

# **The Welsh Government's Supplementary Legislative Consent Memoranda (Memoranda No. 3 and No. 4) on the Social Housing (Regulation) Bill**

January 2023



# 1. Background

## The UK Government's Social Housing (Regulation) Bill

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

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

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

3. The Bill completed its passage through the House of Lords on 31 October 2022. Committee Stage in the House of Commons was completed on 29 November. At the time of writing this report, a date for Report Stage and Third Reading is yet to be announced.

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

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

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

6. On 5 October 2022, the Minister laid before the Senedd a Supplementary Legislative Consent Memorandum (Memorandum No. 2) in respect of the Bill following amendments in the House of Lords.<sup>3</sup>

7. We reported on these Memoranda on 22 November 2022.<sup>4</sup>

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<sup>1</sup> Social Housing (Regulation) Bill, as introduced (HL Bill 21)

<sup>2</sup> Welsh Government, Legislative Consent Memorandum, Social Housing (Regulation) Bill, August 2022

<sup>3</sup> Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No. 2), Social Housing (Regulation) Bill, October 2022

<sup>4</sup> Legislation, Justice and Constitution Committee, The Welsh Government's Legislative Consent Memoranda on the Social Housing (Regulation) Bill, November 2022

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**8.** Paragraphs 10 to 16 and 19 to 22 of that report set out the clauses of the Bill which, at the time, the Welsh Government considered to require the Senedd's consent, and identified where disagreement existed between the Welsh and UK Governments.

**9.** Paragraphs 17 and 23 of that report set out the Welsh Government's position on the Bill, as set out in the Memorandum and Memorandum No. 2.

## **The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 3)**

**10.** On 17 November 2022 the Minister laid before the Senedd a further Supplementary Legislative Consent Memorandum<sup>5</sup> (Memorandum No. 3) in respect of amendments tabled for consideration at Lords Report Stage.

**11.** The Business Committee agreed that the Local Government and Housing Committee and the Legislation, Justice and Constitution Committee, should report on Memorandum No. 3 by 13 January 2023.<sup>6</sup>

## **Update on the position since the publication of the Memorandum and Memorandum No. 2**

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**12.** Paragraphs 3, 16 and 17 of Memorandum No. 3 provide an update on the position since the publication of the earlier legislative consent memoranda.

**13.** After the laying of Memorandum No. 2, the UK Government tabled a further 32 amendments to the Bill for consideration at Lords Report Stage and supported one non-government amendment. These amendments were agreed to. In addition, a further non-government amendment which did not receive UK Government support was accepted. All of these amendments made provision for a purpose within the legislative competence of the Senedd.<sup>7</sup>

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<sup>5</sup> Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No. 3), Social Housing (Regulation) Bill, November 2022

<sup>6</sup> Business Committee, Timetable for consideration of the Supplementary Legislative Consent Memorandum (No. 3) on the Social Housing (Regulation) Bill, November 2022

<sup>7</sup> Welsh Government, Memorandum No. 3, paragraph 3

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## **The Welsh Government's position on the amendments made to the Bill**

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**14.** Paragraphs 18 to 34 and 39 of Memorandum No. 3 set out the Welsh Government's view on the amendments made to the Bill for which consent is required.

**15.** The amendments agreed to relate to the following provisions in the Bill:

- clause 1 (Fundamental objectives);
- clause 7 (clause 6 in the Bill as introduced – Registration criteria);
- clause 15 (clause 14 in the Bill as introduced – Notification requirements: expansion to profit-making organisations);
- clause 16 (New clause – Conversion of company into registered society: continuation of registration);
- clause 17 (New clause – Restructuring of registered societies: registration of successor bodies);
- clause 18 (clause 15 in the Bill as introduced – Receipt of transfers of engagements from a registered society);
- clause 21 (New clause – Standards relating to competence and conduct);
- clause 22 (clause 17 in the Bill as introduced and clause 19 as amended at Lords Committee Stage – Standards relating to information and transparency);
- clause 24 (New clause – Standards relating to energy demand);
- clause 25 (clause 19 in the Bill as introduced – Direction by Secretary of State);
- clause 27 (clause 21 in the Bill as introduced and clause 23 as amended at Lords Committee Stage – Performance monitoring);
- clause 28 (clause 22 in the Bill as introduced – Surveys);
- clause 29 (New clause – Inspection Plan);
- clause 30 (clause 23 in the Bill as introduced and clause 25 as amended at Lords Committee Stage – Performance improvement plans);
- clause 31 (clause 24 in the Bill as introduced – Emergency remedial action);

- Schedule 5 (bar paragraph 48 – Minor and consequential amendments).

