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GENERAL COMMITTEES

Public Bill Committee

BUILDING SAFETY BILL

Ninth Sitting

Thursday 23 September 2021

(Morning)

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CLAUSES 36 TO 41 agreed to, one with an amendment.
Adjourned till this day at Two o'clock.

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

Monday 27 September 2021

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The Committee consisted of the following Members:

Chairs: PHILIP DAVIES, PETER DOWD, †CLIVE EFFORD, MRS MARIA MILLER

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

Public Bill Committee

Thursday 23 September 2021
(Morning)

[CLIVE EFFORD *in the Chair*]

Building Safety Bill

Clause 36

DETERMINATION OF CERTAIN APPLICATIONS BY
SECRETARY OF STATE OR WELSH MINISTERS

11.30 am

The Chair: May I remind the Committee to switch electronic devices to silent and to email speaking notes to our *Hansard* colleagues at hansardnotes@parliament.uk? We begin today's session with clause 36.

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

The Minister of State, Department for Levelling Up, Housing and Communities (Christopher Pincher): It is once again a pleasure to serve under your chairmanship, and I welcome the Committee back to this final line-by-line scrutiny session before we go into recess again.

The Government are committed to ensuring that there is a stringent regulatory framework to enable the design and construction of better and high-quality homes while providing industry with the clarity and certainty that it needs. Dame Judith's review found that unnecessary delays in the system must be minimised, and we wholeheartedly agree with that finding. The gateways and building control system have been designed to ensure appropriate consideration of building regulations compliance, including building safety, throughout design and construction.

Applicants in England are encouraged to work with the Building Safety Regulator to ensure that decisions are reached in good time or extensions are agreed, and the Building Safety Regulator will make decisions on a variety of matters relating to building control. They include deciding whether to approve or reject the following types of applications: gateway 2 building control applications, change control applications, gateway 3 applications and certain refurbishment applications. To provide industry with certainty for project and financial planning, the Building Safety Regulator will have prescribed periods in which to decide such applications.

Where further time is required—there may be occasions when that is necessary—extensions can be agreed between the regulator and the applicant. However, it is necessary to have an alternative route through which an applicant can get a decision on their application if the Building Safety Regulator has not issued a decision within the required timeframe and an extension has not been agreed, and clause 36 provides the legal basis for the Secretary of State, or a person appointed to act on their behalf, to make a decision on applications in England in such circumstances. We envisage that there will be very few applications that follow this path each year. Like applications decided by the Building Safety Regulator, there will be no set timeframe in which applicants can expect such a decision.

In Wales, failure by the building control authority to decide on an application relating to a higher-risk building will similarly allow the applicant to apply to the Welsh Ministers, or a person appointed by them, for a decision on the application. This is a means by which decisions can be expedited, and I commend the clause to the Committee.

Mike Amesbury (Weaver Vale) (Lab): We agree with the Minister.

Shaun Bailey (West Bromwich West) (Con): This is a really important clause. My right hon. Friend was rather succinct in his comments, but he touched on the balancing of the environment with the Bill. As we talked about in our previous deliberations earlier this week, we want to ensure that we can still have the environment in place in order to continue to build, because we still need to build homes and ensure that there is an adequate process in place. The important part of the clause, which links to other clauses that we have debated so far, is about ensuring that there is an adequate process in place to ensure that there are no delays and that we have adequate building taking place in an expedient manner.

We also need to ensure that those who want to play according to the rules, as I discussed on Tuesday, know how to do that and can ultimately have their matters determined in an expedient manner. I am sure my right hon. Friend will touch on that in his remarks when he responds later, but I want to ensure that in the clause we maintain the balance between a proper determination to ensure safety for leaseholders and residents and an expedient manner to determine applications, which will be important.

I will not talk about the impact in Wales. I commented on that during our previous deliberations, but I fully support the clause, which strikes the right balance in the underlying tensions in the Bill. I look forward to hearing my right hon. Friend's comments in due course.

Christopher Pincher: I am obliged to the Opposition for what appears to be their support for this fairly uncontroversial and important clause. I am also obliged to my hon. Friend the Member for West Bromwich West for his contribution. He is right to say that we want to ensure that building can progress expeditiously and safely. That is why we have put in place sensible review points—the gateways and the hard stops that they provide for. It is also why we have included this clause in the Bill to ensure that where there are occasions—we do not envisage many—when the Building Safety Regulator has failed to issue a decision and no extension to the timeframe has been granted, there is a means by which the applicant can move to get a decision.

We have not specified a timeframe by which the Secretary of State or the person or body appointed by the Secretary of State will be obliged to make a decision because we anticipate that in those very few circumstances a decision might not have been made because of the complexity of the arrangements. That then allows the Secretary of State or the appointed body time and space to come to a conclusion.

Shaun Bailey: Will the Minister give way?

Christopher Pincher: And on the word "conclusion" I will give way to my hon. Friend.

Shaun Bailey: I am grateful to my right hon. Friend. He said that there would not be specific timeframes in the Bill, but can he assure me that there will be ongoing monitoring? The one thing that the clause seeks to achieve is an expedient process, which previous clauses have done as well. Will he touch on how monitoring of the process will be implemented to ensure the aims of the clause are enacted?

Christopher Pincher: I am happy to do that. My hon. Friend pre-empts what I was going to say. In secondary legislation we will specify what we believe to be proportionate timescales in which the Building Safety Regulator will have to come to a decision on applications before them. That will place proper focus on the Building Safety Regulator and ensure that applicants get the focus and engagement that they deserve. We will ask the regulator to provide data, and the regulator will report on the number of applications that it receives and the outcome of each application, including the timeframe of each decision and whether extensions were agreed.

