable law of the liability (Cox v Ergo Versicherung at [28]); where that is English law “no question of extra territorial application arises”; s.130 “may perhaps be likened to vicarious liability”; the insolvency and criminal authorities relied on were distinguished: [75]–[86]. Alternatively, Parliament may be taken to have intended s.130 to apply to foreign associates: “it would be odd if it was not

intended to apply to foreign entities who would otherwise fall within section 131”: [81], [87]. The point was not finally decided: [86].

- (e) The applications to set aside service out were dismissed; on the extension of time the judge held there was no good reason for it, but the point had been conceded by the defendants under a compromise agreement: [108].

Link: <https://caselaw.nationalarchives.gov.uk/ewhc/tcc/2026/1833>

SECTION 131 – BUILDING LIABILITY ORDERS: ASSOCIATES

STATUTORY TEXT

- (1) For the purposes of section 130, a body corporate (A) is associated with another body corporate (B) if—
 - (a) one of them controls the other, or
 - (b) a third body corporate controls both of them.
- (2) A body corporate (X) controls a company (Y) if X possesses or is entitled to acquire —
 - (a) at least half of the issued share capital of Y,
 - (b) such rights as would entitle X to exercise at least half of the votes exercisable in general meetings of Y,
 - (c) such part of the issued share capital of Y as would entitle X to at least half of the amount distributed, if the whole of the income of Y were in fact distributed among the shareholders, or
 - (d) such rights as would, in the event of the winding up of Y or in any other circumstances, entitle it to receive at least half of the assets of Y which would then be available for distribution among the shareholders.
- (3) A body corporate (X) controls a limited liability partnership (Y) if X—
 - (a) holds a majority of the voting rights in Y,
 - (b) is a member of Y and has a right to appoint or remove a majority of other members, or
 - (c) is a member of Y and controls alone, or pursuant to an agreement with other members, a majority of the voting rights in Y.
- (4) A body corporate (X) controls another body corporate (Y) if X has the power, directly or indirectly, to secure that the affairs of Y are conducted in accordance with X's wishes.
- (5) In subsection (3) a reference to "voting rights" is to the rights conferred on members in respect of their interest in a limited liability partnership to vote on those matters which are to be decided on by a vote of the members of the limited liability partnership.
- (6) In determining under any of subsections (2) to (4) whether one body corporate (X) controls another, X is treated as possessing—
 - (a) any rights and powers possessed by a person as nominee for it, and

- (b) any rights and powers possessed by a body corporate which it controls (including rights and powers which such a body corporate would be taken to possess by virtue of this paragraph).
- (7) For the purposes of section 130 as it applies in relation to a building, where a person's interest in the building is held on trust, a body corporate which is a beneficiary of the trust is to be regarded as associated with the person.

EXPLANATORY NOTES

Section 131: Building liability orders: associates

Effect

1075. This section defines when bodies corporate are associated for the purposes of section 130. When two bodies corporate are associated then section 130 confers a power on the High Court to apply a Building Liability Order to them.

1076. Subsection (1) defines a body corporate (A) as being associated with a body corporate (B) if one controls the other, in which case they would have a parent and subsidiary relationship, or if both A and B are controlled by a third company, in which case A and B would be sister companies.

1077. Subsections (2) to (4) provide further definitions.

1078. Subsection (2) sets out that one body corporate controls another if one of them possesses or is entitled to acquire: at least half of the issued share capital of the other; half the voting rights exercisable in the general meetings of the other; at least half of the other's income if all the income was distributed amongst the shareholders; or, rights which would entitle it to half the assets of the other which are available for distribution amongst the shareholders in the event of the other winding up.

1079. Subsection (3) sets out when a body corporate (X) controls a limited liability partnership (Y). X has control of Y if: X holds the majority of the voting rights in Y; X is a member of Y and has the right to appoint or remove a majority of other members; or, X is a member of Y and controls the majority of the voting rights in Y (either along or through agreements with other members).

1080. Subsection (5) defines voting rights for the purposes of subsection (3). Voting rights are the rights conferred on members in respect of their interest in Y to vote on matters decided on by a vote by members of Y.

1081. Subsection (4) sets out if a body corporate has the power to ensure another acts how it wishes it to, then that body corporate has control of the other.

1082. Subsection (6) sets out that for the purposes of subsections (1A) to (4) of this section, a body corporate is treated as possessing any rights and powers possessed by a person as nominee for it (such as a director) and any rights and powers possessed by a body corporate which it controls.

1083. *The effect of subsection (6) is that bodies corporate, which are not directly associated, can be taken as associated if there is a chain of associated bodies corporate which connects them.*

1084. *Subsection (7) sets out that if an interest in a building is held on trust, and a relevant liability is incurred in relation to that building (as defined by section 130), a body corporate which is a beneficiary of the trust is considered associated.*

1085. *This section applies to England and Wales.*

Background

1086. *This is a new provision.*

1087. *The definitions used within this section have a basis in the Petroleum Act 1998 and the Corporation Tax Act 2010. Example A body corporate A shares all of its directors with a body corporate B. It could be argued that A is able to ensure that B acts how A wishes B to conduct its affairs. B controls 100% of the voting rights exercisable in the general meetings of body corporate C. C is a member of a limited liability partnership of which bodies corporate D and E are also members. D controls the majority of the voting rights in the limited liability partnership. Due to these connections and subsection (6), A, B, C, D and E are associated under this section. Under this section, if any of A, B, C, D, or E have a claim brought against them which is the result of a relevant liability being incurred, then the High Court may apply a building liability order to any or all of the others, if the claimants request it and if the High Court considers it just*

COMMENTARY

178. Section 131 defines association for the purposes of s.130 alone. The definition is control-based: two bodies corporate are associated if one controls the other, or a third controls both (s.131(1)). Control is then defined by three tests which mirror s.121(6)–(8): the share-capital and distribution tests (s.131(2)), the LLP tests (s.131(3)), and the general test that X controls Y if X has the power, directly or indirectly, to secure that Y’s affairs are conducted in accordance with X’s wishes (s.131(4)). Nominee rights and the rights of controlled companies are attributed, so chains are traced (s.131(6)); and where an interest in the building is held on trust, a corporate beneficiary is associated with the trustee for s.130 purposes (s.131(7)).

179. There are important differences between this section and s.121:

- (a) s.131 contains no partner, director or common-director route. A group linked only by shared directors is within the RCO net but outside the BLO net unless control can be shown.

- (b) s.121 tests association at the qualifying time of 14 February 2022; s.131 asks whether the specified body is or was associated with the original body at any time in the relevant period, which runs from the beginning of the works to the making of the order: s.130(4), (7). The BLO window is both longer and later: an association formed after 2022 can found a BLO but not an RCO.
 - (c) s.131 applies only between bodies corporate. Individuals cannot be specified under s.130, however complete their control: the remedy against controlling individuals, if any, lies elsewhere.
180. The asymmetry is deliberate, but its consequences are only starting to be worked out. Where a family network runs its companies through common directors and informal influence rather than shareholdings, everything turns on s.131(4). In my view the courts are likely to read that subsection as reaching de facto control on the same basis as s.121(8): the words are identical, the mischief is identical, and the TCC has already likened the s.130 mechanism to vicarious liability rather than an exorbitant veil-piercing: **HB (WM) v Sto** at [82]. The analytical framework set out in the s.121 commentary (the tax, decommissioning and sanctions learning) applies here without modification, and the Explanatory Notes acknowledge the same Petroleum Act and Corporation Tax Act pedigree.
181. The control tests themselves remain judicially untested. In **Crest Nicholson v Ardmore** association was conceded: [29]. In **HB (WM) v Sto** association of the family holding vehicle was not disputed; the fight was about territorial reach, and the claimants won it: an applicable-law analysis, not a presumption against extraterritoriality, governs, and s.131 is apt to catch foreign bodies corporate: [75]–[88]. In **Mulalley v Sto** the German parent was fixed by default judgment. So four years in, no respondent has yet put an applicant to proof of control under s.131(2)–(4). When one does, the first-instance answer will very likely be built from the materials discussed under s.121.
182. Practically, s.131 is where BLO applications are won at the investigation stage. The information order regime under s.132 exists precisely to let a prospective applicant map the associates of the original body before committing to proceedings, and the two provisions should be read together: see the commentary to s.132.

CASE DIGEST

Case Name: HB (WM) Ltd v Sto Ltd

Case Reference: [2026] EWHC 1833 (TCC)

Judge: Moody J

Date: 14 May 2026

Key Issues: Whether the s.131 association definition reaches bodies corporate incorporated abroad; association through a foreign family holding entity.

Held:

1. The claimants sought BLOs against Sto SE & Co KGaA, the German manufacturer, and Stotmeister Beteiligungs GmbH (“SBG”), a non-trading German vehicle holding the Stotmeister family shares. It was not suggested by the defendants that SBG was not an associate of the English supplier and the German manufacturer for s.131 purposes [33].
2. The court rejected the submission that s.130, and with it the s.131 association net, could not have effect against a German entity: on an orthodox applicable law analysis, where English law governs, the English statute applies and extraterritoriality does not arise [75]-[80].
3. Alternatively, the claimants had a real prospect of establishing that Parliament intended the provisions to reach foreign entities falling within s.131: it would be odd if entities otherwise within the associate definition escaped because of foreign incorporation, given the international character of the construction products industry exposed by the Grenfell Tower Inquiry [81], [87].
4. Although the evidence of SBG’s involvement was sparse, and SBG asserted it was a major shareholder rather than parent of Sto Germany, whether a BLO against it would be just and equitable was a fact-specific question for later determination; a real prospect sufficed at the jurisdictional stage [70]-[72], [88].

Link: <https://caselaw.nationalarchives.gov.uk/ewhc/tcc/2026/1833>

SECTION 132 – ORDER FOR INFORMATION IN CONNECTION WITH BUILDING LIABILITY ORDER

STATUTORY TEXT

- (1) A person of a prescribed description may apply to the High Court for an information order.
- (2) An “information order” is an order requiring a specified body corporate to give, by a specified time, specified information or documents relating to persons who are, or have at any time in a specified period been, associated with the body corporate.
- (3) An information order may be made only if it appears to the court—
 - (a) that the body corporate is subject to a relevant liability (within the meaning of section 130), and
 - (b) that it is appropriate to require the information or documents to be provided for the purpose of enabling the applicant (or the applicant and others) to make, or consider whether to make, an application for a building liability order.
- (4) In this section—

“associate”: section 131 applies for the purposes of this section as it applies for the purposes of section 130;

“building liability order”: see section 130;

“prescribed” means prescribed by regulations made by the Secretary of State;

“specified” means specified in the information order.

COMMENCEMENT AND AMENDMENTS

In force: 28 May 2022 for specified purposes (SI 2022/561, reg. 2); 28 June 2022 in full (SI 2022/561, reg. 3(i)). No amendments to date.

EXPLANATORY NOTES

Section 132: Order for information in connection with building liability order

Effect

1088. This section gives the Secretary of State a power to allow the High Court to order a specified body corporate to share information about their associated companies. It allows for prescribed persons to petition the High Court to request such an information order. This section also allows the Secretary of State, by regulations, to prescribe the description of persons who can apply to the court for such an order.

1089. Subsection (1) provides that prescribed persons may apply to the High Court for an information order. It allows for the Secretary of State, by regulations, to prescribe the description of persons who can apply to the court for such an order.

1090. Subsection (2) defines what an information order is. It provides that an information order is an order which once granted will require a specified body corporate to give, in a specified time defined by the courts, information or documents related to persons who are or have been associates of that body corporate.

1091. Subsection (3) defines the circumstances in which the High Court can grant an information order. It provides that information orders may only be granted if it appears to the court that the body corporate is subject to a relevant liability as defined by subsection (3) of section 130. Relevant liabilities include liabilities under the Defective Premises Act 1972, section 38 of the Building Act 1984, or liabilities which are incurred as a result of a building safety risk. A building safety risk is a risk to the safety of people in or about a building arising from the spread of fire or structural failure. The court must also be convinced that the information and documents to be provided support the applicant in making or considering whether to make an application for a building liability order as defined in section 130.

1092. Subsection (4) sets out that prescribed means prescribed in regulations made by the Secretary of State and specified means specified in the information order.

1093. This section should be considered in conjunction with sections 130 and 131. Section 130 defines relevant liability for the purposes of this section. Section 131 defines the circumstances in which a body corporate can be considered associated with another body corporate for the purposes of this section. This section supports those who wish to be granted a building liability order under section 130.

Background

1094. This is a new provision.

1095. This section has been created to prevent companies using more complex and opaque structures to prevent a building owner, landlord or leaseholder from being able to prove how companies are associated and therefore undermine the intended outcome of building liability orders as defined in section 130. Information orders provide a route for persons to obtain information in order to support them applying for a building liability order and to support them in receiving adequate recompense to correct building safety defects.

Proposed use of power

1096. This section allows for the Secretary of State, by regulations, to prescribe the description of persons who can apply to the court for an information order. We intend to create regulations to define these persons. Example A 14 storey residential building is developed by body corporate A. A few years after it is completed, it is discovered that there are serious fire compartmentation issues within the building and the local fire and rescue authority orders the building to be evacuated until the risk from fire is reduced. To seek recompense for the remediation costs, a leaseholder within the building speaks to lawyers about whether they can make a civil claim. The lawyers advise the leaseholder that they can

make a claim under the Defective Premises Act as the building is unfit for habitation. The leaseholder discovers the development company was dissolved once the building was completed and the freehold sold off. The leaseholder suspects that the development company's parent company is associated, therefore, they wish to be able to apply for a building liability order in order to seek damages from the parent company. However, the leaseholder is unable to show that the parent company is associated to the degree needed to be granted a building liability order. The leaseholder applies to the High Court for an information order to be applied to the parent company. The leaseholder must show that they intend to seek damages under a relevant liability (in this instance the Defective Premises Act) and that the information order could support them in applying for a building liability order. In this example, the request for an information order is granted. The High Court places an information order on the parent company, and they are then required to share with the leaseholder details of all companies which were associated with them during a time period specified by the courts. The leaseholder now has the information required to show that the parent company is associated with the development company, as the parent company directly controlled the actions of the development company. The leaseholder is then able to apply for a building liability order, to support them in making a claim under the Defective Premises Act against the parent company.

COMMENTARY

183. Section 132 is the preparatory limb of the BLO regime: it permits a person of a prescribed description to apply to the High Court for an order requiring a specified body corporate to give specified information or documents relating to persons who are, or have in a specified period been, associated with it. The prescribed persons are identified in regulation 12 of the Building Safety (Leaseholder Protections) (England) Regulations 2022: any person making, or intending to make, an application for a building liability order under s.130 may apply. The gateway is therefore wide as to applicants but, as the case law has shown, narrow as to everything else.
184. The leading authority, and still the only substantive decision on the section, is **BDW Trading Ltd v Ardmore Construction Ltd** [2025] EWHC 434 (TCC), in which I appeared for the respondents. HHJ Keyser KC refused information orders sought against Ardmore Construction Ltd and three of its group companies in respect of five developments. Four holdings matter: (a) an information order can be made only against the body corporate that is itself subject to a relevant liability, the “original body” in s.130 terms, and not against its associates: the contrary example in the Explanatory Notes is impossible to square with the statutory wording and cannot override it (at [17]-[19]); (b) the s.132(3)(a) condition that it “appears to the court” that the body “is subject

to a relevant liability” does not require a prior judgment, award, decision or admission, but nor is it satisfied by showing that the respondent “may well” have a liability: the court must be able to say that the body appears presently to be subject to a relevant liability, and evidence of expert and legal advice supporting disputed claims did not suffice (at [26]-[27], [36]-[37]); (c) the relevant liability must relate to the specified building in respect of which a BLO is contemplated: it is not enough that at least one of several disputed claims across a portfolio will probably succeed (at [35]); and (d) the permissible scope of an order is confined to material enabling the applicant to identify associates and, in an appropriate case, to assess their financial position; publicly available material will not be ordered, and the court assessed each of the seventeen categories sought and would have refused all but a limited order concerning four overseas entities identified in the accounts (at [40], [43]-[50]). Attempts to outflank the section through s.37(1) of the Senior Courts Act 1981 or the inherent jurisdiction failed: the court will not disregard the limits Parliament placed on the power (at [54]).

185. The judge was emphatic that applications under s.132 “ought to be short and uncomplicated”: the section is ancillary to s.130, not a vehicle for trying building disputes or obtaining early neutral evaluation, and the court is not obliged to become embroiled in the merits (at [29]). If that means information orders are made sparingly where liability is disputed, the judge could not see why that was a bad thing. Nor could the applicant improve its position by adverse inference: a party to arbitration is entitled to stand on the confidentiality of that process (at [36]).
186. **BDW v Ardmore** exposed a structural asymmetry. The same judgment confirmed that a BLO itself may be made before the original body’s liability is established, functioning as what might be termed an indemnity (at [14]); yet the information order, the supposedly preparatory tool, requires the court to be satisfied now that a relevant liability exists. The preparatory mechanism carries the higher threshold. **Crest Nicholson Regeneration Ltd v Ardmore Construction Ltd** [2026] EWHC 789 (TCC) has since confirmed the anticipatory BLO jurisdiction in contested proceedings, and at [133] Constable J was careful to confine **BDW v Ardmore** at [29] to the s.132(3) (a) jurisdictional threshold: the observation that an adjudication decision may make it “appear” that there is a relevant liability says nothing against an adjudication decision actually constituting one for s.130 purposes.

187. The practical consequence is that s.132 has become a residual remedy. An applicant who can map the corporate group from Companies House should proceed directly to an anticipatory BLO within the main proceedings, as Crest did; the information order is for the genuinely opaque group, and even then the applicant must come armed with cogent evidence of a present relevant liability relating to the specified building, and with narrowly drawn requests confined to associate identification and associate financial standing. In my view the courts will not relax the **BDW v Ardmore** threshold; the pressure for reform, if it comes, will have to be legislative. Two lacunae remain untested: the position where the original body has been dissolved (a s.130(5) BLO remains available, but s.132 supplies no respondent), and the availability of Norwich Pharmacal relief against third parties as an alternative route to association evidence.
188. Neither of the Ardmore decisions has been disturbed on appeal. Permission to appeal the adjudication decision, **BDW Trading Ltd v Ardmore Construction Ltd** [2024] EWHC 3235 (TCC), was granted but no appeal was pursued, and no appeal from the information-order decision has been reported. As at 10 September 2026 both stand.

CASE DIGEST

Case Name: **BDW Trading Ltd v Ardmore Construction Ltd**

Case Reference: [2025] EWHC 434 (TCC); [2025] 1 WLR 3101

Judge: HHJ Keyser KC (sitting as a Judge of the High Court)

Date: 27 February 2025

Key Issues: First substantive decision on s.132 information orders: who may apply, against whom an order may be made, the “subject to a relevant liability” threshold, and the permissible scope of the information and documents ordered.

Held:

1. Any person making or intending to make a BLO application is a prescribed person entitled to apply, by regulation 12 of the Building Safety (Leaseholder Protections) (England) Regulations 2022 (SI 2022/711). This is a matter of statute rather than a holding in the case.
2. An information order can be made only against the body corporate that is itself subject to a relevant liability, not against its associates; the example in the Explanatory Notes

showing an order against an associate is impossible to square with s.132(2) and (3)(a), and the Notes cannot override the statute [17]-[19]. The applications against the three group companies failed on this ground alone.

3. Section 132(3)(a) does not require that a relevant liability shall already have been established, and the court makes no determination of liability; it forms a view whether it appears that the body is presently subject to a relevant liability. Applications ought to be short and uncomplicated, without trial procedures or merits assessments of disputed claims [26]-[29].
4. A BLO may itself be made before the original body's liability is established and may function as an indemnity; s.130 contains no precondition of established liability [14].
5. The relevant liability must relate to the specified building in respect of which the applicant contemplates a BLO; it was not sufficient that ACL probably had a liability on at least one of five disputed developments. The most the court could say was that ACL "may well" have a relevant liability, which did not satisfy the condition; a discharged adjudication liability (paid in full) no longer subjected ACL to a relevant liability [32], [35]-[37].
6. Obiter, the permissible scope of an order comprises material enabling the applicant to identify associates and, in appropriate cases, to assess an associate's financial position; publicly available material will not be ordered. On a line-by-line review, all seventeen categories sought would have been refused save a limited order concerning two Irish and two BVI companies appearing in ACL's accounts [40], [43]-[50].
7. Neither s.37(1) of the Senior Courts Act 1981 nor the inherent jurisdiction will be used to circumvent the limits of s.132 [54]. The applications were refused [55].

Link: <https://caselaw.nationalarchives.gov.uk/ewhc/tcc/2025/434>

SECTION 133 – SERVICE CHARGES IN RESPECT OF REMEDIATION WORKS

STATUTORY TEXT

- (1) The Landlord and Tenant Act 1985 is amended as follows.
- (2) In section 20(1)(b) (limitation of service charges: consultation requirements) at the beginning insert “except in the case of works to which section 20D applies,”.
- (3) In section 20ZA (consultation requirements: supplementary) after subsection (5) insert—
 - (5A) And in the case of works to which section 20D applies, regulations under subsection (4) may also include provision requiring the landlord—
 - (a) to give details of the steps taken or to be taken under section 20D(2),
 - (b) to give reasons about prescribed matters, and any other prescribed information, relating to the taking of such steps, and
 - (c) to have regard to observations made by tenants or the recognised tenants’ association in relation to the taking of such steps.
- (4) After section 20C insert—

20D Limitation of service charges: remediation works

- (1) This section applies to works of a prescribed description (“remediation works”) on a building in England of a prescribed description.
- (2) The landlord must—
 - (a) take reasonable steps to ascertain whether any grant is payable in respect of the remediation works and, if so, to obtain the grant;
 - (b) take reasonable steps to ascertain whether monies may be obtained from a third party in connection with the undertaking of the remediation works and, if so, to obtain monies from the third party;
 - (c) take prescribed steps relating to any other prescribed kind of funding.
- (3) In subsection (2)(b) the reference to obtaining monies from a third party includes obtaining monies—
 - (a) under a policy of insurance;
 - (b) under a guarantee or indemnity;
 - (c) pursuant to a claim made against—
 - (i) a developer;
 - (ii) a person involved in the design of the building or of works to the building; or
 - (iii) a person involved in carrying out works in relation to the building.

- (4) Where any funding of a kind mentioned in subsection (2) is obtained, the amount of the funding is to be deducted from the remediation costs (and the amount of any service charge is to be reduced accordingly).
- (5) In the case of a failure to comply with subsection (2), a tenant may make an application for an order that all or any of remediation costs are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by—
 - (a) the tenant, or
 - (b) anyone else specified in the application.
- (6) An application is to be made to the prescribed court or tribunal.
- (7) 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.
- (8) Nothing in this section requires the landlord to do anything mentioned in subsection (2) before carrying out remediation works.
- (9) The Secretary of State may issue guidance about the taking of steps under subsection (2), and may revise or withdraw any issued guidance.
- (10) Where on an application under this section it is alleged that a person failed to comply with subsection (2)—
 - (a) proof of a failure to comply with any applicable guidance may be relied on as tending to establish that there was such a failure, and
 - (b) proof of compliance with any applicable guidance may be relied on as tending to establish that there was no such failure.
- (11) In this section—
 - “developer”, in relation to a building, means a person who undertakes or commissions the construction or conversion of the building with a view to granting or disposing of interests in the building (or parts of it);
 - “prescribed” means prescribed by regulations made by the Secretary of State;
 - “remediation costs” means costs incurred or to be incurred in carrying out the remediation works;
 - “third party” means a person other than a tenant.

20E Regulations under section 20D

- (1) In this section “regulations” means regulations under section 20D.
- (2) Regulations are to be made by statutory instrument.
- (3) A power to make regulations includes power to make—
 - (a) incidental, transitional or saving provision;

- (b) different provision for different purposes.
- (4) A statutory instrument containing regulations is subject to annulment in pursuance of a resolution of either House of Parliament.

EXPLANATORY NOTES

Section 133: Service charges in respect of remediation works

Effect

1097. This section amends the existing section 20 consultation process in the Landlord and Tenant Act 1985. Subsection 133(4) inserts new section 120D Landlord and Tenant Act 1985, which sets out additional steps the landlord must undertake when embarking on defined remediation works.

1098. Subsection (2) of new section 20D Landlord and Tenant Act 1985 provides that, for specified remediation works, the landlord must take reasonable steps to seek other cost recovery avenues before passing on the costs to leaseholders and must 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.

1099. Subsection (8) of new section 20D Landlord and Tenant Act 1985 clarifies that the landlord is not required to comply with their duty to seek cost recovery avenues (subsection (2)) before carrying remediation works.

1100. Subsection (4) of new section 20D Landlord and Tenant Act 1985 provides that, where funding is obtained, the landlord must reduce the remediation costs passed on to leaseholders accordingly.

1101. If the landlord does not comply with the above steps, subsection (5) of new section 20D Landlord and Tenant Act 1985 provides that a tenant can make an application for an order that all or any of the remediation costs are not regarded as relevant costs and therefore should not be taken into account when determining the service charge payable by the tenant or anyone else specified in the application.

1102. Subsection (9) of new section 20D Landlord and Tenant Act 1985 provides a power for the Secretary of State to issue guidance in relation to the steps set out in subsection (2).

1103. Subsection (10) of new section 20D Landlord and Tenant Act 1985 provides that failure to follow guidance may be relied upon as tending to establish proof of failure to comply with the requirements in subsection (2), and conversely proof of following the guidance can be taken to establish that there was no such failure.

1104. Subsection (11) of new section 20D Landlord and Tenant Act 1985 provides for definitions of key terms (“developer”, “prescribed”, “remediation costs” and “third party”).

1105. Subsection 133(4) also inserts new section 20E Landlord and Tenant Act 1985. New section 20E sets out the procedures for regulations made under new section 20D, notably that these regulations will be made using the negative procedure.

1106. Proposed use of Powers

1107. The Secretary of State will have the power to prescribe reasonable steps that a landlord must take and to set out how a landlord might demonstrate that they have met this requirement in statutory guidance.

1108. The Secretary of State will have the power to prescribe additional alternative sources of funding that the landlord must explore in regulations.

1109. The Secretary of State will be able to specify in regulations the information that the landlord must provide to the leaseholders about what steps they have taken, and the reasons for their course of action. This will enable leaseholders to be provided with accurate, up to date information and will enable them to make informed choices and to challenge when they feel their landlord has not taken reasonable steps.

Background

1110. There is currently no legal obligation on the landlord to seek alternative forms of cost recovery for remediation works before passing these costs onto leaseholders. This clause amends section 20 in the Landlord and Tenant Act 1985 so that the landlord has new duties to take reasonable steps to seek other cost recovery avenues before passing on remediation costs to leaseholders.

1111. This change to the law is being made to give leaseholders further rights and protection by ensuring other cost recovery routes are appropriately explored. Example A leaseholder is given a service charge bill for a large amount of money for remediation works. The leaseholder challenges the validity of the service charge at the First-tier tribunal, because they do not feel the landlord has taken reasonable steps to explore other forms of cost recovery. It transpires that the landlord has not made a claim against a warranty and the claim of the leaseholder is upheld by the First-tier Tribunal. The landlord must take reasonable steps to seek cost recovery via this route, before passing any costs on to the leaseholder.

COMMENTARY

189. Section 133 amends the Landlord and Tenant Act 1985 by inserting a new section 20D (with s.20E governing the regulations). Where remediation works of a prescribed description are carried out on a building of a prescribed description, the landlord must take reasonable steps to ascertain whether any grant is payable and, if so, to obtain it; to ascertain whether monies may be obtained from a third party and, if so, to obtain them;

and to take prescribed steps in relation to other prescribed kinds of funding. “Third party” recovery expressly includes insurance, guarantees and indemnities, and claims against the developer and those involved in the design or carrying out of works. Any funding obtained must be deducted from the remediation costs, and service charges reduced accordingly.

190. The enforcement mechanism is leaseholder-led: on a failure to comply, a tenant may apply for an order that all or any of the remediation costs are not to be regarded as relevant costs for service charge purposes, the tribunal making such order as is just and equitable. Compliance or non-compliance with any guidance issued by the Secretary of State is evidentially significant both ways (new s.20D(10)). Two features limit the provision’s bite: the landlord is not required to exhaust the s.20D(2) steps before carrying out the works (s.20D(8)), and the operative content depends heavily on regulations prescribing the works, buildings and steps concerned.
191. Section 133 should be understood as the service charge counterpart of the litigation provisions in this Part: the s.20D duty to pursue developers and construction professionals is given real teeth by the extended limitation periods under s.135 and by the BLO regime under ss.130 to 132, which together make such claims worth pursuing. A landlord that resorts to the service charge without first taking reasonable steps to pursue those routes is exposed to a s.20D application. There is as yet no reliable appellate guidance on the interaction between s.20D and the reasonableness regime in s.19 of the 1985 Act; in my view the tribunals will treat the two as cumulative requirements, and prudent landlords should document their funding enquiries before any demand is made.

SECTION 134 – DUTIES RELATING TO WORK TO DWELLINGS ETC

STATUTORY TEXT

- (1) In the Defective Premises Act 1972 after section 2 insert—

2A Duties relating to work to dwellings etc

- (1) This section applies where a person, in the course of a business, takes on work in relation to any part of a relevant building.
- (2) In this section “relevant building” means a building consisting of or containing one or more dwellings.
- (3) The person owes a duty to—
- (a) the person for whom the work is done, and
 - (b) each person who holds or acquires an interest (whether legal or equitable) in a dwelling in the building,
- to see that the work is done in a workmanlike or (as the case may be) professional manner, with proper materials and so that as regards the work the dwelling is fit for habitation when the work is completed.
- (4) The duty under this section does not apply in relation to a dwelling if—
- (a) the work taken on is work for or in connection with the provision of the dwelling (as to which see section 1), or
 - (b) it is expected that, on completion of the work, it will have ceased to be a dwelling or will otherwise have ceased to exist.
- (5) A person (A) who takes on any work to which this section applies for another (B) on terms that A is to do it in accordance with instructions given by or on behalf of B is, to the extent to which A does it properly in accordance with those instructions, to be treated for the purposes of this section as discharging the duty imposed on A by this section except where A owes a duty to B to warn B of any defects in the instructions and fails to discharge that duty.
- (6) A person is not treated for the purposes of subsection (5) as having given instructions for the doing of work merely because the person has agreed to the work being done in a specified manner, with specified materials or to a specified design.
- (7) A person who, in the course of a business which consists of or includes carrying out or arranging for the carrying out of work of a kind mentioned in subsection (1), arranges for another to take on work of that kind is treated for the purposes of this section as included among the persons who have taken on the work.

- (8) For the purposes of the Limitation Act 1980, a cause of action in respect of a breach of a duty imposed by this section is treated as accruing at the time the work is completed; but if after that time a person does further work to rectify the work the person has already done, any such cause of action in respect of that further work is treated as accruing at the time when the further work is finished.
- (2) The amendment made by this section applies in relation to work completed after the coming into force of this section.

EXPLANATORY NOTES

Section 134: Duties relating to work to dwellings

Effect

1112. Subsection (1) of this section amends the Defective Premises Act 1972 by inserting new section 2A into that Act.

1113. New section 2A(1) sets out that this section applies where a person takes on work in relation to any part of a relevant building in the course of a business. It does not apply, for example, to homeowners doing work on their own properties.

1114. New section 2A(2) defines a “relevant building” as a building consisting of or containing one or more dwellings (e.g. a house or a block of flats).

