



# Housing, Communities and Local Government Committee

House of Commons, London SW1A 0AA

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Lord Greenhalgh  
Minister of State for Building Safety, Fire and Communities  
Ministry of Housing, Communities and Local Government  
Fry Building  
2 Marsham Street  
London  
SW1P 4DF

19 July 2021

Dear Stephen,

## **Government response to pre-legislative scrutiny of the Building Safety Bill**

Thank you for the Government's thorough and comprehensive response to the Committee's pre-legislative scrutiny of the Building Safety Bill. We are glad that the Government found the Committee's scrutiny of the draft Bill helpful and were pleased to see so many of our recommendations reflected in the Bill introduced to Parliament on 5 July. I am writing with a number of outstanding questions and concerns from the Committee.

### **General recommendations**

Regarding the powers the Government has taken to amend primary legislation, please could you clarify the conditions under which the Government would "consider it absolutely necessary" to use these powers? We are particularly concerned about the power to amend the definition of the Accountable Person.

### **Leaseholders and the building safety charge**

You have decided to extend the limitation period for claims under section 1 of the Defective Premises Act 1972 from six years to fifteen, with retrospective effect. What was the evidence for setting the upper limit at fifteen years? How many more buildings will be brought into scope as a result and how many buildings will miss out because they were built more than fifteen years ago?

The Committee asked the Government to announce, before the Bill was published, its proposals for funding all historical building safety remediation works. While we are grateful for the information provided in the response, we are concerned that there was no mention of the words 'loan scheme' nor 'developer tax', both of which were announced by the Secretary of State on 10 February. When will full details of the loan scheme, developer tax, and developer levy be announced? Can you confirm that the Government, as per the Committee's recommendation, will foot the bill in the short term?

We note that the information in paragraph 31 of the Government's response contains the most detail on the loan scheme that we have seen since the Secretary of State's announcement back in February – even though the word 'loan' is entirely absent from the response. We are extremely concerned that the response seems to provide conditions for leaving some leaseholders' payments uncapped – either when they are "properly consulted" or when "the First Tier Tribunal grants the landlord dispensation from the consultation requirements". Is our reading of your response correct? If so, why does the Government consider it justifiable that leaseholders should ever be in the situation of facing uncapped costs?

We are particularly concerned by the fact that the urgency of building safety remediation work could mean that consultation is dispensed with on application to the tribunal, as we heard in evidence. It is our view that no leaseholder should face uncapped costs for remediating historic defects not of their making – indeed, we maintain that leaseholders should pay nothing at all. In our pre-legislative scrutiny, we expressed concern that the Government had shifted to talking about protecting leaseholders from “unaffordable costs”. We note that in its response the Government has shifted even further, to saying leaseholders should not face “unaffordable upfront costs”. Does the Government now accept that, over a period, leaseholder payments could amount to costs that are unaffordable?

### **The Building Safety Regulator**

The Government does not agree with the Committee’s recommendation that factors for expanding the definition of a higher-risk building should be specified by way of a ‘have regard’ requirement. What is its reasoning?

The Government does not agree with the Committee’s recommendation to set a timetable for reviewing the scope of the regime, on the basis that it considers this “unnecessary” because under the Bill, the Regulator must monitor the scope of the regime continuously. It is our view that monitoring and reviewing are two different activities. Could you clarify what actions the Regulator will take to meet the duty to monitor the regime?

Could you clarify whether the inclusion of care homes and hospitals above 18m or seven storeys within the initial scope of the definition of higher-risk building, as mentioned in the response, is a new development? Regardless, the Committee is concerned that this will not protect those less able to evacuate other buildings, including care homes and hospitals below 18m, whether through vulnerability or lack of ways of exiting the building. We therefore reiterate our recommendation that the ability of residents to evacuate a building – of any height – be the principal factor when the scope of the definition is expanded.

We are grateful for the Government’s response to our recommendation that clause 12 be amended to remove the Secretary of State’s power to abolish the Building Safety Regulator’s statutory committees. However, the response only addresses the possibility of the Building Safety Regulator wishing to reform itself or adapt its committee structure. We are concerned that the Bill in its current form allows the Secretary of State to abolish a statutory committee without a recommendation from the regulator. We therefore urge the Government to accept our original recommendation and remove this power, or to introduce safeguards so that the Secretary of State cannot abolish a statutory committee without a formal recommendation from the Building Safety Regulator.

### **Design and construction**

The Government did not agree with our recommendation that provisions be included in the Bill for establishing a national system of third-party accreditation and registration for all professionals working on the design and construction of higher-risk buildings, saying that it considered these matters should be for statutory guidance and wider industry guidance. The response referred to a variety of work ongoing in this area, including by the British Standards Institution. Can you provide further information about the timetables for completion of this work?

The Committee is grateful for the Government’s detailed response to our recommendation that dutyholder choice be removed entirely from the building safety system, but we are not satisfied that the safeguards outlined will eliminate conflicts of interest between building control bodies and dutyholders. How does the Government propose to resolve the problem that building control bodies might feel less able to point out safety concerns for fear of losing future contracts?

## **Occupation**

We are pleased that the Government accepted our recommendation to provide guidance on what is meant by the accountable person having to take “all reasonable steps” in the new safety case approach. Can the Government confirm that the definition of “major incident” will include incidents that might reasonably cause death or serious injury?

The Government’s response recognises the benefits of establishing a central register of Building Safety Managers and states that “[a]ny register should be supported by robust and consistent assurance processes”, however it leaves it to industry to decide whether it should establish such a register. What steps will the Government take to encourage the industry to ensure that a central register is established?

## **Construction products and supplementary provisions**

The response states: “Where appropriate, we will require sample testing of safety critical products by a third party”. Under what conditions would this be appropriate, and when would this not be appropriate or required?

The Government says it “shares the Committee’s views on the need for certainty on whether the UK will continue to recognise European harmonised standards” yet has “no current plans to review these standards at this time”. How will the Government provide certainty for the industry after the UK stops recognising the EU’s CE marking for products on 1 January 2022?

Thank you again for MHCLG’s comprehensive response to the Committee’s report. I would be grateful for a response to this letter by Friday 27 August.

A handwritten signature in black ink, appearing to read 'Clive Betts', written in a cursive style.

**Clive Betts MP**  
**Chair, Housing, Communities and Local Government Committee**