

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 2)

Social Housing (Regulation) Bill

1. This legislative consent memorandum (“LCM”) 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 Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.
2. The Social Housing (Regulation) Bill (“the Bill”) was introduced in the UK Parliament, in the House of Lords, on 8 June 2022. I laid an [LCM on the Bill as introduced](#) on 18 August.
3. The UK Government tabled 42 amendments on 25 August for consideration at Lords Committee stage which took place on 6 September. 39 of the 42 amendments make provision which falls within the legislative competence of the Senedd. Their effect is described in paragraphs 17 to 41 below.
4. All of the amendments tabled by the UK Government were accepted. The clauses referred to in this supplementary LCM are as set out in the Bill as amended at Lords Committee stage and published on 6 September. This version of the Bill can be found at: [Social Housing \(Regulation\) Bill \[HL\] - Parliamentary Bills - UK Parliament](#).
5. On 8 September, I wrote to the Llywydd explaining that due to the amendments being laid in recess, it had not been possible to lay this LCM within the normal two-week SO29 deadline.

Policy Objective(s)

6. The described purpose of the Bill is to reform the social housing regulatory regime in England to drive significant change in landlord behaviour to focus on the needs of their tenants and ensure landlords are held to account for their performance.
7. The UK Government’s stated core objectives of the Bill, are:
 - To facilitate a new, proactive consumer regulation regime for social housing
 - To refine the existing economic regulatory regime for social housing, and
 - To strengthen the Regulator for Social Housing (“the regulator”)’s powers to enforce the consumer and economic regimes.

Summary of the Bill

8. The Bill is sponsored by the Department for Levelling Up, Housing and Communities.
9. The Bill makes a number of amendments to existing legislation. These amendments make safety and transparency explicit parts of the English social housing regulator's objectives and give the regulator new powers on transparency and the provision of information.
10. The Bill seeks to maintain and refine the regulator's current economic regulatory role, ensuring that England-based registered providers ("RPs") of social housing are well governed and financially viable to protect homes and invest in new supply. The UK Government state that this will support the existing work of the regulator, by creating continued stability and viability in the sector through robust economic regulation, with the aim to encourage continued investment in the sector, by supporting the development of new homes, while protecting tenants from the risks of provider insolvency.
11. The Bill seeks to strengthen the regulator by giving it new enforcement powers ensuring it can effectively intervene when required and the provisions seek to encourage landlords to maintain standards, to avoid the threat of enforcement action, and ensure that the regulator has the appropriate tools available to deal with non-compliance with the standards.
12. The majority of the Bill's provisions amend Part 2 of Housing and Regeneration Act 2008 ("HRA 2008"). Part 2 of the HRA 2008 sets out the regulatory regime which applies to social housing provided by English bodies, and as such has little practical application in Wales. However, English based RPs are responsible for some social housing stock in Wales. Whilst the Bill's provisions will have little impact given the small number of England-based RPs with social housing stock in Wales, the amendments being made to the HRA 2008 nonetheless relate to the devolved matter of housing, insofar as they relate to RPs with housing stock in Wales, and are therefore within the legislative competence of the Senedd.
13. Further information about the Bill can be found within the [first LCM laid on 18 August](#).

Update on position since the publication of the first Legislative Consent Memorandum

14. I laid an LCM on 18 August, based on the Bill as introduced on 8 June. That LCM recommended that Senedd consent was given to the relevant provisions within the Bill.

15. Eddie Hughes MP, then Parliamentary Under-Secretary for Rough Sleeping and Housing, wrote on 25 August to confirm the tabling of the UK Government amendments to the Bill, which make provision falling within the legislative competence of the Senedd.
16. All of those UK Government amendments were laid before the UK Parliament on 25 August and agreed on 6 September. The amendments which make provision that fall within the legislative competence of the Senedd are the subject of this supplementary LCM. Annex A contains a table which outlines the changes to clause numbers following the amendments made at Lords Committee stage.

