



Wales Centre for Public Policy
Canolfan Polisi Cyhoeddus Cymru

International review of regulatory models for building safety

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Summary

- The Welsh Government asked WCPP to summarise the international evidence on regulatory models for building safety, ahead of the drafting of legislation intended to reform building safety regulation in Wales to make it more effective. This report synthesises the discussion from a roundtable held on 16th December 2022 with academic experts, supplemented by literature.

Comparing single and multiple regulators

- The precise organisational form that a regulator takes may be less critical than ensuring that the regulator has adequate resources for monitoring, data collection and analysis, problem-solving, and, when needed, sanctioning action.
- Although neither a single nor multiple regulator model is necessarily better, the establishment of an overarching committee acting as a single point of contact may improve visibility and ease of engagement with the Accountable Person (AP).
- Being clear about who is accountable and for what will be important in reforming the regulatory model.

- The use of a registration system may make it easier for a regulator to determine which buildings are currently managed and also to target APs with enforcement and sanctions when necessary.
- There is a need for robust data infrastructure to be in place to allow for an understanding of the number of buildings in scope across Wales.

Methods of enforcement and sanctions

- Enforcement and sanctions are only one part of the 'toolkit' needed to address noncompliance with building safety regulations in Wales. Engaging with and educating both APs and residents will be key first actions.
- Discussions on the effectiveness of enforcement and sanctioning for behaviour change focused on educating residents. Linking building safety with other areas, such as social services, has the potential to ensure that education is provided via additional channels.
- There is a lack of evidence pointing to the effectiveness of enforcement and sanctions for existing buildings. However, different approaches, such as deterrence or 'naming and shaming', should be considered.

Introduction

The Welsh Government asked the Wales Centre for Public Policy (WCPP) to summarise the international evidence on regulatory models for building safety. In response to this request, WCPP convened a roundtable discussion on 16th December 2022 with invited academic experts and senior officials from the Welsh Government, listed in [Annex 1](#).

This report summarises the key conclusions from that discussion with supporting evidence. The aim of this report is to complement the Welsh Government's work to improve building safety in Wales by informing decisions on reforming the regulatory model used in the building safety sector in forthcoming legislation.

Review topics

Discussions centred around providing evidence for two main areas:

1. Comparing the effectiveness of single versus multiple regulators through discussion and examples; and
2. Identifying key themes on the effectiveness of enforcement and sanction models internationally.

Background

Building regulation powers were devolved in 2011, granting Welsh Government ministers the power to make changes to the regulatory building safety system in Wales. The Welsh Government is in the process of reforming the current system, according to a Programme for Government commitment to ensure 'people feel safe and secure in their homes' (Welsh Government, 2021a). The Grenfell Tower tragedy has exposed the need to make improvements to the building safety system. In 2021, the Welsh Government issued a White Paper on reforming the legislation and culture around building safety (Welsh Government, 2021b). This drew on findings from the Hackitt Review: the UK Government-commissioned independent inquiry into building regulations and fire safety following Grenfell (Hackitt, 2018) and the Welsh Government's Building Safety Expert Group report, 'Road Map to Safer Buildings in Wales' (Building Safety Expert Group, 2019).

Single versus multiple regulatory models

Background

Currently in Wales, building safety is regulated by local authorities and the fire and rescue services. The Welsh Government’s White Paper identified two options for reforming the existing system:

1. A move to a single, integrated model involving either establishing a new national building regulator or appointing a lead regulator from existing regulators; or
2. A commitment to a multiple regulatory model involving either maintaining and strengthening the current regulatory regime or establishing a joint committee to coordinate and oversee the multiple regulators involved (Welsh Government, 2021b).

The latter option is similar to the recommendation in the Hackitt Review that a ‘joint competent authority’ be formed, which advocated for bringing together existing regulators to manage building safety at all stages of a building’s lifecycle (Hackitt, 2018: 6). Table 1 provides more detail on the two options.

Table 1: Welsh Government’s White Paper options for single and multiple regulatory models

A single regulator	Multiple regulators
<p>A new national building safety regulator</p> <p>This could potentially provide a streamlined process, centralising oversight and enforcement under one body. It would be easier for duty holders and others to access and understand the regulatory landscape, and it could provide independence from existing authorities. A new, single regulator may make it easier to meet capacity and capability requirements, but it would have significant cost implications.</p>	<p>A concurrent regulatory regime</p> <p>Rather than significantly reform the existing model, this option would maintain it and improve identified deficiencies to strengthen the regulatory regime. In addition, there could be stronger information sharing and collaboration agreements to facilitate a joint approach.</p>

<p>One lead regulator</p> <p>This would see one of the existing authorities (the local authority or the fire and rescue authority) become the lead regulator. There would be capacity and expertise considerations, as neither option has blanket expertise to cover the regime alone without the need to develop and bring in additional expertise and resources.</p>	<p>Coordination and oversight arrangements</p> <p>This option replicates the one above but also establishes a joint committee that could include representatives from regulatory authorities and from the sector (for example: builders/developers, building managers, managing agents and residents). This 'committee' would have a coordination function that monitors the regulatory regime and ensures that it is meeting its objectives and discharging its function in accordance with agreed-upon objectives.</p>
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Source: Welsh Government (2021b: 31)

The experts participating in the roundtable discussion brought experience from several regulation areas (for example, environmental and product safety) in addition to building safety regulation, which allowed for a deeper and more thorough reflection on the reform options.