Over time, a body of information and evidence will be developed, which, apart from the secondary legislation statutory timeframes for adjudication that we will set, will enable the sector to see the average timeframes and outlier timeframes that the adjudications take and be able to make its decisions accordingly with respect to appeals to the Secretary of State or to the Secretary of State's appointed appeals body.

We think that in practice the clause and its provisions will be used infrequently, but it is an important backstop, which is why we have included it. It provides, as I say, a legal basis for the Secretary of State, or a person appointed on their behalf, to make a decision on applications in England in such circumstances, and in Wales for Welsh Ministers to do similarly. I commend the clause to the Committee.

Question put and agreed to.

Clause 36 accordingly ordered to stand part of the Bill.

Clause 37

COMPLIANCE AND STOP NOTICES

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

Christopher Pincher: Dame Judith's review found that the existing building safety enforcement regime is not fit for purpose. That is partly explained by the absence of powers for building control authorities to immediately halt dangerous or non-compliant work. That is why the Government are committed to strengthening enforcement powers for regulators to act against non-compliant building work. Clause 37 takes forward the review's recommendation and provides more effective powers for building control authorities to ensure compliance with building regulations.

Compliance and stop notices are designed to tackle all forms of non-compliance with building regulations during the design and build stage of all buildings, irrespective of their risk level or intended use. Compliance notices will be available where there is, or is likely to be, a contravention of building regulations. Stop notices are intended to be used where a compliance notice is contravened, or where building regulations are likely to be contravened in such a way as to cause serious harm to people in or around the building.

Brendan Clarke-Smith (Bassetlaw) (Con): Will the Minister give way?

Christopher Pincher: Not wishing to break my batting average, I will of course give way.

Brendan Clarke-Smith: What a pleasure it is to serve under your chairmanship, Mr Efford. It has to be welcome that we are strengthening the powers of the regulator and local authorities. As the Minister rightly says, these are vital tools for building control authorities, and there is currently no power available to stop non-compliant building work being continued or completed, which is clearly a concern. I am very keen that we do something about that. It is very important that it is tackled.

Will the Minister clarify, first, how the powers will change the bad behaviour that we have seen across the industry? We know that most people in the industry are responsible, but for those who are not, what will we do? How will this change that behaviour? Secondly, what enforcement powers will the Building Safety Regulator have for gateway 2 following on from this?

Christopher Pincher: I am obliged to my hon. Friend. On the new powers changing bad behaviour, what we want through the entirety of the Bill is to effect culture change. The clause on its own will not achieve that, but it is part of the cumulative weight of the Bill, which will over time effect culture change. We envision that the additional tools that we are providing to the Building Safety Regulator, and the statutory powers that will be provided, will contribute significantly to that culture change. Safety cases, more regulation of the building control sector, and the gateway assessments and the hard stops involved in them will all play their part in driving that culture change.

We also envision an escalating set of powers for the Building Safety Regulator, and as we move through the late 30-something and early 40-something clauses, I think I will be able to provide further illumination to the Committee on what those enhanced powers will be. Additionally, it will be an offence to start certain building work in higher-risk buildings without building control approval, and stop notices could be used to stop work that is being carried out without approval. We believe—I think this goes some way towards addressing my hon. Friend's point—that these are critical tools for building control authorities, because as he says, there is currently no power available to stop non-compliant building work from being continued or completed.

11.45 am

Compliance and stop notices will also provide a proportionate but effective way to require companies to rectify non-compliant work swiftly, without the need to bring a prosecution. Compliance notices will require non-compliant work to be rectified within a specified period. As the result of some work may be dangerous, stop notices will be able to halt that work. The stop will normally apply immediately, but a building control authority will have the option of setting a date from which the stop will take effect. Breach of either of these notices will be a criminal offence, punishable by an unlimited fine and/or up to two years' imprisonment. To ensure that all individuals involved in contravening the law are held responsible for their actions, directors

and managers of companies found to be complicit in such breaches can also be prosecuted for the offence, as will be further set out in future clauses. This sends a strong signal to those managing companies, as well as individuals, that they will be held responsible for their building safety duties.

The Government intend that these stronger powers will act as more effective deterrents for individuals and their corporate associates who wish to engage in non-compliant building work in the belief that they will not face any consequences for doing so. They will, and I commend the clause to the Committee.

Mike Amesbury: I should have said earlier, Mr Efford, that it is yet again a pleasure to serve under your chairmanship.

We welcome the increased regulation—the compliance and stop notices recommended by Dame Judith Hackitt in the independent review—but I have a couple of questions for the Minister. Will these powers given to the regulator apply to buildings that are 11 to 18 metres tall, and will compliant products be kitemarked for ease of inspection to ensure that they are compliant, or not?

Shaun Bailey: I should also have said in my previous contribution that it is a pleasure to see you back in the Chair today, Mr Efford, and I thank you for your indulgence during our previous deliberations. You are being very generous with your time in the Chair.

I have a few questions for my right hon. Friend the Minister as well, dovetailing with what the hon. Member for Weaver Vale just said. The one concern I have is about individuals who purchase their property pre-completion of construction—because that does happen in these settings too—and what protections we can devise for that. I have seen it happen before: people have put down a deposit or spent significant amounts of money on legal and transactional fees to get to a particular point. I heard what my right hon. Friend said, and I agree that we are talking about extreme cases of individuals who are flouting the rules or not following them, but my concern is that as we embed new sets of regulations, issues often become apparent quite commonly and quite quickly. I am sure that those of us who have been Members much longer than I have will have seen the array of issues that arise when new legislation comes into effect during its initial implementation.

My question to my right hon. Friend the Minister is whether he is open to a broader discussion about what we can do to avoid potential blockages in transactions as an unintended consequence of this. What we see is that people who are trying to let or purchase properties are left in limbo, with a back and forth for months on end, while stop notices are issued and remediation is done. Clause 37 seeks to ensure that remediation is taken, and, more importantly, that work in the initial process is compliant in the first place and we do not reach a situation where stop notices have to be issued.