### **The Welsh Government's conclusions in Memorandum No. 3**

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**16.** In Memorandum No. 3 the Minister states:

*"The overall intention is that the Bill, as amended at Lords Report Stage, will lead to improvements in the performance of RPs [registered providers of social housing], 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."<sup>8</sup>*

**17.** Memorandum No. 3 further confirms the Minister's view that the Senedd should grant consent to the Bill as amended at Lords Report Stage.<sup>9</sup>

### **The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 4)**

**18.** On 6 December 2022 the Minister laid before the Senedd a further Supplementary Legislative Consent Memorandum<sup>10</sup> (Memorandum No. 4) in respect of amendments tabled for consideration at Commons Committee Stage, which took place on 29 November.

**19.** The Business Committee agreed that the Local Government and Housing Committee and the Legislation, Justice and Constitution Committee should also report on Memorandum No. 4 by 13 January 2023.<sup>11</sup>

### **Update on the position since the publication of the Memorandum No. 3**

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**20.** Paragraphs 3, 17 and 18 of Memorandum No. 4 provide an update on the position since the publication of Memorandum No. 3.

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<sup>8</sup> Welsh Government, Memorandum No. 3, paragraph 37. See also paragraph 40.

<sup>9</sup> Welsh Government, Memorandum No. 3, paragraph 41

<sup>10</sup> Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No. 4), Social Housing (Regulation) Bill, December 2022

<sup>11</sup> Business Committee, Timetable for consideration of the Supplementary Legislative Consent Memorandum (No. 4) on the Social Housing (Regulation) Bill, December 2022

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**21.** The UK Government tabled a further 11 amendments to the Bill for consideration at Commons Committee Stage which make provision for a purpose within the legislative competence of the Senedd.<sup>12</sup>

### **The Welsh Government's position on the amendments made to the Bill**

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**22.** At paragraphs 17 and 18 of Memorandum No. 4 the Minister states:

*"Baroness Scott of Bybrook, Parliamentary Under Secretary for Communities, wrote to me on 21 November to alert me to the expected tabling of amendments to remove the House of Lords energy efficiency strategy amendment, to clarify the circumstances in which it would be permissible for a person authorised by the regulator to leave equipment on premises during surveys or emergency remedial action, and to remove specific provision on charging fees for inspections. Her letter confirms that the analysis of the UK Government indicates that these amendments 'extend and apply to England and Wales, and engage the [legislative consent] process since housing is an area of devolved legislative competence.'*

*In her letter, the Parliamentary Under Secretary for Communities also alerted me to a change in the opinion of the UK Government regarding their devolution analysis of clause 11 (Electrical safety standards), and to flag where the devolution analysis of the UK Government in other areas of the Bill differs from my own."*

**23.** Paragraphs 19 to 22 of Memorandum No. 4 set out the Welsh Government's view on the amendments made to the Bill for which consent is required.

**24.** The amendments agreed to relate to the following provisions in the Bill:

- clause 4 (Power to charge fees);
- clause 24 (clause added to the Bill at Lords Report Stage – Standards relating to energy demand): this clause has been removed from the Bill;
- clause 27 (clause 22 in the Bill as introduced – Surveys);
- clause 30 (clause 24 in the Bill as introduced – Emergency remedial action).

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<sup>12</sup> Welsh Government, Memorandum No. 4, paragraph 3

- 25.** At paragraphs 24 and 25 of Memorandum No. 4 the Minister outlines that the UK Government has revised its position as regards clause 11 of the Bill.
- 26.** The UK Government no longer considers that the Senedd's consent is required because it believes the provision does not apply to Wales as "only housing in England is affected by the Bill's change to this provision".<sup>13</sup>
- 27.** At paragraph 25 of Memorandum No. 4 the Minister states that she agrees with the UK Government's revised view and that she therefore wishes to revise her position in respect of consent, which she deems is no longer required in relation to clause 11.
- 28.** At paragraphs 26 to 29 the Minister again notes that the UK Government does not consider the Senedd's consent is required for clauses 13 (Limited liability partnerships) and 14 (Insolvency of registered providers), Part 1 of Schedule 1 (Limited liability partnerships: Amendments of the Housing and Planning Act 2016), Schedule 2 (Amendments to restrictions on insolvency procedures), and clause 41 (Power to make consequential provision).
- 29.** The UK Government considers that the provisions in clauses 13 and 14 of the Bill and Part 1 of Schedule 1 and Schedule 2 to the Bill relate to the reserved matter of insolvency and, as such, do not require the consent of the Senedd.<sup>14</sup>
- 30.** At paragraph 27 of Memorandum No. 4 the Minister confirms that she disagrees with this view and believes the Senedd's consent for these provisions should still be sought and granted.
- 31.** At paragraph 28 of Memorandum No. 4 the Minister outlines the UK Government's position as regards clause 41 of the Bill, which is that consent is not required, and the Minister cites the reasoning given by the UK Government, as follows:
- "as the provision is not itself substantive and a legislative consent motion has been sought for the substantive Bill provisions within devolved legislative competence for which the power in clause 41 might be used in respect of."*
- 32.** The Minister does not agree and maintains that the Senedd's consent is required for this clause, and that the Senedd should grant consent.<sup>15</sup>

