

I: JUSTICE IMPACT ASSESSMENT

Overview

The Welsh Government's assessment of the impacts of this legislation on the justice system is that it has:

- Medium potential impact

This is because:

Background

The Building Safety (Wales) Bill ("the Bill") introduces a new building safety regime in Wales focusing on the occupation and ongoing management ("the occupation phase") of multi-occupied residential buildings.

The Bill establishes a new enforcement regime and confers new functions on local authorities (that will be the building safety authority for their area under the regime) and the Fire and Rescue Authorities (that will be the fire safety authority for their area under the regime, except for any in-scope buildings that are Crown premises, where the fire safety authority will be an inspector appointed by the Welsh Ministers).

It imposes duties on accountable persons, defined in section 8 of the Bill as:

- (a) a person who holds a legal estate in possession in the common parts of the building or any part of them, unless subsection (3) applies, or
- (b) 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.

Persons with an obligation under a contract (other than a lease) to provide services relating to the repair, maintenance or safety of that part of the building, or persons with any degree of control over that part of the building, defined in section 35, are also to be treated, in relation to matters within scope of that part of the building, as being an accountable person for that part and will have duties placed upon them.

The Bill also places duties on landlords and duty holders of relevant Houses in Multiple Occupation (HMOs), defined in section 68.

Duties are also placed on residents and owners of residential units within regulated buildings¹ and on occupiers of relevant HMOs². The provisions placing duties on residents and owners of residential units are found in Chapter 7 (sections 51, 52 and 53) and the duties imposed on occupiers of relevant HMOs are to be found in Part 2 of the Bill, section 74.

Impact on the Justice System

Matters heard by the Residential Property Tribunal (Wales) (the 'RPT')

The Bill provides for applications to be made to the Residential Property Tribunal (Wales) in relation to several matters, including:

- Specified decisions relating to the identification of a principal accountable person (PAP), or accountable person (AP) (section 11).
- Appeals against specified decisions of the building safety authority or fire safety authority (section 58).

¹ A regulated building is defined in section 2 of the Bill as a building that (a) contains at least 2 residential units, and (b) is wholly or mainly in Wales.

² A relevant HMO is defined in section 67 of the Bill

- A decision by the enforcing authority to issue specified enforcement notices (section 84, section 86).
- Specified matters relating to access to residential units by accountable persons, principal accountable persons (section 53) and residential properties by HMO duty holders (section 77).
- Specified matters relating to enforcement of resident duties by accountable persons, principal accountable persons (section 55).
- Specified matters relating to Special Measures Orders in category 1 buildings only (section 96 and Schedule 2).

Accountable persons will be able to issue warning notices to residents where they think there is a contravention of a resident duty. Accountable persons can, in certain circumstances, then apply to the RPT (Wales) for a contravention order. Accountable persons and HMO duty holders can also apply to the RPT (Wales) for an access order in certain circumstances.

Offences

The Bill introduces a number of offences. This means that building safety authorities and fire safety authorities will have certain powers to undertake investigations and to prosecute where building safety duties are being breached. These are listed below (Table 1). These are either summary only or triable either way, that is, in the Crown Court or Magistrates' Court.

Rationale for 'Medium Potential Impact' Assessment

Policy approach

The policy is that non-sanction routes to compliance, such as raising awareness of responsibilities, promoting cultural change, and education, should be exhausted before more formal action, such as issuing a compliance notice, or formal prosecution, are pursued. This approach aims to address non-compliance before it impacts the justice system and will be set out in guidance.

It is expected that most principal accountable persons, accountable persons, duty holders in relevant HMOs and residents will comply with the requirements of the new regime.

Number of buildings impacted by the new duties

There are 180 category 1 buildings in Wales, 449 category 2 buildings, 51,000 category 3 buildings and more than 15,000 HMOs (although these are not all relevant HMOs). Some duties and/or offences in the Bill apply to only category 1 buildings, or category 1 and 2 buildings. For example, the duty to assess and manage structural safety risks (which would be enforced by means of a compliance notice) applies only to category 1 and 2 buildings. The offence of a building being occupied before it is registered also applies only to category 1 and 2 buildings. Due to the relatively low numbers of buildings in those categories, and alongside other factors mentioned in this assessment, this suggests that the likelihood of a prosecution for a breach of those offences is low.

Duties to assess and manage fire safety risks

The largest category of buildings are category 3 and relevant HMOs. These buildings are subject to the fire safety duties only, with additional duties to co-operate and co-ordinate with other accountable persons for regulated buildings and other duty holders for relevant HMOs.

Duties relating to the assessment and management of fire safety risks are similar to duties currently situated within the Regulatory Reform (Fire Safety) Order 2005, with some exceptions for new offences such as those relating to the use of unqualified fire risk assessors. Data on enforcement activity under the provisions of the Regulatory Reform (Fire Safety) Order 2005 is published annually by StatsWales. Data³ for residential properties indicates that in the three

³ Audit activity by audit outcome and financial year

years 2021-22, 2022-23 and 2023-24 there were a total of 144 enforcement notices, 18 prohibition notices, and one prosecution.

he introduction of specific offences, such as the use of unqualified fire risk assessors, should act as a deterrent rather than leading to an increased number of prosecutions.

Referrals to the RPT (Wales)

Our assumptions on the number of referrals to the RPT (Wales) reflect % of cases occurring in different categories of building. There is no current comparator that can be used to test the assumptions applied when considering the number of cases that might be referred to the RPT (Wales), particularly in relation to resident enforcement.

Given the large number of buildings in category 3 (compared to category 1 or 2), we consider that most referrals to the RPT (Wales) will be in relation to category 3 buildings, and that they will be applications by an accountable person for a contravention order. This will happen where the resident is not adhering to the terms of a warning notice. However, we will be taking steps to reduce the number of referrals by ensuring engaging with residents and by issuing guidance to accountable persons. The fire safety authority and the building safety authority must also be notified when an accountable person is applying to the RPT (Wales) for an order (section 55), and may intervene to support a resident, particularly if they are known to be vulnerable. Local authorities are experienced in providing support to vulnerable individuals and making any necessary referrals to appropriate services. In HMOs, it will be the fire safety authority that will enforce the duties. In total, these actions should reduce the number of applications to the tribunal.

We considered whether data from England on resident enforcement under section 96 of the Building Safety Act 2022 might be helpful, albeit that would relate only to buildings of 18m+. However, we have not been able to identify any data either on the use of contravention notices by the principal accountable person or accountable person (s.96 of the Building Safety Act 2022) or on applications to the County Court to enforce against contravention notices (as per s.96(7) of the Building Safety Act 2022).

Building Safety Act 2022

Finally, it is worth noting that when assessing the potential impact of Building Safety Act 2022 in England for buildings 18 metres and higher, UK Government officials concluded that that Act as a whole, would have a minimal impact on the justice system. Part 4 of that Act contains several provisions that are similar to those in the Building Safety (Wales) Bill.

1. Bill Title

1.1. Working title of Bill

Building Safety (Wales) Bill

2. General information

2.1. Have you notified the judicial office of your proposals by completing Desk Instruction 7? (please seek advice from your legal advisors)

☒ Yes

☐ No (please explain why)

2.2. In brief, what is your proposal? (no more than half a page) (*This information is provided to help MoJ officials to understand the intent of the proposed change in order to be able to comment as fully as possible on its potential impacts*).

The Building Safety (Wales) Bill (the Bill) introduces a new building safety regime covering the management of building safety risks in multi-occupied residential buildings in Wales. It creates three categories of regulated buildings and attaches duties relating to the assessment and management of building safety risks to those buildings.

The Bill largely disapplies the Regulatory Reform (Fire Safety) Order 2005 in as far as it refers to residential buildings only (it will still apply to other buildings and, in limited terms, to residential buildings that are also workplaces). Broadly similar fire safety duties relating to residential properties and their associated enforcement and sanctions actions are contained in the Bill. These are the only provisions in the Bill which apply to relevant HMOs.

The Bill imposes duties on local authorities as building safety authorities, and on fire and rescue authorities (as the fire safety authority⁴). It defines an accountable person and principal accountable person, that is, the person or persons in a regulated building that are responsible for assessing and managing building safety risks in that building. It also defines those to be treated as an accountable person under section 35 as persons in a regulated building that are responsible for managing building safety risks for the part of the building they are responsible for under contract. It places duties on those persons in relation to building safety risks. It places duties on residents and owners of residential units in category 1 and 2 regulated buildings relating to building safety risks and on residents and owners of residential units in category 3 regulated buildings and occupiers of relevant HMOs relating to fire safety risks.

Building safety authorities and fire safety authorities will be able to make applications to the RPT (Wales) under specific circumstances, and to prosecute certain breaches under the Bill via the courts. Appeals against prescribed decisions of the building safety authority, and against the issue of prescribed notices of an enforcing authority will also be heard by the RPT (Wales).

Accountable persons will be able to issue warning notices to residents where they think there is a contravention of a resident duty. Accountable persons can then apply to the RPT (Wales) for a contravention order in certain circumstances. Accountable persons

⁴ Except for any in-scope buildings that are Crown premises, where the fire safety authority will be an inspector appointed by the Welsh Ministers.

and HMO duty holders can also apply to the RPT (Wales) for an access order in certain circumstances.

2.3. Please indicate when you will be undertaking a post-implementation review of this legislation and the enforcement actions arising from it.

A post-implementation review will begin in spring 2030, approximately three years after the first provisions are planned to come into force.

2.4. Is this legislative proposal similar in any way to legislation being brought forward in England? If so, please name that legislation and identify below any ways in which the legislation brought forward in Wales will differ.

If the legislation has no substantive difference from that in England, there may be no need to complete all parts of the JSII form.

Yes, but only in part. Many of the proposed provisions closely resemble provisions applicable to multi-occupied residential buildings in England which are set out in Part 4 of the Building Safety Act 2022.

There are fundamental differences, notably that the provisions in the 2022 Act apply only to multi-occupied buildings at least 18 metres in height or with at least 7 storeys (these are referred to as “higher-risk” buildings). In Wales, the Building Safety (Wales) Bill applies to multi-occupied residential buildings (with some exceptions), regardless of height, but the applicable provisions vary according to height (see the categories of building below). Provisions which set in place a new fire safety regime for residential buildings, effectively replacing the Regulatory Reform (Fire Safety) Order 2005 also apply to certain houses in multiple occupation (HMOs).

