

## LEGISLATIVE CONSENT MEMORANDUM

### SOCIAL HOUSING (REGULATION) BILL

1. This legislative consent memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a legislative consent memorandum (“LCM”) 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 House of Lords on 8 June 2022.
3. The Bill can be found at: [Social Housing \(Regulation\) Bill \[HL\] - Parliamentary Bills - UK Parliament](#).
4. On 27 June, I wrote to the Llywydd explaining that due to the scale of the Bill and the number of provisions that are subject to consent, it has not been possible to lay this LCM within the normal two-week SO29 deadline.

#### Policy Objective(s)

5. 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.
6. The core objectives of the UK Government 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

7. The Bill is sponsored by the Department for Levelling Up, Housing and Communities.
8. The Bill makes a number of amendments to existing legislation. The amendments will make safety and transparency explicit parts of the English social housing regulator’s objectives and gives the regulator new powers on transparency and the provision of information. The Bill removes the serious detriment test (a legislative barrier to regulator action on consumer issues) and requires landlords to nominate a designated person for health and safety issues. The Bill makes provision for the introduction of new requirements for social housing landlords relating to electrical safety checks.

9. The Bill seeks to maintain and refine the regulator's current economic regulatory role, ensuring that registered providers ("RPs") 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.
10. 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.
11. Clauses 1-11, 14-30, Part 2 of Schedule 1, Schedule 3 and Schedule 4 of the Bill amend Part 2 of the Housing and Regeneration Act 2008 ("HRA 2008"). Clause 13, Part 1 of Schedule 1, and Schedule 2 to the Bill amend the Housing and Planning Act 2016 ("HPA 2016"). Clause 31 amends the Housing Act 1996 ("HA 1996"). Clause 32 and Schedule 5 make minor and consequential amendments and transitory provision. Clause 33 is an enabling power. Clauses 34, 35 and 36 concern extent, commencement, and short title.
12. All provisions of the Bill extend to and have application in England and Wales, except for, clause 13, Part 1 of Schedule 1 and Schedule 2, which have UK-wide extent and application.
13. The majority of the Bill's provisions amend Part 2 of the HRA 2008. Part 2 of the HRA 2008 establishes a framework for the regulation of social housing by **English** bodies.
14. The regulatory regime for social housing in Wales is provided for under Part 1 of the HA 1996, not Part 2 of the HRA 2008. Currently, except for one body, it is not possible for a provider of social housing with a registered office in Wales to be a RP under Part 2 of the HRA 2008 and this possibility will be ruled out completely by the amendments made by clause 5 of the Bill.
15. However, a number of English RPs own and/or manage some social housing stock in Wales, albeit a very small number. Therefore, as the amendments being made by the Bill will affect the regulation of all RPs, including those with social housing stock in Wales, the amendments will have an impact on tenants of the stock in Wales.
16. The provisions being made by the Bill are intended to be positive for tenants of RPs including those in Wales, in that the Bill will reform the English social housing regulatory regime as noted in paragraph 5.

## **Provisions in the Bill for which consent is required**

17. All the provisions identified below extend and apply to Wales and relate to the devolved matter of housing, therefore these clauses make relevant provision for the purposes of SO29 and Senedd consent is required for them.

### Clause 1 - Fundamental objectives

Clause 1 amends section 92K of the HRA 2008. Section 92K sets out the fundamental objectives that guide the regulator's approach to regulation of social housing. The amendment specifies that the regulator must support the provision of housing which is 'safe' in addition to the existing expectations of being 'well managed' and of 'appropriate quality'. It also adds a new objective for the regulator to require RPs to be transparent with their tenants.

### Clause 2 - Advisory panel

Clause 2 amends the HRA 2008 by inserting a new section 96A. Section 96A requires the regulator to set up an Advisory Panel. The panel will comprise of a range of stakeholder voices, including tenants and landlords, enabling them to inform the regulator on a wide range of matters connected to the regulation of social housing owned and managed by English RP's.

### Clause 3 - Collection of information

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.

### Clause 4 - Relationship between regulator and housing ombudsman

Clause 4 amends the HRA 2008 and the HA 1996 to add measures on the relationship between the regulator and the housing ombudsman so they can exchange information quickly and effectively to provide better protection for tenants. The regulator regulates RPs in England, and the housing ombudsman seeks to resolve complaints from tenants about RPs. A new section, 100H, is added to the HRA 2008 requiring both bodies to cooperate and to prepare, publish and regularly review a memorandum of understanding outlining how they will do so.