Amendments tabled by the UK Government to the Bill for consideration (and made) at House of Lords Committee stage for which consent is required

17. All the amendments described below either make provision in relation to Wales for a purpose, or related to a purpose, within the legislative competence of the Senedd (housing, insofar as it applies to an English-based RP which has housing stock in Wales), and therefore require the legislative consent of the Senedd.

Clause 3

18. Clause 3 amends sections 107 and 108 of the HRA 2008 to broaden the existing power for the regulator to require persons to provide documents or information for purposes connected to its regulatory functions. The amendments made here are consequential following the addition of a new offence by this clause. I recommended legislative consent was required for clause 3 as introduced because it makes provision in relation to Wales for a purpose within the legislative competence of the Senedd, namely housing, and I remain of this view following the amendments to the Bill.

Clause 4 – New clause ‘Power to charge fees’

19. This new clause amends section 117 of the HRA 2008, to allow the regulator to charge fees for applications for registration; the fee may be set at a level to cover the costs of the regulator, not just the registration itself. This new clause makes provision in relation to Wales for a purpose within the legislative competence of the Senedd, namely housing, and so requires Senedd consent, which I recommend is granted.

Clause 13 and Schedule 1

20. Paragraph 9 of Part 1 of Schedule 1 has been removed. This is consequential on amendments made to Schedule 2.

21. Part 1 of Schedule 1 broadly concerns insolvency, which is a reserved matter. However, while the provision broadly relates to insolvency, the overall purpose of the provision relates to the devolved matter of housing.
22. Part 2 of Schedule 1 makes several amendments to the HRA 2008 to apply the housing moratorium and housing administration regimes in relation to RPs that are Limited Liability Partnerships (“LLPs”). The amendments made to Part 2 of Schedule 1 add provisions titled “*Notice of registration or de-registration*” and “*Accounts*” to Part 2 of Schedule 1, these provisions extend the requirements of the HRA 2008 to LLPs.
23. I recommended legislative consent was required for Part 1 and 2 of Schedule 1 as introduced because it makes provision with regards to, or relating to, the devolved matter of housing, and I remain of this view following the amendments to the Bill.

Clause 17 (clause 16 as introduced)

24. Subsection (5) was removed from clause 17 of the Bill. This amendment is consequential on the insertion of new clause 18 adding new sections 169CB, 169CC and 169CD to Part 2 of the HRA 2008. I recommended legislative consent was required for clause 16 as introduced because it makes provision in relation to Wales for a purpose within the legislative competence of the Senedd, namely housing, and I remain of this view following the amendments to the Bill.

Clause 18 – New clause ‘Notification of change of control’

25. New clause 18 amends Part 2 of the HRA 2008 to add new sections 169CB, 169CC and 169CD. These new sections will place a RP under a duty to notify the regulator if certain events occur. The events are ones which may affect control of the provider. This new clause makes provision in relation to Wales for a purpose within the legislative competence of the Senedd, namely housing, and so requires Senedd consent, which I recommend is granted.

Clause 19 (clause 17 as introduced)

26. Clause 19 amends Part 2 of the HRA 2008. The amendment made here removes subsection (3) of clause 19. This amendment is consequential on the substitution of clause 20 with new clause 22. I recommended legislative consent was required for clause 17 as introduced because it makes provision in relation to Wales for a purpose within the legislative competence of the Senedd, namely housing, and I remain of this view following the amendments to the Bill.

Clause 22 – New clause ‘Failure to meet standards: exercise of intervention powers’ (removing clause 20 as introduced)

27. Clause 20 of the Bill (as introduced) was removed and a new clause 22 inserted into the Bill. New clause 22 omits sections 198A and 198B of the HRA 2008, which set out general grounds for exercise of intervention powers. Related amendments were made to Schedule 3, which adjust the grounds on which intervention powers may be exercised. This new clause makes provision in relation to Wales for a purpose within the legislative competence of the Senedd, namely housing, and so requires Senedd consent, which I recommend is granted.

Clause 23 (clause 21 as introduced)

28. Clause 23 was amended to remove reference to section 198B in, as a consequence of new clause 22. I recommended legislative consent was required for clause 21 as introduced because it makes provision in relation to Wales for a purpose within the legislative competence of the Senedd, namely housing, and I remain of this view following the amendments to the Bill.

