Leasehold and Freehold Reform Bill

THIRD MARSHALLED

LIST OF AMENDMENTS

TO BE MOVED

IN COMMITTEE OF THE WHOLE HOUSE

The amendments have been marshalled in accordance with the Instruction of 27th March 2024, as follows –

Clauses 1 to 7	Clauses 45 and 46
Schedule 1	Schedule 9
Clauses 8 to 18	Clauses 47 to 68
Schedule 2	Schedule 10
Clauses 19 to 29	Clauses 69 to 103
Schedule 3	Schedule 11
Clauses 30 to 36	Clauses 104 to 108
Schedules 4 to 7	Schedule 12
Clauses 37 to 44	Clauses 109 to 123
Schedule 8	Title

[*Amendments marked ★ are new or have been altered*]

Amendment No.

After Clause 50

BARONESS TAYLOR OF STEVENAGE

64 After Clause 50, insert the following new Clause—

"Power to establish a Right to Manage regime for freeholders on private or mixed-use estates

In Section 71 of the CLRA 2002, after subsection (2) insert—

"(3) The Secretary of State may by regulations make provision to enable freeholder owners of dwellings to exercise a right to manage in a way which corresponds with or is similar to this Part.

(4) A statutory instrument containing regulations under subsection (3) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.""

Member's explanatory statement
This new Clause would permit the Secretary of State to establish a Right to Manage regime for freeholders of residential property on private or mixed-use estates.

BARONESS TAYLOR OF STEVENAGE

65 After Clause 50, insert the following new Clause—

"Ground rent cap

The Secretary of State must, within 30 days of this Bill coming into force, publish the Government's response to its consultation, 'Modern leasehold: restricting ground rent for existing leases' and lay before both Houses of Parliament a statement outlining its plans to bring forward any such legislation that its implementation requires."

Member's explanatory statement
This amendment would require the Government to publish its response to its consultation on a cap on ground rents and set out its implementation within a month of the Bill passing.

LORD BAILEY OF PADDINGTON

65A After Clause 50, insert the following new Clause—

"Premises to which leasehold right to manage applies

In section 72(1)(a) of the CLRA 2002 at the end insert the words "or of any other building or part of a building which is reasonably capable of being managed independently"."

Member's explanatory statement
This new Clause, which is an amendment to the Commonhold and Leasehold Reform Act 2002, adopts Recommendation 5 of the Law Commission's Right to Manage report to permit leaseholders in mixed-use property with shared services or underground car park to exercise the Right to Manage for their element of the building.

LORD BAILEY OF PADDINGTON

65B After Clause 50, insert the following new Clause—

"Proportion of qualifying tenants required for a notice of claim to acquire right to manage

In section 79(5) of the CLRA 2002 omit "one-half" and insert "35%"."

Member's explanatory statement
This new Clause would reduce the proportion of qualifying tenants who must be members of a proposed Right to Manage company for a claim to be made from one-half to 35%.

Clause 51

BARONESS SCOTT OF BYBROOK

66 Clause 51, page 59, line 15, leave out "as follows" and insert "in accordance with subsections (2) to (6)"

Member's explanatory statement
This amendment is consequential on the other Government amendment to this clause.

BARONESS TAYLOR OF STEVENAGE

67 Clause 51, page 60, line 2, leave out subsection (4)(a)

Member's explanatory statement
This amendment would ensure that the statutory test of reasonableness would apply to fixed service charges.

BARONESS SCOTT OF BYBROOK

68 Clause 51, page 60, line 19, at end insert—

"(7) The Landlord and Tenant Act 1987 ("the LTA 1987") is amended in accordance with subsections (8) to (10).

(8) In the provisions referred to in subsection (9), in each place they occur—
(a) for "service charge" substitute "variable service charge";
(b) for "service charges" substitute "variable service charges".

(9) The provisions are—
(a) in section 24 (appointment of manager by tribunal), subsections (2) and (2A);
(b) in section 35 (application by party to lease for variation of lease), subsections (2) and (4);
(c) in section 42 (service charge contributions to be held in trust), the heading and subsections (1), (2), (3), (4), (6), and (8).

(10) In section 35(8), for ""service charge" has the meaning" substitute ""service charge" and "variable service charge" have the meaning".

(11) In section 167 of the CLRA 2002 (failure to pay small amount for short period)—
(a) in subsection (1), for "service charges" substitute "variable service charges";
(b) in subsection (5), for "service charge" substitute "variable service charge"."

Member's explanatory statement
This amendment would, in light of the amended definition of "service charges" in section 18 of the LTA 1985, make amendments to provisions in the LTA 1987 and CLRA 2002 that use that definition so that they refer to "variable service charges" (and accordingly preserve the current effect of those provisions).

Clause 53

BARONESS TAYLOR OF STEVENAGE

69 Clause 53, page 62, leave out line 16

Member's explanatory statement
This amendment would remove provision for the appropriate authority to exempt certain categories of landlord from the requirements relating to service charge demands set out in subsection (1) of the Clause.

BARONESS SCOTT OF BYBROOK

70 Clause 53, page 62, line 28, leave out "the Landlord and Tenant Act 1987 ("the LTA 1987")" and insert "the LTA 1987"

Member's explanatory statement
This amendment is consequential on the Government amendments to clause 51.

Clause 54

BARONESS SCOTT OF BYBROOK

71 Clause 54, page 63, line 21, leave out paragraph (b) and insert—

"(b) that, on or before the account date for an accounting period in respect of which a statement of account is provided, the landlord must provide the tenant with a written report about the statement prepared by a qualified accountant, which—

(i) is prepared in accordance with specified standards for the review of financial information, and

(ii) includes a statement by the accountant, in a specified form and manner, that the report is a faithful representation of what it purports to represent;

(c) that the landlord must provide adequate accounts, receipts or other documents or explanations to the accountant to enable them to provide the report;

(d) that, if the landlord incurs costs in obtaining the report, the tenant must pay the landlord a fair and reasonable contribution to those costs."

Member's explanatory statement
This amendment would clarify that the obligations of the landlord are to obtain a report from a qualified accountant as to the accuracy of the statement of account and to provide adequate documents to the accountant, and would require the tenant to contribute towards the costs of the report.

BARONESS SCOTT OF BYBROOK

72 Clause 54, page 63, line 36, at end insert—

"(4A) An amount payable under the term implied by subsection (2)(d)—

(a) is a variable service charge for the purposes of section 18, and the provisions of this Act relating to service charges apply accordingly;

(b) is payable irrespective of whether a lease, contract or other arrangement provides for it to be payable as a service charge."

Member's explanatory statement
This amendment would subject any costs payable under the new section 21D(2)(d) to the restrictions relating to variable service charges.

BARONESS SCOTT OF BYBROOK

73 Clause 54, page 65, line 7, leave out "certification of" and insert "report on"

Member's explanatory statement
This amendment is consequential on the amendment to new section 21D(2)(b).

BARONESS SCOTT OF BYBROOK

74 Clause 54, page 65, line 8, at end insert—

"(aa) for subsection (2) substitute—

"(2) A person has the necessary qualification if the person—

(a) is eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006, or

(b) satisfies such other requirement or requirements as may be specified in regulations made by the appropriate authority.";"

Member's explanatory statement
This amendment would allow an appropriate authority to expand the meaning of "the necessary qualification" in section 28(2) of the LTA 1985.

BARONESS SCOTT OF BYBROOK

75 Clause 54, page 65, line 10, at end insert—

"(c) after subsection (6) insert—

"(7) Regulations under this section—

(a) are to be made by statutory instrument;

(b) may make provision generally or only in relation to specific cases;

(c) may make different provision for different purposes;

(d) may include supplementary, incidental, transitional or saving provision.

(8) A statutory instrument containing regulations under this section (whether alone or with other provision) is subject to the affirmative procedure.""

Member's explanatory statement
This amendment would make provision about regulations about the meaning of "the necessary qualification" in section 28(2) of the LTA 1985.

Clause 55

BARONESS TAYLOR OF STEVENAGE

76 Clause 55, page 67, leave out lines 5 to 12 and insert—

"(4) P may not charge R any sum in excess of the prescribed amount in respect of the costs incurred by P in doing anything required under section 21F or this section.

(5) The prescribed amount means an amount specified in regulations by the appropriate authority; and such regulations may prescribe different amounts for different activities.

(6) If P is a landlord, P may not charge the tenant for the costs of allowing the tenant access to premises to inspect information (but may charge for the making of copies)."

Member's explanatory statement
This amendment would make the appropriate authority (i.e. the Secretary of State or the Welsh Ministers) responsible for setting a prescribed amount for the costs of providing information to leaseholders. That prescribed amount would be the maximum amount that freeholders and managing agents employed by them could seek to recover through a service charge.

Clause 56

LORD BAILEY OF PADDINGTON

76A Clause 56, page 67, line 38, leave out subsection (2) and insert—

"(2) In section 26(1) (Exception: tenants of certain public authorities), omit the words "but section 25 (offence of failure to comply) does not"."

