

## SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 5)

### 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 was introduced in the UK Parliament, the House of Lords, on 8 June 2022. I laid an LCM on the Bill on 18 August, and supplementary LCMs on 5 October, 17 November and 6 December.
3. The UK Government tabled 39 amendments on 10 February for consideration at House of Commons Report Stage. The amendments which make provision which fall within the legislative competence of the Senedd are set out in paragraphs 20 to 25 below.
4. Links to the Bill as introduced and amended at each Parliamentary stage so far may be found in Annex A, alongside a table outlining the changes in clause titles and numbers as the Bill has progressed. Where appropriate, this sLCM refers to the amendments grouped according to the clause numbers of the Bill as amended at Commons Committee stage which they propose to amend. This version of the Bill was published on 30 November at this link: [Social Housing \(Regulation\) Bill \[HL\] \(parliament.uk\)](#). I also include the amendment reference number, as listed in the list of amendments tabled by UK Ministers, which may be found at this link: [socialhousing\\_rep\\_rm\\_0210 \(parliament.uk\)](#).

### 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 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

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. 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.
9. 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.
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. 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.
12. Further information about the Bill can be found within the [first LCM laid on 18 August](#).
13. The UK Government brought forward 42 amendments which were accepted at Lords Committee stage, and are discussed in detail in [supplementary LCM \(Memorandum No 2\)](#), laid on 5 October.

14. Supplementary LCM (Memorandum No 2) recommended that Senedd consent was given to the relevant provisions within the Bill as amended at House of Lords Committee stage. 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; and
  - Changes to grounds for use of enforcement powers.
15. The UK Government brought forward a further 33 amendments which were accepted at Lords Committee stage, and are discussed in detail in [supplementary LCM \(Memorandum No 3\)](#), laid on 17 November.
16. Supplementary LCM (Memorandum No 3) recommended that Senedd consent was given to the relevant provisions within the amended Bill. In summary, as well as more technical amendments to improve the functioning of the regime, the most significant amendments were made in the following areas:
- Professionalism – a new power for the regulator to set a standard on matters relating to competence and conduct of staff, which the Secretary of State could require the regulator to set. Failure or risk of failure to meet the standard was also added as a ground for the regulator to require a provider to prepare and submit a performance improvement plan.
  - Energy efficiency – added to the regulator's objectives, and changes made to the regulator's power to set consumer standards and the Secretary of State's power of direction in relation to the regulator's standards.
  - Inspections – imposing a duty on the regulator to make a plan that sets out the descriptions of registered providers to be subject to regular inspections, the frequency of such inspections and the circumstances in which registered providers should be subject to inspections other than regular inspections, as well as requiring the regulator to take appropriate steps to implement the plan and keep it under review.
17. The UK Government brought forward a further 12 amendments which were accepted at Commons Committee stage, and are discussed in detail in [supplementary LCM \(Memorandum No 4\)](#), laid on 6 December.
18. Supplementary LCM (Memorandum No 4) recommended that Senedd consent was given to the relevant provisions within the amended Bill. Amendments were made in the following areas at Commons Committee stage:

- Changing provision around ability of the regulator to charge fees;
- Removing a clause on 'standards relating to energy demands' which was added to the Bill by non-government amendment at House of Lords Report stage;
- Amendments to the requirements on registered providers around storing equipment during surveys and emergency remedial action.

#### **Update on position since the publication of Memorandum No 4**

19. Following House of Commons Committee stage, a further 39 UK Government amendments have been tabled. My officials have engaged with counterparts in both UK Government and the Senedd to endeavour to give the Senedd as much opportunity for scrutiny in the limited time available prior to the consent debate.

#### **Provisions amending the Bill proposed at House of Commons Report stage for which consent is required**

##### New clause 'Power of housing ombudsman to issue guidance to scheme members' (Gov NC 2)

20. This new clause inserts a new section in the Housing Act 1996, in order to confer powers on a housing ombudsman to issue guidance to scheme members about the carrying on of housing activities, as well as to order a scheme member, in certain circumstances, to assess whether its policies and practices are consistent with the guidance where a complaint is made. This amendment 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.

##### New Clause 'Action after inspection' (Gov NC 3)

21. This new clause amends provisions in Part 2 of the HRA 2008 and inserts a new section in order to allow the regulator to decide if a report is required following an inspection (rather than just a summary of findings), and the content of that report if so. 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.

##### New Clause 'Secretary of State's duty to give direction about providing information to tenants' (Gov NC 4)

22. This new clause requires the Secretary of State to give a direction to the regulator under section 197(2A) of the HRA 2008 (which was inserted by clause 24 'Direction by Secretary of State'), about setting a standard under section 194B HRA 2008 (inserted by clause 22 'Standards relating to information and transparency'), to ensure registered providers of social

housing are required to provide their tenants of low costs rental accommodation with information about tenants' rights and about making complaints against their landlord. This amendment 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 12 'Moratorium on disposal of land' (Clause 11 as introduced, Gov 4-10)

23. This clause substitutes section 145 of the HRA 2008 to set out the events that trigger the commencement of a moratorium on the disposal of land, and makes consequential amendments to section 146. Amendments to this clause change the starting point of a moratorium where insolvency occurs and where there is an appointment of an administrator of a private registered provider, and also amend various powers and processes of the regulator in relation to moratoriums, including in relation to the duration of the moratorium, further moratoriums, the appointment of an interim manager during a moratorium, the procedure for proposals made during moratorium and financial or other assistance by regulator in connection with proposals. I recommended legislative consent was required for clause 11 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 newly proposed amendments to the Bill.

