

The Welsh Government's Legislative Consent Memoranda on the Building Safety Bill

December 2021



1. Background

The UK Government's Building Safety Bill

1. The UK Government's Building Safety Bill¹ (the Bill) was introduced into the House of Commons on 5 July 2021. It is sponsored by the Ministry of Housing, Communities and Local Government.

2. The long title of the Bill states that it is:

"A Bill to make provision about the safety of people in or about buildings and the standard of buildings, to amend the Architects Act 1997, and to amend provision about complaints made to a housing ombudsman."

3. The Bill completed Committee stage in the House of Commons on 26 October 2021. At the time this report was agreed, the date for Report stage had not been confirmed.

The Welsh Government's Legislative Consent Memoranda

4. Standing Orders 29.1 and 29.2 provide that a Legislative Consent Memorandum is required when a relevant UK Bill modifies or falls within the Senedd's legislative competence.

5. On 19 July 2021 Julie James MS, the Minister for Climate Change (the Minister), laid before the Senedd a Legislative Consent Memorandum² (the Memorandum) in respect of the Bill.

6. On 21 September, the Minister laid before the Senedd a Supplementary Legislative Consent Memorandum³ (Memorandum No. 2) in respect of the Bill.

¹ Building Safety Bill, as introduced [Bill 139-EN]

² Welsh Government, Legislative Consent Memorandum, Building Safety Bill, July 2021

³ Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No. 2), Building Safety Bill, September 2021

7. The Business Committee agreed that the Legislation, Justice and Constitution Committee, and the Local Government and Housing Committee, should report on the Memoranda by 4 and 18 November respectively.⁴ The deadline was later extended to 16 December 2021.⁵

Provision for which the Senedd's consent is required

8. Paragraphs 13 to 93 of the Memorandum set out the Welsh Government's assessment of the provisions in the Bill which require Senedd consent, namely:

- clause 1 (Overview of Act);
- clauses 30 to 40 (Building control authorities and building regulations);
- clauses 41 to 52 (Building control approvers and building inspectors);
- clauses 54 to 56 (Miscellaneous and general);
- clauses 125 to 126 (Remediation and redress);
- clause 134 (Fire safety);
- clauses 143, 144 and 146 (Part 6 of the Bill concerning general provisions);
- Schedules 4 to 6 (Transfer of approved inspectors' functions to registered building controllers; Minor and consequential amendments in connection with Part 3; Appeals and other determinations).

9. The UK Government disagrees with the Welsh Government's position in respect of clauses 52, 126, 144 and 146.⁶

10. Paragraphs 11 to 33 of Memorandum No. 2 set out the Welsh Government's further assessment of provisions in the Bill that will be new or altered as a result of amendments tabled during the House of Commons' Committee Stage which also require Senedd consent. Amendments to clauses 30, 41, 146 and Schedule 5 – provisions previously mentioned in the

⁴ Business Committee, [Timetable for consideration: Legislative Consent Memorandum on the Building Safety Bill](#), September 2021; Business Committee, [Timetable for consideration: Supplementary Legislative Consent Memorandum \(Memorandum No. 2\) on the Building Safety Bill](#), September 2021

⁵ Business Committee, [Revised timetable for consideration: Legislative Consent Memorandum on the Building Safety Bill](#), November 2021

⁶ Building Safety Bill, [Explanatory Notes, Annex A](#) [Bill 139-EN]

Memorandum – are referenced in Memorandum No. 2, along with clause 142 which was not a relevant provision listed in the Memorandum.

Reasons for making provision for Wales in the Bill

11. Paragraphs 94 to 100 of the Memorandum, and paragraphs 34 and 35 of Memorandum No. 2, set out the Welsh Government's reasons for making provision for Wales in the Bill.

12. The Minister cites commonality of systems as one such reason. She states:

"Since the transfer of functions over Building Regulations to the Welsh Minister in 2021 the changes taken forward in Wales have largely dealt with technical aspects of the regulations e.g. the changes to energy conservation (Part L) and the introduction of residential fire suppression systems. It remains the case therefore that currently the building control system for England and Wales are still largely the same. (...)

