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FROM THE BARONESS SCOTT
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5 April 2022

Dear Wajid,

Thank you for your helpful comments during Report stage of the Building Safety Bill on 29 March. I promised to write to you about the “fitness for habitation test”.

You asked about the “fitness for habitation test” used in the Government amendments that introduce a new cause of action against construction products manufacturers and suppliers. We have also created a power to make provision in regulations for a costs contribution order to be made against a construction products company. You wanted to know whether this test provides a similar guarantee to the right to live in a safe and habitable home as that used in the Homes (Fitness for Human Habitation) Act 2018. I thought it would help to clarify the scope of the test used in these amendments and the rationale for this.

It is intended that the ‘fit for habitation’ test used in these amendments will be equivalent to the test used in the Defective Premises Act 1972. This test is concerned with the building’s construction, which is the primary focus of the Building Safety Bill, underpinned by almost 50 years of caselaw and is a generally understood concept. The ‘fitness for human habitation’ test, which is inserted into the Landlord and Tenant Act 1985 by the Homes (Fitness for Human Habitation) Act 2018, is concerned with the quality of rented properties for occupation, rather than the construction of the building.

I hope that this clarifies the scope of the ‘fitness for habitation’ test and the reason that we have used it in these amendments.

I hope you find this letter helpful. I will also place a copy in the House library.


BARONESS SCOTT OF BYBROOK

Lord Khan of Burnley
House of Lords