In Wales, there will be three categories of regulated building within the new regime as follows:

- Category 1 – at least 18 metres in height or has at least 7 storeys
- Category 2 – less than 18 metres in height and has fewer than 7 storeys, and is at least 11 metres in height or has at least 5 storeys
- Category 3 – less than 11 metres in height and has fewer than 5 storeys

The fire safety provisions in the Bill will also apply to “relevant HMOs” in Wales – i.e. those which are not let under a single joint tenancy.

The meaning of a regulated building is set out in section 2 and the meaning of a residential unit is set out in section 5.

2.5. Please specify the name of any other related legislation. How do you expect the relevant provisions of this (new) legislation to be enacted?

The Bill will be enacted as primary legislation in the Senedd. Secondary legislation (also enacted through the Senedd) will then follow.

As stated above, the Bill will largely disapply the Regulatory Reform (Fire Safety) Order 2005 in as far as it applies to residential buildings only (it will still apply to other buildings and to non-residential parts of mixed use buildings). Broadly similar fire safety duties relating to residential properties, and the associated enforcement and sanctions provisions, will be contained in the Bill. Beyond this, there is no legislation applicable to Wales which is directly comparable to the Bill.

The principal existing legislation regulating multi-occupied residential buildings in Wales is listed below:

- Housing Act 2004
- The Management of Houses in Multiple Occupation (Wales) Regulations 2006
- The Housing (Wales) Act 2014
- The Renting Homes (Wales) Act 2016
- The Renting Homes (Fitness for Human Habitation) (Wales) Regulations 2022
- The Landlord and Tenant Act 1985
- The Landlord and Tenant Act 1987
- The Commonhold and Leasehold Reform Act 2002
- The Regulatory Reform (Fire Safety) Order 2005
- The Fire Safety Act 2021

2.6. Please indicate the anticipated date when a) the legislative changes are expected to come into force and b) the date when the first anticipated impact on the justice system will arise.

The Bill was introduced to the Senedd on 7 July 2025. Subject to the Bill passing through the Senedd and receiving Royal Assent, the first Bill provisions, including those relating to the registration of category 1 buildings and some other provisions, are expected to commence from April 2027. While some cases relating to, for example, the identification of an accountable person or principal accountable person, may be heard by the RPT (Wales) soon after the provisions have commenced, enforcement action is not expected to take place immediately. In terms of enforcement activity, it may be another year before an impact on the justice system will arise.

2.7. If altering or introducing an offence, sanction or penalty, which of the following groups will the proposal affect and in what circumstances? (Tick all that apply)

- ☒ Individuals
- ☒ Private Institutions (e.g. Businesses)
- ☒ Public Institutions (e.g. Government Departments)

A duty holder role will be created for regulated buildings and relevant HMOs.

In regulated buildings this is referred to as the accountable person. Where a building has more than one accountable person then one of those accountable persons will be the principal accountable person and the principal accountable person will have additional duties compared to the other accountable persons in the building. Where there is only one accountable person for the building, they will be the principal accountable person. In relevant HMOs this will be the HMO duty holder.

Duties will be placed on the principal accountable person and any accountable persons relating to the assessment and management of building safety risks in the parts of regulated buildings that they are responsible for, and on HMO duty holders for the relevant HMO.

Whilst a principal accountable person or accountable person will be able to engage others to support them in fulfilling their duties, they cannot abandon or transfer their duties whilst they remain the principal accountable person or accountable person. The accountability for those duties remains with the accountable person or principal accountable person.

Where a Special Measures Order (which is only applicable to category 1 buildings) is in place, some or all of the duties of the principal accountable person and/or accountable persons in the building may be passed to a Special Measures Manager, subject to an order made by the RPT (Wales). Under the Landlord and Tenant Act 1987 (section 24), there may be a manager appointed to carry out duties which could include building safety functions. These duties would not fall to the principal accountable person or accountable person while that manager is in place.

We do not hold accurate data regarding the ownership of multi-occupied buildings in Wales. There are a range of ownership models across the private and social housing sectors that fall within scope of the proposed building safety regime. This means that an accountable person and principal accountable person could be any of the following:

- Freeholder
- Head Lessee or Superior Lessee
- Landlord (including private landlords and social landlords)
- Resident Management Company or Right to Manage Company
- Commonhold association

We consider it unlikely that a category 1 building will be owned by an individual (as opposed to a company or some other organisation) whereas it is more likely that an individual will own a category 2 or category 3 building (although we do not have an indication of the numbers).

The legislation will place duties on residents and owners of residential units within regulated buildings⁵ and on occupiers of relevant HMOs⁶. The provisions placing duties on residents are to be found in Chapter 7 for regulated buildings and in Part 2 of the

⁵ A regulated building is defined in section 2 of the Bill as a building that (a) contains at least 2 residential units, and (b) is wholly or mainly in Wales.

⁶ A relevant HMO is defined in section 67 of the Bill

Bill, section 74 for relevant HMOs. The principal accountable person and any accountable persons in regulated buildings will usually be responsible for enforcing those resident duties, through informal discussion, warning notices, and an application to the RPT (Wales) for a contravention order. Enforcing authorities may also enforce against residents where it is appropriate to do so.

The functions of regulation are placed on local authorities in Wales (as the building safety authority) and the Fire and Rescue Authorities (as the fire safety authority⁷). Those functions include:

- Determinations as to who the principal accountable person for a building is (where there are two or more people that meet the definition) (a function of the building safety authority)
- Functions relating to the registration of category 1 and 2 buildings (the building safety authority)
- Receipt of occurrence recording (both the fire safety authority and building safety authority)
- Resident complaints (the building safety authority)
- Issuing of building certificates for category 1 buildings (the building safety authority)
- Enforcement of the duty to assess and manage fire safety risks (the fire safety authority)
- Enforcement of all other duties under the Bill (the building safety authority)
- Enforcement of duties in relation to relevant HMOs (the fire safety authority)

Both the building safety authority and fire safety authority have enforcement powers, and enforcement tools available to use, including:

- Information notices
- Compliance notices
- Urgent action notices
- Prohibition notices (fire safety authority only)
- Direct offences
- Powers of entry
- Powers to apply for access orders

Failure to comply with an information notice, compliance notice, urgent action notice or prohibition notice will be an offence.

Residential fire safety duties and their associated enforcement and sanctions actions from the Regulatory Reform (Fire Safety) Order 2005 will be replicated, with some amendments, in the new building safety regime. This means the inclusion in the Bill of compliance notices (akin to enforcement notices under the Regulatory Reform (Fire Safety) Order 2005), prohibition notices, and similar offences to those in the Regulatory Reform (Fire Safety) Order 2005. Fire and Rescue Authorities will remain responsible for enforcement in relation to fire safety (except in relation to Crown premises).

⁷ For any Crown premises in Wales within scope of the Bill, the fire safety authority will be the Crown premises inspector appointed by the Welsh Ministers, not the fire and rescue authority. This reflects the position under art.25 of the Regulatory Reform (Fire Safety) Order 2005. There are understood to be fewer than 5 such Crown premises in Wales.

- 2.8. Does your legislation only have impact in Wales or are you working jointly with other administrations? Tick all that apply and provide brief details as appropriate, including whether your proposal will create different laws in Wales compared to England, Scotland and / or Northern Ireland.

Please note that, with the exception of the devolved tribunals, the MoJ administers the justice system in England and Wales only. Please talk directly to the MoJ devolution unit if you anticipate your proposal could have an impact on courts or prisons in Scotland or Northern Ireland.

- ☒ Wales only
☐ England
☐ Scotland
☐ Northern Ireland
☐ Other (Please Specify)

The legislation will cover premises wholly or mainly in Wales, although accountable persons and principal accountable persons based anywhere could be liable to enforcement action with regards to buildings in Wales. It should also be noted that the building safety authority or fire safety authority may need to enter premises outside Wales in pursuit of their functions – for example, they may need to view documentation.

- 2.9. If your legislation could directly impact visitors to Wales or other people not normally resident in Wales, or if your legislation is significantly different from elsewhere in England, Scotland or Northern Ireland:

- a) what arrangements have you made to ensure ongoing awareness raising of the different legislative approach on this issue in Wales?
b) what will be the implications on the enforcement agencies of taking forward action against individuals not usually resident in Wales?

- a) We have engaged extensively with stakeholders and stakeholder representative bodies to raise awareness of the duties that will be introduced by the Building Safety (Wales) Bill.

It is unlikely that legislation will directly impact on visitors to Wales and therefore awareness raising of the different legislative approach with visitors will not be necessary. Only buildings within Wales are within the scope of the Bill. Potentially, the legislation could impact on an individual who is not normally resident in Wales if they are someone who rents, leases or owns a dwelling in a regulated building in Wales which they occupy occasionally (for example as a second home or student flat). Where this is the case, the individual will be known to the accountable person or principal accountable person for the building in question and provided with information regarding the new regime as set out in the Bill.

Similarly, an accountable person or principal accountable person could potentially be based outside Wales.

Category 1 and category 2 buildings within the scope of the Bill will be registered with the building safety authority (local authority) and the accountable person/ principal accountable person will be identified at that point and made aware of their duties under the regime, regardless of whether they are resident in Wales or not.

- b) Where it is necessary to take action against individuals not normally resident in Wales, there should be no additional implications beyond those involved in taking action against an individual who is resident in Wales. There are no additional implications for enforcing this legislation outside Wales. The usual considerations of enforcement outside of jurisdiction will apply.

2.10. What are the options under consideration and how does this change the existing situation?

Three options were considered, and these are published in the [Regulatory Impact Assessment](#) for the Bill.

The Building Safety (Wales) Bill reflects the preferred option that was taken forward.

It places duties on the accountable person/principal accountable person (and those treated as accountable persons within section 35) in regulated buildings and on duty holders in relevant HMOs relating to the assessment and management of building safety risks.

Residents and owners of residential units will have duties placed on them under the Bill, and as such will be expected to be active participants in ensuring the ongoing safety of buildings. In regulated buildings, the accountable person will be expected to support residents not to breach those duties and will be given powers to give a warning notice to require a resident to take certain action by a specified date. In the event the resident fails to take action following a warning notice, the accountable person will have powers to apply to the RPT (Wales) for an order requiring residents to remedy a breach. The building safety authority and the fire safety authority will also have direct powers of enforcement against residents of regulated buildings. The fire safety authority will have powers of enforcement against occupiers of relevant HMOs.