Theo Clarke (Stafford) (Con): I agree with my hon. Friend that clause 37 takes forward the important recommendations in the review to ensure that building control authorities are issuing compliance and stop notices in relation to the contravention of building regulations. Does he agree that the clause will also strengthen the powers for the regulator and local authorities?

Shaun Bailey: To answer my hon. Friend's question, we need to go back to what Dame Judith Hackitt said. She found a fundamental flaw in the regulatory framework. Effectively, it was giving unscrupulous developers almost a free pass at times. It was not fit for purpose. I believe that clause 37 will achieve the aims that my hon. Friend has articulated.

I suppose this comes back to the point that the Bill is a balancing act. My central concern is about the vulnerable leaseholders at the heart of this—the people we expect to live in these developments. There are always two sides to the coin. We need to ensure that these leaseholders are not stung at the outset by developers who are not following the rules in the first place. I am trying to impress on my right hon. Friend the Minister that we need to ensure that those processes are in place and that they work with bodies. This comes back to what the hon. Member for Liverpool, West Derby articulated in our previous deliberations around resourcing and funding, and ensuring that our local authorities, building control authorities and the regulatory framework have the expertise. We are not just trying to pigeonhole things into one particular resource package.

I notice the reference to the appeals process in clause 37. I am sure colleagues have read it in as much depth as I have. It talks extensively about the appeals process. That requires our court system to be functioning in a way that allows the process to be as expedient as possible. I do apologise to my right hon. Friend the Minister; he has got a shopping list of asks from me on one clause. He probably thought it would be a little less demanding than this. I ask him to ensure that there are ongoing discussions between his Department and the Ministry of Justice about ensuring that this is implemented in an expedient way.

We need to ensure that there are stop notices for those that have put thousands of pounds into a development they are waiting for. I have constituents in similar situations who have written to me who are left out in the cold because a developer issued a stop notice that goes back and forth for months, because they have reserves of money where they can fight and fight, or it is backlogged in the courts for months. We know of the issues with backlogs in the courts in other areas. I will not test your indulgence, Mr Efford, by going down that route. I would be grateful if my right hon. Friend the Minister continued that dialogue with his colleagues across Government to ensure that the clause does not have unintended consequences that I am sure he does not want to see.

Brendan Clarke-Smith: As my hon. Friend has said, I think it is very important that when these rules are contravened action is taken and that that action is appropriate. I note from the clause that, as well as a criminal offence, there is a maximum penalty of up to two years' imprisonment. One of my concerns has always been that there are other people in this chain—be that secretaries, directors, managers and so on. I notice that we will come to that when we consider clause 39. Does he agree that putting that criminal offence in there and being clear about what is happening when that is contravened strengthens the clause even further?

Shaun Bailey: I am grateful to my hon. Friend for his intervention. Dame Judith Hackitt's review highlighted a shameful system. Putting in place a criminal offence

shows that we will not and should not tolerate this shoddy behaviour any more, and nor should those individuals who have had to suffer the highest cost as a result of it. He is right in what he says in the spirit of his intervention. He listed the plethora of individuals who would be caught by this and I do not disagree that they should. People should not be able to hide behind the corporate veil and dodge liability. He is right that, in drafting the Bill, my right hon. Friend the Minister and his team have ensured that it is all-encapsulating. What we do not want to see—perhaps I am being optimistic, but I hope not—is individuals being able to dodge this.

Mike Amesbury: On a point of order, Mr Efford. For clarity, are we talking to clause 37 or clause 38, which is about offences?

The Chair: I am grateful for the point of order, but as far as I am concerned, the hon. Member for West Bromwich West is in order. He seems to be speaking to sections of the clause. I think you can take it as read, because I have not interrupted him, that he is in order.

Shaun Bailey: I am talking to clause 37. To help the hon. Member for Weaver Vale, I am responding to the intervention by my hon. Friend the Member for Bassetlaw. He asked a specific point about the categories of people caught by clause 37, so I am just expanding on that and explaining why it is right for those individuals. I am saying, just as my right hon. Friend the Minister pointed out in his opening comments—and I am sure that the hon. Member for Weaver Vale agrees with me—exactly why those individuals should be caught by the clause.

I was in the process of winding up my comments prior to that point of order. I fully support the clause, which brings out issues that my right hon. Friend the Minister needs to address. I do not want it to result in unintended consequences and I hope that he can give me a reassurance, to take back to leaseholders who have been caught out and, more broadly, to the industry, that there will be no delays. The clause is an important development in stop notices. It will enable our regulatory framework to act quickly to prevent serious situations from occurring and, I hope, prevent other scenarios from causing issues down the line. I want to be sure of that, so I press my right hon. Friend for a guarantee that he will do whatever he can to ensure that the process operates expeditiously and that it will have no unintended consequences.

Siobhan Baillie (Stroud) (Con): It is a pleasure to be back before you so quickly this week, Mr Efford. I will be brief. I want to expand on the issue of the need for culture change. Hon. Members have already raised this and the Minister himself has said that the clause is part of the cumulative weight of the Bill to achieve a culture change. That is crucial. Not only is Dame Judith correct in her assessment and desire to see change, which has led to clause 37. The lay public would be genuinely shocked, if they had no experience of these worlds, to learn that there is currently no power available to prevent non-compliant building from creating these issues.

I welcome clause 37 and I am glad that the Government are addressing the issue, bringing matters forward. However, to really achieve culture change, there need to be prosecutions. We know that we are far off that at the moment. What discussions has the Minister had with

stakeholders and others on the formulation of the regulator and the creation of clause 37? There is a real appetite not only to enforce the clause and the new, strengthened powers but to drive them through to prosecutions, which are the true deterrent and which will lead to change in the industry.