...the proposed changes to the core primary legislation, the Building Act 1984 (the 1984 Act), that the Bill now proposes, provide the necessary tools with which Welsh Ministers would be able to modernise the system in Wales. Keeping a similar structure in the 1984 Act is of benefit to users both sides of the border.

*Likewise for fire safety law, while in due course the regulatory regime will differ between Wales and England, core concepts of fire safety (such as competence in fire risk assessment) remain the same in both countries and indeed elsewhere."*⁷

13. The Minister also suggests that landlords owning property in both Wales and England means "there is again some benefit in maintaining a broad consistency of approach".⁸

14. In paragraph 100 of the Memorandum the Minister states:

"The proposals are not the application of UK proposals on Wales. The provisions in the Bill which fall within the legislative competence of the Senedd are largely bespoke amendments to the 1984 Act suited to the

⁷ Welsh Government, Memorandum, paragraphs 97 to 99

⁸ Welsh Government, Memorandum, paragraph 99

building safety issues in Wales. All of them are fully consistent with our White Paper "Safer Buildings in Wales", published in January 2021."

15. The Minister's view, as set out in the Memorandum and confirmed in Memorandum No. 2, is that it is "appropriate to deal with these provisions in this UK Bill". She states:

"The criticisms placed on the design and construction phase for buildings are clear and regulatory reform is needed. I consider that the proposed changes to the 1984 Act, provide the necessary tools with which Welsh Ministers would be able to modernise the system in Wales to ensure buildings are designed and built to the standards we expect. I consider this Bill the most effective way for these provisions to come into force as soon as possible, enabling us to set up the system on building safety. Therefore I recommend the Senedd supports the proposals and gives consent."⁹

⁹ Welsh Government, Memorandum, paragraph 109, and Memorandum No. 2, paragraph 38

2. Committee consideration

16. We considered the Memoranda at our meeting on 11 October 2021.¹⁰ We were due to take evidence from the Minister at our meeting on 15 November. However, due to unforeseen circumstances, the session was cancelled at short notice.¹¹ In lieu of the evidence session, we wrote¹² to the Minister on 15 November, and the Minister responded on 16 November.¹³

17. We agreed our report on 6 December 2021.

Our view

General comments

18. We note the position of the Welsh Government as set out in the Memorandum and Memorandum No. 2 with regards to its reasons for making provision for Wales in the Bill. These matters are discussed below.

19. We note that there are some areas of disagreement between the Welsh and UK Governments on which clauses in the Bill require the consent of the Senedd.

Conclusion 1. We agree with the Welsh Government's assessment that all clauses and Schedules listed in the Memoranda fall within a devolved purpose as described in Standing Order 29.

20. We further note that none of the relevant provisions listed in the Memoranda modify the legislative competence of the Senedd.

21. We note that 16 of the clauses which require the consent of the Senedd provide new regulation-making powers to the Welsh Ministers. The majority of these regulation-making powers will be subject to the negative scrutiny procedure in the Senedd. We further note that clause 143 contains a broad Henry VIII regulation-making power to the Welsh Ministers which will be subject to the affirmative procedure.

¹⁰ Legislation, Justice and Constitution Committee, 11 October 2021

¹¹ Legislation, Justice and Constitution Committee, 15 November 2021

¹² Letter to the Minister for Climate Change, 15 November 2021

¹³ Letter from the Minister for Climate Change, 16 November 2021

22. With regards to the commencement powers available to the Welsh Ministers we note that, in Memorandum No. 2, the Minister confirms that amendments were made to the Bill during the House of Commons Committee stage. Paragraph 15 of Memorandum No. 2 states:

"Clause 146 (Amendment 20) confers certain powers of commencement on the Welsh Ministers. The power for the Welsh Ministers to commence provisions is limited to Part 3 and clause 134 which are the parts of the Bill in which we have sought bespoke provision for Wales. The clause is drafted so as to ensure there is no overlap between the function of the Secretary of State and the function of the Welsh Ministers. Amendments 21, 35 and 38 are linked to this amendment."

