

Report on the Legislative Consent Memorandum for the Building Safety Bill

15 December 2021

1. Background

1. On 19 July 2021, the Minister for Climate Change laid a Legislative Consent Memorandum ("the LCM") for the Building Safety Bill currently before the UK Parliament. A Supplementary LCM ("the SLCM") was laid on 21 September 2021 following amendments tabled at the Commons Committee stage.
2. On 30 September 2021, the Business Committee referred the LCM to the Local Government and Housing Committee ("the Committee") and the Legislation, Justice and Constitution Committee for consideration. The Business Committee set a reporting deadline of 18 November 2021, which was then revised to 16 December. We considered the LCM and SLCM at our meeting on 6 October, 3 and 17 November.
3. Following our consideration of the LCM and SLCM on 6 October, we wrote to the Minister for Climate Change requesting more information on the Welsh Government's decision to seek these reforms through a UK Bill and the legislative consent convention, rather than via Senedd legislation. We also wrote to the Legislation, Justice and Constitution Committee. The Minister for Climate Change responded on 22 October. After considering the response on 3 November we agreed to take evidence from the Minister for Climate Change on the LCM and SLCM on 17 November.



2. The LCM and SLCM

4. Paragraphs 7 to 11 of the LCM summarise the Bill and its policy objectives. Paragraph 12 sets out the clauses in the Bill which have particular relevance to matters within the legislative competence of the Senedd. Paragraphs 13 to 93 set out the provisions in the Bill for which consent is being sought by the UK Government. Paragraphs 94 to 100 set out the Welsh Government's views on the provisions being made in a UK Bill, rather than via Senedd legislation.

5. Paragraph 109 of the LCM sets out the Welsh Government's conclusion that it is appropriate to deal with these provisions through a UK Bill and recommends that the Senedd supports the proposals and gives consent.

6. The SLCM provides an update following the tabling of 22 amendments to the Bill by the UK Government on 15 September for consideration at Commons Committee stage. The amendments make provisions which fall within the legislative competence of the Senedd. All of the amendments were agreed.

7. Paragraphs 11 to 33 of the SLCM set out the changes to the Bill since the publication of the LCM. Paragraphs 34 to 35 set out the Welsh Government's position on the Bill, as amended. Paragraphs 37 to 39 set out the Welsh Government's conclusion that it recommends the Senedd supports the amendments to the Bill.

3. Provisions for which consent is sought

8. The Senedd's consent is being sought by the UK Government for clauses 1, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 54 and Schedule 5, clause 55 and Schedule 6, clauses 56, 125, 126, 134, 143, 144, 146.

9. These clauses require consent from the Senedd because the provisions all relate to building safety, which is a devolved purpose, and do not engage any relevant reservations or general restrictions.

Clause 1 (Overview of Act)

10. Clause 1 is an overview clause of the whole Bill, intended to assist the reader of the Bill to understand the provisions that follow.

Clause 30 (Higher risk buildings etc)

11. Clause 30 inserts section 120I into the Building Act 1984 (“the 1984 Act”) to define a “higher risk building” in Wales and “higher risk building work”, which includes circumstances where work causes a building to become a higher risk building or ceases to be a higher risk building. A “higher-risk building” means a building of a description specified in regulations made by the Welsh Ministers. The regulations under Clause 30 are subject to the affirmative procedure.

Clause 31 (Building control authorities)

12. Clause 31 inserts section 91ZD into the 1984 Act which provides a power for the Welsh Ministers, in building regulations, to designate an alternative local authority to act as building control authority where the local authority for the area proposes to carry out higher-risk building work. This is to avoid the risk of a conflict of interests where the local authority would otherwise be both developer and regulator on a higher-risk building. The regulations are subject to the negative procedure. The clause also inserts new section 121A into the 1984 Act to define building control authorities and to confirm that the designated local authority is the building control authority for work in relation to which it has been designated.

Clause 32 (Building regulations)

13. Clause 32 inserts new provisions into Schedule 1 to the 1984 Act to provide powers for building regulations to set:

- Procedural requirements relating to building control and the issue of notices and certificates (new paragraph 1A);
- Procedures relating to applications for building control approval, and for requirements to be imposed on approvals (new paragraph 1B);
- Approval of schemes whose members can issue certificates, and provision about those certificates and schemes including insurance (new paragraph 1C);
- Requirements on giving, obtaining or keeping of information or documents (new paragraph 1D);
- Requirements for the establishing of a system relating to mandatory occurrence reporting (new paragraph 1E);
- The form and content of documents and information to be provided with building control applications (new paragraph 1F);

- Inspection and testing (new paragraph 1G);
- Powers for building control authorities to extend prescribed timescales for deciding applications with the agreement of the applicant (new paragraph 1H); and
- Rights to appeal decisions, appeal requirements and procedures (1I).

14. These provisions will enable the introduction of new procedures and requirements for any work, including new higher-risk buildings as they are designed and built, and for building work carried out on them. It also enables similar procedures to be introduced for buildings not in scope of the more stringent regime where this is considered beneficial.

