

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 4)

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 (Memorandum No 2 and Memorandum No 3) on 5 October and 17 November.
3. The UK Government tabled 12 amendments on 23 November for consideration at House of Commons Committee Stage which took place on 29 November. 11 of the amendments make provision which fall within the legislative competence of the Senedd, as detailed in paragraphs 19 to 22 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. The clauses referred to in this supplementary LCM are as set out in the Bill as amended at Commons Committee stage, and published on 30 November at this link: [Social Housing \(Regulation\) Bill \[HL\] \(parliament.uk\)](#).

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.

Update on position since the publication of the supplementary Legislative Consent Memorandum (Memorandum No 3) laid on 17 November

17. 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.'

18. 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. I expand further on these points in paragraphs 24-30 below.

Provisions tabled by the UK Government at House of Commons Committee Stage for which consent is required

Clause 4 'Power to charge fees'

19. Clause 4, which was added by amendment at House of Lords Committee stage, amends the fee charging powers of the regulator set out in section 117 of the HRA 2008. This clause has been amended to repeal provision within the HRA 2008 which provide specific powers to enable the regulator to charge registered providers of social housing fees for inspections, and for connected purposes. I recommended legislative consent was required for clause 4 when it was added to the Bill because it makes provision in relation to Wales for a purpose within the legislative competence of the Senedd, namely housing, and I remain of this view following the amendments to the Bill.

Removal of Clause 'Standards relating to energy demand'

20. Clause 24, which was inserted at House of Lords Report stage, has been removed from the Bill. This clause made changes to section 193 of the HRA 2008 on standards relating to consumer matters, to add a standard relating to energy demand, as well as to introduce a new requirement on the regulator to have regard to a Government strategy on reducing energy demand for social housing properties. Although I recommended consent be given to this clause when it was added to the Bill, its proposed removal does not significantly change the generally positive impact that I view this Bill presents for tenants of English RP's in Wales. However, following the removal of this clause, the Senedd is asked to note that consent is therefore no longer required.

Clause 27 (Clause 22 at introduction) 'Surveys'

21. This clause concerns surveys and amends sections 199 and 200 of the HRA 2008 and inserts new sections 199A and 199B into that Act. This clause was previously amended at House of Lords Report stage, and further amendments have now been made to clarify that, while a survey is being carried out, where it is necessary to leave equipment or materials

on premises, it may only be left in a place where it impairs the use of a dwelling or common parts if it cannot instead be left elsewhere on the premises where this obstruction would not occur.. I recommended legislative consent was required for clause 22 as introduced, and as amended 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 amendments to the Bill.

Clause 30 (Clause 24 at introduction) 'Emergency remedial action'
(Government amendments 8-11)

22. This clause adds sections 225A to 225H on emergency remedial action to the HRA 2008. This clause was previously amended at House of Lords Report stage, and further amendments have now been made to clarify that, while emergency remedial action is taken, where it is necessary to leave equipment or materials on premises, it may only be left in a place where it impairs the use of a dwelling or common parts if it cannot instead be left elsewhere on the premises where this obstruction would not occur. I recommended legislative consent was required for clause 24 as introduced, and as amended 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 amendments to the Bill.

UK Government view on the need for consent

23. The UK Government, as outlined in the letter I received from the Parliamentary Under Secretary for Communities on 21 November, agrees that the amendments tabled for House of Commons Committee Stage require legislative consent (see paragraph 18, above), but differ in their analysis of the devolved nature of a number of other clauses in the Bill.

Clause 11 (Electrical safety standards)

24. Although initially flagged as an area which UK Government believed required consent, the Parliamentary Under Secretary for Communities has advised that the UK Government has now revised its position:
'We no longer consider a legislative consent motion to be necessary for these amendments, as whilst the provision extends to England and Wales, the provision does not apply to Wales. The relevant power amended by this provision, section 122 Housing and Planning Act 2016, explicitly applies to landlords of residential premises in England and so only housing in England is affected by the Bill's change to this provision.'

25. Having given further consideration to clause 11, I agree with the current view of the UK Government. I therefore wish to revise my position in respect of consent, which is not required in relation to clause 11.

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) and Schedule 2 (Amendments to restrictions on insolvency procedures)

26. The Parliamentary Under Secretary for Communities outlines in her letter that these provisions amend the Housing and Planning Act 2016, and that the UK Government view is that a legislative consent motion is not required for these provisions, because:

'The housing administration regime in Part 4 Chapter 5 Housing and Planning Act 2016, and amendments in respect of it, relate to the reserved matter of insolvency.'

27. I note the UK Government's view, but maintain my original recommendation, that legislative consent is required for clause 13 and Part 1 of Schedule 1, and that I recommend the Senedd should agree to grant it.

Clause 41 (Power to make consequential provision)

28. The Parliamentary Under Secretary for Communities further outlines in her letter that the UK Government do not consider a legislative consent motion is required in respect of clause 41:

'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.'

29. Again, in relation to this clause, I note the UK Government's view, but maintain my original recommendation, that legislative consent is required, and that the Senedd should agree to grant it.

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

30. 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.

31. The overall intention is that the Bill, as amended at Commons Committee 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

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

Conclusion

33. As set out above, it is my view that the legislative consent of the Senedd is required for the amendments proposed to clauses 4, 28 and 31, 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.
34. 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).
35. 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.
36. I therefore recommend that the Senedd grants its consent to the Bill as amended at Commons Committee Stage.

Julie James MS
Minister for Climate Change
6 December 2022

Annex A - Comparison table between versions of the Bill

Bill as introduced to the House of Lords on 8 June:
[Social Housing \(Regulation\) Bill \[HL\] \(parliament.uk\)](#)

Bill as amended at House of Lords Committee stage and published on 6 September:
[Social Housing \(Regulation\) Bill \[HL\] \(parliament.uk\)](#)

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

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

Clause number on introduction	Clause description	As amended at HoL Committee stage	As amended at HoL Report stage	As amended at HoC Committee stage
9	Appointment of health and safety lead by registered provider	10	10	10
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		

Clause number on introduction	Clause description	As amended at HoL Committee stage	As amended at HoL Report stage	As amended at HoC Committee stage
	Failure to meet standards: exercise of intervention powers	22	26	25
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

Clause number on introduction	Clause description	As amended at HoL Committee stage	As amended at HoL Report stage	As amended at HoC Committee stage
Schedule 1	Limited liability partnerships	Schedule 1	Schedule 1	Schedule 1
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		