

The Welsh Government's Legislative Consent Memoranda on the Leasehold and Freehold Reform Bill

March 2024



1. Background

The UK Government's Leasehold and Freehold Reform Bill

1. The Leasehold and Freehold Reform Bill¹ (the Bill) was introduced into the House of Commons and had its first reading on 27 November 2023. It is sponsored by the Department for Levelling Up, Housing and Communities.
2. The Explanatory Notes to the Bill provide the following overview:

"The Leasehold and Freehold Reform Bill is the second part of a legislative package to reform English and Welsh property law. It follows on from the Leasehold Reform (Ground Rent) Act 2022, which put an end to ground rents for new, qualifying long residential leasehold properties in England and Wales.

The Bill will make long-term changes to homeownership for millions of leaseholders in England and Wales. The main elements of the Bill are:

Empowering leaseholders:

a. Making it cheaper and easier for existing leaseholders in houses and flats to extend their lease or buy their freehold.

b. Increasing the standard lease extension term from 90 years to 990 years for both houses and flats, with ground rent reduced to a peppercorn.

c. Removing the requirement for a new leaseholder to have owned their house for two years before they can extend their lease or buy their freehold and for flats before they can extend their lease.

d. Increasing the 25 per cent 'non-residential' limit preventing leaseholders in buildings with a mixture of homes and other uses such as shops and offices, from buying their freehold or taking over management of their buildings - to allow leaseholders in buildings with up to 50

¹ [Leasehold and Freehold Reform Bill, as introduced](#). (Bill 013)

per cent non-residential floorspace to buy their freehold or take over its management.

Improving leaseholder consumer rights:

a. Requiring greater transparency regarding leaseholders' service charges so that all leaseholders receive minimum key financial and non-financial information on a regular basis, including introducing a standardised service charge demand form and an annual report, so that leaseholders can scrutinise and better challenge costs if they are considered unreasonable.

b. Replacing buildings insurance commissions for managing agents, landlords and freeholders with transparent administration fees.

c. Scrapping the presumption for leaseholders to pay their landlords' legal costs when challenging poor practice.

d. Granting freehold homeowners on private and mixed tenure estates the same rights of redress as leaseholders – by extending equivalent rights to transparency over their estate charges and to challenge the charges they pay by taking a case to a Tribunal.”²

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

“Amend the rights of tenants under long residential leases to acquire the freeholds of their houses, to extend the leases of their houses or flats, and to collectively enfranchise or manage the buildings containing their flats, to give such tenants the right to reduce the rent payable under their leases to a peppercorn, to regulate charges and costs payable by residential tenants, to regulate residential estate management and to regulate rent charges.”³

4. The Bill completed its passage through the House of Commons on 27 February 2024. It received its first reading in the House of Lords on 28 February

² [Leasehold and Freehold Reform Bill, Explanatory Notes](#), November 2023, paragraphs 1 to 4

³ Leasehold and Freehold Reform Bill, as introduced, page 1

2024 and at the time we agreed our report, a date for second reading had not been announced.

The Welsh Government's Legislative Consent Memorandum

5. 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.

6. On 12 December 2023, Julie James MS, Minister for Climate Change (the Minister), laid before the Senedd a Legislative Consent Memorandum (the Memorandum) in respect of the Bill.⁴

7. The Business Committee agreed that the Local Government and Housing Committee, and the Legislation, Justice and Constitution Committee, should report on the Memorandum by 15 March 2024.⁵

Provision for which the Senedd's consent is required

8. The Welsh Government's assessment is that "the entirety of the Bill makes provision in relation to Wales for a purpose within the legislative competence of the Senedd, namely housing".⁶

9. The Memorandum, at paragraphs 16 to 69, provides an overview of the provisions in the Bill which the Welsh Government believes trigger the requirement for consent.

