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Ysgrifennydd y Cabinet dros Lywodraeth Leol a Thai
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Llywodraeth Cymru
Welsh Government

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30 October 2025

Dear Mike,

Thank you for providing the Committee's questions on the Building Safety (Wales) Bill. My responses are attached at Annex A.

I also said I would write to you with my thoughts on the formal consolidation of housing law. Your Committee will be familiar with the criteria the Government set itself for identifying suitable projects for consolidation and codification at the beginning of this Senedd. Those criteria clearly point to housing being a suitable subject for codification in due course. Indeed, this is identified as such in the Government's *Future of Welsh Law* programme.

There is a substantial body of Welsh law in the area of housing, including our work to progressively develop Welsh law in the field of 'Renting Homes'. The Renting Homes (Wales) Act 2016 was the first step in this: the 2016 Act brought together and updated many diverse statutes and incorporated relevant case law. The Renting Homes (Fees Etc.) (Wales) Act 2019 was the second significant step in this process.

We are also engaged, jointly with the UK Government, in the reform and updating of a wide range of legislation governing the operation of leasehold, freehold and commonhold law, with the Leasehold Reform (Ground Rent) Act 2022 and the Leasehold and Freehold Reform Act 2024 already having been passed and further reforms planned.

There is a tension between the need to improve the accessibility of the law through consolidation and codification, and the understandable need to reform existing legislation and make provision for emerging issues. However, I believe we are approaching a point where reforms could operate within a body of codified Welsh housing law and I would hope that the next Government will consider this area of the statute book for formal codification.

I also agreed to write to you about shell companies. Exactly which person or entity is identified as an accountable person will vary depending on the ownership and management model used in each building.

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The Bill primarily places duties on those who own or have certain existing obligations for the building. This ensures accountability is placed on those entities who are in a position to keep the building safe for residents. Typically, we expect building owners and landlords, both social and private, to be identified as accountable persons.

In some buildings where complex ownership models are in place it could be possible for others, e.g. freeholders or head lessees, to be an accountable person depending on which entity in a chain of leases has the repairing obligations.

We know that many of the buildings that would be regulated under the regime established by this Bill would be owned through companies. Section 105 of the Bill means that senior officers of companies may be held criminally liable, if it is proven that they have committed an offence under the Bill. Senior officers of a company are capable of being held to account, for example, where the officer has themselves committed the offence or it is due to neglect on their part. This will help to ensure that individuals that are in practice responsible for breaches cannot avoid accountability by hiding behind a corporate veil. This provision seeks to ensure company directors and others do not avoid liability due to the accountable person or principal accountable person not being an individual.

I'm grateful for the Committee's work on the Bill. I hope this information helps with the Committee's ongoing considerations and I look forward to receiving its report in due course.

I am copying this to the Chairs of the Local Government and Housing Committee and the Finance Committee.

Yours sincerely,

Jayne Bryant AS/MS
Ysgrifennydd y Cabinet dros Lywodraeth Leol a Thai
Cabinet Secretary for Housing and Local Government

Annex A: Response to Questions from the Legislation, Justice and Constitution Committee on the Building Safety (Wales) Bill

Legislative competence

1. **We understand that certain provisions of the Bill that may affect the private interests or hereditary revenues of the King or the Duke of Cornwall and so, in our view, will require the signification of Crown consent under section 111(4) of the 2006 Act and Standing Order 26.67. Could you please tell us which provisions in the Bill you anticipate will require King's or Duke of Cornwall's consent and what is the status of those requests?**

   The Bill will bind the Crown, by virtue of section 28 of the Legislation (Wales) Act 2019 (subject to the limitation in section 28(3) of the 2019 Act). This is also subject to the exceptions in section 97 of the Bill (application of this Part to the Crown). The exceptions relate to limitations on investigatory action, enforcement action and powers of entry.

   By way of example as to how the Crown may be affected by the general application of the Bill as introduced, if His Majesty were the owner of the common parts of a building within scope of the regime then His Majesty could be identified as an "accountable person" (subject to section 8 being satisfied) for that building. If this were the case then the duties under the Bill would apply to His Majesty (subject to the aforementioned limitations), see in particular those in Chapter 4 (in respect of "regulated buildings"). The Duke of Cornwall would be capable of being affected by the Bill in the same way as His Majesty.

   The Principal Private Secretary to the First Minister wrote to the Private Secretary to HM The King on 8 July 2025 to ask His Majesty for consent, in so far as he may be affected by the Bill as introduced. The Palace confirmed on 23 September 2025 that His Majesty has granted his consent.

