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Public Bill Committee

BUILDING SAFETY BILL

Eleventh Sitting

Tuesday 19 October 2021

(Morning)

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Saturday 23 October 2021

The Committee consisted of the following Members:

Chairs: Philip Davies, †Peter Dowd, Clive Efford, Mrs Maria Miller

† Amesbury, Mike *(Weaver Vale)* (Lab)
† Bailey, Shaun *(West Bromwich West)* (Con)
† Baillie, Siobhan *(Stroud)* (Con)
† Byrne, Ian *(Liverpool, West Derby)* (Lab)
† Cadbury, Ruth *(Brentford and Isleworth)* (Lab)
† Clarke, Theo *(Stafford)* (Con)
† Clarke-Smith, Brendan *(Bassetlaw)* (Con)
† Cooper, Daisy *(St Albans)* (LD)
† Hopkins, Rachel *(Luton South)* (Lab)
† Hughes, Eddie *(Walsall North)* (Con)
† Logan, Mark *(Bolton North East)* (Con)
† Mann, Scott *(Lord Commissioner of Her Majesty's Treasury)*
† Osborne, Kate *(Jarrow)* (Lab)
† Pincher, Christopher *(Tamworth)* (Con)
† Rimmer, Ms Marie *(St Helens South and Whiston)* (Lab)
† Saxby, Selaine *(North Devon)* (Con)
† Young, Jacob *(Redcar)* (Con)

Yohanna Sallberg, Adam Mellows-Facer, Abi Samuels, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 19 October 2021

(Morning)

[Peter Dowd *in the Chair*]

Building Safety Bill

Clause 59

Meaning of "building safety risk"

9.25 am

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss clauses 60, 61 and 58 stand part.

The Parliamentary Under-Secretary of State for Levelling Up, Housing and Communities (Eddie Hughes): Before I address this group, I would like to say that since this Committee last met we have suffered the very sad loss of two much loved and much respected colleagues, so I want to put on the record my condolences to their families and close friends, who are trying to come to terms with their tragic loss.

Following the pause in proceedings yesterday, the business of the House continues and we must now turn our minds to saving the lives of other people.

Clause 58 serves as an overview of part 4 of the Bill, which contains provisions for the management of building safety risks in higher-risk buildings. Part 4 is concerned with occupied buildings. It defines a building safety risk and it defines and places duties on the accountable person in relation to risks in their building, including duties regarding resident engagement.

Clause 59 defines "building safety risk" for the purposes of the Bill as a risk to the safety of people in or about a building due to the spread of fire or structural failure. The accountable person for an occupied higher-risk building must consider the spread of fire, structural failure and anything which may trigger them, through the safety case approach.

The Government's approach embraces the independent review's recommendations that the new, more stringent regulatory regime should focus on fire and structural safety. Our consultation referenced fire and structural safety, and we have engaged stakeholders on what the appropriate building safety risks should be. That engagement has supported that our approach covers the appropriate risks.

The clause also creates a power for the Secretary of State to add other building safety risks in the future, should evidence come to light that that is necessary. The Building Safety Regulator will oversee building safety and through that gain knowledge about the built environment. Therefore, it is only right that it must provide a recommendation or advice, or be consulted, before the power to specify new building safety risks is used. However, the spread of fire and structural failure cannot be removed in the future. They will and must remain at the heart of the new regulatory regime.

Clause 60 will enable the Building Safety Regulator to recommend that the Secretary of State makes regulations under the power in clause 59(1)(c). It also specifies the conditions that must be met for the regulator to do so. Through its duty to keep the safety of people in and about buildings under review, the regulator will be aware of the risks to and in buildings. It is only right that the regulator should be able to make recommendations based on that knowledge. In making a recommendation to change the definition of building safety risk, the Building Safety Regulator must have regard to the regulatory principles in clause 3, including proportionality.

We are focusing on preventing those rare incidents that have the highest consequences. The conditions that must be met for the regulator to make a recommendation reflect that, including the three-part test for simultaneously adding a new category of higher-risk building and a new building safety risk.

Finally, clause 61 provides that the Building Safety Regulator must provide advice about proposals to make regulations under clause 59(1)(c) to the Secretary of State, if requested. The regulator will be able to provide expert advice and will be a wealth of knowledge on risks such as the aforementioned spread of fire and structural failure. Moreover, it is important for the regime to be flexible and to be able to respond to new risks, if and when they arise. Thus the ability for the Secretary of State to request formal advice when considering altering the definition of building safety risk is an important step in ensuring that the Secretary of State is expertly informed and to keep the regime flexible.

Question put and agreed to.

Clause 59 accordingly ordered to stand part of the Bill.

Clauses 60 and 61 ordered to stand part of the Bill.

Clause 62

Meaning of "higher-risk building" etc

Mike Amesbury (Weaver Vale) (Lab): I beg to move amendment 12, in clause 62, page 81, line 37, at end insert—

> "(aa) has characteristics relating to function, material used for construction or inaccessibility of emergency routes out of the building as must be defined by the Secretary of State in regulations which make it a high risk to its residents, or"

This amendment would require the Government to define high-risk buildings which are not at least 18 metres or 7 storeys high in regulations.

The Chair: With this it will be convenient to discuss clause stand part.

Mike Amesbury: It is a pleasure once again to serve under your chairmanship, Mr Dowd, and to follow the Minister, whom I welcome to his place on the Front Bench. I concur with his comments on the tragic events surrounding Sir David Amess and on the loss of James Brokenshire, who served this House and, indeed, the Department well over the years.

The amendment seeks to broaden the definition of risk. During Committee stage, Members and Ministers have heard and reviewed evidence from many stakeholders, including the Construction Industry Council, which has argued that the current definition—which applies to buildings below 18 metres or with fewer than seven

storeys—is not a sufficient definition of genuine risk. Indeed, the Fire Brigades Union argues in its written evidence, provided just a few days ago—I am sure that Members have had the opportunity to read it—that the scope is not broad enough.

For example, the fire at a residential care setting in Crewe not very long ago—we have referred to it throughout our deliberations—would not have been covered by the proposed definition because it was below 18 metres and had fewer than seven storeys. Yet the residents who called that building home were undoubtedly at a higher risk than many of us in this Committee Room.

The fire at the Cube student accommodation in Bolton, which has also been referred to throughout this Committee, would not have been covered by this definition, either. Yet in a relatively short period, a significant fire destroyed the building and—there but for the grace of God—nearly cost lives.

Although it is acknowledged that hospitals and care homes are covered by previous clauses, which have been debated, their focus is also on buildings below 18 metres or with fewer than seven storeys. The 18-metre threshold has caused considerable debate, as have comments made by officials in the now renamed Department. I am not at all confident that the Department itself believes that it is an appropriate figure. Indeed, the former Secretary of State, the right hon. Member for Newark (Robert Jenrick), said that relying

"on crude height limits…does not reflect the complexity"

of the risk, as many Committee members will know. He concluded that height would need to

"sit alongside a broader range of risk factors"—[*Official Report*, 20 January 2020; Vol. 670, c. 24.]

Finally, given that buildings below the proposed threshold are no longer deemed to be at high risk, I find it rather perplexing that the Government would advertise for and recruit a civil servant on a salary of £77,000 to take charge of the new proposed loans regime to remediate building safety issues on buildings from 11 to 18 metres. If they are not at risk, they are not at risk.

Ruth Cadbury (Brentford and Isleworth) (Lab): It is a pleasure to serve under your chairmanship again, Mr Dowd. I echo the comments made across the Committee about our departed colleagues Mr Brokenshire and Sir David Amess.

I rise to support amendment 12, which stands in my name and those of my hon. Friend the Member for Weaver Vale and the hon. Member for St Albans. I reinforce the point that risk to building safety should be defined by actual risk—as assessed by the many experts we have in this country and the systems that we use but should probably improve—and not by some arbitrary cut-off.

I will describe two examples. On building risk, my hon. Friend the Member for Weaver Vale mentioned the risk of occupation, which should be covered but from which so many users and so many types of residential building are excluded—a point that I have covered in previous Committee sittings.

In my constituency, we have six 22-storey tower blocks called the Brentford Towers, which are council blocks with a mixture of tenants and leaseholders and were built more than 40 years ago. Not so long ago, a man died in a fire in his flat in one of those blocks. The fire did not spread. There was smoke damage in the communal hallway, which was shared by three other flats, and a lot of the smoke went out of his windows or through the smoke escape hatch on the stairwell.

The fire did not spread upwards, downwards or into the other flats on the man's floor, because the building was designed with fire safety in mind and had not subsequently been messed around with. The fire doors were all shut and the smoke vent was open. That is what was supposed to happen: it was a tragic death, but sadly the man might have died in any kind of home-based fire. No one else was injured, no other flat was damaged and the cost to the community was minimal.