1115. New section 2A(3) sets out that the person who takes on work to a relevant building owes a duty to the person for whom the work is done and any person who holds or subsequently acquires a legal or equitable interest in a dwelling in the building (this includes homeowners and leaseholders). The duty applies to work done directly to a dwelling, and to work done to other parts of a building (such as to the communal parts of a block of flats). This section sets out that the person undertaking the work owes a duty to ensure that, as regards the work, the dwellings in the building are fit for habitation when the work is completed. This test is also used in section 1 of the Act (in relation to the original provision of a dwelling). The phrase “as regards the work” means that the person is responsible only for their own work and not any existing defects in the building (although the person will be responsible for their own work in relation to any defects which are within the agreed scope of the work).

1116. New section 2A(4) sets out that new section 2A(3) does not apply where the existing section 1 duty applies (i.e. where work is taken on in connection with the “provision” of a dwelling), or where it is expected that the dwelling will cease to be a dwelling on the completion of the work (e.g. converting flats into offices) or if the dwelling will have otherwise ceased to exist (e.g. demolition of a house).

1117. New section 2A(5) sets out that, where a person (A) takes on work for another person (B), and it is agreed that the work will be done in accordance with instructions provided by or on behalf of B, then if A does that work properly and in accordance with those instructions, then A will have discharged the duty and no claim would be able to be

brought. There is an exception where there are defects in the instructions provided by B. In this case, if A has a professional duty to inform B that the instructions are defective but fails to do so, and carries out work in accordance with the defective instructions, then A fails to discharge their duty to B.

1118. New section 2A(6) makes clear that, for the purposes of new section 2A(5), the person commissioning the work is not treated as having given instructions just because they have agreed with the person doing the work that the work will be completed in a specified way.

1119. New section 2A(7) sets out that, if a person doing work to a relevant building arranges for another person to take on that work (e.g. subcontracting part of a project) then those persons (i.e. the subcontractors) also owe a duty for the work they take on.

1120. New section 2A(8) relates to the limitation period in respect of a breach of a duty imposed by new section 2A, as set out in the Limitation Act 1980, as amended by section 135. This section sets out that the 15-year limitation period starts when the work is completed. As with a time limit under section 1, if a person subsequently does work to rectify original defective work, the 15-year limitation period starts again when that further work is finished.

1121. Subsection (2) of this section makes clear that new section 2A will apply only to work completed after this section comes into force.

1122. This section will apply equally in Wales.

Background

1123. This section amends the Defective Premises Act 1972.

1124. 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 currently extends to the “provision” of a dwelling, meaning construction (i.e. new builds) or conversion (e.g. offices into flats). In practice, the claimant will need to show that the work made the dwelling not fit for habitation, and it is up to a court to decide based on the facts of the specific case.

1125. 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 section expands the right to claim compensation to any work undertaken on a dwelling, provided that work is done in the course of a business. Example Work to refurbish an existing block of flats is done by a contractor. As a result of that work, one or more of the flats are no longer fit for habitation. This would constitute a breach of the duty under new section 2A of the Defective Premises Act 1972 and leaseholders of the affected flats would be able to bring a claim through the civil courts against the contractor for the cost of rectifying the defective work.

COMMENTARY

192. Section 134 inserts s.2A into the Defective Premises Act 1972. It is one of the BSA's most significant changes to the general law. Section 1 of the DPA reaches only the "provision" of a dwelling: new build, conversion or enlargement. Section 2A extends the duty to any person who, in the course of a business, takes on work in relation to any part of a "relevant building", meaning a building consisting of or containing one or more dwellings. Refurbishment, re-cladding, repair and alteration works are now within the DPA for the first time.
193. The content of the duty mirrors s.1: the work must be done in a workmanlike or professional manner, with proper materials, so that as regards the work the dwelling is fit for habitation when the work is completed. The duty is owed both to the person for whom the work is done and to each person who holds or acquires a legal or equitable interest in a dwelling in the building. The phrase "as regards the work" confines responsibility to the work taken on: a contractor is not liable for pre-existing defects outside its scope. The familiar s.1 machinery is replicated: instructions given by the employer discharge the duty if properly followed (subject to a duty to warn), and arranging for others to take on the work attracts the duty to the arranger and subcontractor alike (s.2A(5)-(7)).
194. Limitation runs from completion of the work, with a fresh accrual for rectification works when the further work is finished (s.2A(8)), and the applicable period is the 15-year period under s.4B of the Limitation Act 1980. Critically, s.134(2) makes the amendment prospective only: s.2A applies to work completed after 28 June 2022. The contrast with s.135 is deliberate: there is no backdated liability for historical refurbishment works, whereas s.1 claims for original construction reach back 30 years.
195. The practical exposure is considerable. Every contractor, subcontractor and professional taking on business works to any building containing a dwelling now owes a non-excludable statutory duty (DPA, s.6(3)) to a wide and shifting class of interest-holders, with a 15-year tail. The "fit for habitation" threshold will do the main work of containing liability: on the current authorities (**Rendlesham; Vainker v Marbank**; and see **Mallas v Persimmon Homes Ltd** [2025] EWHC 2581 (TCC), digested under s.135), defects presenting a risk to safety or health engage the standard, cosmetic defects do not. I expect the first substantial s.2A judgments to concern re-cladding

projects carried out since 2022, and the courts to apply the s.1 jurisprudence on fitness without material modification.

SECTION 135 – LIMITATION PERIODS

STATUTORY TEXT

- (1) After section 4A of the Limitation Act 1980 insert—

4B Special time limit for certain actions in respect of damage or defects in relation to buildings

- (1) Where by virtue of a relevant provision a person becomes entitled to bring an action against any other person, no action may be brought after the expiration of 15 years from the date on which the right of action accrued.
- (2) An action referred to in subsection (1) is one to which—
- (a) sections 1, 28, 32, 35, 37 and 38 apply;
 - (b) the other provisions of this Act do not apply.
- (3) In this section “relevant provision” means—
- (a) section 1 or 2A of the Defective Premises Act 1972;
 - (b) section 38 of the Building Act 1984.
- (4) Where by virtue of section 1 of the Defective Premises Act 1972 a person became entitled, before the commencement date, to bring an action against any other person, this section applies in relation to the action as if the reference in subsection (1) to 15 years were a reference to 30 years.
- (5) In subsection (4) “the commencement date” means the day on which section 135 of the Building Safety Act 2022 came into force.
- (2) In section 1(5) of the Defective Premises Act 1972, for “the Limitation Act 1939, the Law Reform (Limitation of Actions, &c.) Act 1954 and the Limitation Act 1963” substitute “the Limitation Act 1980”.
- (3) The amendment made by subsection (1) in relation to an action by virtue of section 1 of the Defective Premises Act 1972 is to be treated as always having been in force.
- (4) In a case where—
- (a) by virtue of section 1 of the Defective Premises Act 1972 a person became entitled, before the day on which this section came into force, to bring an action against any other person, and
 - (b) the period of 30 years from the date on which the right of action accrued expires in the initial period,
- section 4B of the Limitation Act 1980 (inserted by subsection (1)) has effect as if it provided that the action may not be brought after the end of the initial period.
- (5) Where an action is brought that, but for subsection (3), would have been barred by the Limitation Act 1980, a court hearing the action must dismiss it in relation to any

defendant if satisfied that it is necessary to do so to avoid a breach of that defendant's Convention rights.

(6) Nothing in this section applies in relation to a claim which, before this section came into force, was settled by agreement between the parties or finally determined by a court or arbitration (whether on the basis of limitation or otherwise).

(7) In this section—

“Convention rights” has the same meaning as in the Human Rights Act 1998;

“the initial period” means the period of one year beginning with the day on which this section comes into force.

section 4B of the Limitation Act 1980 (inserted by subsection (1)) has effect as if it provided that the action may not be brought after the end of the initial period.

EXPLANATORY NOTES

Section 135: Limitation periods

Effect

1126. This section makes a number of changes to extend the limitation periods (i.e. the period within which legal action must be brought) in respect of action under section 1 of the Defective Premises Act 1972, (the yet to be commenced) section 38 of the Building Act 1984, and new section 2A of the Defective Premises Act 1972 (see section 134). The changes to limitation periods are achieved primarily by inserting new section 4B into the Limitation Act 1980 (subsection (1)). The Limitation Act currently provides that the limitation period with respect to these causes of action is six years.

1127. This section extends the limitation period under section 1 of the Defective Premises Act (relating to the “provision” of a dwelling) to 30 years retrospectively and 15 years prospectively. This means that relevant work completed prior to the commencement of this section will be subject to a 30-year limitation period, and work completed after commencement will be subject to a 15-year limitation period.

1128. This section also provides for 15-year limitation periods under section 38 of the Building Act and new section 2A of the Defective Premises Act. These changes will apply prospectively only.

1129. This section provides in subsection (4) that, in respect of section 1 of the Defective Premises Act, where a revived limitation period would last for less than one year (known as “the initial period”), it will instead last for one full year, in order to give potential claimants the necessary time to take advice and lodge a claim.

1130. Where a limitation period is extended retrospectively this section sets out two safeguards to ensure fairness in the proceedings. First, subsection (5) provides that, where a claim is lodged and the continuation of the claim would breach a defendant's human rights, the court must dismiss the claim. Secondly, subsection (6) provides that, where a

claim has previously been dismissed or otherwise concluded (for example, if settled), the extended limitation period will not, of itself, be sufficient to reopen the claim.

1131. This section will apply equally in Wales.

Background

1132. This section is a new provision. To complement the redress provisions for newly built homes that are being introduced through the Act, the Government wishes to go further and extend redress provisions for existing buildings. Example 1: Extended limitation period Work on a new build block of flats is completed in 2024 and, seven years later, the leaseholders of a flat in that block find that, during the building work, there was a breach of a requirement imposed by the building regulations. Under section 38 of the Building Act 1984 the leaseholders can lodge proceedings to have their claim heard by the court within 15 years of the completion of the work. Example 2: “Revived” limitation period Work on a new build block of flats was completed in 2000 and in 2019 leaseholders discovered that there were defects in the original work to the extent that the flat is unfit for habitation, potentially giving rise to a cause of action against the housebuilder under section 1 of the Defective Premises Act 1972. However, the limitation period had already expired in 2006, so no claim was brought. Due to the retrospective extension of the limitation period to 30 years, the leaseholders could now bring proceedings up until 2030.

COMMENTARY

196. Section 135 is the most transformative single provision of the BSA. It inserts s.4B into the Limitation Act 1980, providing a 15-year limitation period for actions under s.1 or s.2A of the Defective Premises Act 1972 and s.38 of the Building Act 1984. For s.1 DPA claims where the right of action accrued before 28 June 2022, the period is 30 years, and by s.135(3) the amendment “is to be treated as always having been in force”: claims statute-barred for decades were revived. Three safeguards temper the retrospectivity: a one-year “initial period” for claims whose 30-year period would otherwise expire within a year of commencement (s.135(4)); a mandatory dismissal where necessary to avoid a breach of the defendant’s Convention rights (s.135(5)), which remains untested at any level; and the preservation of claims settled or finally determined before commencement (s.135(6)).
197. The leading authority is **URS Corporation Ltd v BDW Trading Ltd** [2025] UKSC 21. The Supreme Court resolved four questions, each in favour of the developer claimant: (a) there is no “voluntariness principle” barring recovery of remediation costs incurred without an enforceable obligation, given the practical, reputational and legal pressures on a developer facing dangerous buildings; (b) the retrospectively extended s.1 DPA limitation period applies also to claims in negligence and contribution that are

dependent on the DPA position, since the contrary result would be legally incoherent; (c) a developer is itself owed the s.1 duty by the professionals it engages: the statute does not confine the duty to purchasers; and (d) a contribution claim may be brought without any prior judgment, award or settlement, provided the claimant faces liability for the same damage. The decision removes most of the outworks that defendants had constructed against the retrospective period.

198. The reach of s.4B must nevertheless not be overstated: it attaches to the listed “relevant provisions” only. The asymmetry was exposed in **The Occupiers of Samuel Garside House v Bellway Homes Ltd** [2024] EWHC 1579 (KB) at [8]-[14]: occupiers injured by a 2019 fire had the benefit of the 30-year period for their s.1 DPA claims for physical damage and economic loss, while their common law negligence claims, including all personal injury claims, remained governed by the three-year period in s.11 of the 1980 Act (subject to s.33 disapplication) or the ordinary six-year period. The result is the reverse of the usual hierarchy: the statutory fitness claim long outlives the tort claim, and personal injury claimants, the persons the building safety regime most obviously protects, take no benefit from s.4B. Whether personal injury damages can themselves be pursued within a s.1 DPA claim so as to attract s.4B was noted but not decided in **Samuel Garside** at [12]. That question will have to be confronted; in my view the wording of s.1 is capable of embracing personal injury loss, and the point is likely to be run.
199. Practice has adjusted quickly. Existing actions were amended to add DPA claims as soon as s.135 came into force: **USAF Nominee No 18 Ltd v Watkin Jones & Son Ltd** [2023] EWHC 1880 (TCC) at [6] is an early example. The retrospective period is now routinely conceded where the point is clear: in **Mallas v Persimmon Homes Ltd** [2025] EWHC 2581 (TCC) at [24] the developer accepted, following **URS v BDW**, that a claim concerning a 2015 house was in time. And the 30-year period can be enforced through adjudication: in **BDW Trading Ltd v Ardmore Construction Ltd** [2024] EWHC 3235 (TCC) Joanna Smith J enforced a £14.5m award on DPA claims arising from a contract made in 2002, with practical completion in 2003 to 2004, claims that had been statute-barred since about 2010.
200. The structural consequences are now visible. The administrator’s report before the court in **Crest Nicholson Regeneration Ltd v Ardmore Construction Ltd** [2026] EWHC 789 (TCC) at [20]-[21] recorded that ACL’s entry into administration was driven

wholly or in significant part by its exposure to revived cladding claims following the 30-year extension. Section 135 is thus the engine of the wider Part 5 machinery: it creates the liabilities, and ss.130 to 132 (BLOs) and s.124 (RCOs) prevent corporate structuring from defeating them. A defendant group that responds to s.135 exposure by ringfencing the contracting entity should expect the BLO jurisdiction to follow it, as the Ardmore group discovered.

201. For defendants, the residual lines of defence are these: (a) the s.135(5) Convention rights safeguard, which requires a fact-specific showing that the retrospective revival itself causes the relevant prejudice, and which has yet to succeed anywhere; (b) the fitness for habitation threshold, which confines s.1 to defects presenting a real risk to health or safety (**Mallas** at [25]-[26] shows both edges: an unsafe porch sufficed, while foundation movement causing cracking did not); (c) s.135(6) for claims previously settled or determined; and (d) on quantum, contribution and apportionment arguments of the kind considered in **Mulalley & Co Ltd v Sto Ltd** [2026] EWHC 1552 (TCC). None of these is a limitation defence in the old sense. The 30-year period runs from accrual, without any discoverability requirement, and the courts have shown no appetite to blunt it.

CASE DIGEST

Case Name: **The Occupiers of Samuel Garside House v Bellway Homes Ltd**

Case Reference: [2024] EWHC 1579 (KB)

Judge: Master Dagnall

Date: 25 June 2024

Key Issues: The limitation framework after s.135 BSA: the asymmetry between revived s.1 DPA claims and common law negligence and personal injury claims; service and amendment applications in a claim arising from the 2019 fire at Samuel Garside House.

Held:

1. Occupiers of a block constructed in 2013 claimed against the developer and architect at common law and under s.1 DPA 1972 following a serious fire in June 2019, for physical damage, economic loss and personal injuries [2].

2. It was common ground that, by reason of s.4B of the Limitation Act 1980 inserted by s.135, the limitation period for the s.1 DPA claims had not expired, and that this applied to the resultant claims for physical damage and economic loss [10].
3. The position differed for the common law claims: s.4B applies only to the listed relevant provisions, so negligence claims, and in particular claims including damages for personal injury, remained subject to the three-year period under s.11 of the 1980 Act, extendable only under s.33 [8], [11], [14].
4. The parties' shared assumption that personal injury claims fall wholly outside s.4B was noted but expressly not affirmed; the Master observed a tension between s.11 and the new s.4B which was not argued out [12], [15].
5. The judgment is the clearest early statement of the asymmetry at the heart of s.135: the statutory fitness claim reaches back 30 years while parallel tort claims for the same fire may already be barred [8]-[14].

Link: <https://caselaw.nationalarchives.gov.uk/ewhc/kb/2024/1579>

Case Name: **USAF Nominee No 18 Ltd v Watkin Jones & Son Ltd**

Case Reference: [2023] EWHC 1880 (TCC)

Judge: Waksman J

Date: 26 July 2023

Key Issues: Title to sue on a collateral warranty and on DPA claims added by amendment in reliance on s.135; whether s.6(3) DPA 1972 precludes assignment of DPA claims.

Held:

1. The claimants' cladding claims for £3.797m were brought for breach of collateral warranty, negligence and under the DPA 1972, the DPA claim having been recently added by amendment in the light of the extension to the limitation period provided for by s.135 [6].
2. On the trial of preliminary issues as to title to sue, the court held there had been no absolute assignment of the receivables encompassing the collateral warranty and the claims; the claimants' title survived [231].

3. In consequence it was unnecessary to decide the separate point whether s.6(3) of the DPA 1972 prohibits the assignment of DPA causes of action; the question remains open [232].
4. The case illustrates the immediate practice effect of s.135: extant proceedings were promptly amended to add revived DPA claims, bringing with them novel collateral questions (assignability, title, trusts structures) that the DPA had rarely generated in its first fifty years [6], [232].

Link: <https://caselaw.nationalarchives.gov.uk/ewhc/tcc/2023/1880>

Case Name: Mallas v Persimmon Homes Ltd

Case Reference: [2025] EWHC 2581 (TCC)

Judge: Mr Alan Bates (sitting as a Deputy Judge of the High Court)

Date: 9 October 2025

Key Issues: DPA s.1 claim by a homeowner against a developer; concession of the 30-year retrospective limitation period; the fitness for habitation threshold applied to discrete elements of a house.

Held:

1. A homeowner sued the developer of a 2015 detached house built on foundations inappropriate for the ground conditions, in contract and under s.1 DPA 1972.
2. The developer acknowledged, following URS v BDW, that the DPA claim was not time-barred given the insertion of s.4B into the Limitation Act 1980 by s.135, which retroactively extended the period to 30 years [24]. The concession reflects what is now settled practice.
3. The house was unfit for habitation within s.1: the porch had its own shallow foundations, was unsafe and would collapse without propping; that collapse was not imminent did not negate the ongoing risk to safety from inadequate construction. This sufficed for breach [25].
4. The court would not have found unfitness by reason of the inadequate trench foundations of the house itself: the resulting movement and cracking did not present a risk to safety or render occupation unduly inconvenient or uncomfortable [26].

5. The decision shows the fitness threshold operating element by element: a single unsafe component may render the dwelling unfit, while more widespread but non-hazardous defects will not [25]-[26].

Link: <https://caselaw.nationalarchives.gov.uk/ewhc/tcc/2025/2581>

SECTION 136 – ESTABLISHMENT OF THE NEW HOMES OMBUDSMAN SCHEME

STATUTORY TEXT

- (1) The Secretary of State must make arrangements for there to be a scheme, to be known as the “new homes ombudsman scheme”, which meets the conditions in section 137(1).
- (2) Examples of arrangements under subsection (1) are arrangements—
 - (a) with another person under which that other person agrees to establish and maintain the new homes ombudsman scheme in accordance with the terms of the arrangements,
 - (b) under which the new homes ombudsman scheme is established and maintained by (or on behalf of) the Secretary of State, or
 - (c) for the maintenance of the new homes ombudsman scheme, in accordance with the terms of the arrangements, by a person other than the person who established it.
- (3) The Secretary of State may—
 - (a) give financial assistance (by way of grant, loan, guarantee or in any other form) to a person for the establishment or maintenance of the new homes ombudsman scheme;
 - (b) make payments to such a person (otherwise than as financial assistance) in accordance with arrangements under subsection (1).
- (4) Before making arrangements under subsection (1), the Secretary of State must consult—
 - (a) the Welsh Ministers,
 - (b) the Scottish Ministers, and
 - (c) the relevant Northern Ireland department.
- (5) In this section, “the relevant Northern Ireland department” means—
 - (a) the Northern Ireland department designated for the purposes of this section by the First Minister and deputy First Minister acting jointly, or
 - (b) failing such a designation, the Executive Office in Northern Ireland.

EXPLANATORY NOTES

Section 136: Establishment of the New Homes Ombudsman scheme

Effect

1133. This section requires the Secretary of State to arrange for there to be a redress scheme for England, Scotland, Wales and Northern Ireland, to be known as the “New

Homes Ombudsman scheme”, which must meet the conditions in section 137(1), including the requirements set out in Schedule 9.

1134. The provision gives examples of how the obligation in subsection (1) might be achieved. The scheme may be an external or “in-house” redress scheme. For example, the Secretary of State could either select a third party to establish the scheme and maintain it, or the scheme could be an “in-house” arrangement whereby the Secretary of State establishes and maintains the scheme directly or establishes the scheme and appoints another person to maintain it. This will provide flexibility for how the scheme is established and maintained, and who will deliver the New Homes Ombudsman scheme. For completeness, the examples set out in the provision also cover the Secretary of State having to make arrangements for transfer, to allow the scheme to be maintained by a different person to the person who established it. This might become necessary if the external scheme provider which established the scheme could no longer fulfil its contract.

1135. In line with the flexibility around how the scheme is established and maintained, this section also provides for flexibility in terms of funding the scheme. It allows the Secretary of State to provide financial assistance to the New Homes Ombudsman scheme, including through non-repayable forms (grants) as well as repayable forms of assistance (such as loans). In the alternative, if the scheme is procured and is not self-financing there is also provision to allow the Secretary of State to pay for the service. The intention is for the New Homes Ombudsman scheme to cover its own costs and to finance itself through fees charged to developers.

1136. Before making the arrangements for the New Homes Ombudsman scheme under this section, the Secretary of State must consult the Welsh Ministers and Scottish Ministers and the relevant Northern Ireland department. If in future, alternative arrangements are required for the New Homes Ombudsman Scheme, the Secretary of State will be required to consult with the Scottish and Welsh Ministers and the relevant Northern Ireland department again.

1137. The relevant Northern Ireland department is the department of the Northern Ireland Executive designated by the First Minister and deputy First Minister in Northern Ireland acting jointly, or the Executive Office in Northern Ireland, where a department has not been designated.

Background

1138. This is a new provision. There is no previous provision for owners of new build homes specifically to complain to an ombudsman or redress scheme. Redress schemes already exist in relation to management, lettings and estate agency work in the private residential sector, and for social housing residents.

Example

The Secretary of State may make arrangements with a third party to establish a scheme and maintain it by way of a government procurement. There may already be a voluntary scheme in place that could bid, alongside other potential providers. It is anticipated that an independent board incorporating the housebuilding industry, consumer groups and others

will bring forward arrangements to set up such a voluntary scheme prior to Royal Assent. Where no suitable providers of a scheme come forward, the Government may establish a scheme itself and ask someone else to maintain the scheme. If necessary, the Government could make a loan to establish a scheme which could be recouped once fees have been received under the scheme. Before making arrangements for the scheme the Secretary of State will consult with the Scottish and Welsh Ministers, and the relevant Northern Ireland department, and intends to work with the devolved administrations as the policy is developed.

COMMENTARY

202. Section 136 requires the Secretary of State to make arrangements for a “new homes ombudsman scheme” meeting the conditions in s.137(1). The duty is mandatory, but the form is flexible: the scheme may be established and maintained by a third party under arrangements with the Secretary of State, or established and maintained by or on behalf of the Secretary of State directly, with power to give financial assistance by grant, loan or guarantee (s.136(2), (3)). The devolved administrations must be consulted before arrangements are made, the scheme being intended to operate UK-wide.
203. No statutory scheme has yet been established. The field is occupied by the voluntary arrangements of the New Homes Quality Board, whose New Homes Quality Code and associated New Homes Ombudsman Service have operated since 2022 for participating developers. The statutory framework in ss.136 to 143 stands behind the voluntary scheme as a backstop, a pattern deliberately mirroring the building industry scheme provisions in ss.126 to 129: voluntary machinery first, statutory compulsion in reserve. Until the mandatory membership power in s.140 is exercised, the practical protection for buyers depends on their developer’s participation in the voluntary scheme.

SECTION 137 – THE NEW HOMES OMBUDSMAN SCHEME

STATUTORY TEXT

- (1) The conditions referred to in section 136(1) are that—
 - (a) membership of the scheme is open to all developers,
 - (b) the scheme enables qualifying complainants to have complaints against members of the scheme investigated and determined by an independent individual, and
 - (c) the scheme contains the provisions required by Schedule 9.
- (2) A “qualifying complainant” is a person who, at the time the complaint is made, is a relevant owner of a home which, at that time, is a new build home.
- (3) The individual who is to investigate and determine complaints under the scheme is to be known as “the new homes ombudsman”.
- (4) The scheme may also include provision for persons other than qualifying complainants to have complaints against members of the scheme investigated and determined under the scheme.
- (5) The scheme may provide that the new homes ombudsman is not required to investigate a complaint if the new homes ombudsman is satisfied that the complaint (or a complaint which is materially the same) is being, or has been, dealt with under another redress scheme or in legal proceedings.
- (6) In this section, “redress scheme” means a scheme under which complaints may be made to, and investigated and determined by, an independent person.
- (7) Schedule 9 contains further provision about the new homes ombudsman scheme.
- (8) Schedule 10 contains amendments connected with the establishment of the new homes ombudsman scheme.

EXPLANATORY NOTES

Section 137: The New Homes Ombudsman scheme

Effect

1139. The scheme must meet the conditions set out in this section and in Schedule 9.

1140. The purpose of the New Homes Ombudsman scheme is to enable relevant owners of new build homes across the United Kingdom to make complaints against scheme members (developers) and to have such complaints investigated and determined by an individual who will act as an independent ombudsman.

1141. Membership of the scheme must be open to all developers. The scheme must manage complaints made by qualifying complainants about those members. The definition of

“qualifying complainant” covers a person who is a “relevant owner” of a “new build home” in England, Scotland, Wales or Northern Ireland at the time of a complaint, which is a complaint within the first two years from the first purchase of the property from the developer. “Relevant owner” and “new build home” are defined in section 138. “Relevant owners” include individual owners who occupy the new build home, and certain residential landlords. Complaints can be made for certain new build homes constructed or converted after this section comes into effect, subject to further conditions in section 138.

1142. This section does not restrict the New Homes Ombudsman scheme from receiving complaints from “qualifying complainants” only. It may include provision for other people or organisations to have complaints investigated.

1143. To avoid duplication, the scheme will not be required to investigate a similar complaint being dealt with under another redress scheme, such as complaints against a developer who is a member of another redress scheme.

1144. This could include a situation where a complaint has been made to the Housing Ombudsman Service for a new build home in England which has not been resolved yet. The New Homes Ombudsman scheme will also not be required to investigate complaints that are subject to legal proceedings. The same applies to complaints already resolved by other redress schemes or the courts.

1145. This section also introduces Schedule 10 which inserts reference to the New Homes Ombudsman into the Local Government Act 1974 and the Housing Act 1996 to make sure that the Local Government and Social Care Ombudsman and the Housing Ombudsman can work effectively together with the New Homes Ombudsman.

1146. In this section, the term “redress scheme” is to include schemes that involve statutory corporations , amongst others, such as the Public Services Ombudsmen available in Wales Scotland and Northern Ireland, the Local Government and Social Care Ombudsman and the Housing Ombudsman.

Background

1147. This is a new provision. There is no previous provision for owners of new build homes specifically to complain to an ombudsman or redress scheme. Redress schemes already exist in relation to property management, lettings and estate agency work in the private residential sector, and for social housing residents. Example An individual who owns and occupies a new build home will be able to bring a complaint against a developer who is a member of the New Homes Ombudsman scheme about the developer’s conduct and standards of work. The complaint can be raised about matters occurring within two years from the date the home was first purchased from the developer. A complaint does not have to be made by the original purchaser, if the home has changed hands – see further below at section 138. There is flexibility for the New Homes Ombudsman to include provision in its rules so that it can receive complaints where the purchaser wasn’t an individual (for example, small organisations who purchase a new build home from a developer and do not have the capacity to pursue cases through the courts). It will be up to the New Homes Ombudsman scheme to set out who can complain to it in these

circumstances. This could include prospective purchasers of new build homes who did not complete the purchase of the property as a result of a developer's actions, or it could include organisations such as smaller housing associations who bought new build homes for occupation by tenants.

COMMENTARY

204. Section 137 sets the three conditions the scheme must meet: membership open to all developers; provision for “qualifying complainants” to have complaints against members investigated and determined by an independent individual, to be known as the new homes ombudsman; and inclusion of the provisions required by Schedule 9 (which governs complaints procedure, remedies, reporting and funding). A “qualifying complainant” is a person who, when the complaint is made, is a relevant owner of a home which is then a new build home; both terms take their content from s.138, and the effect is broadly a two-year post-purchase complaints window.
205. Two permissive features matter in practice: the scheme may extend to complaints by persons other than qualifying complainants (s.137(4)), for example small organisations or prospective purchasers, and the ombudsman may decline to investigate complaints being or already dealt with under another redress scheme or in legal proceedings (s.137(5)). The provision thus anticipates, and manages, overlap with the Housing Ombudsman and the courts rather than establishing exclusivity.

**SECTION 138 – “RELEVANT OWNER”, “NEW BUILD HOME” AND
“DEVELOPER”**

STATUTORY TEXT

- (1) This section provides for the meaning of terms used in section 137 (and in this section).
- (2) A person is a “relevant owner” of a home if the person—
 - (a) is an individual,
 - (b) has a relevant interest in land that includes the home, and
 - (c) meets the occupation condition.
- (3) A person meets the occupation condition if the person—
 - (a) occupies the home, or
 - (b) is the landlord under a lease of land that includes the home granted for a term not exceeding 21 years to another individual for that individual’s occupation of the home.
- (4) In relation to a home in Scotland or Northern Ireland, subsection (3) has effect as if in paragraph (b) the words “for a term not exceeding 21 years” were omitted.
- (5) A home is a “new build home” if—
 - (a) the home is, or is contained in—
 - (i) a building the construction of which began after the coming into force of this section, or
 - (ii) a building that has been converted, or to which any other works have been carried out, so that it consists of or contains the home, where the conversion or works began after the coming into force of this section,
 - (b) there is a person who is, or was, a developer in relation to the home, and
 - (c) no more than two years have elapsed since the first acquisition, by any person, of a relevant interest in land that includes the home from the person mentioned in paragraph (b).
- (6) “Relevant interest” means—
 - (a) in relation to land in England or Wales, a legal estate which is—
 - (i) an estate in fee simple absolute in possession, or
 - (ii) a term of years absolute granted for a term of more than 21 years from the date of the grant;
 - (b) in relation to land in Scotland, the interest of an owner of land;

- (c) in relation to land in Northern Ireland, a legal estate which is—
 - (i) an estate in fee simple absolute in possession,
 - (ii) an estate in fee simple in possession subject to a rent payable under a fee farm grant, or
 - (iii) a term of years absolute granted for a term of more than 21 years from the date of the grant.
- (7) A “developer” is a person—
 - (a) who undertakes or commissions—
 - (i) the construction of a new building that is to consist of or contain a home,
 - (ii) the conversion of, or carrying out of any other works to, an existing building so that it consists of or contains a home, or
 - (iii) the conversion of, or carrying out of any other works to, an existing building so as to alter the number of homes contained in it,

with a view to granting, or disposing of, a relevant interest in land that includes the home or, in a case falling within sub-paragraph (iii), any of the homes, or
 - (b) who is of a description specified in regulations made by the relevant national authority.
- (8) Regulations under subsection (7)(b) may, among other things, specify a description of persons by reference to a connection with a person mentioned in subsection (7)(a).
- (9) In subsection (7)(b), “the relevant national authority” means—
 - (a) in relation to homes in England, the Secretary of State,
 - (b) in relation to homes in Wales, the Welsh Ministers,
 - (c) in relation to homes in Scotland, the Scottish Ministers, and
 - (d) in relation to homes in Northern Ireland, the Northern Ireland department designated for the purposes of this section by the First Minister and deputy First Minister acting jointly.
- (10) Before making regulations under subsection (7)(b), the relevant national authority must consult each other person who is the relevant national authority in relation to regulations under that subsection.
- (11) If no Northern Ireland department has been designated for the purposes of this section then, for the purposes of subsection (10), “the relevant national authority” in relation to homes in Northern Ireland is the Executive Office in Northern Ireland.
- (12) “Home” means a private residence.
- (13) “Occupies” means occupies as a private residence (and “occupation” is to be construed accordingly).