Clause 25 (clause 23 as introduced)

29. The amendment made to clause 25 was consequential on the insertion of new paragraph 8A into Schedule 3. New paragraph 8A contains amendments to section 252A of the HRA 2008. I recommended legislative consent was required for clause 23 as introduced because it makes provision in relation to Wales for a purpose within the legislative competence of the Senedd, namely housing, and I remain of this view following the amendments to the Bill.

Clause 30 (Clause 28 as introduced) and Schedule 3

30. The HRA 2008 was amended to adjust the grounds on which the regulator can act under various different scenarios, linked to the repeal of sections 198A and 198B of the HRA 2008, by new clause 22. Other amendments were made in consequence of these changes.
31. Paragraphs 15 and 16 were added to Schedule 3, which amend the HRA 2008 to widen the power of the regulator to appoint officers of a registered provider.
32. Paragraph 14(b) of Schedule 3 was amended to make it clear that the regulator doesn't need to wait until the expiry of a term of appointment of an officer before renewing the appointment.
33. I recommended legislative consent was required for Schedule 3 as introduced because it makes provision in relation to Wales for a purpose within the legislative competence of the Senedd, namely housing, and I remain of this view following the amendments to the Bill.

Clause 32 – New clause ‘Meaning of “subsidiary”’

34. This new clause widens the meaning of “subsidiary” in Part 2 of the HRA 2008 so, amongst other things, it applies to bodies other than companies. This new clause makes provision in relation to Wales for a purpose within the legislative competence of the Senedd, namely housing, and so requires Senedd consent, which I recommend is granted.

Clause 34 (clause 31 as introduced)

35. Clause 34 ensures the housing ombudsman of a scheme approved by the Secretary of State under Schedule 2 to the Housing Act 1996 (“HA 1996”) is empowered to issue a code of practice on complaint handling and makes clear that the housing ombudsman can issue orders that seek to prevent the recurrence of issues identified during an investigation by ordering a member to review its practice and/or policy.
36. Amendments have been made to require the housing ombudsman to monitor compliance with such a code of practice, to make it clear that subscriptions payable by members of a housing ombudsman scheme may be set at a level to cover all the costs of the scheme administrator and the ombudsman, and for connected purposes. I recommended legislative consent was required for clause 31 as introduced because it makes provision in relation to Wales for a purpose within the legislative competence of the Senedd, namely housing, and I remain of this view following the amendments to the Bill.

Clause 35 and Schedule 5 (bar paragraph 36)

37. Schedule 5 makes minor and consequential amendments and transitory provision. Part 1 of Schedule 5 amends the HRA 2008.
38. Section 122 of the HRA 2008 has been expanded to provide for the recovery of wrongful gifts or payments, so it applies to all non-profit registered providers. Changes have been made to the HRA 2008 related to clause 7 of the Bill which removes automatic designation of charities as non-profit organisations and as a consequence of the introduction of new clause 18.
39. Changes have been made to Part 2 of the HRA 2008 to remove unnecessary words and achieve greater consistency of language. Sections 258 and 264 of the HRA 2008 have been updated to provide that an offence under those sections is punishable on summary conviction with an unlimited fine. Paragraph 37 of Schedule 5 has been removed as a consequence of an amendment made to Schedule 3.
40. I recommended legislative consent was required for Schedule 5 as introduced (bar paragraph 36) because it makes provision in relation to Wales for a purpose within the legislative competence of the Senedd, namely housing, and I remain of this view following the amendments to the Bill.

Summary

41. As outlined above, 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.

UK Government view on the need for consent

42. The then Parliamentary Under-Secretary for Rough Sleeping and Housing, Eddie Hughes MP, in his letter to me of 25 August, confirming the laying of the UK Government amendments, stated:

The impact of these amendments on Wales, and some of the amendments themselves are minor and technical. However, the Welsh Government may want to lodge a supplementary Legislative Consent Memorandum for some of these provisions for the reasons set out in my last correspondence.