The other example is a block of flats that I have mentioned before, Richmond House in Worcester Park in south London. It had four storeys, I believe, with just over 30 flats. Once the fire took hold, it took 11 minutes for that building to burn down completely. By the grace of God, as my hon. Friend the Member for Weaver Vale said, no one died, although some people had smoke injuries.

Daisy Cooper (St Albans) (LD): It is a pleasure to serve under your chairmanship, Mr Dowd. On a number of occasions during the passage of the Fire Safety Act 2021 and this Bill, we have heard from the Government that the number of fires has gone down, but does the hon. Member agree that it is important that we remember the evidence we have heard from a number of organisations that fires are now spreading a lot faster and that there is therefore a much greater danger when fires do break out?

Ruth Cadbury: The hon. Member is absolutely right: we need to look at the evidence from actual fires. Many of us have had examples in our own constituency; the one that I mentioned was not in mine, but there was a fire in a block of flats in my constituency as a result of flammable cladding that had not yet been removed. Luckily, the fire brigade got there in time, before serious damage, injury or death occurred.

I conclude by referring to so much high-quality, professional expertise that has submitted evidence to the Committee and said that the risks should be based on actual risk and not on an arbitrary cut-off by height or number of storeys.

Eddie Hughes: I thank hon. Members for raising the important question of the definitions for high-risk building safety and safety in buildings of under 18 metres and a height of seven storeys. I am afraid the Government will not be able to accept the amendment.

We recognise that the height and the use of a building are not the only factors that affect the level of risk found in each building. However, they are commonly used factors in determining the level of risk. We consider that other factors, including the materials used for construction, the presence of fire protection measures and the distance to emergency exits, could be used to define a high-risk building, but we concluded that it would be inappropriate to base the regime on factors like that because we were concerned that there would be unintended consequences. For example, when considering the materials used in construction, a large number of materials can be found in various quantities in various combinations. A material or product may be safe on one building owing to its placement, use and combination

[Eddie Hughes]

with other materials yet unsafe on another. Apart from particular circumstances such as the ban on combustible materials in and on external walls of certain buildings, a blanket approach to specific materials would therefore be inappropriate.

As for the accessibility of emergency routes, our assessment is that this would be a subjective factor. Different people may have different opinions about whether a building has sufficiently accessible emergency routes and therefore whether the building is or is not a high-risk building. This would not provide the clarity residents, industry and the regulator need.

We recognise that it is important that the risk of a fire occurring is low in any building. We must be proportionate in the application of the new regulatory regime.

Mike Amesbury: The FBU and Leeds University have carried out recent research that for residents in buildings of 11 metres-plus the risk of fire is somewhat higher. The current scope of the Bill suggests that it captures about 13,000 buildings, but if the definition were broadened to buildings of 11 metres-plus, it would be about 100,000. There has been no effective risk assessment of the risk in individual buildings, and people who reside in them may have disabilities, for example. They would be at significantly higher risk. There are also care homes, hospitals, prisons and educational institutions, so more effective and concerted effort needs to be made by Government and Departments to assess risk properly.

Eddie Hughes: The stakeholders we have consulted—Dame Judith Hackitt, the National Fire Chiefs Council and the Building Research Establishment—all think we have taken a proportionate approach in setting the level at 18 metres. The hon. Gentleman has mentioned prisons, but we should not be distracted by other things. My understanding is that the fires that there have been in prisons in recent times have not involved a spread from the source location. Clearly, risk safety means that there is a limited amount of combustible materials in cells. I understand the point that he is making and we are sensitive to it. We do not in any way avoid the fact that the Bill might need to evolve at some point in the future. More risks may become apparent and we will talk again when we come to later clauses about how the Bill may develop to accommodate that.

The definition of high-risk building for the occupation regime that is outlined in part 7 was determined on the basis that the risk to multiple households is greater when fire spreads in buildings of at least 18 metres. That followed extensive consultation, including a stakeholder listening exercise following the publication of the independent review by Dame Judith Hackitt, stakeholder engagement and our public consultation on building a safer future. Therefore, we think the current definition is correct, proportionate and deliverable for the new regulator. The amendment intends to create a power that duplicates clause 62(5), which already contains a power to alter the definition of higher risk building.

9.45 am

Clause 144(3) states:

"Regulations may describe a building by reference to its height, size, design, use, purpose or any other characteristic."

I confirm that this subsection allows regulations to be made to define higher-risk building use, using the characteristics included in the amendment, if the Government later consider it appropriate.

Ms Marie Rimmer (St Helens South and Whiston) (Lab): What material factors would be considered appropriate to reconsider this situation? What would be necessary to re-examine or develop this further? Are the Government waiting for incidents to happen? Risk is supposed to be based on hazards and the likelihood of them materialising. Risk assessments are supposed to avoid materialisation, but that is not how the Bill is drafted.

Eddie Hughes: I understand the passion with which the hon. Lady makes her case, but I simply do not accept that point. We have been highly proportionate. Dame Judith Hackitt is well respected in this field. We have taken her advice and that of the Building Research Establishment—experts in the field—into consideration. The Building Safety Regulator will be responsible, through the Health and Safety Executive, for monitoring ongoing situations and therefore will be well placed to make recommendations to the Secretary of State should new evidence come to light. We are alive to the issue, and the Bill responds to it.

Ruth Cadbury: The Minister speaks of waiting for evidence to come to light. My hon. Friend the Member for St Helens South and Whiston asked whether we have to await an incident involving death or serious injury. Is that the definition of evidence? If not, what is?

Eddie Hughes: I thank the hon. Lady for her intervention. We need to acknowledge how much the building safety sector has changed as a result of Grenfell Tower and of this Bill. People are more attuned to fire safety and the risks and are more engaged in the process of addressing it. I speak following my engagement with social housing providers. I know from the work that we are doing on the social housing White Paper that they are much more engaged. They are listening to their residents and working with them. We are providing an opportunity to ensure that residents' voices are heard more in the future. With the resident engagement set out in the Bill we will be in a much better informed position to determine safety risks.

I assure Members that the safety of people in buildings under 18 metres high and under seven storeys is of no less importance to the Government. We have a wide programme to strengthen the fire safety regime that includes improving fire safety in all premises regulated by the fire safety order and introducing specific requirements to protect residents' safety in multi-occupied residential buildings of any height.

I shall not go into the details of clause 134, which takes forward our proposals on fire safety reform, as it is due to be debated at a later sitting of the Committee. However, it is another step in the delivery of our reforms and the Committee will be aware that the Government intend to lay fire safety regulations specific to multi-occupied residential buildings this autumn.

In the light of the work that the Government are doing to protect residents' safety in multi-occupied residential buildings under 18 metres in height and under seven storeys, and given how the power to amend

the definition of higher-risk buildings in clause 62(5) works with clause 143(3), I urge Members to consider withdrawing the amendment.

Mike Amesbury: I beg to ask leave to withdraw the amendment, Mr Dowd.

Amendment, by leave, withdrawn.

Clause 62 ordered to stand part of the Bill.

Clause 63

REGULATIONS UNDER SECTION 62: PROCEDURE

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss clauses 64 to 67 stand part.

Eddie Hughes: Clause 63 sets out that the Secretary of State must consult the Building Safety Regulator, unless advice or a recommendation has already been provided, before making regulations under clause 62. The regulations may supplement clause 62, exempt categories of building from the definition of higher-risk building, and provide definitions or alter the clause, apart from subsections (2) and (5). The regulator will oversee building safety and through that gain knowledge about the built environment. It is therefore only right that it is consulted before the powers in clause 62 are used.

Clause 63 also states that the Secretary of State must consult any other persons they consider appropriate before making regulations under clause 62. As the powers cover a few areas, we do not think it right to specify particular other people to consult. However, we recognise that there may be other appropriate people to consult before regulations are made, so we have included that general duty. The powers in clause 62 should not be used lightly and must be used in a proportionate way. This clause provides one of the checks on that.

Clause 64 provides extra checks. If the Secretary of State proposes to use the powers in clause 62 to add a category of building to the definition of higher-risk buildings, it stipulates that the Secretary of State must have received advice or a recommendation from the Building Safety Regulator, and a cost-benefit analysis must be undertaken and published. The Building Safety Regulator oversees building safety and is therefore in the best position to assess if a category of building should be higher risk. It is vital that the regulator's advice be obtained if it has not already provided a recommendation if the definition of higher-risk building were to expand. To ensure that we are being proportionate in the measures we place on buildings, a cost-benefit analysis must be carried out. If the definition of higher-risk building were to expand, it is only fair and transparent that the analysis must be published.