Existing legislative framework

2. **At our evidence session on 29 September, your official spoke about the Regulatory Reform (Fire Safety) Order 2005, its lack of applicability with housing law, and how the Bill aims to address those inconsistencies. Do you have anything further to add about whether this legislation combined with UK legislation amended by the Senedd, recently enacted UK legislation (e.g. the Building Safety Act 2022 ("the 2022 Act")), and associated subordinate legislation, will affect the accessibility and coherence of the law in relation to building safety in Wales? We would welcome any additional examples of how the Bill is improving the accessibility and coherence of the statute book in relation to building safety.**

The current regulatory system covering safety in multi-occupied residential buildings is not fit for purpose. The failings were laid bare in the Grenfell Tower tragedy and subsequent reviews and inquiries.

Whilst buildings within the scope of the Bill will also be subject to other legislative provisions, such as the Housing Health and Safety Rating System under the Housing Act 2004, the Hackitt Review recommended that there should be greater clarity about who is responsible for managing the safety of buildings in occupation.

The Bill identifies who those duty holders are and places a proportionate and relevant set of duties on them to ensure that risks are managed appropriately in buildings. I consider, therefore, that the changes brought about by this Bill will improve the coherence of the law on building safety.

I do note, however, the Committee's broader concern regarding overall accessibility and the question around whether housing law generally, and building safety law specifically, applicable in relation to Wales should be brought together into bilingual Acts of the Senedd and codified. I refer the Committee to the main body of my letter.

Development of the Bill

3. **As we discussed on 29 September, there has been a very significant delay between the Grenfell tragedy in June 2017 and the development of this Bill. During the Local Government and Housing Committee's scrutiny of the Building Safety Bill LCM in November 2021 (already over four years after the Grenfell fire), the then Minister for Climate Change stated that:**

"… in the light of the Grenfell tragedy and the need to respond to the subsequent independent review of building regulations—the Hackitt review that Members will be familiar with—we need to respond as quickly as possible, and this Bill is the most effective way to do that. We've made it clear as a Government that, whilst protecting the devolution settlement remains a critical area of priority for us and that our general principle is to legislate in the Senedd, we should be open to taking pragmatic approach to using UK legislation to achieve the Welsh Government's objectives where that's necessary and it completely suits our policy agenda."

How would you respond to concerns that, by enacting legislation in Wales via the UK Parliament in 2021, and taking an additional four years to introduce this Bill to the Senedd, the Welsh Government has failed both to respond quickly to the Grenfell tragedy and to protect the devolution settlement?

The Bill forms part of a much wider programme of work taken forward since the Grenfell Tower tragedy, all aimed at ensuring residential buildings in Wales are as safe as possible. Since Grenfell we have:

- Made significant reforms to the building control system
- Introduced new regulation for higher-risk buildings during the design and construction phase
- Required mandatory registration and regulation of building control professionals
- Made regulations in 2019 preventing the installation of certain cladding on residential buildings of at least 18 metres
- Laid regulations, due to come into force in December, banning metal composite cladding panels with a polyethylene core (the type of cladding that was used on Grenfell Tower) on all buildings that require building regulations approval
- Undertaken a programme of remediation work (which is ongoing) to address in-built fire safety issues in multi-occupied residential buildings of 11m and above

The measures taken forward under the Building Safety Act 2022 are largely related to regulation of the building control profession, procedural reform for the design and construction of buildings and the introduction of dutyholder roles and responsibilities during the design and construction phase. The 2022 Act provided an opportunity to expediate the changes for the design and construction phase of higher risk buildings and create consistency for developers operating across England and Wales.

The scope of the Building Safety (Wales) Bill is wider than the regime currently in place in England and is concerned with buildings once they are occupied. It captures the vast majority of multi-occupied residential buildings in Wales and includes more extensive fire safety reforms. Developing the Bill has involved meaningful and significant stakeholder engagement, helping to make sure we get the regime right for residents and others in Wales, so that those who call these buildings home can feel safe. Time and engagement have been needed to get this right and to ensure that the new regime is fit for purpose.