## *Registration of providers of social housing*

### Clause 5 - Meaning of "English body"

Clause 5 amends section 79 of the HRA 2008 so that eligibility for voluntary registration as an RP is explicitly limited to entities taking certain corporate forms with a registered office or an address for charity registration purposes in England. This change is intended to ensure that registration, and the regulatory regime which applies in consequence of it, is limited to bodies which the regulator can regulate in an appropriate manner given their corporate form and location.

### Clause 6 - Registration criteria

Clause 6 amends section 112 of the HRA 2008 to enable the regulator to make the registration of social housing providers conditional upon their ability to meet,

on registration, regulatory standards. Under section 112 of the HRA 2008, the regulator can set criteria which specify the financial, constitutional and management arrangements that must be satisfied by new registrants.

#### Clause 7 - Designation

Clause 7 amends section 115 of the HRA 2008 so that the regulator can look beyond constitutional form when determining an organisation's status as either a profit-making or non-profit organisation, to ensure that the regulator is able to designate RPs according to the substance of how they operate (or intend to operate). This clause will also remove the condition which states that a non-profit provider can satisfy one of the conditions in the non-profit test if it is prohibited by its constitution from issuing interest or dividend beyond a prescribed rate. No rate has ever been prescribed, which therefore leaves a potential loophole.

#### Clause 8 - De-registration

Clause 8 amends section 118 of the HRA 2008 allowing the regulator to de-register a RP for failing to meet a regulatory standard. This change follows from Clause 6, which enables the regulator to make the registration of social housing providers conditional upon their ability to meet, on registration, the regulatory standards.

### *Duties of registered providers*

#### Clause 9 - Appointment of health and safety lead by registered provider

Clause 9 inserts new sections 126A to 126D into the HRA 2008. These new sections require RPs to designate a person to act as lead on certain functions relating to the provider's compliance with its health and safety obligations towards tenants, known as the "health and safety lead". Legal responsibility for ensuring compliance with relevant obligations to protect the health and safety of tenants will remain with the RP.

#### Clause 10 - Electrical safety standards

Clause 10 amends section 122 of the HPA 2016. The amendments extend the power for the Secretary of State, by regulations, to impose duties on landlords so that these duties can also be imposed on landlords who are RPs in England, rather than just private landlords.

### *Registered providers: insolvency, restructuring etc.*

#### Clause 11 - Moratorium on disposal of land

Clause 11 amends the moratorium process under the HRA 2008 including provision as to how and when the period commences and ends. During a housing moratorium, the prior consent of the regulator is required for disposals of a RP's land. This protects social housing stock while solutions can be explored to support a provider experiencing financial difficulty.

#### Clause 12 (insofar as it relates to Part 2 of Schedule 1) and Part 2 of Schedule 1 - Limited Liability Partnerships (LLPs)

Clause 12 introduces Schedule 1 to the Bill. Schedule 1 makes a number of amendments to apply the housing moratorium and housing administration

regimes in relation to PRPs that are limited liability partnerships (“LLPs”) and makes related provision. Part 2 of Schedule 1 amends the HRA 2008 to extend the existing provisions to LLPs.

Clause 14 - Notification requirements: expansion to profit-making organisations

Clause 14 expands to profit-making RPs the requirements in sections 160, 161, 163, 165, 169A and 169C of the HRA 2008 (currently imposed only on non-profit RPs) to notify the regulator of various restructuring and dissolution events. This is to align requirements across the sector regardless of a provider’s profit-making status.

Clause 15 - Receipt of transfers of engagements from a registered society

Clause 15 inserts 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 engagements to the provider.

Clause 16 - Notification of constitutional changes

Clause 16 concerns notification of constitutional changes and adds new requirements to the HRA 2008 to provide for when an RP must notify the regulator of certain constitutional changes.

*Standards*

Clause 17 - Standards relating to information and transparency

Clause 17 adds new section 194A to the HRA 2008 allowing the regulator to set standards for RPs on the provision of information and transparency to their social housing tenants and to the regulator. New section 194A(2) sets out examples of things that the standards could contain. Clause 17 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.

Clause 18 - Code of practice: standards relating to consumer matters

Clause 18 amends section 195 of the HRA 2008 so that the regulator is able to issue a code of practice in relation to its consumer standards. The regulator can currently issue a code of practice which relates to economic standards made under section 194 of the HRA 2008 and it currently publishes codes of practice on financial viability and governance and value for money. This clause permits the regulator to issue a code of practice for *any* of its standards, ensuring there is parity between these areas of regulation.