EXPLANATORY NOTES

Section 138: “Relevant owner”, “new build home” and “developer”

Effect

1148. This section defines the key concepts used in sections 136 and 137: who is a relevant owner, what is a new build home, and what is a relevant interest in land. This section also defines who is a developer, the category used to establish who may become a member of the New Homes Ombudsman scheme.

1149. This section also allows the relevant national authority to set out, in regulations, an additional category of persons (for example by reference to their connection with a “developer” as defined in the first part of this section), so that anyone of such a description is also a “developer” for the purpose of the legislation.

1150. This section also provides a description of who the relevant national authority is in relation to homes in England, Scotland, Wales and Northern Ireland.

1151. If, based upon experience in administering the scheme, it transpires that alternative company structures are utilised so that the definition of a developer is inadequate and is not able to capture all those intended to be members of the New Homes Ombudsman scheme, regulations can provide additional provisions to supplement the definition under this section, for example by adding companies connected to those fitting the definition of developer to the “developer” category in subsection 6(a).

1152. Before making regulations under this section, the intention is that the relevant national authority bringing forward regulations is to consult each of the other relevant national authorities listed in subsection (7A). This will make sure that the other “relevant national authorities” are provided with an opportunity to engage on the regulations and to consider bringing forward similar regulations in relation to their respective countries.

1153. Section 139 sets out how these regulation-making powers are exercisable in relation to England, Scotland, Wales and Northern Ireland.

1154. The relevant national authorities are the Secretary of State, the Welsh and Scottish Ministers, and the department of the Northern Ireland Executive designated by the First Minister and deputy First Minister in Northern Ireland, acting jointly.

1155. If a department has not been designated as “the relevant national authority” for the purposes of section 139, the relevant national authorities, for homes in England, Wales and Scotland, must consult with the Executive Office in Northern Ireland before making regulations.

Background

1156. This is a new provision.

Example: Review the definition of a developer

The Welsh Ministers may review the definition of a developer after a certain period of time and decide that another category of persons should be included in it (for example where a

new development or sales structure has emerged). This provides flexibility to ensure those who are intended to be members of the New Homes Ombudsman should be. If the Welsh Ministers identify an additional category of persons who they consider should be included in the category of developer in Wales, before regulations are made, the Welsh Ministers must consult with both the Secretary of State and Scottish Ministers, and the designated Northern Ireland department before bringing forward regulations. If the relevant national authority chooses to make regulations, the respective procedure for the relevant national authority will be set out in section 139. For example, in England, the relevant national authority is the Secretary of State and if the Secretary of State decides to make such regulations, and the consultation requirements are met, a draft of the regulations will be subject to approval by each House of Parliament.

COMMENTARY

206. Section 138 supplies the definitions on which the scheme's scope turns. A "relevant owner" must be an individual with a relevant interest (freehold, or a lease exceeding 21 years) who occupies the home or lets it on a short lease to another individual for occupation. A home is a "new build home" only if the building or conversion works began after commencement, there is or was a developer in relation to it, and no more than two years have elapsed since the first acquisition of a relevant interest from that developer. The scheme is therefore a consumer remedy for the early years of ownership, not a general defects jurisdiction, and conversions are included alongside new construction.
207. "Developer" covers a person who undertakes or commissions construction, conversion or other works creating or altering the number of homes, with a view to granting or disposing of a relevant interest. Subsection (7)(b) permits the relevant national authority to specify further descriptions of persons by regulations, including by reference to a connection with a developer: a power designed, as the Explanatory Notes make clear, to defeat avoidance through alternative corporate structures. The definition should be read with the association concepts elsewhere in the Act (ss.121, 131): the legislature's consistent concern is that obligations attaching to "developers" should not be escaped by nominee or group arrangements.

SECTION 139 – REGULATIONS UNDER SECTION 138

STATUTORY TEXT

- (1) The power to make regulations under section 138(7)(b) is exercisable—
- (a) in the case of regulations made by the Secretary of State or the Welsh Ministers, by statutory instrument, and
 - (b) in the case of regulations made by a Northern Ireland department, by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).

(For regulations under section 138(7)(b) made by the Scottish Ministers, see section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)).

- (2) Regulations under section 138(7)(b)—
- (a) may make different provision for different purposes;
 - (b) may contain consequential, supplementary, incidental, transitional or saving provision.
- (3) Regulations under section 138(7)(b)—
- (a) if made by the Secretary of State, may not be made unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, each House of Parliament;
 - (b) if made by the Welsh Ministers, may not be made unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, Senedd Cymru;
 - (c) if made by the Scottish Ministers, are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10));
 - (d) if made by a Northern Ireland department, may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly.

EXPLANATORY NOTES

Section 139: Regulations under section 138

Effect

1157. This section provides for the parliamentary procedure and other matters connected to the power to make regulations under section 138(6)(b) to add to the description of who is a developer.

1158. *It is envisaged that the definition of developer in section 138 will capture those persons who Government intends to become members of the redress scheme. However, it is acknowledged that developers use a variety of corporate structures and vehicles, and this will be kept under review.*

1159. *The relevant national authorities for homes in England, Scotland, Wales and Northern Ireland may have specific policy priorities or identify specific issues in relation to those respective countries. The power within section 138(6)(b) has therefore been granted to the Welsh and Scottish Ministers, and a designated Northern Ireland department as well as the Secretary of State.*

1160. *This section sets out that regulations made for this purpose must be made by statutory instrument using the affirmative procedure within the UK Parliament, the Senedd Cymru and the Scottish Parliament, and by statutory rule using the affirmative procedure within the Northern Ireland Assembly. This section further sets out that those regulations may make different provision for different purposes or may contain consequential, supplementary, incidental, transitional or saving provision in relation to regulations regarding an additional description of a developer. For example, there may be circumstances in future where the legislation does not work as intended in the context of a new person described as a developer without some further consequential or supplementary provision.*

1161. *Other circumstances may arise where transitional or saving provision are required, such as where regulations are made by the national relevant authority to add a description of a developer and those now included within that definition need time to become members of the new homes ombudsman scheme. Likewise, there may be some circumstances where exceptions should be made in relation to a new additional description of developer set out in the regulations.*

Background

1162. *This is a new provision.*

COMMENTARY

208. Section 139 is procedural. Regulations under s.138(7)(b) extending the definition of “developer” are made by statutory instrument (or Northern Ireland statutory rule) and are subject to the affirmative procedure in each legislature: Parliament, the Senedd, the Scottish Parliament or the Northern Ireland Assembly, as the case may be. The affirmative procedure reflects the significance of the power: it determines who can be compelled into the scheme and exposed to sanctions under s.140. No regulations have been made.

**SECTION 140 – POWER TO REQUIRE PERSONS TO JOIN SCHEME AND TO
PROVIDE INFORMATION**

STATUTORY TEXT

- (1) The Secretary of State may by regulations—
 - (a) require persons who are developers, or developers of a specified description, to become members of the new homes ombudsman scheme;
 - (b) require persons who are required to become members of the scheme under paragraph (a) to remain members of the scheme for a period specified in the regulations (even if they are no longer developers);
 - (c) require members of the scheme to inform persons of a specified description of the scheme;
 - (d) make provision for civil sanctions to be imposed in respect of a breach of a requirement imposed by regulations under paragraph (a), (b) or (c);
 - (e) make provision for the investigation of suspected breaches of such a requirement.
- (2) Before making regulations under subsection (1), the Secretary of State must consult—
 - (a) the Welsh Ministers,
 - (b) the Scottish Ministers, and
 - (c) the relevant Northern Ireland department.
- (3) Provision made by virtue of subsection (1)(a) may provide for exceptions to the requirement to become a member of the scheme.
- (4) Provision made by virtue of subsection (1)(a) or (b) may require persons who are members of the new homes ombudsman scheme to—
 - (a) obtain a certificate confirming their membership of the scheme;
 - (b) display or publish the certificate in accordance with the regulations;
 - (c) produce a copy of the certificate, on request, in accordance with the regulations.
- (5) Provision made for the imposition of a civil sanction by virtue of subsection (1)(d) must include—
 - (a) provision for appeals to a court or tribunal against the imposition of the sanction, and
 - (b) such other provision as the Secretary of State considers appropriate for safeguarding the interests of persons on whom the sanction may be imposed.
- (6) Provision made by virtue of subsection (1)(d) or (e) may—

- (a) confer functions on a person (including functions involving the exercise of a discretion);
 - (b) require a person on whom functions are so conferred to have regard to any relevant guidance issued by the Secretary of State relating to the exercise of those functions.
- (7) The Secretary of State may make payments to a person on whom functions are conferred by virtue of subsection (6).
- (8) In this section, “the relevant Northern Ireland department” means—
- (a) the Northern Ireland department designated for the purposes of this section by the First Minister and deputy First Minister acting jointly, or
 - (b) failing such a designation, the Executive Office in Northern Ireland.

EXPLANATORY NOTES

Section 140: Power to require persons to join scheme and provide information

Effect

1163. *This section creates a power for the Secretary of State to make regulations which will require developers of new build homes, who are within scope, to join the scheme and remain members of the scheme for a specified period. The Secretary of State may also in regulations set out certain publicity requirements for members of the scheme, requiring developers to provide information about the scheme, which may include requiring developers of new build homes to obtain a certificate to prove or advertise their membership. The regulations may require scheme members to inform certain persons, such as purchasers of new build homes, that the New Homes Ombudsman scheme exists.*

1164. *In such regulations the Secretary of State may set out the framework for enforcement including: the investigation of suspected breaches in relation to these duties, conferring functions on a person in relation to sanctions and investigations, types of sanctions for failing to comply, and the right to appeal the sanctions. This section also provides the Secretary of State with a power to make payments to any person on whom the regulations confer enforcement functions. Any person on whom the regulations confer enforcement functions may be required to have regard to statutory guidance concerning the exercise of those functions.*

1165. *There are differences in law, custom and practice across the United Kingdom and the regulations will need to accommodate these differences, particularly in relation to any enforcement framework and civil sanctions. To make sure that the regulations take into account the differences across the United Kingdom, before making regulations under this section, the Secretary of State must consult the Welsh and Scottish Ministers, and the relevant Northern Ireland department.*

1166. *The relevant Northern Ireland department is the department of the Northern Ireland Executive designated by the First Minister and deputy First Minister in Northern Ireland*

acting jointly, or the Executive Office in Northern Ireland, where a department has not been designated.

Proposed use of power

1167. It is intended that when a New Homes Ombudsman scheme is available and developers are aware of the new requirements, affirmative procedure regulations will be laid which, once approved by both houses of Parliament, will require developers to belong to the New Homes Ombudsman scheme, and publicise their membership of the same. It is also intended that the regulations will set out how those provisions are to be enforced. The Regulations may provide exceptions to the requirement to be a member.

1168. Consultation is necessary so that the scheme can work as intended across the United Kingdom by ensuring that differences in law, custom and practice, are considered, particularly where judicial systems differ.

Background

1169. This is a new provision.

1170. There is presently no statutory obligation upon developers of new build homes specifically to belong to a redress scheme, nor a way to enforce the requirements. This represents a significant gap for purchasers of new build homes.

Example

The UK Government will work with the Scottish, Welsh and Northern Irish administrations so that the regulations are operable in England, Scotland, Wales and Northern Ireland. For example, this would take into account the different legal regimes in different territories. The Government's intention is for consultation with the Scottish and Welsh Ministers, and the relevant Northern Ireland department, to be conducted at an early stage and before decisions have been taken. This may include a UK Government and devolved administration working group to facilitate joint working between these authorities. Once the regulations have been approved, developers of new build homes within scope will be required to belong to the New Homes Ombudsman scheme. Developers may have to remain members of the scheme until such a time that they are no longer bound by scheme's terms. The Government may want developers to be able to confirm or prove their membership (for example, by displaying a copy of their membership in their sales offices). This section provides for regulations to be laid regarding the enforcement of any duties introduced by this section. Developers that breach requirements may face civil sanctions. The regulations must allow for a right of appeal against such sanctions. In addition, this section allows the Secretary of State to designate the person to impose the sanctions or investigate suspected breaches of requirements. This could, for example, allow a new or existing body to undertake the enforcement role, and this section allows the Secretary of State to make payments for that body to undertake the role. The power is flexible to take into account both the existing and new regulatory environment. When the Secretary of State chooses to make regulations, a draft of the regulations would be subject to approval by each House of Parliament.

COMMENTARY

209. Section 140 converts the ombudsman scheme from a voluntary into a compulsory regime. The Secretary of State may by regulations require developers (or specified descriptions of developers) to become and remain members for a specified period, even after they cease to be developers; require members to publicise the scheme; and provide for the investigation of suspected breaches and the imposition of civil sanctions. Membership may be evidenced by certificates which members can be required to obtain, display and produce (s.140(4)).
210. The sanctions framework is subject to statutory safeguards: provision for appeals to a court or tribunal is mandatory, together with such other provision as the Secretary of State considers appropriate to safeguard the interests of those on whom sanctions may be imposed (s.140(5)). Enforcement functions may be conferred on another person, who may be required to have regard to guidance and may be paid for the role (s.140(6), (7)). Consultation with the devolved administrations is required before regulations are made.
211. No regulations have been made, and the compulsory limb of the scheme accordingly remains dormant. The sequencing is deliberate: mandatory membership presupposes an operating statutory scheme to join. When the power is exercised, I expect the regulations to follow the pattern of the RAS Regulations under ss.126 to 129, including group-based anti-avoidance provisions of the kind s.138(8) contemplates.

SECTION 141 – REGISTER OF MEMBERS

STATUTORY TEXT

- (1) The person who maintains the new homes ombudsman scheme must keep a register of persons who are members of the scheme.
- (2) The register must be made available for inspection by members of the public at all reasonable times.

EXPLANATORY NOTES

Section 141: Register of members

Effect

1171. This section places a requirement on the person who maintains the scheme to keep and publish a register of the scheme's members that can be inspected by the public at all reasonable times. This will mean that consumers can check if a developer is a member of the New Homes Ombudsman scheme.

Background

1172. This is a new provision.

COMMENTARY

212. Section 141 requires the person maintaining the scheme to keep a register of members and to make it available for public inspection at all reasonable times. The provision is a standard transparency measure: it enables a purchaser (or their conveyancer) to verify a developer's membership before exchange. Its practical value will be greatest once membership becomes compulsory under s.140, when absence from the register will itself signal non-compliance.

SECTION 142 – DEVELOPERS’ CODE OF PRACTICE

STATUTORY TEXT

- (1) The Secretary of State may issue or approve a code of practice about the standards of conduct and standards of quality of work expected of members of the new homes ombudsman scheme.
- (2) The Secretary of State may from time to time revise or replace the code or approve its revision or replacement.
- (3) The Secretary of State must ensure that the current version of the code is published.
- (4) The Secretary of State must consult the Welsh Ministers, the Scottish Ministers and the relevant Northern Ireland department before—
 - (a) issuing, revising or replacing the code, or
 - (b) approving the code or a revision or replacement of it.
- (5) In this section, “the relevant Northern Ireland department” means—
 - (a) the Northern Ireland department designated for the purposes of this section by the First Minister and deputy First Minister acting jointly, or
 - (b) failing such a designation, the Executive Office in Northern Ireland.

EXPLANATORY NOTES

Section 142: Developers’ code of practice

Effect

1173. This section allows the Secretary of State to give approval to a code of practice that covers the standards of conduct and standards of quality of work which should be met by members of the New Homes Ombudsman scheme. Alternatively, if the industry or others do not come forward, this section allows the Secretary of State to issue a code.

1174. If a code is issued or approved, it must be published by the Secretary of State. If the code of practice needs adjustment or replacement in the future, there is provision to allow this to happen. The Secretary of State can revise or replace it, or approve its revision/replacement, and again such revised or replaced code must be published. In accordance with Schedule 9, where there is a code of practice which has been issued or approved then the scheme may accept complaints about non-compliance with such a code. In considering a complaint under the scheme, whatever the issue, the scheme must have regard to any code of practice that has been issued or approved.

1175. The Secretary of State must consult the Scottish and Welsh Ministers, and the relevant Northern Ireland department, before issuing, revising or replacing the code of practice; or before approving the code or its revision or replacement. This is designed to ensure that the Code of Practice takes into account the views of the devolved

administrations, in order to take into account their policy priorities and to reflect differences in law, custom and practice between Scotland, Wales, Northern Ireland and England.

1176. The relevant Northern Ireland department is the department within the Northern Ireland Executive designated by the First Minister and deputy First Minister in Northern Ireland acting jointly, or the Executive Office in Northern Ireland, where a department has not been designated in this way.

Proposed use of power

1177. The Secretary of State is not required by this section to issue or approve any code of practice. The ability of the Secretary of State to issue or replace a code of practice is included as a potential option only.

Background

1178. This is a new provision. Example A code of practice may be used by developers (who are members of the New Homes Ombudsman scheme) and the purchasers of new homes so that all parties are aware of the standards expected. These standards could be in relation to the sales, marketing, and after-sales services expected of the developer of the new build home, and in relation to the standards of conduct and standards of quality of work expected of developers during the construction process. It is expected that, if a code of practice is issued or approved by the Secretary of State, the New Homes Ombudsman Scheme will require its members to follow it and will consider compliance with the code when investigating complaints. The Code can be changed over time. The Secretary of State may, following consultation with the Scottish and Welsh Ministers, and the relevant Northern Ireland department, revise or replace a code of practice to reflect changing circumstances and practice or approve its revision or replacement. To enable purchasers and developers to be aware of the code of practice and expected standards, the Secretary of State will ensure it is published and could publish it on the Government's website or signpost to where the code of practice is published Any code could also require developers to make prospective purchasers aware of the code during the sales process.

COMMENTARY

213. Section 142 empowers the Secretary of State to issue or approve a code of practice about the standards of conduct and quality of work expected of scheme members, to revise or replace it, and to ensure the current version is published, after consultation with the devolved administrations. The power is facultative: the Secretary of State is not obliged to issue any code, and the provision accommodates approval of an industry-produced code, which is what the New Homes Quality Code in substance is.
214. The code operates through the complaints machinery: under Schedule 9 the scheme may accept complaints about non-compliance with an issued or approved code, and the ombudsman must have regard to any such code when determining complaints. The code

thus supplies the normative standard against which developer conduct in sales, marketing, after-sales service and build quality is judged, without creating free-standing civil liability.

SECTION 143 – AMENDMENT OF THE GOVERNMENT OF WALES ACT 2006

STATUTORY TEXT

In Schedule 7B to the Government of Wales Act 2006 (general restrictions on legislative competence of Senedd Cymru), in paragraph 10(2), at the end insert—

- (o) the new homes ombudsman.

EXPLANATORY NOTES

Section 143: Amendment of the Government of Wales Act 2006

Effect

1179. This section modifies Senedd Cymru's legislative competence by removing the need for the consent of the UK Secretary of State to a provision of an Act of Senedd Cymru which removes or modifies any function of the new homes ombudsman or which confers power to do so.

Background

1180. This is a new provision. This section lists the New Homes Ombudsman in subparagraph 10(2) to Schedule 7B to the Government of Wales Act 2006, so that the Senedd is not restricted from bringing forward legislation to remove or modify the New Homes Ombudsman's statutory function in relation to Wales in future. Housing is devolved to the Senedd, the Scottish Parliament and the Northern Ireland Assembly, and in the future those bodies may decide to pursue alternative arrangements regarding redress for new build homebuyers which may necessitate changes to the New Homes Ombudsman's functions as regards those countries.

COMMENTARY

215. Section 143 adds the new homes ombudsman to paragraph 10(2) of Schedule 7B to the Government of Wales Act 2006, with the effect that the Senedd may legislate to remove or modify the ombudsman's functions in relation to Wales without the consent of the UK Secretary of State. Housing being devolved, the provision preserves the ability of the devolved legislature to pursue alternative redress arrangements for new build homebuyers in future. It requires no further commentary.

SECTION 144 – NEW BUILD HOME WARRANTIES

STATUTORY TEXT

- (1) This section applies where a person (“the developer”) carries out a development in England that results in the creation of one or more dwellings (“new build homes”).
- (2) The developer must, at the time of or before granting or disposing of a relevant interest in a new build home—
 - (a) provide to the purchaser a new build home warranty for the new build home, and
 - (b) provide to a prescribed person a new build home warranty for any common parts.
- (3) A “new build home warranty” for a thing is an arrangement, satisfying any requirements under subsection (4), under which—
 - (a) the developer agrees, in specified circumstances, to remedy any specified defect (or any defect) in the thing occurring in a specified period, and
 - (b) a prescribed person obtains the benefit of a policy of insurance relating to specified defects (or any defects) in the thing.
- (4) The Secretary of State may by regulations impose requirements about new build home warranties, including in particular requirements as to—
 - (a) the kinds of defect which the developer must agree to remedy;
 - (b) the circumstances in which the developer must agree to remedy a defect (including the minimum duration of the period mentioned in subsection (3)(a));
 - (c) the developer agreeing to meet prescribed costs incurred by a person occupying a new build home, where works to remedy a defect are carried out;
 - (d) the policy of insurance (including risks that must be covered, the minimum amount of cover, the minimum duration of the period of cover, and the maximum amount of any excess);
 - (e) the solvency of the insurer or underwriter;
 - (f) the standard of service provided by or on behalf of the insurer in relation to the policy;
 - (g) the ability of a person who has the benefit of the warranty to transfer that benefit to another person.
- (5) The regulations must provide that the period of cover under the policy of insurance must be at least 15 years beginning with the day on which the relevant interest is granted or disposed of.
- (6) In this section—

“carries out a development”: the reference to a person carrying out a development is to undertaking or commissioning—

- (a) the construction of a building, or
- (b) the conversion of, or carrying out of any other works to, a building, with a view to granting, or disposing of, relevant interests in one or more dwellings created as a result of the construction, conversion or carrying out of works;

“common parts”, in relation to a new build home, means any part of a building, where—

- (a) that part is provided for the use, benefit and enjoyment of the residents of the new build home and the residents of other dwellings (whether alone or with other persons), and
- (b) the right to use that part is conferred in connection with the grant or disposal of the relevant interest in the new build home;

“defect”: any reference to a defect includes, in relation to land, contamination;

“prescribed” means prescribed by regulations made by the Secretary of State;

“purchaser” means the person to whom the relevant interest is granted or disposed of;

“relevant interest” means a legal estate which is—

- (a) an estate in fee simple absolute in possession, or
- (b) a term of years absolute granted for a term of more than 21 years from the date of the grant.

EXPLANATORY NOTES

Section 144: New build home warranties

Effect

1181. This section sets a legal requirement for the developer of every new build home to provide a warranty for the benefit of a purchaser (subsections (2) and (3)). The warranty must meet minimum standards, which will be set in regulations. The warranty must be for a minimum term of no less than 15 years (subsection (5)).

Background

1182. At present, 10-year warranties are provided on new homes as a requirement to obtain mortgage finance rather than as a legal requirement. As part of the Act’s general aim of improving the safety and standards of buildings, this section mandates provision of such warranties in law, extends the minimum term from 10 to 15 years (subsection 5) and also provides powers for the Secretary of State to set a range of minimum requirements in regulations (subsection (4)).

1183. The minimum warranty term of 15 years mirrors the extended limitation period to bring litigation under section 1 of the Defective Premises Act 1972 and section 38 of the Building Act 1984, set by section 144 of this Act.

Proposed use of power

1184. The Government intends to consult widely on the proposed minimum standards to be set in regulations made under this section. It intends to delay commencement of this section to allow industry the opportunity to consider the outcome of that consultation and make appropriate warranties available for sale. Example 1 Once this provision comes into effect, it will be unlawful for a developer of a new build home (whether a house, flat, maisonette or other type) to sell it without providing a warranty covering at least the prescribed minimum standards for at least the minimum term. Where the new home is a flat in a block with common parts, those parts would also need to be covered by a warranty (subsection (2)(b)). Example 2 If a new build home were to be sold, after commencement of this section, without a warranty, enforcement action could be taken against the developer under regulations made under the following section.

COMMENTARY

216. Section 144 makes the provision of a new build home warranty a legal requirement for the first time. A developer carrying out a development in England that creates new build homes must, at or before granting or disposing of a relevant interest, provide the purchaser with a warranty for the home and provide a prescribed person with a warranty for any common parts. A warranty for this purpose has two limbs: the developer's agreement to remedy specified defects arising within a specified period, and a policy of insurance in respect of defects for the benefit of a prescribed person. "Defect" extends to land contamination.
217. The minimum content is left to regulations under s.144(4): the kinds of defect, the circumstances of remedy, occupants' costs during remedial works, the insurance cover (risks, minimum amount, maximum excess), insurer solvency, service standards and transferability. One minimum is fixed by the statute itself: the insurance cover must run for at least 15 years from the grant or disposal (s.144(5)), mirroring the prospective limitation period under s.135 and a significant extension of the 10-year cover that has been market practice through NHBC Buildmark and equivalent products.
218. The section is not yet in force and no regulations have been made; the Government's stated intention was to consult on the minimum standards and allow the warranty market time to produce compliant products before commencement. When commenced, the interaction with existing warranty schemes will need care: existing 10-year products

will not satisfy the 15-year statutory minimum, and the solvency and excess requirements are likely to reshape a market which has already seen capacity strain since Grenfell.

SECTION 145 – NEW BUILD HOME WARRANTIES: FINANCIAL PENALTIES

STATUTORY TEXT

- (1) The Secretary of State may by regulations make provision for and in connection with the imposition of a financial penalty in cases where the Secretary of State, or a person designated by the Secretary of State, is satisfied beyond reasonable doubt that a person has, without reasonable excuse, failed to comply with section 144(2).
- (2) The regulations may include provision—
 - (a) about the procedure to be followed in imposing penalties;
 - (b) about the amount of penalties;
 - (c) for the imposition of interest or additional penalties for late payment;
 - (d) conferring rights of appeal against penalties.
- (3) The regulations must provide that the amount of a financial penalty (excluding interest or any additional penalty) may not exceed the greater of—
 - (a) 10% of the value of the relevant interest at the time the person granted or disposed of the relevant interest, and
 - (b) £10,000.

EXPLANATORY NOTES

Section 145: New build home warranties: financial penalties

Effect

1185. This section enables the Secretary of State to set out in regulations i) the level of financial penalties that could be issued to developers selling new build homes without a compliant warranty in breach of section 144, including provision for interest or additional penalties for late payment and ii) the process for considering and issuing such penalties and the right to appeal.

Background

1186. At present, 10-year warranties are provided on new build homes as a requirement to obtain mortgage finance rather than as a legal requirement. There is therefore no provision at present to mandate warranties in law or to impose penalties for selling a new build home without a warranty.

1187. In order to deter developers from considering selling new homes without a compliant warranty, subsection (1) enables the Secretary of State, or a person designated by them, to issue financial penalties for doing so in the absence of a reasonable excuse. Subsection (2) provides that the level of penalties, the process for issuing them, provision for interest or additional penalties for late payment and conferring rights of appeal will be set in regulations; subsection (3) provides that the maximum penalty prescribed in regulations

may not exceed £10,000 or 10% of the sale price of the new home, whichever is the greater. Example If a new home were built and then sold for £250,000 without a warranty, and the developer had no reasonable excuse for not providing a warranty, the Secretary of State (or person designated by them) could issue the seller with a financial penalty of up to £25,000, or such lower maximum as may be prescribed in regulations.

COMMENTARY

219. Section 145 is the enforcement complement to s.144. It permits regulations providing for financial penalties where the Secretary of State, or a designated person, is satisfied beyond reasonable doubt that a person has, without reasonable excuse, failed to comply with the warranty obligation in s.144(2). The criminal standard of proof for a civil penalty is notable, and reflects the severity of the maximum: the greater of 10% of the value of the relevant interest at the time of the grant or disposal, and £10,000. On any development of scale the 10% measure is the operative one, and it accrues per home sold without a compliant warranty.
220. The regulations must address procedure, amounts, interest and additional penalties for late payment, and rights of appeal (s.145(2)). Like s.144, the provision awaits commencement and regulations; it will stand or fall with the warranty regime itself.

SECTION 146 – CONSTRUCTION PRODUCTS

STATUTORY TEXT

Schedule 11 contains provision for regulations relating to construction products.

EXPLANATORY NOTES

Section 146: Construction products

Effect

1188. The current regulatory framework covering some construction products placed on the UK market, is derived from the EU Construction Products Regulation 2011. This regime was brought into UK law, as retained EU Law, via the European Union (Withdrawal) Act 2018. The enforcement regime in the UK is governed by the Construction Product Regulations 2013. Both sets of regulations were amended for the UK by the Construction Products (Amendment etc.) (EU Exit) Regulations 2019.

1189. They were further amended by the Construction Products (Amendment etc.) (EU Exit) Regulations 2020, implementing the Northern Ireland Protocol for construction products by enabling the continued application of the EU Construction Products Regulation 2011 in Northern Ireland and implementation of the amended retained EU law in Great Britain.

1190. Currently this framework applies only to products with an EU harmonised standard or conforming to a European Technical Assessment (now, in the UK, a designated standard and a United Kingdom Technical Assessment). The Secretary of State has powers to add further products for the GB market. Certain other construction products where they are used by consumers may fall under the requirements of the General Product Safety Regulations 2005 for products to be safe. There are many construction products where there is no existing EU harmonised standard, or European Technical Assessment, and they are not used by consumers – Aluminium composite material (ACM) cladding being one example and some types of fire doors another. This gap in regulation became apparent after the Grenfell Tower Fire.

1191. It is intended that all construction products which are made available on the UK market should fall under a regulatory regime. The Building Safety Act 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.

1192. This is in addition to the current regulatory regime. The Act also creates powers enabling the Secretary of State to amend the current regime to ensure that it remains fit for purpose.

1193. This section gives the Secretary of State the power to regulate construction products.

1194. The power applies to the whole of the United Kingdom.

1195. The power will be used to set out a detailed regime in regulations. The detail of the extent of the power is set out in Schedule 11.

1196. This power will be used by the Secretary of State to create regulations for the marketing and supply of construction products in the United Kingdom. The new regulations will work in three ways: a) they will create a new requirement for construction products to meet a general safety requirement; b) they will retain existing requirements for products which perform to a designated standard or products which conform to a technical assessment, adding some further requirements to enhance the existing market surveillance and enforcement regime, and provide for regulation of false statements made in advertising and marketing material; and c) they will create new requirements for a list of safety critical products (where the failure of such products would result in death or serious injury).

Background

1197. The purpose of this power is to provide that construction products placed on the UK market are safe and, in the case of products subject to designated standards, technical assessments or are on the safety critical list, that they will perform to certain technical standards. For these products, where they are placed on the UK market, this will ensure reliable information is available to anybody who wishes to buy or use these products.

Example

The provisions of Schedule 11 set out the detail of how this power is intended to be used and includes examples of how the regulations are intended to work in practice.