12 noon

Christopher Pincher: I am obliged to the Committee for its deliberations on clause 37 and for the questions that have been asked of me. The hon. Member for Weaver Vale asked me two specific questions. First, will the measures in clause 37 also apply to buildings below 18 metres? The answer is yes. Perhaps I can explain further. I said that these powers are critical tools for building control authorities. The building control authority could be the Building Safety Regulator, for in-scope buildings, or local authorities, for other buildings. The Building Safety Regulator will use clause 37 for enforcement purposes on the buildings for which it is responsible, and local authorities can use the powers in the clause for buildings for which they may be responsible.

The hon. Gentleman asked me, secondly, about product compliance and kitemarking. In our witness sessions, we heard some evidence on the importance of having good product development and specification. There are clauses later in the Bill that address the question of product specifications, so we can have debates about those.

My hon. Friend the Member for West Bromwich West made a passionate speech, calling for a proper recognition that in-flight work and development have to be properly understood and recognised. He said that it is important that we do not unintentionally create bad or poor effects for players across the sector, particularly the residents of in-scope buildings. We are working with representatives across the building control system to effectively benchmark the existing regulatory capacity and to ensure that all the actors in the regime have the capabilities to abide by it and an understanding of the consequences if they do not. That is one of the reasons why we are using secondary legislation—to ensure that we are able to properly understand what it is that we need to implement in granular detail, having consulted stakeholders and taken on board comments from members of the Committee.

As I have indicated, we are also working very closely with the shadow regulator, the Health and Safety Executive and others to ensure that we transition to the new regime in such a way that we mitigate the effects of in-flight development. We do not want to endanger people in and around buildings that have been built unsafely, but to ensure that those buildings can be properly, safely and expeditiously built within the constraints of the new regulatory regime. We need to make sure that the transition is effectively executed.

My hon. Friend the Member for Stroud made the very important point that we need to ensure not only that the penalties in the Bill are understood but that prosecutions can effectively be brought. We have tried to ensure that through this and other clauses, and through discussions with officials and colleagues in the Ministry of Justice and in expert bodies, such as the HSE. That has helped us to build an approach that will ensure that there are sufficient and appropriate penalties, in an escalating manner, that the sector will understand and that can be applied successfully should they be necessary.

[Christopher Pincher]

We want to give the Building Safety Regulator and local authorities the powers they need to do the jobs we are asking of them. With that, I commend clause 37 to the Committee.

Question put and agreed to.

Clause 37 accordingly ordered to stand part of the Bill.

Clause 38

BREACH OF BUILDING REGULATIONS

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

Christopher Pincher: A breach of building regulations can have serious consequences for residents in occupied buildings. We saw that four years ago in the Grenfell Tower fire and we have seen it on other occasions. The independent review found that

“where enforcement is...pursued, the penalties are so small as to be an ineffective deterrent.”

That is why, to repeat some of the points I made to my hon. Friend the Member for Stroud, the Government are committed to ensuring that where building regulations are contravened, building control authorities have the necessary powers to enforce the rules and offenders receive a proportionate penalty for their non-compliance.

Clause 38, alongside clause 37, will provide a stronger deterrent to those doing building work and, where necessary, stronger sanctions for building control authorities to use. At the moment, offenders can only receive unlimited fines for their contravention of the law. Even where directors or managers are complicit in their company's wrongdoing, they are sheltered from the consequences, a point raised by my hon. Friend the Member for Bassetlaw.

The new custodial sentence we are introducing serves to reflect the gravity of breaching building regulations and, alongside clause 39, which we will discuss shortly, brings the threat of imprisonment to any director or manager of a company who is found to be complicit or negligent in an act of non-compliance. We intend for the higher custodial sentence to operate as an effective deterrent against negligent, reckless or dangerous behaviour.

Where previously prosecution under section 35 of the Building Act 1984 had to be brought within two years, making the offence triable in a Crown court removes the time limit altogether, enabling building control authorities to prosecute breaches of building regulations even when they come to light much later. There is no longer a two-year limit to court action.

This clause goes further and makes clear that the section 35 offence applies not only to breaches of the building regulations themselves, but to requirements imposed under building regulations, such as conditions imposed as part of building regulation approvals. The increased coverage will send a signal that no requirement under building regulations can be ignored without consequences.

As with other changes we have already discussed, this provision aims to encourage those involved in building work to do the right thing and to disincentivise substandard building work. To return briefly to a previous debate, in order to make this absolutely clear, whatever planning

route a building is subject to, all relevant building work must comply with building regulation, whether it is on a higher-risk building or otherwise, and whether it benefits from permitted development rights or not. The hon. Member for Weaver Vale made that point in our previous sitting and alluded to it in his previous contribution.

In addition, the extension of the enforcement period under section 36 of the Building Act from one year to 10 years will provide another effective route through which building control authorities can enforce building regulations. This clause responds to the review's recommendation that the sanctions available under the Building Act be enhanced to enable building control authorities to act effectively but proportionately whenever they encounter non-compliance. They will now have stronger powers to ensure that all buildings are designed and constructed in line with regulations. I commend the clause to the Committee.

Mike Amesbury: We welcome the stronger sanctions, given the gravity of the consequences and the context, which the Minister referred to, of the tragic events of Grenfell over four years ago.

Shaun Bailey: I, too, welcome the clause. I wish to raise a couple of points with the Minister about the defences under proposed new section 35(2) of the Building Act, relating to instances where duty holders believe wrongly that another duty holder has reported an incident. It will be

“A defence to the offence of failure to report where the person being prosecuted was not aware of the occurrence which gave rise to the requirement to report”.