4. **You have stated that this Bill was developed in response to the Grenfell tower fire of 2017 and the Hackitt review a year later. You issued a white paper on the Bill's proposals in January 2021. However, in evidence to the Local Government and Housing Committee, you explained that some issues are still unresolved, which may lead to substantive amendments to the Bill (for example, in relation to how the Welsh Government can ensure consistency of application of the regulation regime across the 22 local authorities). Why did you not use the time since the White Paper to publish a draft bill for public consultation, which could have resolved some of these issues before the Bill was introduced?**

As outlined in response to question 3 above, the Bill forms part of a much wider programme of work taken forward since the Grenfell Tower tragedy, all aimed at ensuring residential buildings in Wales are as safe as possible.

Work on the policy development for the Bill has proceeded alongside this wider programme of work. This is a broad and complex Bill. The focus of our work has been on the considerable engagement with stakeholders that has been undertaken as part of the policy development stage for the Bill, and this takes time to complete. However, input from that stakeholder engagement has directly contributed to the proposals laid out in the Bill and will be ongoing as we move to develop regulations under the Bill.

The ongoing work that you are referring to is in relation to the operational model. So, it's not that the policy in the Bill is unresolved. The Bill is complete and workable as drafted. However, the Bill is framed in such a way to provide local authorities with a level of flexibility around how they organise themselves to effectively discharge their functions under the Bill. In my evidence to the Local Government and Housing Committee, I discussed the work we are doing with local authorities and fire and rescue authorities to agree the operational model for the new building safety regime.

While all 22 local authorities will be the building safety authority for their area, I've been clear that I do not envisage in practice all 22 will exercise their functions in isolation. Work is ongoing around how local authorities work together to operationalise the new regime.

I do not believe that publishing a draft Bill would have helped in this case. The ongoing work is part of our implementation planning.

Regulation making powers in the Bill, and accompanying guidance, will help to ensure consistent application of the functions given to the building safety authorities.

Implementation of the Bill

5. The Bill provides Welsh Ministers with the power to make subordinate legislation in some 65 areas. How many of these regulations will need to be in place in order for the effect of the Bill to be fully implemented?

We are planning for a phased commencement of regulations under the Bill. Our Statement of Policy Intent sets out those regulation making powers that we consider are not likely to be required for implementation but may be required in the longer term, for instance, to reflect changes in the built environment. Phasing commencement will allow local authorities and duty-holders to acclimatise and adjust to the new regime and for consultation with key stakeholders and the wider public to take place.

The phased approach also recognises the large number of in-scope buildings. We expect registration of category 1 buildings to be introduced in the first phase in 2027. Category 2 registration is expected to commence in early 2028. With category 3 duties expected to follow later in 2028. We believe this approach will support a smooth transition, recognising that stakeholder awareness and preparedness will be paramount to success.

6. **Local Authority Building Control (LABC) has highlighted that under regulations currently in force made under the 2022 Act, a building is considered a "higher-risk building" if it contains at least *one* residential unit. However, for the purposes of the Bill, a "regulated building" must contain at least *two* residential units. They argue that this inconsistency "may lead to confusion in the wider industry". How do you respond to these concerns, particularly given your general views about the importance of alignment between this Bill and the 2022 Act?**

   For the design and construction phase the definition of a "higher-risk building" is set out in the Building Safety (Description of Higher-Risk Building) (Design and Construction Phase) (Wales) Regulations 2023. A "higher-risk building" is indeed only required to have one residential unit in order to be capable of meeting the definition (or be a hospital, care home or children's home and not be an "excluded building").

   In the White Paper "Safer Buildings in Wales", it was proposed that higher-risk buildings/category 1 buildings across both design and construction and occupation phases would be buildings with at least two residential units (and were at least 18 metres tall or had at least seven storeys). However, for the design and construction phase, this proposal was subsequently amended to one residential unit to bring the definition in line with requirements in respect of combustible cladding.

   The occupation phase's focus continues to be on multi-occupied residential buildings, so it defines category 1 buildings (and other "regulated buildings") as having two or more residential units. Across the occupation phase regime, buildings with only one residential unit would include all conventional houses and bungalows and it has never been the intention to capture such buildings in the occupation phase building safety regime.

   We are confident that we will be able to communicate this difference clearly to stakeholders. As the Committee points out, the intention is generally to align what constitutes a "higher-risk building" under the design and construction phase with what constitutes a category 1 building under the occupation phase, but the policy in relation to this specific matter (and in respect of some "excluded buildings") does not align between the two phases and so different provision is required.