Clause 22 'Standards relating to information and transparency' (Clause 17 on introduction, clause 19 at House of Lords Committee stage, Gov 11, 12)

24. Clause 22 allows the regulator to set standards for registered providers on the provision of information and transparency to their social housing tenants and to the regulator. The amendments to this clause make clear that standards set by the regulator under section 194B of HRA 2008 may require information to be published, and that the regulator's power under section 194B(1) and (2)(a) of HRA 2008 includes power to require compliance with rules about the provision of information to tenants about their rights and about making complaints against their landlord. I recommended legislative consent was required for clause 17 as introduced, and as amended as clause 19 at House of Lords Committee stage and as clause 22 at House of Lords Report 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 newly proposed amendments to the Bill.

Schedule 5 Minor and consequential amendments and transitory provision (Gov 14, 35)

25. Schedule 5 makes minor and consequential amendments and transitory provision. One amendment is consequential to the insertion of section 194B of the HRA 2008 by clause 22 and clarifies the scope of the existing

power under section 193(1) and (2)(f) of the HRA 2008 to impose rules about methods of consulting and informing tenants. The other amendment adds a new section 276B on Data Protection into Part 2 of HRA 2008, clarifying that nothing in Part 2 requires or enables a person to disclose or otherwise process personal data if doing so would contravene the data protection legislation. I recommended legislative consent was required for Schedule 5 (bar paragraph 36) as introduced, and as amended at House of Lords Committee and Report stages 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 newly proposed amendments to the Bill.

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

26. As outlined in the previous legislative consent memoranda 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.
27. The overall intention is that the Bill, as amended at Commons 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**

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

### **Conclusion**

29. As set out above, it is my view that the legislative consent of the Senedd is required for the amendments proposed to clauses 12 and 22, and to Schedule 5, as well as for the new clauses outlined in paragraphs 20-22, since 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).
30. I continue to believe 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, and that the Bill as a whole as it is expected to be composed following UK Government

amendments proposed for Commons Report stage, is positive for those tenants in Wales.

31. I therefore recommend that the Senedd grants its consent to the Bill as UK Ministers propose to amend it at Commons Report Stage

**Julie James MS**  
**Minister for Climate Change**  
**15 February 2023**

## 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 \[HL\] \(parliament.uk\)](#)

Bill as amended at House of Commons Committee stage and published on 30 November:  
[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	As amended at HoC Committee stage
1	Fundamental objectives	1	1	1
2	Advisory panel	2	2	2
3	Collection of information	3	3	3
	Power to charge fees	4	4	4
4	Relationship between regulator and housing ombudsman	5	5	5
5	Meaning of 'English body'	6	6	6
6	Registration criteria	7	7	7
7	Designation	8	8	8
8	De-registration	9	9	9
9	Appointment of health and safety lead by registered provider	10	10	10



Clause number on introduction	Clause description	As amended at HoL Committee stage	As amended at HoL Report stage	As amended at HoC Committee stage
10	Electrical safety standards	11	11	11
11	Moratorium on disposal of land	12	12	12
12	Limited liability partnerships	13	13	13
13	Insolvency of registered providers	14	14	14
14	Notification requirements: expansion to profit-making organisations	15	15	15
	Conversion of company into registered society: continuation of registration		16	16
	Restructuring of registered societies		17	17
15	Receipt of transfers of engagements from a registered society	16	18	18
16	Notification of constitutional changes	17	19	19
	Notification of change of control	18	20	20
	Standards relating to competence and conduct		21	21
17	Standards relating to information and transparency	19	22	22
18	Code of practice: standards relating to consumer matters	20	23	23
	Standards relating to energy demand		24	Removed from the Bill
19	Direction by Secretary of State	21	25	24
20	Intervention powers: removal of 'serious detriment' test	Removed from the Bill		
	Failure to meet standards: exercise of intervention powers	22	26	25

<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>	<b>As amended at HoC Committee stage</b>
21	Performance monitoring	23	27	26
22	Surveys	24	28	27
	Inspection Plan		29	28
23	Performance improvement plans	25	30	29
24	Emergency remedial action	26	31	30
25	Extension of powers to charities who have not received public assistance	27	32	31
26	Notification of Charity Commission of exercise of enforcement powers	28	33	32
27	Exercise of powers: land with a Crown or Duchy interest	29	34	33
28	Regulatory and enforcement powers: further amendments	30	35	34
29	Leaving the social housing stock: end of lease	31	36	35
	Meaning of 'subsidiary'	32	37	36
30	Appeals	33	38	37
31	Housing Ombudsman scheme	34	39	38
32	Minor and consequential amendments and transitory provision	35	40	39
33	Power to make consequential provision	36	41	40
34	Extent	37	42	41
35	Commencement	38	43	42
36	Short title	39	44	43
Schedule 1	Limited liability partnerships	Schedule 1	Schedule 1	Schedule 1

<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>	<b>As amended at HoC Committee stage</b>
Part 1	Amendments of the Housing and Planning Act 2016	Part 1	Part 1	Part 1
Part 2	Amendments of the Housing and Regeneration Act 2008	Part 2	Part 2	Part 2
Schedule 2	Amendments to restrictions on insolvency procedures	Schedule 2	Schedule 2	Schedule 2
Schedule 3	Regulatory and enforcement powers	Schedule 3	Schedule 3	Schedule 3
Schedule 4	Appeals	Schedule 4	Schedule 4	Schedule 4
Schedule 5	Minor and consequential amendments and transitory provision	Schedule 5	Schedule 5	Schedule 5
Part 1	Housing and Regeneration Act 2008	Part 1	Part 1	Part 1
Part 2	Other Acts	Part 2	Part 2	Part 2
Part 3	Transitory provision	Removed from the Bill		