

## SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 3)

### 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](#). I then laid a [supplementary LCM \(Memorandum No 2\)](#) on the Bill on 5 October following amendments tabled by the UK Government for consideration and agreed at House of Lords Committee Stage.
3. The UK Government tabled a further 32 amendments on 11 October for consideration at Lords Report Stage, which took place on 18 October, and supported one amendment laid by another peer. All of these amendments make provision which falls within the legislative competence of the Senedd and were accepted at Lords Report Stage. In addition, one non-government amendment which didn’t receive government support was also accepted. This amendment is also relevant for the purposes of SO 29.
4. The effect of the amendments made to the Bill is described in paragraphs 18 to 34 below.
5. The clauses referred to in this supplementary LCM are as set out in the Bill as amended at Lords Report Stage and published on 18 October. This version of the Bill can be found at: [Social Housing \(Regulation\) Bill \[HL\] \(parliament.uk\)](#).
6. On 24 October, I wrote to the Llywydd explaining that due to the UK Government only notifying us of the amendments after they were tabled, it has not been possible to lay this supplementary LCM within the normal two-week SO29 deadline.

### Policy Objective(s)

7. 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.
8. 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**

9. The Bill is sponsored by the Department for Levelling Up, Housing and Communities.
10. 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.
11. 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.
12. 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.
13. 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. The latest information received from the Social Housing Regulator in England confirms there are 18 Registered Providers who own and manage approximately 530 homes/units in Wales which will be subject to the changes proposed in the Bill. These are, in the main, special needs provision with some general needs and shared ownership.

14. Further information about the Bill can be found within the [first LCM laid on 18 August](#).
15. The UK Government brought forward 42 amendments which were accepted at Lords Committee stage, and are discussed in detail in the supplementary LCM (Memorandum No 2), laid on 5 October. Memorandum No 2 recommended that Senedd consent was given to the relevant provisions within the amended Bill. In summary, the most significant of these amendments were made in the following areas:
- New requirement that providers must notify the Regulator when control of the organisation changes in certain ways;
  - Changes to the ability of the regulator to charge fees to cover costs;
  - Amendments to the duties and fee charging of the Housing Ombudsman Service;
  - Changes to the Regulator's power to appoint an officer to the board of a registered provider;
  - Changes to grounds for use of enforcement powers.

**Update on position since the publication of the supplementary Legislative Consent Memorandum (Memorandum No 2) laid on 5 October**

16. The UK Government tabled a further 32 amendments on 11 October, and supported a further amendment laid for considerations at Lords Report Stage.
17. All of the amendments that the UK Government tabled or supported were agreed at Lords Report Stage on 18 October. Additionally, one of the non-government amendments tabled was also agreed (this amendment introduced new clause 24), though not supported by the UK Government. All the amendments make provision which fall within the legislative competence of the Senedd and are the subject of this supplementary LCM (Memorandum No 3). Annex A contains a table which outlines the changes to clause numbers following the amendments made at each relevant stage of the Bill's passage so far.

**Amendments tabled to and supported by the UK Government to the Bill for consideration at House of Lords Report stage, and amendment made at the same for which consent is required**

18. All the amendments described below make provision in relation to Wales for 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 1 ‘Fundamental objectives’

19. This clause amends section 92K of the HRA 2008 – which sets out the fundamental objectives that guide the regulator’s approach to regulation of social housing – such that the regulator must support the provision of housing which is ‘safe’ in addition to the existing expectations, and that the regulator must require RPs to be transparent with their tenants. The clause has been amended to add being energy efficient to the objectives set out in that section. I recommended legislative consent was required for clause 1 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 7 (Clause 6 as introduced) ‘Registration criteria’