COMMENTARY

221. Section 146 is a single-sentence enabling provision: Schedule 11 contains provision for regulations relating to construction products. The brevity is deceptive. Schedule 11 confers on the Secretary of State powers to make construction products regulations for the whole United Kingdom, including power to require products to be safe, to create a statutory list of safety-critical products, to impose requirements on economic operators across the supply chain, and to provide for enforcement including criminal offences and civil sanctions.
222. The mischief is well documented in the Explanatory Notes (paragraphs 1188 to 1194): the inherited regime, derived from the EU Construction Products Regulation 2011 as retained in UK law, applies only to products covered by a designated standard or technical assessment. Many products, including the ACM cladding used at Grenfell Tower and certain fire doors, fell outside any regulatory regime. Schedule 11 is designed to close that gap by bringing all construction products made available on the UK market within regulation.

223. Section 146 should be read with the liability provisions in ss.147 to 149, which create the private law counterpart: statutory causes of action in respect of construction products and cladding products, considered in this commentary under those sections. The jurisdictional reach of the cladding products tort under s.149 against foreign manufacturers was upheld, at the service-out stage, in **HB (WM) Ltd v Sto Ltd** [2026] EWHC 1833 (TCC), and the quantum consequences are illustrated by **Mulalley & Co Ltd v Sto Ltd** [2026] EWHC 1552 (TCC): both are digested under s.130 above. In my view the regulatory powers under Schedule 11 and the liability regime will develop together: the Grenfell Tower Inquiry's Phase 2 findings on product manufacturers make further and more prescriptive product regulation a question of when, not whether.

**SECTION 147 – LIABILITY RELATING TO CONSTRUCTION PRODUCTS:
GENERAL DEFINITIONS**

STATUTORY TEXT

In this section, section 148 and section 149—

“the 1991 Regulations” means the Construction Products Regulations 1991 (S.I. 1991/1620);

“the 2011 Regulation” means Regulation (EU) No. 305/2011 (regulation laying down harmonised conditions for the marketing of construction products);

“the 2019 Regulations” means the Construction Products (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/465);

“construction products regulations” means regulations under paragraph 1 of Schedule 11;

“construction product requirement” means a requirement under—

- (a) construction products regulations,
- (b) the 2011 Regulation, or
- (c) the 2019 Regulations;

“relevant building” means—

- (a) a building which consists of a dwelling, or
- (b) a building which contains two or more dwellings;

“relevant interest”, in relation to a building in England and Wales, means—

- (a) in a case where the building consists of a dwelling, a legal or equitable interest in the building, and
- (b) in a case where the building contains one or more dwellings, a legal or equitable interest in—
 - (i) the building, or
 - (ii) any dwelling contained in the building;

“relevant interest”, in relation to a building in Scotland, means—

- (a) in a case where the building consists of a dwelling, any right or interest (including a servitude or heritable security) in or over the building, and
- (b) in a case where the building contains one or more dwellings, any right or interest (including a servitude or heritable security) in or over—
 - (i) the building, or
 - (ii) any dwelling contained in the building;

“requirement” includes a prohibition or restriction.

EXPLANATORY NOTES

Section 147: Liability relating to constructions products: general definitions

Effect

1198. This section sets out definitions that are relevant to the four subsequent sections, 148 to 151: *Liability relating to construction products*, *Liability for past defaults relating to cladding products*, *Liability relating to construction products: limitation in England and Wales* and *Liability relating to construction products: limitation in Scotland*.

1199. This section defines the construction product regulations that are relevant to sections 146 to 148. These are the *Construction Products Regulations 1991* (“the 1991 Regulations”), *Regulation (EU) No. 305/2011* (“the 2011 Regulation”), the *Construction Products (Amendment etc.) (EU Exit) Regulations 2019* (“the 2019 Regulations”) and the regulations made under schedule 11 of this Act (“the construction products regulations”).

1200. This section defines a “relevant building” as a building which consists of a dwelling, or a building which contains two or more dwellings.

1201. A “relevant interest” in relation to a building is defined for England and Wales, and separately for Scotland. In England and Wales, a “relevant interest” is a legal or equitable interest in a building, or any dwelling contained in the building. In Scotland, a “relevant interest” is any right or interest in or over the building where it contains a dwelling or the building contains one or more dwellings, the building, or any dwelling contained within the building.

1202. This section applies equally in England and Wales and Scotland. Section 169(7) provides a power for sections 147 to 149 to be extended, by regulations, to Northern Ireland.

Background

1203. This is a new provision.

1204. Sections 147 and 148 each create a new cause of action which allows for manufacturers and sellers of construction products to be held accountable where the use of a construction product in construction works causes or contributes to a dwelling being unfit for habitation on completion of those works. This applies retrospectively (section 149) in relation to construction products which are cladding products only, and where the relevant products are in breach of regulations, inherently defective, or have been mis-sold. Prospectively (section 148) it applies to all construction products, where the relevant product is in breach of regulations, inherently defective, or has been mis-sold. Sections 149 and 150 make provisions for limitation periods associated with the new causes of action. This section provides general definitions relevant to the new causes of action.

COMMENTARY

224. Section 147 is the definitions gateway to the construction products liability regime in ss.148 and 149. It defines, for the purposes of those sections: (a) the three regulatory instruments by reference to which a “construction product requirement” is identified, namely the Construction Products Regulations 1991 (SI 1991/1620), Regulation (EU) No 305/2011 as retained in domestic law, and the Construction Products (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/465), together with any regulations yet to be made under paragraph 1 of Schedule 11; (b) “relevant building”, meaning a building which consists of a dwelling or contains two or more dwellings; and (c) “relevant interest”, meaning a legal or equitable interest in the building or in any dwelling in it (with a Scottish equivalent). It came into force on 28 June 2022 (s.170(3)).
225. Of note:
- (a) “Relevant building” is far wider than the higher-risk building definitions in Parts 3 and 4: any dwelling, of any height, is caught.
 - (b) The definition of “construction product requirement” spans the pre-Brexit and post-Brexit regimes, with the result that breaches of either the 1991 Regulations or the 2011 Regulation can found liability under s.149.
 - (c) The class of claimants is confined to persons with a “relevant interest”: as a result a developer which has sold on and retains no legal or equitable interest is outside s.149(5): if they wish to sue a manufacturer they will have to do so through the Civil Liability (Contribution) Act 1978. That is exactly the route taken in **HB (WM) Ltd v Sto Ltd** [2026] EWHC 1833 (TCC) and **Mulalley & Co Ltd v Sto Ltd** [2026] EWHC 1552 (TCC), digested under s.149 below.
226. Neither “misleading statement” nor “inherently defective”, the second and third limbs of Condition A in ss.148(2) and 149(2), is defined anywhere in the Act. In **HB (WM) v Sto** Moody J held at [45]-[47] that the content of each limb raises fact-sensitive questions of construction in a new and developing area of law which must be resolved at trial, not summarily. In my view the courts are likely to give both concepts a practical, purposive reading: a statement is misleading if it would convey a false impression of the product’s performance to a reasonably informed specifier (the Class 0 and “limited combustibility” claims in the Sto litigation are the paradigm), and a product is

inherently defective if, used as intended, it presents a safety risk irrespective of any regulatory breach.

227. s.147 is likely to undergo change quite quickly. The Construction Products Reform White Paper (25 February 2026) proposes a root-and-branch reform of the products regime, including a general safety requirement and the long-awaited exercise of the Schedule 11 powers, and the Remediation Bill announced in the King's Speech in May 2026 is expected to extend manufacturer liability further. Until the Schedule 11 regulations are made, the 1991, 2011 and 2019 instruments remain operative.

SECTION 148 – LIABILITY RELATING TO CONSTRUCTION PRODUCTS

STATUTORY TEXT

- (1) This section applies where Conditions A to D are met.
- (2) Condition A is that, at any time after the coming into force of this section—
 - (a) a person fails to comply with a construction product requirement in relation to a construction product,
 - (b) a person who markets or supplies a construction product makes a misleading statement in relation to it, or
 - (c) a person manufactures a construction product that is inherently defective.
- (3) Condition B is that, after Condition A is met, the construction product referred to in subsection (2)(a), (b) or (c) is installed in, or applied or attached to, a relevant building in the course of works carried out in the construction of, or otherwise in relation to, the building.
- (4) Condition C is that, when those works are completed—
 - (a) in a case where the relevant building consists of a dwelling, the building is unfit for habitation, or
 - (b) in a case where the relevant building contains one or more dwellings, a dwelling contained in the building is unfit for habitation.
- (5) Condition D is that the facts referred to in subsection (2)(a), (b) or (c) were the cause, or one of the causes, of the building or dwelling being unfit for habitation.
- (6) The person referred to in subsection (2)(a), (b) or (c) is liable to pay damages to a person with a relevant interest in relation to the relevant building for personal injury, damage to property or economic loss suffered by that person as a result of the facts referred to in subsection (4)(a) or (b).
- (7) A term of an agreement which purports to exclude or restrict, or has the effect of excluding or restricting, any liability arising under this section is void.
- (8) For the purposes of section 10B(1) of the Limitation Act 1980 and section 18ZD(1) of the Prescription and Limitation (Scotland) Act 1973, the right of action that a person has by virtue of this section is to be regarded as having accrued—
 - (a) in a case where the works referred to in subsection (3) are carried out in the construction of the relevant building, when the construction is completed, and
 - (b) in any other case, when the works are completed.
- (9) In subsection (2)(a) “construction product”—
 - (a) in relation to a construction product requirement under construction products regulations, has the meaning specified in those regulations;

- (b) in relation to a construction product requirement under the 2011 Regulation, has the meaning specified in the 2011 Regulation;
 - (c) in relation to a construction product requirement under the 2019 Regulations, has the meaning specified in the 2011 Regulation as it had effect immediately before IP completion day.
- (10) In subsection (2)(b) and (c) “construction product” has the meaning specified in the 2011 Regulation.

COMMENCEMENT AND AMENDMENTS

In force: 28 June 2022, but Condition A depends on regulations under s.146 (not yet made).
 Limitation: 15 years from completion (ss.150–151).

EXPLANATORY NOTES

Section 148: Liability relating to construction products

Effect

1205. Section 148 makes provision for a new cause of action where a construction product used in construction works causes, or is a factor in causing, a dwelling to be unfit for habitation on completion of those works.

1206. Subsection (1) sets out that section 148 applies when Conditions A to D are met.

1207. Subsection (2) sets out Condition A. Condition A is that a person fails to comply with a construction product requirement (which is defined in section 147), or a person makes a misleading statement in relation to a construction product, or a person manufactures a construction product that is inherently defective. A “construction product requirement” is defined in section 147 as a requirement under either of the 2011 or 2019 regulations, or construction product regulations made under schedule 11 of this Act (defined in section 147).

1208. Subsection (3) sets out Condition B. Condition B is that the construction product referred to in subsection (2) is installed in, or applied, or attached to, a relevant building (as defined in section 147).

1209. Subsection (4) sets out Condition C. Condition C is that, when the works to the relevant building are completed, the relevant building, or a dwelling contained within the building, is unfit for habitation.

1210. Subsection (5) sets out Condition D. Condition D is that the facts referred to in subsection (2) were the cause, or one of the causes of the building or dwelling being unfit for habitation.

1211. If Conditions A to D are met, a claim for compensation can be brought through the civil courts. A claim can be brought by those who have a relevant interest in relation to the relevant building and have suffered a loss due to a dwelling being unfit for habitation.

1212. Subsection (6) sets out that loss can be claimed for personal injury, damage to property or economic loss.

1213. Subsection (7) provides that any attempt to contract out of any liability arising under this section is void.

1214. Subsection (8) sets out when the limitation period commences, and refers to the statutory provisions which apply separately for England and Wales, and Scotland. In relation to a building's initial construction, the limitation period commences when the building is completed. In relation to other works not connected with the initial construction of the building, the limitation period commences when those works are completed.

1215. Subsection (9) and (10) define "construction product" for the purposes of this section.

1216. Section 148 applies equally in England and Wales and Scotland. Section 169(7) provides a power for this section to be extended, by regulations, to Northern Ireland.

Background

1217. This is a new provision.

1218. There is evidence that the mis-selling of construction products and the supply of defective construction products have contributed to safety defects in buildings, particularly in multi-occupied residential buildings. When these defects come to light, their remediation can be costly.

1219. Currently, there is limited recourse against manufacturers of defective or inappropriately marketed construction products, or those in breach of construction product regulations. Often, the possibility of redress to recover costs from manufacturers is limited to a claim for breach of contract, where a contractual relationship exists. However, it will often be the case that there is no relevant contractual relationship in place; for example, the owner of a flat which has been affected by the installation of a defective construction product will not usually have a contractual relationship with the product manufacturer or seller, and so would be unable to use such a route to recover damages for remediation work that is needed.

1220. In England and Wales, 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". Section 134 of this Act expands the scope of the Defective Premises Act to work done to a dwelling beyond its initial completion. However, the duty under the Defective Premises Act only extends to persons taking on work in relation to the dwelling. The duty does not extend to the role that manufacturers or sellers of construction products might play in a building or dwelling being unfit for habitation on completion of the relevant works.

1221. The new cause of action created by this section will enable claims to be brought against construction product manufacturers and sellers for their role in dwellings being unfit for habitation on completion of the relevant works: if a construction product contributes to or causes a dwelling to be "unfit for habitation" on completion of the

relevant works and an individual with a relevant interest incurs a loss as a consequence, then a civil claim can be brought through the courts to recover damages for that loss.

1222. Damages that can be recovered under this section can include personal injury, damage to property, for example caused by a fire; or economic loss, which could include the costs of remediation.

1223. This section will apply prospectively, meaning that it will apply to work completed after the commencement of this section, which is two months after Royal Assent (section 170(3)(e)). The limitation period for claims brought under this section is 15 years from when the cause of action accrues.

1224. The “fit for habitation” test is intended to be equivalent to the test used in the Defective Premises Act 1972 which applies to England and Wales. The Defective Premises Act does not extend to Scotland, but the phrase has a generally understood meaning, which could be used by the Courts in Scotland, together with using the principles in caselaw under the Defective Premises Act as guidance. The same principles could apply should the provisions be extended to Northern Ireland using the power at section 169(7). Example A construction product manufacturer makes a statement in marketing materials that a particular product is suitable for use in the construction of high-rise residential buildings. The statement is not true, and the performance of this product meant it was not suitable for such use. The manufacturer sells this product directly to a contractor who is constructing a high-rise residential building. The contractor relies on the information in the marketing material that the product is suitable for the specific construction project and uses it in that construction project. On completion of the works, the dwellings in the building are not fit for habitation and to make them fit for habitation costly remediation works would be required. The leaseholders, who would have to pay for the remediation works, would be able to bring a claim for damages against the manufacturer under this cause of action.

COMMENTARY

228. Section 148 creates a new statutory cause of action against manufacturers, suppliers and others in the construction product supply chain. It applies prospectively, to defaults occurring after 28 June 2022, and to all construction products. The provision has a four-condition cumulative structure:

- (a) Condition A: a person fails to comply with a construction product requirement, makes a misleading statement in marketing or supplying the product, or manufactures a product that is inherently defective (s.148(2));
- (b) Condition B: the product is installed in, or applied or attached to, a relevant building in the course of works (s.148(3));
- (c) Condition C: on completion of those works the building or a dwelling in it is unfit for habitation (s.148(4)); and

- (d) Condition D: the Condition A facts caused, or were one of the causes of, that unfitness (s.148(5)).

Where those conditions are met, the person is liable to pay damages to anyone with a relevant interest for personal injury, damage to property or economic loss (s.148(6)). Any attempt to exclude or restrict the liability is void (s.148(7)).

229. The structure borrows the fitness for habitation standard from s.1 of the Defective Premises Act 1972 but applies it to product manufacturers and suppliers, filling the gap identified after Grenfell. The DPA does not cover those who merely make or sell products (Explanatory Notes, para 1220). Unlike the DPA, the trigger is not the quality of work but the product default; and unlike s.2A of the DPA (inserted by s.134), the claim runs to economic loss suffered by any holder of a relevant interest, whereas the DPA route is tied to the dwelling and its owners.
230. Condition A's first limb is narrower in practice than it looks. Requirements under the retained 2011 Regulation and the 2019 Regulations can already be relied on; but the fuller set of requirements contemplated by the Act awaits regulations under s.146 and Schedule 11, which have still not been made (a point made by Keating at paragraph 15-063). Until then, the misleading statement and inherent defect limbs will carry most of the weight, as they have under s.149 in the Sto litigation.
231. The limitation period is 15 years from completion of the works (s.150, inserting s.10B(1) into the Limitation Act 1980), with accrual fixed by s.148(8) at completion of the construction or of the relevant works. Section 148 claims are for the future: no reported decision has yet turned on the section. In my view its construction will simply follow whatever the courts decide under s.149, since the two sections share their architecture and their undefined terms: see the digests under s.149.
232. The prospective regime is about to be reinforced. The Construction Products Reform White Paper (25 February 2026) proposes a general safety requirement for all construction products and a strengthened enforcement regime; the Remediation Bill announced in the May 2026 King's Speech is to extend manufacturer liability, although no draft has yet been published. I would expect the Bill, when published, to widen the class of products and defaults caught rather than to disturb the four-condition structure.

SECTION 149 – LIABILITY FOR PAST DEFAULTS RELATING TO CLADDING PRODUCTS

STATUTORY TEXT

- (1) This section applies where Conditions A to D are met.
- (2) Condition A is that, at any time before the coming into force of this section—
 - (a) a person fails to comply with a cladding product requirement in relation to a cladding product,
 - (b) a person who markets or supplies a cladding product makes a misleading statement in relation to it, or
 - (c) a person manufactures a cladding product that is inherently defective.
- (3) Condition B is that, after Condition A has been met, the cladding product is attached to, or included in, the external wall of a relevant building in the course of works carried out in the construction of, or otherwise in relation to, the building.
- (4) Condition C is that, when those works are completed—
 - (a) in a case where the relevant building consists of a dwelling, the building is unfit for habitation, or
 - (b) in a case where the relevant building contains one or more dwellings, a dwelling contained in the building is unfit for habitation.
- (5) Condition D is that the facts referred to in subsection (2)(a), (b) or (c) were the cause, or one of the causes, of the building or dwelling being unfit for habitation.
- (6) The person referred to in subsection (2)(a), (b) or (c) is liable to pay damages to a person with a relevant interest in relation to the relevant building for personal injury, damage to property or economic loss suffered by that person as a result of the facts referred to in subsection (4)(a) or (b).
- (7) A term of an agreement which purports to exclude or restrict, or has the effect of excluding or restricting, any liability arising under this section is void.
- (8) For the purposes of section 10B(2) of the Limitation Act 1980 and section 18ZD(2) of the Prescription and Limitation (Scotland) Act 1973, the right of action that a person has by virtue of this section is to be regarded as having accrued—
 - (a) in a case where the works referred to in subsection (3) are carried out in the construction of the relevant building, when the construction is completed, and
 - (b) in any other case, when the works are completed.
- (9) Where an action is brought under this section in England and Wales that, but for section 10B(2) of the Limitation Act 1980, would have been barred by that Act, a

court hearing the action must dismiss it in relation to any defendant if satisfied that it is necessary to do so to avoid a breach of that defendant's Convention rights.

- (10) Where an action is brought under this section in Scotland that, but for section 18ZD(2) of the Prescription and Limitation (Scotland) Act 1973, would have been barred by that Act, a court hearing the action must dismiss it in relation to any defender if satisfied that it is necessary to do so to avoid a breach of that defender's Convention rights.
- (11) In this section "cladding product requirement" means—
- (a) in relation to a time before IP completion day, a requirement relating to a cladding product under—
 - (i) the 1991 Regulations, or
 - (ii) the 2011 Regulation as it had effect in EU law at that time, and
 - (b) in relation to a time after IP completion day, a requirement relating to a cladding product under—
 - (i) the 2011 Regulation, or
 - (ii) the 2019 Regulations.
- (12) In this section—

"cladding product" means a cladding system or any component of a cladding system;

"Convention rights" has the same meaning as in the Human Rights Act 1998;

"external wall", in relation to a building, includes any part of a roof pitched at an angle of more than 70 degrees to the horizontal if that part of the roof adjoins a space within the building to which persons have access otherwise than for the purpose of carrying out repairs or maintenance.

EXPLANATORY NOTES

Section 149: Liability for past defaults relating to cladding products

Effect

1225. Section 149 makes provision for a new cause of action where a cladding product used in construction works cause, or is a factor in causing, a dwelling being unfit for habitation, following completion of certain works.

1226. Subsection (1) sets out that this section applies when Conditions A to D are met.

1227. Subsection (2) sets out Condition A. Condition A is that a person fails to comply with a cladding product requirement (which is defined in subsection (12)), or a person makes a misleading statement in relation to a cladding product, or a person manufactures a cladding product that is inherently defective. A "cladding product" is defined in subsection (11) of this section.

1228. Subsection (3) sets out Condition B. Condition B is that the cladding product is attached to, or included in, the external wall of a relevant building (as defined in section 147) in the course of works to that building.

1229. Subsection (4) sets out Condition C. Condition C is that, when the works to install the cladding product in the relevant building are completed the relevant building, or a dwelling contained within the building, is unfit for habitation.

1230. Subsection (5) sets out Condition D. Condition D is that the facts referred to in subsection (2) were the cause, or one of the causes, of a dwelling, or dwellings, being unfit for habitation.

1231. If Conditions A to D are met, a claim for compensation can be brought through the civil courts. A claim can be brought by those who have a relevant interest in relation to the relevant building and have suffered a loss due to a dwelling being unfit for habitation.

1232. Subsection (6) sets out that loss can be claimed for personal injury, damage to property or economic loss.

1233. Subsection (7) provides that any attempt to contract out of liability under this section is void.

1234. Subsection (8) sets out when the limitation period commences and refers to the statutory provisions which apply separately for England and Wales, and Scotland. In relation to a building's initial construction, the limitation period commences when the building is completed. In relation to other works not connected with the initial construction of the building, the limitation period commences when the works are completed.

1235. Subsections (9) and (10) set out a safeguard to ensure fairness in proceedings. They provide that where a claim is brought and the continuation of the claim would breach a defendant's Convention rights, the court must dismiss the claim. The "Convention rights" are defined in subsection (12) as having the same meaning as in the Human Rights Act 1998.

1236. Subsection (11) provides a definition for "cladding product requirement" in relation to the relevant regulations in force at the time. Subsection (12) defines a "cladding product" and makes clear that the term "external wall" includes parts of the roof in certain cases.

1237. Section 149 applies equally in England and Wales and Scotland. Section 169(7) provides a power for the provisions to be extended, by regulations, to Northern Ireland.

Background

1238. This is a new provision.

1239. Current issues with historical fire safety defects in multi-occupied residential buildings are an unprecedented situation affecting large numbers of leaseholders.

1240. There are particular problems with the past use of unsafe cladding products on these buildings, and the resultant fire safety risks. Often, to mitigate against the fire safety risks,

the cladding needs to be remediated. The costs associated with remediation are often significant.

1241. There is evidence that the past actions of manufacturers and sellers of cladding products have contributed to the creation of these defects and the resultant fire safety risks.

1242. Where the actions of cladding product manufacturers and sellers have caused or contributed to a building being unsafe, there are limited existing routes to secure redress from those at fault.

1243. The cause of action created by this section provides a new route for recourse against cladding product manufacturers, where their actions have caused or contributed to a dwelling becoming unfit for habitation.

1244. The cause of action has retrospective effect. This means that it is available in respect of defaults (to which see subsection (2)) which occurred before the commencement of this section (which is two months after Royal Assent of this Act; to which see section 170(3)). The limitation period commences on the date on which the right of action begins to accrue, which is the completion of the relevant works. In practice, this means that claims will be able to be brought in respect of works which were completed from mid-1992 onwards. The limitation period for work completed before commencement will be 30 years; the limitation period for work completed after commencement will be 15 years.

1245. The cause of action created by section 148 has prospective effect. It applies to a wider range of construction products and will apply in respect of defaults which occur after the commencement of sections 148 and 149. Example In 2001, the manufacturer of a cladding product misrepresented the properties of the product to the lead contractor for the construction of a high-rise residential building. The manufacturer stated in marketing materials that the cladding product was more resistant to the spread of fire than it was. The cladding product was installed by the contractor on the high-rise residential building and the relevant works were completed in 2002. Following fire safety checks it is determined that the cladding product installed on the building creates a serious fire safety risk and should not have been used in the construction of a high-rise building. The use of the product in the building has resulted in dwellings in the building being unfit for habitation at the time of completion of the works due to fire safety risks. The cladding product now needs to be replaced with a safe alternative. The building owner will bear the costs of this remediation. To replace the dangerous cladding, the building owner incurs significant costs. Under this section, (and before the limitation period expires) the building owner brings a claim for compensation against the cladding product manufacturer for the costs associated with remediating the unsafe cladding. The court finds that the reason the dwellings in the building were unfit for habitation on completion of the relevant works is the use of the unsuitable product. This was used as a result of the manufacturer's misleading marketing material and the Court orders the manufacturer to pay damages to the building owner.

COMMENCEMENT AND AMENDMENTS

In force: 28 June 2022 (s.170(3)). Limitation: 30 years for pre-28 June 2022 defaults (s.149(4)).

COMMENTARY

233. Section 149 is the retrospective counterpart to s.148, confined to cladding products. It mirrors the four-condition structure:
- (a) Condition A is a pre-28 June 2022 failure to comply with a cladding product requirement, a misleading statement, or the manufacture of an inherently defective cladding product (s.149(2));
 - (b) Condition B is the attachment or inclusion of the product in the external wall of a relevant building (s.149(3));
 - (c) Condition C is unfitness for habitation on completion (s.149(4)); and
 - (d) Condition D is causation (s.149(5)). “Cladding product” means a cladding system or any component of one (s.149(12)); “external wall” includes steeply pitched roof sections adjoining occupied spaces. The focus reflects the Grenfell disaster and the role played by the combustible cladding in that disaster.
234. The retrospectivity is dramatic. By s.10B(2) of the Limitation Act 1980 (inserted by s.150), a right of action accruing before 28 June 2022 may be brought within 30 years of accrual, accrual being fixed at completion of the works (s.149(8)). Claims therefore reach back to works completed in mid-1992. Sections 149(9) and (10) contain the safety valve: the court must dismiss a claim that would otherwise be revived if that is necessary to avoid a breach of the defendant’s Convention rights. That proviso mirrors s.135(6) for DPA claims and remains untested under s.149.
235. Section 149 received its first judicial consideration in **HB (WM) Ltd v Sto Ltd** [2026] EWHC 1833 (TCC). Moody J described it as “a new statutory tort (with a 30-year retrospective limitation period)” and as “a novel and untested area of law” [42]. On the Sto companies’ jurisdiction challenge he held that all three limbs of s.149(2) raised triable issues against the German parent: the misleading statement case built on the BBA certificates and “limited combustibility” literature [45], the cladding product requirement case under the 1991 Regulations [46], and the inherent defect case founded on combustible EPS and the defective Sto detailing [47]. Each was held fit for trial, not summary determination, in a developing area of law.
236. **HB (WM)** also settles, at first instance, the mechanics by which developers without any surviving “relevant interest” deploy s.149. The claims were contribution claims under

the Civil Liability (Contribution) Act 1978: the developers are liable to building owners under the DPA and the BSA; the manufacturers are liable to the same owners under s.149; both are therefore liable for “the same damage”. Applying the accrual analysis of Lord Leggatt in **URS Corporation Ltd v BDW Trading Ltd** [2025] UKSC 21, Moody J held at [58]-[62] that a claimant may issue contribution proceedings before its own right to contribution has accrued through payment, judgment or settlement: CPR 20.6 and 20.7 are procedure, not substance, and performing remedial works in kind can itself found the claim (**URS v BDW** at [266]).

237. The judgment leaves open, deliberately, the harder questions: (a) whether the Building Safety Fund and self-remediation terms machinery affects who has suffered the damage (unresolved because said to be fact-dependent [56]-[57]); (b) whether a liability created by a building liability order under s.130 can be “the same damage” for contribution purposes (real prospect of success; for trial [65]); and (c) the reach of s.130 against foreign associates, where the applicable-law analysis was preferred to a bare extraterritoriality bar [108]. The s.130 aspects of **HB (WM)** and **Mulalley** are digested under s.130: I do not repeat them here.
238. **Mulalley & Co Ltd v Sto Ltd** [2026] EWHC 1552 (TCC) is the first money judgment on a claim founded on s.149. Sto Germany having failed to defend, the content of its s.149 liability was fixed by the default judgment: misleading statements about the StoTherm Classic system and its inherently defective nature were the causes of the flats being unfit for habitation [19]. Pepperall J assessed the recoverable remedial cost at £2,025,499.62 and fixed the just and equitable contribution under s.2(1) of the 1978 Act at 87.5% [20]-[21], by analogy with the 67%-80% range typically awarded against a designer, uplifted because the principal cause was Sto’s marketing and supply of an inherently defective product [20]. Judgment was entered for £1,772,312.17 [22].
239. Taken together, the two Sto decisions establish the working model for cladding product claims: contribution proceedings in the TCC by remediating developers or contractors, s.149 supplying the manufacturer’s liability, s.130 reaching solvent associates where the UK supplier has failed, and contribution percentages likely to be set high where the manufacturer’s product and literature were the root cause. In my view the Court is likely, at the **HB (WM)** trial, to give the three limbs of s.149(2) a claimant-friendly construction; and the Remediation Bill announced in the May 2026 King’s Speech is

expected to extend manufacturer liability beyond cladding, which would make s.149 the template rather than the exception.

CASE DIGEST

Case Name: HB (WM) Ltd v Sto Ltd

Case Reference: [2026] EWHC 1833 (TCC)

Judge: Moody J

Date: 14 May 2026 (hearing 12-14 May 2026)

Key Issues: First judicial consideration of s.149; jurisdiction challenge by German manufacturer group; contribution claims before accrual; s.130 interaction

Held:

1. Section 149 is a new statutory tort with a 30-year retrospective limitation period; it had received no prior judicial consideration and is a novel and untested area of law [42].
2. On applications to set aside service out, the court applies the real prospect of success test with judicial restraint and no mini-trial; in a developing area of statutory liability, novel points should be decided at trial on found facts [15]-[17].
3. The claimants had a real prospect of establishing breach of s.149(2)(b) (misleading statements): the BBA certificates' Class 0 claims and the "limited combustibility" literature, if the pleaded facts are true, are capable of establishing the breach [42], [45].
4. The claims under s.149(2)(a) (failure to comply with a cladding product requirement, here under the 1991 Regulations) and s.149(2)(c) (manufacture of an inherently defective cladding product, "cladding product" including any component: s.149(12)) also raised triable issues; all three limbs go to trial [46]-[48].
5. A claimant may issue contribution proceedings under the Civil Liability (Contribution) Act 1978 before its right to contribution has accrued by payment, judgment or settlement: applying URS Corporation Ltd v BDW Trading Ltd [2025] UKSC 21 at [216]-[238] and [266], CPR 20.6-20.7 are procedural, and payment in kind by performing remedial works can suffice [58]-[62].
6. There is no requirement that the persons to whom the underlying liability is owed (owners and lessees) be parties to the contribution claim [55].

7. Whether a liability arising under a building liability order can be liability for “the same damage” is itself a triable issue with a real prospect of success [63]-[65].
8. The applications to set aside service out were dismissed; the extension of time for service stood, there being no breach of the duty of full and frank disclosure [100]-[101], [108].

