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Ymateb gan: Propertymark | Evidence from: Propertymark

Senedd Cymru | Welsh Parliament

Y Pwyllgor Llywodraeth Leol a Thai | Local Government and Housing Committee

Bil Diogelwch Adeiladau (Cymru) | Building Safety (Wales) Bill

You do not need to answer every question, only those on which you wish to share information or have a view.

1. What are your views on the general principles of the Bill, and whether there is a need for legislation to deliver the stated policy intention?

1. Propertymark agrees with the general principles of the Bill and the need for legislation to deliver the aim of improving the safety of people in multi-occupied residential buildings and Houses in Multiple Occupation (HMOs) in Wales. Our feedback on the Bill mainly focuses on the practical enforcement and implementation of the legislation based on how similar regulations have been applied in other UK nations.

2. What are your views on the provisions set out in Part 1 of the Bill – Safety of buildings containing two or more residential units (sections 1-66 and Schedule 1)? In particular, are the provisions workable and will they deliver the stated policy intention?

2. Overall, our understanding is that the challenges to the workability of provisions set in Part 1 are due to enforcement and guidance for the sector. This is based on the challenges implementing very similar provisions in England through the Building Safety Act 2022¹. There is however one key element of Part 1 of the Bill which we wish to raise as leading to considerable confusion and a reduction in compliance in England. This is the definition of accountable person, which is defined by the Building Safety (Wales) Bill as, “a person who holds a legal estate

¹ <https://www.legislation.gov.uk/ukpga/2022/30/contents>

in possession in the common parts of the building or any part of them” or “a person who does not hold a legal estate in any part of the building but who is under a relevant repairing obligation in relation to the common parts of the building or any part of them”. Furthermore, as outlined in the Bill, the estate owner is not the accountable person if all long leases state that a specific person who does not hold a legal estate in the building but is under a relevant repairing obligation to the common parts or if the functions of the repairing obligations have been regulated to a Right to Manage Company. The same definition applies to England, with almost identical responsibilities. This definition has caused considerable confusion and has caused instances where accountable persons have not been identified or have led to disagreements as to who should be the principal accountable person. Further to this confusion, at the time the Building Safety Act 2022 was coming into force in England, the Department for Levelling Up, Housing and Communities explicitly stated in its guidance that managing agents hired by Right To Manage companies, the owner of the block of flats or leaseholders would rarely be the accountable person.

3. Reflecting on these provisions, we think that managing agents are best placed to fulfil the duties of accountable persons, as they are often appointed to carry out the existing responsibilities of block owners and support leaseholders where they have taken ownership of the management of the common parts. This helps specifically where leaseholders are unaware of legislative requirements or when freeholders of blocks are foreign investors who have delegated all management to the agent. However, since managing agents are not considered accountable persons by existing legislation, many do not understand the fire safety requirements for their block and are less able to support residents, leaseholders and freeholders of the building. In a June 2023 survey of Propertymark members who provided block management services, only 50% reported that they were at least confident in their understanding of requirements for managing agents and accountable persons. Only 16% agreed that the legislative changes had been well-communicated by the UK Government with 72% disagreeing or strongly disagreeing that the changes had been well-communicated.
 4. To help clarify who should be appointed as the principal accountable person, Propertymark suggests three solutions:
 - The first of which is to include a new clause within the Building Safety (Wales) Bill that specifies if an organisation has been hired to carry out the management of the block or specific common parts, they are to be
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considered an accountable person for the purpose of fulfilling the responsibilities set by the Building Safety (Wales) Bill. This could be tied to the introduction of minimum qualification for management agents. Proposals to ensure managing agents in England are suitably qualified and are members of a designated body are currently being consulted on by the Ministry of Housing, Communities and Local Government (MHCLG)². This would have the benefit of ensuring that any the new qualifications and regulatory oversight can be linked to existing regulatory frameworks in Wales and designed to include fire safety requirements, thus ensuring qualified professionals rather than building owners or leaseholders are responsible.

- The second solution is to support accountable persons by providing specific guidance. This should include various scenarios where a principal accountable person is not clearly known and to provide definitive clarity as to who are the principal and accountable persons in these scenarios.
- Thirdly, recommend that local authorities can set up a system where residents can flag that there is no accountable person or the accountable person is failing to meet their responsibilities. This will help raise awareness to fire safety authorities of any non-compliance.

