

# Levelling-up and Regeneration Bill

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AMENDMENTS  
TO BE MOVED  
ON REPORT

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**After Clause 108**

THE EARL OF LYTTON

After Clause 108, insert the following new Clause –

**“Building Safety Remediation Scheme**

- (1) Planning permission must not be granted to any developer or associate responsible for the construction or sale of units in a building with a building safety risk until the Secretary of State has established a Building Safety Remediation Scheme.
- (2) Schedule (*Building Safety Remediation Scheme*) makes further provision for the establishment of a Building Safety Remediation Scheme.
- (3) This section comes into force six months after Royal Assent.
- (4) In this section –
  - “Associate” has the meaning of “associated persons” in section 121 of the Building Safety Act 2022;
  - “Building safety risk” has the meaning given in section 120(5) of the Building Safety Act 2022.”

***Member's explanatory statement***

*This Clause inserts a new Schedule to implement a building safety remediation scheme to ensure that buildings with building safety risks are put right without costs to leaseholders.*

**After Schedule 11**

## THE EARL OF LYTTON

After Schedule 11, insert the following new Schedule –

## “SCHEDULE

## BUILDING SAFETY REMEDIATION SCHEME

*Duty to establish the scheme*

- 1 (1) The Secretary of State must establish, or make arrangements for the establishment of, a Building Safety Remediation Scheme (“the BSRS”).
- (2) The purpose of the BSRS must be to ensure that residential blocks of flats with building safety risks are made safe, mortgageable and insurable –
  - (a) speedily, efficiently, effectively and proportionately,
  - (b) without recourse to lengthy and expensive legal proceedings,
  - (c) without cost to leaseholders or occupiers, and
  - (d) in accordance with the building safety remediation principle.
- (3) For the purposes of this Schedule “building safety remediation” is the principle that –
  - (a) so far as reasonably practicable, remediation costs for relevant buildings with building safety risks arising from defective construction or additional building work should be met by the developer, the principal contractor or both, and
  - (b) where that is not reasonably practicable, or where building safety risks do not arise from defective construction or additional building work, costs should be met by the construction industry.

*Scope of the scheme*

- 2 The BSRS must be framed so as to apply to relevant buildings which –
  - (a) were constructed, or subject to additional building work, on or after 1 June 1992, and
  - (b) present building safety risks.

*Operation of the scheme*

- 3 (1) The BSRS must provide for persons (including freeholders and leaseholders) to apply –
  - (a) for a building to be recognised as a relevant building, and
  - (b) for a relevant building to be recognised as eligible for grants in respect of the cost of remediation works.
- (2) The BSRS must provide –

- (a) for the appointment of persons (“BSRS adjudicators”) with appropriate expertise to determine, on behalf of the Secretary of State, applications under sub-paragraph (1)(a) and (b), and
  - (b) for BSRS adjudicators to be required to exercise operational independence in making determinations under the scheme.
- (3) For the purposes of sub-paragraph (2), the BSRS may provide for appointments to be made by the Secretary of State or by one or more persons designated for that purpose by the Secretary of State under the scheme.
- (4) The BSRS must provide that determinations of BSRS adjudicators in respect of building eligibility are final (but nothing in this sub-paragraph prevents the exercise by the High Court of its judicial review jurisdiction).

*Scheme supplementary regulations*

- 4 (1) The Secretary of State must make regulations (“scheme supplementary regulations”) in respect of the BSRS.
- (2) Scheme supplementary regulations, in particular –
- (a) may make provision for determining what is to be, or not to be, treated as a relevant building for the purposes of the scheme;
  - (b) may make provision for determining the date on which buildings were constructed or subject to additional building work;
  - (c) may make provision for determining who is entitled to make an application under the scheme in respect of a relevant building;
  - (d) may specify criteria to be applied by BSRS adjudicators in determining whether a relevant building presents building safety risks as a result of defective construction (and the criteria may, in particular, make provision wholly or partly by reference to building regulations or other enactments in force at the time of construction or by reference to specified classes of document);
  - (e) may make provision permitting or requiring BSRS adjudicators to conduct tests, and requiring owners and occupiers of relevant buildings to cooperate with BSRS adjudicators in conducting tests;
  - (f) may make provision permitting BSRS adjudicators to require local authorities or other specified classes of person to provide information or documents, and requiring persons to comply with any requirements imposed;
  - (g) may make provision about the timing of applications and determinations;
  - (h) may make provision about evidence to be adduced in support of an application;
  - (i) may require or permit BSRS adjudicators to operate a rebuttable presumption of defective construction where specified classes of fact have been proved (for which purpose the regulations may make provision similar to, or applying with or without modification, any enactment);

