

Report on Supplementary Legislative Consent Memorandum (No.2) for the Renters' Rights Bill

March 2025

1. Background

1. The Renters' Rights Bill ("the Bill") was introduced in the House of Commons on 11 September 2024. On 26 September 2024, the Welsh Government laid a Legislative Consent Memorandum ("the LCM") for the Bill. We reported on the LCM on 7 January 2025.
2. On 22 January 2025, Jayne Bryant MS, Cabinet Secretary for Housing and Local Government, laid Supplementary Memorandum No.2 ("SLCM No.2) in respect of the Bill. On 28 January 2025, the Business Committee referred SLCM No.2 to the Local Government and Housing Committee ("the Committee") and the Legislation, Justice and Constitution Committee for consideration, and set a reporting deadline of 7 March 2025.

2. SLCM No.2

3. SLCM No.2 seeks consent in respect of 2 out of 47 amendments tabled by the UK Government for consideration at Commons Report Stage. The



amendments are labelled Gov 51 and Gov 52 and amend clause 102 of the Bill concerning offences of failing to obtain licences for HMOs and houses.

Provisions in respect of which consent is sought

4. Clause 102 of the Bill 'Unlicensed HMOs and houses: offences' amends sections 72 and 95 of the Housing Act 2004, which currently provide that offences are committed by a person having control of or managing a property, which is a HMO or subject to selective licensing, who does not have the required license. The intention of clause 102 is to expand those offences and close a loophole in response to concerns that superior landlords (and some immediate landlords) may avoid committing offences by falling outside the scope of those persons managing or having control of such a property.

5. Amendments Gov 51 and Gov 52 make provision in relation to the defences to those offences. The amendments provide that a landlord under a tenancy agreement or licence to occupy cannot rely on a term under that agreement or licence about the occupation of the building, or part of the building / house, to on its own prove a defence to the offence. This is the case for the offences of failing to obtain a licence for an HMO and also failing to obtain a licence under Part 3 of the Housing Act 2004.

6. Paragraph 17 of SLCM No.2 states:

"The intention is that superior landlords must take steps to supervise their property and rent-to-rent arrangement on an ongoing basis to make sure it is and remains compliant with the requirement to hold a licence, if one is needed. The amendments prevent superior landlords from relying on contractual clauses as a defence in proceedings for an offence of failing to licence a HMO or house where required to do so under Parts 2 or 3 of the 2004 Act".

7. Paragraph 16 sets out that it will be a defence if the person proves they:

- did not know, and had a reasonable excuse for not knowing, that the building was a HMO / house subject to Part 3,

- took all reasonably practicable steps to ensure that the HMO was licensed under Part 2 / house was licensed under Part 3, or
- had some other reasonable excuse for failing to ensure the HMO / house was licensed.

8. SLCM No.2 explains, by reference to case law, the potential for landlords to escape enforcement action for licensing offences by signing away responsibility for licensing through their tenancy agreement with the immediate landlord and then relying on the reasonable excuse defence. The Cabinet Secretary states in SLCM No.2 that:

“Although I do not have evidence of widespread problems in Wales, I am aware that these types of arrangements exist”.

3. Committee consideration

9. We considered SLCM No.2 at our meeting on 5 February 2025. We note that the SLCM states that the provisions “close a loophole which allows landlords of sub-standard properties to hide behind complex management structures to evade sanctions”.

10. We restate our view from our report on the LCM, that we support the policy objectives of this legislation. Despite the concerns we noted in that report, we recognise the importance of legislating quickly and that using the UK Government’s Bill to legislate appears to be the swiftest means of doing so. We therefore recommend the Senedd should grant its consent for the UK Government to legislate on these devolved matters.

Recommendation 1. We recommend that the Senedd should grant its consent for the UK Government to legislate on these devolved matters.