43. Following our subsequent analysis of the impact of the amendments to the Bill for Wales, I concur that since the amendments outlined in paragraphs 17 to 41 above make provision which apply to Wales and relate to the devolved matter of housing (insofar as they apply to an English-based RP with housing stock in Wales) which is within the legislative competence of the Senedd, Senedd consent to the amendments is required to be sought.

Reasons for making these provisions for Wales in the Social Housing (Regulation) Bill

44. As explained above, 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.
45. 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.

Financial implications

46. No financial implications have been identified to date should these provisions be applied in Wales.

Conclusion

As set out above, it is my view that the legislative consent of the Senedd is required for the amendments made to Clauses 3, 13 (in relation to Schedule 1), 17, 19, 23, 25, 30 (in relation to Schedule 3), 34 and 35 (in relation to Schedule 5), and for new clauses 4, 18, 22 and 32, which make provision in relation to Wales for a purpose within the legislative competence of the Senedd (insofar as they apply to an English-based RP with housing stock in Wales). Legislative consent is also required for the removal of paragraph 9 of Part 1 of Schedule 1, which makes provision with regards to the devolved matter of housing.

47. As outlined in the LCM for the Bill as introduced, 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 proposals in the Bill as a whole, and in the amendments tabled by the UK Government and agreed at Lords Committee stage, 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.
48. I therefore recommend that the Senedd grants its consent to the Bill as amended at Lords Committee stage.

Julie James MS
Minister for Climate Change
05 October 2022

Annex A - Comparison table between versions of the Bill

Bill as introduced to the House of Lords on 8 June:
[Social Housing \(Regulation\) Bill \[HL\] \(parliament.uk\)](#)

Bill as amended at House of Lords Committee stage:
[Social Housing \(Regulation\) Bill \[HL\] \(parliament.uk\)](#)

Clause number on introduction	Clause description	As amended at HoL committee stage
1	Fundamental objectives	1
2	Advisory panel	2
3	Collection of information	3
	Power to charge fees	4
4	Relationship between regulator and housing ombudsman	5
5	Meaning of 'English body'	6
6	Registration criteria	7
7	Designation	8
8	De-registration	9
9	Appointment of health and safety lead by registered provider	10
10	Electrical safety standards	11
11	Moratorium on disposal of land	12
12	Limited liability partnerships	13
13	Insolvency of registered providers	14
14	Notification requirements: expansion to profit-making organisations	15
15	Receipt of transfers of engagements from a registered society	16
16	Notification of constitutional changes	17
	Notification of change of control	18
17	Standards relating to information and transparency	19
18	Code of practice: standards relating to consumer matters	20
19	Direction by Secretary of State	21
20	Intervention powers: removal of 'serious detriment' test	Removed from the Bill
	Failure to meet standards: exercise of intervention powers	22
21	Performance monitoring	23

Clause number on introduction	Clause description	As amended at HoL committee stage
22	Surveys	24
23	Performance improvement plans	25
24	Emergency remedial action	26
25	Extension of powers to charities who have not received public assistance	27
26	Notification of Charity Commission of exercise of enforcement powers	28
27	Exercise of powers: land with a Crown or Duchy interest	29
28	Regulatory and enforcement powers: further amendments	30
29	Leaving the social housing stock: end of lease	31
	Meaning of 'subsidiary'	32
30	Appeals	33
31	Housing Ombudsman scheme	34
32	Minor and consequential amendments and transitory provision	35
33	Power to make consequential provision	36
34	Extent	37
35	Commencement	38
36	Short title	39
Schedule 1	Limited liability partnerships	Schedule 1
Part 1	Amendments of the Housing and Planning Act 2016	Part 1
Part 2	Amendments of the Housing and Regeneration Act 2008	Part 2
Schedule 2	Amendments to restrictions on insolvency procedures	Schedule 2
Schedule 3	Regulatory and enforcement powers	Schedule 3
Schedule 4	Appeals	Schedule 4
Schedule 5	Minor and consequential amendments and transitory provision	Schedule 5
Part 1	Housing and Regeneration Act 2008	Part 1
Part 2	Other Acts	Part 2
Part 3	Transitory provision	Removed from the Bill