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Y Gweinidog Tai a Llywodraeth Leol  
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Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref: MA-P-JJ-4639-18

John Griffiths AM  
Chair  
Equality, Local Government and Communities Committee

21 December 2019

Dear John,

### **Review of Fire Safety in High-Rise Buildings**

Following recent ministerial changes, I have assumed lead ministerial responsibility for Housing and Local Government. As building safety matters fall within my portfolio I am responding to the Committee's inquiry and recommendations. I would like to thank the Committee for its time and commitment in considering this complex and multi-faceted subject. I am clear, as was the former Minister for Housing and Regeneration, Rebecca Evans AM, that the necessary reform to the system must be comprehensive, considered and coherent. The Welsh Government will balance appropriate pace with the necessary reflection, thus ensuring the changes we make are practicable, make a discernible difference and are ultimately the right ones for residents and for the whole system. As Dame Judith Hackitt made clear in her report, *Independent Review of Building Regulations and Fire Safety*, change needs to rebuild public confidence in the system. We will not therefore cherry-pick the 'easy' to do at the expense of what needs to be done.

**Recommendation 1. We recommend that the Welsh Government establishes regulation of agents who manage high-rise residential buildings. In the interim, the Welsh Government should consider the feasibility of extending Rent Smart Wales' remit to cover the licensing of managing agents for high-rise residential buildings in Wales.**

### **Response: Accept**

In order to tackle the wider abuse of leasehold, last August the Welsh Government established a Task and Finish Group. The Group will provide recommendations on residential leasehold reform, with a final report scheduled and on track for summer 2019. An initial recommendation for the Welsh Government has been to adopt the Royal Institute of Chartered Surveyors (RICS)' Service Charge Residential

Management Code, 3rd Edition. My officials are engaged with RICS in adapting the Code to incorporate Welsh Legislation.

In addition to the actions the Welsh Government has taken that specifically apply in Wales, we have partnered with the UK Government on the Law Commission's review of leasehold. This project is considering enfranchisement, Right to Manage and commonhold. It is scheduled to report to both the Welsh and UK Governments in summer 2019. The report will provide advice on actions to reform the sector, including potential legislation, and regulation of managing agents.

With regard to introducing interim regulation arrangements for agents who manage leasehold high rise residential buildings into the current Rent Smart Wales scheme, we will explore the feasibility and desirability of the recommendation. I would flag, however, that the proposed interim action would require new primary legislation. Currently Part 1 of the Housing (Wales) Act 2014 imposes requirements in relation to properties let under domestic tenancies. The 2014 Act creates a licensing authority (i.e. Cardiff Council operating as Rent Smart Wales) and imposes a registration requirement on private sector landlords who let their properties under domestic tenancies and imposes a licence requirement on those agents who carry out property management work on behalf of landlords who let their properties under domestic tenancies. The registration and licensing functions are undertaken by the licensing authority. If new statutory requirements are to be imposed on those persons who manage leasehold high-rise residential buildings and the role of the licensing authority extended to accord, legislative change would be necessary. As such, it appears to us impracticable to deliver the recommendation, in the interim and short term, through Rent Smart Wales.

**Recommendation 2. We recommend that the Welsh Government gives priority to addressing safety concerns surrounding fire doors and ensuring that all fire doors provide a minimum of 30 minutes protection. This should include providing guidance to residents, leaseholders, managing agents and developers in addressing concerns and replacing any current fire doors over which there are safety concerns.**

**Response: Accept**

As the former Minister for Housing and Regeneration set out in evidence to the Committee, fire safety in any building is secured through a combination of measures. These include fire doors, fire exits and escape plans, sprinklers, and fire safety education. The failure of one protection measure, for example fire doors, should not significantly affect the overall safety of residents. In that sense, I agree with the advice of the UK Government's Expert Panel concerning fire doors, that "the additional risk to public safety remains low".

That said, the problems with composite fire doors, which are a concern, must be addressed by the sector. I am pleased to note that manufacturers are cooperating and acting responsibly. All doors known to have failed to meet the necessary standard were withdrawn from the market. Affected manufacturers were asked to contact their customers. I understand appropriately certificated doors are now returning to market, under conditions designed to ensure compliance.