Before proceeding to a discussion of the benefits and risks of different regulatory models, the experts acknowledged a need for:

- Obtaining comprehensive baseline data, including the total number of buildings, the number of buildings that may be affected by regulatory change, the number of people involved in enforcement and related activities, and statistics on inspections, violations observed, and enforcement actions undertaken;
- Clearly defining the regulatory objectives; and
- Determining how to measure regulatory effectiveness against the objectives.

Regulatory functions

The chosen regulatory system will have a set of functions that their work covers. The White Paper states that the key aim of the regulatory system is 'to ensure the safety of residents and others in and around buildings by holding duty holders to account in performance of their duties (Welsh Government, 2021b: 29). The nine proposed core

functions of the regulatory system are grouped into three broad regulatory objectives, as follows:

Oversight: monitoring effective operation of the regime

- Inspecting buildings;
- Ensuring competence; and
- Setting safety standards and policy direction.

Collaboration: working with others to achieve regime objectives

- Working with others;
- Public engagement / education; and
- Public accountability.

Compliance: ensuring adherence to regime requirements

- Dealing with complaints;
- Investigations and enforcement; and
- Governance considerations.

The Welsh Government's White Paper also set out that the regulatory system also has to provide a registration function that details buildings within the regime.

Benefits and risks associated with single and multiple regulatory models

Neither the single nor multiple regulatory models are objectively better than the other; therefore, the choice of which to select is dependent on contextual features and priorities. If coordination is a key priority, with different groups working together to accomplish the overall goal, a single regulator may be advantageous. This will, however, introduce new issues that were not significant problems with the previous multiple regulator structure, such as difficulties in ensuring sufficient attention is paid to critical tasks. Therefore, spending time, money and the associated disruption to restructure might not be the best use of resources (Carrigan, 2017). In this case, being aware of any weaknesses in the current structure and possibly implementing measures to mitigate these weaknesses may be a more cost-effective approach that can potentially yield better results.

Single regulator model - benefits

Moving to a single regulator could provide clarity around responsibilities. It could provide a single point of contact for the public, those subject to the regulations, industry and other wider stakeholders.

It was observed, however, that the same single point of contact could be achieved with a multiple regulator model by, for example, establishing a body or group that can coordinate action from different regulatory bodies, as discussed below.

Single regulator model - risks

In theory, moving to a single regulator increases regulatory efficiency, as all current aspects of regulation are controlled by a single entity. However, in practice, the work of building regulation covers a range of specific skills and processes, which is why it has historically been the case that distinct aspects of regulation are covered by different organisations. Therefore, it is likely that any new single regulator would replicate those differences within its own structure. Therefore, while it would be a 'single regulator' in theory, in practice, it may remain an amalgam of disparate regulatory functions or technical expertise.

Where that arises, it is likely to remain challenging for members of the public to find the appropriate division, and their ability to do so would depend on the efficiency of the communications system.

Evidence from similar reorganisations shows that this is also accompanied by the potential for competing and possibly even conflicting missions to be located within one organisation. Associated with this, there may be more confusion amongst the staff with respect to the organisation's core mission (Carrigan, 2018). Organisations that manage competing tasks typically work to define a core purpose, which can result in otherwise important tasks being neglected, which raises the risk that vital aspects of the regulatory process become lost or are downplayed (Drucker, 1980). When managing a larger regulatory body with a wider remit, it is easier to lose contact with what is happening on the ground, and the functions of regulation can become more bureaucratised. Gilad (2015) provides an example of this in their examination of the British Financial Services Authority (FSA). Gilad states that large regulatory agencies, such as the FSA, usually operate with a range of goals and technical tasks. Combining multiple goals and tasks within one regulatory body can, however, cause ambiguity around what should be prioritised, and uneven attention to be given to different tasks. This can result in overlooking significant problems and even regulatory failure (Gilad, 2015).

Wider quantitative studies indicate that ambiguity around priority goals as well as the combination of different functions within a regulatory body are associated with the lower performance of such agencies (Chun and Rainey, 2005; Carrigan, 2014). Carrigan further notes that, ‘agencies can be undermined by conflicts with program targets that are created by saddling them with competing missions’ (Carrigan, 2018: 671).

