

The Welsh Government's Legislative Consent Memorandum on the Leasehold Reform (Ground Rent) Bill

December 2021



1. Background

The UK Government's Leasehold Reform (Ground Rent) Bill

1. The Leasehold Reform (Ground Rent) Bill¹ (the Bill) was introduced into the House of Lords and had its first reading on 12 May 2021. It is sponsored by the Ministry of Housing, Communities and Local Government (MHCLG).

2. The explanatory notes to the Bill state:

"Through this Bill the Government aims to make leasehold ownership fairer and more affordable for leaseholders by ensuring that freeholders/landlords will no longer be able to make financial demands for ground rent. The Bill also prohibits the charging of administration charges in relation to peppercorn rents."²

3. The Bill completed its stages in the House of Lords on 14 September 2021 and received its first reading in the House of Commons on 15 September 2021. The Bill completed its second reading on 29 November in the House of Commons. At the time this report was agreed, the date for the Committee stage in the House of Commons had not been confirmed.

The Welsh Government's Legislative Consent Memorandum

4. Standing Orders 29.1 and 29.2 provide that a Legislative Consent Memorandum is required when a relevant UK Bill modifies or falls within the Senedd's legislative competence.

5. On 26 May 2021, the Minister for Climate Change, Julie James MS (the Minister), laid before the Senedd a Legislative Consent Memorandum³ (the Memorandum) in respect of the Bill.

6. The Business Committee agreed that the Legislation, Justice and Constitution Committee, and the Local Government and Housing Committee, should report on the Memorandum by 14

¹ [Leasehold Reform \(Ground Rent\) Bill, as introduced](#) [HL Bill 1]

² Leasehold Reform (Ground Rent) Bill, [Explanatory Notes](#), paragraph 1

³ Welsh Government, [Legislative Consent Memorandum, Leasehold Reform \(Ground Rent\) Bill](#), May 2021

October 2021.⁴ The deadline was subsequently extended to 18 November 2021,⁵ the 2 December 2021⁶ and 9 December 2021.⁷

Provision for which the Senedd's consent is required

7. Paragraph 12 of the Memorandum sets out the Welsh Government's assessment that consent is required in respect of all provisions of the Bill:

"We consider that the Senedd's consent is required in respect of all provisions of the Bill because they relate to rent regulation and housing policy which are not reserved. The Bill therefore makes provision, in relation to Wales, that is within the legislative competence of the Senedd."

8. Paragraphs 13 to 80 of the Memorandum set out further detail on the provisions within the Bill.

Reasons for making provision for Wales in the Bill

9. The reasons for making provisions for Wales in the Bill are set out in paragraphs 81 to 84 of the Memorandum:

"It is the Welsh Government's position that primary legislation within areas where there is legislative competence should be enacted by the Senedd. However, there are circumstances in which it is advantageous if provisions which could be within legislative competence are included in UK Parliamentary Bills (with the consent of the Senedd).

The Bill's provisions are sensible and important: they address widely acknowledged weaknesses in the leasehold market. The Law Commission's projects on leasehold reform were carried out on an England and Wales basis. Following consultation, the Commission concluded that there was no evidence of a need for different provision in the law in England and Wales. The Law Commission have been working with MHCLG to develop this

⁴ Business Committee, [Timetable for consideration of the Legislative Consent Memorandum for the Leasehold Reform \(Ground Rent\) Bill](#), July 2021

⁵ Business Committee, [Revised Timetable for consideration: Legislative Consent Memorandum on the Leasehold Reform \(Ground Rent\) Bill](#), September 2021

⁶ Business Committee, [Revised Timetable for consideration: Legislative Consent Memorandum on the Leasehold Reform \(Ground Rent\) Bill](#), November 2021

⁷ Business Committee, [Revised Timetable for consideration: Legislative Consent Memorandum on the Leasehold Reform \(Ground Rent\) Bill](#), November 2021

legislation, therefore it is considered sensible for an England and Wales approach.

The UK Government have committed to further reforms, including legislating on recommendations of the Law Commission projects. Establishing a precedent, and retaining the current commonality of the law which applies in England and Wales is seen to be beneficial. Given the complexity of the existing leasehold legislation, a coherent and consistent approach would be beneficial to both England and Wales. England and Wales share legal and conveyancing professions.