Member's explanatory statement
This amendment seeks to preserve the ability to crowdfund private prosecutions of rogue landlords, which should help get section 24 orders for abused blocks. It also extends the protection of the criminal sanction to council leaseholders.

BARONESS THORNHILL

77 Clause 56, page 68, line 16, at end insert—

"(ba) an order that penalties be applied to the price payable for enfranchisement to acquire a freehold, to reflect the dereliction of duty to leaseholders;"

Member's explanatory statement
This amendment seeks to ensure that leaseholders are entitled to apply to the appropriate tribunal to ensure that freeholders who do not provide the agreed estate management services can be subject to penalty at sale of the freehold.

After Clause 56

BARONESS FOX OF BUCKLEY

78 After Clause 56, insert the following new Clause—

"Consultation about service charges

(1) Section 20ZA of the Landlord and Tenant Act 1985 (consultation requirements: supplementary) is amended in accordance with subsections (2) and (3).

(2) In subsection 20ZA(1) leave out from "satisfied" to end and insert "the landlord meets the requirements of subsections (1A), (1B) and (1C)".

(3) After subsection 20ZA(1) insert the following—

"(1A) There is a presumption that the appropriate tribunal is not to grant dispensation unless the landlord proves—

(a) there are grounds of bona fide urgency that are not within the landlord's control, and

(b) the dispensation would not prejudice any tenant, whether in pecuniary terms or otherwise.

(1B) In every application under this section the appropriate tribunal must consider whether any condition should be imposed on the grant of dispensation, whether or not requested by the landlord or the tenant.

(1C) No application under this section may be made—

(a) after the relevant costs have been incurred by the landlord, except in the case of the landlord proving a bona fide emergency,

(b) during any proceedings before the appropriate tribunal under section 27A, or

(c) after any determination made against the landlord by the appropriate tribunal under section 27A.""

Member's explanatory statement
This amendment enhances leaseholders' consultation rights by only allowing dispensation from consultation in relation to major works or qualifying long-term agreements in cases of genuine

urgency that would improve the position of tenants. It also places the burden of proof of landlords and requires that all applications for dispensation be made prospectively.

LORD BAILEY OF PADDINGTON

78A After Clause 56, insert the following new Clause—

"LTA 1985: regime for service charge disputes

(1) The Landlord and Tenant Act 1985 is amended in accordance with subsections (2) to (3).

(2) In section 27A(4)(a), after "tenant" insert the words "or landlord".

(3) After section 27A insert the following—

"27B Requirement to join all interested tenants unless they opt-out

(1) On receipt of any application under section 27A from any tenant, the appropriate tribunal shall direct the landlord to give notice of the application to all tenants under the same landlord.

(2) The appropriate tribunal must direct that all tenants will be deemed joined to application unless they write to the appropriate tribunal and opt-out of the proceedings before the final hearing.

27C Landlord's duty to account to all tenants following determinations in favour of any tenant under section 27A

(1) A landlord owes a duty to account to all tenants for any costs found to be unreasonable following a determination by the appropriate tribunal in favour of any tenant under section 27A.

(2) A landlord must account to all tenants by the end of the period of two months beginning with the date of the appropriate tribunal's determination under section 27A.

(3) The account must include any interest awarded under section 27D.

(4) An appeal does not suspend the landlord's duty to account unless—

(a) The appellate court of tribunal orders otherwise, and

(b) As a condition of any order the landlord pays the sum due into escrow on terms approved by the appellate court or tribunal, or else into the Court Funds Office.

27D Power to award interest on determinations under section 27A

(1) On application by the tenant, the appropriate tribunal shall have the power to award interest on any determination in favour of the tenant under section 27A.

(2) Provided the landlord accounts to the tenant in accordance with section 27C, interest ordered under this section shall accrue daily on the simple basis at a rate that is the higher of—

(a) any interest rate for late payments specified in the lease, or

(b) the rate specified in section 17 of the Judgments Act 1838 at the date of the appropriate tribunal's determination.

(3) If the landlord does not comply with its duty to account to the tenant in accordance with section 27C then beginning on the day after the period specified in section 27C(2)—

(a) the applicable rate of interest shall increase to 15% per annum, or such higher amount as the relevant authority shall prescribe,

(b) interest shall apply to the aggregate of the sum outstanding and interest calculated in accordance with subsection (2), and

(c) interest shall accrue daily on a compound basis until the date of payment by the landlord.

27E Avoidance of sections 27B to 27D

Any agreement contrary to sections 27B to 27D is void, whether made before or after the coming into force of this section.""

Member's explanatory statement

This amendment would strengthen the regime for service charge disputes by allowing tenants to claim interest, imposing a 2 month limit on repayments from landlords and requiring landlords to account to all tenants for costs found to be unreasonable.

BARONESS JONES OF MOULSECOOMB

78B After Clause 56, insert the following new Clause—

"Review of municipalisation of public assets funded by leaseholders

(1) Within six months of the passing of this Act, the Secretary of State must publish a report on the municipalisation of public assets funded by leaseholders through ground rent and/or service charge payments.

(2) In preparing the report in subsection (1), the Secretary of State must consult representatives from—

(a) local government,

(b) relevant leaseholders,

(c) relevant freeholders, and

(d) anyone else that the Secretary of State considers relevant.

(3) The report must include the following issues—

(a) the prevalence of public assets funded by leaseholders through ground rent and/or service charge payments, such as green space, play equipment, roads and pavements;

(b) the costs and benefits to leaseholders and other users of these assets;

(c) Whether such assets ought to be taken into some form of public ownership, control, and/or funding."

THE EARL OF LYTTON

78C After Clause 56, insert the following new Clause—

"Incurring of costs

(1) Section 18 of the Landlord and Tenant Act 1985 (Meaning of "service charge" and "relevant costs") is amended as follows.

(2) After subsection (3) insert—

"(4) For the purposes of this Act, costs are to be treated as incurred as soon as there is an unconditional obligation to pay them.

(5) The rule in subsection (4) applies even if the whole or a part of the costs are not required to be paid until a later date.""

Member's explanatory statement
This amendment clarifies that costs are to be treated as incurred as soon as there is an unconditional obligation to pay them, even if the whole or a part of the costs are not required to be paid until a later date.

THE EARL OF LYTTON

78D After Clause 56, insert the following new Clause—

"Value for money

(1) Section 19 of the Landlord and Tenant Act 1985 (Limitation of service charges: reasonableness) is amended as follows.

(2) In subsection (1)(a), for "are reasonably incurred" substitute "provide value for money".

(3) After subsection (5), insert —

"(6) In this section "value for money" means "a combination of economy, efficiency and effectiveness"."

Member's explanatory statement
This amendment replaces the "reasonably incurred" test as to service charge playability with one of providing value for money.

THE EARL OF LYTTON

78E After Clause 56, insert the following new Clause—

"Provision of information

(1) A landlord must provide the following information to all tenants—

(a) information on individual items of expenditure in the format prescribed in subsection (2),
(b) details of all debits and credits to the service charge, and capital works and maintenance accounts,
(c) a copy of a relevant policy of insurance,
(d) copies of management contracts,
(e) copies of employment contracts in respect of the building, and
(f) health and safety information, including risk assessments.

(2) For each individual item of expenditure, the following information must be provided—
(a) date the expenditure was incurred,
(b) summary of the purpose of the expenditure amount,
(c) merchant category, and
(d) a copy of the invoice.

(3) Information required under this section must be provided to tenants within six months of the passing of this Act and published quarterly thereafter and on each occasion not later than one month after the quarter to which the data and information is applicable.

(4) The Secretary of State may by regulations specify how and in what form information is to be provided to tenants.

(5) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

(6) In this section—
"landlord" and "tenant" have the same meanings as section 30 of the Landlord and Tenant Act 1985;
"management contracts" has the same meaning as in section 91(2) of the Commonhold and Leasehold Reform Act 2002;
"relevant policy" has the same meaning as in paragraph 1 of Schedule 3 of the Landlord and Tenant Act 1987."

Member's explanatory statement
This amendment requires landlords to provide tenants with a range of information and to update that information regularly.

THE EARL OF LYTTON

78F After Clause 56, insert the following new Clause—

"Contracts: related parties and connected persons

(1) A landlord may not enter into an agreement for the provision of goods or services, or a works contract, with a related party or connected persons.

(2) The Secretary of State may by regulations provide that this section does not apply—
(a) if it is an agreement of a description prescribed by the regulations, or

(b) in any circumstances so prescribed.

(3) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

(4) In this section—

"connected persons" has the same meaning as in section 843 of the Corporation Tax Act 2009;

"landlord" includes—

(a) any person who has a right to enforce payment of a service charge;

(b) an RTM company as defined by section 73 of the Commonhold and Leasehold Reform Act 2002;

"related party" has the same meaning as in sections 835, 836, 837 and 841 of the Corporation Tax Act 2009.

(5) A lease, contract or other arrangement is of no effect to the extent it makes provision contrary to this section."