23. We further note that some provisions in the Bill for which the Senedd's consent is sought will be commenced by order by the Secretary of State by virtue of the power in clause 148(4)(c) (clause 146 became clause 148 following amendments at Committee stage).¹⁴

Recommendation 1. Before seeking the Senedd's consent for the Bill, the Minister should ensure that it is amended to provide that the Welsh Ministers are given equivalent commencement powers relating to the provisions in the Bill for Wales to those already given to the Secretary of State, so that the Welsh Ministers are fully in control of when the provisions for Wales come into force.

Legislating in devolved areas and the capacity of the Welsh Government

24. The Counsel General has shared¹⁵ with us the Welsh Government's principles for UK Bills, in which it states that primary legislation in devolved areas should be enacted by the Senedd. Given this overriding principle, we asked the Minister to set out her reasons why this principle is not being followed as regards the Bill. In providing this explanation, we also asked her to confirm:

- whether she believed that commonality can only be achieved via England and Wales legislation and why Senedd legislation cannot be used to amend England and Wales legislation to achieve or retain commonality of approach;
- whether her priority was to achieve a consistency of approach over and above the principle that legislation in devolved areas should be made in Wales;

¹⁴ See Building Safety Bill, as amended in Committee [Bill 177]

¹⁵ Letter from the Counsel General, 22 October 2021

- her views on the cumulative constitutional implications of asking and allowing the UK Parliament to legislate in a wholly devolved areas.

25. The Minister told us:

"The extension of the parts of the Building Safety Bill to Wales (which we requested) presents an opportunity to respond to some of the issues raised by the Grenfell tragedy in advance of what would be possible if we waited for a Senedd Bill. (...)

This government has made clear that whilst protecting the devolution settlement remains a critical priority and that our general principle is to legislate in the Senedd in devolved areas, we should be open to taking a pragmatic approach to using UK legislation to achieve the Welsh Government's objectives where necessary. I believe the Grenfell tragedy and the need to respond to the subsequent independent review of building regulations created circumstances where using UK legislation is appropriate. I therefore consider this Bill the most effective way for these provisions to come into force as soon as possible. While I could bring forward the same provisions in our future Wales Bill, these would almost certainly be the same provisions but at a later date.

I consider the cumulative constitutional implications to be limited. Working collaboratively with the UK Government to achieve provisions for Wales that will update and modernise outdated legislation in a devolved area, does not in any way alter or undermine the fact that the Senedd has legislative competence in this area. We have the ability to make amendments in the future if that is needed."¹⁶

26. We are not convinced by the Minister's reasoning and wish to challenge two particular aspects of the Minister's response.

Conclusion 2. The Minister's remarks that the Bill provides an opportunity to respond to the issues raised by the Grenfell tragedy in advance of what would be possible "if we waited" for a Senedd Bill implies that that the Minister is a passive participant in this decision. While no doubt unintentional, we consider this to be potentially misleading.

¹⁶ Letter from the Minister for Climate Change, 16 November 2021, Annex – response to question 1

27. We would contend that the Senedd is waiting for the Minister to bring forward a Welsh Government proposed Bill. The Minister's comments unfortunately suggest that someone else is responsible for bringing forward a Welsh Bill to deliver on the reforms that the Welsh Government has itself consulted on in this area.

28. We do not disagree with the Minister that such reforms should be put in place as a matter of priority. However, we question whether the Minister's approach of using a UK Bill will deliver the desired changes to improve building safety in Wales any quicker than if the Minister had brought forward a Welsh Bill and utilised the flexibility in the Senedd's own procedures.

29. If the Minister considered that a Welsh Bill required the Senedd's urgent attention, her reasons could have been presented to the Senedd's Business Committee when it undertook its role to establish a timetable for the consideration of the Bill and Stages 1 and 2. By working with the relevant Senedd Committees, a curtailed but fair timetable could have been proposed which reflected the need to prioritise a Bill on building safety. The Welsh Government itself would then control the timetable for Stages 3 and 4 of the legislative scrutiny process. Moreover, if the Minister believed that the reforms to building safety law were needed as soon as possible, the Minister could have proposed to the Senedd that a Welsh Bill be officially subject to the Senedd's emergency Bill procedures.

