PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT BUILDING SAFETY (LEASEHOLDER PROTECTIONS) (INFORMATION ETC.) (ENGLAND) REGULATIONS 2022

Monday 18 July 2022

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Friday 22 July 2022

The Committee consisted of the following Members:

Chair: Mrs Sheryll Murray

Barker, Paula *(Liverpool, Wavertree)* (Lab)
† Beresford, Sir Paul *(Mole Valley)* (Con)
Berry, Jake *(Rossendale and Darwen)* (Con)
† Bradley, Ben *(Mansfield)* (Con)
† Clarkson, Chris *(Heywood and Middleton)* (Con)
† Cruddas, Jon *(Dagenham and Rainham)* (Lab)
† Fletcher, Colleen *(Coventry North East)* (Lab)
† Gibson, Peter *(Darlington)* (Con)
† Green, Kate *(Stretford and Urmston)* (Lab)
† Johnson, Gareth *(Dartford)* (Con)
Johnson, Kim *(Liverpool, Riverside)* (Lab)
† Jones, Mr Marcus *(Minister of State, Department for Levelling Up, Housing and Communities)*
† Lewer, Andrew *(Northampton South)* (Con)
† Mackrory, Cherilyn *(Truro and Falmouth)* (Con)
† Nichols, Charlotte *(Warrington North)* (Lab)
† Pennycook, Matthew *(Greenwich and Woolwich)* (Lab)
† Simmonds, David *(Ruislip, Northwood and Pinner)* (Con)

Seb Newman, Anna Kennedy-O'Brien, *Committee Clerks*

† attended the Committee

First Delegated Legislation Committee

Monday 18 July 2022

[Mrs Sheryll Murray *in the Chair*]

Draft Building Safety (Leaseholder Protections) (Information etc.) (England) Regulations 2022

4.30 pm

The Chair: Before we begin, I would like to say that, in view of the heat, hon. Members may wish to remove their jackets.

The Minister of State, Department for Levelling Up, Housing and Communities (Mr Marcus Jones): I beg to move,

That the Committee has considered the draft Building Safety (Leaseholder Protections) (Information etc.) (England) Regulations 2022.

It is, as ever, a pleasure to serve under your chairship, Mrs Murray. Laid before Parliament on 7 June, the regulations are part of the implementation of the leaseholder protection provisions in the Building Safety Act 2022, using powers in part 5 of and schedule 8 to the Act. I will start, if I may, by providing some context and background to these important regulations. As hon. Members will know, before the Government introduced the leaseholder protections via the Building Safety Act, many leaseholders found themselves liable for unlimited costs for remedying historical safety defects in their buildings—costs that they could not afford for problems that were not their fault. But since the provisions came into force at the end of last month, most leaseholders in England are no longer liable to meet those costs.

To be specific, leaseholders in buildings that are 11 metres or more than five storeys high, where the building owner or landlord is the developer or is connected to the developer, are now fully protected from paying for historical safety remediation. However, where that is not the case, qualifying leaseholders will still be protected from all cladding remediation costs and any costs for non-cladding remediation or interim measures, including waking watches; those costs will be firmly capped. In some cases, qualifying leaseholders will also be protected from all historical remediation costs and those protections will pass on to subsequent buyers.

Without the provision made by these regulations, leaseholders would not be able to demonstrate that their lease qualified for the protections; nor would building owners be able to apportion liability for remediation costs between themselves and other landlords. The regulations set out the essential detail needed to implement the Building Safety Act's provisions and make sure that leaseholders are protected under law. They do not do anything to weaken the leaseholder protections that Parliament agreed in April.

These regulations can be considered in three parts. First, the regulations set out the information that leaseholders must provide to benefit from the protections: their qualifying lease status, their property's last sale price and their shared ownership status. In line with schedule 8 to the 2022 Act, the regulations provide a form of certificate, which the leaseholder must complete—once per flat. The certificate and evidence requirements are intended to be as simple as possible for leaseholders, while also being robust enough to prevent fraud and assure landlords and lenders of the lease's qualifying status.

There are two trigger points at which the landlord must notify the leaseholder of the need to complete the certificate: when a defect is found, or the leasehold property is being sold. But leaseholders can submit a completed certificate voluntarily as soon as they have collected the information required. These provisions enable leaseholders to demonstrate that they qualify for protections under the Act and therefore to understand what their maximum cap should be. We will be making available, on the gov.uk website, both guidance and an easy-to-use online tool to help leaseholders and landlords to understand how the system works.