10. On its introduction the Bill consisted of 65 sections, split into six Parts, and eight Schedules:

- Part 1 - Leasehold enfranchisement and extension (clauses 1-20);
 - Schedule 1 (introduced by clause 4) - Eligibility for enfranchisement and extension: specific cases;
 - Schedule 2 (introduced by clause 11(2)) - Determining and sharing the market value;

⁴ Welsh Government, [Legislative Consent Memorandum Leasehold and Freehold Reform Bill](#), 12 December 2023

⁵ Business Committee, [Timetable for consideration: Legislative Consent Memorandum on the Leasehold and Freehold Reform Bill](#), January 2024

⁶ Memorandum, paragraph 15

- Schedule 3 (introduced by clause 11(3)) - Other compensation;
- Schedule 4 (introduced by clause 11(4)) - Schedules 2 and 3: Interpretation;
- Schedule 5 (introduced by clause 11) - Amendments consequential on section 11 and Schedules 2 to 4;
- Schedule 6 (introduced by clause 19) - Leasehold enfranchisement and extension: miscellaneous amendments;
- Part 2 - Other rights of long leaseholders (clauses 21-25);
 - Schedule 7 (introduced by clause 21) - Right to vary lease to replace rent with peppercorn rent;
- Part 3 - Regulation of leasehold (clauses 26-38);
 - Schedule 8 (introduced by clause 37) - Part 3: consequential amendments;
- Part 4 - Regulation of estate management (clauses 39-57);
- Part 5 - Rent charges (clauses 58-59); and
- Part 6 - General (clauses 60-65).

11. As well as information contained in the Memorandum, the UK Government's Explanatory Notes contain commentary on individual clauses and Schedules.⁷

12. The Bill delegates powers to the Secretary of State and to the Welsh Ministers to make subordinate legislation, and these powers are listed in Annex 1 to the Memorandum. There are 15 powers delegated to the Welsh Ministers; 12 are subject to the negative procedure, two to the affirmative procedure, and one is subject to no procedure.

13. The Minister states in the Memorandum that:

“There is divergence between my view, and the view of the UK Government on the need for Senedd consent for provisions in the Bill. Lee Rowley MP, Minister for Housing, has written to me

⁷ Leasehold and Freehold Reform Bill, Explanatory Notes, November 2023

to advise that in the UK Government's view, the consent of the Senedd is needed for the following clauses and schedules:

· Clauses 5, 6, 8, 42, 44 and 49, and Schedules 1, 5 and 7. This is only to the extent that these provisions relate to the procedure of the leasehold valuation tribunal, as they otherwise relate to the private law restriction.

· Clauses 12-18, 23-38 and 51-56. These provisions generally relate to costs procedure in the Leasehold Valuation Tribunal (which is a devolved tribunal), service charge regulation, banning buildings insurance commissions, and challenging administration charges for freehold estates. We consider that these provisions do not relate to any restrictions or reservations in GOWA.

· Clause 62. This sets out the procedure for regulations in the Act. It also provides that the Secretary of State in England and, where applicable, Welsh Ministers in Wales can make consequential, supplementary, incidental, transitional, or saving provision for regulations set out in the Act.

· Schedule 8. This is only to the extent that this Schedule amends the Housing (Wales) Act 2014 (which is consequential on Clause 30(2)), as the purpose of the Schedule is otherwise to amend existing law to refer to new provisions introduced by the Bill, or repeal law.”⁸

14. The UK Government's position is also set out in Annex A of its Explanatory Notes to the Bill.⁹

The Welsh Government's position

15. The Minister sets out a range of reasons for making provision for Wales in the Bill.

16. The Minister states that:

⁸ Memorandum, paragraph 72

⁹ Leasehold and Freehold Reform Bill, Explanatory Notes, November 2023, Annex A - Territorial extent and application in the United Kingdom

"I have been clear that, building on the work of the Law Commission which identified improvements to the law in England and Wales, and following the Senedd's consent to the earlier Leasehold Reform (Ground Rent) Act 2022, I would seek for further leasehold reforms to be made on an England and Wales basis in areas of mutual agreement, and where reforms will benefit leaseholders in Wales."¹⁰