Regulation-making powers

7. **There are 11 regulation-making powers to amend primary legislation (Henry VIII powers) in the Bill. Please set out a justification for why *each* Henry VIII power is necessary, reasonable and proportionate.**

   There are 10 regulation-making powers to amend primary legislation in the Bill. The reference in the Statement of Policy Intent to the regulation making power in

section 65(3) being subject to the Senedd approval procedure is incorrect, it is subject to the Senedd annulment procedure and it does not amend primary legislation. My apologies for the original error. The regulation making power in section 59(2) is subject to the Senedd approval procedure, but it does not amend primary legislation. Each of the regulation-making powers that amend primary legislation are set out in turn below.

Power	**Why the power is necessary, reasonable and proportionate**
Section 16(1) (power to amend sections 2 to 14)	This regulation making power is necessary to enable the Bill to be amended to respond to evidence of new and emerging risks and to ensure that the regime can be adapted to respond to such risks. It will also enable amendments to be made e.g. to account for new ownership models or building design. This power to amend Schedule 1 will provide flexibility to enable the list of "excluded buildings" to be amended should the need arise. There is a duty to consult each building safety authority, each fire safety authority and such other persons as the Welsh Ministers consider appropriate. Therefore, an appropriate consultation will be taken before making regulations. The regulations are also subject to the Senedd approval procedure which will allow additional Senedd scrutiny. The regulations do not amend any of the duties in the Bill. Rather, they are intended to make minor changes to clarify key terms in the Bill, or to take into account new ownership models etc. The regulation making power is therefore considered to be reasonable and proportionate.
Section 27(2) (to modify the definition of "building safety risk")	The Bill is aimed at ensuring that building safety risks are properly assessed and managed. How the risks are assessed and managed, that is, the duties we place on the principle accountable person and accountable persons, and the enforcement of those duties are at the core of this Bill. The Bill is intended to ensure the safety of people in or about regulated buildings by making sure that someone is held accountable for that. The regulation making power is necessary as new evidence may emerge that there are risks other than fire and structural safety risks that, if not assessed and managed, may result in a risk to the safety of people in or about a regulated building. For example, this could be a risk arising from climate change such as flooding. The regulations may also make provision conferring functions for the regulation of that risk, onto any devolved Welsh Authority. Similarly to the power in section 16, there is a duty to consult prior to making any regulations. The regulations are also subject to the Senedd approval procedure which will allow Senedd scrutiny.

Section 41(9) (amend the period of time when a further building certificate application must be made – to change from 5 years).	The regulation-making power is necessary to allow flexibility to decrease or increase the five-year period depending on any emerging evidence about building safety risks. The regulation-making power is reasonable and proportionate because new evidence may emerge indicating that this timeframe should be changed. The scope of the regulation making power is limited to only adjusting the time period.
Section 56(4) (amend list of "reviewable decisions" and meaning of "affected person")	This regulation making power is necessary to provide flexibility to add decisions of the building safety authority that must be subject to a review before an appeal, or to remove them. The policy intent of this section is to reduce the burden on the tribunal, but it may be the case that some decisions are in fact better left to the tribunal and that requiring them to be reviewed first achieves only delaying a final decision. The regulation making power provides flexibility to make amendments to this process based on experiences at implementation. To ensure that those impacted by a decision can request a review of a reviewable decision, and to ensure that the definition of an affected person captures the right people, the regulation making power also provides flexibility to amend the definition of an affected person should that need to be broadened, based on evidence gathered at implementation. The regulation-making power is reasonable and proportionate as it allows for minor amendments to be made to ensure that the review process works as intended, and that people who are affected by decisions may bring a review. It is deemed appropriate for this type of amendments to be made via regulations.
Section 62 (new section 30IC of LTA1985 – meaning of building safety measure) – can amend subsections (2), (3) or (4) to amend "building safety measure".	The regulation making power in this section is necessary in order to allow the Welsh Ministers to amend the definition of a building safety measure, should it appear in future that the definition should be amended. It may be necessary to amend the meaning of building safety measure to account e.g. for new information obtained during implementation and subsequently. A regulation making power will enable this flexibility. The regulation making power is reasonable and proportionate as it is limited to adding, removing or modifying the definition of a building safety measure. The amendments are likely to be minor and technical in nature and it is therefore considered appropriate for these changes to be made by secondary legislation.
Section 64 (new section 20FA of LTA1985 – limitation of variable service charges: excluded costs for regulated buildings). Can	The regulation making power in subsection (5) allows the Welsh Ministers to amend the definition of "excluded costs" in subsection (3) by adding, removing or modifying a description of excluded costs. The regulation making power in subsection (5) is necessary to allow the Welsh Ministers to amend the definition of a "excluded costs" should it appear that the definition should be amended. This is to ensure that the liability for building safety costs is passed down

