Ministry of Housing,
Communities &
Local Government

Clive Betts
Chair - Housing, Communities and Local Government Committee

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Dear Clive

Thank you for your letter of 19 July outlining some of the Select Committee's outstanding questions and concerns following the Government's response to the pre-legislative scrutiny of the Building Safety Bill. I have considered the points raised in your letter and am pleased to be able to provide the following response.

General recommendations

You asked for further information about the conditions under which the Government would use delegated powers. We agree that those powers should be included only where justified and necessary.

A key reason for seeking to use delegated powers, beyond aligning with the legislative approach taken in the existing statutory regimes we are amending (such as the Building Act 1984), is that we judge it essential to be able to respond in a timely way to an evolving evidence base on building safety issues. Using secondary legislation will enable the Secretary of State to respond more rapidly to changing circumstances, including emerging and potentially urgent risks.

Where the delegation of a power to the Secretary of State relates to a matter that would be of significant interest to Parliament or amends primary legislation, regulations made under the power will be subject to the affirmative resolution procedure requiring the approval of both Houses of Parliament.

In relation to the Committee's concerns over the power to amend **the definition of Accountable Person**, the Government considers that this would be used to ensure that the building safety regime is adaptable, futureproof, and that it continues to deliver the correct Accountable Person in every case. We recognise that due to the nature and complexity of some land tenure structures there is a remote possibility that the definition may fail to identify a clear or appropriate Accountable Person in circumstances we cannot at this stage foresee, which would need to be clarified. In addition, being an Accountable Person carries serious statutory obligations and, if those who ought to be caught by the definition find a way to avoid those responsibilities, we require the flexibility to be able to amend the definition to ensure they continue to fall within it. And as you will be aware, the Building Safety Bill is designed to improve building safety for many years to come, and as such the Building Safety Regulator may in the future recommend changes to the scope of the building safety regime. It is vital that the Secretary of State has the power to amend the definition to ensure that those that should be responsible for building safety in any new

categories of in scope buildings are correctly captured as Accountable Persons and cannot avoid their building safety obligations under the Bill.

Leaseholders and the Building Safety Charge

You asked for further information on the choice of 15 years for the limitation period. There are various limitation periods set in the Limitation Act 1980 for different types of civil claim. These range from 12 months (for defamation or the late payment of insurance claims), to six years (for claims relating to some types of contracts), to 15 years (the long stop limitation period for cases involving negligence other than personal injury), to 60 years for certain actions for recovery of land. A 15-year limitation period has been chosen to bring the Defective Premises Act in line with other types of serious civil claim.

You also asked about the number of buildings the retrospective extension to the limitation period will bring into scope. Our changes to the Defective Premises Act were not included in the impact assessment that was published alongside introduction of the Bill. We will be carrying out further research, including addressing issues with data availability, and publishing a standalone impact assessment for our redress measures, including changes to the Defective Premises Act, during the passage of the Bill.

In relation to remediation costs, as the Secretary of State made clear at the second reading debate, we support the expert advice that there is no evidence of a systemic risk of fire in blocks of flats. We are working with the Health and Safety Executive and others to explore ways to deliver an effective fire risk assessment audit process that ensures assessments are carried out in a risk-proportionate manner and do not recommend unnecessary and costly remediation works where they are not genuinely needed. We are also exploring options to provide a clear route for residents and leaseholders to challenge costly remediation work.

It is crucial that all market participants show the necessary leadership to help end the nightmare that has impacted the lives of many leaseholders. Following advice from independent experts we've set out that EWS1 forms should not be requested for buildings below 18m. We urge the market to follow this approach and we will continue to work closely with the industry to ensure that a more risk-proportionate approach is taken to fire safety in blocks of flats. Through concerted, cross-market action we believe we can help open up the housing market, allowing thousands to buy, sell or re-mortgage their homes.

Our multi-billion investment in grant funding for cladding remediation on buildings of 18 metres and above will protect hundreds of thousands of leaseholders from the cost of remediating unsafe cladding on their homes. It is right that we have focused grant funding on the tallest buildings – this is in line with longstanding expert advice on which buildings are at the highest risk, but we are also stepping in to provide a generous finance scheme for the remediation of unsafe cladding on medium-rise buildings, where the risk is lower.