30. The UK Bill was introduced to the UK Parliament in July of this year and is currently still subject to the scrutiny of the first House (the House of Commons). A timetable for its passage through the House of Lords is not yet known. Given that the Welsh Government has no control over the timetable for the scrutiny of a Bill in the UK Parliament but has significant control over such timetables in the Senedd, we see no reason why a Welsh Bill brought before the Senedd could not have been delivered within the same (or even a quicker) timeframe as the UK Bill.

31. While curtailed scrutiny of a Bill before the Senedd is rarely ideal, on this occasion, we consider it would have represented a better approach than using a UK Bill to legislate on building safety in Wales.

32. We discuss the role of the Welsh Government in supporting the passage of the Bill in later paragraphs.

Conclusion 3. A further aspect of the Minister's response which concerns us is her statement that she considers the cumulative constitutional implications of asking and allowing the UK Parliament to legislate in a wholly devolved areas to be limited. We respectfully disagree. We harbour significant concerns about such a cumulative effect and believe that it will be more

serious than the Minister suggests. We remain deeply concerned at the Welsh Government's approach to using, so extensively, UK Bills to legislate in devolved areas.

Recommendation 2. The Minister should, in advance of the debate on the relevant legislative consent motion, provide a full and detailed assessment of her view that:

- the cumulative constitutional implications of asking and allowing the UK Parliament to legislate in wholly devolved areas within her remit are limited, and
- her approach does not in any way undermine the fact that the Senedd has legislative competence in this area.

Conclusion 4. We are monitoring the use of UK Bills to deliver law for Wales and the cumulative effect for the Senedd, for Wales and for devolution, and will continue to so throughout the Sixth Senedd.

33. The Minister has previously cited capacity issues in the Welsh Government as a reason for using UK Bills to legislate for Wales.¹⁷ We asked her whether her department has the capacity it needs to deliver on the Welsh Government's legislative priorities, and:

- why she states in the Memorandum that there is no Senedd time to bring forward the provisions contained in the Bill;
- what are her other legislative priorities and why is there is no capacity to bring forward Senedd legislation in these areas;
- has she sought the views of stakeholders and Senedd Members on whether they would prioritise the content of the Bill over others and whether they would prefer Senedd legislation even if it should take longer than pursuing these provisions through a UK Bill.

34. The Minister said:

"...we have many other priorities, and to deliver them all we have to take a pragmatic and indeed an innovative approach. I consider proceeding in the way we propose is in the interests of the people of Wales. The White Paper

¹⁷ See [Report on the Welsh Government's Legislative Consent Memoranda on the Environment Bill](#), September 2021

set out our intention to use the Building Safety Bill and there was broad support for this approach. (...)

Resources have been allocated to support the passage of the Building Safety Bill and the development of subsequent secondary legislation and related guidance to introduce the more robust building control regime that our White Paper, 'Safer Buildings in Wales', proposed.

The decision to utilise what was an English Bill reflects the urgency of the issues to be addressed following Grenfell and the calls on Senedd time. We have taken a pragmatic approach to extending the scope of the Building Safety Bill to achieve the Welsh Government's objectives where appropriate. The common objectives driven by Dame Judith Hackitt's independent review report and the current common legislative base point to the Building Safety Bill as the most effective way for these provisions to come into force as soon as possible. While we could bring forward the same provisions in our future building safety bill, these would almost certainly be the same provisions but at a later date.

Our White Paper, which has been the subject of a public consultation, set out the need for urgent action and our intentions to utilise the UK Building Safety Bill. Ahead of the analysis of responses and our government response, to be published later this year, there was clear support for the White Paper proposals generally, both in terms of elements common with England e.g. Duty holders, Gateway Stages and the Golden Thread and the Wales bespoke elements e.g. Welsh Ministers' power to define higher risk buildings and local authority as the single regulator for high risk buildings."¹⁸

35. In the Memorandum, the Minister states that the Bill's provisions for Wales are "bespoke". The Minister also says that the provisions are necessary for consistency with a regime for England.¹⁹ We asked the Minister to clarify how the provisions could be both bespoke and also achieve consistency. We also asked whether Welsh Government legislative drafters or UK Government parliamentary counsel had drafted the bespoke provisions for Wales.