Member's explanatory statement
This amendment prevents landlords from contracting with related parties or connected persons.

THE EARL OF LYTTON

78G After Clause 56, insert the following new Clause—

"Contracts: limitation of duration

(1) A landlord may not enter into an agreement for the provision of goods or services or a works contract for a period of more than five years.

(2) A lease, contract or other arrangement is of no effect to the extent it makes provision contrary to this section.

(3) The Secretary of State may by regulations provide that this section does not apply—

(a) if it is an agreement of a description prescribed by the regulations, or

(b) in any circumstances so prescribed.

(4) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

(5) In this section "landlord" includes—

(a) any person who has a right to enforce payment of a service charge;

(b) an RTM company as defined by section 73 of the Commonhold and Leasehold Reform Act 2002."

Member's explanatory statement
This amendment prevents landlords from entering into contracts with a duration of more than three years.

THE EARL OF LYTTON

78H After Clause 56, insert the following new Clause—

"Consent: cosmetic works

(1) A tenant may undertake cosmetic works to the demised premises without the consent of the landlord.

(2) Cosmetic work includes but is not limited to work for the following purposes—
- (a) installing or replacing hooks, nails or screws for hanging paintings and other things on walls,
- (b) installing or replacing handrails,
- (c) painting,
- (d) filling minor holes and cracks in internal walls,
- (e) laying carpet,
- (f) installing or replacing built-in wardrobes,
- (g) installing or replacing internal blinds and curtains, and
- (h) any other work prescribed by regulations for the purposes of this subsection.

(3) This section does not apply to the following work—
- (a) work involving structural changes,
- (b) work that changes the external appearance of the demised premises,
- (c) work that detrimentally affects the safety of the building, including fire safety systems or compartmentation,
- (d) work involving waterproofing or the plumbing or exhaust system of a building,
- (e) work involving reconfiguring walls,
- (f) work for which consent or another approval is required under any other Act, and
- (g) any other work prescribed by regulations for the purposes of this subsection.

(4) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

(5) In this section "landlord" and "tenant" have the same meanings as in section 30 of the Landlord and Tenant Act 1985."

Member's explanatory statement
This amendment sets out details of cosmetic works that can be undertaken without approval from a landlord.

BARONESS TAYLOR OF STEVENAGE

78I★ After Clause 56, insert the following new Clause—

"Enforcement of duties relating to heat networks under the Energy Act 2023

(1) The Landlord and Tenant Act 1985 is amended as follows.

(2) After section 25, insert the following new Clause—

"25A Enforcement of duties relating to heat networks under the Energy Act 2023

(1) Amounts payable by way of financial penalties imposed by the regulator under Schedule 18 of the Energy Act 2023 are not to be regarded as relevant costs to be taken into account in determining the amount of any variable service charge payable by a tenant.

(2) Amounts payable by way of a consumer redress order imposed by the regulator under Schedule 18 of the Energy Act 2023 are not to be regarded as relevant costs to be taken into account in determining the amount of any variable service charge payable by a tenant.

(3) Amounts payable by way of the outcome of Alternative Dispute Resolution under the Consumers, Estate Agents and Redress Act 2007 (complaints handling and redress schemes) are not to be regarded as relevant costs to be taken into account in determining the amount of any variable service charge payable by a tenant (whether or not a tenant to whom the outcome applies).

(4) Amounts payable by way of compensation to be made to persons affected by a failure to meet a standard of performance under Schedule 18 of the Energy Act 2023 are not to be regarded as relevant costs to be taken into account in determining the amount of any variable service charge payable by a tenant (whether or not a tenant to whom the compensation is paid).""

Member's explanatory statement
This amendment prevents landlords from passing on costs imposed on them by Ofgem or the Energy Ombudsman (under the Energy Act 2023) in relation to their mismanagement of communal heating systems.

Clause 57

LORD BAILEY OF PADDINGTON

79 Clause 57, page 70, line 10, at end insert—

"(5A) The regulations must specify a broker's reasonable remuneration at market rates as a permitted insurance payment.

(5B) The regulations must exclude any payment which arises, directly or indirectly, from any breach of trust, fiduciary obligation or failure to act in the best interests of the tenant."

Member's explanatory statement
This amendment would require "permitted insurance payment" to include payment of a reasonable sum to a broker at market rates for placing the cover, and to exclude any payments which have arisen from wrongdoing.

After Clause 57

BARONESS PINNOCK
BARONESS TAYLOR OF STEVENAGE

80 After Clause 57, insert the following new Clause—

"Report on the impact of section 57

(1) Within one year of the day on which section 57 of this Act comes into force the Financial Conduct Authority (FCA) must conduct a report into the impact of that section in reducing instances of unreasonable insurance costs being passed on to leaseholders.

(2) The FCA may make a recommendation as to whether further action is needed to protect leaseholders from unreasonable insurance costs.

(3) The Secretary of State must lay a copy of the report in subsection (1) before Parliament."

Member's explanatory statement
This amendment would require the FCA to report on the impact of the provisions in the bill around insurance costs in order to monitor progress on reducing costs passed on to leaseholders.

After Clause 58

THE EARL OF LYTTON

80A After Clause 58, insert the following new Clause—

"Insurance proceeds

(1) Any insurance proceeds paid to a landlord under a relevant policy must be held on trust in a dedicated fund.

(2) The provisions of sections 42 and 42A of the Landlord and Tenant Act 1987 apply to a fund created under subsection (1).

3) A landlord that receives money from an insurer for the destruction of or damage to a building must, if reasonably practicable, immediately apply that money in rebuilding, replacing, repairing or restoring the building.

(4) In this section "landlord" and "relevant policy" have the same meaning as in paragraph 1 of Schedule 3 of the Landlord and Tenant Act 1987."

Member's explanatory statement
This amendment requires landlords to pay the proceeds of building insurance policy into a separate fund, held on trust for leaseholders. It also requires landlords, on receipt of insurance proceeds, to immediate begin to repair or rebuild a building as far as reasonably practicable.

THE EARL OF LYTTON

80B After Clause 58, insert the following new Clause—

"Prohibition on assignment of insurance proceeds

(1) Any assignment of, or charge on, or any agreement to assign or charge, any insurance proceeds payable under a relevant policy has no effect.

(2) In this section "relevant policy" has the same meaning as in paragraph 1 of Schedule 3 of the Landlord and Tenant Act 1987.

(3) A person is guilty of an offence if they transfer any monies payable under a relevant policy to an assignee or chargee.

(4) A person guilty of an offence under subsection (3) is liable—

(a) on summary conviction in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates' court or a fine (or both);

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both)."

Member's explanatory statement
This amendment provides that any assignment of, or charge on, or any agreement to assign or charge, any proceeds of a buildings insurance policy has no effect. And provides that a transfer of any proceeds in contravention of this ban shall be a criminal offence.

Clause 60

LORD MOYLAN

81 Clause 60, page 76, line 36, at end insert—

"(1A) Subsection (1) does not apply to a Right to Manage Company constituted under the Commonhold and Leasehold Reform Act 2002 when exercising the functions of the landlord."

LORD MOYLAN

81A Clause 60, page 76, line 36, at end insert—

"(1A) Subsection (1) does not apply to non-profit entities which have the right to enforce payment of a service charge. The following (non-exhaustive) list provides examples of the types of entities in question—

(a) Residential Management Companies;

(b) Right to Manage Companies constituted under the Commonhold and Leasehold Reform Act 2002."

Member's explanatory statement
This would allow non-profit resident-run lease operators to continue to recoup legal costs through a service charge.

LORD MOYLAN

81B★ Clause 60, page 77, line 16, at the end insert "save that, where a landlord has succeeded on its case or part of its case in relevant proceedings, the court or tribunal shall make an order pursuant to subsection (2) relating to all of the landlord's litigation costs related to that case or that part unless the landlord has acted unreasonably in bringing, defending or conducting the relevant proceedings."

Member's explanatory statement
This amendment allows freeholders to recover litigation costs in appropriate circumstances, such as quick online claims, to avoid unnecessary court hearings overloading the court system

LORD MOYLAN

81C★ Clause 60, page 77, line 29, at the end insert—

"(6A) Subsection (1) does not apply to a landlord's litigation costs which are—

(a) incurred in connection with relevant proceedings or any part of relevant proceedings which are the subject of a judgment in default made in favour of the landlord pursuant to Part 12 of the Civil Procedure Rules 1998, unless and until any such judgment in default is set aside;

(b) incurred in connection with relevant proceedings or any part of them in relation to a case or part of a case made by a party other than the landlord which is struck out, unless or until that case or part of it is reinstated;

(c) incurred in relation to the preparation or service of a notice under section 146 or 147 of the Law of Property Act 1925, or in relevant proceedings or part of relevant proceedings relating to any such notice; or

(d) incurred in relevant proceedings which are finally determined or settled before a first hearing."

Member's explanatory statement
This amendment allows freeholders to recover litigation costs in appropriate circumstances, such as quick online claims, to avoid unnecessary court hearings overloading the court system.