In relation to enforcement, the following functions will be placed on the building safety authority and the fire safety authority:

Investigatory powers

- Applications to the relevant court or tribunal for an order of access.
- Requiring of information or documents by issuing an information notice. Failing to comply with an information notice may result in a prosecution which, on conviction, may result in an unlimited fine and/or up to two years imprisonment.

Enforcement powers

- Issuing of prohibition notices (fire safety authority only).
- Issuing compliance notices and urgent action notices. These may be applied to a range of contraventions. The consequence of not complying with a compliance notice or urgent action notice is potentially an unlimited fine and/or two years imprisonment.
- Prosecution for breaches of duties.
- Applications to the RPT (Wales) for a special measures order to ensure proper ongoing assessment and management of building safety risks where there has been a serious failure, or a failure on two or more occasions.

Non-compliance by the accountable person/principal accountable person with certain duties placed upon them indicate a lack of accountability for building safety and may also reflect an attempt to avoid scrutiny in relation to the way in which building safety risks are being assessed or managed. Failings to assess or manage building safety risks could lead to serious injury, significant costs through damage to or loss of property, or loss of life. This is why many of the offences have been created as triable either way offences. The

sanctions applied by the court in relation to those offences, can be an up to unlimited fine or imprisonment of up to two years, and in some cases an additional fine for each day that the offence continues. This allows for the court to apply a sanction that is appropriate to the degree of non-compliance as well as the seriousness and risk attached to the offence.

Residential fire safety duties and their associated enforcement and sanctions actions from the Regulatory Reform (Fire Safety) Order 2005 will be largely replicated in the new building safety regime, with two new offence relating to competence of fire risk assessors. This means the inclusion in the Bill of enforcement notices, prohibition notices, and the offences from the Regulatory Reform (Fire Safety) Order 2005.

The offences which will be introduced by the Building Safety (Wales) Bill are set out in the following table.

Table 1

Offence	Who can commit it
The principal accountable person for a category 1 building or a category 2 building commits an offence if the building is occupied but not registered. A person who has been convicted of this offence commits a further offence if the building continues to be occupied but not registered.	The principal accountable person for a category 1 building or category 2 building
A person commits an offence if they fail to notify the building safety authority of a change to any information included in the register for a category 1 or 2 building. A person who has been convicted of this offence commits a further offence if the person continues to fail to comply after conviction.	The principal accountable person for a category 1 building or category 2 building
It is an offence if a person fails without reasonable excuse to provide a building safety authority a relevant declaration. A person who has been convicted of this offence commits a further offence if the person continues to fail to comply after conviction.	The principal accountable person for a category 1 building or category 2 building
It is an offence if a person fails to apply to the building safety authority to remove the category 1 or 2 building from the register if it is believed that it is not a category 1 or 2 building or if the building will not be occupied for at least 6 months. A person who has been convicted of this offence commits a further offence if the person continues to fail to comply after conviction.	The principal accountable person for a category 1 building or category 2 building
A person commits an offence if they engage a person to conduct a fire risk assessment who is known, or should reasonably have been known, not to be competent to do so.	A principal accountable person and landlord of a relevant HMO

If a fire risk assessment for a regulated building is made by a person who is not a competent person, the person who makes the assessment commits an offence.	Any person conducting a fire risk assessment who is not competent to do so.
A person commits an offence if the person offers to make a fire risk assessment for a regulated building, and the person is not a competent person.	Any person offering to conducting a fire risk assessment who is not competent to do so.
An accountable person must give relevant building safety information to the building safety authority and the fire safety authority; it is an offence if they fail to comply without a reasonable excuse. Relevant building safety information means information about building safety risks relating to the part of the building for which the accountable person is responsible.	An accountable person for a category 1 building
A principal accountable person must apply to the building safety authority for a building certificate within 28 days of being directed to do so by the building safety authority. It is an offence if they do not comply. It is an offence if a person does not apply for a further building certificate within 5 years of the most recent building certificate being issued. A person commits a further offence if they continue to fail to comply with the duty to either apply for a building certificate having been directed to do so or apply within 5 years of the most recent building certificate being issued.	A principal accountable person for a category 1 building
A principal accountable person commits an offence if they fail to display a building certificate and other related information in a conspicuous place in the category 1 building which is occupied and registered. The person commits a further offence if they continue to fail to comply once they have been convicted.	A principal accountable person for a category 1 building
A person commits an offence if they fail to give information and documents to an incoming accountable person without reasonable excuse. A person commits a further offence if they continue to fail to comply once they have been convicted of the offence.	An outgoing accountable person for a category 1 building, category 2 building or category 3 building
A person commits an offence if they conduct an HMO fire risk assessment, when not competent.	The person who makes the assessment
A person commits an offence if they fail to comply with an information notice, a compliance notice or contravenes a prohibition or restriction contained in a prohibition notice.	Any person (on whom the notice may be served).

A person commits a further offence if the failure or contravention continues after the conviction.	
A person commits an offence if, with intent to deceive, the person impersonates an authorised officer. A person commits an offence if the person intentionally obstructs an authorised officer exercising or seeking to exercise their functions.	Any person
An accountable person for a regulated building, or a person treated as an accountable person, or a duty holder for a relevant HMO, commits an offence if they contravene a requirement imposed on the person by this Act or regulations made under it, and the contravention places one or more people in or about the building at a significant risk of death or serious injury arising from a building safety risk.	Accountable person or duty holder for a relevant HMO.
A person who is required by this Act or regulations to record or keep any information commits an offence if they include any information that the person knows to be false in a material respect.	Any person (required to keep information by this Act)

Our proposals for Enforcement and Sanctions are set out in the table which follows.

Table 2 sets out a full list of the Principal Accountable Person (PAP) and Accountable Person (AP) duties which will be imposed within the building safety regime and the corresponding enforcement and sanctions which are intended to be applicable.

Table 2

POLICY AREA	BUILDING CATEGORY	DESCRIPTION	SANCTION
General offences	n/a	Section 93 (1) A person commits an offence if, with intent to deceive, the person impersonates an authorised officer.	Prosecution Summary only.
		Section 93 (3) A person commits an offence if the person intentionally obstructs an authorised officer exercising, or seeking to exercise, their functions.	Prosecution Summary only.
	1, 2, 3 Relevant HMO	Section 95 (1) A person required by a provision of this Act or regulations made under it to record or keep information commits an offence if they include in that information any information they know to be false in a material respect.	Prosecution Triable either way.
		Section 95 (3)	Prosecution, Triable either way.

		A person knowingly and recklessly gives false or misleading information to an enforcing authority under the Act or to any other person in purported compliance with a duty imposed by this Act or regulations made under it.	
	1, 2, 3 Relevant HMO	Section 94 (1) and (2) Contravention of a duty under this Act by a PAP, AP or duty holder for a relevant HMO giving rise to a significant risk of death or serious injury arising from a building safety risk	Prosecution, Triable either way.
	1, 2, 3 Relevant HMO	Section 88 (1) A person commits an offence if the person— a) fails to comply with an information notice given to the person, b) fails to comply with a compliance notice given to the person, c) contravenes a prohibition or restriction contained in a prohibition notice, d) fails to comply with section 85(6) (steps to be taken by recipient of prohibition notice).	Prosecution, Triable either way.
Registration of buildings	1 and 2	Section 18 (1) The principal accountable person for a category 1 building or a category 2 building commits an offence if the building is occupied but not registered. Section 18 (3) A person who has been convicted of this offence commits a further offence if the building continues to be occupied but not registered.	Prosecution, Triable either way. Prosecution, Summary only.
	1 and 2	Section 20 (2) A person commits an offence if they fail to notify the building safety authority of a change to any information included in the register for a category 1 or 2 building. Section 20 (4) A person who has been convicted of this offence commits a further offence if the person continues to fail to comply after conviction.	Prosecution, Triable either way. Prosecution, Summary only.
	1 and 2	Section 23 (8) It is an offence if a person fails without reasonable excuse to provide a building safety authority a relevant declaration. Section 23 (10) A person who has been convicted of this offence commits a further offence if the person continues to fail to give the building safety authority a relevant declaration.	Prosecution, Triable either way. Prosecution, Summary only.
	1 and 2	Section 24 (4)	Prosecution, Summary only.

		<p>It is an offence if a person fails to apply to the building safety authority to remove the category 1 or 2 building from the register if it is believed that it is not a category 1 or 2 building or if the building will not be occupied for at least 6 months.</p> <p>Section 24 (5) A person who has been convicted of this offence commits a further offence if the person continues to fail to comply after conviction.</p>	Prosecution, Summary only.	
Key Documentation	1	<p>Section 41 (5) A PAP commits an offence if the person fails to apply for a building certificate within 28 days of receiving a direction from the building safety authority.</p>	Prosecution, Triable either way.	
	1	<p>Section 41 (5) A PAP commits an offence if the person fails to apply for a building certificate within 5 years of the date the most recent building certificate was issued.</p>	Prosecution, Triable either way.	
	1	<p>Section 41(7) A person who has been convicted of an offence under section 41(5) commits a further offence if the person continues to fail to comply with section 41(3) or 41(4) (as the case may be) after the conviction.</p>	Prosecution Summary only	
	1	<p>Section 44 (5) A PAP commits an offence if the person fails without reasonable excuse to display a building certificate and other related information in a conspicuous place in the building which is occupied and registered.</p>	Prosecution, Triable either way	
	1	<p>Section 44 (5) When a Special Measures Order is in force a PAP commits an offence if, without reasonable excuse they fail to ensure that no building certificate relating to the building, or copy of such a certificate, is displayed in the building.</p> <p>Section 44 (7) A person who has been convicted of this offence commits a further offence if the person continues to fail to comply after conviction</p>	<p>Prosecution, Triable either way</p> <p>Prosecution, Summary conviction.</p>	
	1	<p>Section 42 (1) The PAP who applies for a building certificate must include information specified in regulations with the application.</p>	Compliance notice	
	1	<p>Section 36 (3) The PAP must prepare a safety case report as soon as reasonably practicable.</p>	Compliance notice	