As a Government, we have been appropriately proactive. The former Cabinet Secretary for Local Government and Public Services issued statutory guidance concerning fire doors in residential flats, (available [here](#)). Advice for residents is similarly available on the National Fire Chiefs Council [website](#) and can also be accessed, free of charge, from the Fire Service. Residents who remain concerned about their doors should contact their landlord or building owner.

We continue to work with the UK Government to ensure building owners have access to appropriate information and guidance as the testing regime reaches its conclusions. My officials will continue their regular liaison with their Whitehall counterparts.

**Recommendation 3. We recommend that the Welsh Government brings forward new legislation to replace the Regulatory Reform (Fire Safety) Order 2005 in the current Assembly term. We believe this should be prioritised as part of the roadmap the Building Safety Expert Group is preparing. The new 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**

**Response: Accept in Principle**

I agree with the Committee that the Fire Safety Order needs to be radically reformed or replaced. The Order was not designed for residential buildings, and therefore does not address the main risks of fire in such buildings. The Committee's suggestions will form part of our considerations.

Reform which addresses Dame Judith's (and our stakeholders') concerns will require a significant piece, or pieces, of primary legislation. This will take time and careful consideration to ensure a new system for building safety is clear, joined-up, practicable and effective. We will consider how reforms to fire safety legislation can be addressed as part of this work, and we cannot guarantee to complete this in the current Assembly term.

Ahead of any legislation being brought forward we will continue to work to clarify expectations with regards to fire doors. We will of course continue to work with landlords and responsible persons to support them in their duties under the Fire Safety Order.

**Recommendation 4. We recommend that the Welsh Government explores the feasibility of ensuring invasive level four surveys for all high-rise residential buildings. This should include the impact on fire and rescue services' capacity, levels of skills and expertise needed and the lifting of any legislative restrictions.**

**Recommendation 5. We recommend that the Welsh Government ensures that any changes in the fire safety legislation as called for in recommendation 3, provides fire and rescue services with the legislative powers to require level 4 invasive surveys.**

**Response: Accept both in Principle**

Primary responsibility for ensuring that buildings are fit for purpose rest with those who commission, design and build the project. It is the responsibility of the builder/ developer to ensure that they construct good quality buildings. The role of building control or the Fire and Rescue Service is not to stand over the shoulder of each tradesperson on site to ensure that they are doing a good job.

In her review of Building Regulations and Fire Safety, Dame Judith Hackitt identified a number of issues with the potential to impact on building safety. These include a lack of clear roles and responsibilities, and professional competence.

We need to restore trust in the system. In responding to the Hackitt review we will put in place the right combination of clear responsibility, competence, regulatory oversight and guidance that reflects risk across the range of buildings developed in Wales. We will also consider the need for invasive building surveys, and who is best placed to undertake them. If necessary we will consider how these would be implemented through legislative reforms.

**Recommendation 6. We recommend that the Welsh Government commit to the establishment of a new regulatory framework that follows the JCA model outlined in the Hackitt Review.**

**Response: Accept in Principle**

Appropriate consideration of scrutiny levels, control oversight and scale of higher risk buildings is critical. Dame Judith Hackitt proposes the best way to provide this is through a 'Joint Competent Authority'. As part of our response we will consider the appropriateness of a JCA in Wales, or if an alternative mechanism for ensuring robust scrutiny is more appropriate in a Welsh setting. It is one of the areas that my Building Safety Expert Group is considering. We will also reflect on the UK Government's response to this proposal and any consequent or possible cross-border issues.

**Recommendation 7. We recommend that the Welsh Government consider how the planning and building regulation process can be revised to ensure the Fire and Rescue Services are included much earlier in the process so that their fire safety expertise can be utilised to ensure high-rise residential buildings can adequately resist fire.**

**Response: Accept**

Fire safety in buildings is currently regulated by Building Control (either local authority or approved inspectors) in respect of building construction or alteration, and Fire and Rescue Authorities in terms of the ongoing occupation of buildings which are subject to the Regulatory Reform (Fire Safety) Order 2005.