36. The Minister said:

¹⁸ Letter from the Minister for Climate Change, 16 November 2021, Annex – response to question 2

¹⁹ Welsh Government, Memorandum, paragraphs 99 to 100

"The Bill is a response to the very specific recommendations of the independent Hackitt report, it therefore includes elements that we would equally wish to introduce in Wales as the same core legislation that the report criticises, the Building Act 1984, which the Bill amends applies to both England and Wales, e.g.: Duty holder responsibilities; Gateway scrutiny stages (planning application, before construction and before occupation) and; Competence requirements for industry and regulators.

But it then provides Welsh Ministers with all the necessary powers to customise the Hackitt model for Wales e.g. it is for Welsh Ministers to determine what a higher risk building is, and for local authorities to be the regulator (removing the choice of private sector options for higher risk buildings).

I am mindful of the fact that many building control professionals work in England and Wales and that there is merit in similar provisions being applicable in both nations where there is cross-border activity and they suit our respective needs. Initial drafting was undertaken by the UK Government which was scrutinised, amended as necessary and agreed by our policy and Legal Services officials."²⁰

37. We are not persuaded by the Minister's arguments.

38. As highlighted above in earlier paragraphs when discussing the Minister's approach of using a UK Bill to deliver these reforms, we are unclear why the Minister did not allocate resources differently in her department so that they were available to support the drafting and passage of a Welsh Bill through the Senedd.

39. We find the Minister's reasoning and approach particularly confusing given that Welsh Government officials would have developed the policy instructions for the relevant bespoke clauses in the Bill, and subsequently commented on and edited draft clauses prepared by the UK Government's legal counsel. Furthermore, it is clear that intergovernmental working has continued while the Bill is progressing through the UK Parliament which will have also had time and resource implications for the Welsh Government.

40. We are unclear if the Welsh Government resources needed to support the passage of a UK Bill are any less intensive than those that would be required to draft a Welsh Bill and support

²⁰ Letter from the Minister for Climate Change, 16 November 2021, Annex – response to question 15

its scrutiny by the Senedd. This is a point we made in our earlier report on the Welsh Government's Legislative Consent Memoranda on the Environment Bill.²¹

41. With regards to the Minister's comments that many building control professionals work in both England and Wales and that there is therefore merit in similar provisions being applicable in both nations, we do not see why commonality of law across England and Wales could not be achieved by a Senedd Bill.

Recommendation 3. The Minister should, in advance of the debate on the relevant legislative consent motion, provide a full explanation as to why she made the decision to allocate resources in her department to support the drafting and passage of the UK Bill rather than allocate resources to facilitate the drafting and scrutiny of a Welsh Bill. In doing so, the Minister should provide details on how many Welsh Government officials have been allocated to, and how much time has been spent on, the tasks of:

- preparing the legal instructions that would have been used by the UK Government legal counsel to prepare the bespoke provisions for Wales in the Bill;
- scrutinising and amending the draft clauses prepared by the UK Government legal counsel drafters before they were included in the Bill for introduction to the UK Parliament;
- continued and ongoing intergovernmental working on the Bill, including the negotiation and drafting of any amendments to the Bill;
- monitoring the passage of the Bill through the UK Parliament and providing the necessary advice and updates.

Accessibility of the law that applies in Wales

42. The Welsh Government has committed to keeping the accessibility of Welsh law under review. This follows on from legislation the Welsh Government itself brought forward in the Fifth Senedd. The *Legislation (Wales) Act 2019* places a duty on the Welsh Ministers and the Counsel General to prepare a programme for each Senedd term setting out what they intend to do to improve the accessibility of Welsh law. The first programme – *The future of Welsh law: A programme for 2021-2026* – was laid before the Senedd in September 2021.

²¹ See Report on the Welsh Government's Legislative Consent Memoranda on the Environment Bill, paragraph 24

43. Given this context, we asked the Minister what assessment she had made of the impact of making these provisions in a UK Bill on the Welsh Government's duties in relation to the accessibility of Welsh law particularly as regards the lack of bi-lingual legislation, and that law in relation to building safety will be contained within a UK Bill (which amends an existing Act) and in a separate Senedd Bill.