- (j) may make provision about the making, processing and determination of applications under the scheme;
- (k) may make provision about the giving of notice to developers and others;
- (l) may make provision about the payment of awards;
- (m) may make provision about monitoring expenditure on remediation works;
- (n) may set a threshold for the estimated or quoted cost of remediation works below which an application for recognition cannot be made;
- (o) may make provision for determining, having regard in particular to the need for proportionality, the nature and extent of remediation costs which may be funded by the scheme (for which purpose “remediation costs” means any class of expenditure related to building safety risks, including, in particular, repair costs, the costs of interim mitigation or safety measures and reimbursement of or compensation for increases in insurance premiums);
- (p) may make provision for account to be taken of grants provided in respect of remediation works by any other scheme established by enactment or by a public authority;
- (q) may make provision for financial assistance provided by any other scheme established by enactment or by a public authority to be repaid out of grants under the remediation scheme;
- (r) may permit or require the amalgamation of multiple applications in respect of one relevant building, or of applications on behalf of the residents of one or more relevant buildings;
- (s) may permit or require representative applications on behalf of the residents of one or more relevant buildings;
- (t) may make provision about the qualifications, appointment, remuneration and conduct of BSRS adjudicators, and the regulations may, in particular –
  - (i) provide for adjudicators to be remunerated from BSRS funds;
  - (ii) provide for indemnities in respect of decisions taken by adjudicators (for which purpose the regulations may apply an enactment (with or without modification)); and
- (u) must include provision requiring the maintenance and publication of records of applications and determinations under the scheme.
- (v) must confer a right to appeal to the first tier tribunal in respect of determinations as to whether a building safety risk arose from defective construction or additional building work.

#### *Scheme funding regulations*

- 5 (1) The Secretary of State must make regulations about the funding of the BSRS Scheme and of grants made under the scheme (“scheme funding regulations”).
- (2) Scheme funding regulations must aim to apply the building safety remediation principle so far as practicable.

- (3) For that purpose, scheme funding regulations must aim to ensure that a grant awarded under the scheme is funded –
  - (a) so far as possible where building safety risks arise from defective construction or additional building work, by the developer or principal contractor of the building in respect of which the grant is awarded; and
  - (b) failing that (whether by reason of the dissolution of a developer or principal contractor, insolvency or otherwise), or where building safety risks do not arise from defective construction or additional building work, by money paid into a fund maintained through a levy on the construction industry in general, or specified parts of the construction industry.
- (4) For the purposes of achieving the objective in sub-paragraph (3)(a) –
  - (a) the reference to the developer of a building includes a reference to any person who arranged for its construction or additional building work and for the sale of units in the building;
  - (b) the reference to the principal contractor is a reference to the person who was responsible to the developer for the construction of a building or undertaking additional building work;
  - (c) scheme funding regulations must permit a BSRS adjudicator to provide for an award under the scheme to be paid by one or more persons specified by the adjudicator (and awards may, in particular, provide for joint and several liability);
  - (d) scheme funding regulations must confer a right to appeal to the First-tier Tribunal;
  - (e) scheme funding regulations may include provision permitting a BSRS adjudicator to permit or require an award for payment by a specified person to be satisfied wholly or partly by a person connected to that person (within the meaning of the regulations, for which purpose the regulations may apply, with or without modification, section 1162 of the Companies Act 2006 (parent and subsidiary undertakings) and any enactment relating to joint ventures); and
  - (f) scheme funding regulations may include provision about enforcement of liability to satisfy awards, which may, in particular –
    - (i) provide for collection of awards as a statutory debt;
    - (ii) include provision for interest or penalties;
    - (iii) provide for liability to make payments pending appeal or review; and
    - (iv) create criminal offences in connection with evasion.
- (5) For the purposes of achieving the objective in sub-paragraph (3)(b), scheme funding regulations –
  - (a) must establish one or more levies to be paid by specified businesses or classes of business;
  - (b) must make provision for determining liability to pay the levy;
  - (c) may confer functions on BSRS adjudicator or other specified persons (which may include the Secretary of State) in respect of determination of liability to pay the levy;

