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REG NO. RC000803  
VAT REG NO. 318 0552 21

31 March 2022

**FAO: The Rt Hon Michael Gove MP, Secretary of State for Levelling Up, Housing and Communities**

***Via: email Michael.gove.mp@parliament.uk***

Dear Secretary of State

We understand that the Lords will be sitting for the third reading of the Building Safety Bill on 4 April 2022 to examine the latest version of the Building Safety Bill with a view to making any refinements necessary to make it workable.

Having reviewed the latest version of the Bill, we would like to draw attention to a potential flaw in a proposed amendment, which has the propensity to result in drastic unintended consequences.

Page 174, item 10 of the Building Safety Bill, seeks to amend Section 7 of the Building Act 1984 as follows:

- (1) Section 7 is amended as follows.*
- (2) In subsection (1)(a) for the words from “document” to “provision” substitute “relevant approved document”.*
- (3) After subsection (1) insert—*

*“(1A) In subsection (1) “relevant approved document” means a document approved for the purposes of the provision that applies in relation to the work in question.”*

We believe that there has been a misunderstanding of what is meant by “Approved Documents” and the use of this phrase.

Fundamentally, Building Regulations dictate the minimum standards and Approved Documents are *guidance* as to how one might achieve those standards. However, they are merely guidance and do not take into account complexity of buildings, whose standards may be met by achieving a higher standard as outlined in a British Standard for example, but may not comply with the Approved Document.

The alteration of the wording in the Building Act would mean that if the regulations are not met by complying with the guidance, then it is tending to establish liability, when the original clause by its first paragraph is clarifying that that is not the intention.

It is our belief that the term “approved documents” is being used to mean other types of documentation, and we would urge the writers of the legislation to discard the amendment quoted above and refrain from using terms that are understood by the building industry to mean Approved Documents in this sense as duplication of nomenclature may create chaos in practical terms.



For reference, please see below how the Clause would appear in context (within the Building Act 1984), a marked-up copy of that clause within that Act and an excerpt from the introduction of Approved Document B explaining the status of an Approved Document.

Reading this in context, the clause would read as follows:

- (1) A failure on the part of a person to comply with an approved document does not of itself render him liable to any civil or criminal proceedings; but if, in any proceedings whether civil or criminal, it is alleged that a person has at any time contravened a provision of building regulations—
  - (a) a failure to comply with a relevant approved document may be relied upon as tending to establish liability, and
  - (b) proof of compliance with such a document may be relied on as tending to negative liability.

(1A) In subsection (1) “relevant approved document” means a document approved for the purposes of the provision that applies in relation to the work in question.

**Below is a marked-up copy of the Clause in the Building Act:**

Font	Paragraph	Styles
<i>Status: This version of this Act contains provisions that are prospective.</i> <i>Changes to legislation: Building Act 1984 is up to date with all changes known to be in force on or before 28 May 2021. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes</i>		
<b>7</b>	<b>Compliance or non-compliance with approved documents.</b>	
	(1) A failure on the part of a person to comply with an approved document does not of itself render him liable to any civil or criminal proceedings; but if, in any proceedings whether civil or criminal, it is alleged that a person has at any time contravened a provision of building regulations— <ol style="list-style-type: none"><li>(a) a failure to comply with a <u>relevant approved document</u> <del>document that at that time was approved for the purposes of that provision</del> may be relied upon as tending to establish liability, and</li><li><u>(b)</u> proof of compliance with such a document may be relied on as tending to negative liability.</li></ol>	
<del>(b)</del>	<u>(1A) In subsection (1) “relevant approved document” means a document approved for the purposes of the provision that applies in relation to the work in question.</u>	
	(2) In any proceedings, whether civil or criminal— <ol style="list-style-type: none"><li>(a) a document purporting to be a notice issued as mentioned in section 6(3) above shall be taken to be such a notice unless the contrary is proved, and</li><li>(b) a document that appears to the court <u>or tribunal</u> to be the approved document to which such a notice refers shall be taken to be that approved document unless the contrary is proved.</li></ol>	



**Excerpts from an Approved Document follow here:**

**What is an approved document?**

*The Secretary of State has approved a series of documents that give practical guidance about how to meet the requirements of the Building Regulations 2010 for England.*

*These approved documents give guidance on each of the technical parts of the regulations and on regulation 7 (see the back of this document). The approved documents provide guidance for common building situations.*

*It is the responsibility of those carrying out building works to meet the requirements of the Buildings Regulations 2010.*

*Although it is ultimately for the courts to determine whether those requirements have been met, the approved documents provide practical guidance on potential ways to achieve compliance with the requirements of the regulations in England.*

*Although approved documents cover common building situations, compliance with the guidance set out in the approved documents does not provide a guarantee of compliance with the requirements of the regulations because the approved documents cannot cater for all circumstances, variations and innovations. Those with responsibility for meeting the requirements of the regulations will need to consider for themselves whether following the guidance in the approved documents is likely to meet those requirements in the particular circumstances of their case.*

*Note that there may be other ways to comply with the requirements than the methods described in an approved document. If you prefer to meet a relevant requirement in some other way than that described in an approved document, you should seek to agree this with the relevant building control body at an early stage.*

*Where the guidance in the approved document has been followed, a court or inspector will tend to find that there is no breach of the regulations. However, where the guidance in the approved document has not been followed, this may be relied upon as tending to establish breach of the regulations and, in such circumstances, the person carrying out building works should demonstrate that the requirements of the regulations have been complied with by some other acceptable means or method.*

*In addition to guidance, some approved documents include provisions that must be followed exactly, as required by regulations or where methods of test or calculation have been prescribed by the Secretary of State.*

*Each approved document relates only to the particular requirements of the Building Regulations 2010 that the document addresses. However, building work must also comply with all other applicable requirements of the Building Regulations 2010 and all other applicable legislation.*

Yours sincerely

Francesca Berriman MBE  
**Chief Executive**