		Section 36 (4) As soon as possible after preparing the safety case report, the PAP must give a copy of it to the building safety authority for the building.	
	1	Section 36 (5) The PAP must keep the safety case report under review and make revisions necessary to keep the report up to date.	Compliance notice
	1	Section 36 (7) As soon as possible after revising the safety case report the PAP must give the revised report to the building safety authority.	Compliance notice
Occurrence Recording System and Reporting	1	Section 38 (1) An AP must give relevant building safety information to the building safety authority for the building, and the fire safety authority for the building.	Prosecution
	1	Section 37 (1) The PAP must establish and operate an occurrence recording system for the purpose of enabling the APs for the building to report building safety occurrences to the building safety authority and fire safety authority.	Compliance notice
	1	Section 37 (4) The PAP must ensure that the occurrence recording system complies with regulations made by Welsh Ministers.	Compliance notice
Resident engagement	1	Section 39 (1) The PAP for an occupied category 1 building must— (a) prepare a strategy for promoting the participation of relevant persons in building safety decisions in relation to the building, and (b) act in accordance with the strategy.	Compliance notice
	1	Section 39 (4) The residents' engagement strategy for a building must include information about — (a) the information that will be given to relevant persons about building safety decisions, (b) the aspects of those decisions that relevant persons will be consulted about, (c) the arrangements for obtaining and taking account of the views of relevant persons, (d) how the appropriateness of methods for promoting participation will be measured and kept under review, and (e) any other matters specified in regulations.	Compliance notice
	1	Section 39 (5) The principal accountable person must prepare the residents' engagement strategy as soon as possible after the latest of the following events occurs— (a) the building becomes occupied;	Compliance notice

		(b) the building becomes a category 1 building; (c) the person becomes the principal accountable person for the building; (d) this section comes into force.	
	1	Section 39 (6) The principal accountable person must— (a) review the residents' engagement strategy at the times specified in regulations, and (b) revise the strategy if the person considers it necessary or appropriate to do so.	Compliance notice
		Section 39 (7) (b) take any representations made in response to the consultation into account when next reviewing the strategy	Compliance notice
	1	Section 40 (1) (b) each accountable person for the building must give a copy of the strategy to— (i) each adult resident of the part of the building for which the accountable person is responsible, (ii) each owner of a residential unit in that part of the building, and (iii) any other person specified in regulations made by the Welsh Ministers.	Compliance notice
Information and Complaints	1, 2 and 3	Section 45 (1) The Welsh Ministers may by regulations require an accountable person for a regulated building to keep— (a) relevant information specified in the regulations; (b) relevant documents specified in the regulations. Section 45 (4) Where an accountable person is required to keep relevant information or a relevant document, but does not have it, the person must obtain the information or the document unless it is not practicable to do so. Section 45 (5) An accountable person who is required to keep relevant information must so far as possible ensure that the information is accurate and is kept up to date.	Compliance notice
	1, 2 and 3	Section 46 The Welsh Ministers may by regulations require an accountable person for a regulated building to give relevant information specified in the regulations, or a relevant document specified in the regulations, to— (a) the building safety authority for the building;	Compliance notice

		(b) the fire safety authority for the building; (c) another accountable person for the building; (d) residents of the building; (e) owners of residential units in the building; (f) any other person specified in the regulations	
	1, 2 and 3	Section 47 (2) The Welsh Ministers may by regulations require an outgoing accountable person for a regulated building to give relevant information specified in the regulations, or relevant documents specified in the regulations, to— (a) a successor; (b) the building safety authority for the building; (c) the fire safety authority for the building. An outgoing accountable person commits an offence if the person fails without reasonable excuse to comply with a requirement imposed by regulations under this section.	Prosecution, Triable either way
	1, 2 and 3	Section 47(7) A person who has been convicted of an offence under subsection (5) commits a further offence if the person continues to fail to comply with the requirement in question after the conviction.	Prosecution, Summary only
	1	Section 48 (1) The principal accountable person must establish and operate a system for the investigation of relevant complaints.	Compliance notice
	1	Section 48 (3) The principal accountable person must establish and start to operate the complaints system as soon as possible after the latest of the following events occurs— (a) the building becomes occupied; (b) the building becomes a category 1 building; (c) the person becomes the principal accountable person for the building; (d) this section comes into force	Compliance notice
	2 and 3	Section 49 (1) The Welsh Ministers may by regulations require an accountable person for an occupied category 2 building or an occupied category 3 building to make and give effect to arrangements for the consideration of relevant complaints.	Compliance notice
Building safety risks	1, 2 and 3	Section 32 (1) Each accountable person for the building must take all reasonable steps to: (a) prevent a fire safety risk materialising in relation to the part of the building for which the person is responsible.	Compliance notice

		(b) reduce the severity of any incident resulting from such a risk materialising in relation to that part.	
	1,2 and 3	<p>Section 29 (5) Requirement for fire risk assessment for a regulated building or relevant HMO to be made by competent person. The person commits an offence if they are not competent and the PAP (or landlord for an HMO) commits an offence if they knew, or ought reasonably to have known, the person was not competent.</p> <p>Section 29 (7) A person commits an offence if— (a) the person offers to make a fire risk assessment for a regulated building, and (b) the person is not a competent person</p>	<p>Prosecution,</p> <p>Triable either way.</p>
	1, 2 and 3	<p>Section 31 (1) The PAP for a regulated building must ensure that: (a) the findings of every fire risk assessment and review relating to the building are recorded in writing, and (b) a copy of each assessment is given to: (i) every other accountable person for the building (where there is more than one accountable person), and (ii) any other person who is treated as an accountable person by virtue of section 35.</p>	Compliance notice
	1 and 2	<p>Section 34 (1) Each AP for the building must take all reasonable steps to: (a) prevent a structural safety risk materialising in relation to the part of the building for which the person is responsible, and (b) reduce the severity of any incident resulting from such a risk materialising in relation to that part.</p>	Compliance notice
	1 and 2	<p>Section 33 (6) In assessing structural risks, an AP who is responsible for a part of a building must ensure that the findings of every structural risk assessment for that part are recorded in writing, and a copy of each assessment is given to the PAP for the building (where the AP is not the PAP).</p>	Compliance notice
Co-operation and co-ordination	1, 2, 3	<p>Section 60 (2) When carrying out their duties under this Act and regulations made under it, each accountable person must so far as possible co-operate and co-ordinate with every other accountable person for the regulated building (where there is more than one accountable person for a regulated building)</p>	Compliance notice

		<p>(4) When carrying out their duties under this Act and regulations made under it, the accountable person must so far as possible co-operate and co-ordinate with each duty holder for the relevant HMO.</p> <p>(8) If an order under section 24 of the Landlord and Tenant Act 1987 (c. 31) is in force which appoints a manager to carry out any building safety functions in relation to the building or any part of it, the accountable person must co-operate with the manager for the purpose of the manager carrying out their building safety functions under the order.</p> <p>(11) If one or more other persons are responsible persons for the purposes of the Regulatory Reform (Fire Safety) Order 2005 in relation to any premises that— (i) form part of the regulated building, or (ii) form part of the same structure or set of structures as the regulated building (see sections 2 to 4) and lie wholly or partly above or below it, the accountable person must so far as possible co-operate and co-ordinate with each responsible person for the purpose of each responsible person carrying out their duties under the Regulatory Reform (Fire Safety) Order 2005.</p>		
	1	<p>Section 60</p> <p>(6) If a special measures order is in place in relation to the building the accountable person must co-operate with the special measures manager appointed by the order for the purpose of the manager carrying out their functions under the order.</p>	Compliance notice	
	HMOs	<p>Section 78 (2)</p> <p>Where there is more than one duty holder for a relevant HMO when carrying out their duties under this Act and regulations made under it, each duty holder must so far as possible co-operate and co-ordinate with every other duty holder for the relevant HMO.</p> <p>Section 78 (4)</p> <p>Where— (a) a person is a duty holder for a relevant HMO that is contained in a regulated building, and (b) one or more other persons are accountable persons for the regulated building, when carrying out their duties under this Act and regulations made under it, the duty holder must so far as possible co-operate and co-ordinate with each accountable person for the regulated building.</p> <p>Section 78 (6)</p>	Compliance notice	

		<p>Where— (a) a person is a duty holder for a relevant HMO that is contained in a category 1 building, and (b) a special measures order is in force in relation to the category 1 building, the duty holder must co-operate with the special measures manager appointed by the order for the purpose of the manager carrying out their functions under the order</p> <p>Section 78 (8) Where— (a) a person is a duty holder for a relevant HMO that is contained in a regulated building, and (b) an order under section 24 of the Landlord and Tenant Act 1987 (c. 31) is in force 5 which appoints a manager to carry out any building safety functions in relation to the regulated building or any part of it, the duty holder must co-operate with the manager for the purpose of the manager carrying out their building safety functions under the order.</p>		
Resident duty	1, 2, 3	<p>Section 53 Duty on residents and owners of residential units to provide access where an accountable person for an occupied regulated building makes a request to a relevant person (i.e. an adult resident or any person who has control over entry to the unit) for entry to relevant premises. The request for access must be made for the following purposes —</p> <p>(a) enabling the accountable person to determine whether there is or has been a contravention of— (i) section 51(2) (fire safety duties of residents etc. of regulated buildings); (ii) section 52(2) (structural safety duties of residents etc. of category 1 and 20 category 2 buildings);</p> <p>(b) where the accountable person is the principal accountable person for the building, enabling that person to comply with sections 28 to 31 or regulations made under those sections (assessment of fire safety risks relating to regulated buildings);</p> <p>(c) enabling the accountable person to comply with section 32 or regulations made under it (management of fire safety risks relating to regulated buildings);</p> <p>(d) enabling the accountable person to comply with section 33 or 34 or regulations made under those sections (assessment and management of structural safety risks relating to category 1 and category 2 buildings);</p> <p>(e) enabling a person who is treated as an accountable person by virtue of section 35 to comply with section 32 or 34 or regulations made under those sections.</p>	Access order Warning notice	
Duties of occupiers of relevant HMOs	HMOs	<p>Section 76 An occupier of a relevant HMO must not— (a) in, on or in relation to the relevant HMO, do any act that creates a significant risk or significantly increases any existing risk that, if fire breaks out in the relevant HMO, the fire will spread from the relevant HMO;</p>	Compliance notice	