I want to ensure that the scope of the defences is as tight as it can be. Clearly, there is a balance to be struck. We are fully aware that incidents happen; human failure can happen and we cannot eliminate that, so we have to take account of that within the regulatory framework, but we need to tighten the circumstances where this defence can be used. I am conscious that there is a risk that developers will see this as an opportunity to do some finger-pointing and say, “It wasn't me. It was him,” or, “No, he missed that and I missed that.” I know that is not the intention behind the defences under clause 38, but can my right hon. Friend the Minister assure me that there will be appropriate guidance on implementation and enforcement of the provisions of clause 38, which is really important?

We have an obligation to follow through on what Dame Judith Hackitt noted in her report, particularly about the regulatory landscape. Ultimately, we do not want people who have not done right by the people we are trying to protect to find some way of getting round things. I know my right hon. Friend has worked hard to ensure that does not happen, but given that the broader point of the clause is to send out a message, particularly through custodial sentences, that breach of building regulations is serious—we are dealing with human life, as we saw with Grenfell—I want to get some reassurance from him that he will tighten that up.

I welcome the enforcement period extension. I think that is right. My right hon. Friend touched on that in his comments, so I do not need to repeat that. If he can give me those reassurances, I will be immensely grateful.

Christopher Pincher: I am obliged to you, Mr Efford, and my hon. Friend, who is quite within his rights to ask for reassurances.

I reiterate that clause 38 needs to be read in conjunction with clause 37. I made it clear that the current building safety enforcement regime is not fit for purpose; there are too many gaps and loopholes. With compliance notices and stop notices, clause 37 tightens the regime. Clause 38 is designed to ensure that in the event of contravention of such notices, the enforcement powers and penalties are that much greater. If my hon. Friend reads clause 37 in conjunction with clause 38, he will see that we are doing exactly that—tightening up the loopholes from compliance and imposing stronger and more effective penalties where there are contraventions.

12.15 pm

As I said in my opening remarks, the clause responds to the independent review's recommendation to enhance sanctions available under the Building Act 1984, which is now some years old. We are committed to doing that and ensuring that where building regulations are contravened, building control authorities—the Building Safety Regulator or local authorities on whom the hat fits—have the necessary powers to enforce the rules and offenders receive a proportionate penalty for non-compliance.

It will be for building control authorities to act effectively but proportionately whenever they encounter non-compliance. We will come to that in more detail in further clauses. We are giving those building control authorities stronger powers to ensure that all buildings are designed and constructed in accordance with regulations, and to sanction those who do not follow those regulations. I commend the clause to the Committee.

Question put and agreed to.

Clause 38 accordingly ordered to stand part of the Bill.

Clause 39

LIABILITY OF OFFICERS OF BODY CORPORATE ETC

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

Christopher Pincher: I will be more succinct in respect of this clause, because it follows on from clauses 37 and 38 and I referred briefly to it earlier.

Many of the persons with responsibilities under the Building Act 1984 are and will be corporate bodies, or “legal persons”, rather than individuals, who are known as “natural persons”. Any corporate body operates only through the actions of its employees, controlled by its managers and directors. As such, if there is an offence by a corporate body, there is likely to be some measure of personal failure by those in positions of seniority.

That liability is already provided for in a number of other pieces of legislation, including, most notably, the Health and Safety at Work etc. Act 1974. The end result is that directors, managers and other such persons are just as criminally responsible as the company at which they have either made decisions directly leading to an offence being committed, or been negligent in allowing an offence to occur.

Selaine Saxby (North Devon) (Con): Will my right hon. Friend clarify how that will apply when there is only one director of a corporate body?

Christopher Pincher: I am not a lawyer by training, although involvement in the Bill has given me some legal background—not all of it as exciting as watching “Crown Court” on television. A corporate body and the director are separate legal entities, so normally two separate prosecutions would occur. However, in practice, both prosecutions would be conducted at the same time. If there were a conviction, it would be for the court and the judge to sentence the corporate body and the individual appropriately. Although the law says that they are two separate persons, the court action would take place in conjunction and the sentencing of both entities would be as the court decided. I hope that is helpful to my hon. Friend.

Shaun Bailey *rose*—

Christopher Pincher: My hon. Friend appears to be moving to intervene. I am conscious that I have failed to give way only once—to the hon. Member for Brentford and Isleworth—and that was by accident, so in order to keep up my almost perfect track record, I will allow my hon. Friend to intervene.

Shaun Bailey: I am immensely grateful to my right hon. Friend, who is characteristically very generous. I would be interested to hear how the clause would deal with developers that dissolve, disappear or fall into difficulties as a result of this. He has been assisting me with a matter in my constituency, where a developer dissolved and left the residents in a bit of limbo, so he knows all about that.

Christopher Pincher: My hon. Friend is stretching my legal knowledge, although not quite to breaking point.

The Chair: I am not sure that the question is entirely within the scope of the clause.

Christopher Pincher: In the sense that we are discussing companies, if a company has dissolved by the point of prosecution, it cannot be prosecuted. However, to address my hon. Friend's point, that does not preclude the liability of individual company directors or managers. They can be prosecuted individually, even if the corporate identity itself has passed into history and is beyond prosecution.

The potential for criminal liability of directors and managers reinforces the duty of those who direct the actions of companies to uphold and promote building safety throughout the operations of their companies. We consider that it is a key contributor to our stated purpose of embedding building safety at all levels of industry, contributing to residents both being and feeling safe in their homes.

Ruth Cadbury (Brentford and Isleworth) (Lab): I thank the Minister for giving way. It is a pleasure to serve under you again, Mr Efford. I cannot see a problem with the objectives of the clause and we will not object to it, but it gives me the opportunity to ask about the issue of personal liability insurance. We are picking up that construction trade professionals in the UK are increasingly struggling to get appropriate insurance. Have the Government done an impact assessment on the issue of liability insurance and how that impacts construction professionals?

Christopher Pincher: I am obliged to the hon. Lady and I can ensure her that insurance, risk assurance and personal indemnity insurance, for example, are addressed in part 3, so I suspect that we will address those issues at greater length in the not-too-distant future.