There are requirements on Building Control Bodies to consult the Fire and Rescue Service where a building is going to be subject to the Fire and Safety Order. The Building Regulations and Fire Safety Procedural Guidance sets out how the two regulatory systems are intended to operate.

Evidence from Fire and Rescue Authorities is that good relations have existed for many years. They also reported issues concerning a lack of FRS involvement in discussions until after buildings have started construction. In worse scenarios they are consulted only once buildings are about to be occupied. This is unacceptable and we would look to see how the regulatory system might address the issue.

I recognise the value of early identification of high risk buildings and early engagement with the Fire and Rescue Service. We have started to identify options to involve Fire and Rescue Authorities more formally in the planning process. For example whether it may be possible to make them mandatory consultees on certain types of planning applications and the fire safety advice they might provide at the development planning stage such as proximity to forestry, water supply and access for appliances.

In responding to issues emerging from the Grenfell investigation we have already been bringing together parties including a range of Welsh and Local Government officials and the Fire and Rescue Service. This is an early prototype of the type of engagement, structure, information-sharing and activity that Hackitt describes in a JCA. It will be helpful in identifying issues and learn lessons about joint engagement as we develop options. My Building Safety Expert Group will consider these issues further.

**Recommendation 8. We recommend that the Welsh Government assesses the effectiveness of quality assurance of building works, and considers whether best practice can be mandated through regulation.**

**Response: Accept**

As I set out earlier, the primary responsibility for ensuring that buildings are fit for purpose rests, and will remain with those who commission, design and build projects. It is the responsibility of the builder/ developer to ensure that they are constructing good quality buildings.

Responding to the findings of the Hackitt review will require a combination of government intervention and industry up-skilling. We will work with the UK Government and Industry to identify an appropriate balance between regulation and behaviour change and promoting best practice.

**Recommendation 9. We recommend that the Welsh Government brings forward changes to the building regulation system for high-rise residential buildings which provides for more regular on-site inspections during the construction stage by Local Authority Building Control.**

**Response: Accept in Principle**

The main function of building control is to ensure that the requirements of the building regulations are met. Generally, they examine plans, specifications and other documents submitted for approval and undertake site inspections as the work proceeds. Most building control surveyors are actively involved at design stage for many schemes and are acknowledged to provide valuable input at all stages of development.

Currently, local authorities are notified at certain stages e.g. commencement of operations and prior to cover up of excavations, foundations, slab and drainage. Local Authorities then determine, on the basis of risk assessment, the extent of site inspection. It is acknowledged that the notification stages are in need of review as they no longer reflect the complexity of buildings or requirements of building regulations.

More targeted and risk-based inspections will contribute to improving quality. Redefining a clearer set of responsibilities, supported by improved competence and reporting, and reassessment of changes made during the construction period, will make a still greater contribution.

My Building Safety Expert Group will consider the extent to which current inspection arrangements adequately reflect risk and where improvements might be made.

**Recommendation 10. We recommend that the Welsh Government urgently change the regulatory framework to only allow local authority building control to act as the regulator for high-rise residential buildings of seven storeys or higher. However, in changing the framework, LABCs should be able to appoint approved inspectors to undertake the work on their behalf.**

**Response: Reject (at this time)**

The Hackitt Review identified a perceived conflict of interest between the private sector's commercial interest and its role in vetting designs to ensure compliance with the building regulations.

There are a number of differences between Approved Inspectors and Local Authority Building Control. Neither system is 'bad' per se, and in fact there are some additional requirements of Approved Inspectors that are not replicated in the LABC environment. For example, Approved Inspectors must demonstrate and maintain relevant qualifications and experience. They are also required to comply with a code of conduct and are subject to audit by an independent body, whereas there is currently no such framework for Local Authority Building Control inspectors.

That said, there are some real advantages to consistency. We will take account of the relevant capacity and specialist competence issues as we develop proposals for the future role for both Local Authority and private sector Approved Inspector building control bodies. In so doing, we will of course pay due attention to the conclusions of my Building Safety Expert Group.