17. The Minister added:

"Research for the Welsh Government, published in 2021, identified that the issues affecting leaseholders in Wales were the same as those affecting leaseholders in England, and that the solutions being explored by UK Government would similarly benefit leaseholders in Wales. For this reason, I have asked that areas of the Bill which are not derived from the work of the Law Commission, but which represent an improvement in leaseholder rights, should also be made on an England and Wales basis. I have taken the view that it is appropriate that: changes to the legal costs regime; enhanced requirements for transparency in relation to service charges; and curbs on the taking of commissions for the arrangement of buildings insurance in leasehold blocks, represent such positive improvements for leaseholders in Wales."¹¹

18. The Minister also notes that the Bill addresses issues affecting freeholders who are subject to estate charges for the maintenance of housing developments, which were the subject of a Welsh Government consultation exercise in 2020.¹² The Minister comments that:

"The responses emphasised the strength of feeling of those who are subject to such charges, but have very little say in the level of charges or the activities which they pay for, and who currently lack legal recourse to challenge charges. My view is that provisions in this Bill introducing requirements for transparency in the administration of

¹⁰ Memorandum, paragraph 11

¹¹ Memorandum, paragraph 11

¹² Welsh Government, [Estate charges on housing developments: call for evidence](#), 6 February 2020.

such charges, as well as a right to challenge their reasonableness, also address an issue of significant concern in Wales."¹³

19. The Minister goes on to state:

*"I have outlined... where there are differences between my view and the views of UK Government Ministers on the extent to which the Senedd could legislate for the provisions in this Bill. If we were to pursue a Wales only Bill to achieve the same aims, and it was challenged as not within competence, there may be a significant delay in the benefit of the changes being felt by citizens in Wales. Taking a joint approach avoids this risk."*¹⁴

20. Additional reasons cited by the Minister include:

- the interconnectedness and commonality of the existing law;¹⁵
- that, given the complexity of the existing leasehold legislation, a coherent and consistent approach would be of benefit "particularly given that England and Wales share a highly populated border region";¹⁶
- that pursuing provision for Wales would be in line with the First Minister's principles for recommending consent to UK Bills¹⁷ and specifically, the particular principle of "it being unwise for the Welsh Government to adopt a self-denying ordinance".¹⁸

21. Overall, the Minister considers that the approach "will reduce complexity, maximise the clarity and coherence of the law and ensure the new fairer reformed system applies to all."¹⁹

22. The Minister adds:

"Although in my view the provisions of this Bill represent significant positive improvements for homeowners in Wales, there is still clearly disagreement with UK Government as to the extent to which individual provisions are within the legislative

¹³ Memorandum, paragraph 12

¹⁴ Memorandum, paragraph 74

¹⁵ Memorandum, paragraph 75

¹⁶ Memorandum, paragraph 76

¹⁷ [Letter from the Counsel General](#), 22 October 2021, Annex B: Welsh Government's principles for UK Bills

¹⁸ Memorandum, paragraph 77

¹⁹ Memorandum, paragraph 81

competence of the Senedd, and the extent to which Welsh Ministers should be able to exercise powers to make subordinate legislation flowing from the Bill. I am actively engaging with UK Government to pursue this matter, and will update the Senedd on my progress in due course.”²⁰

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 2)

23. On 30 January 2024, the Minister laid a Supplementary Legislative Consent Memorandum (Memorandum No. 2) in respect of the Bill following amendments made to the Bill at Commons Committee Stage.²¹

24. The Business Committee agreed that the Local Government and Housing Committee and the Legislation, Justice and Constitution Committee should report on Memorandum No. 2 by 15 March 2024.²²

Provision for which the Senedd's consent is required

25. The Minister states in Memorandum No. 2 that:

“As I explained in the LCM for the Bill as introduced, it was my view the entirety of the Bill makes provision in relation to Wales for a purpose within the legislative competence of the Senedd, namely housing. In my view the amendments to the Bill also represent such provision, and therefore trigger or maintain the requirement for consent, except provisions which relate to redress requirements, which are England-only.”²³