Clause 33 (Duty holders and general duties)

15. Clause 33 amends Schedule 1 to the 1984 Act, by the addition of paragraph 5A, appointed persons, and paragraph 5B, general duties. The new regulatory regime will regulate and hold to account those participating in the design and construction of new buildings, and the refurbishment of existing buildings.

16. This clause creates a power in paragraph 5A to require appointments to be made in relation to any work under building regulations, to make provisions about the nature of the appointment (including the appointer, the appointee and the term of the appointment), and determine situations where an appointment is deemed to have been made.

17. This clause also creates a power in paragraph 5B to impose duties on relevant persons throughout the design and construction phase of a building project. These dutyholders include those commissioning or undertaking work as well as those appointed, controlling or managing the work. These duties may apply to any design or building work on any building. The provisions in this clause will replace an existing power in paragraph Schedule 1 to the 1984 Act, inserted by the Sustainable and Secure Buildings Act 2004.

18. The regulations made under this clause are to be made in building regulations and are subject to the negative procedure.

Clause 34 (Industry competence)

19. This clause amends the 1984 Act, creating powers to impose competence requirements on appointed persons and prescribed persons. The clause defines competence requirements for this purpose. These requirements will apply to any design or building work on all buildings and not only higher risk buildings. The regulations made under this clause are to be made in building regulations and are subject to the negative procedure.

Clause 35 (Lapse of building control approval etc)

20. Clause 35 inserts a new section 32 into the 1984 Act which provides for building control approvals to lapse automatically after three years in respect of any buildings in which work has not commenced. It also inserts a new section 53A into the Act which makes provision for initial notices and plans certificates to lapse after three years. A new paragraph 4A is inserted into Schedule 4 to the 1984 Act to provide for a public body's notice and public body's plans certificate to lapse after three years. Consequential amendments make section 47 (Giving and acceptance of initial notice) and section 53 (Effect of initial notice ceasing to be in force) subject to the new section 53A. Clause 35 also inserts provision in new sections 32 and 53A and paragraph 4A which allows the Welsh Ministers, in building regulations, to define when work commences for the purposes of a lapse of approval. The regulations made under this clause are subject to the negative procedure.

Clause 36 (Determination of certain applications by Secretary of State or Welsh Ministers)

21. This clause provides regulation making powers to enable Welsh Ministers to appoint a person to determine the original application, including conferring functions on them and on the effect of their decisions. The Welsh Ministers, and any appointed person, will have the powers of the building control authority to determine the original application with the 1984 Act and building regulations applying to them as they apply to the local authority.

22. The clause provides powers to make provisions about these applications in building regulations, including requirements on applicants and imposing duties on the local authorities in relation to the transfer of the application to the Welsh Ministers. The regulations to be made in building regulations and are subject to the negative procedure.

23. Applicants will be able to appeal decisions of the Welsh Ministers to the magistrates court.

Clause 37 (Compliance and stop notices)

24. Subsection (1) of this clause enables the building control authority (i.e. the local authority for the area or one designated by Welsh Ministers in accordance with regulations made under s91ZD) to issue compliance or stop notices where there is or is likely to be a contravention of building regulations by inserting new sections 35B to 35D into the 1984 Act.

25. A compliance notice (new section 35B) can be served on a person who is contravening, or is likely to contravene, building regulations or a requirement imposed under building regulations. This notice will require the person to remedy the contravention or to take the steps detailed in the notice within the specified period.

26. Where work is being carried out that contravenes one or more particular provisions of building regulations that are specified in regulations for this purpose, where a compliance notice has not been complied with, or where work would present a risk of serious harm to people in or about the building if the building were used without the contravention being remedied, a stop notice (new section 35C) can be issued, to require a person to stop all work specified in the notice. Appeals against stop and compliance notices will be to a magistrates' court.

27. The regulations relating to compliance and stop notices are made in building regulations and are subject to the negative procedure.

Clause 38 (Breach of Building regulations)

28. This clause replaces the existing summary-only offence, punishable by fine, in section 35 of the 1984 Act (penalty for contravening building regulations), and makes it triable either way, and also providing for imprisonment as a possible punishment option. The substituted version of section 35 also increases the maximum daily fine reflecting inflation since 1984 by reference to level 1 on the standard scale. In addition, new section 35(1) expands the existing offence of contravening building regulations so that it also covers requirements imposed under building regulations; for example, requirements imposed at the time of granting building control approval, such as provision of revised plans.

29. Subsection (2) provides for the building regulations to make provision for defences in relation to specific building regulations, to be used by persons whose circumstances meet the criteria of the defence to dispute a charge against them.

30. Subsection (3) amends section 36 of the 1984 Act (notice requiring rectification of non-compliant work) to extend the time limit during which rectification in respect of a contravention of building regulations can be required from twelve months to 10 years.

31. Regulations under this provision are to be made in building regulations and are subject to the negative procedure.

Clause 39 (Liability of officers of body corporate)

32. Clause 39 inserts new section 112A into the 1984 Act which provides that, where a corporate body commits a criminal offence under that Act, any director, manager, secretary or other similar officer of that body is also deemed to have committed that offence in certain circumstances (where the individual has consented to or connived in the commission of the offence or where the offence is attributable to any neglect on their part).