One potential solution to the issue of competing goals and tasks is to increase staffing, which would allow for more and higher quality reporting. It should be noted that increasing staffing would result in a separate issue of requiring increased funding for staff.

Multiple regulator model - benefits

The roundtable discussion highlighted the fact that maintaining the multiple regulator model would avoid the need for restructuring. Transition costs can be expensive, and organisational restructuring can be difficult to manage, is complex, and often creates unintended outcomes. Any restructuring will cause some operational inefficiencies and should only be done where the gains outweigh the costs.

Multiple regulator model - risks

Risks associated with this approach include the potential for ongoing gaps or overlaps in responsibilities that could cause a lack of clarity. To avoid this, it would be essential to establish clear roles and accountability. There is also the possibility that the interests of regulators will not be aligned, resulting in conflict between them.

Multiple regulators can cause duplication in inspection regimes, which is costly to building owners. Excessive and repetitive inspection can therefore potentially disincentivise construction and the purchase of existing buildings. However, the experts also noted that duplication can sometimes be helpful in high-risk environments, as it can reduce the possibility that a key problem has been overlooked.

Achieving the aims and mitigating the risks of reorganisation

The question arose of which functions would need to be centralised to achieve the aims of the reform and improve the functioning of the current system. The following functions were identified by experts as being important:

- Providing a single point of contact: a model often described as a ‘one-stop-shop’ for owners and occupiers, industry partners, building owners and developers, and the wider public;

- Responsibility for the collection and collation of data on buildings and conducting data analysis to identify potential issues;
- Developing a register for qualified assessors and identifying whether sufficient capacity and competency to assess building safety exist in the system. The register would provide oversight of the standards and process for validating assessor qualification;
- Maintaining a register that lists buildings, responsible people, and organisations; and
- Establishing and maintaining clear lines of accountability and oversight.

By extension, responsibility for standards, inspection, management of complaints and investigations, and enforcement activities would fall to existing regulators with oversight by a central evaluation body.¹

Experts suggested a ‘centralised coordinating committee’, as an alternative to either establishing a single regulator or leaving the multi-regulator system in place. Such a committee could coordinate work across the building regulatory spectrum, ensuring greater overall regulatory efficiency (including controlling the costs of regulation) and making regulatory gaps and blind spots less likely to occur through coordinated regulatory practice. [Annex 2](#) presents examples to illustrate the advantages of a coordinating committee and bodies.

There are examples of other countries that are pursuing similar approaches that could be learnt from:

- Scotland’s post-Grenfell regulatory reforms are similar to the establishment of a coordinating body. Instead of the proposed regulatory model and a building regulator, there is a central hub for peer review of complex designs (Scottish Government, 2019). This is an example of how a coordinating body would allow you to increase competencies and accountability, but without the downsides of major regulatory restructuring.
- Relating to accountability, the building warrant of fitness approach that New Zealand has adopted was referenced in the discussions; this approach places a clear responsibility on the building owner to confirm that the specified systems for their building have been maintained and checked for the previous 12 months in accordance with the compliance schedule (New Zealand Government Building Performance, 2016). Central certification through enforcement by states, as used in environmental legislation in the US, for

¹ This was not explicitly discussed in the roundtable but was generated by comparing what was identified as a key centralised function with the ten core functions detailed in the White Paper.

example, was also suggested (United States Environmental Protection Agency, 2022). States must apply and demonstrate to national government and get certification that the state-based regimes are adequate and must provide data. Third party auditing is also an option if the competency of the accountable person (AP) is questioned (McAllister, 2012).

The importance of ensuring sufficient capacity

Experts highlighted that one of the key takeaways from the Grenfell disaster is that the fire risk assessment has been reduced to a checklist approach for assessment. The risk assessor was not competent enough to know the implications of the factors that contributed to the dangerous situation.

Regardless of whether a single or multiple regulator model is pursued, additional capacity is needed to perform the necessary functions. The identified functions of the new regulator will require skills and capacity beyond what exists in the current system. An illustrative example here is Cladding Safety Victoria (Cladding Safety Victoria, 2022). This programme, in the Australian state of Victoria, brings together government and building owners to rectify non-compliant or non-conforming external wall cladding products on buildings. The programme also provides additional expertise on combustible wall cladding to the building regulatory system: expertise that is often not available within local councils.

The National Academies of Sciences (2018) discuss the importance of ensuring that there is sufficient capacity to perform the necessary functions when choosing a 'regulatory design type' as a regulator that cannot develop the required capacity, 'such as a staff with sophisticated risk analysis and auditing competencies, may find that the attributes of a regulation type... can create a considerable burden and practical obstacle to regulatory effectiveness' (National Academies of Sciences, 2018: 100). Coglianesse (2018) echoes this, highlighting the need for both sufficient capacity and skills within the regulatory workforce. He suggests that although regulated entities will have a better understanding of their own operations and be able to find cost-effective solutions, their incentives are not always fully aligned with a commitment to achieving the safest result. Ensuring that the inspector has sufficient skills for reviewing risk management plans when inspecting regulated entities will therefore be extremely important. In cases where the regulated entities are supported and told what to do by the regulator, they are more likely to modify their behaviour (Coglianese, 2018).

