



Stephen McPartland MP
Chair of the Regulatory Reform Committee
By Email Only

17 March 2021

Dear Stephen,

Fire Safety Bill

I am writing following your request for more information on the Fire Safety Bill, and how it interacts with the Regulatory Reform (Fire Safety) Order 2005 (this is at Annex A). As this is related to our recent discussion at the All Parliamentary Party Group (APPG) on 24 February, I also wanted to write about the amendment you had tabled to the Fire Safety Bill.

I understand your concerns and those of our colleagues on remediation of cladding. I want to assure you that I share your desire to help leaseholders. I understand the good intentions behind trying to do so through your amendment to the Fire Safety Bill. However, for several reasons, trying to make amendments to the Fire Safety Bill in this way could prove unhelpful to leaseholders and other residents of multi-occupied residential buildings.

First and foremost, it is a matter of urgency that the Fire Safety Bill be placed on the statute books. The current delay means that fire safety for leaseholders and residents of all multi-occupied residential buildings continues to be potentially compromised because of the legal ambiguity over whether external walls, flat entrance doors and structure, and are expressly included with the regulatory regime of the Fire Safety Order. This ambiguity translates into

- i. delays in the updating of fire risk assessments which will assess the risk from these parts of the premises and
- ii. delay to effective enforcement action by FRAs who have assessed that they do not have the legal certainty they require to take appropriate action to enforce against building owners (or relevant others) to take remedial action, where appropriate.

Secondly, any prolonged delays to the Fire Safety Bill arising from the re-drafting of the proposed remediation clauses, will impact on the timing of subsequent Regulations which (potentially alongside provision in the Building Safety Bill) will be used to implement the Grenfell Tower Inquiry recommendations. We have committed to implementing the Grenfell recommendations in our manifesto, and these regulations will deliver a number of important fire safety reforms. It is vital that we implement the recommendations as soon as practicable, in order to improve the safety of leaseholders and other people living in multi-occupied residential buildings.

Thirdly, we need to take the time to ensure we get the legislation drafted in a way that works.

The Fire Safety Order is a regulatory framework that sets out the duties of a Responsible Person in relation to fire risk assessments. It does not cover the relationship, including potential financial obligations or prohibitions, between freeholder and leaseholder.

I am clear that the correct legislative approach to dealing with issues relating to interaction between freeholder and leaseholder is the Building Safety Bill. As you may know, in the draft Building Safety Bill we brought forward clauses 88 and 89 that relate to charges and remediation. This is a complex area and the issues you raise and their interaction with other aspects of Building Safety Charges needs to be carefully considered. You've said many times you would be open to discussions with the Government on how best to help leaseholders. I would welcome a discussion with you and other colleagues on building safety charges ahead of introduction of the Building Safety Bill.

We have common cause: we both want to provide leaseholders with peace of mind and financial certainty. That is why the Government recently announced an additional £3.5 billion to fund the removal and replacement of unsafe cladding targeted at the highest risk buildings, which brings the total investment in building safety to an unprecedented £5 billion.

I appreciate your concerns and those of other Parliamentarians in respect of remediation costs being passed on to leaseholders before the details of the enhanced Building Safety Fund are known. However, the increased funding should provide building owners with the reassurance that they will have financial support going forward and we intend to publish more detail about the Building Safety Fund shortly. I remain happy, of course, to provide the assurance of further discussions on these issues as part of or alongside the passage of the Building Safety Bill through Parliament.

I trust my letter provides the detail you wanted in relation to the Fire Safety Bill, and also addresses the reasons as to why we do not consider the Fire Safety Bill and Fire Safety Order to be appropriate mechanisms for making provisions relating to remediation costs.

I will place a copy of this letter in the House Library of both Houses.

Yours,



Lord Greenhalgh
Minister of State for Building Safety, Fire and Communities at
Ministry of Housing, Communities & Local Government and Home Office

Annex A - Purpose of the Fire Safety Bill and how it amends the Fire Safety Order

The background to the Fire Safety Bill is a legal ambiguity over whether structure, external walls and flat entrance doors were included within the scope of the Fire Safety Order (FSO). This led to many Fire Risk Assessments not covering these areas and many enforcing authorities being reluctant to take appropriate action.

The purpose of the Fire Safety Bill is to make clear that the Order applies to the whole building (including structure, external walls and any common parts) with the exception of individual flats (“domestic premises”) save for their front doors. Legally, this is achieved by clarifying Article 6 (Application to premises) of the FSO.

Clause 2 of the Fire Safety Bill (as introduced) provides a new delegated power to change the scope of qualifying premises under the FSO in future. This will mean, for example, that if a new design of building were constructed then the Government of the day could act nimbly in ensuring it could be quickly brought within scope of the FSO, where appropriate. Alternatively, if architecturally a new aspect of an existing building were to become common place and merit explicit inclusion in the FSO then this could be quickly achieved through an amending statutory instrument.

This is the sole delegated power that the Government included in the Fire Safety Bill. We consider that Article 24 of the FSO is otherwise sufficient to make Regulations to cover a number of proposals we consulted on to deliver on the Grenfell recommendations. Other proposals in the Fire Safety Consultation that require primary legislation will be brought forward in the Building Safety Bill.

Clause 3 of the original Fire Safety Bill provided details on commencement and the ability to introduce all Bill provisions at once or flexibly. As you will be aware, we took advice on this from an industry led Task and Finish Group who suggested that all provisions of the Bill commence simultaneously but that a risk-based approach is taken to ensure that buildings of greatest concern have their fire risk assessments updated first. This in turn acknowledges the issues around the capacity of fire safety professionals.

We brought forward an amendment, which has been approved by both Houses, to implement the Task and Finish Group’s recommendation on commencement. Legally this will be achieved by amending Article 50 of the FSO and includes the ability to introduce risk based guidance and a rebuttable legal presumption that if you have followed the guidance then you are deemed to have complied with your duties, whereas if you have not then you will be considered not to have met your obligations.