Boosting resilience to flooding and coastal change

Sustainable drainage at a new development in the OxCam arc

What we're doing

336,000 properties will be better protected from flooding and coastal change between 2021 and 2027.

The Environment Agency measure and track the number of properties protected each year to understand the impact of investment and report on progress to government. We want to be able to measure and track other aspects to understand how flood and coastal risk management activity improves resilience to flooding and coastal change.

Actions to boost resilience

The national flood and coastal erosion risk management (FCERM) strategy for England aims to boost resilience to flooding and coastal change using a range of activities. Whilst all the time adapting, we're working with others to:

- provide protective defences
- improve place making
- respond to flooding and coastal change
- improve recovery

Increasing resilience is an important part of how the nation can adapt to climate change.

Measuring success

We'll only know if the picture is changing for the better if we measure changes in resilience over a period of time, so we're delivering new research to determine how to do this.

We have already worked with focus groups to understand what resilience to

flooding and coastal change means in different contexts and places. Over the summer we'll use the results to develop ways of measuring changes with indicators. In September 2021, focus groups will help us design these indicators. Please let us know if you would like to join these focus groups.

The project will also look at what's already being monitored and what other data or action might be needed to measure how resilience is changing.

This work will help the Environment Agency report on progress in delivering the national FCERM strategy, and Defra to develop a national set of indicators to understand the impact of policies and inform future action. The government committed to developing these indicators in the flood and coastal erosion risk management policy statement.

It will also enable the Environment Agency and Defra to evaluate, monitor and learn from a range of activities to boost resilience to flooding and coastal change. We are working alongside the flood and coastal resilience innovation programme to help monitor progress and understand the benefits being delivered.

When complete, the research reports will be published on our project page.

Further information is available from Hayley Bowman
hayley.bowman@environment-agency.gov.uk

Note

The UK Government is developing a new National Resilience Strategy to enhance the way we prepare and respond to the most serious risks we face as a nation. The Cabinet Office are seeking contributions to a supporting Call for Evidence until 27 September to gather the broadest possible range of views to inform the strategy.

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1. 23 July 2021

   Added reference to call for evidence for National Resilience Strategy

2. 21 July 2021

   First published.

Lord Chancellor's keynote speech on

Judicial Review

Thank you to Policy Exchange for inviting me to speak here today.

I am very grateful for the work that Policy Exchange's Judicial Power Project has done over the past six years. That work seems to me to be crucial in two vital respects.

First of all, scholarly commentary has an important role in developing and refining the law. I am sure that all students of criminal law will recall how the House of Lords in the case of Anderton v Ryan – how shall I put this diplomatically – misconstrued s. 1 of the Criminal Attempts Act. Very soon after that decision Professor Glanville Williams wrote a scathing commentary of the ruling and a year later in R v Shivpuri their Lordships corrected course. When it comes to public law, there can be a tendency in sections of academia to want the courts to expand on their power. I think the Judicial Power Project and the academics associated with it provide an important counterweight to this tendency.

The second reason why I think your work is so important is that the debate about the proper balance of the Constitution is too crucial to be left to the pages of the Law Quarterly Review or of Public Law. It concerns us all whether we are lawyers or not and your work has really brought those issues into wider view.

So, I want to start by saying something about my underlying thinking when it comes to constitutional reform itself. I think it is fair to say that I am guided by three principles.

The very first, is a principle of method and I think it was Michael Oakeshott who put it best:

"To be conservative, then, is to prefer the familiar to the unknown, to prefer the tried to the untried, fact to mystery, the actual to the possible, the limited to the unbounded, the near to the distant, the sufficient to the superabundant, the convenient to the perfect, present laughter to utopian bliss."

That means, in my book, that one should never seek to reinvent the wheel and that change where necessary should be incremental.

The second part of my principles is the Rule of Law. What I mean is that as a society we are governed by clear rules set in advance and not by the arbitrary choices of those in power. That is a fundamental principle of our Constitution and I would not want any reform to endanger it.

The third is the Sovereignty of Parliament. In order for life in common to be possible, the laws that govern us must be orientated towards the common good. But what the common good means is, of course, open to interpretation. As Winston Churchill said, the least bad way of settling those disagreements is through democracy. It is our Constitution that gives the final say to the

elected Parliament, not to the unelected branches of the state. I think that is a very sensible settlement which has served us all very well.