Where required, residents in buildings between 11 and 18 metres will gain new protection from the costs of remediating unsafe cladding through a government backed finance scheme. The Government is conscious of the need to make any finance scheme affordable for leaseholders which is why we have said that the finance scheme will have a £50 a month cap. As we have previously discussed, we will publish more information on the scheme as soon as we are in a position to do so.

The Government launched a consultation on 21 July seeking views on the design of the levy, including how it will be calculated. Decisions on the levy will be informed by the evidence received from this consultation, and balancing revenue raised with potential impacts on housing supply.

The consultation on the design of the new Residential Property Developer Tax ran from 29 April to 22 July. HMT officials are now considering the responses received, in order to inform the final design of the tax, and will publish a formal response to the consultation in due course. The final design of the tax, including the rate and allowance, will be announced by the Chancellor at a future Budget. The tax will come into effect from April 2022.

I note the committee's views on leaseholders' liability for building remediation costs for historic defects. The Building Safety Bill contains measures to protect leaseholders by providing a legal requirement for landlords to explore alternative ways to meet the costs of remediation works before passing these onto leaseholders, along with evidence that this has been done. If this does not happen, leaseholders will be able to challenge these costs in the courts.

The Building Safety Regulator

You asked that we clarify our reasoning for not including specific factors to which the Building Safety Regulator must 'have regard' in relation to expanding the definition of a higher-risk building.

The definition of higher-risk building will be kept under constant review by the Building Safety Regulator. Clause 5 places a duty on the Building Safety Regulator to keep the safety and standard of buildings under review. This will include considering the effect of factors, such as the general occupant profile for different types of buildings, on the safety of people in buildings. Where the Building Safety Regulator identifies performance or safety issues, it will be able to work with industry to understand the situation, issue guidance or commission research, and seek technical advice from the Building Advisory Committee.

Following this, the Building Safety Regulator could consider whether a change in building regulations is needed, or whether types of building need to be brought in scope of the enhanced regime. If the Building Safety Regulator believes a new category of building meets the requirements set out in clause 30, 120G(1)(a) to (c) and/or clause 66(1)(a) to (c) then it must make a recommendation that the Secretary of State alters the definition of higher-risk building. When making these assessments, the Building Safety Regulator will have regard to the principles of regulatory good practice set out at clause 3(2), which include being proportionate and targeting action at cases where it is needed. In light of this and the duty in clause 5, we do not believe there is a need to include 'have regard' factors. And in addition to this ongoing requirement, the Bill includes a requirement for an independent periodic review of the effectiveness of the building regulatory regime and the system of regulation for construction products.

You asked about **the inclusion of care homes and hospitals** in the scope of the Regime. I can confirm that those care homes and hospitals which are at least 18 metres or at least 7 storeys will be within the definition of higher-risk building for the new building control process, and that this is a new development since the publication of the Pre-legislative Scrutiny Report. This ensures that all high-rise buildings which may be occupied by those who are unable to evacuate quickly or without assistance are designed and constructed under the new regime. As you will know, once occupied hospitals and care homes are workplaces, so all parts of these buildings will be subject to the Fire Safety Order.

In relation to your concerns about the power to abolish **Building Safety Regulator's statutory committees** contained within clause 12, as I said above the Building Safety Bill is designed to improve building safety for many years to come. The Government believes that the ability to abolish, alter or merge committees is needed to allow the Building Safety Regulator to adapt and improve its regulation and engagement with experts, residents, and other stakeholders over time. This reflects the advice and practical experience of the Health and Safety Executive, as an experienced regulator which is committed to excellent stakeholder engagement.

We can only foresee using this power following advice from the Building Safety Regulator. Changes to the committee structure by regulations will be subject to affirmative resolution and any changes must be approved by both Houses of Parliament which could reject those not supported by the Building Safety Regulator.