Clause 19 - Direction by Secretary of State

Clause 19 amends section 197 of the HRA 2008 by adding a new subsection (2A) which allows the Secretary of State to issue a direction to the regulator in relation to standards (under section 194A) requiring RPs to comply with rules about the provision of information to their tenants about the management of their housing.

#### Clause 20 - Intervention powers: removal of “serious detriment” test

Clause 20 amends section 198A of the HRA 2008, the amendment removes the requirement that the regulator must have reasonable grounds to suspect that a breach of the consumer standards has caused or could cause ‘serious detriment’ to the RP’s tenants or potential tenants. The regulator will continue to be able to consider evidence from any sources, in accordance with section 96 of the HRA 2008. The regulator will also continue to have a duty to exercise its functions in a way that is proportionate and minimises interference, as required by section 92K of the HRA 2008.

#### Clause 21 - Performance monitoring

Clause 21 amends the HRA 2008 to insert a new section 198C, 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. Clause 21 also amends section 220 and section 227 so that a failure by a RP to comply with a direction made under section 198C or failure to provide information requested under subsection 5 means that the regulator is permitted to take enforcement action by issuing an enforcement notice or imposing a financial penalty.

### *Monitoring and enforcement*

#### Clause 22 - Surveys

Clause 22 amends section 199 and section 200 of the HRA 2008 and inserts new sections 199A and 199B. The amendments reduce the minimum notice period the regulator must give to the RP and tenant before an authorised person can enter to conduct a survey of the condition of premises, in cases where the regulator suspects that the provider is failing to maintain them according to standards under section 193.

#### Clause 23 - Performance improvement plans

Clause 23 adds sections 218A - 218D to the HRA 2008 enabling the regulator to require a RP of social housing to prepare and implement a performance improvement plan (“PIP”). The change will allow the regulator to hold a RP to account in relation to how, and by when, it proposes to address an issue that has been identified and. provides an opportunity for RPs to address issues prior to the taking of further enforcement action by the regulator.

#### Clause 24 - Emergency remedial action

Clause 24 adds sections 225A to 225H to the HRA 2008. These sections enable the regulator, following completion of a survey under section 199, to arrange for an authorised person to take emergency remedial action on premises to remedy specified failures on the part of RPs that cause an imminent serious health and safety risk.

#### Clause 25 - Extension of powers to charities who have not received public assistance

Clause 25 amends the HRA 2008 to repeal provisions which prevent the regulator from exercising various enforcement powers against registered

charities who have not received public assistance. These changes will give the regulator stronger enforcement powers to use in relation to registered charities that have not received public assistance.

Clause 26 - Notification of Charity Commission of exercise of enforcement powers

Clause 26 amends the HRA 2008 to introduce a requirement for the regulator to inform the Charity Commission when it exercises certain enforcement powers against registered charities.

Clause 27 - Exercise of powers: land with a Crown or Duchy interest

Clause 27 clarifies that the regulator may exercise its powers in relation to premises located on land where there is a Crown or Duchy interest as defined in subsections (2) and (3).

Clause 28/Schedule 3 - Regulatory and enforcement powers: further amendments

Clause 28 introduces Schedule 3. Schedule 3 makes further amendments to the regulatory and enforcement powers of the regulator of social housing.

Clause 29 - Leaving the social housing stock: end of lease

Clause 29 amends section 74 of the HRA 2008 which provides that where the lease of a home held by a RP expires it ceases to be social housing. Subsection (1)(c) closes a loophole which potentially might allow a RP to dispose of or declassify social housing stock without notifying or seeking consent from the regulator if the party from which it had leased the dwelling was one of its associates or subsidiaries or another RP. Subsection (2) provides that these amendments will have retrospective effect and will apply to leases that exist at the time the provision comes into force if they were granted on or after the 10 June 2022, i.e. those granted after the date on which this Bill was published.

Clause 30/Schedule 4 - Appeals

Clause 30 introduces Schedule 4. Schedule 4 makes amendments to the HRA 2008, the amendments relate to appeals against deregistration decisions and enforcement action.

Clause 31 - Housing Ombudsman Scheme

Clause 31 ensures the housing ombudsman of a scheme approved by the Secretary of State under Schedule 2 to the HA 1996 is empowered to issue a code of practice on complaint handling and makes clear that the housing ombudsman of an approved scheme 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.