LORD MOYLAN

81D★ Clause 60, page 79, line 31, at the end insert "save that, where a landlord has succeeded on its case or part of its case in relevant proceedings, the court or tribunal shall make an order pursuant to sub-paragraph (2) relating to all of the landlord's litigation costs relating to that case or that part unless the landlord has acted unreasonably in bringing, defending or conducting the relevant proceedings."

Member's explanatory statement
This amendment allows freeholders to recover litigation costs in appropriate circumstances, such as quick online claims, to avoid unnecessary court hearings overloading the court system.

LORD MOYLAN

81E★ Clause 60, page 79, line 38, at the end insert—

"(6A) Sub-paragraph (1) does not apply to a landlord's litigation costs which are—

(a) incurred in connection with relevant proceedings or any part of relevant proceedings which are the subject of a judgment in default made in favour of the landlord pursuant to Part 12 of the Civil Procedure Rules 1998, unless and until any such default judgment is set aside; or

(b) incurred in connection with relevant proceedings or any part of them in relation to a case or part of a case made by a party other than the landlord which is struck out, unless or until that case or part of it is reinstated; or

(c) incurred in relation to the preparation or service of a notice under section 146 or 147 of the Law of Property Act 1925, or in relevant proceedings or part of relevant proceedings relating to any such notice; or

(d) incurred in relevant proceedings which are finally determined or settled before a first hearing."

Member's explanatory statement
This amendment allows freeholders to recover litigation costs in appropriate circumstances, such as quick online claims, to avoid unnecessary court hearings overloading the court system.

BARONESS TAYLOR OF STEVENAGE
BARONESS PINNOCK

82 Leave out Clause 60 and insert the following new Clause-—

"Prohibition on landlords claiming litigation costs from tenants

(1) Any term of a long lease of a dwelling which provides a right for a landlord to demand litigation costs from a leaseholder (whether as a service charge, administration charge or otherwise) is of no effect.

(2) The Secretary of State may, by regulations, specify classes of landlord to which, or prescribed circumstances in which, subsection (1) does not apply.

(3) In this section—

"administration charge" has the meaning given by Schedule 11 of the Commonhold and Leasehold Reform Act 2022;

"dwelling" means a building or part of a building occupied or intended to be occupied as a separate dwelling, together with any yard, garden, or outhouses and appurtenances belonging to it or usually enjoyed with it;

"long lease" has the meaning given by sections 76 and 77 of the Commonhold and Leasehold Reform Act 2002;

"service charge" has the meaning given by section 18 of the Landlord and Tenant Act 1985;

"landlord" has the meaning given by section 30 of the Landlord and Tenant Act 1985."

Member's explanatory statement
This new Clause would prohibit landlords from claiming litigation costs from tenants other than under limited circumstances determined by the Secretary of State.

Clause 61

LORD MOYLAN

82A★ Clause 61, page 81, line 5, after "a" insert "homeowner"

Member's explanatory statement
This amendment limits recovery of leasehold litigation costs to homeowners rather than investor tenants.

LORD MOYLAN

82B★ Clause 61, page 81, line 29, at end insert—

""homeowner lease" means a lease of a single dwelling where, at time of the relevant proceedings the dwelling was the only or principal home of the tenant, or if there are joint tenants, the only or principal home of one or more of them."

Member's explanatory statement
This amendment limits recovery of leasehold litigation costs to homeowners rather than investor tenants.

After Clause 65

THE EARL OF LYTTON

82C After Clause 65, insert the following new Clause—

"Building trustee

(1) A prescribed building must have a building trustee.

(2) In this section a prescribed building is—

(a) a higher-risk building as defined by section 65 of the Building Safety Act 2022, or

(b) a building where—

(i) 50 per cent or more of the internal floor of the building (taken as a whole) is not occupied for residential purposes, and

(ii) the total service charge payable for the building exceeded £250,000 in the last financial year, or

(c) a building where a recognised tenants' association has requested the appointment of building trustee, or

(d) a building where a court or tribunal has ordered the appointment of a building trustee.

(3) The Secretary of State may by regulations amend the definition of prescribed building.

(4) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

(5) In this section—

"building" means a self-contained building, or self-contained part of a building, in England that contains at least two dwellings;

"prescribed" means prescribed in regulations made by the Secretary of State;

"recognised tenants' association" has the same meaning as in section 29 of the Landlord and Tenant Act 1985."

Member's explanatory statement

This amendment requires higher-risk buildings (over 18m), and buildings where 50% or more of the floor space is not residential and with a total service charge of more than £250,000 to have a building trustee. A building trustee may also be appointed at the request of recognised tenants' association, or by a court or tribunal.

THE EARL OF LYTTON

82D After Clause 65, insert the following new Clause—

"Duties of building trustee

(1) The building trustee must seek to ensure that—

(a) the building is properly maintained and in a state of good and serviceable repair,

(b) the capital works and building maintenance plan is adequate to keep the building properly maintained and in a state of good and serviceable repair in future years and sufficient funds are being set aside for this purpose,

(c) the building is regularly valued and adequately insured to cover damage or destruction, and

(d) the landlord is securing value for money in the discharge of their management functions.

(2) The building trustee must make an annual report to tenants—

(a) on the extent to which the landlord has secured value for money in the discharge of its management functions,

(b) on the 10 year capital works plan, and

(c) whether adequate provision is being made through the capital works and maintenance fund to keep the building properly maintained and in a state of good and serviceable repair.

(3) In this section—

"landlord" and "tenant" have the same meanings as section 30 of the Landlord and Tenant Act 1985;

"management functions" has the same meaning as subsection 96(5) of the Commonhold and Leasehold Reform Act 2002;

"value for money" means a combination of economy, efficiency, effectiveness."

Member's explanatory statement

This amendment sets out the purposes and duties of the building trustee which are to report to tenants: on the value for money of the landlord's management of the building: on the 10-year capital works plan; and the adequacy of the capital works and maintenance fund.

THE EARL OF LYTTON

82E After Clause 65, insert the following new Clause—

"Appointment of building trustee by specified person

(1) The Secretary of State may by regulations make provision for and in connection with the appointment, by a person (an "appointing person") specified by the Secretary of State, of a building trustee.

(2) Regulations under subsection (1) may, in particular make provision about—

(a) the persons that may be specified as an appointing person;

(b) the procedure for specifying a person and for an appointing person's specification to come to an end in prescribed circumstances;

(c) the consequences of an appointing person's specification coming to an end, including—

(i) for the exercise of functions by the Secretary of State, and

(ii) for the transfer of the person's rights and liabilities arising by virtue of the regulations to the Secretary of State or another appointing person;

(d) confer functions on an appointing person, including in relation to—

(i) the appointment of building trustees under the regulations,

(ii) the activities of such trustees, and

(iii) the resignation or removal from office of such trustees;

(e) require an appointing person to consult prescribed persons before exercising prescribed functions.

(3) Provision made by regulations under subsection (1) may, in particular—

(a) provide for fees to be paid in accordance with a scale or scales of fees specified by the appointing person, and

(b) provide for the payment in prescribed circumstances of a larger or smaller fee than is specified by the appropriate scale.

(4) Regulations under subsection (1) may, in particular, make provision about the functions of a building trustee appointed by an appointing person.

(5) Provision made by regulations under subsection (1) may, in particular, provide for the appointment to be made by the authority or the Secretary of State.

(6) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament."

Member's explanatory statement
This amendment gives the Secretary of State the power to make provision, by regulations, to have a building trustee appointed on their behalf by a body (an 'appointing person') specified by the Secretary of State.

THE EARL OF LYTTON

82F After Clause 65, insert the following new Clause—

"Building trustees' right to documents and information

(1) A building trustee has a right of access at all reasonable times to every document (a "building assessment document") that is reasonably required for the purposes of the building trustee's duties in section (*Duties of building trustee*).

(2) This includes power to inspect, copy or take away a building assessment document.

(3) A building trustee may require any person to whom this subsection applies to provide such information or explanation as the trustee thinks is necessary for the purposes of section (*Duties of building trustee*).

(4) Subsection (3) applies to—
(a) the landlord;
(b) an employee of the landlord;
(c) a managing agent, if appointed by the landlord;
(d) an employee of a managing agent;
(e) any other person exercising management functions.

(5) Nothing in this section compels a person to disclose information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

(6) In this section—
"landlord" has the same meaning as section 30 of the Landlord and Tenant Act 1985;
"managing agent" has the same meaning as section 30B(8) of the Landlord and Tenant Act 1985;
"management functions" has the same meaning as subsection 96(5) of the Commonhold and Leasehold Reform Act 2002."

Member's explanatory statement
This amendment sets out the building trustees' right to documents and information. A building trustee may require the landlord, an employee of the landlord, or an employee of a managing agent, if appointed by the landlord to provide information or explanation as the trustee thinks is necessary to fulfil their duties. Legally privileged information is protected.