20. Clause 7 amends section 112 (eligibility for voluntary registration) of the HRA 2008, which enables the regulator to set criteria which specify the financial, constitutional and other management arrangements that must be satisfied by new registrants. This clause has been amended to add a further requirement to the list of conditions a new entrant must meet, following the addition of ‘standards relating to competence and conduct’ by clause 21 of the Bill. I recommended legislative consent was required for clause 6 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 15 (Clause 14 as introduced) ‘Notification requirements: expansion to profit-making organisations’

21. Clause 15 expands to profit-making RPs requirements set out in the HRA 2008 to notify the regulator of various restructuring and dissolution events. This clause has been amended to remove two subsections as a consequence of the addition of new clauses 16 (Conversion of company into registered society: continuation of registration) and 17 (Restructuring of registered societies), to the Bill at Report stage. Since I am recommending that legislative consent is required for new clauses 16 and 17, and as I recommended it was required for clause 14 as introduced, since they make provision in relation to Wales for a purpose within the legislative competence of the Senedd, namely housing, I also recommend it is required for the clause as now amended.

### Clause 16 – New clause ‘Conversion of company into registered society: continuation of registration’

22. This new clause amends section 161 of the HRA 2008 to remove the requirement for the regulator to decide whether providers who convert from a company to a registered society are eligible for registration with the regulator, so that registration is continuous and obligations on the provider also continue on conversion. 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 17 – New clause ‘Restructuring of registered societies: registration of successor bodies’

23. This new clause omits subsections (5) to (8) of section 163 of the HRA 2008 and inserts a new section after section 163 to make provision for what the regulator is required to do in a situation where a registered society is restructured and it results in the creation of a new body or in the transfer of engagements to a body which is not a registered provider. The new section requires the regulator to decide whether or not to register the body and describes how the body should be treated pending that decision. 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 18 (Clause 15 as introduced) ‘Receipt of transfers of engagements from a registered society’

24. This clause, in the Bill as introduced, inserted new provisions in the HRA 2008 creating a new notification requirement applicable to RPs that are companies and registered societies. The new provisions require such RPs to notify the regulator if a registered society that is not a RP passes a resolution transferring its engagement to the provider. This clause has been amended in consequence of the insertion of new clause 17. I recommended legislative consent was required for clause 15 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 21 – new clause ‘Standards relating to competence and conduct’

25. This clause introduces a new section into the HRA 2008 giving the regulator additional power to set standards relating to the competence and conduct of RPs. 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 22 (Clause 17 as introduced and Clause 19 as amended at Lords Committee Stage) ‘Standards relating to information and transparency’

26. This clause adds a new section in the HRA 2008 which allows the regulator to set standards for RPs on the provision of information and transparency and sets out examples of things the standards could contain. This clause also amends the HRA 2008 in order to provide that a failure to meet a standard set under the new section 194A will be a ground to exercise various of the regulator’s enforcement powers. This clause was consequentially amended at Lords Committee Stage and has been further amended at Lords Report Stage in consequence of the

insertion of new clause 21, and of amendments made to schedule 5. I recommended legislative consent was required for clause 17 as introduced and as amended at Lords Committee Stage 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 24 – New clause ‘Standards relating to energy demand’

27. This non-government amendment was agreed to the Bill at Lords Report Stage. This new clause amends section 193 of the HRA 2008 which concerns standards relating to consumer matters, adding a standard relating to energy demand and outlining a new requirement on the regulator to have regard to the UK Government’s strategy on reducing energy demand for social housing properties, which the Secretary of State is also required by this clause to publish. 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 25 (Clause 19 as introduced) ‘Direction by Secretary of State’

28. This clause amends section 197 of HRA 2008 to allow the Secretary of State to issue a direction to the regulator in relation to standards, requiring providers to comply with rules about the provision of information to their tenants about the management of their housing. Amendments have been made to this clause as a consequence of the insertion of new clause 21 on standards relating to competence and conduct. I recommended legislative consent was required for clause 19 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 27 (Clause 21 as introduced and Clause 23 as amended at Lords Committee Stage) ‘Performance monitoring’