**Recommendation 11. We recommend that the Welsh Government updates the Committee in six months' time on capacity in the UK for testing material and**

**any impact that has had on fire safety in high-rise residential buildings in Wales.**

**Response: Accept**

We will endeavour in our discussions with the UK Government to understand whether current reported problems in arranging tests have any long-term implications.

**Recommendation 12. We recommend that the Welsh Government outline what actions it is taking to encourage or incentivise the retrofitting of sprinklers in the private sector.**

**Response: Accept**

Sprinklers are widely recognised as a key contributory factor in effective fire safety measures. Installing sprinklers in new housing and as part of refurbishment programmes will go a long way towards minimising the risk of death and injury from fire.

The Domestic Fire Safety (Wales) Measure 2011 has been implemented through the Building Regulations 2010. From 30 April 2014 fire suppression systems (sprinklers) are required in new and converted:

- care homes;
- children's residential homes;
- boarding houses;
- halls of residences; and
- hostels (other than hostels intended for temporary accommodation for leisure purposes).

The Welsh Government produced a 'Householders Guide to Sprinklers' in 2015. From 1 January 2016, sprinklers are required in new and converted houses and flats. This legislation now seems even more important.

In Wales, of the 38 social high-rise blocks, 21 are known to have fitted or are in the process of retro fitting sprinklers.

Within the private sector, retrofitting sprinklers in existing buildings remains a matter for the responsible person to ensure fire safety in the building. It is for building owners to seek professional advice and decide whether to fit sprinklers, on the basis of their assessment of the particular risk faced in their building(s).

We cannot currently require retrofitting in any dwelling. There is more that private sector landlords could do. I am pleased that some are taking steps to retrofit these important fire safety measures.

As part of our programme to improve building safety we will consider how else we could encourage or even incentivise more retrofitting in multiple occupancy buildings.

**Recommendation 13. We recommend that the Welsh Government liaises with the UK Government to identify any common approaches that can be taken in**

**relation to addressing concerns about the cost of remedial work and leaseholders being held liable.**

**Response: Accept**

Welsh Government officials have developed close working relationships with their counterparts in UK Government following the events at Grenfell Tower. My officials will continue to engage with their counterparts in the Ministry for Housing Communities and Local Government on a regular basis and in relation to the full range of emerging issues.

The evolving and expanded scope of devolution – which has extended the Welsh Government’s competence in recent years – does not alter the need for strong ties between the Welsh Government, the other devolved administrations, and UK Government.

Whilst we will work with UK and other administrations to understand the implications of Dame Judith’s final report, actions taken here will be judged against what is best for Wales. In the short time that we have been responsible for building regulations, we have already demonstrated a desire pursue our own agenda. The same will be true of fire safety. We will not however be different for the sake of difference.

In respect of your comments on liability for remediation costs, I am pleased to report that the completed and planned removal and replacement of Aluminium Composite Material cladding in Wales has been, and is being, funded by developers or building owners, rather than by individual leaseholders.

**Recommendation 14. We recommend that the Welsh Government explore with the Building Safety Expert Group and the Leasehold Reform Group as to how the use of personal evacuation plans can be encouraged and supported in private sector high rise buildings.**

**Response: Accept**

Individuals with long term conditions or mobility issues who are resident in the social housing sector, or in other settings such as care homes, are likely to have Personal Emergency Evacuation Plans (PEEPs).

For those living in private residences, there is no legal requirement to have a PEEP, or for the landlord to take any steps to ensure their evacuation. This is an illustration of the complexity and ambiguity of the Fire Safety Order, which only applies to the common areas of buildings and not individual dwellings.

That said, those living with long term conditions are able to work with their managing agent or building owner to develop appropriate escape plans.

It is not possible, or appropriate, to legislate for requiring an individual to have a PEEP. However, that is not to say that residents, whether in the public or private sector, should not be made aware of the benefits of PEEP, and have the ability to access one if they request it. This is something that we can explore as we consider further the reform of fire safety legislation.



I welcome the Committee's careful analysis of these issues. Whilst it is clear we need to change the system, we also need to change the culture, and inevitably that will take time. The Welsh Government will strive to bring forward proposals which take account both of the system and the underlying culture. I look forward to working with the Committee as we bring forward change.

Yours sincerely,



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