26. The following clauses and Schedules of the Bill as introduced have been amended. Relevant government amendment numbers are listed below and can be identified on the UK Parliament website:²⁴

- Schedule 1 (Gov 57 and 58);

²⁰ Memorandum, paragraph 78

²¹ Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No. 2\) on the Leasehold and Freehold Reform Bill](#), 30 January 2024

²² Business Committee, [Timetable for consideration: Supplementary Legislative Consent Memorandum \(No. 2\) on the Leasehold and Freehold Reform Bill](#), February 2024

²³ Memorandum No. 2, paragraph 13

²⁴ [House of Commons, Committee Stage: Wednesday 17 January 2024 Leasehold and Freehold Reform Bill \(Amendment Paper\)](#); [House of Commons, Committee Stage: Wednesday 24 January 2024 Leasehold and Freehold Reform Bill \(Amendment Paper\)](#)

- Schedule 2 (Gov 59 to 71);
- Clauses 12 and 13 (Gov 29 to 32);
- Clauses 14 and 16 (Gov 33 to 36 and 39 to 41 with consequential amendments 37, 38 42 and 43 to these clauses and clause 18);
- Schedule 5 (Gov 72);
- Schedule 6 (Gov 73 and Gov 74);
- Clause 21 (Gov 44);
- Schedule 7 (Gov 75 to 120);
- Clause 23 (Gov 45);
- Gov NC6²⁵ inserted after clause 26 (with a consequential amendment Gov 46);
- Gov NC7 after clause 35;
- Gov NC 8 inserted after Gov NC 7 (with a consequential amendment Gov 125);
- Gov NC 42 inserted after Gov NC 9;
- Schedule 8 (Gov 48 to 51, Gov 121 to 123 and Gov 126);
- Clause 39 (Gov 52);
- Clause 43 (Gov 53);
- Gov NC 10 to Gov NC 14 inserted after clause 55;
- Gov NC 43 to Gov NC 46 inserted after Gov NC 14;
- Long title (Gov 28).

27. The amendments contain new delegated powers for the Welsh Ministers (in NC6) and for the Secretary of State (Gov 53, 57, 58, 74, NC10, NC12 and NC13). The Minister notes that all regulations to be made under such powers are subject to the negative procedure, save for regulations to be made using the new delegated

²⁵ NC refers to a new clause

powers created under Gov 57, which would be subject to the affirmative procedure.²⁶

28. In relation to Gov 57, the Minister states in Memorandum No. 2:

"The powers in Gov 57 allow the Secretary of State to dictate the tribunal processes relating to the application for and cancellation of community housing certificates, including the description or conditions to be met by community housing providers wishing to be issued a certificate."²⁷

29. The Minister states in Memorandum No. 2:

"As at introduction, there continues to be divergence between my view and the view of the UK Government on whether provisions in the Bill engage the requirement for Senedd consent. Lee Rowley MP, Minister for Housing, has written to me to advise that in the UK Government's view, the consent of the Senedd is needed for the following amendments

· (...) [NC 8, NC 11, NC12, NC 13, NC14, Gov 57, 58, 74, 88, 91, 98, 103, 105]. This is only to the extent that these provisions relate to the procedure of the leasehold valuation tribunal, as, in the UK Government's view, they otherwise relate to the private law restriction.

· (...) [Gov 29-43, 45-51 NC6, NC 7]. These provisions generally relate to costs procedures in the leasehold valuation tribunal (which is a devolved tribunal), service charge regulation, banning buildings insurance commissions, and challenging administration charges for freehold estates. The UK Government considers that these provisions do not relate to any restrictions or reservations in the Government of Wales Act 2006.

· (...) [Gov 55, 56]. These amend clause 62, which sets out the procedure for regulations in the Act. Clause 62 provides that the Secretary of State in England and, where applicable, the Welsh Ministers in Wales can make consequential,

²⁶ Memorandum No. 2, paragraph 44

²⁷ Memorandum No. 2, paragraph 44

supplementary, incidental, transitional, or saving provisions for regulations set out in the Act.