A related but separate question to consider is how the new regulatory regime fits into the wider policy environment. The Welsh Government has existing policy initiatives designed to encourage improvement in the quality, energy efficiency and affordability

of housing in Wales. Moreover, there are existing links between housing and a range of other policy areas, including health and social care. Other countries are trying to think of building safety regulation holistically, to deliver regulation more efficiently alongside other services. For example, US building enforcement communities combine health, fire and sanitation services issues, alongside programmes to improve energy performance of buildings. These other services need to access properties and interact with residents; therefore, holistic building management could combine building visits and inspections with other building-related services that residents need.

The next section of this report focuses on the effectiveness of using enforcement measures and sanctions, highlighting key themes that emerged from the roundtable discussion.

Enforcement and sanctions

Key theme 1: Using enforcement and sanctions to foster behavioural change

Background

The Hackitt Review deemed the regulatory system for high-rise and complex buildings unfit for purpose. The key issues identified as underpinning system failure include (Hackitt, 2018: 5):

- Regulations and guidance being ignored, misunderstood, or misinterpreted;
- A primary motive to get things done as quickly and as cheaply as possible with the delivery of 'quality' homes side-lined;
- A lack of clarity on roles and responsibilities, amplified by fragmentation within the industry, which resulted in a lack of accountability; and
- Inadequate regulatory oversight and enforcement tools. Enforcement is often not pursued where necessary and, when it is, the penalties are too small or lenient to be an effective deterrent.

The Building Safety Expert Group broadly agreed that these shortcomings were applicable to Wales too, and the group made recommendations to the Welsh Government on the reform of the building safety sector within this context (Building Safety Expert Group, 2019).

The White Paper states that the key aim of the regulator will be 'to ensure the safety of residents and others in and around buildings by holding duty holders to account in performance of their duties' (Welsh Government, 2021b: 29). Through regulatory reform, the Welsh Government is hoping to achieve:

- Improved clarity and awareness of the regime and building safety regulation;
- Improved systems for holding the relevant individuals to account, with clear lines of accountability;
- A strengthened regime that facilitates improved working between authorities, for example local authorities and fire and rescue services; and
- Cultural and behavioural change.

It is anticipated that these aims will largely be delivered through the core functions of the new regulatory system.

Experts discussed important issues to consider when reforming a regulatory system.

Being clear about liability

One of the key issues with the proposed reform is the management of liabilities across the design and construction phases, and the occupation phase. For example, if issues are identified with an occupied building that stem from the design or construction of that building, who is liable? This is a question for the Welsh Government teams working on: i) the occupation phase; and ii) the design and construction phase to jointly answer.

Another issue discussed with experts following the roundtable, is the liability that comes to those who are responsible for assessing compliance with building regulations. Establishing responsibility is key, for example, whether it is a government inspector or its wider organisation that is responsible for missing a design flaw. This type of scenario can have an impact during the occupation phase, as applicants may use the building permit process as a relatively cheap way to check the building quality and/or sue those responsible (in some cases, the government inspector or their organisation) when things go wrong. If liability rests elsewhere, then there needs to be consideration of the incentive for a government inspector to carry out this work.

Clear accountability structures are therefore needed. The design and construction and occupation phases typically involve different actors and are often controlled under different legislation. Complexities can arise when the ultimate building owner is not involved in making decisions during the design or construction phases. It is critical that clear information trails exist.

Educating rather than sanctioning residents

The involvement of residents in the regulation of building safety is complex. Residents within the regime will likely be held accountable for allowing entry into the property they are residing in for inspection and for maintaining a standard of fire safety within the property. The experts cautioned against imposing sanctions on residents, as there is a risk that such action would place an undue burden on residents, some of whom may come from disadvantaged backgrounds. There was a clear steer from the experts to focus any enforcement and sanction action toward the accountable person, who should then work with the resident to educate them on building and fire safety. An accountable person may therefore be responsible for producing a plan to interact with residents about the residents' responsibilities and the actions they should be taking to maintain fire and building safety. The plan should also raise awareness about common unsafe fire behaviours.

Perceptions of sanctions

Experts highlighted that perceptions about sanctions affect compliance behaviour. This includes the perceived chance of being caught and subsequently sanctioned and the perceived severity of the sanction. The fear of being sanctioned may motivate people to comply with regulatory requirements. Therefore, governments may decide to extensively publicise cases of severe sanctioning, often referred to as 'naming and shaming', so that the case sets a precedent within a community.