Clause 40 (Revocation of certain provision made under section 2(2) of ECA 1972)

33. Clause 40 provides powers for the Welsh Ministers in building regulations to revoke provisions in building regulations which were made under both section 1(1) of the 1984 Act and powers in section 2(2) of the European Communities Act 1972. Any amendments to such provisions are to be made in building regulations and are therefore subject to the negative resolution procedure.

Clause 41 (Regulation of building control profession)

34. Clause 41 amends the 1984 Act by inserting a new Part 2A into the Act which provides for the registration of building inspectors and building control approvers. The overall purpose of Part 2A is to improve competence levels and accountability in the building control sector by creating a unified professional and regulatory structure for building control, changing and modernising the existing legislative framework.

35. In future, local authorities and each registered building control approver will be required, before exercising specified building control functions in relation to a building project (such as approving plans or submitting an initial notice), to obtain and consider advice from a registered building inspector. They will also be required to use a registered building inspector to carry out restricted activities (such as building control inspections).

36. Individuals in both the private and public sectors who wish to be registered building inspectors will need to meet the same minimum standard criteria in order to be placed on the register. Registered building inspectors will be able to provide advice to the building control authorities or registered building control approvers, in line with the type of registration they hold.

37. Current “Approved Inspectors” (i.e. organisations) wishing to undertake building control work will also have to meet minimum criteria to become registered as building control approvers, becoming subject to the oversight of the regulatory authority. The regulatory authority in Wales is the Welsh Ministers.

Clause 42 (Transfer of approved inspectors’ functions to registered building control approvers) and Schedule 4

38. Part 2 of the 1984 Act currently provides for Approved Inspectors (including organisations and individuals) to supervise building work. This clause, and Schedule 4, makes a number of consequential amendments to provisions in the 1984 Act, mainly in Part 2, so that references to Approved Inspectors are changed to become references to registered building control approvers.

Clause 43 (Functions exercisable only through, or with advice of, registered building inspectors)

39. Clause 43 inserts new sections 46A and 54B into the 1984 Act. Section 46A provides that a building control authority can only carry out restricted activity (defined in this section) through a registered building inspector. It also provides that prescribed building control functions will be specified as functions which building control authorities will only be able to carry out having first obtained and considered the advice of a registered building inspector. New section 54B makes the same provision in relation to registered building control approvers.

40. These functions will be prescribed in building regulations which are subject to the negative procedure.

Clause 44 (Default powers of appropriate national authority)

41. Clause 44 amends sections 116 to 118 of the 1984 Act and, in part, clarifies the Welsh Ministers' powers. This clause enables the appropriate national authority (i.e. in Wales, the Welsh Ministers), where it is satisfied that a local authority has failed to perform their functions under the Act, to make an order which declares them to be in default and instruct them to discharge their functions in a specific way and within a specific timeframe. If a local authority fails to comply with this order, the appropriate national authority may make a transfer order to assign to itself specified building control functions belonging to the body in default. New subsection (5) to section 116 also allows the Welsh Ministers to make a transfer order where it is satisfied that the local authority has exercised its functions in a way that falls short of expected standards or puts persons at risk and is likely to continue to do so. The order is made through no procedure.

Clause 45 (Higher-risk building work: registered building control approvers)

42. This clause amends Part 2 of the 1984 Act in relation to higher-risk building work. Part 2 sets out the building control regime where building work is supervised by an approved inspector (to be renamed as registered building control approver by clause 43 of the Bill). The amendments to sections 47 and 51A of the 1984 Act remove the ability for persons carrying out any building work which is higher-risk building work to choose their own building control body. For such work only the local authority for the area or a local authority as designated by Welsh Ministers will be able to act as building control authority. Where changes result in work becoming higher risk building work, cancellation of the original notice and notification to the local authority will be required. This clause also amends section 55 of the 1984 Act to provide for a right of appeal against a cancellation notice. In Wales, appeals will be to the magistrates court.

Clause 46 Higher-risk building work: public bodies

43. Clause 46 inserts a new section 54A into the 1984 Act. Section 54A gives the Welsh Ministers the power to make regulations amending sections 5, 54 and Schedule 4 to the Act in relation to higher-risk buildings. This power would enable the Welsh Ministers to create a modified higher-risk buildings regime for public bodies, for example, prevent a public body from submitting a public body notice (a notice given to the local authority to supervise their own building work instead of the local authority) for higher-risk building work. Regulations made by the Welsh Ministers under new section 54A are subject to the affirmative procedure.

Clause 47 (Insurance)

44. Clause 47 amends section 47 of the 1984 Act. The amendment allows the Welsh Ministers to designate bodies to approve insurance schemes and also to publish guidance as to the adequacy of insurance schemes.

Clause 48 (Plans Certificates)

45. This clause amends section 50 of the 1984 Act in relation to the issue of plans certificates. It includes provision setting out the conditions which must be met for a registered building control approver to issue a plans certificate. These are that the registered building control approver must have inspected the full plans or such plans as are sufficient for the purposes of issuing a plans certificate for the work (new section 50(1A)(a)); that the plans are not defective (new section 50(1A)(b)); that the registered building control approver is satisfied that the work covered by the plans, if carried out in accordance with the plans, will comply with building regulations requirements (new section 50(1A)(c)); and that relevant consultation requirements have been met ((new section 50(1A)(d)).