· (...) [Gov 126]. In the UK Government's view, consent is only required to the extent that this provision amends the Housing (Wales) Act 2014 (which is consequential on Clause 30(2)), as the purpose of the Schedule is otherwise to amend existing law to refer to new provisions introduced by the Bill, or repeal law.

· (...) [NC 42-46]. In the UK Government's view these amendments do not relate to any restrictions or reservations in the Government of Wales Act 2006."²⁸

The Welsh Government's position

30. In Memorandum No. 2 the Minister maintains the reasons set out in the Memorandum for making provision for Wales in the Bill.²⁹

31. The Minister also states:

"My officials have continued to liaise with counterparts in the UK Government regarding amendment of the Bill. I understand further work is ongoing towards the implementation of the UK Government's commitment to ban the use of leasehold for new houses, and as a consequence of the recent consultation, on the limitation of ground rent in existing leases. My officials will continue to work with UK Government to ensure that provisions being developed which will apply in Wales are appropriate."³⁰

32. In Memorandum No. 2 the Minister notes that disagreement on matters of competence and powers to make subordinate legislation (as outlined in the Memorandum³¹) continue. The Minister repeats an assurance that engagement continues with the UK Government on these issues.³²

²⁸ Memorandum No. 2, paragraph 47

²⁹ Memorandum No. 2, paragraphs 48 to 53

³⁰ Memorandum No. 2, paragraph 12

³¹ Memorandum, paragraph 78

³² Memorandum No. 2, paragraph 54

2. Committee consideration

33. We considered the Memorandum and Memorandum No. 2 at our meeting on 19 February 2024.³³

34. We agreed our report on 4 March 2024.³⁴

Our view

General observations

35. We note the Welsh Government's assessment of the provisions within the Bill that require the consent of the Senedd, as set out in the Memorandum.

36. We also note that the Memorandum includes reference to a difference of view between the Welsh Government and the UK Government on matters of legislative competence.

37. Potential issues of legislative competence with the Bill were raised in advance by the Minister (in the context of the wider leasehold reform programme)³⁵ during our consideration of the legislative consent memorandum on a related Bill, the Leasehold Reform (Ground Rent) Bill. While not a consideration for that particular Bill, we drew attention to the Minister's comments on legislative competence in our report on that memorandum.³⁶

38. In accordance with section 108A(2)(d) of the *Government of Wales Act 2006* (the 2006 Act), a provision is outside the Senedd's legislative competence if it breaches any of the restrictions in Part 1 of Schedule 7B of the 2006 Act. The reform of leasehold and freehold may breach the private law restriction in paragraph 3 of Schedule 7B, which provides that the Senedd cannot modify the private law, including the law of property.

39. Paragraph 3(4) of Schedule 7B of the 2006 Act provides an exception to the private law restriction where a modification has a purpose (other than modification of the private law) which does not relate to a reserved matter. To the

³³ [Legislation, Justice and Constitution Committee](#), 19 February 2024

³⁴ [Legislation, Justice and Constitution Committee](#), 4 March 2024

³⁵ [Letter from the Minister for Climate Change](#), 16 November 2021

³⁶ Legislation, Justice and Constitution Committee, [The Welsh Government's Legislative Consent Memorandum on the Leasehold Reform \(Ground Rent\) Bill](#), December 2021, for example paragraph 21 and recommendation 1. [Letter from the Minister for Climate Change](#), 13 December 2021 (Welsh Government response to the report).

extent that provisions of the Bill do not modify the law of property for its own sake, but for the devolved purpose of improving housing, those provisions would be within the Senedd's competence.

40. We consider that there are arguments that would support both positions; that is, that the Bill is outside of the legislative competence of the Senedd by virtue of the private law restriction or that the Bill is within legislative competence because it engages the exception to that restriction.

41. Disputes on matters of legislative competence (which cannot be resolved between the Welsh and UK Governments) and therefore whether the Senedd has the power to make a particular law, would ultimately have to be decided by the Supreme Court.