29. This clause amends section 198c of the HRA, which gives the regulator a power to direct RPs to collect, process and publish information concerning their performance in relation to standards set by the regulator that apply to them. This clause was consequentially amended at Lords Committee Stage, and has been further amended at Report stage as a consequence of the insertion of new clause 21 on standards relating to competence and conduct. I recommended legislative consent was required for clause 21 as introduced, and as amended at Lords Committee Stage, 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 28 (Clause 22 as introduced) 'Surveys'

30. This clause concerns surveys and amends sections 199 and 200 of the HRA 2008 and inserts new sections 199A and 199B into that Act. This clause has been amended to extend the notice required to be given to occupiers prior to a survey, and to make further changes which are consequential on that amendment. I recommended legislative consent was required for clause 22 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 29: New clause 'Inspection Plan'

31. This new clause inserts a new section 201A into the HRA 2008, imposing duties of the regulatory to produce, publish, implement, and keep updated a plan to carry out regular and one-off inspections of RPs of social housing. 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 30 (Clause 23 as introduced and Clause 25 as amended at Lords Committee Stage) 'Performance improvement plans'

32. Clause 30 adds new sections to HRA 2008 enabling the regulator to require a RP of social housing to prepare and implement a performance improvement plan, thereby allowing the regulator to hold a RP to account in relation to issues that have been identified. This clause was consequentially amended at the Lords Committee Stage. Further amendments have been made to this clause as a consequence of the insertion of new clause 21 on standards relating to competence and conduct. I recommended legislative consent was required for clause 23 as introduced and as amended at Lords Committee Stage 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 31 (Clause 24 as introduced) 'Emergency remedial action'

33. Clause 31 adds sections 225A to 225H on emergency remedial action to the HRA 2008. Amendments have been made to this clause to make it clear that notice of entry only needs to be given if the dwelling is occupied, to clarify that the authorised person who gives the pre-entry notice need not be the same authorised person who exercises the power to enter, to enable those who are entitled to receive a pre-entry notice to consent to early entry, and for purposes connected to these changes. I recommended legislative consent was required for clause 24 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.

### Schedule 5 (bar paragraph 48)

34. Schedule 5 makes minor and consequential amendments. Part 1 of Schedule 5 amends the HRA 2008. Amendments were made to Schedule 5 at Lords Committee Stage. Further amendments have been made to this schedule to make clear: that the regulator's power to set standards for RPs extends to energy efficiency of accommodation, facilities and services provided in connection with social housing; that the Secretary of State may direct the regulator about setting standards on energy efficiency; and that the regulator's duty to consult tenant representative bodies refers to social housing tenant representative bodies specifically. Amendments have also been made as a consequence of the changes made within this schedule, and those made by clauses 21, 22 and 26. I recommended legislative consent was required for schedule 5 (bar the provision amending the Leasehold Reform (Ground Rent) Act 2022) as introduced and as amended in Lords Committee Stage 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.

### **UK Government view on the need for consent**

35. Ministerial letters received at earlier stages of the Bill progress (as outlined in the LCM on the Bill as introduced and in Memorandum No 2), have expressed the UK Government's view that an LCM is required for some of the clauses in the Bill, which make provisions with regards to the devolved matter of housing. The explanatory notes accompanying the Bill outline that the Bill makes provision that relates to a devolved matter in Wales and therefore a LCM is required and has been sought.

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

36. As outlined in the original LCM and Memorandum No 2 on the Bill, there are relatively few (approximately 530) 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.
37. The overall intention is that the Bill, as amended at Lords Report 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 remain content that these provisions should be made in a UK Parliamentary Bill.



## **Financial implications**

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

## **Conclusion**

39. As set out above, it is my view that the legislative consent of the Senedd is required for the amendments made to clauses 1, 7, 15, 18, 22, 25, 27, 28, 30, 31 and to schedule 5, and to the addition of new clauses 16, 17, 21, 24 and 29 which all 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).
40. As outlined in my original LCM and Memorandum No 2 on the Bill, 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 relevant amendments tabled and agreed at Lords Report 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.
41. I therefore recommend that the Senedd grants its consent to the Bill as amended at Lords Report Stage.