Now, in my lecture today I would like to take the opportunity to build on two speeches I made recently concerning our constitution – one at Queen Mary University of London and the other at University College London – and specifically to discuss the government's thinking behind our proposals for reform of Judicial Review.

As I said in both those speeches, our system and our constitution have evolved over centuries to serve the needs of the citizens in our country. It is inevitably the case that through all that change, the constitution will at times require some attention – some constitutional plumbing if you will – to ensure that it continues to strike the right and sensible balance between our institutions.

This afternoon the Government introduced the Judicial Review and Courts Bill, the Judicial Review elements of which I hope do exactly that.

It is clear to me, that the Executive and the Judiciary – as branches of the state – are servants of Parliament, which derives its power and authority through the democratic process from the people of our country. We each have a responsibility to respect what Parliament tells us and how it wants us to interact in the interests of just outcomes from the laws it creates and the powers that it grants to us.

The Judicial Review elements of the Bill grew out of the Independent Review of Administrative Law. In their report the IRAL Panel charted developments in Judicial Review over the past 50 years or so. The Panel wrote at length about the diminishing field of non-justiciable areas, highlighted the courts' inconsistent approach regarding nullity, and reflected on concerns expressed by others around ideas such as the 'principle of legality'.

The Panel also pointed out several instances where the courts have not had remedies at their disposal that provide the flexibility that they need, and that this prevents the courts from dealing with Judicial Review cases effectively. The Panel concluded that, in the main, Judicial Review is not in need of systemic reform, and the answer to any judicial overreach is judicial restraint, something which does not require legislation. These are views with which I strongly agree.

For me, this has been a process of reviewing the changes to Judicial Review over the past 40 years – both in individual cases and in the context of our constitutional balance – and asking this very sensible question: is Judicial Review in our country functioning as it should?

I will focus today on one half of the proposed reforms – removing Cart Judicial Reviews. You will see from the Judicial Review and Courts Bill that the ouster clause we are proposing primarily removes Cart reviews due to the resources they use. And I think Lord Brown's words in the Cart judgment are relevant: "The rule of law is weakened, not strengthened, if a disproportionate part of the courts' resources is devoted to finding a very

occasional grain of wheat on a threshing floor full of chaff."

But it also does something else. I hope it can provide a model for how such clauses should be used and draw a line under the legacy of Anisminic – that famous case, almost as old as me, which led to ouster clauses being rendered almost wholly ineffective.

I note that the debate happening around Judicial Review at the moment is a robust one. In a mature and healthy democracy like ours that is exactly as it should be. Unfortunately, those including the JPP who have expressed some concerns about certain developments on Judicial Review have had one of two positions attributed to them.

The first is that they want to abolish (or at very least severely weaken) Judicial Review in order to unleash Executive Power. The second is that critiques of developments have at best only identified a few cases where the courts have got it wrong and, so the argument goes, any system of law is bound to get some cases wrong – so essentially there is nothing to see here.

To my mind, both of those claims are wrong, but I do think we should be clear about the aims of the government in this exercise.

Judicial Review is a crucial tool to ensure that the Executive sticks within the bounds of the powers it has been granted. This is essential to the rule of law and we would not want to get rid of it. No-one is suggesting that we turn back the clock on Judicial Review. Certainly there is no desire – not from me, not from the wider government, and not from the vast majority of constitutional scholars and experts – to undermine the useful innovations and developments in Judicial Review in the past 40 years, of which there have been many.

But while some are clearly useful – for example that there are always limits to discretion – and undoubtedly enhance Judicial Review, there are other developments which could take Judicial Review in more worrying directions and so we must be cautious.

But it is not the case that these concerns are merely about the belief that a few hard cases should have been decided differently. In my UCL speech I focused on two cases, Evans v Attorney General and Privacy International v Investigatory Powers Tribunal . In response to that one commentator said that there was nothing more to it than a disagreement with the majority in two high profile Supreme Court cases. The argument seems to be, there are borderline cases and there will be disagreement about how these should be decided; that's unexceptional.

However, with respect that misunderstands my point, which is that a case like Evans should not have been borderline in the first place. As Lord Hoffmann put it, "It is hard to see how Parliament could have made clearer its intention". The fact that this clear intention was not given effect to "give[s] rise to a worrying impression of a tendency towards judicial supremacism". Those latter words aren't mine, they are the words of Lord Brown of Eaton-under-Heywood – formerly of the House of Lords and the Supreme

Court.