One area where publicising infractions has been used in the US context is in financial regulation, with the creation by the Consumer Financial Protection Bureau of a consumer complaint database that is made public (Consumer Financial Protection Bureau, 2022).

Experts suggested that within Wales, easy wins could be achieved by improving data on buildings. For example, setting up a national registration system or sending out letters can change behaviour. New York City's Department of Buildings, Fire Department, and the Police Department feed into a common database that helps identify risk-prone occupancy using various data, including building and fire inspections, police calls and well-being checks (Heaton, 2015).

Hard wiring compliance

Speed bumps rather than fines from sporadic speed gun enforcement was used as an example of how permanent infrastructure can be a more efficient way of creating behaviour change (Coglianese, 2023). This example, albeit from another field, illustrates how compliance that is integrated into the building system may be more effective than regulations that require an inspector to go through a checklist and issue fines.

The following illustrative examples were offered as potential 'leverage points' that might achieve preventative regulation in some contexts, although applicability to the Welsh context would need further consideration:

- As landlords often take residents to court to force evictions or try to recover unpaid rent, their legal protections could be made dependent on their compliance with building safety regulations.
- The potential of working with insurance companies to incorporate building safety into insurance assessments was discussed; including a scenario in which building owners might pay a premium or lose their insurance if they do not comply with regulations. A further example offered was linking mortgage providers with energy performance certification, where the energy efficiency of each building is made visible to prospective owners and residents. However,

the disadvantages to this approach were recognised, including the impact on the sale and purchase of properties. There may also be constraints on this type of action in Wales related to the devolved context, such as the size of the insurance market.

- A certification process could also be used to identify building safety issues. This would leverage market pressures on the owner at a time of sale or letting of the property, encouraging sellers and landlords to maintain a certain level of safety for the building if they want to achieve a good price in the market. The UK Government Building Safety Act 2022 introduced a Building Assessment Certificate (BAC), which acts as additional reassurance on building safety to residents. However, this has the potential to negatively impact leaseholders should their building lose its BAC.
- Experts suggested consideration of ‘softer’ measures, such as the education both of residents (including greater use of fire drills) and the wider public sector. For example, social services staff visiting households could alert people to potential fire risks in their homes.

The importance of targeting and using technology

Regulators have to be strategic to maximise their effectiveness, so identifying ‘known risks’ is important. Common issues that building safety regulation regimes face include ensuring that buildings contain certain basic safety equipment, that flood prevention measures are present, and that fire extinguishers are replaced before their expiry dates. These issues need to be considered when strategically deploying regulatory resources. Experts recommended exploring the use of statistical modelling techniques to identify where these common risks are likely to occur. There are a variety of approaches to targeting (Coglianese, 2022).

There is also potential to use other data science techniques, including Artificial Intelligence (AI). Such techniques can be used to identify potential risks and are currently being used in a range of regulatory areas for compliance (Coglianese, 2022). New York City, for example, has been identifying potential risks with buildings thanks to AI and machine learning tools that determine where building inspectors should visit (Coglianese and Lehr, 2017). This example is a joint effort between the Department of Buildings Fire Department and Social Services, which relates back to earlier points about developing partnerships to achieve a regulatory goal. One study showed that the US Environmental Protection Agency could increase the identification of safety violations by 600% by relying on a machine learning algorithm to identify which facilities to target (Hino and Brooks, 2018). Therefore, there are several ways to take advantage of AI (Coglianese and Lai, 2022a, and Coglianese and Lai, 2022b).

Experts pointed out that there is a lot of building monitoring technology that could be implemented, and sensing technology was also referenced as a helpful way of achieving compliance (Smarter Technologies, 2022, and Giles, 2022).

There are, however, preconditions that may act as a barrier to utilising new technologies. For example, the statistical models are all dependent on accurate and up-to-date information. If an accurately maintained asset register does not exist, then using data analysis and data science could do more harm than good. Therefore, the need for robust data was stressed again by experts.

Key theme 2: Funding of enforcement and sanctions models

Funding of enforcement through fees

Due to time constraints, the discussion did not address this topic in great detail. However, some references shared by the experts highlight how regulators can be structured to fund their operations at least partially through fees. At a national level, New Zealand, for example, collects a building levy on all consented work over a threshold value (New Zealand Government, 2022). These funds support investment in and development of the building sector, including:

- Policy, technical rules and guidance, operational policy advice and service design;
- Information and education;
- Service delivery (compliance and enforcement); and
- Monitoring and reporting.

In the US, most jurisdictions collect fees for various aspects of work, including obtaining a permit, approving plans, visiting sites during construction, and other related work. The fee level varies by jurisdiction, and the list of individual permits and associated fees for construction work can be lengthy. Examples include the Food and Drug Administration, which collects fees for drug reviews; and the Federal Reserve, which charges for services to banks, such as clearing checks and funds transfers (Zaring, 2012). Some commentators argue that these arrangements create conflicts and cause regulators to become captured by their regulated entities. If they are financially reliant on the entities they oversee, they may be less willing to sanction non-compliance.