Clause 65 provides for the Secretary of State to use regulations to disapply or modify clauses from part 4 of the Bill for a category of higher-risk building. We cannot predict incidents that may occur in the future, nor how the evidence base on risk will evolve. There may be circumstances in future where it would be prudent to include a different category of building within the definition of higher-risk building for the occupation elements for the new regulatory regime. In this case, it may not be appropriate to apply all the clauses within part 4 of the Bill to that category of building—for example, resident engagement duties in a non-residential building. The clause provides for that scenario. Any substantial change to the regime that we have so carefully thought through should be open to comment and scrutiny. That is why the Building Safety Regulator and any other appropriate person must be consulted, and it is why regulations to do that must be approved through the affirmative procedure by both Houses.

Clause 66 specifies when the Building Safety Regulator must make recommendations to the Secretary of State that a category of building should be added to the definition of higher-risk building for the purposes of part 4 of the Bill. Through its function to oversee building safety, the regulator will be aware of the risks to and in buildings, and the regulator should therefore be able to make recommendations based on that knowledge.

Any change to the definition of a higher-risk building must be proportionate. That is why the regulator can recommend adding a category of building to the definition of a higher-risk building only if it believes that a three-part test is met. First, it must believe that the level of building safety risk is greater in the proposed category of building than in buildings in general. Secondly, it must believe that if the building safety risk occurred there is the potential for it to cause a major incident in the proposed category of building. Lastly, it must believe that the occupation parts of the new regulatory regime should apply to the proposed category of building.

To ensure that the process is transparent, if the Secretary of State does not make regulations to put the regulator's recommendation to add a category of building into effect they must publish an explanation. If the regulator considers that a category of building should no longer be a higher-risk building it must provide a recommendation to the Secretary of State. It would not be appropriate to continue to apply the occupation parts of the new regulatory regime to a category of building that should no longer be a higher-risk building.

Clause 67 provides for the Secretary of State to request advice from the Building Safety Regulator about the definition of a higher-risk building. The regulator will be able to provide expert advice. Therefore, the ability of the Secretary of State to request formal advice when considering altering the definition of a higher-risk building is vital. Any change to the definition of a higher-risk building must be proportionate, which is why the regulator can recommend adding a category of building to the definition of a higher-risk building only if it believes that the three parts of the test that I referenced when discussing clause 66 are met.

Similarly, if the Secretary of State requests advice about whether a category of building should no longer be a higher-risk building the regulator must provide it. To ensure that the process is transparent, if the Secretary of State does not make regulations to put a recommendation made under subclause (3)(a) into effect they must publish an explanation of why not.

Mike Amesbury: I thank the Minister for his comments. We have some questions and points of clarity. On clause 63, who would the appropriate stakeholders and consultees be? On clause 64, the notion of a cost-benefit analysis raises important issues. Who bears the cost, and how will that benefit be measured? Could clause 67

[Mike Amesbury]

include flood risk, for example? An early amendment that we tabled referred to climate change, as we march towards COP26.

Eddie Hughes: With regard to who to consult, the question would be: what is the circumstance in which we are seeking information? For the sake of argument, one example given in the explanatory notes is increased wind speeds. If buildings suffered as a result of that, we would need to consult structural engineers. Were it a different issue, we would need to consult a different group of people, so it is helpful for it to be an open category, and for the Building Safety Regulator, and probably the Secretary of State, to understand and determine from whom they would need to seek advice.

On the cost-benefit analysis, I suspect that we will come later in our discussions to who bears the costs in various circumstances. Clearly that will depend on the leasehold arrangements that are in place in that particular building. Given that we have seen changing climate conditions, flood risk is certainly one of the things that could be considered in the future, depending on how weather conditions change in the coming years.

I conclude by saying once again that the powers in clause 62 should not be used lightly. They must be used proportionately, and clause 63 provides one of the key checks on that. Combined with clauses 63 and 65 to 67, and with parliamentary scrutiny, clause 64 ensures that using the powers in clause 62 to expand the definition of a higher-risk building is done appropriately and in a transparent way.

Question put and agreed to.

Clause 63 accordingly ordered to stand part of the Bill.

Clauses 64 to 67 ordered to stand part of the Bill.

Clause 68

MEANING OF "OCCUPIED" HIGHER-RISK BUILDING ETC

10 am

Question proposed, That the clause stand part of the Bill.

Eddie Hughes: Clause 68 defines the meaning of "occupied" and a resident of a higher-risk building. They are key definitions that determine the application of the obligations under the new, more stringent regime provided for in part 4. As the Committee will recall, the definition in clause 62 defines the meaning of a higher-risk building as one that is at least 18 metres in height, has at least seven storeys and contains at least two residential units.

Clause 68 gives details of the meaning of an occupied higher-risk building. It states that if a higher-risk building is to be classified as occupied, residents must actually be living in the building. Specifically there must be residents in more than one residential unit in the building. If there is a building that meets the definition of higher risk but that is not occupied for the time being, it will not be subject to most of the obligations under part 4 such as the registration requirement or production of the safety case. I will discuss that later. However, some of the provisions kick in regardless of occupation. A reference to a resident of a higher-risk building is to a resident of a residential unit. The definition of a residential unit will be discussed at clause 123.

Clause 68 creates a power for the Secretary of State to amend the definition of "occupied" and the resident of a higher-risk building. By way of regulations, the Secretary of State has a power to define the meaning of being the resident of a residential unit. This is to ensure that the scope and definitions can be amended to meet future policy relating to building safety regulation.

Mike Amesbury: I have a quick point for the Minister. If one person were resident in a high-risk building of above 18 metres, they would not be covered by the Bill.

Eddie Hughes: That is correct. In those circumstances, that could be an individual's home and we are not in the business of legislating to that extent. The idea of the Bill and proportionality is that it covers properties in multiple occupation.

Ms Rimmer: Does that mean that it would not be worth selling?

The Chair: Order. The Minister has finished so we will leave it at that.

Question put and agreed to.

Clause 68 accordingly ordered to stand part of the Bill.

Clause 69

MEANING OF "ACCOUNTABLE PERSON" ETC

Eddie Hughes: I beg to move Government amendment 41 in clause 69, page 85, line 34, at end insert—

"This subsection is subject to subsection (2C) (special rule for commonhold land)."

The Chair: With this, it will be convenient to debate Government amendments 42 to 51 and clause stand part.

Eddie Hughes: This group of amendments makes provisions on who the accountable person is for higher-risk building when the title to the building is held in commonhold. The commonhold association owns and manages the common parts of the building in accordance with the commonhold community statement framework. Amendment 48 ensures that the Bill is explicit in providing that where the title to the building is held in commonhold, the commonhold association will always be the accountable person for the building. That works to ensure that the building safety risk will be properly managed by providing that an accountable person is both identifiable and, more importantly, responsible when considering that building ownership type.

Amendment 49 aligns the definitions of commonhold land and commonhold associations with the Commonhold and Leasehold Reform Act 2002, thereby maintaining consistency across the interacting pieces of legislation. Amendment 41 makes consequential changes necessitated by amendment 48. Amendments 42 to 46 and amendments 50 and 51 are technical and deal with the definition of an accountable person in relation to higher-risk buildings, where the right to manage has been exercised. Currently, the Commonhold and Leasehold Reform Act 2002 provides that where the right to manage has been exercised by leaseholders, the right to manage company takes on all the management functions for a building under the lease. That includes the repairing

obligations for common parts. By virtue of clause 69(1)(b), the Bill provides that a right to manage company will therefore become an accountable person for the higher-risk building. Amendments 42 and 46 ensure that when that is the case, a person who is an accountable person by virtue of clause 69(1) is now expressly excluded if all the remaining obligations in relation to the common parts are subsequently the obligations of the right to manage company.

The amendments clarify where the responsibility for building safety duties sit when the right to manage has been exercised, thereby avoiding any confusion where it may appear that there is more than one accountable person captured by the definition for the same common parts of the building. I point out to the Committee that where repairing obligations are not provided for under a lease, and do not therefore become functions of the right to manage company, persons will still rightly also be captured as an accountable person under clause 69(1)(a) or (b) for their respective parts of the building. That maintains a whole-building approach to building safety management.

Amendment 50 aligns the definition of a right to manage company with the existing definition in the 2002 Act to maintain consistency across the interacting pieces of legislation. Amendments 43, 44 and 45 make consequential changes necessitated by the changes made by amendment 42. Amendment 51 is consequential on the motion to divide clause 69 into two separate clauses. Subsection (3) will now form its own clause entitled "Part of building for which an accountable person is responsible".

On amendment 47, the Committee will be aware that clause 69(1) defines an accountable person for a higher-risk building as

> "a person who holds a legal estate in possession in any…of the common parts".