When we look at the evolution of Judicial Review over the past decades, we always have to ask ourselves whether developments serve its actual purpose. It can be seen to operate, in many ways, through an interpretation of what Parliament generally intends – as it would be impossible for legislation to cover every conceivable circumstance in which it may be applied. This is what should guide us in any analysis and proposals for change.

Because Parliament does not specify in exact detail all the necessary requirements and ways a power it grants should be used, the courts must fall back on certain assumptions about how Parliament generally expects decision makers to act. Due to the necessary breadth of these assumptions – for instance that a decision maker should not act unreasonably – it is easy to see how they can become victim to conceptual creep and over complication.

In general, I firmly believe that the courts take a practically minded approach to Judicial Review and, in the majority of cases, there is no cause for concern. But we shouldn't be lulled by this into a false sense of security, and we must be watchful for those cases which might demonstrate a change in conceptual growth, or indeed overgrowth.

Now, I think there are broadly three areas, where to a greater or lesser extent there is a risk. In all these areas we must ask: firstly what is the justification for assuming that Parliament generally intends its legislation to be interpreted or read in this way?

The first is the possibility of the misuse of Wednesbury , due to the potential difficulty in finding an objective way of measuring it, and the varying levels of intensity it is said to have. On the latter point Lord Justice Haddon-Cave's recent Gresham lecture is most helpful:

"the constant refinement and Enigma variations on Wednesbury and the spawning of a myriad of different public law tests in an attempt to achieve 'perfection' in every scenario has led to a great deal of obscurity and entanglement. Bright lines are no bad thing in the good administration of justice and good government. Not everything can be nuanced. In the slightly Alice-in-wonderland world of close or anxious or intense or quite intense scrutiny in public law, you will forgive me for asking: Is today Wednesbury or Thursbury and Fribury?"

Second are the calls for proportionality – the idea that the court does not just look at whether the decision maker has properly used the powers given to it by Parliament, but also whether the decision or action is a proportionate way of achieving a policy aim to become a general ground of Judicial Review. This would fundamentally change the role of the courts and risk a kind of adjudication which draws the judiciary into political questions or ones that are based around values. Indeed, the courts have pointed out such dangers themselves. For example, Lord Neuberger in Keyu v FCO summed up the risk in this way:

"The move from rationality to proportionality, as urged by the appellants,

would appear to have potentially profound and far-reaching consequences, because it would involve the court considering the merits of the decision at issue: in particular, it would require the courts to consider the balance which the decision-maker has struck between competing interests (often a public interest against a private interest) and the weight to be accorded to each such interest"

In the absence of explicit Parliamentary authorisation – as was provided in the Human Rights Act – proportionality should not be seen or become a standard ground of review.

The third concern is around the principle of legality. The IRAL Report discussed one element of this – the lack of certainty about the triggers for the principle of legality. Another is the concernthat Professor Varuhas has raised about what he terms the "augmented" and "proactive" variants of this principle which "make significant inroads into executive discretion, and Parliament's capacity to reshape the common law, even where it manifests its intent by clear words."

While we can view these developments as the courts striving to balance the very practical matters inherent in Judicial Review with complex legal principles, we must also be alive to the risk that the principles can start to take on a life of their own, and lead to the courts overreaching.

The IRAL in their report concluded that, "solutions to any potential problems of judicial overreach and uncertainty created by the current state of the law on the grounds of Judicial Review must come from the courts, and the courts should be encouraged to do what they can to address these problems. " I agree and I am encouraged by recent decisions of the Supreme Court.

One of the concepts over which there has been much Judicial and academic comment is the requirements for the effectiveness of ouster clauses. I think this is a perfect example of where something has become more and more complicated, resulting in problems far beyond the real nature of the issue – a problem which arose out of the Anisminic judgment, and which we are determined to resolve.

Anisminic, as Lord Wilson put it in his dissent in Privacy International "set up 50 years of linguistic confusion for all of us who have been heirs to its decision" . This confusion was over the nature of different kinds of errors and whether all errors were in fact so called 'jurisdictional errors' – that is one where a decision maker acts without the power to do so, and have always been considered as making the action null and void.

Professor Feldman's commentary on the context of Anisminic highlights several points that can I think help us to understand how this confusion arose and why it is less the case itself, rather its legacy, which has led to the confusion.