46. Where the registered building control approver has inspected plans as sufficient for the purposes of issuing a plans certificate under new section 50(1A)(a)(ii)), new section 50(7A)(c) provides that the Welsh Ministers may make regulations requiring the details of the further plans the registered building control approver must specify in the plans certificate. Where the conditions are met, and the person carrying out the work so requests, new sections 50(1B) and (1C) require that the registered building control approver must issue a plans certificate. New section 50(1D) requires that plans certificates must be provided in the prescribed form.

47. New section 50(7A) enables the Welsh Ministers, in building regulations, to prescribe circumstances in which a plans certificate must be issued and the consequences if a plans certificate is not issued in those prescribed circumstances, for example that the initial notice which has been issued for the work ceases to have effect. The clause also makes amendments

to paragraph 2 of Schedule 4 to the 1984 Act to make equivalent provision in respect of a public body's notice plans certificate.

48. The regulatory powers under this provisions are to be made in building regulations and are subject to the negative procedure.

Clause 49 (Cancellation of initial notice)

49. This clause amends sections 47, 53 and 55 of the 1984 Act and inserts new sections 53B to 53E. The amendments to section 53 of the 1984 Act set out the circumstances in which a new initial notice may be given. In cases of a cancellation referred to in section 53(7)(a), the new initial notice must follow the process in section 53B. The process in section 53B requires the registered building control approver, once the initial notice has been accepted, to submit a transfer certificate which must confirm that unfinished works up to the date of the certificate do not contravene any provision of building regulations. Conversely, if the registered building control approver is unable to determine whether the unfinished work meets building regulations, they must set out why in a notice to the person carrying out or intending to carry out the work and provide a copy of that notice to the local authority.

50. The registered building control approver must submit a transfer report with any plans, documents or other information related to the confirmation of the transfer certificate.

51. This must be submitted to the local authority within the relevant period set out in this section (21 days or such other period prescribed in regulations) or any agreed extension to that period as agreed with the local authority. Under section 53C the local authority must, by notice, accept or reject the certificate and report before the end of the relevant period. This provision also allows the local authority, by notice, to request further information and require the registered building control approver to give to the local authority such information as may be specified in the notice within the relevant period. Where the local authority requests further information, a copy of the notice must also be given to the person carrying out the work.

52. The registered building control approver must give the information specified in the notice to the local authority before the end of the period of seven days beginning with the day on which the notice is given, or such other period as may be prescribed in regulations. The registered building control approver can request for this period to be extended with the agreement of the local authority.

53. Section 53D sets out the effect of a cancellation of an initial notice where a new initial notice has been submitted. This section requires the local authority to cancel the initial notice where the registered building control approver does not give the local authority a transfer

certificate and transfer report in accordance with section 53B(2) or the local authority rejects the transfer certificate and transfer report in accordance with section 53C. Section 53D also gives powers to the person carrying out the work to cancel the initial notice before the local authority accepts or rejects the transfer certificate and report in accordance with section 53B, i.e. voluntarily withdraw from the transfer process. Where a transfer certificate is rejected, or the developer withdraws from the transfer process then the transfer process ends and any work becomes subject to local authority enforcement and supervision.

54. Section 53E restricts the functions of registered building control approver where an initial notice has been accepted following a change of registered building control approver and a cancellation of initial notice as a result of disciplinary action. During the transfers period the “transfer process” removes the ability for the registered building control approver to issue plans, a final certificate or an amendment notice.

55. The amendments made to section 47 cross refer to the new provisions and amendments to section 55, ensuring that there is a right of appeal against rejection by a local authority of a transfer certificate or report.

56. Additionally, this clause amends section 53 of the 1984 Act to allow the Welsh Ministers to issue guidance in relation to the new transfer process to assist in the smooth operation of the regime.

Clause 51 (Information gathering)

57. Clause 51 amends section 53 of the 1984 Act in order to enable a local authority to seek information from the person shown on the initial notice as the registered building control approver where it has ceased to supervise a project. This could include requiring a person who is no longer a registered building control approver to provide all its records of supervision of building work. The provision requires that any information provided to the local authority must also be copied to the person carrying out the work and also gives the person carrying out the work a power, by notice, to require other information which a new registered building control approver may need.

Clause 52 (Information)

58. Clause 52(1) and (2) amend the 1984 Act to insert new sections 56A – C which only apply in relation to England, 52(3) disapplies section 56 of the 1984 Act to England and also makes some minor amendments to that section, that are consequential on provisions of the Bill and which relate only to Wales. In so far as the amendments made by this clause apply to Wales, they would be within the legislative competence of the Senedd.

Clause 54 (Minor and consequential amendments) and Schedule 5

59. The provisions in Part 3 of the Bill involve changes to the 1984 Act. Minor and consequential amendments which flow from those changes are set out in Schedule 5. So far as the provisions in Schedule 5 of the Bill are consequential upon provisions in Part 3 that apply to Wales, they are provisions that would be within the legislative competence of the Senedd and as such the consent of the Senedd is required.