Link: <https://caselaw.nationalarchives.gov.uk/ewhc/tcc/2026/1833>

Case Name: **Mulalley & Co Ltd v Sto Ltd**

Case Reference: [2026] EWHC 1552 (TCC)

Judge: Pepperall J

Date: 22 June 2026

Key Issues: First money judgment on a s.149-based contribution claim; assessment of damages on default judgment; just and equitable contribution of 87.5%

Held:

1. On an assessment of damages following default judgment, the claimant obtains its right to damages from the judgment but must still prove its loss; the defendant cannot take points inconsistent with the pleaded liability, the particulars of claim standing as a proxy for the judgment [6].
2. The default judgment necessarily established the content of the s.149 liability: Sto failed to supply a cladding product complying with functional requirement B4(1) and regulation 7 of the Building Regulations, made misleading statements about the StoTherm Classic system, and manufactured an inherently defective system, those matters causing the flats to be unfit for habitation [19].
3. The reasonably incurred remedial costs attributable to the defective Sto system were £2,025,499.62, the court being generally reluctant to second-guess a claimant’s remedial expenditure with hindsight (**Martlet Homes Ltd v Mulalley & Co Ltd** [2022] EWHC 1813 (TCC) at [422] applied) [14]-[16].
4. The principal cause of the remedial works was Sto’s marketing and supply of an inherently defective product; the fire barrier defects flowed from Sto’s own standard detailing, condemned in **Martlet** at [188] as fundamentally deficient [20].

5. The just and equitable contribution under s.2(1) of the Civil Liability (Contribution) Act 1978, informed by the 67%-80% range typical for design responsibility, was 87.5%; judgment against Sto Germany (liable through the building liability order) for £1,772,312.17 [20]-[22].
6. Failure to engage with the proceedings did not of itself justify indemnity costs; standard basis assessment ordered with £175,000 on account [24].

Cross-reference: the building liability order (s.130) aspects of both decisions, including the default BLO against Sto Germany and the extraterritoriality analysis concerning SBG, are digested under s.130. They are not repeated here.

Link: <https://caselaw.nationalarchives.gov.uk/ewhc/tcc/2026/1552>

**SECTION 150 – LIABILITY RELATING TO CONSTRUCTION PRODUCTS:
LIMITATION IN ENGLAND AND WALES**

STATUTORY TEXT

In the Limitation Act 1980, after section 10A insert—

10B Special time limit for actions relating to construction products

- (1) An action under section 148 of the Building Safety Act 2022 shall not be brought after the expiration of 15 years from the date on which the right of action accrued.
- (2) An action under section 149 of the Building Safety Act 2022 shall not be brought after—
 - (a) if the right of action accrued before the commencement date, the expiration of the period of 30 years from the date on which it accrued, and
 - (b) if the right of action accrued on or after the commencement date, the expiration of the period of 15 years beginning with the date on which it accrued.
- (3) In a case where—
 - (a) a right of action under section 149 of the Building Safety Act 2022 accrued before the commencement date, and
 - (b) the expiration of the period of 30 years beginning with the date on which the right of action accrued falls in the year beginning with the commencement date,subsection (2)(a) has effect as if it referred to the expiration of that year.
- (4) In subsections (2) and (3) “the commencement date” is the day on which section 149 of the Building Safety Act 2022 came into force.
- (5) No other period of limitation prescribed by Part 1 of this Act applies in relation to an action referred to in subsections (1) and (2).
- (6) Sections 28, 32 and 35 of this Act apply in relation to an action referred to subsections (1) and (2), but otherwise Parts 2 and 3 of this Act (except sections 37 and 38) do not apply for the purposes of this section.

EXPLANATORY NOTES

Section 150: Liability relating to construction products: limitation in England and Wales
Effect

1246. Section 150 provides for the limitation periods in England and Wales for the causes of action created by sections 148 and 149.

1247. Section 150 inserts new section 10B into the Limitation Act 1980, creating limitation periods for actions under sections 148 and 149 of this Act.

1248. Subsection (1) of new section 10B sets out that the limitation period under section 148 is 15 years from the date on which the right of action accrued. Subsections (3) and (8) of section 148 sets out when the right of action begins to accrue. Section 148 applies prospectively only, meaning that it only applies to work completed after commencement of this section, which is two months after Royal Assent of this Act (section 170(3)(e) of this Act).

1249. Subsection (2) of new section 10B sets out the limitation periods under section 149. Section 149 applies to past defaults relating to cladding products (to which see section 149(2)). Where the work was completed before the commencement of this section, the limitation period is 30 years from the date of completion of the work. Where the work is completed after commencement of this section, the limitation period is 15 years.

1250. Subsection (3) of new section 10B provides that in respect of an historical claim under section 149, if the limitation period would expire within the year starting with the commencement date, it will be extended until the expiry of that year, in order to give potential claimants the necessary time to take advice and lodge a claim.

1251. Subsection (4) of new section 10B defines “the commencement date” for the purposes of this section.

1252. Subsections (5) and (6) of new section 10B disapply other limitation periods prescribed by the Limitation Act 1980 in relation to the new causes of action, and lists some exceptions.

1253. Section 150 extends and applies to England and Wales.

Background

1254. Section 150 is a new provision.

1255. This section amends the Limitation Act 1980 to include the specific limitation periods for the new causes of action created by sections 148 and 149 in England and Wales. Section 151 sets out the equivalent provision for Scotland, which has a separate legislative regime. Section 169(7) provides a power to extend, by regulations, equivalent limitation periods to Northern Ireland.

1256. The cause of action created by section 148 will be subject to a 15-year limitation period, which will apply prospectively only (from commencement of the relevant section).

1257. The cause of action created by section 149 has retrospective effect, meaning that it applies to past defaults in relation to cladding products (to which see section 148(2)). The limitation period commences when the work involving the cladding product is completed. The limitation period will be 30 years for work completed prior to commencement, and 15 years for work completed after commencement.

1258. This means that for work completed prior to commencement of this section, a claim must be brought within 30 years of the completion of the work. For work completed after

commencement of this section, a claim must be brought within 15 years of the completion of the work.

1259. The limitation periods set out in this section mirror the changes this Act makes to the limitation period under section 1 of the Defective Premises Act 1972 (to which see section 135). Example 1 Construction work is completed on 10 January 2002 that involves the installation of a cladding product on the exterior of a high-rise residential building in England. In 2024, it is discovered that dwellings in the building were unfit for habitation on completion of the works. The cladding used in the construction was mis-sold as being suitable for use in the particular construction. The limitation period will expire on 10 January 2032. Example 2 Construction work is completed in on 10 January 2024 that involves the installation of construction product in a multi-occupied residential building in England. In 2028, it is discovered that dwellings in the building were unfit for habitation on completion of the works. The cladding used in the construction was mis-sold as being suitable for use in the particular construction. The limitation period will expire on 10 January 2039.

COMMENTARY

240. Section 150 inserts a new s.10B into the Limitation Act 1980. It provides: (a) for s.148 claims, a 15-year limitation period from accrual; (b) for s.149 claims accruing before 28 June 2022, a 30-year period from accrual; and (c) for s.149 claims accruing on or after that date, 15 years. Where a pre-commencement 30-year period would expire within the first year after commencement, it is extended to the end of that year (s.10B(3)). Accrual is fixed by ss.148(8) and 149(8) at completion of the construction or of the relevant works.
241. The scheme mirrors s.135's treatment of Defective Premises Act claims, giving the BSA a consistent pattern of extended and retrospective limitation. Sections 28 (disability), 32 (fraud, concealment and mistake) and 35 (new claims in pending actions) apply; the remainder of Parts 2 and 3 of the 1980 Act, including s.14A latent damage relief, do not (s.10B(6)). There is no discretion to disapply the period.
242. Two practical points follow from the *Sto* litigation. First, the long-stop is generous but hard-edged: claims in respect of works completed more than 30 years before issue are barred, so the earliest recoverable completions now roll forward daily from mid-1992. Secondly, the limitation regime for the underlying s.149 claim must not be confused with the two-year contribution period under s.10 of the 1980 Act: ***HB (WM) v Sto*** [2026] EWHC 1833 (TCC) at [58]-[62] confirms that a contribution claimant may issue

before its own cause of action has accrued, and at [99] that entering self-remediation terms is not an agreement on the amount to be paid capable of starting the s.10 clock.

**SECTION 151 – LIABILITY RELATING TO CONSTRUCTION PRODUCTS:
LIMITATION IN SCOTLAND**

STATUTORY TEXT

- (1) The Prescription and Limitation (Scotland) Act 1973 is amended as follows.
- (2) After section 18ZC insert—

18ZD Actions relating to construction products

- (1) An action under section 148 of the Building Safety Act 2022 may not be brought after the expiration of 15 years from the date on which the right of action accrued (see subsection (8) of that section).
- (2) An action under section 149 of the Building Safety Act 2022 may not be brought after—
 - (a) if the right of action accrued before the commencement date, the expiration of the period of 30 years from the date on which it accrued (see subsection (8) of that section), and
 - (b) if the right of action accrued on or after the commencement date, the expiration of the period of 15 years beginning with the date on which it accrued.
- (3) In a case where—
 - (a) a right of action under section 149 of the Building Safety Act 2022 accrued before the commencement date, and
 - (b) the expiration of the period of 30 years beginning with the date on which the right of action accrued falls in the year beginning with the commencement date,subsection (2)(a) has effect as if it referred to the expiration of that year.
- (4) In subsections (2) and (3) “the commencement date” is the day on which section 149 of the Building Safety Act 2022 came into force.
- (5) No other period of limitation specified by this Part of this Act applies in relation to an action referred to in subsection (1) or (2).
- (6) In the computation of a period of time specified in subsection (1) or (2), there is to be disregarded any time during which the person seeking to bring the action (P)—
 - (a) was under a legal disability by reason of nonage or unsoundness of mind, or
 - (b) failed to bring the action by reason of—

- (i) fraud on the part of the person against whom the action is to be brought (D) or the part of any person acting on D's behalf, or
 - (ii) error induced by words or conduct of D or any person acting on D's behalf,
- (but not including, for the purposes of paragraph (b), any time occurring after P could with reasonable diligence have discovered the fraud or error mentioned in that paragraph).
- (7) For the purposes of subsection (6)(b), it does not matter whether D, or the person acting on D's behalf, intended the fraud or the words or conduct to cause P to fail to bring the action.
- (3) In section 7(2) (extinction of obligations by prescriptive periods of twenty years), at the end insert "or any obligation to pay damages arising from liability under section 148 or section 149 of the Building Safety Act 2022 (see section 18ZD of this Act)."
 - (4) In section 19CA(1) (interruption of limitation period: arbitration), after "18ZC(2)" insert ", 18ZD(1) or (2)".
 - (5) In Schedule 1, in paragraph 2 (exceptions from the 5 year prescriptive period under section 6), after paragraph (ga) insert—
 - (gb) to any obligation to pay damages arising from liability under section 148 or 149 of the Building Safety Act 2022;".

EXPLANATORY NOTES

Section 151: Liability relating to construction products: limitation in Scotland

Effect

1260. Section 151 provides for the limitation periods in Scotland for the new causes of action relating to construction products.

1261. Subsections (1) and (2) insert new section 18ZD into the Prescription and Limitation (Scotland) Act 1973.

1262. Subsection (1) of new section 18ZD sets out that the limitation period for a civil claim under section 148 is 15 years from the completion of the work.

1263. Subsection (2) of new section 18ZD sets out the limitation periods under section 149, which relates to past defaults relating to cladding products. Where the work was completed before the commencement of this section, the limitation period is 30 years from the date of completion of the work. Where the work is completed after commencement of this section, the limitation period is 15 years.

1264. Subsection (3) of new section 18ZD provides that in respect of an historical claim under section 149, if the limitation period would expire within the year starting with the commencement date, it will not expire until the end of that year this will give potential claimants sufficient time to take advice and lodge a claim.

1265. Subsection (4) of new section 18ZD defines “commencement date” for the purposes of this new section in the Prescription and Limitation (Scotland) Act 1973.

1266. Subsection (5) of new section 18ZD clarifies the application of other limitation periods.

1267. Subsections (6) and (7) of new section 18ZD make provision for there to be a disregard for any time during which the claimant was under a legal disability or failed to bring the claim due to fraud or error on behalf of the defendant. In these circumstances, the limitation period can be extended beyond the prescribed 15 or 30 years. This reflects similar provision in the Limitation Act 1980.

1268. Section 151 extends and applies to Scotland only.

Background

1269. This is a new provision.

1270. This section sets out the limitation periods for the new causes of action created by sections 148 and 149 in Scotland.

1271. The cause of action created by section 148 will be subject to a 15-year limitation period, which will apply prospectively only. The cause of action created by section 149 will have a 30-year limitation period retrospectively, and a 15-year limitation period prospectively.

1272. This means that for work completed prior to commencement of the provision, a claim must be brought within 30 years of the completion of the work. For work completed after commencement, a claim must be brought within 15 years of the completion of the work.

1273. These limitation periods mirror equivalent provision for limitation in England and Wales in relation to the new causes of action. Example 1 Construction work is completed on 10 January 2002 that involves the installation of cladding product on the exterior of a high-rise residential building in Scotland. In 2024, it is discovered that dwellings in the building were unfit for habitation on completion of the works. The cladding used in the construction was mis-sold as being suitable for use in the particular construction. A claim could be brought against the cladding product manufacturer until 10 January 2032. Example 2 Construction work is completed on 10 January 2024 that involves the installation of construction product in a multi-occupied residential building in Scotland. In 2028, it is discovered that dwellings in the building were unfit for habitation on completion of the works. The construction product used in the works was mis-sold as being suitable for the particular type of construction. A claim could be brought against the cladding product manufacturer until 10 January 2039.

COMMENTARY

243. Section 151 is the Scottish counterpart of s.150. It inserts s.18ZD into the Prescription and Limitation (Scotland) Act 1973, applying the same 15-year and retrospective 30-year periods to s.148 and s.149 claims in Scotland, and disapplies the 20-year long

negative prescription for the new statutory obligations (amendments to s.7(2) and Schedule 1).

244. The Scottish provision carries its own equitable disregards: time under legal disability, and time during which the pursuer failed to sue because of the defender's fraud or induced error, are left out of account (s.18ZD(6)-(7)), with an express proviso that intention is irrelevant. The arbitration interruption provisions are extended to the new periods (s.19CA).

SECTION 152 – COSTS CONTRIBUTION ORDERS: GENERAL DEFINITIONS

STATUTORY TEXT

In this section and sections 153 to 155—

“the 2011 Regulation” means Regulation (EU) No. 305/2011 (regulation laying down harmonised conditions for the marketing of construction products);

“the 2019 Regulations” means the Construction Products (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/465);

“the 2020 Regulations” means the Construction Products (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1359);

“construction product”—

- (a) in relation to a construction product requirement under construction products regulations, has the meaning specified in those regulations;
- (b) in relation to a construction product requirement under the 2011 Regulation, has the meaning specified in the 2011 Regulation (or, in Northern Ireland, in the 2011 Regulation as having effect in EU law from time to time);
- (c) in relation to a construction product requirement under the 2019 Regulations, has the meaning specified in the 2011 Regulation as it had effect immediately before IP completion day;
- (d) in relation to a construction product requirement under the 2020 Regulations, has the meaning given by regulation 2 of those Regulations;

“construction products regulations” means regulations under paragraph 1 of Schedule 11;

“construction product requirement”, in England and Wales or Scotland, means a requirement under—

- (a) construction products regulations,
- (b) the 2011 Regulation, or
- (c) the 2019 Regulations;

“construction product requirement”, in Northern Ireland, means a requirement under—

- (a) construction product regulations,
- (b) the 2011 Regulation as having effect from time to time in EU law,
- (c) the 2019 Regulations, or
- (d) the 2020 Regulations;

references to an “interest” in a building or dwelling include—

- (a) in England and Wales, any legal or equitable interest in the building or dwelling;
- (b) in Scotland, any right or interest (including a servitude or heritable security) in or over the building or dwelling;
- (c) in Northern Ireland, any estate within the meaning given by section 45(2) of the Interpretation Act (Northern Ireland) 1954 in the building or dwelling;

“relevant building” means—

- (a) a building which consists of a dwelling, or
- (b) a building which contains two or more dwellings;

“requirement” includes a prohibition or restriction.

EXPLANATORY NOTES

Section 152: Cost contribution orders: general definitions

Effect

1274. This section sets out definitions for the purposes of section 153 (Costs contribution orders made by courts), section 154 (Costs contribution orders made by the Secretary of State) and section 155 (Costs contribution orders: assessments).

COMMENTARY

245. Section 152 defines terms for the costs contribution order regime in ss.153 to 155: “construction product”, “construction product requirement” (with a separate Northern Ireland definition embracing the 2020 EU Exit Regulations), “relevant building” (again, any building consisting of or containing dwellings), and “interest” in a building or dwelling for each UK jurisdiction. In force since 28 June 2022, the definitions are UK-wide, unlike the England-and-Wales-plus-Scotland reach of ss.147 to 151.
246. The persons against whom the orders in ss.153 and 154 are aimed are those convicted of construction products offences: the Explanatory Notes describe them as “economic operators” (manufacturers, authorised representatives, importers and distributors), borrowing the vocabulary of the 2011 Regulation, although the Act itself simply speaks of a convicted “defaulter”. The definitions do nothing until regulations are made under ss.153 to 155; none have been.

SECTION 153 – COSTS CONTRIBUTION ORDERS MADE BY COURTS

STATUTORY TEXT

- (1) The Secretary of State may by regulations make provision for courts to make costs contribution orders on the application of the Secretary of State.
- (2) The regulations may only make provision for the making of costs contribution orders under this section in cases where—
 - (a) Conditions A to D are met, and
 - (b) any prescribed conditions are met.
- (3) Condition A is that a person (“the defaulter”) is convicted of an offence consisting of a failure to comply with a construction product requirement in relation to a construction product.
- (4) Condition B is that, after the failure to comply referred to in subsection (3), the construction product is installed in, or applied or attached to, a relevant building in the course of works carried out in the construction of, or otherwise in relation to, the building.
- (5) Condition C is that, when those works are completed—
 - (a) in a case where the relevant building consists of a dwelling, the building is unfit for habitation, or
 - (b) in a case where the relevant building contains one or more dwellings, a dwelling contained in the building is unfit for habitation.
- (6) Condition D is that the failure to comply referred to in subsection (3) was the cause, or one of the causes, of the building or dwelling being unfit for habitation.
- (7) A “costs contribution order” under this section is an order requiring the defaulter to pay an amount to a person with a prescribed interest in the building or any dwelling contained in the building.
- (8) Regulations under this section must provide for the amount to be paid to a person under a costs contribution order under this section to be such amount as the court making the order considers just and equitable in respect of the costs that the person has reasonably incurred, or in the view of the court is likely to reasonably incur, in respect of works to make the building or dwelling fit for habitation.
- (9) The regulations may make provision as to the matters which may or must be taken into account by a court in determining—
 - (a) whether, against whom and in favour of whom to make a costs contribution order under this section;
 - (b) the amount required to be paid by a person under a costs contribution order under this section.

- (10) The regulations may make provision in relation to—
- (a) enforcement of a costs contribution order under this section;
 - (b) court powers to order the defaulter to pay—
 - (i) any costs incurred by the Secretary of State under regulations under section 155 (assessments) in respect of the application, and
 - (ii) any costs incurred by the Secretary of State in making the application.
- (11) The regulations may make provision about how a costs contribution order under this section relates to other remedies, including in particular—
- (a) provision to secure that, taking a costs contribution order under this section together with other remedies—
 - (i) a person does not incur liability more than once in respect of the same costs;
 - (ii) a person is not entitled to be reimbursed more than once for the same costs;
 - (b) provision preventing a person to whom any amount is payable under a costs contribution order under this section from pursuing any other legal remedy for the recovery of such an amount.
- (12) In this section “prescribed” means prescribed by regulations under this section.

EXPLANATORY NOTES

Section 153: Cost contribution orders made by courts

Effect

1275. This section creates a power to make regulations to enable the Secretary of State to apply to a court for a costs contribution order to be made against a construction products manufacturer, their authorised representative, an importer or distributor (“economic operator”) to require them to contribute to the cost of remediation works.

1276. The Secretary of State would be able to make such an application where an economic operator has been successfully prosecuted for non-compliance with construction products regulations, where the relevant product has caused or contributed to making dwellings unfit for habitation.

1277. Regulations made under this power will be subject to the affirmative procedure.

1278. This section should be read alongside section 155, which creates a power to make regulations relating to assessments undertaken as part of this process.

1279. This power applies UK wide.

Background

1280. This is a new provision.

1281. The existing regulatory framework for construction products, which is derived from the EU Construction Products Regulation 2011, sets out the requirements that economic

operators (construction products manufacturers, their authorised representatives, importers and distributors) must fulfil when making construction products available on the UK market. Schedule 11 of this Act takes powers to strengthen and extend this regulatory framework.

1282. Sections 153 and 154 create a power to make regulations to enable the Secretary of State to require economic operators to pay for, or contribute towards, the cost of remediation works where they have been successfully prosecuted for breach of construction product regulations and use of the relevant products has caused or contributed to making dwellings unfit for habitation. Section 155 creates a power to make regulations relating to assessments undertaken as part of this process.

Proposed use of power

1283. This power will be used to make regulations to enable the Secretary of State to apply to a court for a costs contribution order to be made against an economic operator where the relevant conditions have been met, to require them to pay an amount in relation to the cost of remediation works. Regulations will set out the matters that the court will need to consider when deciding whether to make a costs contribution order and, where applicable, the amount that an economic operator should be required to pay, and to whom. Regulations will also enable the court to order an economic operator to pay to the Secretary of State the cost of any assessments undertaken as part of this process and making the application to court. Example A manufacturer is successfully prosecuted for non-compliance with construction products regulations, following an investigation by the regulator which found that the fire doors that they manufacture do not have the resistance to fire claimed in their marketing material. The Secretary of State appoints assessors to undertake an assessment of residential buildings where the product has been used. The assessment finds that dwellings have been made unfit for habitation as a result of these doors having been used, and that the doors would need to be replaced to make the dwellings fit for habitation. The assessment also sets out the costs which would be, or have been, reasonably incurred in replacing the fire doors. The Secretary of State then applies to the court for an order to be made against the manufacturer for the costs of remediation supported by the evidence from the assessor. The order can also include the costs incurred by the Secretary of State from carrying out the assessment and making the application to court.

COMMENTARY

247. Section 153 empowers the Secretary of State to make regulations enabling courts, on the application of the Secretary of State, to make “costs contribution orders” against a person convicted of an offence of failing to comply with a construction product requirement, where the product was installed in a relevant building and caused, or contributed to causing, the building or a dwelling in it to be unfit for habitation (Conditions A to D, s.153(2)-(6)). The order requires the defaulter to pay a person with

a prescribed interest such amount as the court considers just and equitable in respect of the reasonable costs of remediation (s.153(7)-(8)).

248. The regime is conviction-based: it converts a successful prosecution into a remediation funding order, bypassing the need for a civil claim under ss.148-149. The regulations must police double recovery and may bar a payee from pursuing other remedies for the same amount (s.153(10)); they are subject to the affirmative procedure.
249. The provision is dormant. It depends on both the making of regulations under s.153 itself and the existence of prosecutable construction product requirements, which in turn await the Schedule 11 regulations. The Construction Products Reform White Paper (25 February 2026) proposes the enforcement architecture which would give ss.152 to 155 work to do, and I would expect implementing regulations to follow the Remediation Bill. Until then there is, unsurprisingly, no case law.

SECTION 154 – COSTS CONTRIBUTION ORDERS MADE BY THE SECRETARY OF STATE

STATUTORY TEXT

- (1) The Secretary of State may by regulations make provision for the Secretary of State to make costs contribution orders.
- (2) The regulations may only make provision for the making of costs contribution orders in cases where—
 - (a) Conditions A to D are met, and
 - (b) any prescribed conditions are met.
- (3) Condition A is that a person (“the defaulter”) is convicted of an offence consisting of a failure to comply with a construction product requirement in relation to a construction product.
- (4) Condition B is that, after the failure to comply referred to in subsection (3), the construction product is installed in, or applied or attached to, a relevant building in the course of works carried out in the construction of, or otherwise in relation to, the building.
- (5) Condition C is that, when those works are completed—
 - (a) in a case where the relevant building consists of a dwelling, the building is unfit for habitation, or
 - (b) in a case where the relevant building contains one or more dwellings, a dwelling contained in the building is unfit for habitation.
- (6) Condition D is that the failure to comply referred to in subsection (3) was the cause, or one of the causes, of the building or dwelling being unfit for habitation.
- (7) A “costs contribution order” under this section is an order requiring the defaulter to make a payment to a person with a prescribed interest in the building or any dwelling contained in the building.
- (8) Regulations under this section must provide for the amount to be paid to a person under a costs contribution order under this section to be such amount as the Secretary of State considers just and equitable in respect of the costs that the person has reasonably incurred, or in the view of the Secretary of State is likely to reasonably incur, in respect of works to make the building or dwelling fit for habitation.
- (9) The regulations may make provision as to the matters which may or must be taken into account by the Secretary of State in determining—
 - (a) whether, against whom, and in favour of whom, to make a costs contribution order under this section;

- (b) the amount required to be paid by a person under a costs contribution order under this section.
- (10) The regulations may make provision for the Secretary of State to issue a warning notice to a person before determining whether to make a costs contribution order under this section against that person.
- (11) The regulations may make provision requiring that a costs contribution order under this section—
 - (a) be made in a prescribed form;
 - (b) contain prescribed information.
- (12) The regulations may make provision about service of a costs contribution order under this section including—
 - (a) how an order is to be served;
 - (b) when an order is to be taken as having been served;
 - (c) the persons on whom an order must be served.
- (13) The regulations may make provision in relation to—
 - (a) enforcement of a costs contribution order made under this section (including enforcement by the Secretary of State);
 - (b) powers of the Secretary of State to order the defaulter to pay any costs incurred by the Secretary of State under section 155 in respect of a costs contribution order under this section.
- (14) The regulations may make provision about how a costs contribution order under this section relates to other remedies, including in particular—
 - (a) provision to secure that, taking a costs contribution order under this section together with other remedies—
 - (i) a person does not incur liability more than once in respect of the same costs;
 - (ii) a person is not entitled to be reimbursed more than once for the same costs;
 - (b) provision preventing a person to whom any amount is payable under a costs contribution order under this section from pursuing any other legal remedy for the recovery of such an amount.
- (15) The regulations may make provision for persons to apply to the Secretary of State for a review of a costs contribution order under this section.
- (16) The regulations may make provision for appeals to a court or tribunal in relation to —
 - (a) a decision of the Secretary of State to make or not make a costs contribution order under this section;

- (b) a refusal by the Secretary of State to review a costs contribution order under this section;
 - (c) the outcome of a review by the Secretary of State of a costs contribution order under this section.
- (17) The regulations may in particular include provision suspending a requirement to pay an amount due under a costs contribution order under this section pending the determination or withdrawal of an appeal or the determination of a review.
- (18) In this section “prescribed” means prescribed by regulations under this section.

EXPLANATORY NOTES

Section 154 – Cost contribution orders made by the Secretary of State

Effect

1284. This section enables the Secretary of State to, by regulations, make provision for the Secretary of State to make costs contribution orders in relation to construction products.

1285. The Secretary of State will be able to serve a costs contribution order on an economic operator that has been successfully prosecuted under construction products regulations, and where the use of the relevant product has caused, or contributed to, dwellings being unfit for habitation.

1286. Regulations made under this power will be subject to the affirmative procedure.

1287. This section should be read alongside section 155, which creates a power to make regulations relating to assessments undertaken as part of this process.

1288. This power applies UK wide.

Background

1289. This is a new provision.

1290. The existing regulatory framework for construction products, which is derived from the EU Construction Products Regulation 2011, sets out the requirements that economic operators (construction products manufacturers, their authorised representatives, importers and distributors) must fulfil when making construction products available on the UK market. Schedule 11 of this Act takes powers to strengthen and extend this regulatory framework.

1291. Sections 153 and 154 create a power to make regulations to enable the Secretary of State to require economic operators to pay for, or contribute towards, the cost of remediation works where they have been successfully prosecuted for breach of construction product regulations and use of the relevant products has caused or contributed to making dwellings unfit for habitation. Section 155 creates a power to make regulations relating to assessments undertaken as part of this process.

Proposed use of power

1292. This power will be used to make regulations to enable the Secretary of State to make a costs contribution order against an economic operator where the relevant conditions have been met, to require them to pay the relevant cost of remediation works. Regulations will set out the matters that the Secretary of State will need to consider when deciding whether to make a costs contribution order and, where applicable, the amount that an economic operator should be required to pay. Regulations will also enable the Secretary of State to require an economic operator to pay for cost of any assessments undertaken as part of this process. Regulations will also allow for an economic operator to apply for the decision to be reviewed by the Secretary of State and will set out the circumstances under which appeals can be made to a court or tribunal. Example A manufacturer is successfully prosecuted for non-compliance with construction products regulations, following an investigation by the regulator which found that the fire doors that they manufacture do not have the resistance to fire claimed in their marketing material. The Secretary of State appoints assessors to undertake an assessment of residential buildings where the product has been used. The assessment finds that dwellings have been made unfit for habitation as a result of these doors having been used, and that the doors would need to be replaced to make the dwellings fit for habitation, and the costs of carrying out such remediation. The Secretary of State then makes a costs contribution order against the manufacturer. This order also requires the manufacturer to pay the costs incurred by the Secretary of State in relation to the assessment process.

COMMENTARY

250. Section 154 provides the administrative parallel to s.153: regulations may enable the Secretary of State, rather than a court, to make a costs contribution order. The conditions are the same, including Condition A: a conviction remains a prerequisite. The difference lies in who quantifies and imposes the order: the amount is what the Secretary of State considers just and equitable in respect of reasonable remediation costs (s.154(7)).
251. The section carries its own procedural safeguards, to be filled out by regulations: warning notices before an order is made (s.154(9)), prescribed form, content and service (s.154(10)-(11)), internal review (s.154(14)), appeals to a court or tribunal against the making or refusal of an order or the outcome of a review, and suspension of payment pending appeal (s.154(15)-(16)).
252. An administrative power to order one private person to pay potentially very large remediation sums to another, exercised by a minister who also conducts the prosecution policy, is a striking feature. In my view any implementing regulations will need generous appeal rights to survive challenge, and the courts are likely to construe the

“just and equitable” assessment as importing the same causation discipline seen in **Mulalley v Sto** under the 1978 Act.

SECTION 155 – COSTS CONTRIBUTION ORDERS: ASSESSMENTS

STATUTORY TEXT

- (1) For the purposes of sections 153 and 154, the Secretary of State may by regulations make provision for the Secretary of State to appoint persons to assess—
 - (a) whether the conditions for the imposition of a costs contribution order under either of those sections are met;
 - (b) the works required to make a building or dwelling fit for habitation;
 - (c) what interest a person has in a building or dwelling;
 - (d) the costs that a person has reasonably incurred or is likely to reasonably incur in respect of works referred to in paragraph (b);
 - (e) the amount that a person should be required to pay under a costs contribution order.
- (2) The regulations may include provision about the criteria to be met by a person before they may be appointed as an assessor.
- (3) The regulations may make provision about assessments, including provision—
 - (a) conferring power on an assessor to require that persons provide such information as the assessor may reasonably require for the purposes of an assessment;
 - (b) for the provision of information by an assessor to the Secretary of State (including any information provided under paragraph (a)).
- (4) Regulations under subsection (3)(a) may include provision for criminal offences relating to a failure to provide information, or to the provision of false or misleading information.
- (5) Regulations under subsection (3)(a) creating a criminal offence must have the effect that—
 - (a) the offence is—
 - (i) triable summarily only, or
 - (ii) triable summarily or on indictment,
 - (b) the offence is punishable only—
 - (i) with a fine, or
 - (ii) with a term of imprisonment or a fine (or both),
 - (c) where the offence is triable summarily only, any fine with which the offence is punishable in Scotland or Northern Ireland does not exceed level 5 on the standard scale,

- (d) where the offence is triable summarily or on indictment, any fine with which the offence is punishable on summary conviction in Scotland or Northern Ireland does not exceed the statutory maximum, and
- (e) any term of imprisonment with which the offence is punishable on summary conviction does not exceed—
 - (i) in England and Wales, the relevant period,
 - (ii) in Scotland, 12 months, and
 - (iii) in Northern Ireland, 6 months.
- (6) In subsection (5)(e)(i), “the relevant period” means—
 - (a) in relation to an offence that is triable summarily only—
 - (i) where the offence is committed before the coming into force of section 281 of the Criminal Justice Act 2003, 6 months, and
 - (ii) where the offence is committed after that time, 51 weeks;
 - (b) in relation to an offence that is triable summarily or on indictment—
 - (i) where the offence is committed before the coming into force of paragraph 24(2) of Schedule 22 to the Sentencing Act 2020, 6 months, and
 - (ii) where the offence is committed after that time, 12 months.
- (7) Regulations under subsection (3)(b) may make provision for the purpose of securing that there is (taking into account any power or duty to provide information under the regulations) no contravention of the data protection legislation.
- (8) In subsection (7), “data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).