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<sup>13</sup> Welsh Government, Memorandum No. 4, paragraph 24

<sup>14</sup> Welsh Government, Memorandum No. 4, paragraph 26

<sup>15</sup> Welsh Government, Memorandum No. 4, paragraph 29

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## **The Welsh Government's conclusions in Memorandum No. 4**

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**33.** In Memorandum No. 4 the Minister states:

*"...it is my view that the legislative consent of the Senedd is required for the amendments proposed to clauses 4, 28 and 31<sup>16</sup>, as all these changes 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). I also ask the Senedd to note the proposed removal of clause 24 and that accordingly the consent of the Senedd will no longer be required for this clause.*

*Additionally, further to the explanation set out in paragraphs 24 and 25 above, I wish to amend my recommendation made in the LCM that consent is required for clause 11 (electrical safety standards).*

*As outlined in the legislative consent memoranda I have laid so far on this 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 also in the relevant UK Government amendments tabled at Commons 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."<sup>17</sup>*

**34.** Memorandum No. 4 further confirms the Minister's view that the Senedd should grant consent to the Bill as amended at Commons Committee Stage.<sup>18</sup>

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<sup>16</sup> References here to clauses 28 and 31 are references to the clauses 27 and 30 in paragraph 24 of this report.

<sup>17</sup> Welsh Government, Memorandum No. 4, paragraphs 33 to 35

<sup>18</sup> Welsh Government, Memorandum No. 4, paragraph 36

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## 2. Committee consideration

**35.** We considered Memorandum No. 3 at our meeting on 5 December 2022.<sup>19</sup> We considered Memorandum No. 4 at our meeting on 9 January 2023.<sup>20</sup>

**36.** Given the Welsh Government's proposal to hold a debate on the relevant consent motion for the Bill on 17 January 2023, and taking into account the reporting deadline set by the Senedd's Business Committee, we also agreed our report on 9 January 2023.

### Our view

**37.** We note that Memorandum No. 3 concerns amendments made to the Bill in the House of Lords to:

- clauses 1, 7 (originally clause 6), 15 (originally clause 14), 18 (originally clause 15), 22 (originally clause 17), 25 (originally clause 19), 27 (originally clause 21), 28 (originally clause 22), 30 (originally clause 23), 31 (originally clause 24), and Schedule 5 (except paragraph 48);
- new clauses 16, 17, 21, 24, and 29.

**38.** We also note that Memorandum No. 4 concerns amendments made to clauses 4, 27 (originally clause 22), and 30 (originally clause 24) of the Bill by the House of Commons, and also the removal of new clause 24 which was added to the Bill by the House of Lords.

**39.** Furthermore, we note that, following a further analysis of the Bill's provisions and their impact on devolved competence, the UK Government has revised its position and no longer considers that the Senedd's consent is required for clause 11 of the Bill. We acknowledge that the Minister agrees with this new position.

**40.** We also acknowledge that the Minister continues to disagree with the UK Government's position as regards clause 13, clause 14, Part 1 of Schedule 1, Schedule 2, and clause 41.

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

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<sup>19</sup> Legislation, Justice and Constitution Committee, 5 December 2022.

<sup>20</sup> Legislation, Justice and Constitution Committee, 9 January 2023.

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**41.** As stated earlier in this report, we reported on the Memorandum and Memorandum No. 2 on 22 November 2022. On 6 December, the Minister wrote to us to acknowledge our first report, and to draw our attention to the laying of Memorandum No. 4.<sup>21</sup>

**42.** In our first report we commented on the timings of when the Memorandum and Memorandum No. 2 were laid before the Senedd and, at conclusion 2, reminded the Welsh Ministers of the importance of providing timely information to Senedd Members, so as not to add to the democratic deficiencies caused by UK Bills making provision for Wales in devolved areas and the associated consent process.

**43.** In her letter of 6 December, the Minister told us that she recognised the “importance of the Senedd’s role in scrutinising legislative consent memoranda” and she apologised for the “inconvenience caused to the scrutiny Committees where this has not been possible”. The Minister noted that Memorandum No. 4 was laid in accordance with the “normal laying deadline”.<sup>22</sup>

**44.** We acknowledge that Memorandum No. 4 was laid before the Senedd within 14 days of the relevant amendments being tabled before the UK Parliament. This is to be welcomed.

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<sup>21</sup> Letter from the Minister for Climate Change, 6 December 2022

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