The case revolved around a decision of the Foreign Compensation Commission, which had been set up following the Suez crisis and the seizure of assets by the Egyptian Government. The Commission's role was to determine compensation

claims by affected British citizens and companies whose property had been seized. Anisminic (or in its other name Sinai Mining) was one such company, but the FCC refused them compensation because they believed it had a ‘successor in title’ – or someone to whom ownership of company property had passed – who was not a British National.

Anisminic argued that the Foreign Compensation Commission had made a mistake of law by making its determination about Anisminic’s claim for compensation. Anisminic maintained that the FCC had gone beyond its jurisdiction in making such determination based on whether a ‘successor in title’ in fact existed. This relied upon interpretation of the FCC’s power to make determinations, which was set out in statute. The relevant clause specified that the FCC must take three conditions into account, and only three. The FCC by adding a fourth – whether Anisminic had a successor in title, and basing its decision on that, had made a determination it had no power to make.

In the rationale, Lord Reid set out that the decision of the FCC was not protected by the ouster clause because there was no authority for the tribunal to construe its own powers in deciding what kind of determinations it could make. Only a superior court could decide the true extent of the powers of an inferior court.

It was not the fact of the FCC making an error of law which was decisive but that the kind of error it made led to it basing its decision on a matter it had no right to deal with, that is the issue about whether Anisminic had a successor in title who was not a British National. The House of Lords held that the statute did not allow the FCC to make that a further requirement of giving compensation, and that the FCC had no authority to deem that it could.

So, the judgment therefore did not attempt to rewrite the rules on ouster clauses or nullity, but it found that the specific kind of error the FCC made, in its particular context, did render its determination null, because the ouster clause did not give the FCC the power to alter or to re-interpret the terms on which its determinations must be based.

Here the court was exercising its powers in accordance with the purpose of Judicial Review, having regard to the statute, to Parliament’s intent and to its context. It is after Anisminic that problems began to arise – both because of conceptual leaps by the courts and by legal thinkers, and attempts by various Governments let’s be frank to make their ouster clauses ‘Anisminic-proof’.

Professor Feldman points to the opinions expressed obiter dicta by Lords Reid and Pearce as the foundation of much of the confusion. Lord Reid explored the various scenarios in which a decision maker might deprive themselves of jurisdiction, theorising that there may well be many kinds of error in those categories – from acting in bad faith, to ignoring a mandatory requirement to take something into account. Lord Reid did not attempt to formulate a general rule about errors of law and jurisdiction, or make comments on the limits of ouster clauses, but as Feldman argues, this passage has been taken to do exactly that.

That interpretation of Anisminic was confirmed in the case of O'Reilly v Mackman where the House of Lords found that any error must change the nature of the decision being made – making it outside the decision maker's jurisdiction. The categories – the categorisation – set out by Lord Reid, had completely collapsed.

In response Parliament attempted to overcome the now seemingly restricted boundaries of ouster clauses. For an ouster to be effective in this post-Anisminic world, review over every error had to be ousted, as any error could – or perhaps by necessity would – be a jurisdictional error and therefore a nullity. And so, Parliament passed and attempted to pass extremely wide ouster clauses, wider than perhaps anyone would really consider necessary to achieve the policy intent. The Immigration Bill 2004 ouster is a very good example for an exhaustive ouster as it went through every conceivable kind of error, while the Regulation of Investigatory Powers Act ouster for the Investigatory Powers Tribunal is an example of a more conceptual one as it made provision for the body being able to decide its jurisdiction.

Professor Ekins tells us that legislation is, in part, an act of communication by Parliament to the courts . The communication between them thus begun to break down, because the principles surrounding ouster clauses and nullity and jurisdictional vs non-jurisdictional errors had distracted from what was really at stake – and it's this: what Parliament intended the jurisdiction of a certain body in particular circumstances to be. And that, remember, is how Anisminic was decided!

This came to a head in Privacy International where the wide scope of the ouster I just mentioned fell foul of the judgment's determination of the requirements of the rule of law. In attempting to 'Anisminic-proof' the ouster clause, the legislation had strayed into even more contentious territory. The drafters attempted to evade the post-Anisminic argument that every error was a jurisdictional one, by ousting review over the Tribunal decisions about its own jurisdiction.

