

LEGISLATIVE CONSENT MEMORANDUM

BUILDING SAFETY BILL

1. This legislative consent memorandum 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 Building Safety Bill (“the Bill”) was introduced in the House of Commons on 5 July. The Bill can be found at: [Building Safety Bill - Parliamentary Bills - UK Parliament](#).

Policy Objective(s)

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 in England, providing an avenue for customer redress and the process for social housing matters to go the housing ombudsman has been simplified.

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 provides for, in England, the creation of a new Building Safety Regulator who will be responsible for all regulatory decisions under the new regime during the design, construction, occupation and refurbishment of higher-risk buildings. The Bill makes provision about the new system including:
 - the system of duty holders responsible for building safety and their competence;
 - gateways for buildings to pass through;
 - mandatory reporting of occurrences;
 - the information recorded and stored about a higher-risk building;

- for England, the occupation of buildings and the involvement of residents; and
 - improved or new sanctions throughout the system.
8. The Bill includes provisions to improve competence levels and accountability in the building control sector by:
 - creating a unified professional and regulatory structure for building control; and,
 - introducing a power for the Architects Registration Board to monitor competence of the architects on their Register.
 9. The Bill creates powers to make provision for the regulation of all construction products placed on the UK market.
 10. The Bill includes provisions that enable social housing complainants to escalate a complaint to the Housing Ombudsman service directly and includes provisions that allow relevant owners of new build homes to escalate complaints to the new homes ombudsman scheme.
 11. For Wales, where a matter is devolved, the Bill covers:
 - **Building Safety:** The design and construction phase for the building phase of higher-risk buildings and the creating a unified professional and regulatory structure for building control. The regulator functions for this will be undertaken by a combination of local authorities and the Welsh Ministers.
 12. The clauses with particular relevance to matters within the legislative competence of the Senedd are:

Part 1

Clause 1 (Overview of Act)

Part 3

Chapter 1: Building control authorities and building regulations

Clause 30 (Higher risk buildings etc); Clause 31 (Building control authorities); Clause 32 (Building regulations); Clause 33 (Dutyholders and general duties); Clause 34 (Industry competence); Clause 35 (Lapse of building control approval etc); Clause 36 (Determination of certain applications by Secretary of State or Welsh Ministers); Clause 37 (Compliance and stop notices); Clause 38 (Breach of Building regulations); Clause 39 (Liability of officers of body corporate); Clause 40 (Revocation of certain provision made under section 2(2) of ECA 1972).

Chapter 2: Building control approvers and building inspectors

Clause 41 (Regulation of building control profession); Clause 42 (Transfer of approved inspectors' functions to registered building control approvers); Clause 43 (Functions exercisable only through, or with advice of, registered building inspectors); Clause 44 (Default powers of appropriate national authority); Clause 45 (Higher-risk building work: registered building control approvers); Clause 46 (Higher-risk building work: public

bodies); Clause 47 (Insurance); Clause 48 (Plans Certificates); Clause 49 (Cancellation of initial notice); Clause 50 (New initial notices); Clause 51 (Information gathering); Clause 52 (Information).

Chapter 3: Miscellaneous and general

Clause 54 (Minor and consequential amendments); Clause 55 (Appeals); Clause 56 (Fees and charges).

Part 5

Chapter 1: Remediation and redress

Clause 125 (Duties relating to work to dwellings etc); Clause 126 (Limitation periods)

Chapter 4: Fire safety

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

Part 6

Clause 143 (Power of Welsh Ministers to make Consequential Provision); Clause 144 (Regulations); Clause 146 (Commencement and transitional provision)

Schedule

Schedule 4: Transfer of approved inspectors' functions to registered building controllers; Schedule 5: Minor and consequential amendments in connection with Part 3; Schedule 6: Appeals and other determinations

Provisions in the Bill for which consent is required

Part 1

Clause 1 (Overview of Act)

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

Part 3

Chapter 1: Building control authorities and building regulations

Clause 30 (Higher risk buildings etc)

14. Clause 120I defines "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.

15. The regulations under Clause 30 are subject to the affirmative procedure.

Clause 31 (Building control authorities)

16. Clause 31 inserts section 91ZD into the Building Act 1984 for Wales 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.

