

The Welsh Government's Legislative Consent Memoranda on the Social Housing (Regulation) Bill

November 2022



1. Background

The UK Government's Social Housing (Regulation) Bill

1. The Social Housing (Regulation) Bill¹ (the Bill) was introduced into the House of Lords on 8 June 2022. It is sponsored by the Department for Levelling Up, Housing and Communities.

2. The long title to the Bill states that it is a Bill to:

"to make provision about the regulation of social housing; about the terms of approved schemes for the investigation of housing complaints; and for connected purposes."

3. The Bill completed its passage through the House of Lords on 31 October 2022. At the time of writing this report, a date for Committee Stage in the House of Commons is yet to be announced.

The Welsh Government's Legislative Consent Memorandum

4. Standing Orders 29.1 and 29.2 provide that a legislative consent memorandum is required when a relevant UK Bill makes provision in relation to Wales for any purpose within the legislative competence of the Senedd or which modifies the Senedd's legislative competence.

5. On 18 August 2022, Julie James MS, Minister for Climate Change (the Minister), laid before the Senedd a Legislative Consent Memorandum (the Memorandum) in respect of the Bill.²

6. The Business Committee agreed that the Legislation, Justice and Constitution Committee and the Local Government and Housing (LGH) Committee, should report on the Memorandum by 1 December 2022.³

The impact of the Bill in Wales

7. At paragraphs 13 and 14 of the Memorandum the Minister states:

¹ [Social Housing \(Regulation\) Bill, as introduced](#) (HL Bill 21)

² Welsh Government, [Legislative Consent Memorandum, Social Housing \(Regulation\) Bill](#), August 2022

³ Business Committee, [Timetable for consideration: Legislative Consent Memorandum on the Social Housing \(Regulation\) Bill](#), September 2022

"The majority of the Bill's provisions amend Part 2 of the [Housing and Regeneration Act 2008] HRA 2008. Part 2 of the HRA 2008 establishes a framework for the regulation of social housing by English bodies.

The regulatory regime for social housing in Wales is provided for under Part 1 of the [Housing Act 1996] HA 1996, not Part 2 of the HRA 2008".

8. Part 1 of the *Housing Act 1996* (the 1996 Act) applies to the registration and regulation of social landlords that are based in Wales. Part 1 of the 1996 Act does not capture registered providers [RPs] based in England, even where they own or manage social housing stock in Wales. Registered providers based in England (including those that own or manage housing stock in Wales) are regulated under Part 2 of the *Housing and Regeneration Act 2008* (the 2008 Act).

9. The Bill does not change Part 1 of the 1996 Act, i.e. the Bill does not change the regulation of social landlords that are based in Wales. Therefore, it remains the case that there are two regimes in place for regulating registered providers who own or manage social housing stock in Wales – the 1996 Act regime for providers based in Wales and the 2008 Act regime for providers based in England.

Provisions for which the Senedd's consent it required

10. At paragraph 17 of the Memorandum the Minister sets out her assessment of which provisions in the Bill require the consent of the Senedd, namely:

- Clause 1 (Fundamental objectives);
- Clause 2 (Advisory panel);
- Clause 3 (Collection of information);
- Clause 4 (Relationship between regulator and housing ombudsman);
- Clauses 5 to 8 (Registration of providers of social housing);
- Clauses 9 to 10 (Duties of registered providers);
- Clauses 11, 12 and 14 to 16 (Registered providers: insolvency, restructuring etc.);
- Clauses 17 to 21 (Standards);
- Clauses 22 to 32, and corresponding Schedules 3 to 5 (except paragraph 36 to Schedule 5) (Monitoring and enforcement).

11. The Minister is also of the view that Clause 33 (Power to make consequential provision), Clause 12 (insofar as it relates to Part 1 of Schedule 1) and Part 1 of Schedule 1 may also require the Senedd's consent.⁴

12. The Minister does not consider that the Senedd's consent should be sought for clauses 34 to 36 in the Bill. At paragraph 26 of the Memorandum she states:

"Clauses 34, 35 and 36 concern the extent, commencement, and short title of the Bill. Senedd consent is not required for these clauses, as they have impact outside of the confines of this Bill."

13. In the Memorandum, the Minister confirms that the then Parliamentary Under-Secretary for Rough Sleeping and Housing, Eddie Hughes MP, wrote to her on 8 June 2022 to set out which clauses of the Bill the UKG believe the Senedd's consent is required.⁵

14. The UK Government does not consider that the Senedd's consent is required for clause 12 (insofar as it relates to Part 1 of Schedule 1), clause 13, Part 1 of Schedule 1 and Schedule 2. At paragraph 19 of the Memorandum the Minister states that, in correspondence, the UK Government has said that the Senedd's consent is not required for these provisions because they "contain amendments to the *Housing and Planning Act 2016* which have UK-wide extent and their subject matter is insolvency which falls within the reservation in paragraph 67 of Schedule 7A to [the *Government of Wales Act 2006 (the 2006 Act)*]".