However, in some complex leasehold arrangements it may be that the person who has the active repairing obligations for some of the common parts holds a legal estate in the building but does not have the legal estate in possession. Under the current Bill provisions, that would mean that those persons are not currently being captured as accountable persons but they should be, as they have the active repairing obligations for some of the common parts. The amendment addresses that issue by ensuring that where such leasehold arrangements are in effect, the landlord or superior landlord who has the relevant repairing obligations pursuant to a lease for any of the common parts will be accountable persons for those respective parts of the building. In that scenario, the person with the active repairing obligation will therefore be the accountable person instead of the person who holds the legal estate in possession in those common parts under clause 69(1)(a). The amendment gives due consideration to the whole building approach to building safety by ensuring that where a superior landlord or landlord is under a relevant repairing obligation for only some parts of the common parts, both they and the person with the legal estate in possession will be captured as accountable persons for their respective parts of the building.

Turning to the clause itself, the independent review concluded that having a clear and identifiable person with responsibility for managing building safety during occupation and maintenance was clearly necessary. Clause 69 enacts that recommendation, and creates the statutory definition that identifies who the accountable persons for occupied higher-risk buildings under the new building safety regime are. These accountable persons will have legal requirements under the Bill to ensure that fire and structural safety for their parts of the building are being properly managed in accordance with the new building safety regime.

Having clearly identifiable accountable persons is critical to managing buildings safely, enabling residents to feel safe in their homes and enabling the Building Safety Regulator to regulate effectively. The effect of this clause is that accountable persons could therefore be landlords, freeholders, right to manage companies, management companies or commonhold associations that are in charge of repairing the common parts of a building. The clause defines common parts to include the structure, exterior and any other part of the building provided for the common use of the residents.

Clause 69 allows the Secretary of State to make regulations to amend the definitions of accountable persons, to ensure that the new regime is adaptable and fit for purpose for many years to come. To provide further clarity to accountable persons about the areas that fall under their remit for the purposes of fulfilling their duties, the clause allows the use of regulations to define the parts of a building accountable persons are responsible for. The Government recognise that the success of the enhanced building safety regime rests with ensuring that it is clear where responsibility lies, so that building safety obligations can be adequately complied with.

Mike Amesbury: Many of these amendments are technical tidying-up exercises, looking at the legislation coming through the other place at the moment on leasehold, ground rents and commonhold. In principle, these measures support that direction of travel on commonhold, but to get the new regime right, to stop the ping-pong of people passing the buck that we are all familiar with, there is still more work to be done on the accountable person—the principal accountable person. I noted that on, I think, Thursday 14 October, 200 factsheets were published by the Department. I know every Member on this Committee will have read them in great detail over the past few weeks.

The amendment tries to add some clarity, but again it relies on secondary legislation. The Minister mentioned the right to manage and commonhold, the relationship with the building owners and the demarcation of who will be the principal accountable person versus the accountable person. How will the disputes that will undoubtedly arise be resolved?

Eddie Hughes: I thank the hon. Gentleman for his questions. My understanding is that, if there is contention over who is responsible, the principal accountable person will first and foremost be the person responsible for the exterior of the building. That gives us an easily defined headline position, but, as he rightly points out, there is incredible complexity in English law when it comes to property ownership. It is good that the opportunity arises within the Bill to allow flexibility for the Secretary of State to redefine the accountable person, should it transpire that for some reason there is an entity that has escaped the clutches of this clause. Hopefully we have

[Eddie Hughes]

covered everybody now, given the complex amendments we have tabled; but, should the need arise in future, the Secretary of State has that flexibility.

Amendment 41 agreed to.

Amendments made: 42, in clause 69, page 85, line 35, after "person" insert

"('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')".

This amendment and Amendment 46 provide that a person within subsection (1)(a) is not an accountable person if their repairing obligations in relation to the relevant common parts are obligations of a right to manage company.

Amendment 43, in clause 69, page 85, line 35, leave out "a higher-risk" and insert "the".

This amendment is consequential on Amendment 42.

Amendment 44, in clause 69, page 85, line 37, leave out paragraph (a).

This amendment is consequential on Amendment 42.

Amendment 45, in clause 69, page 86, line 1, leave out "person" and insert "estate owner".

This amendment is consequential on Amendment 42.

Amendment 46, in clause 69, page 86, line 4, at end insert ", or

(c) all repairing obligations relating to the relevant common parts which would otherwise be obligations of the estate owner are functions of an RTM company."

This amendment and Amendment 42 provide that a person within subsection (1)(a) is not an accountable person if their repairing obligations in relation to the relevant common parts are obligations of a right to manage company.

Amendment 47, in clause 69, page 86, line 4, at end insert—

"(2A) Subsection (2B) 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.

(2B) For the purposes of this section and section 70—

(a) the legal estate in possession in so much of the relevant common parts as are within subsection (2A)(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 (2A) and this subsection may apply in relation to it)."

This amendment provides that where, for example, a landlord of a person within subsection (1)(a) has covenanted to keep the common parts held by the person in repair, the landlord is the accountable person (instead of the person).

Amendment 48, in clause 69, page 86, line 4, at end insert—

"(2C) 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."

This amendment provides that where title to a higher-risk building is held in commonhold, the commonhold association is the accountable person for the building.

Amendment 49, in clause 69, page 86, line 15, at end insert—

"'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);".

This amendment, which is consequential on Amendment 48, defines "commonhold association" and "commonhold land" for the purposes of this clause.

Amendment 50, in clause 69, page 86, line 21, at end insert—

"'RTM company' has the same meaning as in Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 (right to manage)."

This amendment, which is consequential on Amendment 46, defines "RTM company" for the purposes of this clause.

Amendment 51, in clause 69, page 86, line 23, leave out "subsection (3) or". —*(Eddie Hughes.)*

This amendment is consequential on the motion to divide this clause into two clauses.

10.15 am

Eddie Hughes: I beg to move,

That Clause No. 69 be divided into two clauses, the first (Meaning of "accountable person") consisting of subsections (1) to (2C) and (4) and (5) and the second (Part of building for which an accountable person is responsible) consisting of subsection (3).

The motion, which would divide amended clause 69, moves the power under subsection (3) into a separate clause, creating two distinct clauses. That is so that all the clauses relating to the identity of the accountable person are in one place, and the ability to make regulations to help identify the parts of the building for which the accountable person is responsible can be in the other.

Question put and agreed to.

The Chair: As a result of the Committee's decision to divide clause 69 into two clauses, I now propose, in accordance with the precedent, to ask the Committee to come to a formal decision separately on the two clauses created. For the purpose of putting these questions, I think it will be convenient to the Committee to describe the two clauses as clause 69A and 69B, and to debate them together. When the Bill is reprinted after the conclusion of the Committee stage, these clauses and the remaining clauses of the Bill will be renumbered accordingly.

Question proposed, That clause 69A, as amended, stand part of the Bill.

The Chair: With this it will be convenient to discuss clause 69B stand part.

Eddie Hughes: We have already debated clause 69 in detail at an earlier stage. Therefore, I will briefly touch on the core functions of clause 69A and clause 69B. Clause 69A creates the statutory definition that identifies who are the accountable persons for occupied higher-risk buildings under the new building safety regime. Clause 69B will allow the use of regulations to define the parts of a building that accountable persons are responsible for.

Question put and agreed to.

Clause 69A, as amended, accordingly ordered to stand part of the Bill.

Clause 69B ordered to stand part of the Bill.

Clause 70

MEANING OF "PRINCIPAL ACCOUNTABLE PERSON"

Eddie Hughes: I beg to move Government amendment 52, in clause 70, page 86, line 29, at end insert ", or

(ii) is within section 69(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."

This amendment caters for cases where accountable persons within clause 69(1)(b) have repairing obligations in relation to the structure and exterior of the building.

The Chair: With this it will be convenient to discuss the following:

Government amendment 53.

Clause 70 stand part.

Government amendments 54 and 55.

Clause 71 stand part.

Eddie Hughes: Amendments 52 and 53 amend clause 70. The Committee will know that clause 70(1)(b) sets out that the principal accountable person for a higher-risk building where there are multiple accountable persons is the one

"who holds a legal estate in possession in the relevant parts of the structure and exterior of the building".

That is a more eloquent answer to the question put earlier by the hon. Member for Weaver Vale. However, there is a scenario where an entity holds a legal estate in possession in the relevant parts of the structure and exterior of the building but is not subsequently captured as an accountable person under clause 69. In those circumstances, the provisions as drafted would not capture a principal accountable person for the building. Specifically, this occurs when accountable persons within clause 69(1)(b) have the relevant repairing obligations in relation to the structure and exterior of the building, but do not hold the legal estate in possession to these common parts of the building.

Amendment 52 is technical and caters for this issue by ensuring that the accountable person who has the repairing obligations for the structure and exterior by virtue of clause 69(1)(b) can become the principal accountable person. It also aligns with amendments made to clause 69, which are aimed at ensuring that the accountable person is the person who has an active repairing obligation through their legal estate in possession or, where they do not have a legal estate in possession, has an active repairing obligation pursuant to a lease. Amendment 53 makes a consequential change necessitated by the changes made through amendment 52.

