

## **SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO.4)**

### **BUILDING SAFETY BILL**

1. This legislative consent memorandum (“LCM”) is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.
2. The UK Government amendments to the provisions in the Building Safety Bill (“the Bill”) were tabled for consideration at Committee Stage in the House of Lords on 14 February 2022. These amendments make provision falling within the legislative competence of the Senedd. The Bill can be found at: Building Safety Bill - Parliamentary Bills - UK Parliament.

### **Policy Objective(s)**

3. The UK Government’s policy objectives for these provisions relate to increasing access to redress for owners of buildings that suffer from significant building defects, and make consequential/minor amendments throughout on practical effects of existing provisions already within the Bill.

### **Summary of the provisions of the Bill**

4. The Bill is sponsored by the Department for Levelling Up, Housing and Communities.
5. The first LCM was laid on 19 July 2021 and included provisions relating to the design and construction phase of buildings. A Supplementary LCM (Memorandum No.2) was laid on 21 September 2021 and covered technical amendments to the original drafting and amended the commencement and the consequential provisions, at the request of the Welsh Government, and tabled by the UK Government for consideration at Commons Committee Stage. A Supplementary LCM (Memorandum No.3) was laid on 20 January 2022 in relation to provisions that increased the limitation period for certain causes of action under the Defective Premises Act 1972 and provisions applying the New Homes Ombudsman scheme to Wales.

### **Provisions tabled by the UK Government to the Bill at Commons Report stage for which consent is required**

6. The clauses which are within the legislative competence of the Senedd are Clause 41, Schedule 5, After Clause 128, and Clause 142.

#### Clause 41

7. The final amendment provides that regulatory authorities under the proposed new Part 2A of the Building Act 1984 (the building safety

regulator in relation to England and the Welsh Ministers in relation to Wales) can share information with each other for the purposes of their respective functions under that Part.

8. The second, third and fourth amendments makes consequential amendments so that the sharing of information provisions apply to a person to whom the Welsh Ministers have delegated registration functions as it applies to the Welsh Ministers. This includes making a consequential amendment in relation to amendment titled ‘after clause 57’ to also enable a person to whom the Welsh Ministers have delegated registration functions to apply to the High Court under new section 131A(5) for a declaration that an act or omission of the Crown is unlawful.

#### Schedule 5

9. The second amendment makes a consequential change to section 56(3) of the Building Act 1984 as a result of the proposed repeal of section 16 of the Building Act 1984 provided for by paragraph 20 of Schedule 5 of the Bill.
10. The fourth and fifth amendments change the location of the definition of “the data protection legislation” in the Building Act 1984 and are consequential on information sharing proposals set out in Clause 41.

#### After Clause 128

11. The first three clauses of this amendment are within the legislative competence of the Senedd as they relate to housing and building safety.
12. The first new clause (Liability for failure to comply with construction product requirements) makes provision for a new right of action where breach of regulations relating to construction products causes, or is a factor in, a building or dwelling becoming unfit for habitation. This section applies where:
  - a person (“the defaulter”) fails to comply, in relation to a construction product, with a construction product requirement applicable to that person at that time;
  - the construction product is installed in, or applied or attached to a building which consists of a dwelling, or which contains one or more dwellings;
  - the building or dwelling within it becomes unfit for habitation; and,
  - the failure to comply was the cause, or one of the causes, of the building or dwelling becoming unfit for habitation.
13. The second new clause (Liability relating to cladding products) provides for a right of action where historic defaults relating to cladding cause, or are a factor in, a building or dwelling becoming unfit for habitation. This applies where:
  - a person fails to comply prior to the provision coming into force, in relation to any cladding product, with a cladding product requirement applicable to that person at that time, markets or supplies a cladding product and makes a misleading statement in relation to it, or a person manufactures a cladding product that is inherently defective;

- the cladding product is attached to, or included in, the external wall of a dwelling, or building containing a dwelling in the course of works carried out in relation to the building;
  - that, in the course of those works or at any time after their completion a dwelling in the building becomes unfit for habitation
  - the person's actions was the cause, or one of the causes, of the building or dwelling becoming unfit for habitation.
14. The third new clause (Liability for failure relating to construction products: limitation) make amendments to the Limitation Act 1980 consequential on the rights of action created by the previous two new clauses. The limitation period for actions under the first new clause is 15 years. The limitation period under the second new clause is 30 years in relation to claims where the right of action accrued prior to the provision coming into force and 15 years for those accruing once the provision has come into force, the right of action accrues when construction work is completed or when refurbishment work is completed.

#### Clause 142

15. The first amendment provides for the new clauses in After Clause 128 detailed above to come into force two months after Royal Assent.

#### **Reasons for extending the provisions in the Bill to Wales**

16. The provision on information sharing will assist the Welsh Ministers in undertaking their functions under the Bill, by providing greater evidence on areas such as building safety and competence within industry. The provisions for construction products, including cladding, will introduce enhanced civil liability for construction products which will allow construction product manufacturers, suppliers and developers who have engaged in, and continue to engage in, nefarious behaviours to be held liable for the consequences of this behaviour. It will widen the pool of potential parties that can be pursued, increasing the ability of freeholders and leaseholders to obtain redress. This will contribute to ensuring that all parties that play a part in creating building defects are in line for costs to rectify them. This change will also ensure that building owners/ leaseholders have equal rights of action to those in England. Other provisions are consequential in nature to provisions included within previous or this LCM.

#### **Financial implications**

17. There are no direct financial implications as a result of the amendments. The redress for owners through the use of the defective product provisions will transfer impacts of remediation from owners/leaseholders to those in the supply chain.

#### **Conclusion**

18. It is my view that it is appropriate for the amendments within the Bill to apply to Wales. Some provisions are consequential to the existing provisions developed and put forward in the previous LCM and improve the functioning of the system such as the sharing of information, or delegation. The provision of additional routes of redress for the use of defective or mis-sold construction products will ensure that building owners/leaseholders have strengthened redress routes by creating new routes for recovering compensation for those whose buildings have been made 'unfit for habitation' through the use of defective or mis-sold construction products, or through a breach of existing regulations and provide equal rights of action to those in England. I consider this Bill the most effective way for these provisions to come into force as soon as possible. Therefore I recommend the Senedd supports the proposals and gives its consent.

**Julie James MS**  
**Minister for Climate Change**  
**22 February 2022**