15. At paragraph 20 of the Memorandum the Minister also states that the UK Government does not consider that the Senedd's consent is required for paragraph 36 of Schedule 5 as "this provision makes a consequential amendment to provision in the *Leasehold Reform (Ground Rent) Act 2021*, the subject matter of which is the law of property and accordingly outside the legislative competence of the Senedd pursuant to paragraph 3(1) of Part 1 of Schedule 7B to [the 2006 Act]".

16. The Minister agrees with the UK Government's analysis of legislative competence⁶ but with the following exceptions:

- The Minister states that, whilst clause 12 (insofar as it relates to Part 1 of Schedule 1) and Part 1 of Schedule 1 broadly concern insolvency, the provision provides for a

⁴ Memorandum, paragraph 17

⁵ Memorandum, paragraph 18

⁶ Memorandum, paragraphs 21 to 23

housing administration regime, and therefore relates to the devolved matter of housing.⁷

- At paragraph 24 of the Memorandum the Minister states that clause 32 introduces Schedule 5, and "UK Government concede that Schedule 5 makes relevant provision with regard to the devolved matter of housing (bar paragraph 36), therefore clause 32 also makes relevant provision in so far as it introduces Schedule 5 and therefore Senedd consent is required for clause 32".
- While clause 33 imposes a function on the Secretary of State, and is therefore outside of the Senedd's competence, the Minister states that it allows the Secretary of State to make provision which is consequential on the other provisions of the Bill for which consent should be sought and, therefore, the Senedd's consent is required for clause 33 in so far as it relates to the other provisions of the Bill.⁸

The Welsh Government's position as set out in the Memorandum

17. Paragraphs 28 to 30 of the Memorandum set out the Welsh Government's conclusions, at the time of laying before the Senedd the Memorandum. The Minister states:

"It is my view that it is appropriate to deal with these provisions in this UK Parliament Bill given the small numbers of social housing stock in Wales owned or managed by an England based RP. Furthermore, the amendments made by the clauses are positive for those tenants in Wales, in that they reform the regulatory regime around social housing by strengthening tenants' rights and driving change in landlord behaviour to focus on the needs of tenants and ensure landlords are held to account for their performance.

I therefore recommend that Senedd supports the proposals and gives consent to the relevant provisions within the Bill."⁹

⁷ Memorandum, paragraph 22

⁸ Memorandum, paragraph 25

⁹ Memorandum, paragraphs 29 to 30

The Welsh Government's Supplementary Legislative Consent Memorandum

18. On 5 October 2022, the Minister laid before the Senedd a Supplementary Legislative Consent Memorandum (Memorandum No. 2) in respect of the Bill following amendments in the House of Lords.¹⁰

Update on the position since the publication of the Memorandum and amendments for which consent is required

19. At paragraph 15 of Memorandum No. 2 the Minister confirms that the then Parliamentary Under-Secretary for Rough Sleeping and Housing wrote to her on 25 August 2022 to confirm the tabling of the UK Government amendments to the Bill, which make provision falling within the legislative competence of the Senedd.

20. At paragraph 16 of Memorandum No. 2 the Minister states that UK Government's tabled amendments were agreed on 6 September 2022.¹¹

21. The amendments tabled impact on the following clauses:

- Clause 3;
- Insertion of a new Clause 4 (and subsequent re-numbering of later clauses);
- Clause 13 and Schedule 1;
- Clause 17;
- Insertion of a new Clause 18 (and subsequent re-numbering of later clauses);
- Clause 19;
- Clause 22;
- Clause 23;
- Clause 25;

¹⁰ Welsh Government, [Legislative Consent Memorandum \(Memorandum No. 2\), Social Housing \(Regulation\) Bill](#), October 2022

¹¹ Memorandum No. 2, paragraph 16

- Clause 30 and Schedule 3;
- Insertion of a new Clause 32;
- Clause 34;
- Clause 35 and Schedule 5 (except paragraph 36).

22. At paragraph 41 of Memorandum No. 2 the Minister states:

"...my view on the need for the legislative consent of the Senedd in relation to clauses of the Bill as introduced, set out in the LCM laid in August, has not changed. Where provision has been amended in these clauses, and where new clauses have been introduced which make provision in relation to Wales for a purpose within the legislative competence of the Senedd, or with regards to the devolved matter of housing, I believe the legislative consent of the Senedd is required."

23. The Welsh Government's reasons for making provisions for Wales in the Bill as described in Memorandum No. 2 are set out in paragraphs 44 and 45 of Memorandum No. 2:

"...there are relatively few properties in Wales which are owned and/or managed by an English RP, who will be subject to the changes in regulatory environment described by the Bill.