EXPLANATORY NOTES

Section 155: Cost contribution orders: assessments

Effect

1293. This section creates a power to make regulations relating to assessments undertaken for the purposes of costs contribution orders.

1294. Following a successful prosecution for non-compliance with construction products regulations, regulations will enable the Secretary of State to appoint persons to undertake an assessment to inform the decision as to whether the conditions have been met, and the terms on which a costs contribution order can be made, or the terms of an application to the court for an order to be made, and the terms of any order sought from the court.

1295. Regulations made under this power will be subject to the affirmative procedure.

1296. This section should be read alongside sections 153 and 154, which set out the conditions for making a costs contribution order.

1297. This power applies UK wide.

Background

1298. This is a new provision.

1299. The existing regulatory framework for construction products, which is derived from the EU Construction Products Regulation 2011, sets out the requirements that economic operators (construction products manufacturers, their authorised representatives, importers and distributors) must fulfil when making construction products available on the UK market. Schedule 11 of this Act takes powers to strengthen and extend this regulatory framework.

1300. Sections 153 and 154 create a power to make regulations to enable the Secretary of State to require economic operators to pay for, or contribute towards, the cost of remediation works where they have been successfully prosecuted for breach of construction product regulations and use of the relevant products has caused or contributed to making dwellings unfit for habitation. This section creates a power to make regulations relating to assessments undertaken as part of this process.

Proposed use of power

1301. This power will be used to make regulations to enable the Secretary of State to appoint persons to undertake an assessment of buildings where the relevant product has been used. The assessment will consider whether the conditions for making a costs contribution order have been met, the remediation works required to make the building or dwelling fit for habitation, and cost of undertaking these works. Regulations will specify the criteria that a person must meet before being appointed as an assessor for this purpose.

COMMENTARY

253. Section 155 is the evidential machinery for ss.153 and 154. Regulations may enable the Secretary of State to appoint assessors to determine whether the conditions for an order are met, what works are needed to make the building or dwelling fit for habitation, who holds what interest, the reasonable costs, and the amount payable (s.155(1)).
254. Assessors may be given information-gathering powers, backed if the regulations so provide by criminal offences for failure to provide information or for providing false or misleading information, within the sentencing limits set by s.155(5)-(6); data protection compliance is expressly preserved (s.155(7)-(8)).
255. Like ss.153 and 154, the section awaits regulations and has generated no authority. The assessment reports contemplated here would in practice resemble the expert exercise conducted for the court in **Mulalley v Sto**: identification of defect-attributable works, causation percentages, and reasonable cost.

SECTION 156 – AMENDMENT OF REGULATORY REFORM (FIRE SAFETY)

ORDER 2005

STATUTORY TEXT

- (1) The Regulatory Reform (Fire Safety) Order 2005 (S.I. 2005/1541) is amended as follows.
- (2) In article 5 (duties under the Order), for “22”, in each place it occurs, substitute “22B”.
- (3) In article 9 (risk assessment)—
 - (a) in paragraph (6) for the words from “record” to the end substitute “make a record of the assessment or review, which must in particular include the information prescribed by paragraph (7).”;
 - (b) in paragraph (7)(a) omit “significant”.
- (4) After article 9 insert—

9A Risk assessment: assistance

- (1) The responsible person must not appoint a person to assist them with making or reviewing an assessment under article 9 unless that person is competent.
- (2) A person is to be regarded as competent for the purposes of this article where the person has sufficient training and experience or knowledge and other qualities to enable the person properly to assist in making or reviewing the assessment.
- (3) Where the responsible person appoints more than one person, the responsible person must make arrangements for ensuring adequate co-operation between them.
- (5) In article 11(2) (fire safety arrangements) omit the words from “where” to the end.
- (6) After article 21 insert—

21A Provision of information to residents of domestic premises

- (1) This article applies in relation to a building containing two or more sets of domestic premises.
- (2) The responsible person must give residents of the domestic premises comprehensible and relevant information about the relevant fire safety matters.
- (3) The relevant fire safety matters are—
 - (a) the risks to residents of the domestic premises identified by the risk assessment;

- (b) the preventive and protective measures;
 - (c) the name of the responsible person and an address in the United Kingdom at which the responsible person, or someone acting on their behalf, will accept notices and other documents;
 - (d) the identity of any person appointed by the responsible person to assist them with making or reviewing an assessment under article 9;
 - (e) the identity of any persons nominated by the responsible person under article 13(3)(b);
 - (f) any risks of which the responsible person has been informed under article 22(1)(c);
 - (g) any other matters specified in regulations made by the relevant authority.
- (4) The information is to be provided at such times, and in such form, as may be specified in regulations made by the relevant authority.
 - (5) The responsible person must keep records of the relevant fire safety matters.
 - (6) The “relevant authority”—
 - (a) in relation to premises in England, means the Secretary of State;
 - (b) in relation to premises in Wales, means the Welsh Ministers.
 - (7) Regulations under this article are to be made by statutory instrument.
 - (8) A statutory instrument containing regulations made by the Secretary of State under this article is subject to annulment in pursuance of a resolution of either House of Parliament.
 - (9) A statutory instrument containing regulations made by the Welsh Ministers under this article is subject to annulment in pursuance of a resolution of Senedd Cymru.
- (7) In article 22 (co-operation and co-ordination)—
 - (a) in the heading, at the end insert “between responsible persons”;
 - (b) before paragraph (1) insert—
 - (A1) A person who is a responsible person in relation to any premises must take such steps as are reasonably practicable to ascertain whether any other responsible person shares, or has duties in respect of, the premises.
 - ;
 - (c) in paragraph (1) before sub-paragraph (1)(a) insert—
 - (za) inform the other responsible persons concerned of that person’s name and an address in the United Kingdom at which that person, or someone acting on their behalf, will accept notices and other documents;

- (zb) inform the other responsible persons concerned of the part of the premises for which that person considers themselves to be a responsible person, and keep a record of that information;

(8) After article 22 insert—

22A Provision of information to new responsible person

- (1) Paragraph (2) applies where a person (the “outgoing person”) ceases to be a responsible person for premises and another person (the “new responsible person”) becomes a responsible person for the premises in place of the outgoing person.
- (2) The outgoing person must give the new responsible person any relevant fire safety information held by the outgoing person.
- (3) “Relevant fire safety information” means—
 - (a) records kept under article 9(6) of assessments and reviews under article 9;
 - (b) the identity of any person appointed by the responsible person to assist them with making or reviewing an assessment under article 9;
 - (c) the name of any other person who is a responsible person in relation to the premises and an address in the United Kingdom at which that person, or someone acting on their behalf, will accept notices and other documents (where known);
 - (d) where the premises consist of or include a higher-risk building, the identity of any other person who is an accountable person in relation to the premises (where known);
 - (e) any information given under regulation 38 of the Building Regulations 2010 (S.I. 2010/2214) (fire safety information);
 - (f) any other matters specified in regulations made by the relevant authority.
- (4) The information is to be provided at such times, and in such form, as may be specified in regulations made by the relevant authority.
- (5) A responsible person must keep records of relevant fire safety information.
- (6) In this article—
 - “accountable person” has the meaning given by section 72 of the Building Safety Act 2022;
 - “higher-risk building” has the meaning given by section 65 of that Act;
 - “relevant authority”—

- (a) in relation to premises in England, means the Secretary of State;
- (b) in relation to premises in Wales, means the Welsh Ministers.
- (7) Regulations under this article are to be made by statutory instrument.
- (8) A statutory instrument containing regulations made by the Secretary of State under this article is subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) A statutory instrument containing regulations made by the Welsh Ministers under this article is subject to annulment in pursuance of a resolution of Senedd Cymru.

22B Co-operation with accountable persons

- (1) This article applies in relation to premises which consist of or include a residential unit in a higher-risk building.
- (2) The responsible person (“P”) must take such steps as are reasonably practicable to ascertain whether there are one or more other persons who are accountable persons in relation to the premises.
- (3) If there are, P must co-operate with each accountable person for the purpose of the accountable person carrying out their duties under the Building Safety Act 2022.
- (4) In this article—
 - “accountable person” has the meaning given by section 72 of the Building Safety Act 2022;
 - “higher-risk building” has the meaning given by section 65 of that Act;
 - “residential unit” has the meaning given by section 115 of that Act.
- (9) In article 29(5) (alterations notices), omit paragraphs (b) and (c).
- (10) In article 32 (offences)—
 - (a) in paragraph (1)(a) for “22” substitute “22B”;
 - (b) in paragraph (4) omit “not exceeding level 3 on the standard scale”;
 - (c) in paragraph (7) omit “not exceeding level 3 on the standard scale”.
- (11) In article 50 (guidance)—
 - (a) in paragraph (1) for “22” substitute “22B”;
 - (b) in paragraph (1A)—
 - (i) for “22” substitute “22B”;
 - (ii) omit “in relation to a relevant building (or part of the building)”;
 - (iii) in sub-paragraph (a) omit “risk based”;
 - (iv) in sub-paragraph (b) omit “risk based”.

EXPLANATORY NOTES

Section 156: Amendment of Regulatory Reform (Fire Safety) Order 2005

Effect

1302. This section makes the following amendments to the Regulatory Reform (Fire Safety) Order 2005, “the Fire Safety Order” as set out below. The Fire Safety Order applies to non-domestic premises in England and Wales. This section extends to Wales where applicable.

1303. In 2019 the Home Office published a call for evidence to better understand how well the Fire Safety Order (FSO) works in practice and whether any changes needed to be made to it. This was followed by a public consultation on fire safety that set out initial Government proposals to respond to the findings of the call for evidence, and finally by the Government’s response to the consultation, published in March 2021, which announced the Government’s proposals to legislate to amend the FSO as set out below. The FSO imposes a range of fire safety duties on Responsible Persons (which may include building owners or managers) and the changes below largely either add to or amend these duties.

Effect

1304. This section in subsection (2) introduces a requirement for all Responsible Persons to record their fire risk assessment in full. It replaces the current requirement to only record significant findings of the assessment in specified circumstances.

Background

1305. At present all Responsible Persons are required to undertake a fire risk assessment, but they are required to record the significant findings of that assessment only when they are an employer of five or more employees or where there is a licence in place, or an alterations notice under the FSO requiring this. Concern was raised during the call for evidence that it is difficult for enforcing authorities to evidence a breach of the Responsible Person’s duties under the FSO or for the Responsible Person to demonstrate compliance if the full fire risk assessment is not recorded. We are therefore introducing a requirement for all Responsible Persons to do so for all regulated premises. The Responsible Person will be able to access guidance to assist with completing and recording their fire risk assessment.

Example

The Responsible Person owns an office and has only three employees. They must undertake a fire risk assessment and update it regularly for the purpose of ensuring the safety from fire of their employees and/or any visitors or customers but they do not need to record their risk assessment. Another responsible person also owns an office but has 50 employees. They must also undertake a fire risk assessment and update it regularly and, additionally, record the significant findings of the assessment, but they are not required to record the full assessment. Under this new provision all Responsible Persons, regardless of their individual circumstances, must record their fire risk assessment in particular the findings of the assessment including measures that have or will be taken to comply with the order and any group of persons identified as being especially at risk. The intention is to ensure

enforcing authorities and other relevant persons (i.e. residents or employees) have access to the full risk assessment to aid authorities when enforcing the FSO and to provide assurance to relevant persons that fire safety risks in the building where they live or work are being safely and appropriately managed.

Effect

1306. A new article 9A requires that a Responsible Person must not appoint a person to assist them in the undertaking or reviewing of a fire risk assessment unless that person is competent. A person is regarded as competent for this purpose where they have sufficient training, experience or knowledge and other qualities to enable them to undertake this role. This duty applies to the appointment of either an individual or a company. Where the person appointed is a company it is envisaged the Responsible Person would need to establish from the company that its staff were considered competent. Where there are two or more appointed persons, the Responsible Person must make arrangements to ensure adequate cooperation between them.

Background

1307. The intention of Article 9A is to address the recommendations made in the Independent Review, which recommended a review of competence within fire safety critical roles, including Fire Risk Assessors.

1308. Building on this report, in the Call for Evidence outlined above the Home Office sought views on the existing provisions in the FSO relating to competent persons and whether they remained sufficient. Respondents highlighted concern about the variable quality of fire risk assessments and the lack of a competence requirement on those engaged by a Responsible Person to complete them.

1309. Proposals to address this were included in the Fire Safety Consultation which set out a new requirement on the Responsible Person that any person appointed by them to undertake all, or any part, of the fire risk assessment must be competent. 96 per cent of respondents to the consultation agreed with this proposal.

Example

The provision is drafted to enable the Responsible Person to assess the level of competence required to undertake a fire risk assessment on the basis of the type of building and its complexity. The Responsible Person will be able to access guidance on how to complete or review a fire risk assessment and identify a competent person or entity to assist them.

Effect

1310. Article 11(2) is amended to require all Responsible Persons to record fire safety arrangements.

Background

1311. At present Responsible Persons are required to implement appropriate measures for their premises to enable effective planning, organisation, control, monitoring and review in order to comply with the requirements of the Order. At present recording is required only where they employ five or more employees or where there is a licence in place, or an

alterations notice under the FSO requiring recording. We are introducing a requirement for all Responsible Persons to record fire safety arrangements to assist Responsible Persons to more easily demonstrate compliance and enforcing authorities to evidence a breach of the Order. This amendment will ensure consistency in approach with article 9A of the Order. The Responsible Person will be able to access guidance to assist their recording of their fire safety arrangements.

Example

The Responsible Person owns an office and has only three employees. They must make and give effect to fire safety arrangements as are appropriate, having regard to the size of their undertaking and the nature of its activities, for the effective planning, organisation, control, monitoring and review of the preventive and protective measures. Another responsible person also owns an office but has 50 employees. They must make and give effect to fire safety arrangements as described above and they must record the arrangements. Under this new provision all Responsible Persons, regardless of their individual circumstances, must record their fire safety arrangements in full. The intention is to ensure enforcing authorities and other relevant persons (i.e. residents or employees) are able to access the fire safety arrangements to aid authorities when enforcing the FSO and to provide assurance to relevant persons that fire safety issues in the building where they live or work are being safely and appropriately managed.

Effect

1312. A new article 21A will require Responsible Persons to provide residents of buildings containing two or more sets of domestic premises with specific information about relevant fire safety matters. This includes information about any risks to residents of the premises identified within the risk assessment, preventative and protective measures, name and UK address of the Responsible Person, the identity of any person appointed by the Responsible Person to assist them with making or reviewing the risk assessment under article 9, the identity of any competent person nominated by the Responsible Person to implement fire-fighting and fire detection measures and any risks to relevant persons throughout the building identified by other Responsible Persons in the building. Article 21A(3)(g) also confers a power on the Secretary of State in England, and the Welsh Minister for Wales, to make regulations to extend the fire safety information that Responsible Persons must provide and to specify the format and frequency for which the information must be provided.

1313. The proposed delegated power will ensure that the list of information in relation to relevant fire safety matters may be extended in future if required. This power will also enable the Secretary of State in England, and the Welsh Minister in Wales, to specify the frequency and format in which the information should be provided.

Background

1314. Under Article 19 of the FSO a Responsible Person must provide employees with relevant information including on any risks identified in the fire risk assessment, the identity of competent persons nominated or appointed to assist them with preventative and protective measures taken in their workplace and details of risks to relevant persons

throughout the building identified by other Responsible Persons sharing or having duties in the premises. Currently, the FSO does not require that a Responsible Person should provide fire safety information to residents, with the exception of article 15(2a) in relation to in the event of serious and imminent danger to relevant persons.

1315. The Government considered how to widen the provision of information requirements, under the FSO, by extending them to include residents of buildings containing two or more sets of domestic premises. Proposals were included in the Fire Safety Consultation which set out new requirements for Responsible Persons to share fire safety information with residents of multi-occupied residential buildings. Findings from the consultation showed that 90% of respondents were supportive of the proposals.

Example

Responsible Persons for of buildings containing more than two sets of domestic premises will be required to provide information about relevant fire safety matters to residents in their buildings. The intention of this provision is to ensure that residents have access to relevant fire safety information about the building where they live to help ensure they are safe and feel safe in their homes.

Effect

1316. Article 22 of the Fire Safety Order requires Responsible Persons, where there is more than one responsible for a premises, to co-operate with each other and co-ordinate their actions to ensure compliance with the order. In addition to their existing duties under this article, Responsible Persons will now be required to take reasonable steps to establish whether any other Responsible Person in the premises shares, or has, duties in respect of the premises. If they do they must also inform each other of their name, UK address and the parts of the premises for which they consider themselves to be Responsible Person and keep a record of that information.

Background

1317. Respondents to the call for evidence raised concern about Responsible Person's compliance with the duty to cooperate and coordinate with other Responsible Persons in multi-occupied premises (as set out in Article 22 of the FSO). Respondents highlighted problems with Responsible Persons being unaware of their duties under the Order and challenges for enforcing authorities in identifying relevant Responsible Persons and establishing whether or not there has been co-operation. It is considered that requiring Responsible Persons to identify themselves to other Responsible Persons in the same premises by informing each other of their name and UK address as well as providing a view on the parts of the premises they consider themselves to be Responsible Person will encourage co-operation and assist enforcing authorities to identify the correct Responsible Persons and to establish whether the duty to co-operate has been complied with.

1318. The Fire Safety Consultation included a proposal to require all Responsible Persons to record and, as necessary, update who they are, the extent of their responsibility under the Fire Safety Order and their contact information. 92% of respondents to the Fire Safety Consultation agreed with this proposal.

1319. The consultation also included a proposal to require Responsible Persons to take reasonable steps to identify themselves to all other Responsible Persons. 95% of respondents agreed with this proposal.

1320. We are therefore amending Article 22 of the Fire Safety Order to require that all Responsible Persons for premises regulated under the Order must establish whether any other Responsible Person in the premises shares, or has, duties in respect of the premises and to inform each other of their name, address and parts of the premises they consider themselves to be Responsible Person for. To inform and support Responsible Persons in discharging this duty, best practice will be provided in guidance. Example This is a hypothetical example. In a block of residential flats which is ten storeys high and has a supermarket on the ground floor, there may be one Responsible Person for the supermarket, another for floors 1-5 and another for floors 6-10. While they each have a specific area within the building for which they are Responsible Person, they must work together to ensure any fire safety actions they take complement those of the other two and do not in any way hinder any fire safety actions taken by each other. For example, the Responsible Person in the supermarket must not block entry and exit to the floors above by storing stock in a stairwell. Each Responsible Person must take reasonable steps to identify the other Responsible Persons, provide them their name and address and an explanation of the parts of the premises they consider themselves to be Responsible Person to strengthen co-operation throughout the building.

Effect

1321. A new article 22A will require departing Responsible Persons to provide relevant fire safety information to incoming Responsible Persons. Relevant fire safety information means: (a) records kept under article 9(6) of fire risk assessments and reviews under article 9; (b) the identity of any person appointed by the Responsible Person to assist them with making or reviewing the fire risk assessment; (c) the identity of any other persons who are Responsible Persons in relation to the premises (where known); (d) where the premises consist of or include a higher-risk building under the Building Safety Act, the identity of any other Accountable Persons in the premises (where known); (e) any information provided to the Responsible Person under regulation 38 of the Building Regulations 2010 (S.I. 2010/2214) (this is information provided to the Responsible Person by the person carrying out building work following completion or occupation relating to the design, construction, services, fixtures and fittings to assist the Responsible Person to operate and maintain the building safely). This article also includes a regulation making power for the Secretary of State in England, and the Welsh Minister for Wales, to enable them to extend the relevant fire safety information that must be provided as well as to specify how frequently all of this information should be provided and in what format.

1322. The Secretary of State in England, and the Welsh Minister in Wales, will have the power to make regulations to extend the fire safety information that departing Responsible Persons will be required to provide to incoming Responsible Persons, and to specify the format and frequency within which the information must be provided.

Background

1323. To maintain a clear thread of information central to ensuring fire safety across the entirety of a building's lifetime, the Fire Safety Consultation included a proposal to amend the FSO to require Responsible Persons to take reasonable steps to share all relevant fire safety information with subsequent Responsible Persons. 95% of respondents to the consultation agreed with this proposal. We are therefore seeking to amend the FSO to deliver this.

1324. A new Article 22A will apply to all premises under the FSO. All departing Responsible Persons of these premises must provide the relevant fire safety information specified in a new Article 22A(3) to incoming Responsible Persons before they depart. It is intended that this requirement will facilitate the preservation of relevant fire safety information between successive Responsible Persons across the lifetime of a building. This compliments the "Golden Thread" provision for Accountable Persons in the Building Safety Act.

Example

The departing Responsible Person must obtain and provide information to the incoming Responsible Person, in an auditable way, before they are no longer the Responsible Person. If the departing Responsible Person is not able to identify the incoming Responsible Person it is envisaged, they should ascertain the identity with the building owner and/or manager of the building and then provide the relevant fire safety information to the incoming Responsible Person, or, failing that, they should provide the relevant fire safety information to the owner of the building. The owner of the building, as Responsible Person, should then make arrangements to provide this information to the incoming Responsible Person.

Effect

1325. A new article 22B will apply to premises consisting of or including a residential unit in a higher-risk building (a building in England that (a) is at least 18 metres in height or has at least 7 storeys, and (b) contains at least 2 dwellings or any units of living accommodation) and require Responsible Persons for such premises to co-operate with Accountable Persons in the premises to enable them to carry out their duties under this Act. There is a reciprocal duty of co-operation between Accountable Persons and Responsible Persons in section 109 of this Act.

Background

1326. This is a new provision. This requirement applies to all Responsible Persons for premises in a higher-risk building. For buildings subject to the Building Safety Act, the Responsible Person(s) must take reasonable steps to identify any Accountable Person(s) in the building and cooperate with them for the purpose of carrying out their respective duties to collectively manage building and fire safety for the entire building. The purpose of this requirement is to ensure that the duties of Responsible Persons and Accountable Persons will contribute towards a whole-building approach to building and fire safety.

Example

Where the Responsible Person is also the Accountable Person, they must ensure that they comply with the requirements of the FSO for the common parts while this should also contribute towards their management of safety for the whole building. For example, the fire risk assessment for the common parts of the building could contribute to the safety case report, and the provision of fire safety information to residents could complement or support the residents engagement strategy required under the building safety regime. The same will be expected where the Responsible Person and Accountable Person are not the same person and where there are multiple Responsible Persons and/or Accountable Persons, the Responsible Person must identify themselves to the other(s) in order to be able to discharge their cooperation duty and for the purpose of enabling the Accountable Person to carry out their duties. In practice, the Responsible Person should make the Accountable Person aware of fire safety risks identified and precautions taken in the common parts of the building.

Effect

1327. Article 32(4) and (7) of the FSO set out the financial penalties available for criminal offences of failing to comply with requirements relating to the installation of luminous tube signs, failing to comply with any requirements imposed by an inspector, under article 27(1) (c) or (d), and impersonating an inspector. At present these offences are subject to a maximum of level 3 fines but the amendment will increase this to unlimited fines.

Background

1328. This Section amends Article 32 (4) and (7) of the FSO. We are introducing these changes further to the information gathered in the Call for Evidence and following the public response to proposals set out in the Fire Safety Consultation. Furthermore, these changes will make the FSO consistent with similar offences in other legislation such as the Building Safety Act and the Health and Safety at Work Act. Financial penalties for criminal offences in the FSO have historically been lower than similar offences in the Building Act. Increasing the level of fines for these three offences in the FSO to the same level as for other similar offences will encourage compliance.

1329. This amendment to the level of financial penalty that may be imposed for these offences enables the Magistrates Court, when prosecuting for these offences under the FSO to apply a higher level of fine for the most serious offences. Accordingly, this ensures these offences carry a suitable deterrent to discourage non-compliance with the Order.

Example

As an enforcing authority for the FSO, Fire and Rescue Authorities undertake routine building inspections to ensure compliance with the Order. The Inspector can take enforcement action when non-compliance has been identified, and prosecution action may be taken against the Responsible Person or dutyholder. If that person is found guilty, the Magistrates' Court may decide to impose a fine. By increasing these fines from a level 3 (£1,000) to unlimited, the Court is provided with a greater range of penalty to impose to reflect the severity of the offence. Through this change a court, after considering the

evidence presented, will have the ability to impose unlimited fines for the most serious offences.

Effect

1330. Article 50 of the FSO requires the Secretary of State to ensure that such guidance as he considers appropriate to assist Responsible Persons to discharge their duties under the FSO is made available to them. Article 50 was previously amended in the Fire Safety Act 2021 to provide that in proceedings for breach of the FSO (for buildings in England containing two or more sets of domestic premises) proof of failure to comply or compliance with applicable risk based guidance may be relied upon as supporting whether or not there was a breach of the Order. Further amendment in article 50(1A) will apply this provision to all guidance issued in accordance with article 50.

Background

1331. Currently under Article 50, the Secretary of State is required to make sure that such guidance as he considers is made available to assist Responsible Persons with discharging their duties under the FSO. Responses to the 2019 call for evidence and the Fire Safety Consultation have indicated that guidance should be strengthened to encourage compliance and to make clear what is statutory guidance. Article 50 guidance is made available to assist responsible persons to discharge their duties under the Order. It also reflects a similar approach to guidance under the Building Safety Act.

Example

Responsible Persons can follow guidance issued under Article 50 to assist with discharging their duties under the FSO. Even if they do not have particular experience in an element of their duties, if they follow the relevant guidance related to that duty they will have comfort that in the event of any breach of the FSO the Court may consider their compliance with the guidance as tending to support compliance with the relevant duty under the FSO.

COMMENTARY

256. Section 156, despite its title, is a wide-ranging amendment of the Regulatory Reform (Fire Safety) Order 2005. Its principal effects are:

- (a) all responsible persons must record their fire risk assessment in full, not merely its significant findings (amended art.9);
- (b) a responsible person must not appoint an assessment assistant unless that person is competent (new art.9A);
- (c) fire safety arrangements must be recorded by all responsible persons (amended art.11(2));
- (d) residents of buildings with two or more sets of domestic premises must be given comprehensible information about relevant fire safety matters (new art.21A);

- (e) responsible persons must identify one another, share names and UK addresses, and record the division of the premises between them (amended art.22), and an outgoing responsible person must hand over the fire safety records to a successor (new art.22A); and
 - (f) most relevantly to the title, in a higher-risk building the responsible person must take reasonably practicable steps to identify the accountable persons under Part 4 and must co-operate with them so that they can perform their BSA duties (new art.22B).
257. Article 22B is the hinge between the two statutory regimes that share every occupied higher-risk building: the fire safety regime under the 2005 Order, policed by the fire and rescue authorities, and the building safety regime under Part 4, policed by the Building Safety Regulator. The duty is deliberately one-way in form (responsible person co-operates with accountable person) but in practice the same entity frequently wears both hats.
258. The unlimited fines regime (amended art.32) and the extension of the duty-imposing articles to art.22B give the co-operation duty teeth. There has been no reported decision on s.156 itself. Disputes about the boundary between fire safety duties and Part 4 duties have instead surfaced through the accountable person case law under s.72, and I would expect art.22B to be litigated, if at all, as a component of a wider enforcement or remediation dispute rather than on its own.

SECTION 157 – ARCHITECTS: DISCIPLINE AND CONTINUING PROFESSIONAL DEVELOPMENT

STATUTORY TEXT

- (1) The Architects Act 1997 is amended as follows.
- (2) In section 3 (the register), after subsection (2) insert—
 - (2A) The Register shall show disciplinary orders made in relation to a registered person for such period as may be prescribed.
- (3) In section 9 (competence to practise)—
 - (a) in subsection (1), in the words after paragraph (c), after “practical experience” insert “or undertaken such recent training”,
 - (b) after subsection (1) insert—
 - (1A) Before prescribing recent practical experience or training for the purposes of subsection (1), the Board shall consult the bodies representative of architects which are incorporated by royal charter and such other professional and educational bodies as it thinks appropriate.
 - , and
 - (c) after subsection (2) insert—
 - (3) Where the Board decides that the name of a person to whom paragraph (b) of subsection (1) applies is by virtue of that subsection to be removed from Part 1 of the Register—
 - (a) the person shall be entitled to apply to the Board within a prescribed period for an extension of time to gain the prescribed experience or undertake the prescribed training or to otherwise satisfy the Board of the person’s competence to practise, and
 - (b) the Board shall not remove the name of the person from the Register unless—
 - (i) the person has not made an application for an extension of time within the prescribed period,
 - (ii) an extension of time granted by the Board has expired and the Board is not satisfied that the person has gained the prescribed experience or undertaken the prescribed training or is otherwise competent to practise, or
 - (iii) the Board has decided not to grant an extension of time in respect of an application made by the person.

- (4) For the purposes of this section, a person is competent to practise if the person has the skills, knowledge, experience and behaviours required for a person to practise as an architect.

EXPLANATORY NOTES

Section 157: Architects: discipline and continuing professional development

Effect

1332. This section allows the disciplinary orders made against architects by the Professional Conduct Committee (PCC) of the Architect Registration Board (the Board), the statutory regulator of architects in the UK, to be listed alongside an architect's entry in the Register of architects. This is to provide greater transparency to members of the public procuring architectural services as the Register entry, accessible through the Board's website, will show whether an architect has been disciplined recently. The Board will determine rules for the length of time that a disciplinary order will be listed on the Register, depending on the severity of the order.

1333. This section in subsections (3)(a) and (3)(b) allow the Board to monitor the competence of architects throughout their Registration. This power will allow the Board to determine which practical experience or training should be assessed and how the assessment should take place. The Board must consult professional bodies and other stakeholders before introducing a competence regime.

1334. If an architect does not meet the requirements set out by the Board, or the Board is not satisfied that the person has met the requirements to a sufficient standard, the individual may be removed from the Register.

1335. This section in subsection (3)(c) allows the Board to determine a period of extension for an individual architect to complete their recent training. This section also sets out the conditions for when the Board can remove an architect from the Register, including if the individual has not requested an extension or if the Board remains unsatisfied with the standard of competence demonstrated.

Background

1336. This is a new provision to increase transparency for those procuring architectural services, in line with wider reform for greater assurance of competence of built environment professionals.

1337. Disciplinary orders are published on the Board's website under "Previous PCC decisions", with separate lists for "current" and "spent" orders. These lists show all cases heard by the PCC since 1997 and include the date, architect, nature of offence and penalty imposed. This website is not easy to navigate and does not display the information to the public in a transparent way.

1338. Sections 4(1) and 4(2) of the Architects Act 1997 provide broad powers for the Board to determine the criteria and process for registering as an architect in the UK. The Architects Act does not provide powers for the Board to scrutinise competence after the

initial registration and throughout an architect's career unless an allegation of unacceptable professional conduct is brought before the Board. This means that an architect may be practicing for a prolonged period without any further proactive regulatory oversight.