In amending the Building Act 1984 through the clause, as well as increasing the maximum penalties under that Act, we are taking a significant step in ensuring that accountability for building safety lies with those responsible. I commend the clause—

Brendan Clarke-Smith: Will my hon. Friend give way?

Christopher Pincher:—once I have given way to my hon. Friend.

Brendan Clarke-Smith: I am grateful to the Minister for being so generous with his time. My question relates to something that my hon. Friend the Member for West Bromwich West touched on during discussion of clause 37. There is a sort of cloak of corporate responsibility that people have hidden behind for far too long. It is almost like a game of pass the parcel when it comes to taking responsibility for some defects. Does my right hon. Friend agree that rather than enabling responsibility to be avoided, the clause widens the scope and makes sure we can focus minds? We will be increasing accountability rather than taking away from it.

Christopher Pincher: My hon. Friend is quite right. As I said earlier, corporate liability is already provided for in other pieces of legislation—the Health and Safety at Work etc. Act 1974, for example. By embedding this clause in the Bill we remind corporate players—directors, managers and other appropriate senior parties in businesses—of their responsibility, and that their businesses and they themselves can be prosecuted if the standard of work or the actions that they undertake fall below the standards required in the Bill, which then allows for criminal prosecution.

The clause will further engender and embed the culture change that we all desire, so that at some point in the not-too-distant future these sorts of court actions will become a thing of the past, because all players act in a responsible way to ensure that buildings are designed, built and managed safely. I commend the clause to the Committee.

Mike Amesbury: I thank the Minister and other members of the Committee for their contributions. The clause responds directly to the Grenfell residents' voices, which is most welcome. We had a situation where developers, subcontractors and the Royal Borough of Kensington and Chelsea put in inferior products and cladding, despite the recommendations for that building. We have seen that sort of thing littered throughout the industry, as people have said. The clause will act as a very effective deterrent, drive the culture change that we have spoken about, and apply the tragic lessons learned in recent years.

Christopher Pincher: I am obliged to my hon. Friends the Members for West Bromwich West and for Bassetlaw for their contributions, and to the hon. Member for Weaver Vale for his recognition that once again the tragedy of Grenfell has opened our eyes to issues in the sector, the loopholes in compliance, and the paucity of penalties, which we are now collectively attempting to

rectify. By agreeing to the clause we are taking a significant step in ensuring that accountability for building safety lies with those who are responsible for it—individuals, corporate bodies, or the individuals in senior positions who make up those corporate bodies. I commend the clause to the Committee.

Question put and agreed to.

Clause 39 accordingly ordered to stand part of the Bill.

The Chair: We now come to clause 30—*[Interruption.]* I am sorry; we now come to clause 40.

Clause 40

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

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

Christopher Pincher: I would be happy enough to speak to clause 30 again, Mr Efford, although I am not sure that that is the desire of the Committee. My eloquence and possibly my effluence covered all bases.

Clause 40 makes a technical but necessary provision to enable the revocation of out-of-date provisions in building regulations made under the European Communities Act 1972 as we modernise the regulations in years to come. Although the major part of the building regulations was made using powers in the Building Act 1984, a few provisions were made using the powers in the European Communities Act. That Act has now of course been repealed, so those powers are no longer available, meaning that at present the provisions made under the Act cannot be amended or revoked.

The building regulations will need to be updated in the light of the changes being made in the Bill. As part of that exercise, we will be looking to consolidate the significant number of amendments made to the regulations in recent years, to make the regulations easier to use for industry and building control bodies. We will need to be able to revoke the existing regulations and replace them with new ones, and without the powers provided by clause 40 we would be in an anomalous position, in that building regulations made under the European Communities Act could not be revoked, so we would not be able to undertake a comprehensive updating and consolidation.

12.30 pm

Clause 40 works by treating building regulations made using powers in both the Building Act 1984 and section 2(2) of the European Communities Act as a “combined instrument” and then provides, in subsection (2), powers for building regulations to revoke provision in a combined instrument. Clause 40(3) disapplies paragraphs 13 and 14 of schedule 8 to the European Union (Withdrawal) Act 2018 in respect of any regulations that amend provision in a combined instrument. This will mean that any such regulations will be made, like building regulations, under the negative resolution procedure. Subsections (1) and (2) of this clause also apply to Wales. Paragraphs 13 and 14 of schedule 8 to the 2018 Act do not apply to statutory instruments made by the Welsh Ministers, so subsection (3) does not apply to Wales.

Clause 40 is needed to allow us to make changes to building regulations, so that we can update and improve legislation. It is a very technical clause.

Siobhan Baillie: Revoking anything can lead to fears of an inadvertent reduction in standards. Is my right hon. Friend satisfied that the clause and the work behind it will achieve exactly the opposite?

Christopher Pincher: This is no back-door attempt to reduce standards now or to introduce poorer standards in the future. It is simply a necessary technical means of allowing standards to be introduced by overriding a now defunct Act; otherwise, we would not be able to repeal or change standards and regulations relating to it. For example, our future homes standard and, indeed, the future buildings standard go way beyond anything that was required of us when we were a member of the European Union or that is required of us under the European Communities Act. I assure the Committee that this is a technical change—a necessary legal and technical change—and not an attempt to reduce standards by subterfuge. With that, I commend the clause to the Committee.

Mike Amesbury: I thank the Minister and other Members who have made contributions. As the Minister said, this is a technical but necessary clause. He referred to the future homes and future buildings standards, and I would like to explore the interplay between the Building Safety Regulator and those up-and-coming standards.