Clause 55 (Appeals) and Schedule 6

60. Clause 55 relates to Schedule 6, which makes provision for changes to the appeals process under the 1984 Act. So far as the provisions in Schedule 6 apply to Wales, they are provisions that would be within the legislative competence of the Senedd and as such the consent of the Senedd is required. Schedule 6 contains amendments to the 1984 Act that relate to appeals and other determinations. Appeals against certain decisions by local authorities in Wales are to Welsh Ministers. References to Secretary of State now read as Welsh Ministers, and appeal references to magistrates' court remain.

Clause 56 (Fees and charges)

61. This clause enables Welsh Ministers, as the "appropriate national authority" to make provision allowing for fees to be charged or recovered and to prescribe the amount of fees and charges chargeable by Welsh Ministers or Welsh local authorities for 1984 Act functions. The regulations made under this section are subject to the negative procedure.

Clause 125 (Duties relating to work to dwellings etc)

62. This clause amends the Defective Premises Act 1972 by inserting new section 2A. The new section 2A provides that for buildings that contain one or more dwellings, where work is undertaken in the course of a business, there is a duty for that work to be in a workmanlike or professional manner with proper materials, so that as regards the work, the dwelling is fit for human habitation. The new duty created by this clause only applies to relevant work undertaken after the provision comes into force.

Clause 126 (Limitation periods)

63. This clause makes a number of changes to extend the limitation period (i.e. the period within which legal action must be brought) in respect of action under both section 1 of the Defective Premises Act 1972 and (the yet to be commenced) section 38 of the 1984 Act from the current six years to fifteen, primarily by inserting new section 4B into the Limitation Act 1980 (subsection (1)). The clause also provides in subsection (3) that, in respect of actions under

section 1 of the Defective Premises Act only, the extended limitation period will apply both prospectively (i.e. in respect of future work) and retrospectively (i.e. in respect of work that has already taken place within 15 years of commencement of the provision). Where a revived limitation period would last for fewer than 90 days (known as “the initial period”), subsection (4) provides that it will last for 90 days, in order to give potential claimants the necessary time to take advice and lodge a claim.

64. Where a limitation period is extended retrospectively, i.e. where a previous six-year limitation period has expired and is revived by this provision, the clause sets out two safeguards to ensure fairness in the proceedings. First, subsection (5) provides that, where a claim is lodged and the continuation of the claim would breach a defendant’s human rights, the court must dismiss the claim. Secondly, subsection (6) provides that, where a claim has previously been dismissed, the extended limitation period will not, of itself, be sufficient to reopen the claim.

Clause 134 (Amendment of Regulatory Reform (Fire Safety) Order 2005)

65. This Clause sets out amendments to the Regulatory Reform (Fire Safety) Order 2005 (“the Fire Safety Order” or “FSO”) with regards to duties on the responsible person. The amendments would require that where the responsible person appoints a person to assist them in making or reviewing a fire risk assessment, they must ensure that the person is a competent person and the assessment must be recorded for all buildings covered by the FSO. The responsible persons themselves must be identifiable to residents and other responsible persons. This corrects obvious shortcomings in the FSO: at present there are no specific provisions about competence and, for some premises, there is no requirement to record the assessment in any way.

66. The Clause will also require responsible persons for buildings containing two or more sets of domestic dwellings to provide relevant fire safety information to residents, and prescribes the type of information that is relevant. It also provides additional types of information can be specified by regulation. Other provisions in the Clause include strengthening the provision relating to statutory guidance issued under Article 50 of the Fire Safety Order, and increasing the level of fines from Level 3 (£1,000) to Level 5 (unlimited) for certain offences, including offences in relation to the impersonation of an inspector, and failure to comply with specific requirements imposed by an inspector.

Clause 143 (Power of Welsh Ministers to make consequential provision)

67. Clause 143 confers on the Welsh Ministers a regulation-making power to make consequential amendments which arise from Part 3 of this Bill, and clause 134, or regulations made under them. Regulations that make consequential provision may amend, repeal or revoke an enactment. Any regulations that amend or repeal primary legislation are subject to the

affirmative procedure. Any other regulations under this clause are subject to the negative procedure.

Clause 144 Regulations

68. Clause 144 ensures that regulations made under this Bill can include any consequential amendments as well as transitional provisions and cover any other incidental matters. It also provides that regulations made under this Bill are to be made by statutory instrument and sets out which sets of regulations require the affirmative procedure. This clause only provides for Westminster Parliamentary scrutiny procedures because, save for regulations under clause 143 (to which clause 144 does not apply), the Bill does not contain any standalone regulation making powers for the Welsh Minsters. All of the powers to make subordinate legislation for the Welsh Minsters are powers to be inserted into the 1984 Act. New section 120A (inserted into the 1984 Act by paragraph 77 of Schedule 5) makes equivalent provisions for Senedd scrutiny. However, in so far as the Senedd could make similar provision in a Senedd Bill, clause 144 would be within the legislative competence of the Senedd.

Clause 146 (Commencement and transitional provision)

69. Although this is a non-operative clause, in so far as the provisions of the Bill apply to Wales, it would be within the legislative competence of the Senedd to make similar provision conferring such powers on the Welsh Ministers.

