

**SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM
(MEMORANDUM NO. 6)**

**DEREGULATION BILL: AMENDMENT IN RELATION TO HOUSING
(TENANCY DEPOSITS) (PRESCRIBED INFORMATION) ORDER 2007**

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for a purpose that falls within, or modifies the legislative competence of the National Assembly.
2. The Deregulation Bill (“the Bill”) was introduced in the House of Commons on 23 January 2014. The Bill can be found at:

<http://services.parliament.uk/bills/2013-14/deregulation.html>

Summary of the Bill and its Policy Objectives

3. The Bill is sponsored by the Cabinet Office. The UK Government’s policy objectives for the Bill are to remove or reduce unnecessary regulatory burdens that hinder or cost money to businesses, individuals, public services or the taxpayer.
4. The Bill includes measures relating to general and specific areas of business, companies and insolvency, the use of land, housing, transport, communications, the environment, education and training, entertainment, public authorities and the administration of justice. The Bill also provides for a duty on those exercising specified regulatory functions to have regard to the desirability of promoting economic growth. In addition, the Bill will repeal legislation that is no longer of practical use.

Provisions in the Bill for which consent is sought

5. The consent of the Assembly is sought for the amendment tabled by Lord Wallace of Saltaire in the UK Parliament on 27 January 2015, which makes amendments to the Housing (Tenancy Deposits) (Prescribed Information) Order 2007. Details of the amendment can be found in the proposed new Clause to be inserted ‘After Clause 29’ in the list of Amendments to be moved on Report and published on the Parliament website on 28 January. The same list of amendments contains a related amendment, tabled by Lord Wallace of Saltaire, to Clause 95 Page 73, line 27, which provides for commencement of the new provision.

6. The Housing Act 2004 defines “landlord” as also including a “letting agent”. The Housing (Tenancy Deposits) (Prescribed Information) Order 2007 duly refers to the term landlord, in line with normal legislative drafting practice. The UK and Welsh Government believe it is permissible for a letting agent’s details to be provided when the agent registers a tenant’s deposit on behalf of a landlord. This is wholly consistent with the definition of “landlord” in the Housing Act 2004.
7. A recent county court judgment identified an ambiguity in the meaning of “landlord” in the legislation. Legal advice has identified the risk of a higher court setting an unhelpful precedent in following the county court judgment. This means where prescribed information has been served which only contains the letting agent’s details, there is a reasonable chance both a county court and the High Court could find a landlord has not complied with the requirements of the Housing (Tenancy Deposits) (Prescribed Information) Order 2007.
8. Since there is a strict 30 day time-limit for service of the prescribed information on the tenant, this means landlords and letting agents in this position would not be able to rectify the problem by re-serving the prescribed information. This amendment ensures that landlords and letting agents in this position are protected by making retrospective amendments to the Housing (Tenancy Deposits) (Prescribed Information) Order 2007.
9. The amendment clarifies that it has always been the case that references in the Order to “landlord” include both the landlord and letting agent for a property (with the exception of one provision, which only permits a landlord to retain a deposit). Therefore, it makes clear that prescribed information served on a tenant which only contains the letting agent’s details, complies with the requirements of the Order. The amendment to the Order, therefore, will have retrospective effect, and can only be made by way of primary legislation. The UK Government has, therefore, tabled the amendment to the Deregulation Bill referred to in paragraph 5 above.
10. The provision applies in relation to England and Wales.
11. It is the view of the Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales in so far as they relate to tenancy deposit schemes under paragraph 11 of Part 1, Schedule 7 to the Government of Wales Act 2006.

Advantages of utilising this Bill rather than Assembly legislation

12. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill as it represents the most practicable and proportionate legislative vehicle to enable these provisions to apply in relation to Wales.

13. The amendment will resolve ambiguity in current legislation and will ensure landlords and letting agents, who are fully complying with guidance, are not disadvantaged. And if we do not take advantage of this late amendment to the Deregulation Bill, Welsh landlords and letting agents would be at a serious disadvantage compared to their counterparts in England should the legislation be introduced on an England-only basis for a period of time until we can legislate to achieve this.
14. Furthermore as the current tenancy deposit protection legislation was introduced on an England and Wales basis, and the schemes are run on behalf of Wales by the Department for Communities and Local Government, it also seems logical this change to the legislation should also be introduced on an England and Wales basis.

Financial implications

15. There are no financial implications for the Welsh Government.

Lesley Griffiths AM
Minister for Communities and Tackling Poverty
January 2015