

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO.5)

BUILDING SAFETY BILL

1. This legislative consent memorandum (“LCM”) is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.
2. The UK Government amendments to the provisions in the Building Safety Bill (“the Bill”) were tabled for consideration at Report Stage in the House of Lords on 22 March 2022. These amendments make provision falling within the legislative competence of the Senedd. The Bill can be found at: [Building Safety Bill - Parliamentary Bills - UK Parliament](#).

Policy Objective(s)

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

Summary of the provisions of the Bill

4. The Bill is sponsored by the Department for Levelling Up, Housing and Communities.
5. The first LCM was laid on 19 July 2021 and included provisions relating to the design and construction phase of buildings. A Supplementary LCM (Memorandum No.2) was laid on 21 September 2021 and covered technical amendments to the original drafting and amended the commencement and the consequential provisions, at the request of the Welsh Government, and tabled by the UK Government for consideration at Commons Committee Stage. A Supplementary LCM (Memorandum No.3) was laid on 20 January 2022 in relation to provisions that increased the limitation period for certain causes of action under the Defective Premises Act 1972 and provisions applying the New Homes Ombudsman (NHO) scheme to Wales. A further Supplementary LCM (Memorandum No.4) was laid on 22 February 2022 which related to amendments made covering information sharing between parties, a new right of action where breach of regulations relating to construction products causes, or is a factor in, a building or dwelling becoming unfit for habitation.

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

6. The clauses which are within the legislative competence of the Senedd relating to Building Regulations are Clause 41, Clause 47, After Clause 47, Clause 132, After Clause 133, after Clause 145, and clause 160.

Clause 41

7. This amendment confers a power on the Welsh Ministers to inspect local authorities and registered building control approvers, in relation to their building control functions.

Clause 47

8. This amendment removes the Bill provision which amended section 47 of the Building Act 1984, dealing with insurance cover relating to work to which an initial notice submitted by an Approved Inspector relates.

After Clause 47

9. This new clause removes requirements in Part 2 of the Building Act 1984. These relate to the Welsh Ministers approving a scheme of insurance, and prescribing insurance cover that is to be provided relating to any work. Consequential changes are also made as a result of this change to remove other references in the Building Act 1984 to approved schemes and insurance cover.

Clause 132

10. The amendment has the effect of applying this clause and clause 133 to Wales. Clause 132 confers power on the court to make an order, to be known as a building liability order, under which certain liabilities relating to buildings in Wales are imposed on a body corporate associated with the body corporate who is primarily liable. Clause 133 makes provision about in what circumstances a body corporate is to be treated as associated with another body corporate for the purposes of clause 132.

After Clause 133

11. This new clause provides that a person prescribed by regulations may make an application to the High Court for an order requiring a body corporate to give information relating to persons who are associates of the body corporate and sets out when the High Court may make the order.

Clause 139

12. The NHO clauses, which are within the legislative competence of the Senedd as they relate to housing which is not reserved, is Clause 139.
13. Clause 139 provides definitions of the terms used in the NHO provisions such as relevant owner, new build home and developer. The amendment clarifies that a home created by, for example, extending an existing building

will be a new build home for the purposes of the new homes ombudsman scheme. As a result a “new build home” would include:

- Construction of new buildings providing a home;
- Conversion of existing buildings currently used in a different way (e.g. commercial) which creates a home;
- Expansion of existing buildings to create a home (e.g. adding more flats to a residential block);
- Splitting or merging existing residential units.

It does not cover expansions of existing residential units i.e. home improvements.

14. The amendment also clarifies that a developer, for the purposes of the NHO, includes a person who, for example, creates a home by extending an existing building” or “extends an existing building so as to change or the number of homes in it.

After clause 145

15. The first four clauses of this amendment are within the legislative competence of the Senedd as they relate to housing and building safety.
16. The first new clause (Liability relating to construction products: general definitions) contains definitions used in the subsequent two clauses. The second new clause (Liability relating to construction products) makes provision for a new right of action where breach of regulations relating to construction products causes, or is a factor in, a building or dwelling becoming unfit for habitation. This section applies where:
 - a person fails to comply, in relation to a construction product, with a construction product requirement applicable to that person at that time including making misleading statements or manufacturing inherently defective products;
 - the construction product is installed in, or applied or attached to a building which consists of a dwelling, or which contains one or more dwellings;
 - the building or dwelling within it becomes unfit for habitation; and,
 - the failure to comply was the cause, or one of the causes, of the building or dwelling becoming unfit for habitation.
17. The third new clause (Liability for past defaults relating to cladding products) provides for a right of action where historic defaults relating to cladding cause, or are a factor in, a building or dwelling becoming unfit for habitation. This applies where:
 - a person fails to comply prior to the provision coming into force, in relation to any cladding product, with a cladding product requirement applicable to that person at that time, markets or supplies a cladding product and makes a misleading statement in relation to it, or a person manufactures a cladding product that is inherently defective;
 - the cladding product is attached to, or included in, the external wall of a dwelling, or building containing a dwelling in the course of works carried out in relation to the building;

- that, in the course of those works or at any time after their completion a dwelling in the building becomes unfit for habitation
 - the person's actions was the cause, or one of the causes, of the building or dwelling becoming unfit for habitation.
18. The fourth new clause (Liability relating to construction products: limitation in England and Wales) make amendments to the Limitation Act 1980 consequential on the rights of action created by the previous two new clauses.

Clause 160

19. The clause provides that these new clauses come into force 2 months after Royal Assent

Reasons for extending the provisions in the Bill to Wales

20. The provision in respect of the regulatory authority being able to inspect local authorities and registered building is supplementary to the existing provisions about requesting information and undertaking investigation of these bodies. The provision on insurance bring the requirements of the profession into line with other professions and inspectors will be able to seek insurance from the market based on the work they actually undertake and not that set by a national scheme. The provisions for the building liability and information orders will widen the pool of potential parties that can be pursued, increasing the ability of persons to obtain redress. This change will also ensure that building owners/ leaseholders have equal rights of action to those in England. Other provisions are consequential in nature to provisions included within previous LCMs.

Financial implications

21. There are no direct financial implications as a result of the amendments. The redress for owners through the use of a building liability order will transfer impacts of remediation from owners/leaseholders to those responsible for construction.

Conclusion

22. It is my view that it is appropriate for the amendments within the Bill to apply to Wales. The provisions assist in providing greater redress to building owners/leaseholders, the amendments for insurance will align the sector with standard practice and other amendments are consequential on previous provisions. I consider this Bill the most effective way for these provisions to come into force as soon as possible. Therefore I recommend the Senedd supports the proposals and gives its consent.

Julie James MS
Minister for Climate Change
25 March 2022