Secondly, the regulations make provision to enable the landlord to identify who is liable to pay for remediation of historical safety defects and how much they will be liable for, and to recover those amounts. The regulations set out formulas that the landlord must use to apportion liability where more than one landlord is connected to the developer, or where full remediation costs are not recoverable from leaseholders. The effect is that in such cases the landlord may recover some costs from other landlords, enabling them to spread the cost of remediating historical safety defects fairly and equitably between those with an interest in the building.

Finally, the regulations set out further detail on the first tier tribunal process in respect of remediation orders. As the Committee will know, the tribunal settles leaseholder disputes in the private rented sector. A remediation order will be an order of the tribunal that requires a landlord to remedy particular defects in a building by a specified time. The regulations make clear the information that a person needs to provide as part of the application to the first tier tribunal for a remediation order. Applicants—who can be anyone connected with the building—along with enforcement bodies, such as the new Building Safety Regulator or a fire and rescue authority, will need to state under which provision the application is made, as well as the building, its landlord and the relevant defect. The first tier tribunal will then be able to determine whether to make an order to require the landlord to remediate the building.

The regulations are a key step towards delivering the leaseholder protections set out in the Building Safety Act. They serve a very specific purpose in providing the detail needed to give full effect to the leaseholder protection provisions in that Act. That in turn will enable buildings to be remediated without requiring leaseholders to pay large amounts of money, so that they benefit fully from the protections that Parliament agreed and that came into force at the end of last month. I hope that hon. Members will join me in supporting the draft regulations, which I commend to the Committee.

4.37 pm

Kate Green (Stretford and Urmston) (Lab): I am grateful to the Minister for his introduction of the regulations. I hope that the Committee will allow me to

ask a few questions on behalf of constituents of mine who are directly affected by the provisions in the Building Safety Act. Although I welcome those provisions—they represent a big step forward in protecting my constituents—I have real concerns about the detail of their implementation. I hope that the Minister will be able to reassure my constituents.

First, I have spoken on a number of occasions about landlords who are linked to the original developer. A network of companies can exist with common directors and shareholders, and such companies can move in and out of liquidation, passing freeholds among themselves in a sort of merry-go-round of ownership. There is no doubt in my mind of the connection between those landlords—some of which have, of course, gone into liquidation and no longer exist—and the original developer, so it would be useful if the Minister explained what he means by "linked". If a link between landlords and the original developer is clearly there but cannot be shown, how might the costs be apportioned between them?

Secondly, in the case of landlords that have gone into liquidation and disappeared, the directors and shareholders of which are still known because they have moved into other companies that are now the landlords, how effective will it be to apportion the costs among anyone who has ever had a hand in owning or developing substandard buildings?

In cases in which the landlord is the director of, a shareholder in, or is connected to a company that is also a leaseholder, or indeed owns a number of leases in the block—as is the case for Aura Court in my constituency—will that landlord who is also a leaseholder be able to benefit in any way from the regulations? It would be absolutely invidious if a landlord's costs could be capped simply by virtue of owning some leases in the building, when in fact that landlord directly or indirectly bears responsibility for the condition of the building.

Thirdly, may I ask about management companies? Again, those may be controlled—I fear that, in the building I am thinking of in my constituency, it will be controlled by one of the individuals who is, in my opinion, linked to the original developer and to other landlords.

Finally, I would like to raise the concerns of constituents who feel they have waited many months to see any remediation at all, and still have no real idea of when works might start so that they can get out of this terrible position of having properties that they feel are not safe and which they cannot sell. My constituents would welcome any update from the Minister on what progress is being made on carrying out remediation work.

4.40 pm

Matthew Pennycook (Greenwich and Woolwich) (Lab): It is a pleasure, as ever, to serve with you in the Chair, Mrs Murray.

As the Minister has outlined, sections 116 to 125 of, and schedule 8 to, the Building Safety Act make provision in relation to remediation of certain defects in buildings and, importantly, include protections from liability for leaseholders in specific circumstances. The Minister knows that the Opposition argued trenchantly throughout the passage of the Bill for all blameless leaseholders facing potential costs to fix historical cladding and non-cladding defects to be fully protected irrespective of circumstance. We still firmly believe that that is the only just response to the building safety crisis.

Although they fall short of what we had hoped to secure, the leaseholder protections in the Act are none the less significant. The regulations before us detail how leaseholders will secure those protections. It is therefore essential that they are approved today, and we have no intention of opposing this statutory instrument. However, I must put five questions to the Minister about the regulations, and I hope he will respond in detail—if not in Committee, then in writing to me over the coming days.