3. What are your views on the provisions set out in Part 2 of the Bill – Fire safety in certain houses in multiple occupation (sections 67 – 80)? In particular, are the provisions workable and will they deliver the stated policy intention?

5. We have two main views on the provisions set out in Part 2 of the Bill. Firstly, the provisions for fire safety in certain HMOs recognises that mandatory licensing already exists in Wales with the intention of controlling housing standards in higher risk HMOs, such as those with the highest risk of death or injury by fire.³ Secondly, for all private rented property in Wales there is already an existing registration and licensing regime for landlords and letting agents under Rent Smart Wales. This includes the letting of houses, purpose-built flats, HMOs and houses converted into flats. Therefore, to prevent duplication it is right that they will not need to re-register the property with the building safety authority in their

² <https://www.gov.uk/government/consultations/strengthening-leaseholder-protections-over-charges-and-services-consultation>

³ <https://www.gov.wales/houses-multiple-occupation-hmo-guidance-local-authorities>

area – coordination between local authorities and Rent Smart Wales can confirm this.

6. Under the Renting Homes (Wales) Act 2016, there is a requirement for landlords to ensure functioning smoke alarms, carbon monoxide detectors and electrical and gas safety certificates be in place for each property they let. Therefore, to ensure that the legislation is workable the Welsh Government are attempting to ensure that the building safety regime compliments rather than duplicates existing legislation and regulatory requirement for owners and managers of residential buildings in Wales. Furthermore, we do think the provisions will deliver the Welsh Government’s policy intent because under the Bill landlords are required to ensure that fire safety risks in HMOs are suitably and sufficiently assessed. Furthermore, the duties relating to HMO fire risk assessments mirror those in relation to a regulated building and similarly the fire risk assessment must be done by a competent person.

4. What are your views on the provisions set out in Part 3 of the Bill – Enforcement and investigatory powers (sections 81 – 97 and Schedule 2)? In particular, are the provisions workable and will they deliver the stated policy intention?

7. Propertymark recognises that placing enforcement and investigatory powers on local authorities and fire and rescue services will utilise significant expertise they hold in relation to matters such as building control, firefighting experience and their familiarity with the buildings within their areas, but a localised approach potentially will not have the advantage of a nationally consistent approach to enforcement. Therefore, to support enforcing authorities, the Welsh Government should consider how they can monitor, train and have oversight of these bodies to ensure consistent application of the provisions set out in Part 3 of the Bill.
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5. What are your views on the provisions set out in Part 4 of the Bill – Supplementary and general (sections 98 – 114 and Schedules 3-4)? In particular, are the provisions workable and will they deliver the stated policy intention?

8. We have no comments to make.

6. What are the potential barriers to the implementation of the Bill’s provisions and how does the Bill take account of them?

9. When implementing very similar provisions in England, compliance with their building safety legislation has been poor. We are therefore concerned that the Building Safety (Wales) Bill will face similar barriers. Propertymark members have regularly reported that even documents that demonstrate a building’s registration with the building safety authority are not present, which is arguably the easiest new responsibility for principal accountable persons to comply with. Additionally, 75% of UK Gateway 2 approvals being rejected⁴. While this applies to pre-occupation requirements, this reflects the understanding of building safety requirements from the housing sector. This demonstrates both a lack of understanding of the Bill’s requirements and a lack of enforcement from local authorities. As with England, local authorities in Wales are required to work with the Building Safety Regulator to enforce these new requirements and while there are fewer buildings over 18m+ in Wales, which can be targeted by local councils with few buildings under their authority, the Building Safety (Wales) Bill applies to all multi-occupied buildings. These can be difficult to identify, meaning more resources would have to be spent determining the number of properties that each local authority in Wales would have to visit. This is at a time when the Welsh Local Government Association has warned councils face “unsustainable” budget pressures⁵.

10. It is for these reasons that we have recommended establishing managing agents as accountable persons by default, especially where a building owner does not play a large role in the management of the building. This ensures that

⁴ <https://internationalfireandsafetyjournal.com/uk-gateway-2-approvals-stall-as-application-rejections-reach-75/>

⁵ <https://wlga.gov.uk/council-services-face-%E2%80%99Cunsustainable%E2%80%9D-budget-pressure-says-wlga>

an accountable person can be identified and begin taking action to implement fire safety measures immediately. Additionally, enabling residents to raise concerns would help offset financial challenges facing local authorities.