Amendments 54 and 55 amend clause 71, which sets out that an interested party may apply to the tribunal for a determination on who the accountable persons for the building are, who the principal accountable person is, or the parts of the building for which an accountable person is responsible. Under the current provisions, an interested party is either the regulator or a person who holds a legal estate in any part of the building. This does not therefore allow an accountable person who has an active repairing obligation, but does not hold a legal estate, to apply to the first-tier tribunal for a determination.

Amendment 55 addresses the issue by capturing a person who is under a repairing obligation to the common parts of a building to now be classified as an interested party for the purposes of clause 71, enabling them also to make an application for a determination to the first-tier tribunal. This works to effectively align clause 69 with clause 71.

Amendment 55 also limits applications that can be made to the first-tier tribunal from a person with just a legal estate in the building to a person holding a legal estate in the common parts of the building. This ensures that the court's resources can be dedicated to resolving complex issues from those that are, or may be, directly responsible for managing building safety for the building. Amendment 54 makes a consequential change as a result of an amendment made to clause 70.

I will now move on to the clauses themselves, beginning with clause 70. We concur with the independent review's recommendations that a "clear and identifiable dutyholder", with overall responsibility for building safety during occupation and maintenance, is needed for higher-risk buildings. Clause 70 makes certain that all occupied higher-risk buildings will have at least one clearly identifiable accountable person, known as the principal accountable person, who will be responsible for ensuring that fire and structural safety is being properly managed for the whole building.

This clause sets out that, where there is a single accountable person for a building, they will automatically become the principal accountable person. Where there are two or more accountable persons, the one responsible for the repair of the structure and exterior of the building will be the principal accountable person. The principal accountable person will have overall responsibility for meeting specific statutory obligations for the whole building, such as complying with registration and certification requirements for the building. Where there are multiple accountable persons for a building, the principal accountable person will have the same statutory obligations for assessing and managing building safety risks in their own part of the building as each individual accountable person. This will be as well as additional obligations arising from their role as principal accountable person.

As part of the registration process, the principal accountable person will identify themselves to the Building Safety Regulator as being the person with overall responsibility for managing fire and structural safety. If a principal accountable person does not come forward to register the building, the Building Safety Regulator can identify who the principal accountable person is by using the statutory definition, or by applying to the first-tier tribunal for a determination. Having a principal accountable person for each higher-risk building is critical to effectively managing buildings safely, as a whole, and ensuring that residents feel safe in their homes.

Clause 71 allows an interested party to make an application to the tribunal for a determination on who the accountable persons are, who the principal accountable person is, or which parts of the higher-risk building an accountable person is responsible for. We recognise the importance of ensuring that the correct persons with responsibility under the Bill are identified, and that the extent of where their responsibility lies is clear. The clause is to be used in complex cases requiring judicial oversight, as the tribunal will decide and provide clarity to those who may be affected by the Bill.

[Eddie Hughes]

Once an interested party makes an application to the tribunal, the tribunal would make a decision that may bind persons as the ones with obligations pursuant to the extent applicable by the Bill. The clause specifies that an interested party who may apply to the tribunal is either the regulator or a person who holds a legal estate in any part of the building. Buildings must have only one principal accountable person, and in cases where more than one person fits the definition of a principal accountable person clause 71 allows the tribunal to decide, as it considers appropriate, who the principal accountable person for the building is.

Mike Amesbury: I thank the Minister for his thorough explanation, which was a great credit to him. I have a couple of questions. The clauses make sense—again, they are technical, tidying-up exercises. Earlier, I referred to 13,000 buildings. We have principal accountable persons and accountable persons. That is a lot of people who require the skills, qualifications and competence to ensure that this new landscape emerges. Are the Minister and his team convinced that it will be properly resourced, and that we genuinely will change the landscape for existing residents, leaseholders and other people? Also, on clause 71, at what stage should the determination be made at the tribunal? Must all buildings in scope have a clearly identified principal accountable person?

Eddie Hughes: I thank the hon. Gentleman for his questions. The question of capacity is an interesting one, although it may be that various people will hold principal accountable positions, as with building safety managers. Some people might hold the position for multiple buildings. There are big companies that own lots of buildings and will therefore already have managing obligations for multiple buildings. With regard to capacity, we are talking big numbers. According to my notes, the number of buildings in scope is 12,500, but some of them could be covered by multiple people. There are already large practices operating in this area.

As I said, given the existence of the Bill, and subsequent to Grenfell Tower, there has been a huge increase in the number of people who are concerned and active in the building safety sector, so I do not feel that there is any need to be concerned about capacity at this stage. However, the point and purpose of the Building Safety Regulator is to be live to changing circumstances so, should there prove to be challenges once the Bill is implemented, it will be for the regulator to monitor any challenges and report back to the Secretary of State. I am sure that we will talk about that in the House in future.

10.30 am

On the tribunal, we will discuss building registration when we come to other clauses. We are expecting buildings to be registered within six months of the implementation of the Bill. The Building Safety Regulator will be aware of any buildings that have not been registered or of cases in which there is complexity in identifying principal accountable persons or accountable persons. The number referred to the tribunal will, we hope, be limited. It will be imperative to move quickly in that small number of cases.

Amendment 52 agreed to.

Amendment made: 53, page 86, line 38, leave out from "person" to end of line 39 and insert "is within subsection (1)(b)." .—*(Eddie Hughes.)*

This amendment is consequential on amendment 52.

Clause 70, as amended, ordered to stand part of the Bill.

Clause 71

DETERMINATIONS BY THE TRIBUNAL

Amendments made: 54, page 87, line 9, leave out from "person" to "the principal" in line 11 and insert "within section 70(1)(b)".

This amendment is consequential on amendment 52.

55, page 87, line 15, leave out "building" and insert

"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 69."—*(Eddie Hughes.)*

This amendment changes the persons who may make applications under this clause, limiting paragraph (b) to persons holding legal estates in the common parts, and including (in new paragraph (c)) persons under repairing obligations in relation to the common parts.

Clause 71, as amended, ordered to stand part of the Bill.

Clause 72

OCCUPATION: REGISTRATION REQUIREMENT

Question proposed, That the clause stand part of the Bill.

The Chair: With this, it will be convenient to discuss clause 73 stand part.

Eddie Hughes: The Bill makes the principal accountable person responsible for registering a building and applying for a building assessment certificate. Building on those responsibilities, clause 72 requires that all occupied higher-risk buildings are registered with the Building Safety Regulator. The principal accountable person will commit an offence if they fail to register.

For new buildings, the principal accountable person will be required to register their building before it becomes occupied. For existing occupied buildings, there will be a transition period in which the principal accountable person must register their building. During the registration, the principal accountable person will provide important information about the building and its duty holders to the Building Safety Regulator. It will include core details of the building, including address, height, date of completion and the name and contact details of all accountable persons and any building safety manager.

The Building Safety Regulator will use the information obtained through the registration of the effective regulation of higher-risk buildings. For example, registration information will support the regulator in prioritising building assessment certificate applications. The regulator will also use registration information to publish the national register of higher-risk buildings.

Clause 72 sets out the maximum penalty for the criminal offence of breaching the registration requirement. If tried by magistrates, the offence will carry a maximum penalty of an unlimited fine and/or 12 months' imprisonment. If it is tried in the Crown court, the maximum penalty will be an unlimited fine and/or two years in prison. These measures are tough but fair and are an important addition to engender compliance with the regime.

Clause 73 makes provision for the registration of higher-risk buildings and allows the Secretary of State to make regulations setting out procedural and administrative details for registration. The information obtained through the registration will ensure that the Building Safety Regulator has a record of all occupied higher-risk buildings in England and those responsible for managing them. Information collected through registration will be used to produce the national register of higher-risk buildings, which will be published. That means that higher-risk buildings can be easily identified and give the regulator excellent oversight and data on buildings in scope.

Clause 73 allows the Secretary of State to make regulations about registration applications. Information required in the registration process will be set out in regulations and will comprise core details of the building, including address, height and date of completion, and the name and contact details of the accountable persons, principal accountable persons, and any building safety manager. Regulations will also set out the procedures for submitting and withdrawing a registration application.

Mike Amesbury: The Minister referred to national registration. For residents and leaseholders who want to access the information, what form will it take? Will it be digital? The Joule Group International Ltd made a lengthy written submission on that topic. I would be interested in hearing the Minister comments.

Eddie Hughes: One of the things that needs to underpin the way the Bill operates is the access to digital information. We need to ensure that residents and leaseholders have no difficulty in accessing information about their building, and that the Building Safety Regulator has access to that information.

With regard to the capacity that we have discussed, once the register is published, the sector will understand the extent of the buildings in scope, where they are geographically and so on, and it will be able to respond in kind by developing appropriate resource in those areas. The information will be available digitally, which is one of the things that underpins the functioning of the Bill.