The SLCM

70. Paragraphs 12-33 of the SLCM set out the clauses affected by amendments tabled to the Bill during Commons Committee stage. In addition to the clauses in paragraph 8 of this report, the Senedd's consent is being sought for clause 142.

71. Since laying the first LCM, the Welsh Government sought technical amendments to the Bill to ensure that all the provisions worked as intended. Amendments were requested to the commencement provisions in order to ensure that the Welsh Ministers have the power to commence provisions that apply in Wales. The other technical amendments ensure that the provisions work in relation to cooperation and information sharing and the ability of the Welsh Ministers to define "higher-risk" buildings. The SLCM lists the following clauses as requiring consent of the Senedd:

Clause 30 (Amendment 17)

72. Amendment 17 enables the Welsh Ministers to define "building" for the purposes of the new section 120I of the 1984 Act (inserted by this clause). Regulations made under this power

will be subject to the negative procedure. Amendments 37 and 38 are linked to this amendment.

Clause 41 (Amendment 18)

73. Amendment 18 provides that section 91B (which contains new cooperation and information sharing provisions) of the 1984 Act, (inserted by Schedule 5 to the Bill), applies in relation to a person to whom functions are delegated under section 58Y as it applies in relation to the Welsh Ministers. Amendments 23 – 35 are linked to this amendment.

Clause 142 (Amendment 19)

74. Amendment 19 provides that the Secretary of State may not make consequential provision that may be made by the Welsh Ministers under clause 143. This amendment is aimed at protecting the devolution settlement by ensuring there is no overlap between the function of the Secretary of State in clause 142 and the function of the Welsh Ministers in clause 143.

Clause 146 (Amendment 20)

75. 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 the Welsh Government has 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.

Clause 146 (Amendment 21)

76. Amendment 21 provides that commencement regulations made by the Welsh Ministers may make transitional or saving provision.

Schedule 5 (Amendment 22)

77. Amendment 22 provides that certain provisions of the 1984 Act do not affect the right of the Counsel General to the Welsh Government to apply for an injunction on the ground that any work contravenes provision made by or under that Act.

Schedule 5 (Amendment 23)

78. The provision in Amendment 23 is consequential on the changes made to the new section 91A of the 1984 Act by other amendments and it amends the heading of that section to better reflect the content.

Schedule 5 (Amendment 24) and amendment 31

79. Provide that the duty under new section 91B(1) (of the 1984 Act) to cooperate applies to Welsh fire and rescue authorities (as defined by Amendment 33) and fire inspectors (as defined by Amendment 30), rather than fire and rescue authorities as defined by the 1984 Act.

Schedule 5 (Amendment 25)

80. Amendment 25 removes the restriction on the duty to cooperate, which currently provides that the duty applies only to functions so far as relating to higher-risk buildings.

Schedule 5 (Amendment 26)

81. Amendment 26 is consequential on Amendment 24 and amends the reference from “the local authority” to “a local authority” to reflect the definition of a “relevant person” provided in new section 91B(3).

Schedule 5 (Amendment 27)

82. Amendment 27 is consequential on Amendment 24 and amends the reference from “the fire and rescue authority” to “a Welsh fire and rescue authority” to reflect the definition of a “relevant person” provided in new section 91B(3).

Schedule 5 (Amendment 28)

83. Amendment 28 is consequential on Amendment 24 and provides that the functions of a fire inspector that are subject to the cooperation provisions of new section 91B, are those they have under the Regulatory Reform (Fire Safety) Order 2005.

Schedule 5 (Amendment 29)

84. Amendment 29 imposes a duty on the Welsh Ministers and relevant persons to cooperate with each other in the exercise of certain functions, and a power to disclose certain information relating to those functions.

Schedule 5 (Amendment 30)

85. Amendment 30 defines “fire inspector” for the purposes of the new section 91B of the 1984 Act.

Schedule 5 (Amendment 31)

86. Amendment 31 changes the definition of “relevant person” for the purposes of the new section 91B of the 1984 Act, so that a fire inspector, as well as a local authority in Wales and a Welsh fire and rescue authority, are included in the definition.

Schedule 5 (Amendment 32)

87. Amendment 32 changes the definition of “relevant function” for the purposes of the new section of the 1984 Act and is consequential on Amendment 31.

Schedule 5 (Amendment 33)

88. Amendment 33 defines “Welsh fire and rescue authority” for the purposes of the new section 91B.

Schedule 5 (Amendment 34)

89. Amendment 34 provides that the disclosure of information under the new section 91B does not breach any obligation of confidence or other restriction, and that the section does not authorise a disclosure of information that would contravene the data protection legislation.

Schedule 5 (Amendment 35)

90. Amendment 35 makes provision in connection with the transfer of the power to make orders under section 134 of the 1984 Act (commencement), in relation to Wales, to the Welsh Ministers.

Schedule 5 (Amendment 36)

91. Amendment 36 is consequential on Amendment 17 and makes regulations under new section 120I(4) of the 1984 Act, subject to the negative procedure.

Schedule 5 (Amendment 37)

92. Amendment 37 is consequential on Amendment 17 and has the effect of ensuring that the existing definition of “building” in section 121 of the 1984 Act does not apply for the purposes of new section 120I.