It is also important to consider public perceptions. If fines from building regulation infractions are used to partially fund the regulator, this may lead to the regulator finding infractions to raise funds, even if the building is compliant. Given this possibility, rather than inspectors receiving funds directly from infractions, they could receive funds from the inspection that is paid for by the regulated entity. This approach would reduce the incentive to seek out infractions.

The experts suggested that effective enforcement and compliance assurance efforts demand adequate personnel and resources for oversight (Metzenbaum and Vasisht, 2015). The authors note that:

‘Failure to obtain and deploy resources effectively can lead to a significant buildup of risk, problems with agency morale, with some in the workforce feeling overworked and overwhelmed, while others treat the lack of resources as an excuse... Fundamental to all this is the importance of regulatory agencies to be able to hire and retain talented people.’ (Metzenbaum and Vasisht, 2015: 9)

Experts also noted that the precise organisational form that a regulator takes may be less critical than ensuring that the regulator has adequate resources for monitoring, data collection and analysis, problem-solving, and, when needed, sanctioning action. The institutional capacity to maintain ‘constant regulatory vigilance’ was important (Coglianese, 2019).

Increasing fines for regulatory failure or noncompliance

With respect to sanctions for noncompliance, many countries employ a series of incremental steps, with increasing levels of fines for failure to rectify the problem, which then advance through the legal system and culminates in the potential for legal action against the property owner.

In Singapore, for example, failure to rectify a fire hazard can attract a fine not exceeding S\$10,000 (approximately £6,000) and, in the case of a continuing offence, to a further fine not exceeding S\$1,000 (approximately £600) for every day or part of a day during which the offence continues after conviction; or where the offence involves failure to comply with a closing order, to a fine not exceeding S\$100,000 (approximately £60,000) or to imprisonment for a term not exceeding 12 months or to both (Hamzah, 2022).

In the US city of San Diego, California, if an inspection report reveals code violations, staff will determine the appropriate remedy (The City of San Diego). This may include the issuance of a citation or notice. In most cases, the person responsible for a violation is given an opportunity to voluntarily comply and correct the situation. Once

the deadline in the notice has expired, the owner or responsible person may be subject to one or more of the following actions:

- Abatement: The City may direct a third party to demolish, secure or remove junk and debris. The City will recover costs;
- Civil penalties: May be assessed up to a daily maximum amount of \$10,000 and up to a total maximum amount of \$400,000; and
- Judicial remedies: The City attorney can file criminal or civil cases against the responsible party or parties.

Key theme 3: Most and least effective methods of enforcement and sanctions

Due to time constraints, the discussion did not address this aspect, and due to a lack of empirical evidence assessing the effectiveness of different approaches, it is difficult to present a summary analysis. Wider research supports a range of regulatory enforcement strategies, as summarised by Gunningham (2017: 4):

- Advice and persuasion;
- Deterrence and responsive regulation;
- Risk-based regulation;
- Smart regulation;
- Metaregulation; and
- Criteria strategies.

The most important consideration, as Gunningham (2017: 11) notes, is to recognise ‘the strengths and weaknesses of different intervention strategies’ and seek to find ‘the ‘fit’ between a particular strategy and the characteristics of the regulatory challenge’. Enforcement style is another area for consideration. Responsive regulation, for example, refers to an approach to enforcement that responds to the actions of the regulated entity. If the regulated entity acts in good faith, so does the regulator. However, if the regulated entity does not cooperate, the regulator relies on a variety of deterrence strategies to encourage compliance. These strategies are graduated in nature, escalating based on the behaviour of the regulated entity. There are many options available to regulators when choosing a regulatory style, with the specific characteristics of the regulatory environment often determining the choice. Carrigan and Harrington (2015) summarise different enforcement approaches, providing an overview of responsive regulation and decisions that need to be made by the regulator in terms of how they interact with regulated entities (Carrigan and Harrington, 2015: iv-v):

- **Targeting** can be used by regulators with limited enforcement resources. This focuses enforcement efforts on firms with poor compliance by issuing larger fines and engaging more frequently in inspections.
- **Deterrence measures** can be used to dissuade regulatory violations through the threat of sanction. The ‘type’ of deterrence chosen will have implications for its enforcement approach. A general deterrence approach sees the regulator using broad threats or actions against a regulated entity to dissuade others from noncompliance; optimal deterrence aims to prevent only inefficient breaches; and absolute deterrence seeks to prevent all violations.
- Similarly, **legalistic enforcement** is a deterrence-based approach that relies on strict, rule-based application of notices, fines, and other mechanisms to sanction infractions and deter any future violations.
- **Accommodative enforcement** aims to achieve compliance and differs from deterrence-based approaches as regulators advise and cooperate with regulated entities in an informal manner through education, negotiation, sympathy and persuasion.
- **Responsive enforcement** involves using a ‘tit for tat’ strategy, in which inspectors cooperate when firms do so but impose sanctions in an escalating fashion when they do not cooperate and violate regulatory rules.