THE EARL OF LYTTON

82G After Clause 65, insert the following new Clause—

"Levy

(1) The Secretary of State must make regulations requiring—
  (a) landlords of prescribed buildings, and
  (b) providers of commercial or residential mortgage finance to—
    (i) the owner of a prescribed building, and
    (ii) the tenant under a long lease of a prescribed building,

to pay a levy with a view to meet the fees incurred by the appointing person in respect of the appointment of building trustees and their work.

(2) Subsection (1)(a) does not apply to—
  (a) an RTM company within the meaning of Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 (right to manage), or
  (b) a building—
    (i) in relation to which a right under Part 1 of the Landlord and Tenant Act 1987 (tenants' right of first refusal) or Part 3 of that Act (compulsory acquisition by tenants of landlord's interest) has been exercised,
    (ii) in relation to which the right to collective enfranchisement (within the meaning of Chapter 1 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993) has been exercised,
    (iii) if the freehold estate in the building or part of the building is leaseholder owned (within the meaning of regulations made by the Secretary of State), or
  (c) which is on commonhold land.

(3) In deciding the total amount of the levy for a period the Secretary of State may take account of estimated as well as actual costs.

(4) The regulations may require different providers of commercial or residential mortgage finance to pay different amounts based on criteria relating to their share of lending to owners of prescribed buildings in the reference period (and may provide for their relative share to be determined in whatever way the Secretary of State thinks appropriate).

(5) The regulations may make provision about—
  (a) payment of the levy, and
  (b) recovery of the levy.

(6) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

(7) In this section—

"landlord" has the same meaning as in section 30 of the Landlord and Tenant Act 1985;

"long lease" means a lease granted for a term of years certain exceeding 21 years, whether or not it is (or may become) terminable before the end of that term by notice given by or to the tenant or by re-entry, forfeiture or otherwise;

"prescribed building" has the definition given in section (*Building trustee*);

"reference period" means a 12-month period determined in accordance with the regulations."

Member's explanatory statement

This amendment requires the Secretary of State to make regulations under which landlords of prescribed building (with the exceptions of right-to-manage companies and leaseholder owned buildings) and providers of commercial or residential mortgage finance to the owners of and leaseholders in prescribed buildings will have to pay a levy to cover the costs of appointing building trustees and their work.

THE EARL OF LYTTON

82H After Clause 65, insert the following new Clause—

"Value for money declaration

(1) If a building trustee in their reasonable opinion considers that an item of expenditure does not provide value for money, the building trustee may apply to the tribunal for a declaration to that effect.

(2) On an application under this section, the tribunal—

(a) may make or refuse to make the declaration, and

(b) if it makes the declaration, may also order the landlord to repay specified sums to tenants.

(3) In this section—

"item of expenditure" means an item in the landlord's accounting records or service charge accounts;

"landlord" and "tenant" have the same meanings as in section 30 of the Landlord and Tenant Act 1985."

Member's explanatory statement

This amendment provides for a building trustee to apply to the Tribunal for a declaration that an item of expenditure does not provide value for money. The court will decide whether to make that declaration and where it does, may order a landlord to repay specified sums to tenants.

THE EARL OF LYTTON

82I After Clause 65, insert the following new Clause—

"Capital works and building maintenance plan

(1) A landlord of a prescribed building must prepare a plan of anticipated major expenditure to be met from the capital works and building maintenance fund for a ten year period commencing within six months of the passing of this Act.

(2) A landlord must prepare a plan for each ten year period following the ten year period to which the first plan applied.

(3) The building trustee must review the plan at least once every five years.

(4) A plan under this section is to include the following—

(a) details of proposed work or maintenance,

(b) the timing and anticipated costs of any proposed work including the date on which such costs were last reviewed,

(c) the source of funding for any proposed work, and

(d) any other matter prescribed by regulations for the purposes of this section.

(5) A landlord must, so far as reasonably practicable implement each plan prepared under this section in a timely manner.

(6) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

(7) In this section—

"landlord" has the same meaning as in section 30 of the Landlord and Tenant Act 1987;

"prescribed building" has the definition given in section (*Building trustee*)."

Member's explanatory statement

This amendment requires landlords of prescribed buildings to prepare and, as far a reasonably practicable, implement a 10-year capital works and building maintenance plan. The building trustee must review the plan at least once every five years.

THE EARL OF LYTTON

82J After Clause 65, insert the following new Clause—

"Capital works and building maintenance fund

(1) A landlord of a prescribed building must establish a capital works and building maintenance fund ("the fund") to meet the costs set out in the capital works and maintenance plan.

(2) It is an implied term of a lease that contributions to the fund are payable under the lease (insofar as this would not otherwise be the case).

(3) Contributions to the fund must be held on trust in a dedicated account to defray costs incurred in the implementation of the capital works plan.

(4) The provisions of sections 42 and 42A of the Landlord and Tenant Act 1987 apply to a fund created under subsection (1).

(5) In this section—

"landlord" has the same meaning as in section 30 of the Landlord and Tenant Act 1987;

""lease" means a lease—

(a) that is granted for a term certain of seven years or more, whether or not it is (or may become) terminable before the end of that term by notice given by the tenant or by re-entry or forfeiture, and

(b) under which the tenant is liable to pay a service charge (within the meaning of section 18 of the Landlord and Tenant Act 1985).

"prescribed building" has the definition given in section (*Building trustee*)."

Member's explanatory statement

This amendment requires landlords of prescribed buildings to establish a capital works and building maintenance fund that is to be used to fund the implementation of the capital works and maintenance plan. Contributions to the fund are to be held on trust.

THE EARL OF LYTTON

82K After Clause 65, insert the following new Clause—

"Right to refer disputes to building trustee

(1) A landlord or tenant of a prescribed building may refer a dispute arising in relation to a lease for adjudication by the building trustee.

(2) The Secretary of State may, by regulations, make provision for and in connection with the exercise of rights and duties under this section.

(3) Regulations made under this section must, in particular, include provision to—

(a) require the building trustee to reach a decision within 28 days of referral or such longer period as is agreed by the parties after the dispute has been referred;

(b) allow the building trustee to extend the period of 28 days by up to 14 days, with the consent of the party by whom the dispute was referred;

(c) impose a duty on the building trustee to act impartially;

(d) enable the building trustee to take the initiative in ascertaining the facts and the law, and

(e) permit the building trustee to correct a decision so as to remove a clerical or typographical error arising by accident or omission.

(4) The regulations must provide that the decision of the building trustee is binding until the dispute is finally determined by legal proceedings or by agreement. The parties may agree to accept the decision of the building trustee as finally determining the dispute.

(5) The building trustee is not liable for anything done or omitted in the discharge or purported discharge of their functions as adjudicator unless the act or omission is in bad faith, and that any employee or agent of the building trustee is similarly protected from liability.

(6) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

(7) In this section—

""landlord" and "tenant" have the same meanings as in section 30 of the Landlord and Tenant Act 1985;

"prescribed building" has the definition given in section (*Building trustee*)."

Member's explanatory statement
This amendment provides landlords and tenants of prescribed buildings with the right to defer disputes to the building trustee for adjudication.

THE EARL OF LYTTON

82L After Clause 65, insert the following new Clause—

"Building trustee: insolvency of landlord

(1) If a landlord of a prescribed building becomes subject to a relevant insolvency procedure, the building trustee will assume—

(a) the management functions of the building, and

(b) responsibility for the grant of approvals under long leases of the whole or any part of the building.

(2) An insolvency-related term in a management contract or a relevant policy of insurance will not have effect if a landlord of a prescribed building becomes subject to a relevant insolvency procedure.

(3) In this section—

""insolvency-related term" means an insolvency-related term in a management contract or a relevant policy of insurance is a provision of the contract under which—

(a) the contract or the supply would terminate, or any other thing would take place, if a landlord becomes subject to a relevant insolvency procedure,

(b) the supplier would be entitled to terminate the contract or the supply, or to do any other thing, if a landlord becomes subject to a relevant insolvency procedure, or

(c) the supplier would be entitled to terminate the contract or the supply because of an event that occurred before a landlord becomes subject to a relevant insolvency procedure;

"management contracts" has the same meaning as in section 91(2) of the Commonhold and Leasehold Reform Act 2002;

"management functions" has the same meaning as in section 96(5) of the Commonhold and Leasehold Reform Act 2002;

"prescribed building" has the definition given in section (*Building trustee*);

"relevant policy" has the same meaning as in paragraph 1 of Schedule 3 of the Landlord and Tenant Act 1987;

"relevant insolvency procedure" the same meaning as in section 233B(2) of the Insolvency Act 1986."

Member's explanatory statement
This amendment provides for the building trustee to assume the management of a prescribed building if an insolvency practitioner is appointed in relation to the building. It also prevents the automatic termination of management contracts or insurance policies on a landlord's insolvency.

THE EARL OF LYTTON

82M After Clause 65, insert the following new Clause—

"Building trustee: qualifications

(1) The Secretary of State may by regulations make provision for the qualifications of building trustees.

