

Julie James AS/MS  
Y Gweinidog Newid Hinsawdd  
Minister for Climate Change



Llywodraeth Cymru  
Welsh Government

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Dear Huw

Thank you for the Committee's report of 10 December on the legislative consent memorandum on the Building Safety Bill (the Bill). I write in response to the recommendations made by the Committee. The recommendations and my response are set out below.

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

Response

I do not consider it necessary for the commencement powers that have not been delegated to the Welsh Ministers, to be delegated. Officials have worked very closely with the UK Government to ensure that the Welsh Ministers have the power to commence provisions in Wales where it is necessary and appropriate for us to have such powers. I therefore do not intend to pursue further amendments to Bill that would result in the delegation of additional commencement powers.

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

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

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

## Response

We have stated we will take a pragmatic approach to using UK legislation to achieve the Welsh Government's objectives where necessary in devolved areas. Nothing in the Bill limits the Senedd's competence in this area. I therefore see no cumulative constitutional implications as a consequence of the Bill's provisions which I view as discrete and self-contained.

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

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

## Response

My response to the committee chair letter of 16 November 2021 set out the rationale for taking the opportunity the UK Government Bill presented to make improvements to the building control system in response to the Independent report findings and recommendations. The proposed approach was set out in the Safer Buildings in Wales white paper and clearly supported by responses to the consultation. [Safer buildings in Wales | GOV.WALES](#)

The Building Safety Expert Group roadmap had been published in March 2019 supporting many of the major changes that the independent report proposed but at the time we were considering the use of the Building Safety Bill we had yet to publish the white paper and timing of any Senedd Bill had yet to be decided. It would have been likely that two Bills would have been needed i.e. separate Bills dealing with construction and occupation phases as the latter required fundamental rethinking of regulation whereas the independent report recommendations for construction entailed the improvement of an existing (building control) system.

Our assessment concluded that the opportunity to utilise the UK Govt Bill presented real benefits over a Senedd Bill covering essentially the same ground sometime in the future. The level of policy and legal resources required for the modification of the Building Safety Bill meant that the work could be contained within existing provision. This remains the case for the ongoing passage of the Bill through Parliament.

There is no comparison between the use of the UK Government Bill and the significant resources needed to establish a Bill team for a Senedd Bill in competition with other legislation and policy priorities.

**Recommendation 4.** *The Minister should, in advance of the debate on the relevant legislative consent motion, provide a detailed explanation as to how her plans to use both*

*this Bill and a future Welsh Bill in this Senedd term relating to building safety complies with the Welsh Government's commitment to improve the accessibility of Welsh law. In doing so, the Minister should address the fact that the Welsh Government has already identified housing and building regulations as areas of law which it may seek to consolidate in the Sixth Senedd term*

## **Response**

As I have set out, taking all the proposals through the Senedd would have likely been taken forward in two separate Bills, due to the different stages of development of policy on construction and the occupation phase.

Whilst it is regrettable that the primary legislation will be in English only, as I said in my response, the crucial detail that operationalises the Bill provisions and which the outside world will tend to interface with, namely the secondary legislation, will be bilingual.

These, and supporting procedural guidance, will ensure all parties understand their roles and responsibilities going forward under the new system.

The inclusion of Building Regulations as an area to explore for consolidation in The Future of Welsh Law: Accessibility Programme 2021 to 2026 is testament to this role regulations play in design and construction. To ensure maximum value out of the process any consolidation of Buildings Regulations would need to be completed after the amendments regulations to insert the new system have been made.

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

## **Response**

My letter of 16 November set out that we will in due course be considering our approach to the development and consultation arrangements for the secondary legislation including the possibility to consult on draft regulations.

The regulations we subsequently bring forward will be subject to consultation and engagement according to our principles and procedures as set out in the Legislation handbook on subordinate legislation. I fully agree with this guidance that the development of subordinate legislation should be founded on appropriate engagement and consultation with stakeholders, based on the best available evidence. Our consultation will include the draft legislation setting out our proposed definition of a higher risk building, and where draft legislation is not included, sufficient policy detail will be included to enable comprehensive responses to be provided.

Yours sincerely



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