Christopher Pincher: The future homes standard, which we will consult on and will legislate on in 2023-24 to introduce in 2025, will require all buildings built from that point to be at least 75% more carbon efficient than buildings built under present regulations. Importantly, they will also be zero carbon rated, so they will not need to be retrofitted as we change the electricity grid. Those regulations will be in force from that point—clearly, they are not law yet—and all regulators will need to have regard to them and will need to issue appropriate guidance once those changes are enacted in law, so that local authorities, the Building Safety Regulator and product manufacturers understand what needs to be embedded in product creation and the design and management of buildings, subject to the law as it stands.

I will conclude—unless anybody else wishes to intervene; I do not think they do—by saying that this is a very technical clause that is very necessary to ensure that we have a regulation landscape that we can properly manage. I commend it to the Committee.

Question put and agreed to.

Clause 40 accordingly ordered to stand part of the Bill.

Clause 41

REGULATION OF BUILDING CONTROL PROFESSION

Christopher Pincher: I beg to move amendment 18, in clause 41, page 50, line 24, at end insert—

“(7) Section 91B of this Act (cooperation and sharing of information between Welsh Ministers and other authorities) applies as if references to the Welsh Ministers included references to a person to whom the Welsh Ministers have delegated functions under this section.”

This amendment provides that section 91B of the Building Act 1984 (inserted by Schedule 5 to the Bill) applies in relation to a person to whom functions are delegated under section 58Y as it applies in relation to the Welsh Ministers.

The Chair: With this it will be convenient to discuss Government amendments 23 to 34.

Christopher Pincher: This group of amendments deals with duties to co-operate and information-sharing powers between Welsh Ministers, fire and rescue authorities, local authorities and fire inspectors. Schedule 3, which we debated and disposed of on Tuesday, already contains very similar provisions for England. To reiterate, that schedule creates statutory information-sharing gateways and duties to co-operate between the Building Safety Regulator and other relevant public bodies. Furthermore, it allows local authorities and fire and rescue authorities to share information about building safety and standards and issues across all buildings, including buildings outside of the higher-risk regime regulated by the Building Safety Inspector.

Amendment 29 places duties to co-operate on Welsh Ministers and creates information-sharing powers for them, enabling them to work with other Welsh statutory bodies—fire and rescue authorities, fire inspectors, and local authorities. Sharing of information and co-operation are key elements in delivering the improvements that the Bill proposes. For Welsh Ministers, those duties and powers relate to their functions under part 2A of the Building Act 1984. Amendment 18 addresses the need for Welsh Ministers’ duty to co-operate and power to share information to be cascaded down where their functions in respect of building inspectors and/or building control approvers are delegated.

Amendment 25 removes the limitation on co-operation and information sharing between Welsh fire and rescue authorities, local authorities and fire inspectors, so that it is no longer restricted to higher-risk buildings only. Those bodies will work together across the whole range of buildings in Wales.

Amendments 24, 28 and 31 clarify that the duties to co-operate and powers to share information apply to Welsh fire and rescue authorities, as defined by amendment 33, and fire inspectors, defined by amendment 30. Amendment 34 mirrors clause 26, which we have already discussed and voted on. It confirms that information sharing under this provision must comply with the data protection legislation, so that people’s privacy rights are overridden only in certain specific circumstances. Amendments 23, 26, 27 and 32 make the consequential changes necessitated by the substantive amendments.

I am sure that Committee Members have followed all those amendments very closely, and I commend them to the Committee.

Mike Amesbury: Again, these are very technical but necessary amendments, which ultimately simplify and unify building control legislation, processes and procedures, and enforcement.

Christopher Pincher: I am grateful for the hon. Gentleman’s support. I commend the amendment to the Committee.

Government amendment 18 agreed to.

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

Christopher Pincher: Dame Judith’s independent review raised serious concerns over the lack of a level playing field for approved inspectors and local authority building control. There were different statutory and non-statutory processes leading to incoherence, confusion and complexity in the system.

[Christopher Pincher]

Clause 41 establishes a new registration and oversight regime to provide consistency across the public and private sector, and creates a new, unified building control profession. The new registration regime will raise standards in the sector and enhance public confidence by requiring a minimum level of demonstrated competence to provide building control services on different types of buildings. For the first time, individual building control professionals, whether in the public or private sector, will have to register with a regulatory authority. That is the Building Safety Regulator in England and the Welsh Ministers in Wales.

We intend for the registration process to involve the demonstration of competence against a shared framework. Registered professionals, who will be called “registered building inspectors”, will need to adhere to a common code of conduct. We will now be able to hold individuals accountable for professional misconduct or incompetence. That is the foundation for clause 43, in which we set out certain activities and functions that building control bodies can carry out only by using a registered inspector.

Together, these clauses will change the way building inspectors work with and for building control bodies, giving the consumer greater assurance that an experienced professional will be checking their building against regulations. We are introducing an updated registration regime for private sector building control bodies, currently known as approved inspectors. They will have to register with the regulatory authority to work as a registered building control approver and will be held to professional conduct rules. We are introducing sanctions and offences for misconduct to ensure that those organisations that supervise building works are held to high professional standards.

Clause 41 also allows the regulatory authority to delegate those registration functions to another body. We are introducing a new framework for the oversight of the performance of building control bodies, levelling the playing field for local authority building control and registered building control approvers. The regulatory authority will be able to set the operational standards defining the minimum performance standards that building control bodies must meet. It sets out the reporting requirements that will enable the regulator to collect information to assess and analyse the performance of building control bodies and make recommendations to drive up standards. It gives the regulatory authority investigatory powers when building control bodies breach the operating standards, and a series of escalating sanctions and enforcement measures to address poor performance issues.

Selaine Saxby: This is, obviously, a necessary and very technical clause, setting out a strong new regime of how we can improve competence levels and accountability in the building control sector. I wonder if he could clarify how the regulator will deal with poor performing building control bodies?