Schedule 5 (Amendment 38)

93. Amendment 38 provides that, in relation to Wales and subject to an exception for the provisions listed in subsection (1B), the power to make commencement orders under the 1984 Act is a power of the Welsh Ministers.

4. Reasons for making these provisions in Wales

Paragraphs 94-100 of the LCM set out the Welsh Government's reasons for making these provisions for Wales through this UK Bill. Paragraphs 94 and 95 refer to the reforms needed and identified by the Hackett review, work done by the Welsh Government's Building Safety Expert Group and the subsequent White Paper, "Safer Buildings in Wales", published in January 2021, which set out in more detail the policy goals. The policy goals included improvements needed in the design and construction phase, regulation of the building safety regime, information records of a building's life and the occupation phase of a building.

94. In paragraph 96, the Welsh Government states:

"whilst some of these goals, particularly those relating to the occupation phase in the life of a building, will need primary legislation to be taken through the Senedd, the Bill presents an opportunity to take earlier action in our efforts to respond to the need to modernise both the building control system and the way the construction industry discharges its responsibilities. This Bill provides this early action for the design and construction phase."

95. In paragraphs 97 to 99, the Welsh Government also refers to the benefits of retaining some commonality between the systems in England and Wales, by both nations having powers based in the Building Act 1984. Paragraph 98 states:

"whilst the proposals for the design and construction phase contained within the White Paper will be intended to respond to a very different scale of the problems found by the Hackitt Review compared to England 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."

96. Paragraph 100 sets out how provisions in the Bill are bespoke to Wales:

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

5. Committee consideration and conclusion

97. Following our initial consideration of the LCM and SLCM, we wrote to the Legislation, Justice and Constitution Committee and to the Minister for Climate Change, sharing our concerns that, as the provisions in the Building Safety Bill relate to devolved areas, the Welsh Government could bring forward its own legislation, which would be subject to full scrutiny by the Senedd.

98. In our letter to the Legislation, Justice and Constitution Committee, we noted the recent increase in the use of the LCM process and that some Members of the Committee felt it regrettable that building safety reforms are not being made through a Senedd Bill, given that it is a priority policy area for the Welsh Government. We also noted the concern of some Members that the timeframe for the LCM process is insufficient for meaningful scrutiny and emphasised that greater scrutiny makes for better law and a Welsh Bill would allow for greater scrutiny.

99. We reiterated these concerns in our letter to the Minister for Climate Change and questioned why the reforms in the UK Government Building Safety Bill are not being made in the Welsh Government's forthcoming Building Safety Bill, as outlined in its White Paper, "Safer Buildings in Wales". We also noted the concerns surrounding the restricted timeframe for LCM scrutiny, and again emphasised that inclusion of the provisions in a Welsh Government Building Safety Bill would allow for the Senedd's full legislative scrutiny process to take place.

100. The Minister responded to our letter on 22 October, stating the Welsh Government's reasons for seeking to use UK legislation to achieve its objectives in this area:

"The First Minister has made clear that whilst protecting the devolution settlement remains a critical priority and that our general principle should be 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 such circumstances. The criticisms levelled at the system in England by Dame Judith Hackitt in her report, whilst of a different magnitude to those in Wales, apply equally as it is the same core legislation.

The Building Act 1984 and the Building Regulations 2010 have set the framework for Buildings with very little change since they were brought into force. Whilst functions were transferred to Welsh Ministers in 2012 our focus to date has been on technical changes such residential sprinklers, banning combustible materials and energy performance. The Building Safety Bill (BSB) therefore provides necessary improvements to a system found wanting in a way that puts control firmly in the hands of Welsh Ministers and the Senedd rather than, as you note, something imposed on us. In addition the bill, likely to receive royal assent next year, which will mean the opportunity to bring forward the necessary changes to the building control system can be made earlier than would be possible for the Building Safety Senedd bill."

101. The Minister goes on to say that the building control system operates in both England and Wales and the UK Government's Building Safety Bill establishes a more robust oversight of the systems, therefore ensuring commonality with England is crucial to enabling organisations to work across both administrations. The letter also notes other reasons for pursuing a common approach, which the Welsh Government see as beneficial:

"The Building Act was drafted in 1984, the BSB will make improvements to the drafting, bringing it up to date in its operation, language and accessibility. These improvements will help all users of the Act, and while they could be brought forward through Welsh legislation they are changes that we believe are necessary irrespective of the legislative route chosen."

The construction industry is gearing up in terms of culture, capacity and competence for the changes the bill proposes. Using the bill as a vehicle for change in Wales means we will benefit from the energy being directed to improvement which runs the risk of being diluted were the opportunity for earlier action not be taken."

102. The Minister emphasised that the Welsh provisions in the Bill meet the Welsh Government's policies:

"...every provision applicable to Wales in the bill is both a reflection of our view of the necessary changes and the criticisms of the independent report but in a way appropriate to our needs. A good example of this is our decision not to create a new regulatory body as proposed for England but to extend existing functions of local authorities."

103. The letter also referred to provisions in the Bill needing secondary legislation to have effect, noting:

"The regulations we subsequently bring forward will be subject to consultation and engagement according to our principles and procedures."