The first is a procedural question relating to the date that the Building Safety Act came into force. The Minister will be aware that the main statutory provisions in the regulations came into force with the Act itself on 28 June 2022. However, in practice, those provisions cannot operate until the regulations before us are approved. My question is therefore: why was the Act brought into force on 28 June before the regulations were ready? That is a procedural question, but it is important none the less because this has caused significant confusion among leaseholders living in buildings with extensive historical non-cladding defects, including a great many in my own constituency, who look to the Act as their only means of escaping financial ruin, but who have spent recent weeks in a state of agitation because the leaseholder protection provisions were unusable.

My second question relates to enfranchised buildings. As the Minister knows, during consideration of Lords amendments we pressed the Government to amend the Bill to ensure that the service charge protections set out in schedule 8 applied clearly to enfranchised buildings and buildings where the right to manage has been exercised. The Government refused to accept the amendments, but the former Minister, the right hon. Member for Pudsey (Stuart Andrew), did commit the Government to a consultation to explore

"how best leaseholders in collectively enfranchised and commonhold buildings and other special cases can be protected from the costs associated with historical building safety defects."—[*Official Report*, 20 April 2022; Vol. 712, c. 186.]

My question is simple: where is the promised consultation, and how much longer will leaseholders in such buildings have to wait to learn whether the Government believe that further measures are appropriate to address their plight?

My third question relates to the point in time at which the leaseholder protections that these regulations provide for kick in. It is clear from the guidance that the Department has published that it takes the view that the protections are retrospective and that, as a consequence, any service charge demand for the purpose of paying for the remediation of historical non-cladding defects made but not paid before 28 June is now invalid. However, that is far from the most obvious reading of the Act itself.

The relevant Cabinet Office guidance makes it clear that we cannot implement retrospective law unless the Attorney General and Solicitor General have both approved it. So my question is whether the Department secured the appropriate memoranda from the Law Officers providing for such approval. If not, why is the Department so confident that qualifying leaseholders issued with a service charge demand before 28 June are protected?

[Matthew Pennycook]

My fourth question relates to what advice the Government are giving to leaseholders who face demands for payment right now. The Government are advising leaseholders not to pay invoices relating to relevant historical remediation costs until building owners have fulfilled a series of transparency and financial reporting requirements. Specifically, the guidance issued by the Department makes it clear that landlords can charge qualifying leaseholders only for the cost of fixing historical non-cladding defects if, first, they have sent all leaseholders in the building a formal legal certificate to that effect and, secondly, that they can demonstrate that the costs do not relate to works covered by the Act. Yet as we know—I have live cases of this in my own constituency—landlords and managing agents are making demands for payment without having issued such legal certificates or demonstrated as much.

The guidance implies that any landlord or agent who seeks to enforce a wrongly issued invoice could be committing a criminal offence, but what steps will the Government take to ensure that leaseholders can enforce these rights? In practice, will it be left entirely to leaseholders to challenge the payability of such invoices at the first tier tribunal, with all the barriers that that involves? Or will the Government task the recovery strategy unit with taking up such cases, and if so, how do leaseholders or hon. Members refer individual cases to that unit?

Lastly, I have a question about the robustness of the regulations before us. The Minister will know that the Joint Committee on Statutory Instruments in its recent ninth report of this 2022-23 Session drew the special attention of both Houses to these regulations on the grounds that

"they are defectively drafted in four respects and that there is doubt as to whether they are intra vires in one respect."

What assurances can the Minister provide that the regulations, which we will shortly approve, are sufficiently watertight to protect leaseholders as the Act intends?

4.46 pm

Mr Jones: I thank the hon. Member for Greenwich and Woolwich and other members of the Committee, who in many ways seem content to allow the regulations to pass. I will start by answering some of the questions raised by the hon. Member and the hon. Member for Stretford and Urmston. The hon. Lady mentioned landlords linked to the developer and the apportionment of costs. The regulations clearly set out a formula for how those costs will be apportioned. In cases where landlords or developers are no longer trading, as I am sure the hon. Member knows, there is a levy scheme where developers pay into that levy, so we can support those people who end up—through no fault of their own—in a situation where the people responsible are not likely to pay for the remediation.