The level of stringency that regulated entities face is determined not only by the regulatory requirements but also by how they are implemented in practice. The level of stringency does not need to be static; it can change over time to reflect the diversity of how regulatory problems manifest. The report also provides empirical evidence on general deterrence strategies, such as targeting, which can be a useful approach for a regulatory body to take if they have limited resources (Carrigan and Harrington, 2015). With targeting, regulated entities are split into two groups: those that take compliance seriously and those that do not. In doing so, ‘regulators can use their scarce resources more efficiently to minimize violations by concentrating enforcement efforts on the group less likely to comply’ (Carrigan and Harrington, 2015: 36).

Much of the broader literature covers new buildings and buildings under construction, yet existing buildings and buildings in use are scarcely covered. When it comes to existing buildings, it seems that building authorities have a limited set of enforcement methods and sanctions at their disposal. For example, in Australia, Canada and New Zealand, a building authority can fine a building owner, or corporate entity, or take them to court. In the Netherlands, a building authority can fine the owner and, in certain circumstances, have a building closed or even take over the management of a building to remedy issues (at the expense of the building owner). In contrast, building authorities have a much broader set of enforcement methods for new

buildings and buildings under construction. They can, for example, refuse to issue planning permission or an occupancy permit; they can issue a time limit within which an issue needs to be resolved; or they can halt construction.

In the US, the most common approach has been the 'deterrence' model, which deters health and safety violations through increasing sanctions, as described. However, such a system faces challenges when resources and powers to inspect buildings are limited. This approach, in practice, often relies on someone issuing a complaint to bring a property to the attention of the authorities (Weinberg, 2021).

A concept called 'strategic code enforcement' has been increasingly implemented (Center for Community Progress, n.d). The aim of strategic code enforcement is to maximise compliance while minimising intervention from local government, taking advantage of data and community input to make the most of limited resources. It is based on three primary tenets:

1. **Equitable code enforcement**, which recognises differences in circumstances and provides the necessary support and protections to property owners. Equitable code enforcement responds to individual hardships while still working to improve property conditions.
2. **Efficient code enforcement**, which achieves compliance in the shortest time and at the lowest public cost.
3. **Effective code enforcement**, which results in an improved property that meets local standards. Property owners might comply voluntarily, or local governments can take action to abate the nuisance and either recover costs or compel the transfer of the problem property to a new responsible owner.

Strategic code enforcement requires six essential programme elements: real property information and data systems; inspection and investigation; regulations and permitting; enforcement and compliance actions; a selection of remedies; and performance measurements and evaluation.

Conclusion

The experts provided evidence to the Welsh Government on two main areas: i) comparing the effectiveness of single versus multiple regulators; and ii) identifying key themes on the effectiveness of enforcement and sanction models internationally.

Single versus multiple regulatory model

Through comparing the effectiveness of single versus multiple regulators, several key points emerged. Although neither a single nor multiple regulatory model is necessarily better, it was suggested that the establishment of an overarching committee acting as a single point of contact would improve visibility and ease of engagement with the accountable person (AP). Clarity around accountability will also be important in reforming the regulatory model. For example, clarity over the AP's role in regulation, such as engaging with residents, but also the sanctions that the AP may face if they breach their duties.

What will be arguably more critical than the organisational form that the regulator takes is ensuring that it has adequate resources for data collection and analysis, monitoring, problem solving and, when needed, sanctioning. The identified functions of the new regulatory system will require skills and capacity beyond what exists in the current system. It is key that staff are equipped to undertake sophisticated risk analysis and are competent in auditing so that they can advise regulated entities effectively on how to modify the regulated entity's behaviour.

The use of a registration system, potentially at a national level, may provide ease for a regulator in both determining which buildings are currently managed and also of targeting APs with enforcement and sanctions, when necessary. However, there is a need for robust data infrastructure to be in place to allow for an understanding of the number of buildings in scope across Wales. Setting up a national registration system would improve access to data on buildings and may serve as a form of deterrence due to the AP's awareness that they are being tracked on a register. Alongside registration, experts highlighted the benefits of certification for buildings, which shares similarities with the UK Government's Building Safety Act 2022. This certification would require data on each building within scope. However, there are also some potential risks to how any certification system may be used in practice, and the Welsh Government should consider this potential approach fully before deciding whether to adopt it.

Methods of enforcement and sanctions

Experts noted that enforcement and sanctions are only one part of the 'toolkit' needed to address noncompliance with building safety regulations in Wales. The new regulatory system should engage with and educate both MPs and residents.