amend the definition of “excluded costs” in new section 20FA.	correctly. Similarly to the regulation making power in section 30IC above, it may be necessary to amend the meaning of “excluded costs” to account e.g. for new information obtained during implementation and subsequently. A regulation making power will enable this flexibility. The regulation making power is reasonable and proportionate as it is limited to adding, removing or modifying the definition of “excluded costs”. The amendments are likely to be minor and technical in nature, and it is therefore considered appropriate for these changes to be made by secondary legislation.
Section 67(8) (meaning of relevant HMO) power in section 68(8) to amend this section.	The power in subsection (3)(d) is necessary if it becomes apparent in future that premises are being inadvertently caught by the definition of “relevant HMO”. The regulation making power allows the definition to be amended but cannot make amendments to subsections (1) and (8). It is also necessary, for example, because the power in subsection (8) allows the definition to be extended if, for instance, new forms of tenure or occupancy emerge. The power is therefore to deal with currently unforeseen circumstances, and there are no plans to use the power at present. The power is reasonable and proportionate because it is important to ensure that multi-occupied premises which are not intended to be “relevant HMOs” are not inadvertently caught by the definition. Whilst subsection (3) already contains exclusions, this power enables ongoing flexibility i.e. for certain premises not to be capture within the definition. The amendments are likely to be minor and technical in nature, and it is therefore considered appropriate for these changes to be made by secondary legislation.
Section 86(7) (appeal against prohibition notice) power in section 86(7) to amend who can appeal against a prohibition notice.	The regulation making power in section 86(7) is necessary in order to amend the list of persons in subsection (2). An example of when this may be necessary is, for instance, where a new entity which had an interest in regulating building safety were created, or if such an interest arose out of a new form of housing tenure. These regulations may be needed in light of future wider policy or legislative change, including new information obtained during implementation and subsequently. This regulation making power provides flexibility should there be a need to amend this list in future. For example, if the meaning of building safety risk is modified using powers in section 27(2), then there may be other persons that have an interest in the management of that type of risk, that would need to be added to this list. The amendments are likely to be technical in nature, and it is therefore considered reasonable and appropriate for these changes to be made by secondary legislation.

Section 112(3) (consequential and transitional provision)	This regulation making power is necessary to ensure that consequential amendments to other legislation and transitional provisions can be made to ensure that the Bill works together with other laws. Although the main amendments to primary legislation have been made on the face of the Bill itself, during implementation it may emerge that further consequential amendments are required. It is deemed reasonable and proportionate that consequential amendments are made via secondary legislation.
Paragraph 21(3) of Schedule 2 (Welsh Ministers can amend paragraph 24 to change the meaning of "interested person" – who is someone who must, for example, be given certain information about Special Measures Orders)	This regulation making power is necessary to provide flexibility should there be a need to amend this list in future. For example, if the meaning of building safety risk is modified using powers in section 27(2), then there may be other persons that have an interest in the management of that type of risk, that would need to be added to this list. The amendments are likely to be technical in nature, and it is therefore considered reasonable and appropriate for these changes to be made by secondary legislation.

8. Can you set out why you believe that it would be appropriate for a government in the Seventh or Eighth Senedd to change key matters in the Bill through secondary legislation, as is currently permitted by the broad relegation-making powers in the Bill, rather than by bringing forward primary legislation and allow full Senedd scrutiny, including by means of an expedited process if necessary?

The way in which buildings are owned and managed, particularly at the smaller end of the spectrum varies considerably. Additionally, the built environment is complex and constantly changing, as are the risks in it whether this be due to advances in technology, building design, construction products or otherwise. The regime may also need to respond to new models of property ownership, occupation and tenure.

The powers are proposed to ensure that if issues arise during implementation, or in the future, we are able to react to these to ensure the regime works as intended, without the need for further primary legislation.

The key terms are designed to ensure that the right buildings are identified and that the appropriate people for those buildings are identified, in order that duties are placed on the most appropriate persons. Whilst a future government could use powers in the Bill to amend the key terms, any amendment would have to have these purposes in mind.