Design and Construction

You asked for further information about the timetables for the completion of ongoing work with the British Standards Institution. The draft competence framework for Building Safety Managers has now been published by the BSI for consultation (closing on 15 September). The BSI aims to finalise the standard in early 2022. The competence framework standards for Principal Designers and Principal Contractors are under development and are expected to be published for consultation in Autumn 2021. The BSI aims to finalise these standards by Spring 2022.

The Government intends that statutory guidance will provide information on the criteria for selecting competent workers, making reference to industry standards and the work undertaken by various sectors to raise competence. The Health and Safety Executive also plans to publish non-statutory guidance on competence and dutyholders for the new regime in Spring 2022.

In response to the concern that building control bodies may feel less able to point out safety concerns for fear of losing future contracts, we are introducing a system of oversight of the performance of building control bodies, and a system of individual registration based on competence and adherence to a code of conduct, all overseen by the Building Safety Regulator. We believe that this greater scrutiny and accountability will ensure there are no conflicts of interest and that there is greater incentive to ensure all buildings, including non-higher-risk buildings, are safe.

Occupation

As noted in your letter, we have amended clause 84 (Management of Building Safety Risks) so that under the safety case regime Accountable Persons must take all reasonable steps to prevent any incident involving a building safety risk materialising. I can confirm that the safety case regime is not limited to just "major incidents", and therefore also includes those which might reasonably cause death or serious injury.

In relation to the establishment of a central register of Building Safety Managers, the Government believes any decision to do so is best taken by the industry. The Building Safety Alliance, an industry-led body formed out of Working Group 8 (Building Safety Managers) set up under the Competence Steering Group, is working to establish a register of Building Safety Managers. We have been kept updated on its progress.

As already detailed, the Government is sponsoring the British Standards Institution (BSI) to develop the competence standard for Building Safety Managers, based on industry's recommendations. Once published, this standard can be used by professional bodies or organisations to assess individuals.

While the Government agrees that publicly accessible registers may help give assurance to Accountable Persons in their decision and promote transparency to residents, a register must not negate the duties on the Principal Accountable Person to carry out checks on competence and should not be seen as the only indication of competence for a particular building. Any register which industry may choose to create should also be supported by robust and consistent assurance processes, including third-party accreditation of organisations making assessments.

Construction products and supplementary provisions

In relation to your question about the conditions under which third-party sample testing of safety critical products would be appropriate, I can confirm that we intend to bring regulation for these products in line with arrangements for those that are subject to a designated standard under the existing regulatory framework for construction products.

Manufacturers will be required to put in place factory production controls and follow the specified assessment and verification of constancy of performance (AVCP) that ensures the product consistently meets the claimed performance standards. This includes third party monitoring, which could include sample testing, and certification as required by the specific AVCP system. Manufacturers will also have to declare the performance of a safety critical product against its published standard.

An independent review into the testing of construction products is underway and is expected to report in autumn 2021. We will also consider the review's recommendations and respond in full in due course.

As you are aware, the Government shares the Committee's views of the need to provide industry with certainty on whether the UK will continue to recognise European harmonised standards. Once the Building Safety Bill is enacted, the existing body of designated standards (formerly 'European harmonised standards') will be maintained in the GB regulations for construction products. The requirements to place any products on the market subject to those designated standards will stay the same. As we indicated in our response to your report, the Government has no current plans to review these standards.

The Government will also ensure there are appropriate mechanisms in place for the construction products sector to participate in the process that leads to the adoption of any new regulated standards, were these to be considered. This includes where a new designated standard is adopted under the UK regulations by the Secretary of State. In that case, a standard proposed for designation will be published on GOV.UK and an opportunity will be given to object to designation. Designated standards will only become mandatory after an implementation period, meaning business and the construction industry will have time to adjust to the changes.

The Committee should be aware that the date by which the end recognition of the CE mark in Great Britain is not set in legislation for construction products. We intend to end recognition of the CE mark in Great Britain through secondary legislation, using powers contained within the Building Safety Bill.

I hope that this further information has been helpful and I would be happy to meet further to discuss the Building Safety Bill.

Yours sincerely,

Yours,

LORD GREENHALGH