Siobhan Baillie (Stroud) (Con): It is a pleasure to serve under your chairmanship, Mr Dowd. I was just listening carefully to the Minister. It is helpful to understand the digital nature and transparency of the measures. If there were a change to the details of a higher-risk building or an accountable person, would the register published by the Building Safety Regulator be updated, and how would that happen?

Eddie Hughes: When the registration details of a higher-risk building or an accountable person change, there will be a need to inform the Building Safety Regulator, which will need to consider whether further changes are needed. The point is that the Bill needs to be flexible to accommodate the circumstances that the hon. Lady has mentioned. We may need to consider that further.

Ian Byrne (Liverpool, West Derby) (Lab): It is a pleasure to serve under your chairmanship, Mr Dowd, especially after some recent results.

Many people do not have digital access, despite the preoccupation with it. They might not be able to afford it or might not have the materials to get online. How will we ensure that residents who do not have the ability to access information digitally can see the overall picture of the register and any changes made to it? We need to drill down into that so that the Bill ensures that those records are accessible not only digitally and that everybody can access them.

Eddie Hughes: I completely agree with the hon. Gentleman. We do not have a preoccupation with digital, but it does allow lots of people easy access to the information. However, I think he is referring to the access to information that individual residents and leaseholders will have, which we will discuss later in Committee. It is incredibly important to me and to the Government that that information is presented to residents in an accessible format. That covers the necessity not just to publish the information in hard copy but to ensure that it is presented in an accessible format for people with any disability or impairment. I thank him for making that important point.

Question put and agreed to.

Clause 72 accordingly ordered to stand part of the Bill.

Clause 73 ordered to stand part of the Bill.

Clause 74

OCCUPIED BUILDING: DUTY TO APPLY FOR BUILDING ASSESSMENT CERTIFICATE

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss clauses 75 to 77 stand part.

Eddie Hughes: As the previous clause makes the principal accountable person for a building responsible for registering their building with the Building Safety Regulator, clause 74 makes them responsible for periodically applying for a building assessment certificate. The building assessment certificate process will allow the Building Safety Regulator to assess whether, at the time of the assessment, the accountable person for a higher-risk building is meeting their obligation to manage building safety risk and keep residents safe.

The clause enables the Building Safety Regulator to direct the principal accountable person to apply for the building assessment certificate. If that happens, they must then apply for the building assessment certificate within 28 days of the notice's being given.

The principal accountable person commits an offence if they fail to apply for the building assessment certification when directed to do so by the regulator, without a reasonable excuse. For new buildings, the principal

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accountable person will be directed to apply for the building assessment certificate within six months of occupation of the building.

There are currently around 12,500 occupied high-rise residential buildings in England. It will take around five years for the Building Safety Regulator to assess all these existing buildings for the first time. The regulator will take a risk-based approach to prioritising existing buildings for assessment and will assess the highest-priority buildings first. It will put existing occupied buildings into five annual groups, or tranches. These tranches are based on height, with the tallest buildings assessed first. All buildings will be reassessed at least every five years.

Clause 74 sets out the requirement for a principal accountable person to apply for a building assessment certificate when directed to do so by the Building Safety Regulator; as part of that process, clause 75 clause sets out the administrative and procedural requirements to obtain a certificate. To apply for the building assessment certificate, the principal accountable person will need to submit a suite of prescribed information and documentation to the regulator, including, among other things, a copy of the safety case report, the resident engagement strategy and information about the principal accountable person's compliance in appointing a building safety manager.

The regulator will use the evidence provided to assess whether the accountable persons are complying with their obligations and managing the building's safety risks effectively. To ensure an adaptable regime, clause 75 also allows the Secretary of State to make regulations setting out further details of the process, including the form and content of an application, the way in which it is made, and anything that may accompany it.

The Bill creates a requirement for the principal accountable person for a higher-risk building to apply for a building assessment certificate when directed to do so by the Building Safety Regulator. The building assessment certificate will demonstrate that, at the time of assessment, the accountable persons were complying with their obligations to effectively manage the building's safety risk and keep residents safe.

Following from that, clause 76 sets out how the Building Safety Regulator will make decisions about applications for the building assessment certificate. On receipt of the application, the regulator will consider the application and decide whether the relevant duties are being complied with. The regulator can also inspect the building before coming to a final decision.

If the regulator is satisfied that all relevant duties are being complied with, then it will issue the building assessment certificate. Before a certificate is issued, however, there are a number of relevant duties against which the regulator will assess compliance. These include appointing a building safety manager, assessing and managing building safety risks, and producing a safety case report. Clause 76 also allows 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 can be put right quite easily.

10.45 am

If the principal accountable person complies with the notice and the contravention is fixed within the specified period, the regulator will issue the building assessment certificate. Through the clause, the Secretary of State will also have the ability to make regulations setting out both procedural and administrative details of the building assessment certificate process. This includes the information to be included in the building assessment certificate.

It is important that the residents of higher-risk buildings have access to information about the management of their building. To that end, the clause ensures that residents can access information about the most recent assessment of their building by the Building Safety Regulator. It requires the principal accountable person to display the most recent building assessment certificate in a prominent place in the building where it can be viewed by residents. Residents need to have access to information about those responsible for managing their building and keeping them safe. That is why the clause creates a requirement for the principal accountable person to display a notice containing the details of the accountable person and any building safety manager. This will ensure that the residents know who is responsible for managing the building safety risks and how to contact them to raise concerns. Residents also need to know if there are issues or concerns regarding the management of the building. That is why the clause creates a requirement for the principal accountable person to display in the building any relevant compliance notices issued by the regulator.

Mike Amesbury: The Minister refers to a resident engagement strategy. What would a good resident engagement strategy look like and where would people find information on that? What information will be contained in the building safety certificate? Where are the reference points for that?

Eddie Hughes: I am afraid that the hon. Gentleman will have to wait for another day to hear about the resident engagement strategy. That is an exciting episode that we will discuss in detail later in the Bill. I look forward to engagements on that.

I explained some of the information that will be displayed on the certificate but I think the pre-eminent role of that is to ensure that residents know who is responsible for building safety within their building. The certificate will identify the principal accountable persons so that residents know where the line of responsibility lies. That is why it is important that such information is displayed prominently in the building.

Ms Rimmer: It is a pleasure, Mr Dowd, to serve under your chairmanship.

The certificate is a piece of paper that is on display but what will ensure that there is compliance with the policies, procedures and arrangements that lie behind the provision of the certificate?

Eddie Hughes: That question goes to the heart of how the Bill will change responsibility in the future. It will be important that the information is displayed, and if it is not—and we will talk about resident engagement later in the Bill, but I will touch on it briefly now—residents will now know who is responsible. As part of that process, there will have to be a complaints procedure through which they can escalate their complaints. A well-informed bunch of residents in a property will understand what provision should be made for them and how they can be helped to be apprised of building

safety. If that is not done, the opportunity to make a complaint and escalate appropriately and perhaps ultimately to the Building Safety Regulator, if necessary, will be one of the things that we will talk about later. The hon. Lady is right. It is imperative that residents have access to that information and, when it is not provided, they have a route to escalate a complaint about its absence.

Ms Rimmer: The Committee has talked about the culture in the building industry and how there has been a lack of trust. At its core the Bill is about changing that culture and bringing about safety. The issue is in training people, ensuring that they keep that training up, quantity and compliance. We must ensure that the procedures on which people are trained are adhered to consistently. That must be part of the arrangements. We should be really concerned about that—I am not saying that we are not—and ensure that that happens. The culture of the people working in the industry is vital.

Eddie Hughes: One of the great things about the Committee is the agreement we have had at several points on matters of great concern. It is important that this is not a tick-box exercise. It is not, "I submit information to you. You tick a few boxes and give me a certificate. I put it on the wall, and everybody feels that we live in a safer place." Since the Bill has been talked about, we are already seeing that culture change.

To cross-reference that with regard to the social housing White Paper—my other responsibility—we need to put tenants at the heart of everything that we do. This is not an academic or legislative exercise for a bunch of people in the room to figure out the best way to do things and trust that that will be done in the future. The hon. Lady is completely right that we need to change the culture, bringing tenants and residents with us, and I think that the Bill will serve that purpose.

Question put and agreed to.

Clause 74 accordingly ordered to stand part of the Bill.

Clauses 75 to 77 ordered to stand part of the Bill.

Clause 78

Duty to appoint building safety manager

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss clauses 79 to 82 stand part.

Eddie Hughes: The independent review recommend the creation of the role of the building safety manager with the right skills, knowledge and experience to oversee the day-to-day management of higher-risk buildings. The Government agree, and the clause both establishes the role of the building safety manager and makes it a duty of the principal accountable person to appoint one for occupied buildings.

