

**SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM
(MEMORANDUM NO.2)**

BUILDING SAFETY BILL

1. This supplementary legislative consent memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a legislative consent memorandum (“LCM”) 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 Building Safety Bill (“the Bill”) was introduced in the House of Commons on 5 July 2021. On 15 September the UK Government tabled 22 amendments for consideration at Commons Committee stage. These amendments make provisions which fall within the legislative competence of the Senedd. The Bill can be found at: [Parliamentary Bills: Building Safety Bill](#).

Policy Objectives

3. The UK Government’s stated policy objectives are to reform the building safety system to improve building safety and performance for all buildings and to establish a more stringent regime to strengthen the management of fire and structural safety risks for new and existing buildings in scope (originally set at residential buildings over 18m).
4. The Bill also provides for a UK oversight of construction products through a stronger framework and the creation of a new regulatory system.
5. Finally a New Homes Ombudsman will oversee developers of new build homes, providing an avenue for customer redress and the process for social housing matters to go to the housing ombudsman has been simplified. These provisions currently only apply in relation to England.

Summary of the Bill

6. The Bill is sponsored by the Ministry of Housing, Communities and Local Government.
7. The Bill implements the recommendations of Dame Judith Hackitt’s ‘Independent Review of Building Regulations and Fire Safety’ (the ‘Hackitt Review’). The Bill sets new requirements for the design, construction, occupation and refurbishment of higher-risk and other buildings. Other changes are made to the oversight of persons, building products involved in the system and creation of a new homes ombudsman.

8. Further information about the Bill can be found within the [first LCM laid on 19 July 2021](#).

Update on position since the publication of the first Legislative Consent Memorandum

9. The Welsh Government laid a LCM on 19 July 2021, based on the Bill as introduced into Parliament (House of Commons) on 5 July 2021. The memorandum confirmed the Welsh Government is supportive of the Bill as introduced.
10. The Welsh Government sought technical amendments to the Bill in order to ensure that the provisions work for Wales. We therefore welcome the inclusion of the amendments outline in paragraphs 11 to 33, which fall within the Senedd's legislative competence, and which address issues raised by us with the UK Government.

Changes to the Bill since the publication of the first Legislative Consent Memorandum for which consent is required.

11. The following amendments, which make provision in relation to Wales and are within the legislative competence of the Senedd, have been tabled to the Bill during Commons Committee stage:
12. Clause 30 (Amendment 17) enables the Welsh Ministers to define “building” for the purposes of section 120I of the Building Act 1984 (inserted by this clause). Regulation made under this power will be subject to the negative procedure. Amendments [37 and 38] are linked to this amendment.
13. Clause 41 (Amendment 18) provides that section 91B (which contains new cooperation and information sharing provisions) of the Building Act 1984 (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.
14. Clause 142 (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 that 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.
15. 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.

16. Clause 146 (Amendment 21) provides that commencement regulations made by the Welsh Ministers may make transitional or saving provision.
17. Schedule 5 (Amendment 22) provides that certain provisions of the Building Act 1984 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.
18. Schedule 5 (Amendment 23) is consequential on the changes made to this section by other amendments and amends the heading of the section to better reflect the content.
19. Schedule 5 (Amendment 24) and amendment 31 provide that the duty under new section 91B(1) (of the Building Act 1984) 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 Building Act 1984.
20. Schedule 5 (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.
21. Schedule 5 (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).
22. Schedule 5 (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).
23. Schedule 5 (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.
24. Schedule 5 (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.
25. Schedule 5 (Amendment 30) defines “fire inspector” for the purposes of the section.
26. Schedule 5 (Amendment 31) changes the definition of “relevant person” for the purposes of the section 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.

27. Schedule 5 (Amendment 32) changes the definition of “relevant function” for the purposes of the section and is consequential on amendment 31.
28. Schedule 5 (Amendment 33) defines “Welsh fire and rescue authority” for the purposes of the section.
29. Schedule 5 (Amendment 34) provides that the disclosure of information under this section 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.
30. Schedule 5 (Amendment 35) makes provision in connection with the transfer of the power to make orders under section 134 of the Building Act 1984 (commencement), in relation to Wales, to the Welsh Ministers.
31. Schedule 5 (Amendment 36) is consequential on amendment 17 and makes regulations under new section 120I(4) of the Building Act 1984 subject to the negative procedure.
32. Schedule 5 (Amendment 37) is consequential on amendment 17 and has the effect of ensuring that the existing definition of “building” in s.121 of the BA 1984 does not apply for the purposes of new section 120I.
33. Schedule 5 (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 Building Act 1984 is a power of the Welsh Ministers

Welsh Government position on the Bill as amended

34. The Welsh Government acknowledges all 22 of the amendments laid by the UK Government on 15 September during Commons Committee stage.
35. We requested amendments to the commencement provisions (amendments 20, 21, 35 and 38) in order to ensure that the Welsh Ministers have the power to commence provisions that apply in Wales, so as to enable these provisions to be commenced in line with our timeframes. The other technical amendments to the Bill are designed to ensure that the provisions work for Wales, particularly in relation to cooperation and information sharing and the ability of the Welsh Ministers to define higher-risk buildings.

Financial implications

36. There are no financial implications for Wales in relation to the amendments. The financial impact of the Bill as affects Wales is summarised in the LCM laid on 19 July 2021, with further detail provided on the Welsh Government website at:
<https://gov.wales/building-safety-bill-impact-assessments>

Conclusion

37. We remain committed to improving building safety and dealing with the criticisms placed on the design, construction and renovation phases for buildings.

38. I remain of the view that the Bill will provide the necessary tools with which Welsh Ministers will be able to modernise the system in Wales to ensure buildings are designed and built to the standards we expect. I consider the Bill to be the most effective way for these provisions to come into force as soon as possible, enabling us to significantly improve the system for ensuring building safety.

39. Therefore I recommend the Senedd supports these UK Government amendments to the Bill and gives consent.

Julie James MS
Minister for Climate Change
21 September 2021