That fell down on two counts, first that on a strict interpretation, the error made by the IPT was not about their jurisdiction in any case, so that the clause was redundant. The court chose not to interpret the decisions about jurisdiction might be implicit in the determination of the IPT – that is that they must have decided they had jurisdiction to make the determination they were making.

Second, that regardless of any wording, the court found it should apply such a stringent type of interpretation of ouster clauses, with a particular focus on the requirements of the rule of law, that it would seem impossible for the ouster to work.

But we must then ask ourselves – did Parliament pass a clause into legislation it intended not to have any effect? And hopefully I think we can agree that such an interpretation would be quite a stretch. We have reached a point where the growth of various concepts after Anisminic have meant Parliament enacting and proposing ouster clauses of seemingly extreme scope, and the courts then declining to judge clauses passed by Parliament of any

effect.

Complexity has led to confusion.

But Privacy International also I think showed us a way out of this conceptual quandary – Lord Carnwath emphasised the artificiality of nullity and also did not preclude Parliament passing effective ouster clauses, so long as, in the words of the Cart judgment, those clauses are clear and explicit. And that's the challenge I think for legislators.

The dissenting judgments also point to different thinking on ouster clauses, looking at concepts such as a 'permitted field' of activity, having more regard to statutory context and Parliamentary intent and the classes of error which the court should have supervision over from a rule of law perspective.

Furthermore, all judgments accepted that there is a distinction between true jurisdictional errors, instances where the decision maker seriously breached their duties to act fairly, and all other errors. These are the distinctions that the post-Anisminic case-law I think had collapsed. And I believe those distinctions hold the key to passing effective ousters that are respectful of the rule of law.

So, I hope the ouster that I am proposing points a way out of the marshes and onto firmer ground with the proper use and effectiveness of ouster clauses.

The clause in the Bill makes very clear what kind of decisions by the Upper Tribunal are not to be subject to review. And it also makes clear the kind of error which could be a ground of review. This preserves the jurisdiction of the supervisory courts for specific reasons.

Of course, for this to work, the courts would have to faithfully respect the distinctions drawn and I am confident that they will do that.

It is very much my hope that this clause will banish the ghost of Anisminic, draw a line under it, and provide a proportionate, targeted and just ouster clause.

Thank you.

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Government outlines significant changes needed to make Northern Ireland Protocol sustainable

- Command Paper outlines how Protocol is not working in its current form or delivering on its objectives.
- The Protocol will not be scrapped, but significant changes are needed to achieve a sustainable 'new balance' which puts UK-EU relationship on a stable footing. This is the only way to ensure protection for all dimensions of the Belfast (Good Friday) Agreement.

The Government has today, Wednesday 21 July, published a Command Paper setting out that it is seeking to negotiate significant changes to the Northern Ireland Protocol.

The document outlines how the Protocol is failing to deliver on some of its core objectives to minimise disruption to everyday lives, respect Northern Ireland's integral place in the UK's internal market and preserve the delicate balance in the Belfast (Good Friday) Agreement in all its dimensions – East-West as well as North-South.

The Government has tried to operate the Protocol in good faith, but the problems are significant and growing. Only this morning, the Chairman of Marks & Spencer has warned that they are having to delist products in Northern Ireland because of the way the Protocol is currently working.

The Government is therefore seeking to agree a sustainable solution that achieves a new balance which better reflects the unique circumstances of Northern Ireland and meets all the objectives of the Protocol. Economic, political and cultural ties that exist East-West must be treated with the same sensitivity as those that exist North-South. This is essential for ensuring that UK-EU relations are put onto a stable, more positive trajectory.

The Command Paper makes it clear that the Government has considered the case for triggering Article 16 and believes that there are clear grounds to justify using it. This option remains within the framework of the Protocol. However, we do not believe it is in the best interests of Northern Ireland to invoke safeguard measures at this time. We would rather seek a consensual approach with the EU, to agree stable, durable solutions that can work for Northern Ireland, the wider UK, and the EU, well into the future.

For this to happen, significant changes are need to the arrangements covering trade in goods and the institutional framework. These include:

Implementing a more rigorous, evidence-based and targeted approach to preventing goods at risk entering the single market. We are ready to enforce in the Irish Sea EU customs rules on goods going to Ireland via Northern

Ireland, but goods going to and remaining in Northern Ireland must be able to circulate near-freely and full customs and SPS processes should only be applied to goods genuinely destined for the EU. Ensuring that businesses and consumers in Northern Ireland can continue to have normal access to goods from the rest of the UK on which they have long relied. The regulatory environment in Northern Ireland should tolerate different standards, allowing goods made to UK standards and regulated by UK authorities to circulate freely in Northern Ireland as long as they remain in Northern Ireland.