17. The clause also inserts new section 121A into the Building Act 1984 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)

18. Clause 32 inserts new provisions into Schedule 1 to the Building Act 1984 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).
19. 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 (Dutyholders and general duties)

20. Clause 33 amends Schedule 1 to the Building Act 1984, 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
21. 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.

22. 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.
23. The provisions in this clause will replace an existing power in paragraph Schedule 1 to the Building Act 1984, inserted by the Sustainable and Secure Buildings Act 2004.
24. The regulations made under this clause are to be made in building regulations and are subject to the negative procedure.

Clause 34 (Industry competence)

25. 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.
26. 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)

27. 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.
28. 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.
29. 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)

30. Clause 36 provides that where the local authority, in their role as building control authority, fails to make a decision on a prescribed application for

higher-risk buildings within prescribed timescales, and there is no agreement with the applicant to extend the timescale, applicants can apply to the Welsh Ministers for a decision on the original application within a prescribed time period. The local authority will not be able to continue determining the original application once an application has been made to the Welsh Ministers for a decision in these cases.

31. The clause also provides the power for regulations 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.
32. 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.
33. Applicants will be able to appeal decisions of the Welsh Ministers to the magistrates court

Clause 37 (Compliance and stop notices)

34. 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.
35. 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.
36. 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.
37. 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)

38. 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.
39. 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.
40. 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.
41. Subsection (3) of this clause 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.
42. 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)

43. 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)

44. 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.

Chapter 2: Building control approvers and building inspectors

Clause 41 (Regulation of building control profession)

45. Clause 41 amends the Building Act 1984 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.

46. 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).
47. Individuals in both the private and public sector who wish to be registered building inspectors must in the future meet the same minimum standard criteria 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.
48. 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.
49. The sections are:
 - New sections 58B to 58D set out the requirements for the registration of individuals as registered building inspectors by the regulatory authority
 - New sections 58E to 58M set out more detail on the ongoing regulation of registered building inspectors including an inspector applying to vary or cancel their registration
 - Sections 58N to 58P set out the requirements for the registration of persons (i.e. organisations or individuals) as building control approvers by the regulatory authority
 - Sections 58Q to 58X set out more detail on the ongoing regulation of registered building control approvers including applying for a variation or cancellation of registration, publication of professional conduct rules, a power for the regulatory authority to seek information from registered building control approvers, and investigations and sanctions if a registered building control approver contravenes the professional conduct rules
 - Section 58Y enables the regulatory authority to delegate some or all of the regulatory authority’s registration functions under sections 58B to 58X to be undertaken by another person.
 - Section 58Z to 58Z6 enables the setting of operational standards for local authorities and registered building control approvers, reporting requirements on the exercise of their building control functions, investigation as to whether they are meeting the

operational standards, and sanctions where they are considered to have failed to meet the standards.

50. The Welsh Ministers are the regulatory authority for registration and ongoing regulation of building inspectors and building control approvers. Section 58Y enables the Welsh Ministers for Wales to delegate some or all of the regulatory authority's functions under sections 58B to 58X to be undertaken by another person.

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

51. Part 2 of the Building Act 1984 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 Building Act 1984, 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)

52. Clause 43 inserts new sections 46A and 54B into the Building Act 1984. 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.
53. These functions will be prescribed in building regulations which are subject to the negative procedure.

Clause 44 (Default powers of appropriate national authority)

54. Clause 44 amends sections 116 to 118 of the Building Act 1984 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) also allows the Welsh Minister 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)

55. The clause amends Part 2 of the Building Act 1984 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).
56. The amendments to sections 47 and 51A of the Building Act 1984 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 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.
57. Technically this change is achieved by prohibiting the submission of an initial notice or an amendment notice in relation to higher-risk building work.