The hon. Lady asked a question about enfranchised buildings and leaseholders, which I will come to when I respond to the hon. Member for Greenwich and Woolwich. The hon. Lady also mentioned management companies. The type of arrangements she was thinking about were those with non-resident owned management companies that are subject to tripartite leases and arrangements with the landlord and leaseholders. It is important and urgent to prepare these two sets of regulations in the way that we have, so that they enable the protections to take place. We are confident that the way the regulations have been drafted will be effective in ensuring that the qualifying leaseholders gets the right outcome for the type of arrangements the hon. Member has mentioned. We are absolutely clear that all types of management company should be covered by the regulations, and we will closely monitor the progress of cases. If it becomes apparent that changes are necessary, we will come back to Parliament with further proposals.

Kate Green: Perhaps I could write to the Minister to set out the specific circumstances that pertain to my constituency. The regulations were helpfully accompanied by some worked-through examples, so perhaps I could add another one that is being faced by my constituents at the moment and the Minister could respond in detail as to how they would be affected?

Mr Jones: I would very much welcome that correspondence. I would be more than happy to receive the example that the hon. Lady is talking about and to come back to her with a response.

The hon. Member for Greenwich and Woolwich mentioned that the protections came into force on 28 June, which was two months after the Act received Royal Assent. The regulations, along with the Building Safety (Leaseholder Protections) (England) Regulations 2022, which were laid on 28 June, will provide the detail to operationalise the new leaseholder protection regime. Landlords are now only able to pass on costs where the Building Safety Act permits them to do so, and that includes pursuing unpaid bills for historical safety remediation issued prior to commencement. As of 28 June, landlords must not pursue bills for historical safety remediation that are not in accordance with the Act. As the hon. Gentleman said, doing so would be illegal and I will come back to him on his point about the operation of that.

Leaseholders should seek to complete the leaseholder deed of certificate that is outlined in the regulations as soon as possible, so they can demonstrate to their landlord whether they qualify for the protections.

In an enfranchised building, the freehold is owned by some or all of the leaseholders. Capping leaseholder liability in a fully enfranchised or commonhold building would not have the effect of reducing or limiting leaseholders' liability as leaseholders are the freeholder. The other complication is that often not all the leaseholders own part of the freehold, which is why my right hon. Friend the Member for Pudsey (Stuart Andrew) committed to bringing forward a consultation and a call for evidence on this important issue, which will be released shortly. It is important that we try to help clarify matters for people in that position.

On the report by the Joint Committee on Statutory Instruments, the Committee will know that the underlying statutory provisions for leaseholder protections were added to what is now the Building Safety Act 2022 about half way through its passage through Parliament, in recognition of the unfair and intolerable position that many leaseholders were in. They faced bills, as has been acknowledged across the House, running into thousands of pounds to fix problems that they had no part in creating. In many senses, as the hon. Member for Greenwich and Woolwich said, those people were put into significant financial distress as a result.

The leaseholder sections were devised and drafted at pace, drawing on expertise in a number of fields, including proposals put forward by Members of both Houses. I record my thanks for their time and engagement on that. The Act received Royal Assent at the end of April and the protections came into force two months later. It was therefore both important and urgent to prepare the two sets of regulations that will enable the protections to take practical effect. The urgency meant that we were not in a position to share the regulations in draft with the Committee, as is the usual practice. That meant, however, that the Committee and its staff had limited time to get to grips with both the regulations and the underlying primary legislation in what is in many ways a groundbreaking piece of law.

None the less, we engaged in two rounds of correspondence with the Joint Committee, culminating in the memorandum and response set out in Appendix 1 to the Committee's report. Some Members will have read that report in full—I am sure the hon. Gentleman will have—and we have seen the detail of the Committee's concern and the Government's response.

To summarise, the Joint Committee raised a number of technical and legal issues with the draft instrument in respect of its drafting and of its vires. The Government have considered those issues carefully, including by working closely with the first tier tribunal about the way in which it will deal with appeals. The Government are satisfied that, notwithstanding the Committee's concerns, there are no issues with the regulations that will prevent the process from operating successfully.

As I have described, the Government consider it imperative that the regulations come into force before the summer recess to alleviate the issues facing leaseholders in defective blocks. We will of course monitor closely the progress of cases. If it becomes apparent that changes are necessary, we will come back to Parliament with proposals. Therefore, as I said before, I ask colleagues to show some forbearance. I am glad that that seems to be the case, but that hon. Members will still feed in their particular cases.

On the final point made by the hon. Member for Greenwich and Woolwich on the memorandum from the Law Officers about confirmation of the retrospection on the 28th due date, if he will forgive me, I will take that away and come back to him with a fuller response. On that basis, and given that we have considered the draft regulations, I hope that the Committee will approve them.

Question put and agreed to.

4.56 pm

Committee rose.