9. **Can you confirm whether some of the broad regulation-making powers in the Bill (such as those in section 16) would allow a future government to exclude certain buildings or structures from the regulatory regime? If so, have you considered inserting safeguards that would limit the use of those powers (for example, by limiting the power to *extending* the list of structures that fall within the regulatory framework of the Bill, rather than enabling future Welsh Government to also *remove* structures from that list)?**

   The power in section 16 is proposed to enable amendments to be made to the key terms sections. This power is not about changing the duties under the Bill. Whilst it is a broad power, it is an important one which ensures that if issues arise during implementation, or in the future, amendments can be made so as to ensure the Bill works as intended. Such regulations could only be made after consultation and with the approval of the Senedd.

   Schedule 1 sets out a list of buildings that are excluded from being regulated buildings. The power to amend Schedule 1 will ensure the list of "excluded buildings" can be amended should the need arise.

   It is possible that a future government could exclude certain buildings or structures from the regime. Such regulations could only be made after consultation and with the approval of the Senedd. Based on the existing available evidence, we believe all of the buildings we have included should be in scope of the regime. But it would be remiss of us not to ensure the regime can respond to evidence if it needs to. This could, for example, be because once the regime has been in operation for some time the evidence suggests that certain types of buildings are better regulated under the Regulatory Reform (Fire Safety) Order 2005 because it would be more appropriate for them to be treated as workplaces for example, making it more appropriate to exclude them from the regime.

   This power is designed to be proportionate and ensure the Government is able to respond to change when there is clear evidence to support such a change and we have included safeguards that limit the use of these powers to that effect. These include the requirement to consult the building safety and fire safety authorities and the use of the Senedd approval procedure thus ensuring it is subject to additional Senedd scrutiny and the Senedd's agreement.

10. **Despite agreeing in principle that the powers granted to Welsh Ministers are appropriate, some key stakeholders including the WLGA have raised concern about how future regulations will be developed, and the extent to which the sector will be consulted. Do you have anything further to add to provide reassurance to these stakeholders and others about the use these powers by future Welsh Governments?**

    We are planning for a phased commencement of regulations which recognises the broader building safety environment and the need to support stakeholders through implementation. Given the large number of in-scope buildings, phasing commencement will allow local authorities and duty-holders to acclimatise and

adjust to the new regime. Local authorities would have time to put in place the systems they need to prepare to take on their new functions.

We expect the registration of category 1 buildings to be introduced in the first phase in 2027. Category 2 registration is expected to commence in early 2028, with category 3 duties expected to follow later in 2028.

Under this phased approach, our initial focus will be on the regulations needed to ensure registration, category 1 duties, and duties in HMOs are in place. We intend to consult on those proposals and subsequently consult on issues more particular to category 2 and 3 buildings, which will be commenced subsequently during the course of 2028.

11. Can you confirm that the current duties "to consult such other persons as Welsh Ministers consider appropriate" would in practice oblige future Welsh Governments to consult meaningfully with residents whenever residents have legitimate interests in the regulations or guidance being developed?

Many of the secondary legislation-making powers and the guidance-making powers included in the Bill are accompanied by a duty to consult 'such other persons as Welsh Ministers consider appropriate'. While 'residents' are not a specified consultation group, there would be many instances where they would have legitimate interests in the regulations or guidance being developed and as such it would be appropriate for the Welsh Ministers to consult residents in those cases.

12. In your response to our question about why a definition of "storey" is not included on the face of the Bill, you explained that including technical detail such as the definition of a storey or a mezzanine "risks overcomplicating the Bill". However, a definition of mezzanine is included in section 118(3) of the 2022 Act, and indeed the Act also provides some detail about the definition of a storey itself (section 118(3)). You went on to state that setting out the definition of storey in regulations, rather than on the face of the Bill, will help to ensure consistency with the 2022 Act and its subordinate legislation. Can you provide further clarity about your decision not to include a definition of "storey" and other key terms of the face of the Bill?

Whilst section 118 of the Building Safety Act 2022 defines "storey", this definition does not apply in Wales (nor in England in respect of the occupation phase regime established by Part 4 of the 2022 Act).

The power to define "higher-risk building" for the design and construction phase is in section 120I of the Building Act 1984. The Building Safety (Description of Higher-Risk Building) (Design and Construction Phase) (Wales) Regulations 2023 ("the 2023 Regulations") are made under this power. The 2023 Regulations set out, for example, how height is to be measured and how storeys are to be calculated (including in relation to mezzanine floors). The Approved Documents

under the Building Act 1984 set out, for example, how height is measured and this aligns with the provisions in the 2023 Regulations.