104. We considered the letter on 3 November and agreed to take evidence from the Minister on 17 November in order to explore concerns raised.

105. On 17 November the Minister explained the Welsh Government's reasons for seeking to use UK legislation to achieve its policy objectives in this area, highlighting that expedience is a priority:

"...in the light of the Grenfell tragedy and the need to respond to the subsequent independent review of building regulations—the Hackitt review that Members will be familiar with—we need to respond as quickly as possible, and this Bill is the most effective way to do that."

...there might be negatives if we waited for a Wales Bill, which are all around delay. We will have a building safety Bill coming through in Wales, there are some specific things we want to do, but in this particular Bill, we're very satisfied that the provisions in it are provisions that we would enact in Wales if we were doing it now, and that it is not in Wales's best interests to fall behind these provisions in England. These are protections—very necessary protections—for residents in high-risk residential blocks, and we feel the need to put those into place as soon as is possible. This Bill represents the best opportunity for that."

106. The Minister told us that the LCM:

"...it's a response to very specific recommendations of the independent Hackitt report, so the one following on from Grenfell tragedy. So, there are important elements we want to introduce in Wales. I've already mentioned some of them: dutyholder responsibilities; gateway scrutiny stages in design and construction—so the planning application before construction, before occupation—and competence requirements for industry and regulators—so, specific competency requirements before you can be various people who inspect the thing. But it also provides Welsh Ministers with all the necessary powers to customise the model for Wales."

107. In response to some Members' concerns about these provisions not being made through a Senedd Bill, the Minister reiterated the time sensitivity of introducing the provisions in Wales, in order to ensure protection for residents in high-risk blocks :

"I absolutely do acknowledge that it's clearly better if we do do a Senedd Bill, but the delay that that introduces and the call on our resources in order to do it, I think, outweighs the need for that full scrutiny.

...we have a really serious problem in building safety in Wales. We've done a lot of expert work about what that should look like. This Bill does represent an ideal opportunity to do that as fast as possible for the people of Wales.

...this is about, for example, who does the building control, what are the legal aspects of which plans should be deposited where, and so on. This is about the control mechanisms. One of the problems with Grenfell and the subsequent problem with all of the building safety issues is that it is not at all clear, for the poor people who live in those buildings now, whose responsibility it is to maintain them or remediate defects and so on...this is about having a control and management system in place for those buildings that designates the legal responsibility."

108. Some Members raised further concerns about the necessity of using provisions in a UK Government Bill, and of having a joint system with England. In response the Minister said:

"...in our judgment, this was the expedient and timely way to do it, and didn't put any detriment onto the people of Wales...We certainly do not have to do it...we think it's an expedient way to do it.

We've negotiated a flexibility into the Bill so that a later Bill could change these rules if we wanted to here in Wales. So, it doesn't take anything away from us in terms of flexibility."

109. The Minister addressed questions about when a Welsh Government Building Safety Bill would be introduced, telling us that the timeframe for the UK Government Bill allows the provisions to be brought in earlier than a future Senedd Bill would allow.

110. We note the Welsh Government's position that using the LCM process on the UK Government's Building Safety Bill is an expedient way of bringing forward the necessary legislation to ensure timely action for residents living in high-risk blocks in Wales.

111. Some Members noted that they are deeply unhappy about bringing forward the provisions through a UK, rather than Welsh Government Bill, and felt that the Welsh Government should have prioritised progressing its own Building Safety Bill. Some Members were concerned that the Minister referred to limited resources and capacity as reasons for not being able to introduce a Welsh Government Bill sooner, seen as work has been on-going since the Grenfell tragedy in 2017.

112. The majority of Members remain concerned about the limited scrutiny available for an LCM, compared with primary legislation, and that it risks undermining devolution. In particular, they are concerned at the lack of engagement with Welsh stakeholders and security of the clauses applicable to Wales. They are also concerned that using the LCM process for this legislation could set a precedent for future Bills; we firmly believe that legislation on devolved matters should be brought forward by the Welsh Government for full scrutiny by the Senedd.

113. Despite the concerns outlined above, we are aware of the urgency needed in bringing forward these provisions to ensure improvements for residents in Wales quickly. Most Members of the Committee therefore recommend the Senedd should grant its consent for the UK Government to legislate on these devolved matters.

114. One Member, Alun Davies MS, is willing to grant consent to this LCM on the basis that the provisions need to be in place as a matter of priority. However the Member disagrees with the Minister's approach of bringing forward the reforms via a UK Government Bill rather than a Senedd Bill and is unconvinced by the argument made that using the UK Building Safety Bill is necessary to ensure "expediency". The Member believes the Minister should have prioritised resources in favour of introducing and passing a Senedd Bill as quickly as possible.

115. The Member questions why, for reforms which require urgent attention such as the ones in this LCM, the Minister has not utilised the Senedd's emergency Bill procedures in order to introduce a Senedd Bill, the timetable for which the Welsh Government would have full control over. If this procedure had been used, the Welsh Government could have potentially delivered the reforms at a similar timeframe as the UK Government Bill, the timetable for which it has no control over.

116. One Member of the Committee, Mabon ap Gwynfor MS, disagrees with the majority view and believes that consent should not be granted.