(2) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament."

Schedule 10

BARONESS SCOTT OF BYBROOK

83 Schedule 10, page 227, line 11, leave out "subsection (4)" and insert "subsections (4) and (7)"

Member's explanatory statement
This amendment is consequential on clause 67 repealing section 172(1)(a) of the CLRA 2002, which is amended by section 112(7) of the BSA 2022.

After Clause 69

BARONESS FOX OF BUCKLEY

84 After Clause 69, insert the following new Clause—

"Marketing of residential leasehold property

(1) Within six months of the day on which this Act is passed, the Secretary of State must make regulations to regulate the marketing of residential leasehold property.

(2) Regulations under subsection (1) may—

(a) require residential leasehold property without a share of the freehold to be marketed and sold as "lease-rental",

(b) require that residential leasehold property without a share of the freehold be advertised with a disclaimer containing the words that "leasehold is a lesser title and management and service charges at this property are controlled by a third-party entity that is not subject to democratic resident control",

(c) provide information about the rights and responsibilities of leaseholders and landlords under a long lease to be given to prospective home buyers by sellers and property agents in the form of a document produced by the Secretary of State or another person,

(d) require sellers and property agents to clearly state material information, including lease length, ground rent and service charge, in the marketing of residential leasehold property,

(e) define "prospective home buyers", "sellers" and "property agents",

(f) provide that the document to be given is the version that has effect at the time the requirement applies, and

(g) specify cases where the regulations do not apply.

(3) Regulations under subsection (1) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament."

Member's explanatory statement
This amendment would provide for a scheme to regulate the marketing of residential leasehold property. The scheme involves requiring leasehold homes without a share of the freehold to be marketed and sold as "lease-rental", which adopts a key recommendation of the leasehold report by the House of Commons' Levelling Up, Housing and Communities Committee, published on 11 March 2019.

BARONESS FOX OF BUCKLEY

85 After Clause 69, insert the following new Clause—

"Prevention of leaseholder abuse in retirement housing

(1) Within one year of the passing of this Act, a Minister of the Crown must publish a report assessing the state of the United Kingdom's retirement leasehold sector with special regard to the treatment of elderly and vulnerable leaseholders.

(2) The report must consider whether the government should introduce legislation on retirement housing to address consumer detriment while encouraging downsizing, a larger, healthier retirement housing sector and a better functioning property market.

(3) The report must also include—

(a) an assessment of the extent to which the following factors harm leaseholders in retirement housing—

(i) service charges not subject to resident control;

(ii) inability to easily switch managing agents to remove predatory or poorly performing service providers;

(iii) license and permission fees;

(iv) short leases;

(v) shared ownership structures;

(vi) exit and event fees;

(vii) resale values, and

(b) an update on the government's implementation of the recommendations in the Law Commission report "Event Fees in Retirement Properties", published on 30 March 2017,

(c) the Older People's Housing Taskforce report and a statement on the government's implementation of its findings,

(d) legislative options to address the significant financial loss and emotional distress of leaseholders in retirement housing and those of their families, and

(e) a recommendation as to whether the housing-with-care model, license to occupy schemes and commonhold developments should be promoted by the government as preferred alternatives to leasehold tenure in the retirement sector."

Member's explanatory statement
This new Clause would require a Minister of the Crown to publish a report to establish the experience of leaseholders in retirement housing and to outline legislative options to improve consumer outcomes in this sector.

Clause 72

BARONESS THORNHILL

86 Clause 72, page 93, line 7, at end insert—

"(c) only where they are incurred in the provision of services or the carrying out of works that would not ordinarily be provided by local authorities."

Member's explanatory statement
This amendment would mean that services or works that would ordinarily be provided by local authorities are not relevant costs for the purposes of estate management charges.

BARONESS TAYLOR OF STEVENAGE

87 Clause 72, page 93, line 7, at end insert—

"(c) where they are incurred in the provision of services or the carrying out of works, only where the requirement for those services or works is not the result of defects in the original construction."

Member's explanatory statement
This amendment would ensure that services or works on private or mixed-use estate that are required as a result of defects in its construction are not relevant costs for the purposes of estate management charges.

Clause 77

BARONESS SCOTT OF BYBROOK

88 Clause 77, page 97, line 6, leave out "provides" and insert "carries out"

Member's explanatory statement
This amendment would align the terminology used with terminology used elsewhere in Part 5.

BARONESS SCOTT OF BYBROOK

89 Clause 77, page 97, line 8, leave out "provided" and insert "carried out"

Member's explanatory statement
This amendment would align the terminology used with terminology used elsewhere in Part 5.

Clause 81

BARONESS SCOTT OF BYBROOK

90 Clause 81, page 100, line 25, at end insert—

"(1A) But "administration charge" does not include an amount payable by a tenant of a dwelling in a case where all of the following conditions are met—

(a) the tenant's lease specifies that only a person who has attained a minimum age may occupy the dwelling;

(b) the amount is payable under a term of the tenant's lease or is otherwise payable in connection with the tenant's lease;

(c) the amount is payable if—

(i) the tenant's lease is granted, assigned or terminated,

(ii) a lease of the dwelling which is inferior to the tenant's lease is granted, assigned or terminated, or

(iii) there is a change in the person or persons occupying the dwelling;

(d) the amount is fixed or is calculated by a method determinable in advance;

(e) any other conditions specified in regulations made by the appropriate authority."

Member's explanatory statement
This amendment would provide for "administration charge" in clause 81 to exclude "event fees" (which will generally be "fixed" service charges subject to the provisions regulating those charges inserted by Part 4).

After Clause 95

BARONESS THORNHILL

91 After Clause 95, insert the following new Clause—

"Estate management services

(1) Within three months of the passage of this Act, the Secretary of State must by regulation provide for residents of managed dwellings to take ownership of—

(a) an estate management company, or

(b) the assets of an estate management company, or other company or business connected with the development or management of the dwellings, which are used to provide services to managed dwellings,

where a relevant condition in subsection (2) is met.

(2) A relevant condition is if the estate management company or connected company or business does not—

(a) provide the residents of the managed dwellings with a copy of its budget for the forthcoming year and accounts for the past year,

(b) give sufficient notice to enable residents to attend its annual meeting, or

(c) acknowledge correspondence sent by registered post to its registered office within a reasonable length of time.

(3) Regulations under subsection (1)—

(a) may amend primary legislation, and

(b) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament."

Member's explanatory statement

This amendment would enable residents to take ownership of estate management companies where the existing management companies are not providing them with an adequate service.

BARONESS TAYLOR OF STEVENAGE

92 After Clause 95, insert the following new Clause—

"Requirement to establish and operate a management company under leaseholder control

(1) The Secretary of State may by regulations make provision—

(a) requiring any long lease of a dwelling to include a residents management company ("RMC") as a party to that lease, and

(b) for that company to discharge under the long lease such management functions as may be prescribed by the regulations.

(2) Regulations under subsection (1) must provide—

(a) for the RMC to be a company limited by share (with each share to have a value not to exceed £1), and

(b) for such shares to be allocated (for no consideration) to the leaseholder of the dwelling for the time being.

(3) Regulations under subsection (1) must prescribe the content and form of the articles of association of an RMC.

(4) The content and form of articles prescribed in accordance with subsection (3) have effect in relation to an RMC whether or not such articles are adopted by the company.

(5) A provision of the articles of an RMC has no effect to the extent that it is inconsistent with the content or form of articles prescribed in accordance with subsection (3).

(6) Section 20 of the Companies Act 2006 (default application of model articles) does not apply to an RMC.

(7) The Secretary of State may by regulations make such provision as the Secretary of State sees fit for the enforcement of regulations made under subsection (1), and such provision may (among other things) include provision—

(a) conferring power on the First-Tier Tribunal to order that leases be varied to give effect to this section;

(b) providing for terms to be implied into leases without the need for any order of any court or tribunal.

(8) The Secretary of State may by regulations prescribe descriptions of buildings in respect of which regulations may be made under subsection (1).

(9) In this section—

"dwelling" means a building or part of a building occupied or intended to be occupied as a separate dwelling, together with any yard, garden, or outhouses and appurtenances belonging to it or usually enjoyed with it;

"long lease" has the meaning given by sections 76 and 77 of the Commonhold and Leasehold Reform Act 2002;

"management function" has the meaning given by section 96(5) of the Commonhold and Leasehold Reform Act 2002.

(10) The Secretary of State may by regulations amend the definition of "management function" for the purposes of this section."

Member's explanatory statement
This new Clause would ensure that leases on new flats include a requirement to establish and operate a residents' management company responsible for all service charge matters, with each leaseholder given a share.

BARONESS TAYLOR OF STEVENAGE

93 After Clause 95, insert the following new Clause—

"Review of terms and charges contained within deeds and leases

The Secretary of State must, within 12 months of this Bill coming into force, carry out and publish a review of the extent and impact of deeds of residential freehold properties and leases of residential leasehold properties containing non-standard terms and charges imposed by estate managers."