Clause 46 Higher-risk building work: public bodies

58. Clause 46 inserts a new section 54A into the 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)

59. Clause 47 amends section 47 of the Building Act 1984. 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)

60. 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)).

61. Where the registered building control approver has inspected plans as are 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.
62. 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.
63. The clause also makes amendments to paragraph 2 of Schedule 4 to the Building Act 1984 to make equivalent provision in respect of a public body's notice plans certificate
64. 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)

65. This clause amends section 52 of the Building Act 1984 to make new provision in relation to cancellation of initial notices by registered building control approvers, local authorities and the person intending to carry out the work.

Clause 50 (New initial notices)

66. This clause amends sections 47, 53 and 55 of the Building Act 1984 and inserts new sections 53B to 53E.
67. The amendments to section 53 of the Building Act 1984 set out the circumstances in which a new initial notice may be given. In cases of a cancellation referred to in s53(7)(a) the new initial notice must follow the process in section 53B is followed.
68. 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.

69. 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.
70. 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.
71. 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.
72. Section 53D sets out the effect of a cancellation of an initial notice where a new initial notice has been submitted. Section 53D 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.
73. 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.
74. 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.
75. 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.

76. Additionally, this clause amends section 53 of the Building Act 1984 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)

77. Clause 51 amends section 53 of the Building Act 1984 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

78. Clause 52(1) and (2) amend the Building Act 1984 to insert new sections 56A – C which only apply in relation to England, 52(3) disapplies s.56 of the 1984 Act to England and also makes some minor amendments to s.56 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.

Chapter 3: Miscellaneous and general

Clause 54 (Minor and consequential amendments) and Schedule 5

79. The provisions of Part 3 of the Bill involve changes to the Building Act 1984. 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

80. Clause 55 relates to Schedule 6, which makes provision for changes to the appeals process under the Building Act 1984. 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.
81. Schedule 6 contains amendments to the Building Act 1984 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)

82. 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 Building Act 1984 functions. The regulations made under this section are subject to the negative procedure.

Part 5

Chapter 1: Remediation and redress

Clause 125 (Duties relating to work to dwellings etc)

83. This clause amends the Defective Premises Act 1972 by inserting new section 2A. 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)

84. 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 Building Act 1984 from the current six years to fifteen, primarily by inserting new section 4B into the Limitation Act 1980 (subsection (1)).
85. The clause also provides in subsection (3) that, in respect of actions under s.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.
86. 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.

Construction Products

Chapter 4: Fire safety

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

87. 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 assessments they must ensure that the person is a competent person and the assessment must be recorded for all buildings covered by the FSO, and that responsible persons themselves are 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.
88. 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.
89. 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.
90. Some of the provisions made in article 22A of the FSO, and the new article 22B, will not apply to Wales. This is because they rely on the Bill's concept and definition of "accountable person", which will likewise not apply to Wales.

PART 6: GENERAL

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

91. 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

92. Clause 144 ensures that regulations made under the Building Safety Bill can include any consequential amendments as well as transitional

provisions and cover any other incidental matters. This clause 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 Ministers. All of the powers to make subordinate legislation for the Welsh Ministers are powers to be inserted into the BA84. New section 120A (inserted into the BA84 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)

93. 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.

Reasons for making these provisions for Wales in the Building Safety Bill

Building safety

94. We issued a position paper in 2020 outlining the building safety reforms we intended to consult upon and flagged to the sector our expectations. These reforms built on the work set out by Welsh Government's Building Safety Expert Group in their report 'Road Map to Safer Buildings in Wales' who identified the parameters of a Welsh response to the issues raised by the Hackitt Review.