12.45 pm

Christopher Pincher: We want to make sure that such a body has the right sanctions available to it. We want to give it a robust set of powers to investigate performance and, where appropriate, impose escalating sanctions. In

the most serious cases, the powers will include the cancellation of the registration of the building control approvers. It will mean potentially the effective taking over of the function of a local authority building control by appointed officers from another local authority. We want to give the regulator the tools to ensure that building control bodies are improving safety and performance, driving up standards, and that, where they themselves are not performing, there is a means by which sanctions can be applied. Clause 41 is essential to creating a more robust and competent building control sector, and I commend it to the Committee.

Mike Amesbury: As the Minister says, this will raise the bar and raise the standards of building control throughout, as recommended by Dame Judith Hackitt and the review. It will do so through its process procedure and, very importantly, enforcement and deterrent. One of the concerns the Opposition raised with other clauses is the potential to have a two-track approach to building control with buildings below 18 metres. What assurances can the Minister give that that will not be the case and that standards will be raised in buildings that are below 18 metres, say, from 11 to 18 metres?

Shaun Bailey: I, too, welcome clause 41 and its effect on the Building Act. I want to raise a point with my right hon. Friend the Minister around clarity. We will effectively have two bodies in England and Wales that will deal with this. In England it is the regulator itself and in Wales it is Welsh Ministers. I would be grateful if he will confirm that he will ensure that his Department will keep that discussion ongoing. The importance of the clause, as with the rest of the Bill, is to ensure consistency. We talked in previous deliberations about cross-border work. We need to ensure that the professionals who would sit within this regime have consistency and are conducting work across the English-Welsh border to ensure that we keep the market going and continue to meet those home building targets.

I agree that the Bill is long overdue. As the hon. Member for Weaver Vale pointed out, it is about raising standards and ensuring that the profession knows what is expected of it. There is a broader point to be made on communication: making sure the points contained within clause 41 are communicated clearly, not just within the profession but more broadly. We have talked about how the impacts of making these regulatory and standards changes need to be communicated with the sector and with training providers, but they need to be communicated with the industry more broadly. If that is not done, we might have a situation in which people enter the industry without necessarily being clear about where they need to be. I would therefore ask the Minister to be sure that his Department continues to engage.

Considering the issues, the measure is long overdue. It is common sense and something that any other regulated profession would do. There is detail about the power to have investigations, and again we need to ensure that that system works and that the regulator is in place for that, in particular for proposed new section 58H—that system must flow properly. Sanctions, too, must be proportionate. The clause is a significant one, so I will not go into every single element of it, but will the Minister ensure that its implementation is reviewed and that we continue the discourse on it, notably on proposed new section 58I on sanctions for professional misconduct?

The regulator must ensure that it continues those discussions of what is appropriate. As we have touched on in other deliberations, circumstances change and things develop. I reiterate that to the Minister, and I ask him to ensure that his Department continues those communications, that the expectations of the industry are communicated and that under the mandate of clause 41 the regulator continues its conversations with Welsh Ministers, so that we can have consistency—that will be key, given its cross-border nature. We must ensure that the clause is implemented so it is how we want to see it work. I am sure he will, but I will be grateful for his reassurances.

Christopher Pincher: I am happy to give those reassurances to my hon. Friend. We will need to take care as we plan the transition to the new regime. I assure him that in our discussions with Ministers in Wales, with other Departments and with the Health and Safety Executive we are exploring appropriate transitional arrangements to ensure that the building control sector moves smoothly and safely from one uneven playing field to a more even one, in an orderly way, as I said.

The hon. Member for Weaver Vale asked about the new registration regime. In the clause, we are attempting to create the oversight and the regime that will provide consistency across the public and private sectors, creating a new unified building control profession for all buildings in the sector. The new regime will not only raise standards in the sector, but enhance public confidence by requiring a minimum level of demonstrated competence to provide building control services on different types of buildings. One can imagine that with a high-rise, higher-risk building, the competence levels that the Building Safety Regulator requires could be higher than or different from those for other buildings. We might come to that in later clauses.

In the meantime, I hope that the Committee will agree that the clause is vital to create a more robust and competent building control sector. I commend it—

Ruth Cadbury *rose*—

Christopher Pincher: Or I will commend it shortly, after I have given way to the hon. Member for Brentford.

Ruth Cadbury: Brentford and Isleworth, to be precise, but I thank the Minister for being so generous in allowing my intervention. The submission from the Local Authority Building Control group welcomed this aspect of the legislation and the clause. It expressed one concern, which I am raising as a question, about CICAIR—Construction Industry Council Approved Inspectors Register—which is designated by the Secretary of State to register and provide the oversight of approved inspectors. Has the Minister taken on board its recommendation that immediate action is taken to strengthen the audit process of CICAIR to include the requirement for external independent technical auditing in advance of the Bill being enacted? It wants to do that in order to improve current performance and standards.

Christopher Pincher: I am happy to work with CICAIR. We work with it to ensure that, for example, registration fees are proportionate. We will set out more details of that later. Fundamentally, we want to ensure that the registration and regulatory oversight process is sensible. I am happy to have further discussions with it and my officials about any appropriate audit trail. I am sure that the Building Safety Regulator—presently in shadow, but as it builds its approach—will also want to have those sensible discussions.

I will accept no more interventions and conclude by saying that the clause is essential to create a more robust and competent building control sector. I commend it to the Committee.

Question put and agreed to.

Clause 41, as amended, ordered to stand part of the Bill.

The Chair: Before I call the Government Whip, may I say to Members that it is customary to stand in your place if you want to indicate to the Chair that you wish to speak? I am not an auctioneer. I was a London taxi driver, so I am good at spotting various gestures, but it would be helpful if you could stand in your place.

Ordered, That further consideration be now adjourned.
—(*Scott Mann.*)

12.56 pm

Adjourned till this day at Two o'clock.