Clause 32/Schedule 5 (bar paragraph 36) - Minor and consequential amendments and transitory provision

Clause 32 introduces Schedule 5. Schedule 5 makes minor and consequential amendments and transitory provision.

## **Clauses which *may* require consent**

### Clause 33 - Power to make consequential provision

Clause 33 enables the Secretary of State (SoS) to make provision that is consequential on this Bill by regulations.

Clause 33 imposes a function on the SoS and is therefore outside of the Senedd competence pursuant to section 108A(2)(c) of the Government of Wales Act 2006 ("GoWA"). However, this clause allows the SoS to make provision which is consequential on the other provisions of the Bill for which an LCM is required. Therefore, Senedd consent is required for this clause in so far as it relates to the other provisions of the Bill.

### Clause 12 (insofar as it relates to Part 1 of Schedule 1) and Part 1 of Schedule 1

Paragraphs 2 and 3 of Schedule 1 amend the HPA 2016, these amendments extend the housing administration scheme (which is a special administration regime for private RPs of social housing that are at risk of entering insolvency proceedings and which operate in England only) to LLPs. This scheme currently only applies in relation to companies, registered societies, and charitable incorporated organisations. Paragraphs 4 to 9 of Schedule 1 include restrictions on insolvency proceedings and applies provisions of Schedule B1 of the Insolvency Act 1986, and certain other enactments, to housing administration orders in relation to LLPs.

Part 1 of Schedule 1 extends and applies to the UK and concerns the reserved matter of insolvency therefore Senedd consent is not required for Part 1 of Schedule 1.

Whilst Part 1 of Schedule 1 extends and applies to the UK and broadly concerns insolvency, the provision provides for a housing administration regime, and therefore relates to the devolved matter of housing. Therefore, I recommend that the consent of Senedd is required for clause 12 (insofar as it relates to Part 1 of Schedule 1) and Part 1 of Schedule 1.

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

18. The Parliamentary Under-Secretary for Rough Sleeping and Housing, Eddie Hughes MP, wrote to me on 8 June, expressing the UK Government's view that an LCM is required for the following clauses in the Bill, which make provisions with regards to the devolved matter of housing:

- clauses 1 to 11;
- clause 12 (insofar as it relates to part 2 of Schedule 1);
- clauses 14 to 31;
- part 2 of Schedule 1;
- Schedules 3 and 4;
- Schedule 5, paragraphs 1 to 35 and 37.

19. In the letter, the UK Government express the view that Senedd consent is not required for clause 12 (insofar as it relates to Part 1 of Schedule 1), clause 13,



Part 1 of Schedule 1 and Schedule 2, because these provisions 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 GoWA 2006.

20. The UK Government state that Senedd consent is not required for paragraph 36 of Schedule 5, 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 GoWA 2006.
21. I agree with the UK Government's competence analysis, that the clauses set out in paragraph 18 which extend and apply to Wales and relate to the devolved matter of housing require Senedd consent.
22. I agree that clause 13 and Schedule 2 relate to the reserved matter of insolvency and are outside of Senedd competence and therefore consent is not required for these provisions. However, 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 housing administration regime, and therefore relates to the devolved matter of housing, I recommend that Senedd consent is required for clause 12 (insofar as it relates to Part 1 of Schedule 1) and Part 1 of Schedule 1.
23. I agree that paragraph 36 of Schedule 5 relates to the restricted matter of the law of property, which is outside of Senedd competence and therefore consent is not required for this provision.
24. With regard to the remaining clauses of the Bill which UK Government do not reference in the letter of 8 June, namely clauses 32-36. Clause 32 introduces Schedule 5 to the Bill, Schedule 5 makes consequential and transitional amendments. 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.
25. Clause 33, is an enabling power that allows the Secretary of State to make provision that is consequential on the Bill by regulations. Whilst clause 33 imposes a function on the SoS and is therefore outside of Senedd competence, this clause allows the SoS to make provision which is consequential on the other provisions of the Bill for which an LCM is required. Therefore, Senedd consent is required for this clause in so far as it relates to the other provisions of the Bill.
26. 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.

### **Financial implications**

27. No financial implications have been identified to date if the Senedd consents to the provisions applying in Wales.

## **Conclusion**

28. As set out above, the legislative consent of Senedd is required for the majority of the clauses of the Bill in so far as they make “relevant provision” with regards to the devolved matter of housing.
29. 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.
30. I therefore recommend that Senedd supports the proposals and gives consent to the relevant provisions within the Bill.

**Julie James MS**  
**Minister for Climate Change**  
**18 August 2022**