11. Aside from these methods, we would also recommend that the Welsh Government consider the role that letting agents play in supporting fire safety in multi-occupied buildings. This would help ensure that more residents, primarily those renting out property, are more familiar with requirements and what to do in case of identifying a potential fire safety risk. Under the building safety regime in England, there is no clear requirement for letting agents, which has made it very difficult for the sector to support contract holders by establishing a clear communication link between the agent and the accountable person. Not only would this help raise potential cases where accountable persons have not been set up nor meeting their requirements, agents are required to support contract holders at the start and throughout their residency within the building. Agents can provide required building safety information, update accountable persons when contract-holders move out and play a part in the resident engagement strategy. Failure to do this could result in accountable persons not being updated on the occupation of residential units, a failure for safety information to be shared and potentially leaving contract-holders unable to raise potential fire safety risks.

7. How appropriate are the powers in the Bill for Welsh Ministers to make subordinate legislation, as set out in Chapter 5 of Part 1 of the Explanatory Memorandum)?

12. In relation to residents' engagement strategies (section 39 and section 40) in the Bill we think further detail is needed so a route of communication is established between the accountable person and those who interact with the property and provide information on building safety. For instance, engagement with landlords, letting and estate agents who will be marketing, letting, and selling these types of property. For instance, under the Consumer Protection Regulations and recently updated legislation, letting and estate agents must provide all material information about the property to all perspective tenants and buyers so they can make a reasonable assessment as to whether to continue with the transaction or not.
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8. Are there any unintended consequences likely to arise from the Bill?

13. We have no further comments to make.

9. What are your views on the Welsh Government's assessment of the financial implications of the Bill, as set out in Part 2 of the Explanatory Memorandum?

14. Propertymark acknowledges the estimated monetised benefits from the application of the Bill but is concerned about the impact on Councils across Wales who will enforce the majority of the regulations as new building safety authorities. We know from our work in the private rented sector that local authorities already struggle to enforce existing rules and this legislation is adding additional responsibility. To this end, further clarity is needed from the Welsh Government on how they will support local councils financially and via additional resources to upskill, create more capacity and transition to the new building safety regime.

10. Are there any other issues you would like to raise about the Bill and the Explanatory Memorandum or any related matters?

15. Propertymark welcomes the opportunity to respond to the LGHC's consultation on the Building Safety (Wales) Bill. Propertymark has been working closely with Welsh Government officials on building safety, publishing joint guidance⁶ on the elements of the Building Safety Act 2022⁷ which have already been introduced in Wales, and will continue to provide guidance and work with the Welsh Government on building safety. Taken as a whole, Propertymark takes no issue with and has no concerns over the majority of the Building Safety (Wales) Bill. As a UK-wide membership body, Propertymark has been paying close attention to the way the post-occupation phase of the Building Safety Act 2022 was implemented in England, which has been challenging for many property agents

⁶ <https://www.propertymark.co.uk/resource/propertymark-collaborates-with-welsh-government-on-in-depth-guide-to-building-safety.html>

⁷ <https://www.legislation.gov.uk/ukpga/2022/30/contents>

and the housing sector in general. Overall, compliance with the Act in England has been inconsistent partially due to poor guidance but due to some definitions within the Act, some of which have been included within the Building Safety (Wales) Bill. So, while Propertymark supports the implementation of the Bill, we have three main areas of concern that we'd like to bring to the attention of the LGHC:

- **Firstly, subsequent regulations must set out the role of property agents within multi-occupied buildings** – when introduced in England, the legislation and guidance failed to cover the role of the agent. This is vitally important as agents are the primary contact between contract holders and landlords when the tenancy is fully managed. This enables the agent to support contract holders by sharing contact details of accountable persons and informing accountable persons when there has been a change of tenancy.
- **Secondly, the Bill will fail to meet its aims unless sufficient resources are invested into enforcing the legislation** – our understanding, as reported by our members managing individual units within a block of flats, compliance with the occupation phase of the building safety regulations in England is inconsistent. Despite this, no individual or company has yet to face any enforcement action from breaching regulations related to the Building Safety Act 2022⁸. The Welsh Government must ensure that local councils and fire authorities are sufficiently resourced inspect buildings that come under the regulations.
- **Thirdly, the Welsh Government must ensure guidance is clear** – poor guidance on the implementation of the Act has often been cited as a leading cause behind non-compliance with the Building Safety Act in England. The Welsh Government must ensure that they engage directly with the industry to create guidance that best helps the industry meet their new obligations.

⁸ <https://resources.hse.gov.uk/notices/search/standard/default.asp>