Discussions on the effectiveness of enforcement and sanctioning for behaviour change focused on educating residents rather than sanctioning them. This would fall under the AP's responsibility to produce a resident engagement plan, which should

clearly set out actions that residents are responsible for. Linking building safety with other areas, such as social services, has the potential to ensure that education is provided via additional channels. Perceptions about sanctions, including the perceived chance of being sanctioned, affect compliance behaviour as the fear of being sanctioned may motivate people to comply with regulatory requirements.

General deterrence models, such as targeting, and 'naming and shaming', were suggested as an appropriate approach to enforcement when regulator resources and capacity are limited. This ensures that the regulated entities that do not comply are targeted and sanctioned whilst the resources are saved. A robust data infrastructure would need to be in place for this to be effective. Within the broader literature, there is a lack of empirical evidence pointing to the effectiveness of enforcement and sanctions for existing buildings. In summary, there is no one set of enforcement and sanctions that should be used, but rather the choice and subsequent effectiveness of the measures will depend on the environment within which they are to be applied.

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Annex 1: Roundtable participants

Experts

- Professor **Brian Meacham**, Managing Principal at Meacham Associates with expertise in regulatory policy and fire safety.
- Professor **Jeroen van der Heijden**, Chair in Regulatory Practice, Victoria University of Wellington. Expert in the field of regulatory reform, including the role of government in designing effective reform.
- Professor **Cary Coglianese**, founding Director of the Penn Program on Regulation, Professor of Law and Professor of Political Science at the University of Pennsylvania.
- Professor **Chris Carrigan**, Associate Professor of Public Policy and Public Administration at the George Washington University Trachtenberg School and Co-Director of the GW Regulatory Studies Center.

Welsh Government, Housing and Regeneration – Building Safety

- Audrey Johns, Head of Building Safety Reform Policy
- David Bell, Enforcement and Sanction Lead in Building Safety Reform Policy
- Lili Thompson, Regulatory Reform Policy Manager

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- Dan Bristow, Director of Policy and Practice
- Dr Helen Tilley, Senior Research Fellow
- Dr Tom Haines-Doran, Research Associate
- Charlotte Morgan, Research Assistant

Annex 2: Examples of centralised coordinating committees

Following the discussion, experts also provided examples of centralised coordinating committees, which could be useful for Welsh Government thinking on building regulatory reform:

- Interagency committees are common practice in the US. One agency usually has the lead in coordinating other regulatory agencies, and this often works well. Examples of coordinating agencies include the **Interagency Security Committee (ISC)**, the **Interagency Committee on Property Management** and the **National Interagency Fire Center**.
- The **Massachusetts Vehicle Check (MVC)** is a joint programme of the Department of Environmental Protection and the Registry of Motor Vehicles. MVC is needed as a coordinating body, as the two agencies are responsible for different aspects of vehicle safety.
- Canada has introduced a **new governance model for harmonised construction code development**, which relies on the expertise and input from industry, the regulatory community, general interest groups, organisations, and the public.
- Centralised coordinating committees are often labelled as ‘ombudsman’ (there is some conceptual slippage around that term internationally). One example is the **Small Business Ombudsman in Pennsylvania** that was created following concern for small businesses being overburdened by regulatory demands. It provides a primary advocacy role for small businesses within the relevant state department. Small businesses owners with a question for or issue with the department can request assistance from the Ombudsman to voice their concerns.
- The OECD publication **‘One-stop shops for citizens and business’** provides examples of good practice and case studies in the delivery of ‘one-stop shops’ that centralise regulatory services for the benefit of citizens and businesses, which assists to communicate regulatory requirements clearly.
- The **Office of Information and Regulatory Affairs** in the US coordinates regulatory policy for all other federal executive branch agencies. Coordination between agencies is also often accomplished through informal mechanisms, such as memoranda of understanding (MOUs).

- The **Administrative Conference of the United States (ACUS)** is a US independent federal agency that identifies ways to improve the functioning of other government agencies. ACUS issues recommendations to improve the efficiency and adequacy of these agencies. [See here](#) for recommendations made on addressing instances of overlap and fragmentation between agencies and improving coordination of these related agency responsibilities.

Another centralised coordinating committee example provided by the experts that offers an interesting perspective, but would not be as directly applicable due to it being based on a permit system instead of a regulatory system, is:

- **General Provisions 'Wabo' Act** in the Netherlands. The Act lays down the rules of granting an **All-in-One Permit for Physical Aspects**. It ensures that people who own a building or apply for a building permit only deal with one authority rather than several. This authority processes the permit itself, or it allocates queries and tasks to appropriate competent parties in the most efficient manner possible. The 'competent authority' is also responsible for the enforcement of the permit and other regulations named in the Act.

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