44. We agree with the Minister that allowing the UK Parliament to legislate in this area meaning that the primary legislation will be in English only is "clearly regrettable". We disagree that such an outcome had to be "inevitable".²²

45. The Minister also said:

"...the crucial detail that operationalises the Bill provisions and which the outside world will tend to interface with, namely the regulations, will be bilingual. (...)

*With regard to the concern that building safety will be dealt with across two pieces of legislation, there are in fact two discrete elements to be addressed: i. design and construction and; ii. occupation. Whilst the interface at construction completion and preparation for occupation is important the regulatory regimes for the two elements will be different."*²³

46. We asked the Minister what Welsh stakeholders had said in relation to taking forward issues in relation to building safety in both a UK Bill and a Senedd Bill. We note the Minister's response that:

"The Safer Buildings in Wales White Paper set out our intentions to utilise the Bill and set out its fundamental features, consultation responses were broadly very supportive. I expect the analysis and Government response to be published later this year. The White Paper reflected the different approaches needed for the design and construction stage, and the subsequent occupation stage. The former represented improvements to the existing building control system informed by work already undertaken for the original England only draft Bill, the latter required more fundamental thinking of a

²² Letter from the Minister for Climate Change, 16 November 2021, Annex – response to question 3

²³ Letter from the Minister for Climate Change, 16 November 2021, Annex – response to question 3

new approach to regulation. Development of primary legislation for the occupation stage will therefore take longer."²⁴

47. We also asked the Minister if she had any concerns that taking forward legislation on the life-cycle safety of buildings in two separate pieces of legislation will have any impacts on the coherence and accessibility of that legislation. The Minister told us that this is "not seen as an issue as the two separate pieces of legislation will mainly deal with discrete aspects in a building's life". She added:

*"...care is being taken to ensure clarity at the handover stage at building completion to ensure the right information is collated, in the right format and handed over to those responsible in the occupation phase. In a similar way regulations will need to address the management of future refurbishment of what will be an occupied building and how that interfaces with the building control regime."*²⁵

48. In our view, legislating for Wales in this area by using both a UK Bill and a future Welsh Bill contradicts the Welsh Government's plans for, and commitment to, improving the accessibility of Welsh law. We find this approach particularly difficult to understand given that housing and building regulations are "Potential areas for consolidation under active consideration" by the Welsh Government for the Sixth Senedd term.²⁶

Recommendation 4. The Minister should, in advance of the debate on the relevant legislative consent motion, provide a detailed explanation as to how her plans to use both this Bill and a future Welsh Bill in this Senedd term relating to building safety complies with the Welsh Government's commitment to improve the accessibility of Welsh law. In doing so, the Minister should address the fact that the Welsh Government has already identified housing and building regulations as areas of law which it may seek to consolidate in the Sixth Senedd term.

Completeness of information and scrutiny opportunities for the Senedd

49. The Minister told us that she was satisfied with the quality and completeness of information provided to the Senedd in both the Memorandum and Memorandum No. 2. She added:

²⁴ Letter from the Minister for Climate Change, 16 November 2021, Annex – response to question 16

²⁵ Letter from the Minister for Climate Change, 16 November 2021, Annex – response to question 17

²⁶ Welsh Government, The future of Welsh law: A programme for 2021-26, September 2021

"However, I recognise the breadth and complexity of the Building Safety Bill and have offered for technical briefing sessions to be arranged for the Local Government and Housing Committee should they so wish."²⁷

50. While we acknowledge the Minister's offer to Senedd Committees of a technical briefing on the Bill's provisions, we respectfully highlight that this is in no way the same as the full and proper scrutiny that would have been undertaken in respect of a Welsh Bill.

51. We asked the Minister if she had any concerns that Senedd Members have not had the opportunity to scrutinise in detail the impact and scope of the 35 clauses currently proposed for Wales in the Bill. In providing her response, we also asked her to address the following questions:

- What engagement has the Welsh Government had with stakeholders in Wales on the development of the Bills?
- Could she provide examples of how the Welsh Government has responded to stakeholder concerns about the Bill given the issues raised during Bill scrutiny in the UK Parliament?