Normalising the governance basis of the Protocol so that the relationship between the UK and the EU is not ultimately policed by the EU institutions including the Court of Justice. We should return to a normal Treaty framework in which governance and disputes are managed collectively and ultimately through international arbitration.

Lord Frost, Minister of State at the Cabinet Office, said:

> The Protocol has failed to deliver on some of its core objectives and we cannot ignore the political, societal, and economic difficulties this continues to create in Northern Ireland.
>
> That is why we need a new approach based on negotiation and the finding of a new and enduring consensus. There is a real opportunity to move forward in a way that protects the Belfast (Good Friday) Agreement and put UK-EU relations on a stable footing.
>
> We urge the EU to grasp this opportunity, take full account of the issues at stake, and help deliver the brighter future that is within reach.

Brandon Lewis MP, Secretary of State for Northern Ireland, said:

> The past few months have shown the current approach to the Protocol is simply not working. Already we have seen trade diverted, supply chains disrupted, and increased costs due to added bureaucracy. This is all having a considerable impact on everyday life in Northern Ireland.
>
> The new approach we have set out today, based on negotiation and consensus, recognises that a sustainable solution will require significant changes to the way the Protocol is being approached. Working together we can find a new balance that better reflects the unique circumstances of Northern Ireland.

The Command Paper also sets out how the EU, the UK, the Irish Government, and the people and political parties of Northern Ireland, share a fundamental mutual interest in supporting and upholding the fundamental objectives that the Protocol exists to protect. However, we cannot keep lurching from

deadline to deadline. Achieving a new balance requires pragmatism and compromise on both sides and a willingness to make the changes needed.

The Government stands ready to work at pace to resolve the issues and we invite the EU to join us in an intensive process that resolves these on a durable, sustainable basis.

Winchester man jailed for longer for attempted murder

Press release

A man has had his sentence increased following an intervention by the Solicitor General

Mark Williams has had the minimum term of his life sentence increased following an intervention by the Solicitor General, the Rt Hon Lucy Frazer QC MP.

On 18 February 2021, Williams, 37, violently attacked a woman and her young daughter in their home. He brought with him a large knife, tape and ties, which he used to restrain and stab the first victim. He then proceeded to stab her daughter when she tried to call for help.

For over two hours he detained both victims, sexually assaulting the child before leaving them both bound and tied. They eventually managed to free themselves and call for help.

Later that same evening, Williams attacked another woman with a knife, cutting at her throat three times.
Two of the victims were left with serious life threatening injuries.

On 21 May 2021, Williams was sentenced to life imprisonment with a minimum sentence of 14 years for attempted murder at Winchester Crown Court. He was

also convicted of wounding with intent, assault by penetration and false imprisonment.

On 21 July the Court of Appeal found his sentence to be unduly lenient and increased it to a minimum term of 18 years.

Speaking after the hearing the Solicitor General, the Rt Hon Lucy Frazer QC MP, said:

> Williams brutally attacked three separate victims and I concluded that the original sentence did not adequately reflect the level of trauma they suffered. The offender is a danger to women, and I am pleased that the Court has seen fit to increase the minimum term of his life sentence.

Published 21 July 2021

Government intervenes to support leaseholders as report finds no systemic fire risk in flats under 18 metres

- Advice from independent expert group finds there is no systemic risk of fire in blocks of flats under 18 metres
- States that residents need to be reassured on safety and recommends an urgent move to a proportionate approach to low and medium-rise buildings
- Following the expert advice, government sets out that EWS1 forms should not be requested for buildings below 18 metres
- Major lenders welcome the move, paving the way for EWS1 forms to no longer be needed, which should free leaseholders from cost and delay and provide confidence to the housing market

Leaseholders in blocks of flats with cladding should be supported to buy, sell or re-mortgage their homes after the government agreed with major lenders to pave the way to ending the need for EWS1 forms. It comes following expert advice that the forms should no longer be needed on buildings below 18 metres.