		(b) without reasonable excuse, remove, damage, or interfere with the functioning of anything that— (i) is in, or forms part of, the relevant HMO, and is intended to improve the safety of people in or about the relevant HMO in relation to a fire safety risk.	
	HMOs	Section 76 An occupier of a relevant HMO must comply with a request for information if— (a) the request— (i) is made by the landlord of the relevant HMO, and (ii) is for information that is necessary to enable the landlord to comply with sections 70 to 73 or regulations made under those sections (assessment of fire safety risks); (b) the request— (i) is made by a duty holder for the relevant HMO, and (ii) is for information that is necessary to enable the duty holder to comply with section 74 or regulations made under it (management of fire safety risks).	Compliance notice
	HMOs	Section 77 An occupier of a relevant HMO must provide access to a duty holder for a relevant HMO who makes a request for entry if the purposes are enabling the duty holder— (a) to comply with sections 70 to 73 or regulations made under those sections 25 (assessment of fire safety risks), where the duty holder is the landlord of the relevant HMO; (b) to comply with section 74 or regulations made under it (management of fire safety risks).	HMO access order

The Bill makes provision allowing APs to issue a “warning notice”, and subsequently apply to the RPT (Wales) for a contravention order, requiring the resident or owner of a residential unit to take specified steps, provide specified information, pay a specified sum, or prohibit the person from doing a specified act, relating to ‘resident duties’. The duties intended to be subject to warning notices are set out in the table below:

POLICY AREA	BUILDING CATEGORY	DUTY
Resident duty	1, 2 and 3	Section 51(2) Duty on residents and owners of residential units who must not : (a) in, on, or in relation to, any of the common parts of the building, do any act that creates a significant risk of a fire safety risk materialising in relation to the building; (b) in, on or in relation to the residential unit, do any act that creates a significant risk or significantly increases any existing risk that, if fire breaks out in the residential unit, the fire will spread from the unit; (c) without reasonable excuse, remove, damage, or interfere with the functioning of anything that— (i) is in, or forms part of, any of the common parts of the building, and (ii) is intended to improve the safety of people in or about the building in relation to a fire safety risk.
		Section 51(4)

		<p>Duty on residents and owners of residential units must comply with a request for information if—</p> <p>(a) the request— (i) is made by the principal accountable person for the building, and (ii) is for information that is necessary to enable the principal accountable person to comply with sections 28 to 31 or regulations made under those sections (assessment of fire safety risks);</p> <p>(b) the request— (i) is made by the accountable person who is responsible for the part of the building containing the residential unit, and (ii) is for information that is necessary to enable the accountable person to comply with section 32 or regulations made under it (management of fire safety risks);</p> <p>(c) the request— (i) is made by the accountable person who is responsible for the part of the building containing the residential unit, and (ii) is for information that is necessary to enable a person who is treated as an accountable person by virtue of section to comply with section 32 or regulations made under it.</p>	
	1 and 2	<p>Section 52(2)</p> <p>Duty on residents and owners of category 1 and 2 buildings must not:</p> <p>(a) in, on, or in relation to, any of the common parts of the building, do any act that creates a significant risk of a structural safety risk materialising in relation to the building;</p> <p>(b) in, on or in relation to the residential unit, do any act that creates a significant risk of a structural safety risk materialising in relation to the building.</p>	
	1 and 2	<p>Section 52(4)</p> <p>Duty on residents and owners of category 1 and 2 buildings must comply with a request for information if—</p> <p>(a) is made by the accountable person who is responsible for the part of the building containing the residential unit, and (b) is for information that is necessary to enable—</p> <p>(i) the accountable person to comply with section 33 or 34 or regulations made under those sections (assessment and management of structural safety risks);</p> <p>(ii) a person who is treated as an accountable person by virtue of section to comply with section 34 or regulations made under it.</p>	

2.11. If you are creating a new civil sanction or penalty which court or tribunal, in your opinion, should deal with it?

If an accountable person or principal accountable person wishes to appeal against certain/prescribed decisions of the building safety authority or fire safety authority, the case can be referred to the RPT (Wales). The RPT (Wales) is the appropriate independent tribunal dealing with disputes relating to rented and leasehold properties in Wales. We have held several meetings with officials and members of the Tribunal to consider the appropriateness of referring cases to them.

If required, cases will be referred to the Upper Tribunal.

Offences listed in table 2 will be directed to the crown or Magistrates' Court, as is appropriate for this type of offence.

Criminal Offences and Civil Penalties and Sanctions

2.12. Which of the following are you creating / amending? (Tick all that apply)

- ☒ Civil Sanctions
Fixed Penalties
- ☒ Civil Orders
- ☒ Criminal Sanctions
- ☒ Criminal Offences
- ☐ Other (Please Specify)

The list of offences and other sanctions are included in tables 1 and 2 above.

Residential fire safety duties and their associated enforcement and sanctions actions from the Regulatory Reform (Fire Safety) Order 2005 will be largely replicated in the new building safety regime, with additional offences relating to the competence of fire risk assessors. This means the inclusion in the Bill of enforcement notices, prohibition notices, and the offences from the Regulatory Reform (Fire Safety) Order 2005.

2.13. If you are creating a criminal offence, is it:

- ☒ Summary Only (heard before a bench of lay magistrates / judge only)
- ☒ Triable Either Way
- ☐ Indictable Only (heard before a judge and jury)

In cases where the maximum penalty is to be an unlimited fine, and a triable either way offence is warranted, please explain why a summary only offence is not considered appropriate. This is especially relevant if few, if any, cases are anticipated.

The preferred route for ensuring compliance is by non-statutory means. See table 1 above which sets out the criminal offences. All offences, except for one offence which is summary only, are triable either way. Where an offence is triable either way, this is because a breach of a building safety duty could reflect an attempt to avoid accountability for building safety and *could* lead to death, injury and significant costs associated with a serious fire or structural event in a building. For example, a failure to register the building could reflect an attempt to avoid accountability for building safety. A person failing to identify themselves as the principal accountable person could lead to delays in the assessment and management of building safety risks. In taller, more complex buildings this could mean that risks to significant numbers of people are not identified or managed properly or in a timely manner. To give another example, a failure to engage a person who is competent to undertake a fire risk assessment will mean that fire safety risks in the building are not being assessed or managed properly. An inadequate fire risk assessment can have catastrophic consequences in terms of damage to/loss of property, injury and loss of life.

The sanctions applied to the offences created by the Bill do, however, provide flexibility for the court to determine the appropriate scale of penalty dependent on the nature of the breach (or breaches).

Enabling most offences to be triable either way is intended to provide scope for the courts to determine the appropriate scale of the penalty. In some cases, the Magistrates' Court will be an appropriate avenue for sanctions. More complex breaches may be more appropriate for a Crown Court and / or a more serious sanction.

Triable either way cases, punishable by an unlimited fine and/or up to two years imprisonment if tried on indictment reflects the current position as regards prosecution of offences under the Regulatory Reform (Fire Safety) Order 2005 and comparable offences under the Building Safety Act 2022.

- 2.14. Who will be responsible for the enforcement of your legislative proposal and how will they take this role forward? Will there be an increased / reduced need for enforcement action? Please also include the anticipated costs of enforcement and how it will be funded.

The 22 local authorities in Wales will be the building safety authority for the new regime within their area of statutory responsibility and will be responsible for its enforcement. They will also have the power to delegate the functions of regulation including enforcement to other local authorities in Wales.

The Regulatory Impact Assessment for the Bill estimates the administrative cost of the regime to be £5.31m over 10 years to local authorities and £2.59m over 10 years to fire and rescue authorities.

Bill provisions include a replacement for the current Regulatory Reform (Fire Safety) Order 2005 so far as it applies to multi-occupied residential premises. Fire and Rescue Authorities will remain the enforcing authority for replacement Regulatory Reform (Fire Safety) Order 2005 provisions, except in relation to Crown premises where the fire inspector will be the Fire Safety Authority. The role and powers of Fire and Rescue Authorities would be substantially the same as they are under the current Regulatory Reform (Fire Safety) Order 2005 as will the cost of enforcement.

- 2.15. What is the anticipated number of cases per year? Please provide details of any evidence of assumptions on which estimates are based.

While the introduction of a replacement for the Regulatory Reform (Fire Safety) Order 2005 for multi-occupied residential buildings will largely replicate current enforcement procedures, the rest of the Bill introduces a new building safety regime. This makes it extremely difficult to predict the number of cases.

However, we anticipate that there should be very little impact on the civil and criminal justice systems other than the RPT (Wales), largely in relation to resident enforcement in category 3 buildings. Our estimate is for 1,100 applications (total) to the RPT (Wales), which includes all areas of responsibility the tribunal will have under the Bill (as described on page 2 - *Matters heard by the Residential Property Tribunal (Wales)*) of which, almost 700 are expected to be Contravention Order applications in relation to resident duties.

In terms of the duties to assess and manage fire safety risks, that apply across all regulated buildings and relevant HMOs, the duties and their associated enforcement and sanctions actions from the Regulatory Reform (Fire Safety) Order 2005 will be largely replicated, with some amendments, in the new building safety regime.

Data on enforcement activity under the provisions of the Regulatory Reform (Fire Safety) Order 2005 is published annually by StatsWales. Data for residential properties indicates that in the three years 2021-22, 2022-23 and 2023-24 there were a total of 144 enforcement notices, 18 prohibition notices and one prosecution. Our proposed introduction of a new fire safety regime for multi-occupied residential buildings, which is largely similar to the provisions in the existing Regulatory Reform (Fire Safety) Order 2005, is unlikely to result in a significant increase in enforcement actions and therefore we predict that the number and type of enforcement actions necessary in the future will remain unchanged.

The additional offences relate to the competence of fire risk assessors. It is not anticipated that this will give rise to a significant number of prosecutions, as assessors who are not competent can be (and are) prosecuted under the Regulatory Reform (Fire Safety) Order 2005 on the basis that their work is not "suitable and sufficient". The new offence is addressed at the same mischief but will be easier to prove.

In relation to the additional duties relating to registration and structural safety, there are currently 180 category 1 buildings in Wales, and 449 category 2 buildings. Due to these relatively low numbers, the estimated impact on the justice system is medium

As set out above, the intention is that whilst the Bill will provide for enforcement action to be taken where necessary, regulatory action will be taken as a last resort. The proposed approach will focus in the first instance on dialogue with the principal accountable person, accountable persons and residents, raising awareness of responsibilities and promoting cultural change. Only later or for serious infringements should statutory enforcement and sanctions be utilised.