It is important that competent persons are engaged to support the co-ordination and management of safety, providing a systemic approach and delivering safe outcomes for residents. The principal accountable person must be satisfied with the competence of their appointed building safety manager.

While the building safety manager will also hold responsibility for certain tasks and provide expertise and assistance, accountability for meeting the duties set out in Bill cannot be transferred by accountable persons. Such an approach is commonplace in the standard arrangement in many high-hazard sectors.

The tasks to be undertaken by the building safety manager will be set out in contract with the principal accountable person. The role may be fulfilled by an individual with the necessary skills, knowledge, experience and behaviours or by an organisation such as a managing agent. Where an organisation is appointed, that does not in any way dilute the need for competency requirements to be met. Any organisation appointed as building safety manager must have the capability to deliver and must have a nominated individual in place with the skills, knowledge, experience and behaviours needed to oversee that that is achieved. We believe that requiring a named individual to be nominated from within the organisation appointed as building safety manager is the right way to provide assurance to residents. If at any time the appointment of a building safety manager comes to an end, a new one must be appointed as soon as reasonably practical. Given the importance of the role in supporting the delivery of safe buildings, failure to appoint a building safety manager without reasonable excuse will be an offence.

This is a new role and we have been working hard to ensure a smooth transition. Through the competence steering group, we are sponsoring the development of a publicly available specification for building safety managers, which will be available ahead of the requirement coming into force. Latter clauses deal with an exception to the duty to appoint a building safety manager, which allows principal accountable persons to deliver the role themselves where they are suitably able.

Clause 79 relates to the appointment of a building safety manager for a building with two or more accountable persons. The Government strongly support the independent review's proposals for a whole building approach to be delivered and to do so there should not be multiple building safety managers in place. A single building safety manager should be appointed by the principal accountable person, playing a key role in ensuring a whole building approach to delivering safe outcomes for residents is delivered.

Every accountable person must ensure that they meet the relevant duties placed on them by the Bill, including the duty to co-operate and co-ordinate with one another, ensuring this whole building approach is delivered. Before the appointment can be finalised, accountable persons should agree on the scope of the building safety manager's role and how each will contribute to payments made to the building safety manager. A consultation between the parties should arrive at this, and ratify the agreement. The principal accountable person must provide a document for other accountable persons setting out the terms of an agreement, including establishing the arrangements for sharing expenditure. By reaching such an agreement, all accountable persons will understand and confirm their support for the scope of the building safety manager's functions across the whole building and how they must act to enable delivery.

Where no agreement can be reached, we will ensure, through regulations, that appropriate mechanisms are in place to arrive at suitable conclusions. We are confident

[Eddie Hughes]

that through this approach we are protecting property rights, ensuring each accountable person meets their obligations and delivering safe outcomes for residents.

Clause 80 relates to the terms of appointment of building safety managers and confirms that the role is held by virtue of the contractual arrangements agreed with the principal accountable person. Either party may confirm in writing to the other their intention to end the agreement. When that occurs, as set out under clause 78, the appointment of a building safety manager must be made as soon as possible to replace the outgoing building safety manager.

Where a building is put into special measures, the effect will be that the building safety manager's appointment will cease. As a special measures order is a last resort for failing buildings, special measures managers must be afforded the scope to act in the best interest of residents. In such circumstances, it would not be right for the building safety manager to remain in place.

The independent review highlighted the need to improve the management of safety in occupied higher-risk buildings and recommended the new role of building safety manager. The review rightly noted that many building owners have the capability to, and already do, deliver safe outcomes for residents themselves. As mentioned, we are making provisions to allow principal accountable persons to confirm their capability to deliver safe outcomes without appointing a building safety manager to assist them. This exception is designed with parameters and, importantly, the same competency standards must be met by the principal accountable person.

A principal accountable person must be satisfied in their capabilities to fulfil the duties placed on them and be able to demonstrate that their approach will deliver safe outcomes for residents. It is our expectation that this exception will be a benefit to organisations such as housing associations and local authorities, many of which already successfully manage their own building stock through in-house teams. Where the principal accountable person is an organisation, and it relies on that exception, it must have a named individual identified who has the skills, knowledge and experience to oversee day-to-day management of building safety risks.

11 am

The requirements of the new regime are clear. There must be a joined-up approach that looks at building safety risk management and the safety critical elements holistically. To support that, the nominated individual should hold a position of authority within the organisation of the principal accountable person, managing the interactions and the interdependencies of safety critical areas, enabling the effective management of building safety risks. Although we do not expect that they will carry out every task directly, they must have oversight to ensure that an holistic and systemic approach is in place. Residents expect that, and we will ensure that it is delivered. Failure to meet the obligations to nominate a competent individual as set out in the clause will be an offence. If at any time circumstances change and the criteria for meeting the exception no longer apply, a building safety manager must be appointed and the building safety regulator updated.

Clause 82 relates to the exception to the principal accountable person's duty to appoint a building safety manager in buildings with more than one accountable person. If the principal accountable person has the capability to deliver the building safety manager function, and reaches an agreement with their fellow accountable persons, they too can be exempt from the duty to appoint a building safety manager. Before this can be confirmed, and the regulator notified, the principal accountable person must consult their fellow accountable persons. The consultation and subsequent agreement should align with the process, as would happen if an external building safety manager was appointed by the principal accountable person. Where no agreement can be reached, the process for arriving at a resolution will follow the same course as will be in place for building safety manager appointments in buildings with more than one accountable person. Regulations will be introduced to support those processes, including providing details of the consultation, the written agreement between accountable persons and dispute resolution.

Ms Rimmer: Is the certificate transferrable within an organisation to individuals? Would the Health and Safety Executive have some responsibility to ensure that if a new manager came along in the future, or a new accountable person, they would be up to the skills required to qualify for the original certificate?

Eddie Hughes: That is an interesting point. As I said, we need to ensure that the building safety regulator is kept informed and they will be able to determine that the new building safety manager appointed meets the criteria set out in the Bill. Effectively, if someone operates as a building safety manager and complies with the criteria set out in the Bill, a change in personnel should not matter because the competence level will be maintained and assured.

Question put and agreed to.

Clause 78 accordingly ordered to stand part of the Bill.

Clauses 79 to 82 ordered to stand part of the Bill.

Clause 83

ASSESSMENT OF BUILDING SAFETY RISKS

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss clause 84 stand part.

Eddie Hughes: Clause 83 relates to the undertaking of comprehensive and regular assessments of building safety risks in occupied higher-risk building.

The independent review identified that, too often, building safety has not been proactively maintained over a building's life cycle, and that fire risk assessments were frequently inadequate and in some cases not carried out at all. We are taking steps to ensure that this lax culture changes and are making it a clear duty on accountable persons to ensure that assessments of building safety risks are carried out. Risk assessments must consider hazards that may originate from outside of the part of the building under the direct control of accountable persons, including in mixed-use buildings where commercial activities may be carried out.

Where there is more than one accountable person for a building, each is duty bound to co-ordinate and co-operate with others. At a minimum, risk assessments should be shared to ensure a whole-building approach is delivered. We are also clear that risk assessments must enable accountable persons to comply with the ongoing duty to take all reasonable steps to manage building safety risks and risk assessments must remain up to date.

The clause requires further risk assessments to be carried out not at specified intervals but based on the accountable person's knowledge and experience of the building. We recognise that there is not a one-size-fits-all solution and the challenge for the industry is to take greater ownership and responsibility for ensuring safety, rather than relying on being told what to do and when. The regulator will, however, have the power to require that a risk assessment be undertaken where it considers it necessary.

Established best practice risk assessment principles, including the use of management systems that deliver evaluation and monitoring, will continue to play an important role. Those building owners who have been acting responsibly will not find they are presented with a significant additional burden, but we must ensure that the right legal framework is in place to make sure that residents of higher-risk buildings are and can feel safe in their homes.

The Government are committing to providing the right framework to deliver on the challenges and recommendations set out by the independent review. The clause places a clear duty on accountable persons to take all reasonable steps to deliver ongoing management of fire and structural safety while a building is occupied, ensuring that residents are safe and feel safe in their homes.

There are two clear purposes for the management of building safety risks: to prevent an incident from happening and to limit the consequences should one arise. The new safety case approach is based on delivering those tangible outcomes, not on blindly following guidance, which was a criticism of the previous system levelled by the independent review. The steps required by the clause must be taken as a direct response to the results of risk assessments carried out under the previous clause. Accountable persons must make an informed judgment on the steps they take and safety arrangements that they need to have in place to deliver safety for residents.

The new regime promotes a proportionate approach and requires people to think for themselves. It is not about requiring all buildings to be brought up to existing standards, which would be disproportionate and, in many cases, impractical. Accountable persons must deliver and maintain a combination of preventive, control and mitigation measures to guarantee that effective and efficient layers of protection are in place. Regulations will be made to set the principles accountable persons must follow when managing building safety risks. These will establish a best practice approach, helping accountable persons make informed decisions.