White paper

95. Subsequently the White Paper: Safer Buildings in Wales published 12 January 2021 set out more detail on the policy goals the Welsh Government's programme of work is intended to deliver. This covered:

- The Design and Construction Phase including dutyholders, gateways and limiting those who can approve high risk buildings;
- Regulating the Building Safety Regime, including registration and oversight of professionals who approve buildings;
- An information record on the building that holds relevant information and is developed throughout the buildings lifetime;
- The Occupation Phase, including the establishment of a duty-holder for the building and the need for risk assessments. Provision will also cover the information given to residents on the building, but also the roles and responsibilities residents have in these buildings.

96. 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 white paper identified 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.

Commonality of systems

97. Since the transfer of functions over Building Regulations to the Welsh Ministers in 2012 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.
98. 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.
99. 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. As many landlords own property in both Wales and England, there is again some benefit in maintaining a broad consistency of approach.

Bespoke to Wales

100. 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.

Financial implications

Building safety

101. An independent assessment has been undertaken on the impact of the proposals relating to building safety contained in this legislative consent memorandum. This will be made available on the Welsh Government website. The impacts below are taken from that report.

Benefits

102. The proposals for Category 1 buildings (buildings 18m or more in height or more than 6 storeys and contain two or more dwellings), three main types of benefits will derive:
- Reduced casualties, fatalities, building and other damage/loss resulting from reduced fire spread and structural failure;

- Avoided costs of resolving another systemic issue;
 - Wider cost savings to the construction industry, building owners and leaseholders.
103. For additional duty-holder responsibilities on other building works – the proposals will increase the time spent checking that the work is compliant with building regulations, and information and activities are co-ordinated across duty-holders. This is expected to reduce the amount of non-compliant work being undertaken per annum as well as providing clearer accountability for compliance. The overall benefit is expected to be £2.3m
104. Some benefits have not been monetised because of the absence of a sufficiently robust evidence base, or it was not considered proportionate to. These benefits include:
- reassuring residents that risks to their safety and their homes have been reduced, mitigate negative mental health and wellbeing impacts.
 - greater mortgage provider/insurer confidence, which should increase the availability and value of these products to leaseholders and residents.
 - design and construction workers could benefit from a more transparent operating environment as a result of a consistent accountability framework
 - there are likely to be additional benefits to the safety of out-of-scope buildings through the improved oversight and competence functions of building inspectors and approvers.

Costs

105. The Building Safety Regime proposals are expected to generate costs. The analysis estimates costs for the new requirements of the regime will fall under the headings of:
- Gateways; as additional work is required to show compliance and pass through a specific gateway, as well as delay in the construction process until gateways are passed.
 - Duty-holder responsibilities; as individuals take on responsibility for set actions in the design and construction phase.
 - Golden Thread; as new information must be prepared and shared on the safety aspects of the building for use in the future and/or by other duty-holders/regulators.
 - Sanctions and appeals; where intervention occurs by regulators due to non-compliance, including an escalation and appeals at key decision points,
 - Other regulator costs; as the regulator takes a more active role in the supervision and oversight, including research.
106. The Costs will be borne by the regulator and by industry and are expected to be £1.0m to the industry and £0.6m to the regulator.
107. From these figures it is identified the monetised costs outweigh the monetised benefits of undertaking the changes. However, the inclusion

of the non-monetised benefits, such as reassurance of residents in the safety of their homes, enhanced confidence of insurers and mortgage lenders and a clearer operating environment for the construction industry the proposals are considered to represent value for money.

108. Specific costs for the Fire Safety Clause element will affect 'responsible persons' as described in the FSO, ie building owners, landlords and employers. The extent of the financial effect will depend on the size of the premises; however, the proposals largely represent widely accepted good practice, and if responsible persons were already following them the costs will be negligible.

Conclusion

109. It is my view that it is appropriate to deal with these provisions in this UK Bill .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.

Julie James MS
Minister for Climate Change
19 July 2021