The policy is that generally (noting the point already discussed regarding the minimum number of residential units) a “higher-risk building” in the design and construction phase will be a “category 1 building” in the occupation phase.

As such, for the occupation phase regime the power in section 6(5) of the Bill has been proposed partly in order that there can be an alignment, now and in the future, between what constitutes a “higher-risk building” and what constitutes a “category 1 building”. The intention is that regulations under section 6(5) will largely mirror, in terms of height and storeys at least, the provision in the 2023 Regulations. This approach will enable regulations for both phases to be aligned now, and in the future. If the 2023 Regulations were amended then the power in section 6(5) would enable, but not require, the occupation phase regulations to follow suit.

As a secondary matter, we also consider that setting out this level of technical detail on the face of the Bill would risk detracting from the “core” provisions i.e. those currently contained in section 6.

13. One of the powers given to the Welsh Minsters in the Bill includes a power for the Welsh Ministers to change the definition of a “building”. During scrutiny, you told us that the definition of building may need to be amended if certain types of structures are being interpreted as buildings in a way that was not intended by the Bill, or if new types of multi-occupied residential accommodation emerge. Please can you:

a) clarify whether consideration was given to taking alternative drafting approaches to include safeguards against different structures being used as buildings on the face of the Bill?

b) set out examples of structures that you may want to exclude from the regulatory regime set out in the Bill (for example, your official cited large floating barges)

a) Consideration of alternative drafting approaches and safeguards

Yes, careful consideration was given to alternative drafting approaches and the need for balance between legislative clarity and the need for flexibility in response to emerging forms of residential accommodation. We explored the options of listing exclusions or defining building types more narrowly on the face of the Bill. However, these approaches were considered too rigid and potentially problematic given the evolving nature of residential accommodation.

It is difficult to anticipate with any certainty whether new approaches to structures and construction will or will not be defined as buildings and whether they should or should not be included in the regime, as we simply don’t know what they will look like yet. The decision to include a regulation-making power to amend the definition of “building” was taken to ensure that the regulatory framework is able

to remain responsive to future developments in the design and construction of residential buildings, including non-traditional structures, in a way that makes sense.

The safeguards we have put in place include the requirement that any changes to the definition must be subject to consultation and will also be subject to the Senedd approval procedure. I believe this provides the appropriate level of transparency and accountability in the exercise of this power in the future.

b) Examples of structures that may be excluded from the regulatory regime

As you say, large floating barges used as residential accommodation were cited during scrutiny as a type of structure that may not be suitable for inclusion within the regulatory framework. We do not think they will be interpreted as buildings and as such we do not think they need to be expressly excluded on the face of the Bill. There is a risk that expressly excluding them may suggest that they should be interpreted as a building in the first instance.

As noted above, we do not know what new types of accomodation might emerge because they haven't arisen yet.

Modular housing example

During scrutiny when we were discussing the intention behind the power to amend the meaning of "building" to include vehicles, vessels or other movable objects, you asked why a modular building might be excluded from the definition of a building and I agreed to write to you on this.

To clarify, we believe the current meaning of building would capture modular buildings. That is the policy intention, and where modular buildings are used to provide multi-occupied residential occupation, they should rightly be in scope of the Bill. However, there is potentially a risk that future unconventional construction or modular designs may not be considered to meet the meaning of "building". Should that issue arise, the power could be used to amend the meaning of building if necessary to provide clarity or ensure they are included.

14. Section 29(3) gives regulation making powers for the Welsh Ministers to specify requirements relating to the competence of fire risk assessors. Given the importance of the qualification of fire risk assessors, why should this be left to regulations and subject only to scrutiny through the annulment procedure?

The requirement that fire risk assessors must be competent is on the face of the Bill and will be directly enforceable without needing any regulations under section 29(3). Such regulations cannot change that requirement. They will merely set out details of how assessors can demonstrate competence, for instance by holding specified academic or vocational qualifications, being members of relevant professional institutions, or their employers being accredited by a suitable

corporate quality assurance scheme. We intend to make the regulations once there is a UK-wide agreement with the fire safety sector on an overall structure of different forms of assurance and their equivalence, and to amend them if new forms of assurance (e.g. new qualifications) become available. We believe the level of detail involved here, the lack of any Henry VIII power and the likely need to amend the regulations frequently, mean that the Senedd annulment procedure is appropriate.