The intention is that the Bill, as amended at committee stage, will lead to improvements in the performance of RPs, strengthening tenants' rights and driving change in landlord behaviour to focus on the needs of tenants, and ensuring landlords are held to account for their performance. This will lead to positive change for all tenants of English RPs, including those Welsh tenants who will be impacted by the changes, and therefore I am content that these provisions should be made in a UK Parliamentary Bill."¹²

¹² See also Memorandum No. 2, paragraphs 47 and 48

2. Committee consideration

24. We considered the Memoranda at our meeting on 24 October 2022, and agreed our report on both memoranda on 21 November 2022.¹³

Our view

General comments

25. We note the Welsh Government's reasons for making provision for Wales in the Bill, as set out in the Memoranda.

26. We note the Welsh Government's assessment as regards the provisions in the Bill for which the Senedd's consent should be sought. We further note that the UK Government's view does not align with that of the Welsh Government.

Conclusion 1. We agree with the Welsh Government's assessment that all the clauses and Schedules listed in the Memoranda fall within a purpose within the legislative competence of the Senedd, as described in Standing Order 29.

Timeliness of the Memoranda

27. The Bill was introduced into the House of Lords on 8 June 2022. However the Minister's first Memorandum was not laid before the Senedd until 18 August when the Senedd was in its summer recess period. While we acknowledge that the Minister wrote to the Llywydd on 27 June¹⁴, it is unfortunate that 10 weeks passed before the Welsh Government was able to lay the required Memorandum before the Senedd. We acknowledge the Minister's reasoning that this was, in part, due to the Bill only being made available to the Welsh Government the day before its introduction to the UK Parliament. This is regrettable and enhances our concerns regarding the current state of intergovernmental respect and relations.

28. There was also a six-week delay between the tabling of relevant amendments to the Bill in the House of Lords, on 25 August 2022, and the laying of Memorandum No. 2 before the Senedd, on 5 October. Again, we acknowledge that the Minister wrote to the Llywydd on 8

¹³ [Legislation, Justice and Constitution Committee, 24 October 2022](#) and [Legislation, Justice and Constitution Committee, 21 November 2022](#)

¹⁴ [Letter from the Minister for Climate Change to the Llywydd](#), 27 June 2022

September¹⁵ to state that the required supplementary legislative consent memorandum would be laid outside the normal two-week Standing Order 29 deadline.

29. However, we are not convinced by the reasoning put forward by the Minister in the letter to the Llywydd and believe it requires further explanation.

30. In her letter, the Minister states that the delay caused to the laying of Memorandum No. 2 was caused by “the amendments being laid during recess”.

31. The Minister's first Memorandum was also laid during the Senedd's summer recess period. As such, it is unclear to us what barrier the Minister is suggesting was caused by the recess period, particularly when it is well-established that government does not stop when the parliament is not sitting.

32. If the Minister was, for some reason, avoiding laying Memorandum No. 2 during the summer recess period, the new term began on 12 September so there would have been opportunity to lay it three weeks sooner.

33. In our view, the reasoning for the delay should have been clearer and more precise; it is unfortunate that the Minister's explanation implies that the Senedd's recess period imposed restrictions on the Welsh Government laying business.

Conclusion 2. We take the opportunity to remind the Minister – and all the Welsh Ministers – of the importance of providing timely information to Senedd Members, so as not to add to the democratic deficiencies caused by UK Bills making provision for Wales in devolved areas and the associated consent process.

The impact of the Bill in Wales

34. We note that the Minister believes a very small number of English RPs own and/or manage some social housing stock in Wales.¹⁶ However, the Memoranda contain no specific detail or information as to the actual numbers of homes or tenants in Wales that will be affected by the Bill.

35. We are aware that the LGH Committee wrote¹⁷ to the Minister on this matter, and requested details on the number of properties in Wales that will be subject to the changes

¹⁵ [Letter from the Minister for Climate Change to the Llywydd](#), 8 September 2022

¹⁶ Memorandum, paragraph 15

¹⁷ [Letter from the Local Government and Housing Committee to the Minister for Climate Change](#), 31 October 2022

proposed by the Bill. We also acknowledge the Minister's response that the Social Housing Regulator in England has confirmed there are 18 Registered Providers who own and manage approximately 530 homes/units in Wales which will be subject to the Bill's provisions.¹⁸

36. We agree with the sentiments expressed by the LGH Committee that this information assists Senedd Committees in their consideration, and therefore we believe it should have been included in the original Memorandum for the Bill.

Further legislative consent memoranda

37. We note that the Minister wrote to the Llywydd on 24 October 2022¹⁹, stating that more amendments to the Bill were tabled and accepted on 18 October and, as such, a further supplementary legislative consent memorandum would be laid before the Senedd.

38. We note that Memorandum No. 3 was laid before the Senedd on 17 November 2023.²⁰

39. We will consider Memorandum No. 3 in due course.

¹⁸ Letter from the Minister for Climate Change to the Local Government and Housing Committee, 10 November 2022

¹⁹ Letter from the Minister for Climate Change to the Llywydd, 24 October 2022

²⁰ Welsh Government, Legislative Consent Memorandum (Memorandum No. 3), Social Housing (Regulation) Bill, November 2022