Member's explanatory statement
This amendment would require the Government to carry out a review of non-standard terms and charges included in freehold deeds and leasehold leads by estate management companies.

Clause 96

LORD BERKELEY

93A Leave out Clause 96 and insert the following new Clause—

"Part 5: Crown application

This Part binds the Crown."

After Schedule 12

THE EARL OF LYTTON

93B★ After Schedule 12, 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 at no cost to leaseholders or landlords.

(3) For the purposes of this Schedule "building safety remediation principle" 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 building 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 for the scheme under paragraph 4 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));

(u) must include provision requiring the maintenance and publication of records of applications and determinations under the BSRS;

(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 and of grants made under it ("scheme funding regulations").and of grants made under it ("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 BSRS 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 building industry in general, or specified parts of the building 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 121 of the Building Safety Act 2022 and any enactment relating to joint ventures);

(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 adjudicators 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;

(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) must 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;

(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, 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;"building industry"has the meaning given in section 127(7) 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;

"landlord" means means the landlord under the lease or any superior landlord.

"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;

"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) may make provision that applies generally or only for specified purposes,

(b) may make different provision for different purposes,

(c) 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

(d) 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.

After Clause 109

LORD BEST
LORD YOUNG OF COOKHAM
BARONESS HAYTER OF KENTISH TOWN
BARONESS TAYLOR OF STEVENAGE

94 After Clause 109, insert the following new Clause—

"The Regulator of Property Agents

(1) The Secretary of State shall establish a body corporate known as the Regulator of Property Agents ("the Regulator") to regulate property agents in respect of—

(a) estate management of leasehold properties,

(b) sale of leasehold properties, and
(c) sale of freehold properties subject to estate management or service charges.

(2) Regulations under this section—
(a) must be laid within 24 months of the date of Royal Assent to this Act,
(b) must be made by statutory instrument, and
(c) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

(3) If, at the end of the period of 12 months beginning with the day on which this Act is passed, the power in subsection (1) is yet to be exercised, the Secretary of State must publish a report setting out the progress that has been made towards doing so.

(4) The objectives of the Regulator are—
(a) to protect the consumers of services provided by property agents, in respect of—
(i) estate management of leasehold properties,
(ii) sale of leasehold properties, and
(iii) sale of freehold properties subject to estate management or service charges.
(b) to set and uphold standards of competence and conduct for property agents in relation to the sale of leasehold properties and freehold properties subject to estate management or service charges.

(5) "Property agent" means an individual or body of persons (whether incorporated or not) which carries out the roles of an estate agent as defined in Section 1 of the Estate Agents Act 1979 or of a property manager as defined in Sections 54 and 55 of the Housing and Planning Act 2016.

(6) The Secretary of State may provide financial assistance (by way of grant, loan or guarantee, or in any other form) and make other payments for the establishment and maintenance of the Regulator.

(7) The Regulator must establish a panel of persons called "the Advisory Panel".

(8) The Panel may provide information and advice to the Regulator about, and on matters connected with, the Regulator's functions (whether or not it is requested to do so by the Regulator).

(9) The Regulator must appoint the following persons to the Panel—
(a) persons appearing to the Regulator to represent the interests of—
(i) leaseholders of properties managed by property agents,
(ii) freeholders of properties subject to estate management or service charges, and
(iii) professional bodies and associations representing property agents who manage leasehold properties.
(b) the Secretary of State.

(10) The Regulator has powers as follows—

(a) to monitor, assess, report, and intervene (as appropriate) in relation to the performance of property agents who manage leasehold properties;

(b) to determine mandatory qualifications to ensure that those undertaking the activities of a property agent in England have, or are working towards, qualifications that demonstrate competency in respect of the sale or management of leasehold and freehold properties;

(c) to enforce compliance with a mandatory and legally-enforceable Code of Practice for property agents selling or managing leasehold properties;

(d) to provide guidance to property agents on the regulatory framework for the sale and management of leasehold and freehold properties;

(e) to register all property agents complying with the requirements of the Regulator and to revoke the registration of property agents who persistently breach the regulatory framework;

(f) to raise a registration fee and an annual fee to pay for the ongoing costs of the Regulator of Property Agents;

(g) to review and make recommendations to the Secretary of State for the updating of the statutory guidance that sits alongside the regulatory framework for the sale and management of leasehold and freehold properties;

(h) to delegate to designated bodies administrative and regulatory functions in respect of the sale and management of leasehold and freehold properties, as it deems appropriate.

(11) The Property Ombudsman and other redress schemes, if any, covering property agents shall provide the Regulator with such information as the Regulator shall request."

Member's explanatory statement
This amendment seeks to create a Regulator of Property Agents to regulate property agents in respect of estate management of leasehold properties, sale of leasehold properties, and sale of freehold properties subject to estate management or service charges.

Clause 111

BARONESS TAYLOR OF STEVENAGE

95 Leave out Clause 111 and insert the following new Clause—

"Remedies for the recovery of annual sums charged on land

(1) Section 121 of the Law of Property Act 1925 is omitted.

(2) The amendment made by subsection (1) has effect in relation to arrears arising before or after the coming into force of this section."

Member's explanatory statement
This new clause would remove the provision of existing law which, among other things, allows a rent charge owner to take possession of a freehold property in instances where a freehold homeowner failed to pay a rent charge.

BARONESS TAYLOR OF STEVENAGE

Baroness Taylor of Stevenage gives notice of her intention to oppose the Question that Clause 111 stand part of the Bill.

Member's explanatory statement
This amendment, along with that replacing clause 111, would remove the provision of existing law which, among other things, allows a rent charge owner to take possession of a freehold property in instances where a freehold homeowner failed to pay a rent charge.

After Clause 115

LORD FOSTER OF BATH

95A After Clause 115, insert the following new Clause—

"Further amendments to the Building Safety Act

After section 125 of the Building Safety Act 2022, insert—

"125A Electrical defects that require remediation works

(1) For the purpose of ascertaining whether a building to which this section applies ('a specified building') has defects caused by a faulty electrical installation which requires remediation works, a person to whom this section applies ('a specified person') must, subject to subsection (3), before putting the building on the market ensure that a valid EICR or a valid EIC is available for the property.

(2) In subsection (1)—
(a) a specified building is a domestic premise placed on the market for sale;
(b) a specified person is the owner of that building or any person selling that building on behalf of the owner.

(3) Subsection (1) does not apply where the specified person can demonstrate that—
(a) the property is being sold for demolition, or
(b) the property being sold has been completely rewired by a competent and qualified person up to five years prior to the proposed sale.

(4) In this section—
"a valid EICR is an Electrical Installation Condition Report" is a report on the condition and age of the whole electrical installation, carried out within the previous five years and completed and issued by a skilled person, competent in such work according to BS 7671 (IET Wiring Regulations);
"a valid EIC" is an Electrical Installation Certificate issued by a qualified person stating that a new installation (rewire) or new

circuits in an existing installation are in accordance with BS 7671, current at the time of the installation work;

"A qualified and competent person" is a person competent in such work according to BS 7671 (IET Wiring Regulations).""

After Clause 116

LORD YOUNG OF COOKHAM
THE LORD BISHOP OF MANCHESTER
BARONESS PINNOCK

96 After Clause 116, insert the following new Clause—

"Meaning of "relevant building"

In section 117(2) of the BSA 2022 (meaning of "relevant building") leave out "and—

(a) is at least 11 metres high, or
(b) has at least 5 storeys.""

LORD YOUNG OF COOKHAM

97 After Clause 116, insert the following new Clause—

"Meaning of "qualifying lease"

In section 119(2)(d)(iii) of the BSA 2022 (meaning of "qualifying lease" and "the qualifying time") for "two" substitute "six"."

LORD YOUNG OF COOKHAM

98 After Clause 116, insert the following new Clause—

"Amendment of the meaning of accountable person

(1) Section 72 of the BSA 2022 is amended in accordance with subsection (2).

(2) At the end of subsection (1)(b) insert ", or

(c) a manager appointed under an order of the appropriate tribunal made under section 24 of the Landlord and Tenant Act 1987 (appointment of manager by a tribunal).""

Member's explanatory statement
This amendment includes a section 24 manager within the definition of accountable person. This is to prevent a landlord who has been replaced with the Tribunal appointed manager from regaining access to service charge funds as an accountable person.

LORD YOUNG OF COOKHAM
BARONESS PINNOCK
THE LORD BISHOP OF MANCHESTER
BARONESS TAYLOR OF STEVENAGE

99 After Clause 116, insert the following new Clause—

"Qualifying buildings under the Building Safety Act 2022

(1) The BSA 2022 is amended in accordance with subsections (2) and (3).

(2) In section 117 (meaning of "relevant building")—
  (a) in subsection (2), omit all words after "dwellings" to the end;
  (b) omit subsection (3).

(3) Omit section 118 (Section 117: height of buildings and number of storeys)."