The aim of compliance notices is also that this will support compliance without recourse to the courts system, although failing to comply with the compliance notice would be an offence where compliance is still not achieved.

Non-enforcement activity that will be routed to the RPT (Wales) will also impact the justice system. We anticipate the majority of cases that are referred to the tribunal will be for resident enforcement (applications for contravention orders) in category 3 buildings, and we are working with the tribunal to ensure that the necessary resources are in place for it to meet demand.

The nearest comparison is the new building safety regime introduced in England by Part 4 of the Building Safety Act 2022. The deadline for registering buildings under this Act was not until October 2023 and work to identify buildings that should be registered, and

building certificate applications, is ongoing with data on enforcement action yet to be published.

The scope of the 2022 Act is wider than our Bill in that it also covers the design and construction phases of the lifespans of in-scope Higher Risk Residential Buildings whereas the Building Safety (Wales) Bill covers only the occupation phase. We do, however, understand that when colleagues from the Department of Levelling Up, Housing and Communities were predicting the impact of the 2022 Act on the justice system, they envisaged the impact would be, in summary, as follows:

- Criminal justice system – very low impact
- Civil justice system – low to medium impact
- Tribunals – medium impact.

In summary: **Criminal Justice System**

As was estimated for the Building Safety Act 2022 in England, we anticipate that there will be very low impact on the criminal justice system. In the first instance, the expectation is that vast majority of people will comply willingly and completely with Bill provisions.

The policy ensuring non-sanction routes to compliance (including raising awareness of responsibilities, promoting cultural change, and education) are exhausted before pursuing civil sanctions or criminal prosecutions are pursued should mean that non-compliance with the regime is addressed before it impacts on the justice system. We are expecting a very small number of cases to reach the courts, due to the stringency of the new regime.

There will be 31 offences introduced, but for the reasons set out above, we do not think that this will lead to a significant number of new prosecutions.

The number of new offences introduced and the number of buildings to which they apply does not necessarily equate to the impact on the criminal justice system, but by the same token, creation of multiple offences does not necessarily equate to a large number of prosecutions for them.

Civil Justice System

We anticipate there will be a low to medium impact on the civil justice system.

Where the enforcing authority is investigating whether duties under the regime are being complied with or whether an offence is being committed, and the enforcing authority requires access as part of those investigations (to residential or non-residential premises), the route currently proposed is via an application for a warrant made to the Magistrates' Court. (This approach is similar to the approach in Schedule 2 to the BSA22.)

The Department for Levelling Up, Housing and Communities estimated that the 2022 Act would result in 28-30 cases to the civil courts and tribunals in respect of the design and construction phases as well as the occupation phase for 12,500 buildings. Our Bill covers only the occupation phase. Using that estimate as a comparator and drawing on conversations with local authorities in which they have indicated that an application for a warrant to gain access would be a measure of last resort, we estimate approximately 2 warrant applications per annum.

Tribunals

Our planning assumption for applications to the RPT (Wales), as described on page 2 above (Overview - *Matters heard by the Residential Property Tribunal*), totals 1,100 p/a

once business as usual is achieved, planned to be in year 3 of implementation and beyond.

As a phased approach to commencement is planned, and as the larger volume of cases for the RPT (Wales) are estimated with the commencement of category 3 duties. The number of applications in year 1 is anticipated as less than 100.

Most RPT (Wales) applications are expected to be principal accountable person/ accountable person applications for contravention orders (over two thirds of all applications). The estimate is derived from a % of warnings notices issued in different types of regulated buildings, and the number of buildings in each category. Work continues to secure reliable information relating to comparable regimes on which improved estimates may be made.

Other estimates on possible applications to the RPT (Wales), reflect our discussions with the Welsh Tribunals Unit and the RPT (Wales) and as such reflect the experience of the RPT (Wales) in relation to other regimes.

2.16. Do you expect proceedings to be heard in the Magistrates' Court, the Crown Court, or a Civil Court? What will the proportions be?

Most offences will be triable either way which means that they can be heard in either the Magistrates' Court or Crown Court. It is anticipated that only a small proportion of cases will go to court.

It is anticipated that the number of breaches which need to be tried in any court will be small. The intention is that most breaches will be addressed through other means such as dialogue, raising awareness of responsibilities and promoting cultural change. It will only be for the most persistent offenders or serious cases (such as where a life is put at risk) or where there is failure to comply with a compliance, prohibition notice or contravention order that a case will be brought to court.

2.17. Please state the maximum associated fine and/or custodial penalties. In the case of offences involving penalties of a fine or custody, please indicate and explain the circumstances which would result in a custodial sentence upon conviction and the proportion of custodial penalties which will be at the maximum level.

Most offences will be triable either way (depending on the nature or severity of the offence) and could be brought to a Magistrates' Court or Crown Court. Cases heard at a Magistrates' Court could result in the defendant being given an unlimited fine and/or up to 12 months imprisonment. The most serious and life-endangering offences will be heard in a Crown Court and could result in an unlimited fine and/or up to two years

imprisonment. However, many defendants in such cases are likely to be corporate entities rather than natural persons, so sentences of imprisonment are likely to be very rare.

This is a new regime and it is very difficult to predict the percentage of cases where a breach of Bill provisions will not be addressed by other means and will result in a fine or custody. The Bill introduces 31 offences that could result in a custodial sentence or an up to unlimited fine.

This allows flexibility for the court to impose a custodial sentence or up to unlimited fine, where the breach is serious or where there are multiple breaches. For example, where there are significant and multiple failings in the assessment or management of risk that put people in or about a regulated building at significant risk of a fire or structural safety incident, or indeed, where the failure to manage risks has contributed to an incident which has led to loss of life, a court may consider that the scale of the failure can only be met with a custodial sentence or significant fine.

However, we anticipate that most people will comply with Bill provisions without recourse to the courts. The policy approach is that the enforcing authorities will take a supportive approach to regulation, ensuring that non sanction routes to compliance (including raising awareness of responsibilities, promoting cultural change, and education) are exhausted before civil sanctions or criminal prosecutions are pursued should mean that non-compliance with the regime is addressed before it impacts on the justice system. We are expecting a very small proportion of cases to reach the courts.

- 2.18. Please itemise details of any proxy or current offences and / or penalties on which the proposed penalties are based. If mirroring / comparing existing legislation, ensure that reference is made to the most recent versions of the legislation (via Westlaw, the online legal research service) as this is not always available online. Please refer to page 8 of the JSII guidance on how to obtain data relating to the number of cases brought forward under the legislation you have identified.

Welsh Government's proposals for enforcement and sanctions as set out in the Building Safety (Wales) Bill closely resemble those in Part 4 of the Building Safety Act 2022 (as well as section 23 of Part 2 of that Act) Provisions from the 2022 Act are set out below. We are unable to include numbers of cases at this stage (the deadline for registering buildings under the 2022 Act was not until October 2023).

Legislation / Section	Offence	Number of cases
Building Safety Act 2022/Section 23	<p>A person who intentionally obstructs a person who is an authorised officer (as set out in section 22 of that Act) who is exercising a relevant building function commits an offence.</p> <p>A person who, with intent to deceive, impersonates an authorised officer (as set out in section 22 of that Act) commits an offence.</p>	Data not available yet
Building Safety Act 2022/Section 24	<p>A person commits an offence if they provide false or misleading information to the regulator—</p> <p>(a)in purported compliance with a building enactment or a requirement imposed by virtue of such an enactment,</p> <p>(b)in connection with an application made to the regulator under a building enactment, or</p> <p>(c)for the purpose of avoiding enforcement action being taken or continued,</p> <p>and the person knows that, or is reckless as to whether, the information is false or misleading.</p>	Data not available yet
Building Safety Act 2022/Section 101	<p>An accountable person for a higher-risk building commits an offence if—</p> <p>(a)without reasonable excuse, the accountable person contravenes a relevant requirement, and</p> <p>(b)the contravention places one or more people in or about the building at critical risk.</p>	Data not available yet.
Building Safety Act 2022/Section 40	Liability of officers of body corporate etc	Data not available yet.
Building Safety Act 2022/Section 77	The principal accountable person for a higher-risk building commits an offence if the building is occupied but not registered.	Data not available yet.

Building Safety Act 2022/Section 79	Where the regulator directs the principal accountable person for an occupied higher-risk building to apply to the regulator for a building assessment certificate in relation to the building, the principal accountable person for the building must make the application within the period of 28 days beginning with the day on which the direction is given. A person who, without reasonable excuse, contravenes this provision commits an offence.	Data not available yet.
Building Safety Act 2022/Section 82	The principal accountable person for an occupied higher-risk building must ensure that the following are displayed together, in a conspicuous position in the building— (a) a notice in the prescribed form containing prescribed information about accountable persons for the building; (b) the most recent building assessment certificate relating to the building; (c) any relevant compliance notice A person who, without reasonable excuse, contravenes this provision commits an offence.	Data not available yet.
Building Safety Act 2022/Section 87	An accountable person for an occupied higher-risk building must, in prescribed circumstances, give prescribed information to the regulator by the prescribed time and in the specified way. The information that may be prescribed is information that relates to a building safety risk as regards the part of the building for which an accountable person is responsible. A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on summary conviction to a fine.	Data not available yet.
Building Safety Act 2022/Section 90	Where at any time an accountable person for a higher-risk building ceases to be responsible for all or any part of the building, they must give prescribed information and a copy of any prescribed document to any person who, immediately after the relevant time— (a) is an accountable person for the building, and (b) is responsible for a part of the building for which the outgoing person ceased to be responsible at the relevant time. The outgoing person must also give prescribed information to the regulator in the prescribed way, as soon as reasonably practicable after the relevant time. A person who, without reasonable excuse, contravenes subsection or commits an offence.	Data not available yet.
Building Safety Act	A resident of a residential unit in an occupied higher-risk building who is aged 16 or over or an owner of a residential unit in such a building must not act in a way that creates a significant risk of a	Data not available yet.