52. The Minister responded:

"In the case of the Building Safety Bill, I acknowledge the concern that such a wide ranging bill will not receive the fullest Senedd scrutiny, this was a concern raised by the chair of the Local Government and Housing Committee. I have therefore offered for my officials to provide technical briefings to go clause by clause if necessary to provide the Committee with the fullest understanding of what the bill provides for Wales. I have also offered to provide details on the delegated powers in the Bill.

As regards engagement with stakeholders, as I have mentioned above the intention to use aspects of the UK Government Building Safety Bill were set out in our White Paper for which there has been broad support, the detail of which will be set out in our government response due to be published before the end of the year."²⁸

²⁷ Letter from the Minister for Climate Change, 16 November 2021, Annex – response to question 4

²⁸ Letter from the Minister for Climate Change, 16 November 2021, Annex – response to question 5

53. We also asked the Minister to confirm if she has any intention to publish draft regulations for the Senedd to scrutinise her intentions in relation to the delegated powers provided to the Welsh Ministers in the Bill. In doing so, we drew the Minister's attention to the fact that the UK Government did so for the regulations that will be made for England in July 2021. The Minister said:

*"There are no plans to publish indicative regulations during the Bill's passage through Parliament however we will in due course be considering our approach to the development and consultation arrangements for the secondary legislation we bring forward following Royal Assent. One option could be to consult on draft regulations."*²⁹

54. We find the Minister's response disappointing in light of the fact that citizens and relevant stakeholders in England will have had the benefit of seeing published draft regulations.

55. It is also unclear to us why, in response to our question, the Minister has said she "could" consult on draft regulations when we are aware that she has told the LGH Committee that "The regulations we subsequently bring forward will be subject to consultation and engagement"³⁰.

Recommendation 5. The Minister should confirm that she will publish and consult on draft regulations that will give effect to the provisions in the Bill.

56. We also asked the Minister to address the concerns about the lack of scrutiny of Welsh provisions by the public bill committee on the Bill and lack of inclusion of any Welsh MPs in that committee's work. The Minister said:

*"The level of scrutiny of the Welsh provisions by the Public Bill Committee on the Building Safety Bill and no Welsh MPs sitting on the Committee are matters for Parliament."*³¹

57. We acknowledge that the Welsh Government has no control over which MPs sit on public bill committees in the UK Parliament and how those committees undertake their scrutiny of Bills. However, these facts serve to strengthen the arguments as to why a Welsh Bill should have been pursued.

²⁹ Letter from the Minister for Climate Change, 16 November 2021, Annex – response to question 19

³⁰ ~~Letter from the Minister for Climate Change to the Local Government and Housing Committee~~, 22 October 2021

³¹ Letter from the Minister for Climate Change, 16 November 2021, Annex – response to question 5

58. We are aware that amendments were made to the Bill during the House of Commons Committee Stage. We asked the Minister to clarify why the provisions added by these amendments were not included in the Bill on introduction, and therefore reflected in the Memorandum. The Minister told us:

*"The timetable for introduction of the Bill meant that some outstanding issues of detail had not been completed. Those introduced at the committee stage as amendments relating to Wales related to expanding provisions for cooperation between bodies and the sharing of information together with extending a power to ensure flexibility when defining a 'higher risk building'. Subject to my answer to Q20 below I do not expect any further amendments of substance to be made in relation to Wales."*³²

59. The Minister also indicated that she was seeking further amendments to the Bill to extend the scope of the New Homes Building Ombudsman to Wales which would require a supplementary legislative consent memorandum if agreed with the UK Government. The Minister told us:

*"We have been working positively with the UK Government with a view to extending the scheme as we believe the scheme could benefit home owners and businesses in Wales. A Supplementary Legislative Consent Memorandum will be required if these provisions are extended to Wales and this will be laid after a Government amendment to the Bill. The timing for this is still unclear, however we are working on the basis of December/January."*³³

³² Letter from the Minister for Climate Change, 16 November 2021, Annex – response to question 18

³³ Letter from the Minister for Climate Change, 16 November 2021, Annex – response to question 20