The announcement by Housing Secretary Robert Jenrick today (21 July 2021) follows new advice from fire safety experts that the government commissioned earlier in the year to investigate risk in medium and lower-rise buildings,

which makes clear that there is no systemic risk of fire in these blocks of flats.

The report recommends that residents are reassured as to safety, and a more proportionate approach is urgently instituted, requiring action by all market participants.

A group of major high street lenders has committed to review their practices following the new advice; HSBC UK, Barclays, Lloyds Banking Group and others have said that the expert report and government statement paves the way for EWS1 forms to no longer be required for buildings below 18 metres and will help further unlock the housing market.

The government welcomes their support but is now calling on others to demonstrate leadership by working rapidly to update guidance and policies in line with the expert advice.

The expert advice was commissioned by the Secretary of State after witnessing what Dame Judith Hackitt, Chair of the Independent Review of Building Regulations and Fire Safety, has described as extreme risk aversion, which has left leaseholders across the country receiving costly bills for remediation that is not necessary.

It states that fire risks should be managed wherever possible through measures such as alarm systems or sprinklers, and that the overwhelming majority of medium and low- rise buildings (those under 18m) with cladding should not require expensive remediation.

The intervention is designed to reduce needless and costly remediation in lower rise buildings and is part of wider efforts to restore balance to the market, helping flat owners to buy, sell or re-mortgage homes.

Risk to life in blocks of flats remains very low. The number of fires in homes in England has been on a general downward trend for many years, reaching an all-time low last year. 91% were in houses, bungalows, converted or low rise flats, while only 9% were in blocks of flats of four storeys or more.

The government is already fully funding the cost of replacing unsafe cladding on all buildings over 18 metres, through the unprecedented £5 billion Building Safety Fund, and has been clear with building owners, lenders and the industry throughout that they must take a proportionate response to fire safety and enable homeowners to get on with their lives.

Today’s announcement – outlined by the Secretary of State during the second reading of the Building Safety Bill – demonstrates that the industry should now be actively taking an evidence-based approach to fire safety.

The move has been backed by the National Fire Chiefs Council and the Institution of Fire Engineers.

Housing Secretary Robert Jenrick said:

> Today’s announcement is a significant step forward for leaseholders in medium and lower-rise buildings who have faced difficulty in selling, anxiety at the potential cost of remediation and concern at the safety of their homes.
>
> While we are strengthening the overall regulatory system, leaseholders cannot remain stuck in homes they cannot sell because of excessive industry caution, nor should they feel that they are living in homes that are unsafe, when the evidence demonstrates otherwise.
>
> That’s why I commissioned an expert group to further examine the issue, and have already agreed with many major lenders that lower-rise buildings will no longer need an EWS1 form, and the presumption should be that these homes can be bought and sold as normal.
>
> We hope that this intervention will help restore balance to the market and provide reassurance for existing and aspiring homeowners alike. The government has made its position very clear and I urge the rest of the market to show leadership and endorse this propionate, evidence based, safety approach.

There is a longstanding legal duty on the Responsible Person for all purpose-built blocks of flats to have an up-to-date fire risk assessment. Moving forward, where the Responsible Person has identified fire safety issues they should update their fire risk assessments to determine any actions required. This could include measures such as installing sprinklers or alarms and in exceptional cases, remediation to ensure buildings are safe and people feel safe.

To help with this, new guidance for the risk assessment of external wall systems will be introduced. The PAS9980 will ensure that fire risk assessments are consistent, proportionate to risk and actions to manage risk are cost-effective, and the Consolidated Advice Note will be withdrawn.

For buildings under 18m which do require remediation, the government will introduce a financing scheme so that no leaseholder will have to pay more than £50 a month for the cost of replacing unsafe cladding. Further details of this scheme will be set out in due course.

Welcoming the support from the fire safety profession and from major lenders, Dame Judith Hackitt said:

> I am pleased to see the support and commitment to returning to an evidence-based proportionate approach to fire and building safety. It’s critical, given the significant – and in many cases unnecessary – impact this is having on people who live in and own homes in blocks of flats.
>
> What’s needed now is for the remaining bodies and lenders to get

> onboard so we have a collective, fact-based system that is reflective of the reality of the situation and reassures leaseholders that they, their homes and their investments are safe.