2022/Sections 95 and 96	<p>building safety risk materialising and must not interfere with a relevant safety item. They must also comply with a request, made by the appropriate accountable person, for information reasonably required for the purposes of a duty under section.</p> <p>Where a person contravenes this provision, they may give a contravention notice to the relevant person.</p>	
Building Safety Act 2022/Section 99	The regulator may give a compliance notice to an accountable person for a higher-risk building who appears to the regulator to have contravened, be contravening or be likely to contravene a relevant requirement as set out in section 4 of the Act. A person who, without reasonable excuse, contravenes a compliance notice commits an offence.	Data not available yet.
Building Safety Act 2022/Section 102	An accountable person for a higher-risk building commits an offence if without reasonable excuse, they contravene a relevant requirement as set out in Part 4 of the Act and the contravention places one or more people in or about the building at critical risk.	Data not available yet.
<p>Currently, fire safety in multi-occupied residential buildings, once they are occupied, is subject to the Regulatory Reform (Fire Safety) Order 2005. It is proposed to establish a new fire safety regime for multi-occupied residential buildings, separately from the Regulatory Reform (Fire Safety) Order 2005. This aspect of the regime will apply to HMOs as well as to other multi-occupied residential buildings. The new fire safety regime for multi-occupied buildings in Wales will mirror many of the provisions of the Regulatory Reform (Fire Safety) Order 2005.</p>		
<p>The Regulatory Reform (Fire Safety) Order 2005</p> <p>PART 4, Article 30</p> <p>Paragraph 1</p>	If the enforcing authority is of the opinion that the responsible person or any other person mentioned in article 5(3) has failed to comply with any provision of this Order or of any regulations made under it, the authority may, subject to article 36, serve on that person a notice (in this Order referred to as “an enforcement notice”).	<p>Data on enforcement activity under the provisions of the Regulatory Reform (Fire Safety) Order 2005 is published annually by StatsWales. Data for residential properties (other than individual private homes) indicates that in the three years 2021-22, 2022-23 and 2023-24 there were a total of 144</p>

		enforcement notices.
<p>The Regulatory Reform (Fire Safety) Order 2005</p> <p>PART 4, Article 32</p> <p>Paragraph 1</p>	<p>It is an offence for any responsible person or any other person who has control of premises to:</p> <ul style="list-style-type: none"> • fail to comply with any requirement or prohibition imposed by articles 8 to 22 and 38 (fire safety duties) of the Regulatory Reform (Fire Safety) Order 2005, where that failure places one or more relevant persons at risk of death or serious injury in case of fire. • fail to comply with any requirement or prohibition imposed by regulations made, or having effect as if made, under article 24 of the Regulatory Reform (Fire Safety) Order 2005, where that failure places one or more relevant persons at risk of death or serious injury in case of fire; • fail to comply with any requirement imposed by article 29(3) or (4) (alterations notices) of the Regulatory Reform (Fire Safety) Order 2005; • fail to comply with any requirement imposed by an enforcement notice; • fail, without reasonable excuse, in relation to apparatus to which article 37 of the Regulatory Reform (Fire Safety) Order 2005 applies (luminous tube signs)— <ul style="list-style-type: none"> (i) to ensure that such apparatus which is installed in premises complies with article 37 (3) and (4); (ii) to give a notice required by article 37(6) or (8), unless he establishes that some other person duly gave the notice in question; (iii) to comply with a notice served under article 37(9). 	<p>Data on enforcement activity under the provisions of the Regulatory Reform (Fire Safety) Order 2005 is published annually by StatsWales. Data for residential properties (other than individual private homes) indicates that in the three years 2021-22, 2022-23 and 2023-24 there were a total of 144 enforcement notices, 18 prohibition notices and one prosecution.</p>
<p>The Regulatory Reform (Fire Safety) Order 2005</p> <p>PART 4, Article 32</p> <p>Paragraph 2</p>	<p>It is an offence for any person to—</p> <p>(a) fail to comply with article 23 of the Regulatory Reform (Fire Safety) Order 2005 (general duties of employees at work) where that failure places one or more relevant persons at risk of death or serious injury in case of fire;</p> <p>(b) make in any register, book, notice or other document required to be kept, served or given by or under, of the Regulatory Reform (Fire Safety) Order 2005, an entry which he knows to be false in a material particular;</p> <p>(c) give any information which he knows to be false in a material particular or recklessly give any information which is so false, in purported compliance with any obligation to give information to which he is subject under or by virtue of this Order, or in response to any inquiry made by virtue of article 27(1)(b) of the Regulatory Reform (Fire Safety) Order 2005;</p>	<p>Data on enforcement activity under the provisions of the Regulatory Reform (Fire Safety) Order 2005 is published annually by StatsWales. Data for residential properties indicates that in the three years 2021-22, 2022-23 and 2023-24 there were a total of 144 enforcement notices, 18</p>

	<p>(d) obstruct, intentionally, an inspector in the exercise or performance of his powers or duties under of the Regulatory Reform (Fire Safety) Order 2005;</p> <p>(e) fail, without reasonable excuse, to comply with any requirements imposed by an inspector under article 27(1)(c) or (d) of the Regulatory Reform (Fire Safety) Order 2005;</p> <p>(f) pretend, with intent to deceive, to be an inspector;</p> <p>(g) fail to comply with the prohibition imposed by article 40 (duty not to charge employees) of the Regulatory Reform (Fire Safety) Order 2005;</p> <p>(h) fail to comply with any prohibition or restriction imposed by a prohibition notice.</p>	prohibition notices and one prosecution.
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2.19. Please provide details of the relevant legislation (where appropriate) and confirm whether the creation or amendment of criminal offences and penalties has been agreed in line with the guidance available at <https://www.gov.uk/government/publications/making-new-criminal-offences>.

The creation or amendment of criminal offences and penalties has been agreed in line with the UK Government guidance available at <https://www.gov.uk/government/publications/making-new-criminal-offences>.

2.20. What will be the short, medium and lifelong implications for an individual found guilty of this offence, and how is this proportionate to the offence created?

A fine or prison sentence on summary conviction or conviction on indictment under this legislation would be subject to the standard rules of disclosure by an individual under the Rehabilitation of Offenders Act 1974. A significant number of buildings (certainly in category 1) are likely to be owned by organisations, rather than individuals. Section 105 ensures “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. That said, in the case of organisations, an individual will only be prosecuted if it is found the offence has been proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, that person.

2.21. Does this legislation impose any duty on the public sector? If so, please provide your assessment of the likelihood of individuals or businesses taking action against the public sector for non-compliance with this legislation.

The regulators for the proposed legislation will be local authorities and fire and rescue authorities (and the fire inspector in relation to Crown premises).

Apart from functions of regulation placed on the local authorities and fire and rescue authorities, the only duty imposed on the public sector would occur where a local authority is the accountable person or principal accountable person for its own housing stock.

In the case of local authorities that are also principal accountable persons or accountable persons in category 1 buildings, the building safety authority is required to take all reasonable steps to delegate the functions of regulation to another local authority, to avoid conflicts of interest.

As with other organisations that are principal accountable persons or accountable persons, an individual will only be prosecuted if it is found the offence has been proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, that person.

3. HM Courts & Tribunals Service and the Welsh Tribunals Service

Estimating the change to caseload of the Courts and Tribunals Service (including devolved tribunals)

- 3.1. Do you expect there to be a change in Court or Tribunals process or an increase / decrease in applications / cases to HM Courts and Tribunals Service and / or the Welsh Tribunals through the creation or amendment of this law? Please provide an estimate of the change to volumes of cases going through the court system as a whole, explain any changes in process and outline the evidence and sources that support these estimates.

There will be no change in Court or Tribunals process as a result of the Bill.

Our estimate for cases that will be referred to the courts is very low. A high estimate is that 5 cases will be taken per year, although taking into consideration the data for the cases taken under the Regulatory Reform (Fire Safety) Order 2005 (where there was one prosecution in a three-year period), this would suggest that even an estimate of 5 may be high. At the time of drafting this assessment, no prosecutions appear to have been taken under the Building Safety Act 2022.

The Welsh Tribunals Unit and the President of the RPT (Wales) have agreed that the decisions proposed for the RPT (Wales) in the Bill would appear appropriate.

Matters to be heard by the RPT (Wales) are set out in the overview of this assessment and our estimate for referrals to the RPT (Wales) is provided under 2.16 above.

The nearest comparison is the regime established by the Building Safety Act 2022 in England. In anticipation of this, the Ministry of Housing, Communities and Local Government (formerly the Department for Levelling Up, Housing and Communities (DLUHC)) anticipated that the volume of 28-30 cases escalating to the Civil Courts and First-tier Tribunal (Property Chamber) each year over the next 5 years. This number includes appeals, applications to be made to the tribunal and County Court case numbers.

We continue to engage with the Ministry of Housing, Communities and Local Government (MHCLG), the Building Safety Regulator in England and the RPT (Wales) to improve estimates and consider the resource impacts.

3.2. Please confirm if the courts / tribunals would be under any duty to inform any regulatory authorities of any convictions made under this offence.

- ☒ No
☐ Yes (please provide details)

Appeal Rights

3.3. Does your proposal create a new right of appeal or expand an existing jurisdiction in the Unified Tribunals System or route to judicial review? If so, how do you expect these to be handled (i.e. administered by HM Courts & Tribunals Service or Welsh Tribunals)?

We would expect building safety authorities and fire safety authorities to implement reasonable processes to minimise the demand on the time of the court and tribunal services. The Bill includes a requirement for the building safety authority to have a process for independent review of decisions made. This will come into effect where the party challenging the decision requests a formal review of their case by the building safety authority, and the review must be undertaken before the person challenging the decision can progress to appeal.

Following a formal review, the applicant may submit an appeal against any of the following, to the RPT (Wales):

Event	Applicant
Appeal against certain decisions of the building safety authority (see 5.1 above).	P/AP

Appeals against the decisions of the RPT (Wales) would follow existing practices and be considered, where permitted, by the Upper Tribunal.

3.4. Do you expect to establish a new tribunal jurisdiction? If so, has this been discussed with the Welsh Tribunals Unit / Ministry of Justice?

No

Alternative Dispute Resolution

3.5. To what extent could the use of alternative dispute resolution (ADR) procedures (including mediation) be appropriate? How will success in ADR be measured?

N/A

Prosecution and Enforcement

3.6. If the proposal is to add a new offence, will the Crown Prosecution Service act to prosecute defendants? If not, please identify who will prosecute.