1339. This provision will apply to all architects on the Register, not only those working on higher-risk buildings, due to the public safety aspect of all construction. Most other regulated professions require their registrants to demonstrate competence throughout their career and most professional membership bodies have mandatory Continuous Professional Development requirements. This proposal brings the architects profession in line with best practice and gives greater assurance to those procuring and inhabiting buildings. Example 1: Discipline An architect is found guilty of unacceptable professional conduct by the PCC and is reprimanded but able to continue practicing. When a member of the public searches for this architect on the Register, there will be a note on the architect's entry stating that they have been reprimanded. This will be listed for a period of time determined by the Board depending on the severity of the order. Once this time period has lapsed, the note on the architect's Register entry will be removed. If an architect is issued with an erasure order then their name is removed from the Register. They may reapply for re-entry no less than two years from the date of erasure (or longer if so specified by the PCC). The Board will decide as part of the prescribed Rules whether the original disciplinary order will be marked on the Register if the sanctioned individual should obtain restored registration. Example 2: Continuing professional development The exact requirements for the assessment of practical experience or training will be determined by the Board following a full review and consultation. This review was commenced in March 2020.

COMMENTARY

259. Section 157 amends the Architects Act 1997 in two respects. First, disciplinary orders against a registered architect must be shown on the Register for a prescribed period (amended s.3). Secondly, the competence to practise regime in s.9 is extended so that the Architects Registration Board may prescribe recent training as well as recent practical experience, after consultation with the profession's chartered bodies; an architect facing removal for want of competence is entitled to apply for an extension of time, and may only be removed on the conditions set out in new s.9(2ZB).
260. The provision gives the ARB, for the first time, a rolling jurisdiction over the whole Register, not merely jurisdiction triggered by complaint. That reflects the Hackitt Review's insistence on demonstrated competence across the built environment professions. The obligations apply to every architect on the Register, whether or not they work on higher-risk buildings.

261. There is no case law on s.157. Its practical effect will depend on the ARB's rules and CPD scheme. The potential for removal from the Register, subject to the appeal routes in s.158, is what gives the scheme force.

SECTION 158 – ARCHITECTS: APPEALS COMMITTEE

STATUTORY TEXT

- (1) The Architects Act 1997 is amended as follows.
- (2) In section 1 (the Board)—
 - (a) after subsection (2) insert—
 - (2A) There is to be an Appeals Committee of the Board.
 - ;
 - (b) after subsection (4) insert—
 - (4A) Part 2A of that Schedule makes provision about the Appeals Committee.
- (3) In section 4 (registration: general)—
 - (a) in subsection (4)(b) for “refer the application to the Board” substitute “refuse the application”;
 - (b) in subsection (6)—
 - (i) omit “(4) or”;
 - (ii) for the words from “direct” to the end substitute
—
 - (a) direct the Registrar to enter the person’s name in the Register if it is satisfied that the person is entitled to be registered, or
 - (b) direct the Registrar to refuse the application if it is not so satisfied.
- (4) In section 6(4B) (notice of refusal of application) for the words from “in the case” to “section 4(2A)” substitute “of an application”.
- (5) In section 9 (competence to practise) after subsection (2) insert—
 - (2A) A notice under subsection (2) must state reasons for the decision.
- (6) In Part 5 (general and supplementary) before section 22 insert—

21A Appeals to the Appeals Committee

- (1) A person may appeal to the Appeals Committee against—
 - (a) a decision to refuse the person’s application for registration, or
 - (b) if the person is a person to whom paragraph (b) of section 9(1) applies, a decision to remove or not to re-enter the person’s name in the Register as a result of section 9(1).
- (2) The Board may make rules about appeals to the Appeals Committee, including in particular rules about—

- (a) the period within which any appeal must be made;
 - (b) the way in which an appeal is to be made or withdrawn;
 - (c) the fee that must be paid on the making of an appeal (including circumstances in which that fee may or must be refunded);
 - (d) the procedure to be followed by the Appeals Committee in relation to an appeal;
 - (e) the effect of the making of an appeal, pending its determination, on the decision appealed against.
- (3) On the determination of an appeal, the Appeal Committee may make any decision that could have been made by the person who made the decision appealed against.
- (4) The Appeals Committee must, within the prescribed period after determining a person's appeal, serve on the person written notice of the decision made on that determination.
- (7) In section 22 (appeals)—
- (a) in subsection (1)—
 - (i) for paragraph (a) substitute—
 - (a) a decision of the Appeals Committee under section 21A, on an appeal made by the person;
 - ;
 - (ii) for paragraph (c) substitute—
 - (c) the person's name not being re-entered in the Register under section 18 as a result of section 9(1);
 - ;
 - (b) in subsection (2) omit "Subject to subsection (3),";
 - (c) omit subsection (3);
 - (d) in the heading at the end insert "to the court".
- (8) In section 24(2) (service of documents) for "or 15(3)" substitute ", 15(3) or 21A(4)".
- (9) In Schedule 1 (the Board and its committees) after Part 2 insert—
- Part 2aThe appeals committeeThe Board may make rules about—the composition of the Appeals Committee;the selection and term of office of members of the Appeal Committee (including casual vacancies);the meetings and procedure (including chairing and quorum) of the Appeal Committee;votes of the Appeal Committee (including providing for a casting vote and the way in which it is to be exercised).Before making rules

about the composition of the Appeals Committee, the Board must consult the Secretary of State.

- (10) In Part 4 of that Schedule (general provisions), after “Professional Conduct Committee”, in each place it occurs, insert “, the Appeals Committee”.

EXPLANATORY NOTES

Section 158: Architects: Appeals Committee

Effect

1340. This section establishes an Appeals Committee of the Board that will hear appeals against a decision to refuse a person’s application for registration, or to remove or not re-enter a person’s name on the Register, where the Board is not satisfied of the person’s competence. This is to give persons the opportunity to challenge registration decisions made by the Board or the Registrant. The Board will determine rules for the procedure of an appeal and the composition of the Appeals Committee. The Board must consult the Secretary of State on the composition of the Appeals Committee to ensure adequate representation. Upon the determination of the appeal, the Appeals Committee will make the final decision on the case appealed. The Appeals Committee’s decision can only be overturned by the High Court.

Background

1341. Section 22 of the Architects Act 1997 provides a judicial route of appeal for aggrieved persons. This section provides a non-judicial route of appeal to aggrieved persons, which will make the appeals process more accessible for architects. This section will ensure that architects removed from the Register under the new competence regime established by section 157 have adequate recourse to challenge the Board’s decision.

Example

The Board is not satisfied with an architect’s demonstration of recent practical experience or training and therefore does not re-enter the architect’s name on the Register. The architect will be able to appeal this decision to the Appeals Committee, who will determine whether or not the architect has demonstrated recent practical experience or training. If the Appeals Committee is satisfied that the architect has indeed demonstrated recent practical experience or training then the architect’s name shall be re-entered on the Register. If the Appeals Committee find that the architect has not demonstrated recent practical experience or training then the Board’s decision shall stand and the architect shall be removed from the Register.

COMMENTARY

262. Section 158 establishes an Appeals Committee of the Architects Registration Board (amended s.1 and new Part 2A of Schedule 1 to the 1997 Act) and creates a non-judicial route of appeal (new s.21A) against: (a) a refusal of an application for registration; and

(b) a decision to remove, or not to re-enter, a name in the Register on competence grounds under s.9(1)(b). The Board may make rules governing appeal periods, procedure, fees and the effect of a pending appeal; the Committee may make any decision that the original decision-maker could have made.

263. The section also tidies the registration machinery (the Registrar refuses rather than refers deficient applications: amended s.4) and preserves the further appeal to the court under s.22, now framed as an appeal against the Appeals Committee's decision. The Board must consult the Secretary of State on the Committee's composition.
264. The purpose is access: an architect removed under the new competence regime in s.157 gets an internal merits appeal before any resort to the High Court. There is no reported authority.

SECTION 159 – ARCHITECTS REGISTRATION BOARD: FEES AND DISCHARGE OF FUNCTIONS BY A COMMITTEE

STATUTORY TEXT

- (1) In the Architects Act 1997, after section 24 insert—

24A Fees

- (1) The Secretary of State may make regulations for, and relating to, the charging of fees by the Board in respect of services which it provides.
- (2) Regulations under this section may in particular make provision about—
- (a) the services, or types of services, in respect of which the Board may charge a fee;
 - (b) the persons who are liable to pay a fee;
 - (c) how fees charged by the Board are to be calculated;
 - (d) how fees charged by the Board are to be paid.
- (3) In this section, a “service”—
- (a) includes any exercise by the Board of its power to prescribe qualifications for the purposes of section 4(1)(a);
 - (b) does not include any service in respect of which a fee may be prescribed under any other provision of this Act.
- (4) Regulations under this section are to be made by statutory instrument.
- (5) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.
- (2) In Schedule 1 to that Act (the Board and its committees), in paragraph 18(2)(b) (functions of the Board which may not be discharged by a committee) for “4(1) or (2)” substitute “4(2)”.
- (3) In consequence of the amendment made by subsection (2), in section 11(5) of the Professional Qualifications Act 2022 for the words from “after” to the end substitute “for “4(2)” substitute “4(1A) or (2)”.”

EXPLANATORY NOTES

Section 159: Architects Registration Board: fees and discharge of functions by a committee

Effect

1342. This section allows the Secretary of State by regulations (subject to the negative procedure) to make provision for the services for which the Board may charge a fee. Regulations will set out the services, or types of services, in respect of which the Board may

charge a fee. Regulations will also make provisions about the persons who are liable to pay a fee, and how fees charged by the Board are to be calculated and how they are to be paid.

Background

1343. Currently, the Architects Act 1997 prescribes a small amount of services for which the Board may charge. The costs of all of the Board's functions are currently met by the annual fee for retention on the Register of Architects under section 8 of the 1997 Act, which is charged by the Board to all architects. Following the end of the EU Exit Transition Period, there will be an expansion in the services the Board provides to implement Mutual Recognition Agreements or Memoranda of Understanding relating to the regulation of architects. This section will allow the Secretary of State to lay regulations to make additional provision for separate fees for additional chargeable services, in order to keep the retention fee down for the architects that do not utilise additional services. This will be after a full impact assessment and consultation.

Example

This will be determined in secondary legislation, The services that will be considered for charging fees are the Board's role in considering and recognising international qualifications, and the Board's function in providing evidence for UK architects registering abroad.

COMMENTARY

265. Section 159 inserts s.24A into the Architects Act 1997, empowering the Secretary of State by regulations to provide for the ARB to charge fees for services it provides, including the exercise of its power to prescribe qualifications, but excluding services for which a fee may be prescribed elsewhere under the Act. Regulations may identify the chargeable services, the persons liable, and the calculation and payment of fees; the negative procedure applies.
266. The policy is user-pays: post-Brexit recognition work and similar services are to be funded by those who use them rather than loaded onto the annual retention fee paid by every architect. The provision is administrative and requires no further commentary.

SECTION 160 – HOUSING COMPLAINTS MADE TO A HOUSING OMBUDSMAN

STATUTORY TEXT

- (1) Schedule 2 to the Housing Act 1996 is amended in accordance with subsections (2) and (3).
- (2) In paragraph 7 (determinations by housing ombudsman)—
 - (a) after “approved scheme shall” insert “, in accordance with the scheme,”, and
 - (b) for the words from “and not withdrawn” to “but withdrawn” substitute “under the scheme”.
- (3) Omit paragraphs 7A to 7C (complaints to a housing ombudsman to be referred by designated person and exceptions).
- (4) The amendments made by this section apply in relation to a complaint made to a housing ombudsman—
 - (a) after the time this section comes into force, or
 - (b) before the time this section comes into force, but only if a determination by a housing ombudsman is still pending in respect of the complaint at such time.

COMMENCEMENT AND AMENDMENTS

In force 1 October 2022 (SI 2022/561, regs. 1(2), 5). No amendments to date.

EXPLANATORY NOTES

Section 160: Housing complaints made to a housing ombudsman

Effect

1344. This section enables social housing complainants to escalate a complaint to the Housing Ombudsman service directly, by removing the existing requirement (“the democratic filter”) to make their complaint via a “designated person”. A “designated person” may be an MP, Councillor or recognised tenant panel.

1345. The requirement for the landlord’s complaints process to have been exhausted is preserved by amendments to para (1) of the Housing Act 1996 which require a complaint to be made in accordance with the scheme. This being that a resident who wishes to escalate a complaint to the Housing Ombudsman Service first needs to have completed their landlord’s own complaints process.

1346. The new paragraph inserted into the Housing Act 1996 (1A) retains the existing procedures that a resident who wishes to escalate a complaint to the Housing Ombudsman Service first needs to have completed their landlord’s own complaints process.

1347. Removing the democratic filter seeks to improve and expedite access to the Housing Ombudsman Service (HOS) for social housing complainants who have exhausted their landlord's internal complaints procedure and still have unresolved complaints. The objective is to promote equity of provision for those seeking redress in the social housing sector with those in other tenures which are not subject to a democratic filter process.

1348. This should speed up redress for social housing complainants as well as creating equity of provision.

Background

1349. This provision applies to England only.

1350. The requirement to refer a complaint through a designated person/tenant panel, introduced in the Localism Act 2011, was intended to strengthen the accountability of landlords, enable housing complaints to be resolved using local knowledge and help to reduce the number of formal investigations by the Housing Ombudsman Service.

1351. Through amendments made by The Localism Act 2011 (section 180), a role was given to "designated persons" in dealing with disputes between members of the Housing Ombudsman Scheme and their tenants/leaseholders. This was in circumstances where complaints had not been resolved in the landlord's procedures and before they could be referred to the Housing Ombudsman. It meant that a complaint against a social landlord cannot be "duly made" (formally submitted for investigation) to the Housing Ombudsman unless it is made in writing to the Ombudsman by a designated person by way of referral of a complaint made to the designated person.

1352. A designated person can be an MP, a Councillor or a recognised tenant panel. It means that currently, if, after a landlord's internal complaints process has been exhausted, the complaint is still not resolved, a complainant (whose landlord is a member of the Housing Ombudsman Scheme) has to refer any outstanding complaints to a designated person before a complaint can be formally referred to the Housing Ombudsman Service. Alternatively, a complainant must wait eight weeks after their complaint has exhausted the landlord's complaints process before they can formally refer their complaint to the Housing Ombudsman Service.

1353. This is known as the democratic filter. It has been criticised for undermining consumer empowerment and is counter to the principles of the ombudsman institution. The Housing Ombudsman's own consultation also uncovered concerns and found that while some local "designated person" arrangements work well, in many cases they do not, and that there were designated persons who did not fully understand their role.

1354. It also emerged that in some areas tenant panels either do not exist or are not used. Removing the democratic filter was supported by the majority of respondents when the Housing Ombudsman Service consulted on its Corporate Plan 2019-22 and Business Plan 2019-20, with low support being expressed for the designated person role.

Example: New complaints process

Current process A resident makes a complaint to their landlord and completes the landlords complaints/dispute process. The resident remains dissatisfied and decides to escalate the complaint to redress level and to the Housing Ombudsman Service. They contact a designated person for assistance (the Democratic Filter). If the designated person is unable to help, after 8 weeks from the landlord's decision they then refer the complaint to the Housing Ombudsman Service. Following removal of the democratic filter Again, a resident makes a complaint to their landlord and completes the landlords complaints/dispute process. The resident remains dissatisfied and decides to escalate to redress level and contacts the Housing Ombudsman Service directly, asking them to investigate their complaint.

COMMENTARY

267. Section 160 amends Schedule 2 to the Housing Act 1996 to abolish the “democratic filter”. Before this section, a social housing complainant who had exhausted the landlord’s complaints process could only refer the complaint to the Housing Ombudsman through a designated person (an MP, councillor or recognised tenant panel) or after waiting eight weeks. The section removes that requirement: the complainant may now go to the Ombudsman directly, provided the complaint is made in accordance with the scheme, which preserves the requirement to complete the landlord’s own process first.
268. The change applies to complaints made after commencement and to earlier complaints not yet duly made (s.160(4)), and extends to England only. It complements, but is distinct from, the residents’ complaints routes under Part 4 (ss.93-94) and the new homes ombudsman scheme for buyers of new homes under ss.136-145 of Part 5: the Housing Ombudsman remains the redress route for social housing management complaints, including complaints about how landlords have handled building safety concerns.
269. The provision has attracted no authority and is unlikely to: its effect is procedural, and its significance lies in the volume of ombudsman determinations it enables rather than in any question of construction.

THE BUILDING SAFETY ACT 2022

A Section-by-Section Commentary and Case Digest

PART 6 – GENERAL (SECTIONS 161–171)

INTRODUCTION

1. This commentary addresses Part 6 of the Building Safety Act 2022. Part 6 contains the general and supplementary provisions of the Act and addresses: liability of officers of corporate bodies (s.161); the mandatory review of the regulatory regime (s.162); financial provisions (s.163); Crown and Parliamentary application (ss.164–165); consequential regulation-making powers (ss.166–167); general regulation-making provisions (s.168); territorial extent (s.169); commencement and transitional provision (s.170); and the short title (s.171).
2. Part 6 is the machinery of the Act.²² Its provisions do not create new substantive rights or obligations in the way that Parts 2 to 5 do. However, their practical importance should not be underestimated. Section 161 creates personal criminal liability for corporate officers. Section 162 mandates a periodic independent review of the entire building safety regulatory system. Section 170 governs the phased commencement of the Act’s provisions, which has been the source of significant litigation, particularly in relation to the retrospective effect of the leaseholder protection and limitation provisions.²³

²² For the substantive building safety provisions, see Parts 2 (the Building Safety Regulator), 3 (Building Act 1984 amendments), 4 (Higher-Risk Buildings), and 5 (other provision about safety and standard of buildings, ss.116–160).

²³ *Keating on Construction Contracts*, 12th ed. (2024). Keating’s treatment of Part 6 is brief, reflecting its mechanical character.

SECTION 161 – LIABILITY OF OFFICERS OF BODY CORPORATE ETC

STATUTORY TEXT

- (1) Where an offence under Part 2 or 4 committed by a body corporate—
 - (a) is committed with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, or
 - (b) is attributable to any neglect on the part of any such person,
that person as well as the body corporate commits the offence and is liable to be proceeded against and punished accordingly.
- (2) In subsection (1) “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.
- (3) Subsection (1) also applies in relation to a body that is not a body corporate, with the substitution for the reference to a director of the body of a reference—
 - (a) in the case of a partnership, to a partner;
 - (b) in the case of an unincorporated body other than a partnership—
 - (i) where the body’s affairs are managed by its members, to a member of the body;
 - (ii) in any other case, to a member of the governing body.
- (4) Where—
 - (a) a relevant company is an accountable person for a higher-risk building (within the meaning of Part 4), and
 - (b) one or more (but not all) directors of the relevant company have been appointed for a building safety purpose and are entitled to remuneration from the company,this section, so far as relating to Part 4, does not apply in relation to a director who is not entitled to remuneration from the relevant company.
- (5) In subsection (4)—

“building safety purpose” means the purpose of supporting the relevant company in complying with its duties under Part 4 or under regulations made under that Part;

“relevant company” means—

 - (a) a resident management company within the meaning of section 111,
 - (b) an RTM company within the meaning of Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 (right to manage), or

- (c) a company that is a commonhold association within the meaning of Part 1 of that Act (see section 34).

COMMENCEMENT AND AMENDMENTS

In force: 1 October 2023 (SI 2023/993, reg. 2(y)). No amendments to date.

EXPLANATORY NOTES

Section 161: Liability of officers of body corporate etc

Effect

1355. This section provides that, where a corporate body commits a criminal offence under Parts 2 or 4 of this Act, any director, manager, secretary or other similar officer of that body is also deemed to have committed that offence in certain circumstances. Those circumstances are where the individual has consented to or connived in the commission of the offence or where the offence is attributable to any neglect on their part. Section 40 makes similar provision in respect of the criminal offences in the Building Act 1984.

1356. Subsection (4) provides an exception where a relevant company appoints a paid director for a building safety purpose. In this case, all unpaid directors of the company will be relieved of their personal criminal liability for breaches of Part 4 duties.

1357. Subsection (5) defines a “building safety purpose” as the function of supporting a relevant company in complying with its Part 4 duties. It also sets out that a “relevant company” is a resident management company (as defined by regulations made by the Secretary of State under section 111), Right to Manage companies and Commonhold Associations.

1358. This section will apply in Wales.

Background

1359. Many of those persons carrying out duties under the Building Act 1984 and the new regime are and will be corporate bodies rather than individuals. As a corporate body operates only by and through the actions of its employees, including managers and directors, if there is an offence by a body corporate, then there is likely also to be some measure of personal failure by one or more individuals, particularly those in a position to make critical decisions.

1360. It will be appropriate to consider what evidence has been obtained against the company and the director or senior manager, taking into account the management arrangements. One purpose of bringing a prosecution under this section should be to bring home the importance of building safety responsibilities to those directing companies.

1361. Where there is sufficient evidence and the public interest test is met, prosecutions could be brought against directors/managers as well as prosecuting the company for an offence under the relevant statutory provisions, even where there is a sole director. This would not be regarded as prosecuting the same person twice, as the two are separate legal

entities. Should both matters result in a conviction, it will be for the sentencing court to sentence the individual(s) and the corporate body appropriately.

1362. This section has been modelled on section 37 of the Health and Safety at Work Act 1974.

COMMENTARY

1. Section 161 is the BSA's corporate officer liability provision.²⁴ It follows the well-established statutory model pioneered by section 37 of the Health and Safety at Work etc Act 1974 ("HSWA 1974"),²⁵ under which the "directing mind" of a corporate body may be held personally criminally liable where an offence committed by the body corporate was committed with the officer's consent or connivance, or was attributable to the officer's neglect. The provision applies to offences under Parts 2 and 4 of the BSA only - it does not extend to offences created by the Building Act 1984, which has its own equivalent provision (s.112A, as inserted by s.40 of the BSA).
2. The three triggers for personal liability - consent, connivance, and neglect - have each been considered in the case law on HSWA 1974, s.37, which provides authoritative guidance on the meaning of these terms in the BSA context:
 - (a) **Consent:** the officer was aware of what was occurring and agreed to it. In **R v Chagot Ltd** [2008] UKHL 73, the House of Lords considered the meaning of 'consent' and the standard of proof required to establish corporate officer liability.
 - (b) **Connivance:** the officer was aware of what was occurring but deliberately refrained from acting. As the Divisional Court explained in **Huckerby v Elliott** [1970] 1 All ER 189, connivance involves 'turning a blind eye.'
 - (c) **Neglect:** the officer failed to take steps which he ought to have taken. In **R v P** [2007] EWCA Crim 1937, the Court of Appeal held that the question is whether the officer, by reason of the surrounding circumstances, should have been put on enquiry to check that relevant procedures were in place.

²⁴ BSA 2022, s.161(1)–(3).

²⁵ Health and Safety at Work etc Act 1974, s.37. Section 161 is expressly modelled on s.37: see Explanatory Notes, para. 1362.

3. No prosecution has been brought under section 161 as at the date of this commentary (March 2026). The provision came into force only on 1 October 2023, and the Building Safety Regulator's enforcement activities under Parts 2 and 4 remain at an early stage. However, the potential for personal criminal liability is real. It is anticipated, for example, that the Grenfell disaster itself will lead to charges being brought within the next year.
4. The exception in subsection (4) for unpaid volunteer directors is an important practical safeguard.²⁶ Where a resident management company, RTM company, or commonhold association appoints at least one paid director for a building safety purpose, all unpaid directors are relieved of criminal liability under Part 4. This was a direct response to concerns raised during the Bill's passage that volunteer leaseholder-directors - who often serve without remuneration and without professional expertise in building safety - should not face criminal prosecution for failures of the corporate body. The exception does not, however, apply to Part 2 offences (relating to the Building Safety Regulator), and it requires at least one director to be appointed for a building safety purpose and to be remunerated.

Practical note: Practitioners advising corporate accountable persons under Part 4 should ensure that: (a) the relevant company has appointed at least one remunerated director with responsibility for building safety compliance, thereby engaging the s.161(4) exception for unpaid directors; (b) all directors understand the personal liability exposure under s.161, particularly the 'neglect' trigger which does not require active wrongdoing; and (c) the company's governance arrangements create clear lines of responsibility and documented decision-making in relation to building safety obligations.

CASE DIGEST

8. Although no case has been decided under section 161 itself, the following decisions on HSWA 1974, s.37 - which section 161 is expressly modelled upon - provide authoritative guidance on the scope of corporate officer liability:

Case Name: **R v P**

²⁶ BSA 2022, s.161(4)–(5). The exception for unpaid volunteer directors of resident management companies, RTM companies, and commonhold associations was introduced to address concerns that volunteer leaseholder-directors would face criminal liability for building safety breaches.

Case Reference: [2007] EWCA Crim 1937; [2008] ICR 96

Judge: Latham LJ (Vice President of the Court of Appeal Criminal Division), Pitchford J, Royce J

Date: 11 July 2007

Key Issues: *The meaning of ‘neglect’ in section 37 of the Health and Safety at Work etc Act 1974, on which BSA 2022, s.161 is expressly modelled; whether a director’s failure to make enquiries about safety procedures constitutes ‘neglect’ even where the director had no actual knowledge of the breach.*

Held:

1. This was an appeal by the prosecution under s. 35(1) of the Criminal Procedure and Investigations Act 1996, with the leave of the trial judge, against a preliminary ruling given at a preparatory hearing. There was no conviction. The respondent, Mr G, faced two counts under HSWA 1974, s. 37(1); the company faced counts under s. 33(1)(a). The charges arose from the death of a six-year-old boy thrown from a fork-lift truck at a dock.
2. The Court of Appeal held that the correct question for determining ‘neglect’ is whether the officer in question, by reason of the surrounding circumstances, should have been put on enquiry to require him to check that relevant procedures were in place. Actual knowledge of the specific breach is not required; the question is whether the officer’s failure to enquire was itself culpable.
3. Latham LJ held that “neglect” under s. 37 does not require proof that the officer knew of the specific breach; to require that would collapse neglect into connivance, and Parliament plainly intended the three limbs to differ [12]. The question is always whether the officer should, by reason of the surrounding circumstances, have been put on enquiry so as to require him to take steps to determine whether the appropriate safety procedures were in place [13].
4. The judge’s ruling was held to be too prescriptive, and the appeal was allowed only to the extent of deleting the words “and did know the material facts” from the proposed direction [14]–[16]. The reasoning applies directly to s. 161 of the BSA: a director of an accountable person who does not inform himself about building safety compliance may be liable even without knowledge of the particular failing.

Cases Cited: Health and Safety at Work etc Act 1974, s.37; *Wotherspoon v HM Advocate* 1978 JC 74

Link: <https://caselaw.nationalarchives.gov.uk/ewca/crim/2007/1937>

Case Name: **R v Chagot Ltd** (t/a Contract Services)

Case Reference: [2008] UKHL 73; [2009] 1 WLR 1

Judge: Lord Hoffmann, Lord Hope of Craighead, Lord Scott of Foscote, Lord Brown of Eaton-under-Heywood, Lord Neuberger of Abbotsbury

Date: 10 December 2008

Key Issues: The circumstances in which consent, connivance or neglect under section 37 of the HSWA 1974 may be inferred once the body corporate's offence is established; what the prosecution must identify and prove as to the officer's state of mind.

Held:

1. A worker was killed in a workplace incident. The corporate employer was convicted under HSWA 1974, s.33. The question was whether the managing director could be convicted under s.37 on the basis that the offence was attributable to his neglect.
2. The House of Lords held that where it is proved that the body corporate has committed an offence, and the director was in a position of responsibility for the state of affairs that gave rise to the offence, the inference may properly be drawn that the offence was committed with the director's consent or connivance or was attributable to neglect. The evidential burden then shifts to the director to provide some explanation.
3. The House of Lords held that once the body corporate's offence is established, the question is whether the officer was in a position where he could and should have taken steps to prevent the breach. If so, the jury is entitled to infer consent, connivance, or neglect from the state of affairs within the company, without requiring direct evidence of the officer's mental state.
4. Lord Hope emphasised that the provision is designed to ensure that those who are responsible for conducting the affairs of a company take positive steps to ensure compliance. This principle applies directly to s.161 of the BSA: directors of accountable persons who fail to put building safety systems in place may face personal criminal liability.

Cases Cited: Health and Safety at Work etc Act 1974, ss.33 and 37; Wotherspoon v HM Advocate 1978 JC 74 at 78; Attorney-General's Reference (No 1 of 1995) [1996] 1 WLR 970 at 980; R v P Ltd [2008] ICR 96

Link: <https://publications.parliament.uk/pa/ld200809/ldjudgmt/jd081210/chargo-1.htm>

SECTION 162 – REVIEW OF REGULATORY REGIME

STATUTORY TEXT

- (1) The Secretary of State must appoint an independent person to carry out a review of —
 - (a) the effectiveness of the regulator in—
 - (i) exercising its building functions,
 - (ii) securing the safety of people in or about buildings in relation to risks arising from buildings, and
 - (iii) improving the standard of buildings,
 - (b) the adequacy and effectiveness of—
 - (i) provision made by or under Parts 2 and 4 of this Act, and
 - (ii) provision made by or under the Building Act 1984 (except section 105C) that applies in relation to England,
 - (c) the effectiveness of the regulation of construction products in the United Kingdom,
 - (d) such matters connected with any of the matters mentioned in paragraphs (a) to (c) as the person considers appropriate, and
 - (e) any other matter specified in the appointment.
- (2) On completion of a review, the appointed person must make a written report to the Secretary of State—
 - (a) setting out the result of the review, and
 - (b) making such recommendations (if any) as the person considers appropriate.
- (3) The Secretary of State must publish a copy of the report.
- (4) The first appointment must be made within the period of 5 years beginning with the day on which this Act is passed.
- (5) Any other appointment must be made within the period of 5 years beginning with the day on which the most recent appointment was made.
- (6) In this section—

“building function” has the meaning given by section 3;

“independent” means appearing to the Secretary of State to be independent of—

 - (a) the Secretary of State,
 - (b) the regulator,
 - (c) the profession of registered building inspectors,

- (d) the built environment industry (as defined by section 30),
- (e) persons carrying on activities connected with the manufacture, importation, marketing or supply of construction products (as defined by paragraph 24 of Schedule 11), and
- (f) local authorities (as so defined);

“the regulator” has the meaning given by section 2.

COMMENCEMENT AND AMENDMENTS

In force: Royal Assent (28 April 2022) (s.170(1)(h)). No amendments to date.

EXPLANATORY NOTES

Section 162: Review of regulatory regime

Effect

1363. This section sets out a mandatory process for the Secretary of State to periodically appoint an independent person to review the effectiveness of the building regulatory regime and the system of regulation for construction products.

1364. This section provides a deliberately non-prescriptive framework to allow the reviewer to operate independently. The reviewer can choose how much to focus on each area of review; so, for example, if some of the areas listed in this section seem to be operating well and others less well, the reviewer can choose to prioritise reviewing the areas that are operating less well.

1365. In the first instance, the Secretary of State must appoint an independent reviewer within five years of the Act being passed. Subsequent appointments must be made within five years of the day on which the most recent appointment was made.

1366. The Secretary of State must ensure the person is independent from the Secretary of State, the Building Safety Regulator, the building control profession, the built environment industry, the construction products industry, and local authorities.

1367. The Act sets out the specific matters the independent person must review, which taken together encompass the key elements of the building regulatory system and the construction products regulatory system: • The effectiveness of the Building Safety Regulator; • The effectiveness of the UK wide system for the regulation of construction products; • The adequacy and effectiveness of the provisions of the Building Act 1984 as it pertains to England, barring new section 105C; • The adequacy and effectiveness of Parts 2 and 4 of the Building Safety Act (these relate to the Building Safety Regulator’s powers and functions, and the new, more stringent regulatory regime for higher-risk buildings in occupation); • Any connected matters, to be determined by the independent person; and • Any other matters specified in the appointment itself.