42. We agree with the Welsh Government's conclusion about the potential risk of a challenge in the Supreme Court should the Welsh Government propose its own Bill to reform leasehold and freehold homeownership (in the same terms as set out in the Bill). We therefore acknowledge that any such dispute in respect of such a Bill introduced into the Senedd may delay the implementation of any changes to the law in relation to Wales, as noted by the Welsh Government.

43. As we note above, the effect of the private law restriction in the 2006 Act is that the Senedd can only modify the law of property if the purpose of the law does not relate to a reserved matter. However, for the purposes of consent under Standing Order 29, all that is required is that the UK Parliament Bill relates to *any* purpose within the Senedd's legislative competence. The private law restriction does not prevent clauses of the Bill from requiring consent under Standing Order 29, because the test in Standing Order 29.1 is broader than the legislative competence tests under the 2006 Act.

Conclusion 1. The Committee considers that all clauses and Schedules of the Bill make provision for a purpose within the legislative competence of the Senedd, as described in Standing Order 29, and therefore require the consent of the Senedd.

44. There are however a number of observations we wish to make related to conclusion 1, and we make recommendations as a consequence.

45. In the Memorandum the Minister states that the "entirety of the Bill makes provision in relation to Wales for a purpose within the legislative competence of the Senedd." However, the Minister also states that there is disagreement with the UK Government on "the extent to which the Senedd could legislate for the provisions in this Bill" and acknowledges that, as a consequence, there would be a

potential risk of challenge in the Supreme Court if it were to pursue its own legislation. The Memorandum does not explain why the Welsh Government and the UK Government have reached different conclusions on whether the Bill is within the Senedd's legislative competence in accordance with the 2006 Act (as opposed to the question of whether the Bill requires Senedd consent under Standing Order 29).

Recommendation 1. The Minister should clarify the Welsh Government's view and explain why the Welsh Government considers that the entirety of the Bill as introduced contains provision in relation to Wales for a purpose within the legislative competence of the Senedd, and in particular:

- which provisions in the Bill engage the private law restriction provided by paragraph 3(1) of Schedule 7B of the *Government of Wales Act 2006*, but are in scope of the exception to that restriction in paragraph 3(4);
- which provisions require consent as a consequence of the test set out in Standing Order 29.1, but could not be pursued through a Bill introduced to the Senedd because they would be outside the Senedd's legislative competence when the competence tests in the *Government of Wales Act 2006* are applied.

Recommendation 2. The Minister should state whether the Welsh Government intends to recommend that consent be refused for any provisions within the Bill if agreement cannot be reached with the UK Government on any matters of legislative competence that are currently in dispute.

46. We would have expected to have seen the matters that are the subject of recommendations 1 and 2 explored in more detail in the Memorandum itself.

47. In seeking to justify the approach to using a Wales and England Bill, the Minister makes reference in the Memorandum to the need for consistency "particularly given that England and Wales share a highly populated border region". We do not consider the reference to a highly populated border to be an appropriate justification for using such a Bill, not least because it would appear to be at odds with the principle of devolution.

48. We also note the argument advanced by the Minister in relation to the First Minister's principles for recommending consent to using provisions in UK Bills, but have previously expressed our concerns with the application of these principles.³⁷

³⁷ LJC Committee, [Annual Report 2021/22](#), October 2022, paragraphs 51 to 52

Standing Order 29.1

49. As we note earlier, the test in Standing Order 29.1 in relation to whether the Senedd's consent for a UK Bill is required is broader than the legislative competence tests under the 2006 Act.

50. The Welsh Government and the UK Government could therefore be applying two different tests when considering whether the Senedd's consent is required for provisions in the Bill.

51. We are aware that the Senedd's Business Committee has commissioned work relevant to the operation of the legislative consent process (as set out in Standing Order 29).³⁸

Recommendation 3. The Business Committee may wish to review Standing Order 29.1 as part of its ongoing work in relation to the legislative consent process.

Delegated powers

52. In our report on the Leasehold Reform (Ground Rent) Bill, we made a recommendation aimed at ensuring that all delegated powers to make subordinate legislation in Wales in devolved areas are to be exercised by the Welsh Ministers.³⁹

53. We note that there are disagreements between the Welsh Government and the UK Government about the extent to which the Welsh Ministers should be able to make subordinate legislation.