15. **Similarly, section 33 (7) gives regulation making powers to the Welsh Ministers to make provision in relation to the making of structural risk assessments, including experience, qualifications and experience of assessors. Why are you satisfied that this should be left to regulations, and subject only to scrutiny through the annulment procedure?**

The requirement for the person making the structural risk assessment to have sufficient skills and experience to assess the structural safety risks, is on the face of the Bill. This would be enforceable by a compliance notice.

We do not currently intend to make regulations using the power under section 33(7). This means that there will be a degree of flexibility in terms of how it can be demonstrated that the requirements under section 33(3) are met. However, should evidence emerge in future that suggests that introducing a qualification requirement or similar would be helpful to the sector, for example to provide clarity as to how it can be demonstrated that those requirements are met, then this could be done using this regulation making power.

Any regulations would be subject to regulatory impact assessment and consultation.

Regulations made under section 33(7) may need to be updated frequently, for example if different forms of qualifications or requirements emerge.

We believe the level of detail involved here, the lack of any “Henry VIII” power and the potential need to amend any future regulations frequently, mean that the Senedd annulment procedure is appropriate.

16. Section 65 (3) inserts new section 49B to the *Landlord and Tenant Act 1987* requiring a landlord to give the tenant a notice containing relevant building safety information. New section 49B (5) (e) provides a power for the Welsh Ministers to make regulations that can prescribe other information as relevant building safety information. Those regulations are made under the Senedd annulment procedure (new section 49B (8)). However, the Explanatory Memorandum states that this power will be subject to the draft affirmative procedure. Can you confirm which procedure will apply to this power, and whether any changes to the Explanatory Memorandum are necessary?

The power will be subject to the Senedd annulment procedure, and the Explanatory Memorandum will be amended accordingly. Please accept my apology for the original error in the Explanatory Memorandum.

Guidance

17. The only guidance that the Welsh Ministers are mandated to issue under the Bill relates to principle accountable persons and landlords of houses of multiple occupation for certain duties relating to the assessment of fire safety risks. Have you given any further consideration to whether a duty should be placed on the Welsh Ministers to produce guidance in other areas (for example, your official cited structural safety as one potential area where compulsory guidance might be worthwhile)?

We have made issuing guidance on the assessment of fire safety risks mandatory because some principal accountable persons and landlords could struggle to discharge their duties properly without it. Article 50 of the Fire Safety Order imposes a similar duty on the Welsh Ministers. If we did not issue new guidance, there would be a risk of principal accountable persons and landlords continuing to rely on the existing guidance made under the Fire Safety Order, when it no longer applied to the building.

The same is not true of other guidance under the Bill. We have therefore adopted the conventional approach of conferring a discretionary power to issue guidance. However, it is our intention to issue guidance to support all those with duties under the regime, including in relation to structural safety.

18. No Senedd scrutiny procedure is in place for the guidance that the Welsh Ministers must issue under section 98 (1) or may issue under section 98 (2). Do you consider that this guidance should be subject to the draft annulment procedure?

Guidance under section 98 is not law; it aims to support accountable persons and others to discharge their duties under the Bill. Much of the guidance under section 98(2) will be unavoidably technical, and it will need frequent amendment to deal with changes in technology, building design, forms of tenure or recognised good practice. We consider that the duty to consult, before issuing or approving

guidance, in section 98 is appropriate and sufficient. It would be unusual for any Senedd procedure to apply to material like this, and no such procedure is necessary or appropriate here.

19. Do you have a list of all the guidance that you plan to publish as a result of this Bill? If so, is there a timetable for the publication of this guidance, and can this be shared with committees, along with a list of all planned guidance?

We recognise the need for comprehensive guidance for the regulatory bodies, accountable persons and residents to be in place in good time ahead of the new building safety regime coming into force. Guidance would be developed in consultation with stakeholders so that we can use the knowledge and expertise of those in the sector to make sure guidance is accessible and operationally sound.

Guidance will cover core aspects of the new regime, including building registration, the operation of a complaints system, preparation of the Safety Case Report, preparation of the resident engagement strategy, occurrence reporting and the duties of regulatory bodies, accountable persons and residents. Guidance will reflect the range of ownership models and organisations who could be principal accountable persons and accountable persons. For residents, we also intend to develop a resident handbook to support their understanding of what the regime means for them.

In terms of timing, we intend to consult with stakeholders on the development of guidance after consultation on the content of regulations, at which stage we will be clearer about the areas where guidance is needed and what it needs to cover.