1368. This section does not allow the Secretary of State to limit the considerations of the reviewer.

1369. *Once the review is complete, the independent reviewer must submit a written report to the Secretary of State explaining the outcome of the review and provide any recommendations for improvement where appropriate. The Secretary of State is required to publish a copy of this report.*

Background

1370. *This is a new provision.*

1371. *The Independent Review recommended for there to be a periodic review (at least every five years) of the effectiveness of the overall system of building regulation including accountabilities, responsibilities, guidance, and the effectiveness of the regulator. Example Approaching the five-year mark of operating the new building regulatory regime, the Secretary of State feels that a proportionate amount of time has passed to allow the system to be reasonably assessed. The Secretary of State must identify and appoint a person who, in their view, meets the statutory independence test included in this section. The Secretary of State may consider that there are issues that might impact building safety, but that are beyond the remit of the review as set out in subsections (1)(a)-(c). In this instance they can instruct the independent person to consider additional matters, under subsection (1)(e). During the review, the independent person may observe that there are non-legislative matters of interest connected to the effectiveness of the Building Safety Regulator that impact the effectiveness of the system. The reviewer would be able to consider these matters as part of the review and make recommendations about them. The reviewer might consider parts of the regulatory regime to be functioning effectively. If that is the case, the reviewer may choose to deal with that area much more briefly in their report. At the end of the review, the independent reviewer will need to submit a written report to the Secretary of State detailing the outcome of the assessment. At this stage, the reviewer may have noted various areas for improvement within the system. The reviewer must detail these recommendations for improvement in the report that they submit to the Secretary of State. The Secretary of State must publish a copy of this report.*

COMMENTARY

5. Section 162 implements Recommendation 1.5 of the Independent Review of Building Regulations and Fire Safety (the Hackitt Review, May 2018),²⁷ which called for a periodic review (at least every five years) of the effectiveness of the overall system of building regulation. The provision is mandatory: the Secretary of State “must” appoint a reviewer. It is not discretionary.²⁸

²⁷ Independent Review of Building Regulations and Fire Safety (the Hackitt Review), Final Report (May 2018), Recommendation 1.5.

²⁸ BSA 2022, s.162(1)–(6).

6. The first review must be commissioned by 28 April 2027.²⁹ The scope of the review is deliberately broad - the reviewer is empowered to consider not only the statutory framework but also **“such matters connected... as the person considers appropriate”** (s.162(1)(d)), and the Secretary of State may add further matters. The reviewer may not be restricted in what he or she examines. The obligation to publish the report provides a measure of accountability.
7. Separately from the s.162 review, the government has taken several steps that anticipate or supplement it. In December 2025, MHCLG published its Single Construction Regulator Prospectus,³⁰ consulting on proposals to unify the regulation of building safety, building control, and construction products under a single authority. In 2025, the government also published an initial review of the definition of higher-risk buildings.³¹ These exercises, while not formally conducted under s.162, demonstrate the government’s recognition that the regulatory framework remains a work in progress.

Practical note: Section 162 is a ‘sleeping provision’ of considerable long-term significance. The independent reviewer will have wide latitude to examine the entire building safety system, including the BSR’s enforcement practices, the adequacy of the higher-risk building regime, and the construction products regulatory system. Practitioners should be aware that the first review period is approaching (by April 2027) and that the outcome could lead to further legislative reform.

²⁹ BSA 2022, s.162(4). The first appointment must be made within five years of Royal Assent (28 April 2022), i.e. by 28 April 2027.

³⁰ MHCLG, ‘Single Construction Regulator Prospectus: Consultation Document’ (17 December 2025). Available at: <https://www.gov.uk/government/consultations/single-construction-regulator-prospectus>

³¹ MHCLG, ‘Definition of Higher-Risk Buildings: Initial Review and Plans for Ongoing Review’ (2025). Available at: <https://www.gov.uk/government/publications/review-of-the-definition-of-higher-risk-buildings>

SECTION 163 – FINANCIAL PROVISIONS

STATUTORY TEXT

There is to be paid out of money provided by Parliament—

- (a) any expenditure incurred under or by virtue of this Act by the Secretary of State, and
- (b) any increase attributable to this Act in the sums payable under any other Act out of money so provided.

COMMENCEMENT AND AMENDMENTS

In force: Royal Assent (28 April 2022) (s.170(1)(h)). No amendments to date.

EXPLANATORY NOTES

Section 163: Financial Provisions

1372. This section recognises that, as a matter of House of Commons procedure, a financial resolution needs to be agreed for this Act.

COMMENTARY

8. Section 163 is the standard financial provision clause, required as a matter of Parliamentary procedure to authorise expenditure from public funds.³² It requires no further commentary.

³² BSA 2022, s.163.

SECTION 164 – CROWN APPLICATION

STATUTORY TEXT

- (1) The following provisions, and any provision made under them, bind the Crown—
 - (a) Part 2;
 - (b) Part 4 except sections 99, 100 and 103 (compliance notices);
 - (c) sections 116 to 124 and Schedule 8 (remediation of certain defects);
 - (d) sections 136 to 142 and Schedule 9 (new homes ombudsman scheme);
 - (e) sections 144 and 145 (new build home warranties);
 - (f) section 161.
- (2) No contravention by the Crown of a provision mentioned in subsection (1) makes the Crown criminally liable.
- (3) Subsection (2) does not affect the criminal liability of persons in the service of the Crown.

COMMENCEMENT AND AMENDMENTS

Not in force at Royal Assent (s.170(5)). Commencement by regulations. Amended: Leasehold and Freehold Reform Act 2024, s.118(2)(h) (24 July 2024) - substituting '124' for former reference in s.164(1)(c).

EXPLANATORY NOTES

Section 164: Crown Application

Effect

1373. This section provides for provisions in Part 2 and Part 4 (except sections 99, 100 and 103) to bind the Crown.

1374. It also provides for Sections relating to remediation of certain defects (sections 116 to 125 and Schedule 8), the new homes ombudsman scheme (sections 136 to 143 and Schedule 9), new build home warranties (sections 144 and 145), and liability of officers of body corporate (section 161) to bind the Crown.

1375. Contravening these provisions does not make the Crown criminally liable. This exclusion from liability does not affect the criminal liability of persons in the service of the Crown.

Background

1376. This is a new provision.

COMMENTARY

9. Section 164 extends significant parts of the BSA to the Crown.³³ This is noteworthy: the Crown owns and manages substantial property portfolios through departments such as the Ministry of Defence, the Ministry of Justice, and the Crown Estate. By binding the Crown to Parts 2 and 4, the Act ensures that higher-risk buildings in Crown ownership are subject to the same regulatory obligations as those in the private sector. The Crown is also bound by the leaseholder protection provisions in ss.116–124, which is significant given the Crown’s role as freeholder of large residential estates.
10. The standard Crown immunity from criminal prosecution is preserved (s.164(2)), but persons in the service of the Crown remain personally liable (s.164(3)). The practical effect is that a government department cannot be prosecuted for, say, failing to register a higher-risk building, but individual civil servants or contractors acting on the Crown’s behalf could face personal liability under the combined effect of s.164(3) and s.161.
11. Section 164(1)(c) was amended by the Leasehold and Freehold Reform Act 2024 to update the cross-reference from ‘sections 116 to 125’ to ‘sections 116 to 124,’ reflecting the restructuring of the remediation provisions by that Act.³⁴

³³ BSA 2022, s.164(1)–(3).

³⁴ Leasehold and Freehold Reform Act 2024 (c. 22), s.118(2)(h), substituting the reference in s.164(1)(c) to ‘sections 116 to 124’ (reflecting the insertion of s.125A).

SECTION 165 – APPLICATION TO PARLIAMENT

STATUTORY TEXT

- (1) The following provisions do not apply in relation to the Parliamentary Estate—
 - (a) sections 99, 100 and 103 (compliance notices under Part 4);
 - (b) paragraphs 1 to 3 of Schedule 2 (powers of entry of authorised officers).
- (2) If the Palace of Westminster (or any part of it) is a higher-risk building within the meaning of Part 4, for the purposes of that Part the accountable persons for the building are the Corporate Officer of the House of Lords and the Corporate Officer of the House of Commons, acting jointly.
- (3) No contravention by a Corporate Officer of a provision made by or under Part 2 or 4 makes the Corporate Officer criminally liable.
- (4) Subsection (3) does not affect the criminal liability of relevant members of the House of Lords staff or of the House of Commons staff (as defined by sections 194 and 195 of the Employment Rights Act 1996).
- (5) In subsection (3) “Corporate Officer” means—
 - (a) the Corporate Officer of the House of Lords,
 - (b) the Corporate Officer of the House of Commons, or
 - (c) the Corporate Officers acting jointly.
- (6) In this section “Parliamentary Estate” means any building or other premises occupied for the purposes of either House of Parliament.

COMMENCEMENT AND AMENDMENTS

In force: Royal Assent (28 April 2022) (s.170(1)(h)). No amendments to date.

EXPLANATORY NOTES

Section 165: Application to Parliament

Effect

1377. Section 165 applies Part 4 to the Palace of Westminster, if it (or any part of it) is a higher-risk building within the meaning of that Part.

1378. It makes the Corporate Officers of the House of Lords and House of Commons the accountable persons, acting jointly. The Corporate Officers are not criminally liable for contraventions of provisions made under Parts 2 and 4. This exclusion from criminal liability does not affect the liability of members of the House of Lords staff or the House of Commons staff.

1379. This section disapplies provisions regarding compliance notices under Part 4 (sections 99, 100 and 103) and powers of entry of authorised officers (paragraphs 1 to 3 of Schedule 2).

Background

1380. This is a new provision.

COMMENTARY

12. Section 165 addresses the constitutional sensitivities of applying building safety regulation to Parliament.³⁵ The Palace of Westminster is one of the most significant buildings in the country, and the ongoing Restoration and Renewal Programme raises acute building safety questions. Section 165(2) is potentially of considerable practical importance: if any part of the Palace qualifies as a higher-risk building (which, given the Palace's height, multiple occupation, and residential elements, is at least arguable), the Corporate Officers of both Houses would be jointly accountable under Part 4.
13. The disapplication of compliance notices and powers of entry reflects the principle of Parliamentary privilege - the BSR cannot serve a compliance notice on or forcibly enter the Parliamentary Estate. However, the substantive obligations of Part 4 still apply; the enforcement mechanism is simply modified. The exemption of Corporate Officers from criminal liability (s.165(3)) mirrors the Crown immunity in s.164(2), while preserving the liability of Parliamentary staff (s.165(4)).³⁶

³⁵ BSA 2022, s.165(1)–(6).

³⁶ Employment Rights Act 1996, ss.194–195 (definitions of House of Lords and House of Commons staff).

SECTION 166 – POWER OF SECRETARY OF STATE TO MAKE CONSEQUENTIAL PROVISION

STATUTORY TEXT

- (1) The Secretary of State may by regulations make provision that is consequential on this Act.
- (2) The regulations may amend, repeal or revoke provision made by or under—
 - (a) an Act passed before this Act;
 - (b) an Act passed later in the same session of Parliament as this Act.
- (3) Regulations under this section may not make provision that may be made under section 167.

COMMENCEMENT AND AMENDMENTS

In force: Royal Assent (28 April 2022) (s.170(1)(h)). No amendments to date.

EXPLANATORY NOTES

Section 166: Power of Secretary of State to make consequential provision

Effect

1381. This section confers on the Secretary of State a regulation-making power to make consequential amendments which arise from this Act or regulations made under it. Regulations that make consequential provision may amend, repeal or revoke an enactment. Any regulations that amend or repeal primary legislation are subject to the affirmative procedure. Any other regulations under this section are subject to the negative procedure. This section provides that the Secretary of State may not make consequential provision that may be made by the Welsh Ministers under section 167.

COMMENTARY

14. Section 166 is a standard Henry VIII clause, empowering the Secretary of State to amend primary legislation by statutory instrument where necessary as a consequence of the BSA.³⁷ The power is limited to consequential provision - it cannot be used to make substantive new policy. The affirmative procedure requirement for instruments that amend or repeal primary legislation provides a Parliamentary safeguard. The section

³⁷ BSA 2022, s.166(1)–(3).

expressly delineates the boundary with the Welsh Ministers' equivalent power in s.167 (s.166(3)).³⁸

³⁸ The Building Safety (Leaseholder Protections) (England) (Amendment) Regulations 2023 (SI 2023/911), made under the general regulation-making powers and related to the leaseholder protection framework.

SECTION 167 – POWER OF WELSH MINISTERS TO MAKE CONSEQUENTIAL PROVISION

STATUTORY TEXT

- (1) The Welsh Ministers may by regulations make provision, in relation to Wales, that is consequential on Part 3 or section 156.
- (2) The regulations may amend, repeal or revoke provision made by or under—
 - (a) an Act passed before this Act;
 - (b) an Act passed later in the same session of Parliament as this Act;
 - (c) an Act or Measure of Senedd Cymru passed before this Act.
- (3) The regulations may make—
 - (a) transitional, transitory or saving provision;
 - (b) different provision for different purposes.
- (4) The regulations are to be made by statutory instrument.
- (5) A statutory instrument containing (whether alone or with other provision) regulations under this section that amend or repeal provision made by an Act, or by an Act or Measure of Senedd Cymru, may not be made unless a draft of the instrument has been laid before and approved by a resolution of Senedd Cymru.
- (6) Any other statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of Senedd Cymru.

EXPLANATORY NOTES

Section 167: Power of Welsh Ministers to make consequential provision

Effect

1382. This section is self-explanatory.

COMMENTARY

15. Section 167 mirrors section 166 for the Welsh Ministers, but its scope is confined to consequential provision arising from Part 3 (Building Act 1984) and section 156 (fire safety).³⁹ This reflects the devolution settlement: building regulations under the Building Act 1984 are a devolved matter in Wales, whereas the building safety regime

³⁹ BSA 2022, s.167(1)–(6). This Welsh Ministers power relates to Part 3 (Building Act 1984) and s.156 (fire safety) only.

under Parts 2 and 4 is an England-only matter. The affirmative procedure in the Senedd applies to instruments amending primary legislation.

SECTION 168 – REGULATIONS

STATUTORY TEXT

- (1) This section applies to regulations under any provision of this Act except—
 - (a) section 138(7)(b) (new homes ombudsman scheme: meaning of “developer”),
 - (b) section 167 (power of Welsh Ministers to make consequential provision),
 - (c) section 170 (commencement and transitional provision), and
 - (d) Schedule 11 (construction products regulations).
- (2) A power to make regulations includes power to make—
 - (a) consequential, supplementary, incidental, transitional, transitory or saving provision;
 - (b) different provision for different purposes or for different areas.
- (3) Regulations may describe a building by reference to its height, size, design, use, purpose or any other characteristic.
- (4) A power to make regulations about the way in which anything is to be given to the regulator (as defined by section 2) includes power to provide that the thing is to be given in a way specified in a direction made and published by the regulator in accordance with the regulations.
- (5) Regulations are to be made by statutory instrument.
- (6) A statutory instrument containing (whether alone or with other provision)—
 - (a) regulations under section 12, 62, 65(5), 68, 71, 72, 74, 119A, 123, 126, 128, 129 or 140 or paragraph 6 of Schedule 3 or paragraph 2(12), 13(10) or 15(4) of Schedule 7 or paragraph 3(5), 12 or 15 of Schedule 8,
 - (b) regulations made by virtue of section 65(3)(c),
 - (c) regulations under section 89 (except regulations only making provision of a kind mentioned in section 89(2)),
 - (d) regulations under section 90 (except regulations only making provision of a kind mentioned in section 90(3) or (4)),
 - (e) regulations under section 92 (except regulations only making provision of a kind mentioned in section 92(3)),
 - (f) regulations under sections 153 to 155, or
 - (g) regulations under section 166 that amend or repeal provision made by an Act,may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

- (7) Any other statutory instrument containing regulations is subject to annulment in pursuance of a resolution of either House of Parliament.

COMMENCEMENT AND AMENDMENTS

In force: Royal Assent (28 April 2022) (s.170(1)(h)). Amended: Levelling-up and Regeneration Act 2023, s.243(4)(5) - inserting reference to s.119A in s.168(6)(a) with retrospective effect to 28 June 2022.

EXPLANATORY NOTES

Section 168: Regulations

Effect

1383. This section ensures that regulations made under the Act can include any consequential amendments as well as transitional provisions and cover any other incidental matters.

1384. This section also provides that regulations made under this Act are to be made by statutory instrument and sets out which sets of regulations require the affirmative procedure.

COMMENTARY

16. Section 168 is the Act's general regulation-making framework.⁴⁰ It serves three principal functions. First, it provides that all regulation-making powers under the Act (with specified exceptions) include ancillary powers to make consequential, supplementary, incidental, transitional, and saving provision (s.168(2)). Second, it provides that buildings may be described by reference to any characteristic, including height, size, design, use, or purpose (s.168(3)) - this is the enabling power for the threshold definitions of "higher-risk building" and "relevant building" in secondary legislation. Third, it establishes the Parliamentary scrutiny framework, distinguishing between instruments subject to the affirmative procedure (s.168(6)) and those subject to the negative procedure (s.168(7)).⁴¹
17. The Levelling-up and Regeneration Act 2023 inserted a reference to s.119A into s.168(6)(a),⁴² with retrospective effect to 28 June 2022. Section 119A (inserted by

⁴⁰ BSA 2022, s.168(1)–(7).

⁴¹ BSA 2022, s.168(6). The affirmative procedure applies to regulations under ss.12, 62, 65(5), 68, 71, 72, 74, 119A, 123, 126, 128, 129, 140, and various Schedule paragraphs, as well as regulations under s.166 that amend primary legislation.

⁴² Levelling-up and Regeneration Act 2023 (c. 55), s.243(4)(5), inserting the reference to s.119A into s.168(6)(a) with retrospective effect to 28 June 2022.

LURA 2023) relates to the remediation of relevant defects, and its inclusion in the affirmative procedure list ensures that regulations defining the scope of remediation obligations receive full Parliamentary scrutiny.

Practical note: The list of provisions subject to the affirmative procedure in s.168(6) is extensive and frequently amended. Practitioners monitoring the development of secondary legislation under the BSA should check s.168(6) to determine whether a particular set of regulations requires affirmative resolution, as this affects the timetable for bringing regulations into force.

SECTION 169 – EXTENT

STATUTORY TEXT

- (1) Subject as follows, this Act extends to England and Wales only.
- (2) The following provisions extend to England and Wales, Scotland and Northern Ireland—
 - (a) Part 1;
 - (b) paragraphs 87 and 88 of Schedule 5 (and section 55 so far as relating to those paragraphs);
 - (c) sections 136 to 143 and Schedule 9 (new homes ombudsman scheme);
 - (d) section 146 and Schedule 11 (construction products);
 - (e) sections 152 to 155 (costs contribution orders);
 - (f) section 157 to 159 (architects);
 - (g) this Part except section 161, 164 and 167.
- (3) Section 2(2) and Schedule 1 (amendments of the Health and Safety at Work etc Act 1974) extend to England and Wales and Scotland.
- (4) The amendments made by Schedule 10 (amendments in connection with the new homes ombudsman scheme) have the same extent as the provision amended.
- (5) Sections 147 to 149 (liability relating to construction products) extend to England and Wales and Scotland.
- (6) Section 151 (liability relating to construction products: limitation in Scotland) extends to Scotland only.
- (7) The Secretary of State may by regulations—
 - (a) provide for the provisions mentioned in subsection (5) to extend also to Northern Ireland, and
 - (b) make provision (including provision amending this Act or any other enactment) in relation to the application of the provisions mentioned in subsection (5) in Northern Ireland.

COMMENCEMENT AND AMENDMENTS

In force: Royal Assent (28 April 2022) (s.170(1)(h)). No amendments to date.

EXPLANATORY NOTES

Section 169: Extent

Effect

1385. This section makes provision about territorial extent for the Act. Subsections (1) to (6) set out the territorial extent for the provisions in the Act; see Annex A for additional detail.

1386. Subsection (7) allows the Secretary of State to make provision extending sections 147 to 149 – which make provision about liability relating to construction products – to Northern Ireland. Subsection (7)(a) permits the Secretary of State by regulations to make provision extending sections 147 to 149 to apply to Northern Ireland. Subsection (7)(b) allows the Secretary of State to amend this Act and any other enactment in relation to the application of those provisions to Northern Ireland.

COMMENTARY

18. Section 169 maps the territorial extent of each part of the Act.⁴³ The core building safety provisions - the Building Safety Regulator (Part 2), the Building Act 1984 amendments (Part 3), the higher-risk building regime (Part 4), and the leaseholder protections and building liability order provisions (Part 5, ss.116–135) - extend to England and Wales only. This reflects the devolution settlement: building safety regulation is an England and Wales matter.
19. Several provisions have wider UK extent.⁴⁴ The new homes ombudsman scheme (ss.136–143), construction products regulation (s.146 and Schedule 11), costs contribution orders (ss.152–155), and architects provisions (ss.157–159) extend to England and Wales, Scotland, and Northern Ireland. The construction products liability regime (ss.147–149) extends to England and Wales and Scotland, with a Henry VIII power (s.169(7)) to extend it to Northern Ireland.⁴⁵ Part 6 itself (except ss.161, 164, and 167) has UK-wide extent.

Practical note: For practitioners in Scotland and Northern Ireland: the substantive building safety regime (Parts 2, 4, and 5 protections) does not apply in those jurisdictions. However, the construction products liability regime (ss.146–149) and the costs contribution order mechanism (ss.152–155) do apply in Scotland. The

⁴³ BSA 2022, s.169(1)–(7).

⁴⁴ BSA 2022, s.169(2)(g): Part 6 extends to England and Wales, Scotland, and Northern Ireland, except ss.161, 164, and 167.

⁴⁵ BSA 2022, s.169(5)–(6). Sections 147–149 (construction products liability) extend to England and Wales and Scotland; s.151 (limitation in Scotland) extends to Scotland only.

architects provisions (ss.157–159) apply UK-wide. Any litigation involving cross-border construction projects must carefully identify which provisions are engaged in each jurisdiction.

SECTION 170 – COMMENCEMENT AND TRANSITIONAL PROVISION

STATUTORY TEXT

- (1) The following provisions come into force on the day on which this Act is passed—
 - (a) section 1;
 - (b) section 2(1);
 - (c) section 7;
 - (d) section 28;
 - (e) section 30;
 - (f) sections 61 to 70;
 - (g) section 115;
 - (h) this Part except sections 161 and 164.
- (2) Parts 2 and 4, except the provisions mentioned in subsection (1), come into force—
 - (a) for the purposes of making regulations, on the day on which this Act is passed;
 - (b) for remaining purposes, on such day as the Secretary of State may by regulations appoint.
- (3) The following provisions come into force at the end of the period of two months beginning with the day on which this Act is passed—
 - (a) sections 116 to 125 and Schedule 8;
 - (b) section 134;
 - (c) section 135;
 - (d) section 146 and Schedule 11;
 - (e) sections 147 to 155;
 - (f) sections 157 to 159.
- (4) As regards Part 3 and section 156—
 - (a) the following provisions come into force on such day as the Welsh Ministers may by regulations appoint—
 - (i) section 31 so far as relating to section 120I of the Building Act 1984;
 - (ii) section 32(3) so far as relating to section 91ZD of that Act;
 - (iii) section 42 so far as relating to section 58Z2 and 58Z10 of that Act;
 - (iv) paragraph 56 of Schedule 5 (and section 55 so far as relating to that paragraph);

- (v) paragraph 77 of that Schedule so far as relating to section 120C of the Building Act 1984 (and section 55 so far as relating to that section);
- (b) the following provisions come into force, in relation to Wales, on such day as the Welsh Ministers may by regulations appoint—
 - (i) section 32 except subsection (3) of that section;
 - (ii) section 33 except so far as relating to paragraph 1D(3) of Schedule 1 to the Building Act 1984;
 - (iii) sections 34 to 41;
 - (iv) section 42 except so far as relating to section 58Z2, 58Z7 or 58Z10 of the Building Act 1984;
 - (v) section 43 and Schedule 4;
 - (vi) sections 44 to 52;
 - (vii) section 53 except subsection (1) of that section;
 - (viii) section 55 and Schedule 5 except—
 - (A) paragraphs 38 and 87 to 89 of that Schedule (and section 55 so far as relating to those paragraphs);
 - (B) paragraph 77 of that Schedule so far as relating to section 120B of the Building Act 1984 (and section 55 so far as relating to that section);
 - (ix) section 56 and Schedule 6 except paragraphs 7 and 29 of that Schedule (and section 56 so far as relating to those paragraphs);
 - (x) section 57;
 - (xi) section 156 except subsection (8) of that section so far as relating to Article 22B of the Regulatory Reform (Fire Safety) Order 2005;
- (c) subject to that, Part 3 and section 156 come into force on such day as the Secretary of State may by regulations appoint.
- (5) The other provisions of this Act come into force on such day as the Secretary of State may by regulations appoint.
- (6) The Secretary of State may by regulations make transitional or saving provision in connection with the coming into force of any provision of this Act.
- (7) Regulations under subsection (4)(a) or (b) may make transitional or saving provision.
- (8) The powers to make regulations under this section include power to make different provision for different purposes or for different areas.
- (9) Regulations under this section are to be made by statutory instrument.

COMMENCEMENT AND AMENDMENTS

In force: Royal Assent (28 April 2022). No amendments to date.

EXPLANATORY NOTES

Section 170: Commencement and transitional provision

Effect

1387. This section is self-explanatory.

COMMENCEMENT REGULATIONS

Seven commencement regulations have been made under section 170. They are set out below. Separate commencement orders have been made by the Welsh Ministers for Part 3 and section 156 in relation to Wales.

- **SI 2022/561 — The Building Safety Act 2022 (Commencement No. 1, Transitional and Saving Provisions) Regulations 2022** (made 19 May 2022). Section 132, for the purpose of making regulations, on 28 May 2022. On 28 June 2022: s. 2(2) and Schedule 1; s. 3; ss. 17 and 18; s. 31 so far as relating to ss. 120D to 120H of the Building Act 1984; s. 41 and s. 57 (England only); s. 55 so far as relating to the Schedule 5 paragraphs specified (England only); ss. 130 and 131; and s. 132 for all remaining purposes.
- **SI 2022/927 — The Building Safety Act 2022 (Commencement No. 2) Regulations 2022** (made 31 August 2022). Sections 126 to 129 (building industry schemes and prohibitions on development and building control), on 1 September 2022.
- **SI 2022/1210 — The Building Safety Act 2022 (Commencement No. 3 and Transitional Provision) Regulations 2022** (made 18 November 2022). Sections 4(1) to (4), 9(1) and (2), and 11, on 1 December 2022.
- **SI 2023/362 — The Building Safety Act 2022 (Commencement No. 4 and Transitional Provisions) Regulations 2023** (made 23 March 2023). Further provisions of Parts 2 and 3, on 1 April 2023, 6 April 2023 and 1 October 2023 respectively.
- **SI 2023/993 — The Building Safety Act 2022 (Commencement No. 5 and Transitional Provisions) Regulations 2023** (made 11 September 2023). The

principal commencement: Parts 2 and 4 for remaining purposes, s. 161, and numerous Part 3 provisions, on 1 October 2023.

- **SI 2024/40 — The Building Safety Act 2022 (Commencement No. 6) Regulations 2024** (made 13 January 2024). Sections 79 and following (occupied higher-risk buildings: building assessment certificates), on 16 January 2024.
- **SI 2024/104 — The Building Safety Act 2022 (Commencement No. 7 and Transitional Provisions) Regulations 2024** (made 28 January 2024). Further Part 3 provisions for England, on 6 April 2024.

COMMENTARY

20. Section 170 is the commencement provision, and it reflects the phased implementation strategy adopted for the BSA.⁴⁶ The Act deploys four commencement mechanisms:
- (a) Royal Assent (28 April 2022): section 1 (overview), section 2(1) (the regulator), sections 61–70 (building control), section 115 (power to make regulations about building control), and Part 6 (except ss.161 and 164);
 - (b) Two months after Royal Assent (28 June 2022): the leaseholder protection provisions (ss.116–125 and Schedule 8), the DPA 1972 amendment (s.134), the limitation extension (s.135), the construction products provisions (ss.146–155), and the architects provisions (ss.157–159);
 - (c) By commencement regulations (Secretary of State for England; Welsh Ministers for Wales): Parts 2 and 4 (for remaining purposes), Part 3, and s.156; and
 - (d) By commencement regulations (Secretary of State): all remaining provisions (s.170(5)), including s.161 (brought into force 1 October 2023) and s.164.
21. The distinction between the ‘Royal Assent’ and ‘two months’ commencement categories (s.170(1) and (3)) has been of critical practical importance.⁴⁷ The two-month commencement of s.135 (the limitation extension) meant that the 30-year retrospective limitation period for DPA claims was in force from 28 June 2022. As the Supreme

⁴⁶ BSA 2022, s.170(1)–(6).

⁴⁷ BSA 2022, s.170(3). Sections 116–125, Schedule 8, s.134, s.135, s.146, Schedule 11, ss.147–155, and ss.157–159 came into force at the end of two months from Royal Assent (28 June 2022).

Court confirmed in **URS Corporation Ltd v BDW Trading Ltd** [2025] UKSC 21, this revived claims that had been statute-barred for years. Similarly, the automatic commencement of the leaseholder protections in ss.116–125 and Schedule 8 from 28 June 2022 meant that remediation cost protections were immediately operative.

22. The phased commencement of Parts 2 and 4 by regulation (s.170(2)) was driven by the need to establish the institutional infrastructure - the Building Safety Regulator, the higher-risk building register, the building assessment certificate regime - before the substantive obligations took effect. The principal commencement order for Parts 2 and 4 was SI 2023/993 (Commencement No. 5), which brought the majority of operational provisions into force on 1 October 2023.⁴⁸
23. The devolved commencement arrangement for Part 3 and s.156 (s.170(4)) reflects the fact that building regulations under the Building Act 1984 are a devolved matter in Wales.⁴⁹ Separate Welsh commencement orders have been made by the Welsh Ministers under s.170(4)(a) and (b)(iii), and the Welsh timetable has not always aligned with the English timetable. Practitioners should not assume that a provision in force in England is also in force in Wales without checking the relevant Welsh commencement order.
24. Section 170(6) provides the power to include transitional, transitory, and saving provisions in commencement regulations.⁵⁰ This power has been used extensively - for example, SI 2024/104 included transitional provisions relating to the application of Part 3 provisions to building work already in progress at the commencement date.

Practical note: Commencement is one of the most practically important aspects of the BSA for litigators. The date on which a provision came into force determines whether it applies to a particular building, claim, or set of facts. Key dates to note: 28 April 2022 (Royal Assent); 28 June 2022 (leaseholder protections, DPA amendment, limitation extension, construction products); 1 October 2023 (Parts 2 and 4 operational, s.161 corporate officer liability); 6 April 2024 (further Part 3 provisions).

⁴⁸ See the Building Safety Act 2022 (Commencement No. 1) Regulations 2022 (SI 2022/561) through to the Building Safety Act 2022 (Commencement No. 7 and Transitional Provisions) Regulations 2024 (SI 2024/104).

⁴⁹ BSA 2022, s.170(4). Part 3 and s.156 commencement is split between the Secretary of State (England) and Welsh Ministers (Wales).

⁵⁰ BSA 2022, s.170(6). Commencement regulations may include transitional, transitory, or saving provision.

A commencement table cross-referenced to each section is an essential tool for any BSA practitioner.

SECTION 171 – SHORT TITLE

STATUTORY TEXT

This Act may be cited as the Building Safety Act 2022.

EXPLANATORY NOTES

Section 171: Short title

Effect

1388. This section is self-explanatory.

COMMENCEMENT AND AMENDMENTS

In force: Royal Assent (28 April 2022) (s.170(1)(h)). No amendments to date.

COMMENTARY

25. Section 171 provides the short title.⁵¹ It requires no further commentary.

⁵¹ BSA 2022, s.171.