

Report on the Legislative Consent Memorandum for the Fire Safety Bill

12 June 2020

1. Background

1. On 30 April 2020, the Deputy Minister for Housing and Local Government laid a Legislative Consent Memorandum (“the LCM”) for the Fire Safety Bill currently before the UK Parliament.
2. On 4 May 2020, the Business Committee referred the LCM to the Equality, Local Government and Communities Committee (“the Committee”) and the Legislation, Justice and Constitution Committee for consideration. The Business Committee set a reporting deadline of 18 June 2020. We considered the LCM at our meeting on 2 June 2020.
3. At the time of writing, a debate in Plenary seeking the Senedd’s consent to the relevant provisions in the Bill (as outlined in the LCM) has not yet been scheduled.

2. The LCM

4. Paragraphs 3 to 7 of the LCM summarise the Bill and its policy objectives. Paragraphs 8 and 9 set out the provisions in the Bill for which consent is sought. Paragraphs 10 to 12 set out the Welsh Government’s views on the provisions being made in a UK Bill, rather than via Senedd legislation.



3. Provisions in the Bill for which consent is sought

5. The Senedd's consent is being sought for clauses 1 to 3 (with some exceptions) because these provisions are in relation to fire safety of buildings in Wales.

6. Clause 1 makes amendments to the Regulatory Reform (Fire Safety) Order 2005 ("the FSO") to clarify that it applies when the premise is a building containing two or more sets of domestic premises to:

(a) the building's structure and external walls (which includes doors and windows and anything attached to the exterior walls, such as cladding, insulation, fixings and balconies) and any common parts; and

(b) doors between domestic premises and common parts.

7. Clause 2 gives power to the "relevant authority" to make regulations to amend the FSO for the purpose of changing or clarifying the premises to which the FSO applies. The use of the power is to be subject to the affirmative resolution procedure. The relevant authority is defined as the Secretary of State in relation to premises in England and the Welsh Ministers in respect of premises in Wales. Clause 2(2)(a) and 2(7) apply to England only and the Senedd's consent is not being sought.

8. Clause 3(2)(b) allows the Welsh Ministers to make regulations commencing clause 1 of the Bill (which makes the operative amendments to extend the scope of the FSO) in relation to Wales. This enables the provisions to be brought into effect as is considered appropriate for premises in Wales. No procedure applies to these regulations.

4. Reasons for making these provisions

9. Paragraphs 10 to 12 set the Welsh Government's rationale for making these provisions via UK legislation rather than through Senedd legislation. It highlights that the "immediate causes of the Grenfell Tower fire as identified by the Public Inquiry could equally arise in blocks of flats in Wales." It adds that the FSO "does not adequately protect" such blocks at the moment. It is their view that the Bill would correct some key deficiencies, and "create an important means of ensuring fire safety in blocks of flats."

10. The LCM also highlights the additional complexity that the FSO was made under a now repealed Act, the Regulatory Reform Act 2001. (It was repealed in 2007.) There is therefore no way to amend the FSO other than through primary legislation.

11. The Welsh Government state that there is “no space” in their current legislative programme for a Bill making similar provisions, and that there is not a Bill where such provisions could be added. They say the Bill has been developed with “full discussion” between the two administrations and that it will “achieve” policy objectives “far sooner than would otherwise be the case”.

5. Committee consideration and conclusion

12. As a Committee, we have taken a keen interest in the issue of fire safety in high rise buildings following the horrific fire at Grenfell Tower in June 2017. We have outlined our concerns and recommendations for change in correspondence and reports.¹ One of the significant issues from the outset has been the clear deficiencies in the FSO. In our report on buildings in the private sector we called for the Welsh Government to bring forward legislation to replace the FSO in the current Assembly (as it was known then) term, and that the legislation should include:

- Standards for persons undertaking fire risk assessments;
- A requirement for fire risk assessments to be undertaken as a minimum annually for high rise residential buildings;
- Clarification that fire doors which act as the front doors to flats are considered part of the communal areas and therefore covered by the legislation replacing the Fire Safety Order 2005.²

13. It has been a matter of disappointment to us that the Welsh Government did not commit to doing this in the current Senedd session. We have always acknowledged the complexities and the need to take a whole system approach to fire safety. However, we believe that this issue is of such fundamental importance, that it should have been given the highest priority, with every effort made to bring forward the far reaching legislation that is needed.

¹ [Inquiry into fire safety in high rise buildings webpage](#)

² [ELGC Committee. Fire Safety in high rise buildings \(private sector\). November 2018](#)

14. The Fire Safety Bill as currently drafted, while short and not covering all the key issues, is at least, a step forward. It does seek to rectify some deficiencies of the FSO. We welcome the changes outlined in the Bill, and support the LCM. It is a sensible approach to use UK Government legislation to make necessary changes, that otherwise, would not happen until the next Senedd.

15. This Bill though leaves much out, as parliamentary colleagues at Westminster highlighted during the Second Reading, for example, there is no provision around the testing of fire doors or lifts.³ It also does not address the issue of minimum standards for assessors or set a requirement for annual assessments of high rise buildings.

16. Without the Covid-19 pandemic, it is likely that our scrutiny of the LCM would have been more extensive, including an evidence session with the Deputy Minister for Housing and Local Government. We ask the Welsh Government to outline how the changes in this Bill fit with implementing the Roadmap to Safer Buildings in Wales, along with an update on how this work is progressing.

17. While the changes in this Bill are important and are welcomed, they are not sufficient. Improving fire safety in high rise buildings needs to be taken forward with more urgency and pace. We acknowledge that the extensive fire safety legislation that we would have liked to see passed in the current Senedd, will not happen now, but for any future administration it must be at the top of their priorities. It is now unlikely we will actually see legislation to fix some of these fundamental issues coming into force before 2022 at the earliest. This will be five years after Grenfell. That is unacceptable. Both the Welsh and UK Governments need to bring forward the necessary legislation governing the safety of high rise buildings both in design, construction, occupation and refurbishment to ensure that such an avoidable tragedy never happens again.

³ [Hansard, House of Commons, 29 April 2020, Column 351](#)