The expectation on duty holders in an outcome-focused regime is that they adopt a systemic and proactive approach to risk management. The clause requires that approach to be delivered. The review's recommendation set a clear expectation that duty holders adopt and can describe the building safety management systems they have in place to deliver that approach. Accountable persons must have systems and policies in place that ensure that their safety arrangements are maintained and remain effective. Such arrangements help ensure that potential safety risks are proactively identified and managed on a continuous basis, improving performance and delivering better safety outcomes. The Health and Safety Executive has vast experience of delivering effective regulatory oversight of industry that requires similar approaches to the management of risks and delivery of safety.

We, and the shadow regulator, recognise the need to work with industry as we move towards the new framework, and have been working closely with industry, including the early adopters group and the joint regulators group, to support that. The shadow regulator recently published a paper setting out the key principles and requirements of a safety case regime. That will help preparations for the new regime and support the development of future guidance. Many responsible building owners already operate in that manner, and the new framework will further support them to deliver safety for residents.

Mike Amesbury: Of course, the new regime is resource intensive. We have principal accountable persons, accountable persons, building safety managers and 12,500 to 13,000 buildings. There will be new builds each year; I am not sure what the projections are. It is about having that reassurance that the new regime can be effectively implemented, and that people will have the competency and qualifications. Who will pay for this landscape? It seems potentially very costly. What salary level would a building safety manager, a principal accountable person or an accountable person have?

Eddie Hughes: We return to the question of capacity. I touched on the idea that organisations such as housing associations or councils already have their buildings under a management structure and a safety structure, and already have appropriate people appointed to those roles. They will have a benchmark with regard to the legislation that sets out the requirements of a building safety manager against which to measure that they have the appropriate skills and competences in place. The fact that within those organisations they will need to identify a named person who has those competences will focus minds, albeit that the person with those responsibilities might not need to discharge all the duties; they can delegate them to others.

The hon. Gentleman is right that this is a big endeavour, but it already exists in many organisations. On the appropriate salary levels, I think it is beyond the scope of the Bill to identify the remuneration for people employed in this, but as I say there are already people doing this role and I am sure that those who are already managing their buildings effectively and safely will not find this a much more onerous obligation.

Shaun Bailey (West Bromwich West) (Con): It is a pleasure to serve under your chairmanship, Mr Dowd, and to see a fellow Black Country MP on the Treasury Bench. I agree wholeheartedly with what the Minister said, but we need to ensure that we do not allow anyone to test the boundaries, particularly when it comes to such things as regular intervals on assessment. He encapsulated a lot of what I was going to say in his

[Shaun Bailey]

contribution. I know that he agrees that we have to have a culture that ensures that those who are regulated by the legislation and by regulations do not see the leeway that we have rightly given them as an opportunity to test the boundaries.

Eddie Hughes: It is an important point. We need to strike a balance between being prescriptive, and setting very specific regulatory periods within which tasks have to be performed, and allowing some latitude for people to continue to manage their buildings in an appropriate way. If we give prescription for one thing it certainly will not apply across all 12,500 buildings, or however many more might be created in future. I return to the point about the Building Safety Regulator being live to developments within the sector and ensuring that it can respond accordingly.

Mike Amesbury: We have both been involved in the social housing sector. The Minister rightly referred to the exemptions. The current landscape and resourcing are there for some in the sector—for some who will be within the scope of the Bill—but it will be different for others in the private sector and, indeed, for some in the third sector. He referred to the regulator and associated committees and to the industry looking at competences and qualifications. Surely, they will look at salary levels. That will not be a role for Ministers or members of the Opposition, but it is important that it is resourced and attracts the right calibre of people.

11.15 am

Eddie Hughes: I am grateful for the opportunity of further deliberation on this point. The Bill will stipulate the level of competence, and remuneration will vary across the country. I understand the hon. Gentleman saying that this process could be expensive, but fortunately it already exists. We need to focus on the competence rather than on the money, and that will lead to improved safety.

Question put and agreed to.

Clause 83 ordered to stand part of the Bill.

Clause 84 ordered to stand part of the Bill.

Clause 85

Safety case report

Question proposed, That the clause stand part of the Bill.

The Chair: With this, it will be convenient to consider clause 86 stand part.

Eddie Hughes: The independent review recommended the introduction of a safety case regime for high-rise residential buildings to drive culture change and improve the understanding and management of fire and structural safety risks, delivering safer buildings for residents. We are delivering on this recommendation. The introduction of this regime will change the way in which building owners demonstrate how they are managing building safety risks.

Safety case regimes have been successful in improving safety standards and reducing incidents in a number of sectors. Under this approach, accountable persons will not be able to rest on the assumption that merely following prescribed standards will result in safe outcomes. They must produce and maintain documented assurance to demonstrate that they are meeting the duties placed on them.

Safety case reports, which will be assessed by the Building Safety Regulator, are a tool that help to offer this assurance. The report must focus on the unique risks and arrangements in place at each higher-risk building and should justify why the safety arrangements that accountable persons are taking are appropriate and sufficient for managing the risks present. We will set out in secondary legislation the form and minimum content required for a safety case report. This will provide clarity on the areas that should be covered.

The HSE, as the shadow regulator, is leading a work programme with industry that will deliver simple guidance to help those with duties under the new regime comply with these new requirements.

The safety case regime is a dynamic and continuous process. A safety case report must remain relevant and be revised to reflect the risks present and how the building is being managed if and when circumstances change. Safety case reports will be assessed by the Building Safety Regulator, including as part of the building assessment certification process. On assessment, the regulator may use its powers of direction to require that further safety measures be implemented if they consider that accountable persons do not have sufficient arrangements already in place.

The process of developing the safety case report will improve safety by ensuring a systemic review and assessment of hazards and their associated risks and the control measures either required or being employed to eliminate or reduce them. The Health and Safety Executive has vast experience and expertise in delivering regulatory oversight for safety case regimes and working collaboratively with stakeholders. We will ensure the right environment is in place to deliver holistic management of building safety risks, so that residents are, and feel, safe in their homes.

The independent review recommended that the duty holder for occupied higher-risk buildings be required to present their safety case to the regulator at regular intervals, to demonstrate that building safety risks are being managed. Clause 86 provides the framework by which this process will be delivered. On completion of a safety case report, and at any time when the report is revised thereafter, the principal accountable person must notify the regulator. As noted, the regulator will assess the safety case report as part of the building assessment certification process, but it may also undertake a further assessment if that is deemed necessary. The report must be submitted if such a request is made. The knowledge that there has been a review by the regulator of the safety arrangements in place in their building will provide reassurance to residents that their buildings are safe to occupy. These arrangements will ensure that the regulator is able to maintain oversight and deliver its functions effectively.

Ms Rimmer: The Bill is already setting criteria for the building safety case report, inasmuch as it refers to 18 metres or seven storeys. Beneath that, a building

does not comply, so how or where do we get the building safety manager's freedom to do a personal risk assessment of a building that is below seven storeys or 18 metres? Can the Minister quantify or qualify how they are going to be able to do their job, or is this one of the "developments" that we are looking for to change the criteria, to bring buildings below that measurement in?

Eddie Hughes: I think there is a terrible possibility that I may not have completely understood the case the hon. Lady was making. The point about the assessment is that it will be a live assessment of the risks in a particular building and then the mitigating factors that will be introduced in order to minimise those risks. With regard to the prescription of building height set out in previous clauses, that simply determines which buildings are in scope. If we assume that a building is in scope, that the legislation applies and that the principal accountable person needs to submit their building case to the regulator in order for it to be assessed, that will be bespoke and determined by individual building requirements.

Mike Amesbury: On the safety case reports, a lot of the detail will, again, be elaborated on in secondary legislation. Sometimes this is rather difficult—we are operating blind—in terms of scrutiny and challenge. Something that we are all familiar with, in regard to the history and journey of the Bill, is the practice in the construction sector of setting up special delivery vehicles and then folding them. How will the information be retrieved, in terms of the safety case report, if those organisations no longer exist?

Eddie Hughes: I have two points. With regard to the idea that some of this information will be developed as secondary legislation and the idea of scrutiny and challenge, we will use the affirmative procedure, so I strongly suspect that the hon. Gentleman and I might be standing across from each other in a room like this, deliberating on the content of those statutory instruments, in the future.

With regard to the structure of companies that are set up, if the hon. Gentleman is referring particularly to new buildings, the idea of the golden thread that runs through this process means that we will be capturing more information, more or less from conception of the building through to its construction and occupation. It means that we will have better access to information, and safety will have been built in early on and a more rigorous process adopted in order to ensure that safety, given the fact that named people will apply throughout the whole process, so I think assurance will be built in once the Bill is introduced.

11.25 am

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Two o'clock.