CEO of the Institution of Fire Engineers, Steve Hamm, said:

> The IFE supports the expert statement issued today. We expect this will lead to a significant reduction in the demand for the EWS1 process from mortgage valuers, particularly for buildings under 18m in height.
>
> Today's statement will support competent fire engineers to use their professional training, judgement and expertise to assess buildings based on professional appraisal of risk. This should enable a move away from the often risk-averse and overly cautious approach that has been seen in many cases.
>
> We welcome the commitment of all parties to ensure a proportionate and evidence-based approach to fire and building safety for all buildings along with the increased scrutiny to be provided by the new Regulators and the gateway approval process, which we expect will lead to improved levels of safety, providing comfort and reassurance for residents and homeowners as well as the wider market."

Chair of the National Fire Chiefs Council (NFCC), Mark Hardingham said:

"We fully support this new advice and welcome the challenge to those who are applying an overly risk-averse approach in many buildings below 18 metres. We expect this will start to redress the balance where disproportionate measures have been put in place to manage fire risks. We want to ensure that buildings are safe and will work closely with fire and rescue services to apply the advice for buildings in their area."

The government has also set out plans for developers of high-rises in England to contribute to the cost of remediating safety defects in a major step towards ensuring industry contributes to righting the wrongs of the past.

A consultation published today outlines that the levy will be applied when developers seek permission to build certain high-rise residential buildings of 18 metres or more in height.

The money recouped would contribute towards fixing historic fire safety defects, including unsafe cladding, protecting leaseholders and taxpayers from shouldering the burden of remediation costs.

The government is calling for views on the proposed design of the levy, which was first announced earlier this year as part of multi-billion-pound package to fix unsafe cladding on high-rise residential buildings, alongside wider financial and regulatory support.

The government has also confirmed today that the Building Safety Fund will reopen for applications in Autumn for any eligible buildings that missed the original deadline in June, with more details to be published in the coming months.

The expert group members are:

- Dame Judith Hackitt, Chair of the Independent Review of Building Regulations and Fire Safety
- Sir Ken Knight, Chair of the Independent Expert Advisory Panel on building safety following the Grenfell Tower Fire
- Ron Dobson, former London Fire Commissioner
- Roy Wilsher, adviser on fire reform, former Chief Fire Officer.

Read the statement from the group.

Read the government's statement.

Very few fires spread from the room where they start. In 2019/20, 7% of fires spread beyond the room of origin in blocks of flats over four storeys, compared with 9% in blocks below four storeys and 14% in houses, bungalows, converted flats and other dwellings.

Find the developer levy consultation.

The government has also today published the Building Regulations Advisory Committee working group report which sets out the definition of the 'golden thread' and how industry can support the government in delivering safer buildings.

As part of the strengthened regulatory system set out in the Building Safety Bill, all high-rise residential buildings will have to have a golden thread of information, which will capture and protect all relevant safety information relating to the building.

The golden thread was a recommendation by Dame Judith Hackitt and will be used by the people responsible for the building to demonstrate its safety to the regulator throughout its life-cycle.

Full statements from lenders:

HSBC UK

> We welcome the statement from experts on building safety and note the assessment from the parties to the statement that there is no systemic risk from fire in medium and lower rise blocks of flats. Our expectation is that the existing consolidated advice note will be removed and, with the endorsement from IFE, this means we will no longer require EWS1 forms for buildings below 18m, and consequently RICS guidance will be updated in line with this advice. We look forward to these changes being reflected in valuations from our RICS qualified partners and remain committed to

supporting affected homeowners.

Barclays

We have seen and support the statement from experts on building safety and accept their assessment that there is no systemic risk from fire in medium and lower rise blocks of flats. This should remove the need for EWS1 forms for mortgage applications in any block below 18 metres. Our approach to mortgage lending and valuation has been and will remain proportionate, relying on the normal statutory process for blocks of flats having an up-to-date fire risk assessment to assure residents’ safety.

Lloyds Banking Group

We welcome the government’s statement on fire safety in multi storey apartment blocks and specifically its declaration, based on advice from relevant experts on building safety, that there is no systemic risk from fire in medium and lower rise blocks of flats. In particular, we welcome the government’s pledge to withdraw its consolidated advice note. We look forward to working with RICS as they update their specialist guidance, which should provide the certainty everyone needs. We also look forward to seeing the details of the government loan scheme that will provide residents support if they need any cladding-related remediation. We expect the government’s action will help further unlock the housing market.