We anticipate that local authorities and fire and rescue authorities will have a power of enforcement and will act to prosecute defendants. It is not anticipated that the Crown Prosecution Service will need to prosecute defendants.

With regards to offences under the Regulatory Reform (Fire Safety) Order 2005, the Crown Prosecution Service will currently prosecute if that offence is charged on the same indictment as another offence which they are prosecuting. We anticipate that this will continue under the Bill and may potentially occur with other, non-fire safety regime offences. However, it is not anticipated that the Bill will result in an increase in cases prosecuted in this way.

- 3.7. Will the proposal require enforcement mechanisms for civil debts, civil sanctions or criminal penalties? If yes, who do you expect to enforce these?

Yes. The building safety authority (local authority) and the fire safety authority (Fire and Rescue Authority) will be responsible. Both enforcing authorities have existing mechanisms for enforcement activity.

HMCTS Procedural Rules, Sentencing and Penalty Guidelines

- 3.8. Do you anticipate that Court and/or Tribunal procedural rules will have to be amended? If so, when is the likely date for the changes?

No

- 3.9. Will the proposals require sentencing and / or penalty guidelines to be amended?

Welsh Government's proposals are broadly similar to the provisions set out in Part 4 of the Building Safety Act 2022.

The Bill will replicate many of the provisions of the Regulatory Reform (Fire Safety) Order 2005, in respect of which no sentencing guidelines have been issued. We understand that in their absence, courts generally apply the sentencing guidelines for workplace health and safety offences. Our intention is to maintain this arrangement.

4. Legal Aid and Court Fees

4.1. What evidence is there that individuals affected by your proposal will be able to secure and afford:

- a) legal representation and legal advice in order to secure a fair hearing of their case
- b) associated court fees

What legal costs for a typical case could each party bear and what provisions exist for a party found innocent to recover all or any of their legal costs?

It is anticipated that the number of cases which will end in prosecution will be very small because, as previously set out, the intention is that the majority of breaches will be addressed through other means such as dialogue, raising awareness of responsibilities and promoting cultural change. It will only be for the most serious cases or where there is failure to comply with a compliance notice or action contravenes a prohibition or restriction contained in a prohibition notice, that a case will be brought to court. This should minimise the need for legal representation, legal advice and payment of court fees.

In the case of category 1 buildings, principal accountable persons or accountable persons are likely to be large corporate bodies and therefore likely to be able to secure and afford their own legal advice and pay court fees. We anticipate that principal accountable persons or accountable persons in other regulated buildings will be a mixture of bodies corporate and private individuals. Potentially, a private individual could be unable to afford legal representation and legal advice in order to secure a fair hearing of their case and associated court fees.

The Bill will place duties on residents and owners of residential units, as well as occupiers of relevant HMOs and, in the event that a resident should fail in one of these duties, there is a chance that this resident will be unable to secure and afford legal representation and associated court fees. This is, however, anticipated to be a very rare occurrence with the exception of breaches of court orders, residents will not be subject to criminal enforcement. As previously stated, the intention is that enforcement will, in the first instance be by non-statutory means and it will only be in a case of a persistent offender or a resident who has committed a particularly serious offence, or where a resident has failed to meet the terms of a contravention order that they will be prosecuted.

We know that compared to the whole population, households living in flats, maisonettes, and apartments are more likely to be single-person households, older, disabled, Black, Asian, or minority ethnic, economically inactive, and in material deprivation. Residents of HMOs are more likely to be young, economically inactive, Black, Asian, or minority ethnic. The new regime aims to benefit all residents, including those most at risk, such as older people, disabled people, and single-parent households. Whilst it is hard to predict, in the unlikely event that a resident is prosecuted, whether they would be able to secure and afford legal representation and associated court fees, the costs of doing so may disproportionately impact groups at highest risk of poverty. We anticipate that it would be a very rare event however, for a resident to be prosecuted for an offence under the provisions introduced by the Bill.

Beyond any existing arrangements for an individual found not guilty to recover their legal costs, subject to various caps, we do not intend making additional provision.

4.2. Once implemented, is your proposal likely to require individuals to seek legal advice and to apply for legal aid in any of the following areas? In each case please provide supporting

evidence.

- ☒ Criminal
- ☒ Civil (including Family)
- ☐ Asylum
- ☐ Legal aid not available (please provide supporting evidence)

As explained in 6.1, the likelihood of an individual being prosecuted under this legislation is unlikely and thus there is a very limited chance that an individual will seek legal advice and/or legal aid as a result. There is also a limited chance that individuals may be eligible for legal advice under the legal aid scheme with regard to civil matters arising as a result of enforcement of Bill provisions.

Legal Aid is not widely available for civil cases and therefore may not be available for cases arising from Bill provisions. We are aware that there are solicitors in Wales who accept legal aid and who are able to offer advice on housing and property related issues. There are also sources of housing advice, free legal advice and pro bono legal services in parts of Wales. The building safety authority and fire safety authority must be notified before an accountable person/principal accountable person may apply for a contravention order against a resident, providing opportunity for the building safety authority (or fire safety authority) to offer advice.

Where criminal prosecutions arise out of provisions included in the Bill, defendants may have recourse to criminal legal aid. As this is means tested, it is by no means guaranteed that they will qualify.

4.3. If legal aid may be affected, would legal aid costs increase or be reduced (and by what margin)?

We anticipate that there may potentially be an increase in legal aid cases, but this will be by a very small margin. There is a very slim chance that an individual may either seek advice under the legal aid scheme in respect to civil matters or seek legal aid because they have been accused of committing an offence which is so serious that it merits prosecution or where such an individual fails to respond to other, non-statutory means of addressing a misdemeanour which they have been accused of committing. There is also a very slim chance that an individual may seek legal aid for the purposes of a judicial review of a decision made by the building safety authority. The individual would then also need to qualify for legal aid. For reasons set out above, the likelihood of this happening is small, and we estimate that it would, at most, result in a very low number of cases annually.

5. Prisons and Offender Management Services

Impact on HM Prison Services

- 5.1. Will the proposals result in a change in the number of offenders being committed to custody (including on remand) or probation (including community sentences)? If so, please provide an estimate and reasoning behind it, an estimated timeframe to reach this number of sentences, what evidence this is based on, and the source for your information.

The number of offenders likely to be committed to custody or placed on probation as a result of our proposals is estimated to be very small indeed. The building safety authority and fire safety authority will have a range of enforcement mechanisms at their disposal prior to taking legal proceedings. This will significantly mitigate the number of non-compliance cases escalating to the justice system in the first instance. Offenders are also quite likely to be bodies corporate and not individuals. We anticipate custodial sentences to be highly unlikely, but potential for a case to materialise in extreme circumstances. As the maximum sentence of imprisonment is two years, it will always be open to the court to suspend the sentence if appropriate.

- 5.2. Does the proposal create, remove or change an existing offence with a custodial or probationary sentence, or change the way offenders go through the prison / probation service? If so, please provide details, including the expected impact on probationary services.

The proposal creates a number of offences which could potentially result in custodial sentences. It does not, however, change the way offenders go through the prison service.

6. Main Justice System Impacts Identified

6.1. Volumes and Costs or Savings (please lengthen if necessary):-

NB in all cases, assume an average annual figure or make clear if a different timespan is being considered. Where there may be significance variance from average in the first years of implementation, please add additional information in the notes below.

Identify the court or tribunal or MoJ service that will be affected by this proposal?	Volumes (please provide both numeric estimates and min-max ranges)	Type (e.g. prison place, tribunal hearing, fixed penalty, etc.)	Estimated recurring annual costs or savings (both numeric estimate and min-max range) (£)	Estimated initial set up costs (£)	Additional Information
Criminal Offences and Sanctions	5-15 cases per year	Fine/prison place	N/K	N/A	
HM Courts & Tribunals Services	No impact	No impact	N/K	N/A	
Welsh Tribunals (in this case, the RPT (Wales)).	Up to 1,100 application p/a (covering all types of potential applications)	Tribunal hearing: identification of a principal accountable person, or accountable person / Appeals / enforcement of resident duties by accountable persons, principal accountable persons / Special Measures Orders / matters relating to service charges.	Work is ongoing to improve estimates of RPT (Wales) applications under the Bill, the capacity requirements and associated costs. Current estimate of £1.3 to £2.3m p/a once all categories of buildings commenced.	£50k Transitional cost for RPT (Wales) readiness for the commencement of Cat 1 only.	
Upper Tribunal	Based on a 2% onward referral rate (as currently), no more than 1 or 2 cases per year.	Onward referrals from RPT (Wales)	N/K	N/A	

Identify the court or tribunal or MoJ service that will be affected by this proposal?	Volumes (please provide both numeric estimates and min-max ranges)	Type (e.g. prison place, tribunal hearing, fixed penalty, etc.)	Estimated recurring annual costs or savings (both numeric estimate and min-max range) (£)	Estimated initial set up costs (£)	Additional Information
Legal Aid	Hard to predict, likely to be no cases,	Individuals may face criminal sanctions .	N/K	N/A	
Notes:-					

6.2. Prisons and Offender Management Services (lengthen if necessary, only complete if maximum penalty is something other than a fine):

Offence	Maximum Penalty	No. of prosecutions brought per annum (numeric estimate and min-max range)	Likely proportion sentenced to immediate custody	Likely average custodial sentence length given	Estimated costs or savings p.a. (£) ⁸ (please provide numeric estimate and min-max range)
The majority of prosecutable offences could potentially result in a criminal offence, but we consider it highly unlikely that they will.	Up to 2 years imprisonment	For reasons already set out in detail earlier (see 7.1), we anticipate that prosecutions will be rare. Prosecutions which result in imprisonment will be even rarer. Most likely to be no cases. Potentially, a single case every few years.	Not possible to predict at this stage as it will depend on the nature of the offence.	Not possible to predict at this stage as it will depend on the nature of the offence.	Based on a single prisoner being admitted costs would be approximately £41,260 per annum.
Notes:					

Please be aware that any costs or savings identified as a result of any changes to the justice system /additional work must be factored in to the financial assessment of your legislation.

⁸ The MoJ publish statistics on "Prison cost per place and cost per prisoner:" - see <https://www.gov.uk/government/statistics/announcements/prison-cost-per-place-and-cost-per-prisoner-2017-to-2018>