Member's explanatory statement
This amendment changes the definition of "qualifying building" so that buildings of any height, and resident-owned buildings, qualify. This change would apply the protections in Part 5 of, and Schedule 8 to, the Building Safety Act 2022 to all leaseholders. Consequently, section 118 of the same Act is repealed.

LORD YOUNG OF COOKHAM
THE LORD BISHOP OF MANCHESTER
BARONESS PINNOCK
BARONESS TAYLOR OF STEVENAGE

100 After Clause 116, insert the following new Clause—

"Qualifying leases under the Building Safety Act 2022

(1) Section 119 of the BSA 2022 is amended in accordance with subsections (2) to (8).

(2) In subsection (2) replace paragraph (d)(ii) with the following—

"(ii) a relevant tenant owned more than one dwelling in the United Kingdom but the aggregate value of those dwellings did not exceed £2 million, or"

(3) After subsection (2) insert the following—

"(2A) Where a person owns more than one dwelling, regardless of whether the dwellings are all let on long leases, the first three such dwellings let on long leases are to be deemed qualifying leases."

(4) After subsection (3A) insert the following—

"(3B) It shall be an implied term of every lease that the landlord must issue a certificate to every tenant (the "Cessation Certificate") as soon as any of the prescribed conditions are met.

(3C) The distinction in subsection (3) shall no longer apply in relation to any lease from the date the landlord provides a Cessation Certificate in accordance with subsection (3B)."

(5) In subsection (4)(b) at end insert "and where a person owns an interest in more than one dwelling with more than one other person, that person's interest is pro-rated by reference to the total number of owners of each such dwelling".

(6) After subsection (4)(b) insert the following—

"(ba) "prescribed" means prescribed in regulations made by the Secretary of State;"

(7) After subsection (4)(d) insert the following—

"(e) "value" means the value determined in accordance with regulations made under paragraph 6 of Schedule 8 to the this Act."

(8) The amendments made by this section are deemed to have been in force since 28 June 2022."

Member's explanatory statement
This amendment (a) ends the distinction between qualifying and non-qualifying leases once prescribed conditions are met (for example, an effective level of fire safety is achieved); (b) ensures every leaseholder has protection for the first three flats owned; (c) apportions protection to non-qualifying leaseholders based on ownership and (d) introduces a wealth criteria before costs can be passed on to non-qualifying leaseholders.

LORD YOUNG OF COOKHAM

101 After Clause 116, insert the following new Clause—

"Report on Remediation Works Agency

Within two months of the day on which this Act is passed, the Secretary of State must lay before Parliament a review of the impact of this Act on—

(a) the progress with remediation of fire safety risks in residential or mixed-use residential buildings of all heights,

(b) the steps His Majesty's Government is taking to accelerate remediation works in all affected buildings,

(c) the progress His Majesty's Government has made in obtaining contributions from developers and other parties responsible for the design, construction or sale of defective residential or residential mixed-use buildings, and

(d) the case for the creation of a Remediation Works Agency to accelerate and oversee remediation works for fire safety defects such that all buildings are remediated by no later than 30 June 2027."

Member's explanatory statement
This amendment requires the Secretary of State to review the impact of this Act on remediation of, and holding responsible actors accountable for, fire safety defects, and the case for a new body to oversee and accelerate remedial works so they are completed by no later than June 2027.

BARONESS PINNOCK

102 After Clause 116, insert the following new Clause—

"Reporting requirement: Building safety remediation

(1) Within three months of the day on which this Act is passed, and every year thereafter, the Government must lay before Parliament a report on progress with regard to building safety remediation.

(2) The report in subsection (1) must include but is not limited to—

(a) an update on the number of buildings in England awaiting remediation works, and any significant delays to remediation,

(b) progress in ensuring leaseholders have access to a robust and independent dispute resolution process to allow them to hold developers to account and challenge delays in remediation works, and

(c) progress towards ensuring all leaseholders affected by building safety issues are able to access remediation, including those not currently able to access Government funding schemes.

(3) The report must make recommendations as to whether further legislation is needed to improve progress towards the objectives outlined in subsection (2)."

Member's explanatory statement
This amendment would require the Government to report on progress relating to building safety remediation.

BARONESS TAYLOR OF STEVENAGE

103 After Clause 116, insert the following new Clause—

"Leaseholder protection against costs arising from the new building safety regulatory framework

In section 30D of the Landlord and Tenant Act 1985, after subsection (9) insert—

"(10) The amount payable by a tenant under a lease to which subsection (3)(a) applies shall not exceed £75 per annum.

(11) The Secretary of State may by regulations made by statutory instrument, alter that figure; such regulations may additionally make different provision for different descriptions of landlord or tenant.""

Member's explanatory statement
This new Clause would impose a cap on charges that can be passed on to leaseholders in relation to cost incurred as a result of the new building safety regulatory framework introduced by the Building Safety Act 2022.

BARONESS FOX OF BUCKLEY

104 After Clause 116, insert the following new Clause—

"Amendment of the power to appoint a manager

(1) Section 24 of the Landlord and Tenant Act 1987 is amended as follows.

(2) Subsections 24(2ZB) and 24(2ZC) are omitted."

Member's explanatory statement
This amendment would allow the appropriate tribunal to appoint a Section 24 manager and have that manager be the "accountable person", where the tribunal has found it "just and convenient" to deprive the landlord of their management functions, for any reason. This amendment removes the conflict between the Building Safety Act 2022 and the Landlord and Tenant Act 1987, which currently deprives leaseholders in buildings of 18 metres or higher who are suffering poor management by their landlord from seeking alternative management.

BARONESS TAYLOR OF STEVENAGE

105 After Clause 116, insert the following new Clause—

"Qualifying leases for the purposes of the remediation of building defects

After Section 119(4) of the Building Safety Act 2022 insert—

"(5) The Secretary of State may, by regulations, amend subsection (2) so as to bring additional descriptions of lease within the definition of "qualifying lease"."""

Member's explanatory statement
This new Clause would give the Secretary of State the power to bring "non qualifying" leaseholders within the scope of the protections of the Building Safety Act 2022.

LORD BAILEY OF PADDINGTON

105A After Clause 116, insert the following new Clause—

"Report on shared ownership, 999 year leases and adoption of commonhold

Within a period of six months beginning on the day this Act is passed, the Secretary of State must lay a report before both Houses of Parliament containing—

(a) Details of their proposals to ensure a fairer deal for shared ownership leaseholders in matters including, but not limited to—

(i) Lease extensions, so as to ensure shared owners enjoy similar rights to other tenants under this Act;

(ii) Terms of leases, in particular means to ensure shared owners have a right to extend their lease to 999 years;

(iii) Service charge liabilities being pro-rated according to the shared owner's proportion of the equity;

(b) Details of their proposals to ensure that all new flats come with either a share of freehold and / or a minimum lease term of 999 years;

(c) Details of their proposals for the widespread adoption of commonhold for all new flats by 2030."

Member's explanatory statement
This amendment requires the Secretary of State to report on ensuring shared owners enjoy the same benefits as other leaseholders and that he makes proposals for measures to encourage 999 year leases as standard and for the widespread adoption of commonhold.

LORD BAILEY OF PADDINGTON

105B After Clause 116, insert the following new Clause—

"Meaning of "accountable person" for the purposes of the Building Safety Act 2022

(1) Section 72 of the Building Safety Act 2022 is amended in accordance with subsections (2) and (3).

(2) After subsection (2)(b), insert—

"(c) all repairing obligations relating to the relevant common parts which would otherwise be obligations of the estate owner are functions of a manager appointed under section 24 of the Landlord and Tenant Act 1987 in relation to the building or any part of the building.".

(3) In subsection (6), in the definition of "relevant repairing obligation", after "enactment", insert "or by virtue of an order appointing a manager made under section 24 of the Landlord and Tenant Act 1987".

(4) Section 24 of the Landlord and Tenant Act 1987 is amended in accordance with subsection (5).

(5) Omit subsection (2E)."

Member's explanatory statement
This new Clause would provide for a manager appointed under section 24 of the Landlord and Tenant Act 1987 to be the "accountable person" for a higher-risk building.

After Clause 117

LORD BERKELEY

106 After Clause 117, insert the following new Clause—

"Application to the Duchy of Cornwall

All provisions of this Act bind the Duchy of Cornwall."

THE EARL OF LYTTON

107★ After Clause 117, insert the following new Clause—

"Building Safety Remediation Scheme

(1) The Secretary of State must establish 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 at no cost to leaseholders or landlords.

(3) Schedule (*Building Safety Remediation Scheme*) makes further provision for the establishment of the BSRS.

(4) In this section—

"associated persons" has the meaning given in section 121 of the Building Safety Act 2022;

"landlord" means the landlord under the lease or any superior landlord.

(5) The building safety remediation principle 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 building industry."

Member's explanatory statement

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

Leasehold and Freehold Reform Bill

THIRD MARSHALLED

LIST OF AMENDMENTS

TO BE MOVED

IN COMMITTEE OF THE WHOLE HOUSE

25 April 2024

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