Leasehold and Freehold Reform Bill

AMENDMENTS

TO BE MOVED

IN COMMITTEE OF THE WHOLE HOUSE

[Supplementary to the Third Marshalled List]

Amendment No.

After Clause 56

BARONESS TAYLOR OF STEVENAGE

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

"Introduction of implied terms into leases for energy efficiency improvements

(1) This section applies to a relevant lease of premises.

(2) In this section "relevant lease" means a lease—

(a) that is granted for a term certain of 7 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 LTA 1985).

(3) The relevant lease has effect—

(a) as if the matters for which the service charge is payable under the lease included the taking of qualifying energy efficiency improvement measures by or on behalf of a landlord (insofar as this would not otherwise be the case), and

(b) where the lease contains different methods for apportioning different relevant costs (within the meaning of section 18 of the LTA 1985), as if it provided for any costs for which the tenant is liable by virtue only of paragraph (a) to be apportioned in the same way as costs incurred in connection with insuring the building.

(4) The Secretary of State may, by regulations, determine or define qualifying energy improvements, or prescribed circumstances in which, subsection (3) applies.

(5) In this section "landlord" includes any person who has a right under the lease to enforce payment of a service charge (within the meaning of section 18 of the LTA 1985).

(6) A statutory instrument made under this section is subject to the affirmative procedure."

Member's explanatory statement
This new Clause would help enable leasehold estates to achieve appropriate decarbonisation and energy efficiency, to help meet Net Zero targets, by introducing qualifying energy efficiency or retrofit improvements to a building.

After Clause 75

BARONESS FINN

87A★ After Clause 75, insert the following new Clause—

"Power to prohibit estate management charges where certain requirements have not been fulfilled

(1) No estate management charge under this Part is payable in relation to a dwelling on a residential leasehold development where an appropriate tribunal has determined that requirements of regulations under this section have not been fulfilled.

(2) The Secretary of State may by regulations prescribe standards for all public amenities ("the adoptable standard") in relation to new residential leasehold developments.

(3) Regulations made under this section may make provision in relation to—
(a) highways;
(b) sewers, pumping stations and drains;
(c) sustainable urban drainage systems;
(d) public open spaces.

(4) Regulations made under this section may permit local planning authorities to modify the definition of public open spaces in relation to local need.

(5) Regulations made under this section may prohibit local planning authorities from granting planning permission for residential development except where—
(a) all public amenities are to be built to the adoptable standard;
(b) relevant authorities have entered into an agreement to adopt all public amenities.

(6) Regulations made under this section may make provision in relation to—
(a) the point at which such undertakings will have effect;
(b) any other matter.

(7) An application may be made to an appropriate tribunal for a determination as to whether requirements of regulations made under this section have been fulfilled.

(8) A statutory instrument containing regulations under this section is subject to the affirmative procedure."

Member's explanatory statement
This new Clause would permit the Secretary of State to prohibit new leasehold developments which do not meet adoptable standards for public amenities and would prevent leaseholders from paying estate management charges where the developer had not adopted these standards.

BARONESS FINN

87B★ After Clause 75, insert the following new Clause—

"Estate management charges: compensation for unfulfilled estate management

(1) Where a leaseholder pays an estate management charge, and the services paid for are not received in a timely and adequate manner the leaseholder will be eligible to claim compensation from said estate management organisation.

(2) The compensation the leaseholder is entitled to is limited to the value of the sum paid for said service, in addition to any damages incurred by the individual.

(3) The leaseholder's right to compensation for services they have not been able to access is protected under section 49, 54 and 56 of the Consumer Rights Act 2015.

(4) In this section "adequate" means the timely fulfilment of the services to the standard contractually agreed upon between the leaseholder and the freeholder at the point of purchase."

Member's explanatory statement
This amendment would protect leaseholders from paying extortionate charges for services they are not receiving but are included in their annual service charge payment, such as lift access and garden maintenance. Under this amendment the lessee would be entitled to compensation for the proportion of their service charge reflective of the unfulfilled service.

After Clause 116

THE EARL OF LYTTON

105C★ After Clause 116, insert the following new Clause—

"Self remediation contract: implied terms

(1) It is an implied term of a self remediation contract that the self remediation terms require the remediation of all relevant defects in a member's own buildings to avoid these costs falling to leaseholders.

