

LEGISLATIVE CONSENT MEMORANDUM

FIRE 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 the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the National Assembly.
2. The Fire Safety Bill (“the Bill”) was introduced in the House of Commons on 19 March 2020. The Bill can be found at https://publications.parliament.uk/pa/bills/cbill/58-01/0121/cbill_2019-20210121_en_1.htm.

Policy Objectives

3. The UK Government’s stated policy objectives are to provide that the Regulatory Reform (Fire Safety) Order 2005 (“the FSO”) is clear in that it applies to external walls (and anything attached to them which includes cladding and balconies) and flat entrance doors of multi-occupied residential buildings.
4. This reflects lessons from the fire at Grenfell Tower in west London in June 2017, and the findings of the first phase of the Public Inquiry into its causes. The Inquiry found that the fire’s rapid propagation (and consequent severe loss of life) was due to defects in the design, installation and maintenance of the Tower’s external cladding and windows, and to the failure of internal doors and other structures to resist the spread of fire.
5. The FSO is the main statute regulating fire safety in occupied buildings in Wales and England. It does not currently cover external walls of blocks of flats, and is unclear in its application to flat entrance doors and internal walls. That means there is no obligation on landlords or others responsible for a building to maintain these features so as to mitigate the risk of fire.

Summary of the Bill

6. The Bill is sponsored by the Home Office.
7. The Bill makes provision for:
 - extending the scope of the FSO to cover the structure of the building, including the external walls and any doors, windows and balconies attached to them;

- likewise extending the scope to cover doors between flats and common areas; and
- regulations to be made to change or clarify the types of premises to which the FSO applies.

Provisions in the Bill for which consent is required

8. The following provisions of the Bill are within legislative competence of the National Assembly for Wales:

- Clause 1 (Premises to which the Fire Safety Order applies), which makes amendments to the FSO to clarify that it applies when the premise is a building containing two or more sets of domestic premises, to:
 - the building's structure and external walls (which includes doors and windows and anything attached to the exterior walls, such as cladding, insulation, fixings and balconies) and any common parts;
 - doors between domestic premises and common parts.

The amendments also affirm that Fire and Rescue Authorities can take enforcement action against responsible persons if they have failed to comply with their duties under the FSO in relation to these parts of such premises.

- Clause 2 (Power to change premises to which the Fire Safety Order applies), which gives power to the "relevant authority" to make regulations to amend the FSO for the purpose of changing or clarifying the premises to which it applies. The use of the power is to be subject to the affirmative resolution procedure. The relevant authority is defined as the Secretary of State in relation to premises in England and the Welsh Ministers in respect of premises in Wales (clause 2(2)(a) and 2(7) apply to England only and are therefore not within legislative competence).
- Clause 3 (Extent, commencement and short title), except clause 3(2)(a), which confers commencement powers as regards England on the Secretary of State.

Clause 3(2)(b) allows the Welsh Ministers to make regulations commencing clause 1 of the Bill (which makes the operative amendments to extend the scope of the FSO as above) in relation to Wales. This enables the provisions to be brought into effect as is considered appropriate for premises in Wales. No procedure applies to such regulations.

9. The purpose of all of the provisions identified above concerns fire safety relating to buildings in Wales. On this basis, the purpose of the provisions do not relate to any reserved matters under the Government of Wales Act 2006. We therefore consider these provisions, including to the extent that they confer functions on the Welsh Ministers, to be within the legislative

competence of the Senedd. As such, it is considered that the Senedd's consent is required in respect of all of the above provisions

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

10. The immediate causes of the Grenfell Tower fire as identified by the Public Inquiry could equally arise in blocks of flats in Wales. The FSO – which applies equally to Wales and England – does not adequately protect against them at present. It imposes no duties on landlords or other responsible persons as regards external walls and internal structures and doors; and confers no inspection and enforcement powers on Fire and Rescue Authorities as regards such features. The Bill would correct that, and create an important means of ensuring fire safety in blocks of flats.
11. The FSO was originally made under the Regulatory Reform Act 2001. That Act was repealed in 2007, with savings for Orders then in force but not for powers to amend them. This means the only way of amending the FSO is through primary legislation.
12. There is no space in the Welsh Government's current legislative programme for a Bill making provision for Wales on these matters, nor is there any Bill in the programme to which such provisions could be added. The Fire Safety Bill has been developed following full discussion between Welsh Government and Home Office officials and lawyers, and will achieve the above policy objectives far sooner than would otherwise be the case.

Financial implications

13. Costs could arise in Wales as a result of:
 - Landlords and other responsible persons having to undertake a more wide-ranging fire risk assessment under the FSO, including the features of each building stipulated in the Bill.
 - Landlords and other responsible persons taking corrective action in light of such assessments, eg to remove combustible cladding (although some such measures may already be necessary to comply with building regulations).
 - Fire and Rescue Authorities undertaking more wide-ranging inspections of blocks of flats, including the features of each building stipulated in the Bill.
14. The Home Office is preparing a regulatory impact assessment for the Bill, in consultation with Welsh Government officials.

Conclusion

15. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill as will make sensible and important

changes to fire safety law far sooner than could be achieved by separate legislation for Wales.

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