- (d) must confer on a person determined to be liable to pay the levy the right to appeal to the First-tier Tribunal;
  - (e) may provide for different amounts of levy to be paid by different classes of person;
  - (f) may provide for the levy to be paid by way of one-off payments, periodic payments or both;
  - (g) may include provision about enforcement of liability to pay the levy (which may, in particular, provide for collection of the levy as a statutory debt, include provision for interest or penalties and create criminal offences in connection with evasion);
  - (h) must include provision about the administration of the levy by the Secretary of State, including provision as to the maintenance and publication of estimates, accounts and other records; and
  - (i) may include supplemental provision about the levy.
- (6) In making regulations under sub-paragraph (5), and in particular in assessing the proportionality and other fairness of any levy imposed by regulations under sub-paragraph (5), the Secretary of State must –
- (a) have regard to any other levy or similar imposition that appears to have a similar purpose as a levy under the scheme funding regulations, and
  - (b) consult persons appearing to him or her to represent the interests of persons affected by other relevant levies and impositions.
- (7) Scheme funding regulations may include provision about –
- (a) application of awards, levies and grants, including provision for holding (or return) of surplus funds;
  - (b) the nature and extent of obligations imposed by awards (which may, in particular, provide for payments in money or services or money's worth);
  - (c) processes and procedures to be applied in determining applications for grants and questions of liability to awards (which may, in particular, include provision for determination wholly, partly, absolutely or contingently by arbitration, mediation or any other kind of process or procedure the Secretary of State thinks appropriate);
  - (d) terms and conditions of awards, levies and grants; and
  - (e) appraisals, appeals and enforcement.

#### *Apportionment*

- 6 (1) Scheme funding regulations may make provision about apportionment of liability for defective construction.
- (2) In particular, scheme funding regulations may provide that where a person is required to pay an award under the BSRS scheme, that person may bring proceedings to recover a contribution from one or more persons who share responsibility for the defects in respect of which the award is made.
- (3) Provision made by virtue of this paragraph may –
- (a) confer jurisdiction on the First-tier Tribunal or on any other specified court or tribunal;

- (b) apply (with or without modifications) any enactment about third-party liability.

#### *Interim payments*

- 7 (1) The Secretary of State may make interim grants to persons whom the Secretary of State believes are likely to be entitled to benefit from the remediation scheme.
- (2) Interim grants may be made on such terms and conditions (including as to repayment) as the Secretary of State may specify.
- (3) Scheme supplementary regulations—
- (a) may include provision for account to be taken of interim grants under this paragraph; and
  - (b) may include other provision about interim grants under this paragraph (including provision about applications for grants, eligibility for grants and determination of applications for grants).

#### *Interpretation*

- 8 For the purposes of this Schedule—
- “Building safety risk” has the meaning given in section 120 (5) of the Building Safety Act 2022;
  - “construction” includes any kind of building work (whether part of the original construction of a building or not) including works of improvement, repair and extension;
  - “class” includes description;
  - “defective construction or other building work” means construction or additional building work that—
    - (a) contravened building regulations or other enactments in force at the time of the construction or additional building work; or
    - (b) satisfies any other criteria specified in the BSRS or in scheme supplementary regulations;
  - “BSRS funding regulations” has the meaning given by paragraph 5;
  - “BSRS scheme” has the meaning given by paragraph 1;
  - “BSRS adjudicator” has the meaning given by paragraph 3;
  - “grant” includes loans and any other form of financial assistance (for which purpose a reference to payment includes a reference to the provision of assistance);
  - “building safety remediation principle” has the meaning given by paragraph 1;
  - “remediation costs” has the meaning given by paragraph 4;
  - “relevant building” means a self-contained building, or self-contained part of a building that contains at least two dwellings; and
  - “scheme supplementary regulations” has the meaning given by paragraph 4.

*Consultation*

- 9 Before making the scheme, the scheme supplementary regulations and the scheme funding regulations, the Secretary of State must consult—
- (a) persons appearing to represent the interests of freeholders, leaseholders or occupiers of blocks of flats with building safety risks;
  - (b) persons appearing to represent the interests of the construction industry and related industries; and
  - (c) such other persons as the Secretary of State thinks appropriate.

*Regulations*

- 10 (1) Scheme supplementary regulations and scheme funding regulations—
- (a) shall be made by statutory instrument;
  - (b) may make provision that applies generally or only for specified purposes;
  - (c) may make different provision for different purposes;
  - (d) may confer functions (including discretionary functions) on specified persons or classes of person, and may provide for the Secretary of State to appoint persons to exercise functions under the regulations or the remediation scheme (whether or not on behalf of the Secretary of State); and
  - (e) may include supplemental, consequential or transitional provision.
- (2) Scheme funding regulations may not be made unless a draft has been laid before, and approved by resolution of, each House of Parliament.
- (3) Scheme supplementary regulations are subject to annulment in pursuance of a resolution of either House of Parliament.”

***Member's explanatory statement***

*This new Schedule would implement a building safety remediation scheme to ensure that buildings with building safety risks are put right without costs to leaseholders.*





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