Recommendation 4. The Minister should state which provisions (clauses and Schedules; and amendments to them identified in Memorandum No. 2) of the Bill are the subject of disagreements about whether the Secretary of State or the Welsh Ministers should exercise regulation-making powers, and the nature of those disagreements.

Recommendation 5. The Minister should state whether she has agreed that the Secretary of State may make regulations in relation to devolved areas in Wales. If so, the Minister should identify the relevant provisions and the reasons for that decision in each case.

³⁸ [Business Committee, 28 September 2021](#), minutes

³⁹ LJC Committee, The Welsh Government's Legislative Consent Memorandum on the Leasehold Reform (Ground Rent) Bill, December 2021, recommendation 2.

54. Specifically, in relation to amendment Gov 57, we note that the Secretary of State would be able to make regulations in relation to certain tribunal processes. We are unclear why these powers are being provided to the Secretary of State, when the appropriate tribunal in relation to Wales is the devolved Leasehold Valuation Tribunal, a point acknowledged by the UK Government in its Explanatory Notes to the Bill.⁴⁰

Recommendation 6. The Minister should explain:

- why, through amendment Gov 57 to the Bill, the Secretary of State is being provided with a regulation-making power in relation to the tribunal processes associated with the devolved Leasehold Valuation Tribunal;
- the reason for the approach being adopted in this Bill given the Welsh Government's intention to introduce its own Bill to reform the Welsh Tribunals.⁴¹

Quality of the Memoranda

55. The Bill is particularly complex and, accordingly, we recognise the difficulty in explaining its provisions in the Memoranda.

56. While we broadly welcome the level of detail in the Memoranda, we believe that certain matters would have benefitted from more detailed explanation and analysis.

57. In addition, we would have found it helpful if clause titles had been included to help understanding and navigation of the subject matter of the Memoranda.

58. We welcome the inclusion of Annex 1 to the Memorandum (Powers to make subordinate legislation) which clearly identifies the requirements of Standing Order 29.3(iv).

59. While we acknowledge that Memorandum No. 2 includes commentary in respect of the requirements of Standing Order 29.3(iv), the inclusion of an annex similar to Annex 1 of the Memorandum, identifying which amendments

⁴⁰ Leasehold and Freehold Reform Bill, Explanatory Notes, November 2023, Annex A - Territorial extent and application in the United Kingdom, paragraph 4

⁴¹ Welsh Government, [Delivering Justice for Wales: 2024 progress report](#), 22 February 2024, section 9

introduced new executive powers for either the Secretary of State or the Welsh Ministers, would have been helpful.

Clarifying the boundary of legislative competence

60. In the Memorandum, in relation to the responses to the Welsh Government's 2020 consultation on estate charges, the Minister makes the following points:

"The responses emphasised the strength of feeling of those who are subject to such charges, but have very little say in the level of charges or the activities which they pay for, and who currently lack legal recourse to challenge charges. My view is that provisions in this Bill introducing requirements for transparency in the administration of such charges, as well as a right to challenge their reasonableness, also address an issue of significant concern in Wales."⁴²

61. Stage 1 in particular of the legislative process in the Senedd for Bills (introduced in accordance with Standing Order 26) would allow for the respondents referred to by the Minister to comment on whether their concerns have been addressed in any legislation introduced by the Welsh Government. Given the apparent uncertainty around matters of legislative competence in relation to the Bill, as the Welsh Government has itself acknowledged, it would be helpful to know whether the Welsh Government has taken any action to remedy this position.

Recommendation 7. The Minister should indicate whether the Welsh Government has explored the feasibility of seeking an order under section 109 of the *Government of Wales Act 2006* to clarify the boundary of legislative competence, such that the risk of challenge should it bring forward its own legislation on leasehold and freehold reform would be reduced, if not eliminated entirely.

⁴² Memorandum, paragraph 12