(2) In this section—

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

"leaseholder" means—

(a) a tenant under a long lease, and

(b) the tenant under the lease is liable to pay a service charge;

"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;

"relevant defect" has the same meaning as section 120 of the Building Safety Act 2022;

"self remediation contract" has the meaning given in regulation 21(1) of The Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023 (S.I. 2023/753);

"self remediation terms" has the meaning given in regulation 21(1) of The Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023."

Member's explanatory statement
This amendment would amend the terms of the developer contract so that developers must remedy all building safety defects in all buildings for which they were responsible.

THE EARL OF LYTTON

105D★ After Clause 116, insert the following new Clause—

"Building safety contributions

In Chapter 3 of the Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023 (Conditions of scheme), after paragraph 21 insert—

"21A Building safety contributions

(1) Each member of the scheme must make payment to the government towards meeting costs associated with remedying relevant defects in buildings (including buildings with which a member has no connection) to avoid these costs falling to a leaseholder.

(2) In this paragraph—

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

"leaseholder" means—

(a) a tenant under a long lease, and

(b) the tenant under the lease is liable to pay a service charge;

"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;

"relevant defect" has the same meaning as section 120 of the Building Safety Act 2022.""

Member's explanatory statement
This amendment requires members of the responsible actors scheme to make payments to government towards remediating buildings so that those costs are not paid by leaseholders.

THE EARL OF LYTTON

105E★ After Clause 116, insert the following new Clause—

"Meaning of "relevant building" and "qualifying lease" under the Building Safety Act 2022

(1) The BSA 2022 is amended in accordance with subsections (2), (3) and (4).

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

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

(4) In section 119 (Meaning of "qualifying lease" and "the qualifying time")—
  (a) omit subsection (2)(d), and
  (b) omit subsection (3)."

Member's explanatory statement
This amendment would change the definition of "relevant building" so that leaseholders of buildings of any height, and resident-owned buildings, qualify for protections in Part 5 and Schedule 8 of the Building Safety Act 2022. It also amends the definition of "qualifying lease" so that all leaseholders are protected irrespective of the number of other properties they own.

THE EARL OF LYTTON

105F★ After Clause 116, insert the following new Clause—

"Remediation costs

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

(2) Omit paragraphs 2 to 7 of Schedule 8 (Remediation costs under qualifying leases etc) and insert—

"2 (1) This paragraph applies in relation to a lease of any premises in a relevant building.

(2) No service charge is payable under a lease in respect of a relevant measure relating to a relevant defect.

(3) The Secretary of State must make regulations under section 126 providing that the costs of taking relevant measures in respect of a relevant defect are to be paid by members of the building industry scheme."."

Member's explanatory statement
This amendment extends the current leaseholder protections in Schedule 8 of the Building Safety Act 2022 to all leaseholders without qualification. It also provides for members of the building industry scheme to cover remediation costs.

THE EARL OF LYTTON

105G★ After Clause 116, insert the following new Clause—

"Meeting remediation costs of insolvent landlord

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

"125B Meeting remediation costs of insolvent landlord

(1) This section applies if a company which is a landlord under a lease of a relevant building becomes subject to a relevant insolvency procedure or the appointment of a receiver and it appears that—

(a) there are relevant defects relating to the building, and

(b) the company is under an obligation (howsoever imposed) to remedy any of the relevant defects or is liable to make a payment relating to any costs incurred or to be incurred in remedying any of the relevant defects.

(2) A person acting as an insolvency practitioner or a receiver must remedy relevant defects mentioned in subsection (1)(b).

(3) The court may, on the application of a person acting as an insolvency practitioner or a receiver in relation to the company, by order require a body corporate or partnership associated with the company—

(a) to make such contributions to the company's assets as the court considers to be just and equitable, or

(b) to make such payments to a specified person as the court considers to be just and equitable for the purpose of meeting costs incurred or to be incurred in remedying relevant defects mentioned in subsection (1)(b).

(4) Section 124(4) applies for the purposes of this section.

(5) Costs incurred in remedying relevant defects mentioned in subsection (1)(b) shall be considered expenses of a person acting as an insolvency practitioner or a receiver.

(6) In this section—

"act as insolvency practitioner" has the same meaning as section 388 of the Insolvency Act 1986;

"receiver" means a receiver appointed under section 109 of the Law of Property Act 1925;

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

Member's explanatory statement

This amendment places a duty on insolvency practitioners and Law of Property Act receivers to remedy building safety defects. They may apply to the court for a remediation contribution order. Remediation costs are to be treated as expenses of a person acting as an insolvency practitioner or a receiver.

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