**Julie James MS**  
**Minister for Climate Change**  
**17 November 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 and published on 6 September:  
[Social Housing \(Regulation\) Bill \[HL\] \(parliament.uk\)](#)

Bill as amended at House of Lords Report stage and published on 18 October:  
[Social Housing \(Regulation\) Bill \[HL\] \(parliament.uk\)](#)

Clause number on introduction	Clause description	As amended at HoL committee stage	As amended at HoL report stage
1	Fundamental objectives	1	1
2	Advisory panel	2	2
3	Collection of information	3	3
	Power to charge fees	4	4
4	Relationship between regulator and housing ombudsman	5	5
5	Meaning of 'English body'	6	6
6	Registration criteria	7	7
7	Designation	8	8
8	De-registration	9	9
9	Appointment of health and safety lead by registered provider	10	10
10	Electrical safety standards	11	11
11	Moratorium on disposal of land	12	12
12	Limited liability partnerships	13	13
13	Insolvency of registered providers	14	14
14	Notification requirements: expansion to profit-making organisations	15	15

<b>Clause number on introduction</b>	<b>Clause description</b>	<b>As amended at HoL committee stage</b>	<b>As amended at HoL report stage</b>
	Conversion of company into registered society: continuation of registration		16
	Restructuring of registered societies		17
15	Receipt of transfers of engagements from a registered society	16	18
16	Notification of constitutional changes	17	19
	Notification of change of control	18	20
	Standards relating to competence and conduct		21
17	Standards relating to information and transparency	19	22
18	Code of practice: standards relating to consumer matters	20	23
	Standards relating to energy demand		24
19	Direction by Secretary of State	21	25
20	Intervention powers: removal of 'serious detriment' test	Removed from the Bill	
	Failure to meet standards: exercise of intervention powers	22	26
21	Performance monitoring	23	27
22	Surveys	24	28
	Inspection Plan		29
23	Performance improvement plans	25	30
24	Emergency remedial action	26	31
25	Extension of powers to charities who have	27	32

<b>Clause number on introduction</b>	<b>Clause description</b>	<b>As amended at HoL committee stage</b>	<b>As amended at HoL report stage</b>
	not received public assistance		
26	Notification of Charity Commission of exercise of enforcement powers	28	33
27	Exercise of powers: land with a Crown or Duchy interest	29	34
28	Regulatory and enforcement powers: further amendments	30	35
29	Leaving the social housing stock: end of lease	31	36
	Meaning of 'subsidiary'	32	37
30	Appeals	33	38
31	Housing Ombudsman scheme	34	39
32	Minor and consequential amendments and transitory provision	35	40
33	Power to make consequential provision	36	41
34	Extent	37	42
35	Commencement	38	43
36	Short title	39	44
Schedule 1	Limited liability partnerships	Schedule 1	Schedule 1
Part 1	Amendments of the Housing and Planning Act 2016	Part 1	Part 1
Part 2	Amendments of the Housing and Regeneration Act 2008	Part 2	Part 2
Schedule 2	Amendments to restrictions on insolvency procedures	Schedule 2	Schedule 2

<b>Clause number on introduction</b>	<b>Clause description</b>	<b>As amended at HoL committee stage</b>	<b>As amended at HoL report stage</b>
Schedule 3	Regulatory and enforcement powers	Schedule 3	Schedule 3
Schedule 4	Appeals	Schedule 4	Schedule 4
Schedule 5	Minor and consequential amendments and transitory provision	Schedule 5	Schedule 5
Part 1	Housing and Regeneration Act 2008	Part 1	Part 1
Part 2	Other Acts	Part 2	Part 2
Part 3	Transitory provision	Removed from the Bill	