In addition, the UK Government have been able to introduce legislation to Parliament far sooner than the Senedd's timetable would allow. A joint approach will allow reforms to be enacted earlier in Wales than would otherwise be possible."

10. The Memorandum concludes:

"It is the view of the Welsh Government that it is appropriate to deal with the majority of these provisions in this UK Bill, subject to UK Government amendments which the Welsh Government is seeking to address issues in relation to the Leasehold Valuation Tribunal as well as the provision of comparable Executive Powers to Welsh Ministers. The Bill will make important changes to Ground Rents far sooner than could be achieved by separate legislation for Wales."⁸

2. Committee consideration

11. We first considered the Memorandum at our meeting on 13 September.⁹

12. Due to unforeseen circumstances we were not able to proceed with a scheduled evidence session with the Minister and so, on 15 November, we wrote¹⁰ to her with questions on the

⁸ Welsh Government, Memorandum, paragraph 87

⁹ [Legislation, Justice and Constitution Committee, 13 September 2021](#)

¹⁰ [Letter to the Minister for Climate Change](#), 15 November 2021

Memorandum, and also Legislative Consent Memoranda on the Building Safety Bill.^{11 12} We received a response on 16 November.¹³

13. We agreed our report on 6 December 2021.

Our view

The Memorandum

14. The Memorandum supporting the Welsh Government's decision to seek consent for the Bill is exceptionally poor.

15. There are a number of examples within the Memorandum where the summary of clauses or other information appear to have been taken directly from the explanatory notes accompanying the Bill. For example:

- paragraph 23 of the Memorandum relating to clause 5 of the Bill makes reference to conditions placed on shared ownership schemes "funded by Government". It is not clear from the Memorandum if this relates to the UK Government only or to the Welsh Government and if it does relate to the UK Government only, why it has been included;
- the description in paragraph 32 of the Memorandum relating to clause 8(2) of the Bill makes reference to the powers of district councils in England; this is a provision which has no application in Wales.

16. There is little information within the Memorandum to explain how the provisions relate, or are intended to relate, to leasehold reform in Wales.

17. Consequently, there are also continual references to the powers of the Secretary of State despite this being a devolved area. While the Memorandum acknowledges that the Welsh Government will be seeking "comparable Executive Powers" for the Welsh Ministers, there appears to have been little attempt to explain which powers of the Secretary of State this will apply to.

¹¹ Welsh Government, [Legislative Consent Memorandum, Building Safety Bill](#), July 2021

¹² Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No. 2\), Building Safety Bill](#), September 2021

¹³ [Letter from the Minister for Climate Change](#), 16 November 2021

- 18.** We highlight further inadequacies with the Memorandum later in the report.
- 19.** Overall the impression given by the Memorandum is that it has been hastily prepared and with little consideration given as to how this legislation in a devolved policy area will affect communities in Wales. As a result, the case made as to why the Senedd should consent to the provisions in the Bill is less than satisfactory.
- 20.** We raised our general concerns with the Minister about the Memorandum and asked if she was satisfied with its quality and completeness. In response, she said she was.¹⁴
- 21.** However, we note that the Minister's letter to us on 16 November contains information that is relevant to understanding the Welsh Government's position and yet this information is not included in the Memorandum. For example, the Minister's letter states:

"To create an entirely coherent set of legislative reforms in relation to leasehold, each element of the legislation must fit with the others. Whilst we have indicated in the Legislative Consent Memorandum (LCM) that we consider this Bill to be within the competence of the Senedd, it is entirely possible that some elements of the wider reform programme could fall outside the Senedd's competence. Therefore, it is only by working with the UK Government, and by using legislation made on a Wales and England basis, that we can ensure that all of the individual elements will fit together."¹⁵

- 22.** Despite these comments, the Minister also notes that:

"...the LCM for the Ground Rent Bill does indeed note that our proposed building safety bill, to be introduced later this Senedd Term, will incorporate a measure related to leasehold reform. This is the creation of a registration and licensing system in respect of those involved in aspects of building safety. However, we intend this scheme to also include other entities who are involved in property or estate management. This will be a relatively self-contained set of arrangements that will be specific to Wales, in a similar way to the registration and licensing requirements we currently place on residential landlords."¹⁶

¹⁴ Letter from the Minister for Climate Change, 16 November 2021, Annex – response to question 4

¹⁵ Letter from the Minister for Climate Change, 16 November 2021, Annex – response to question 1

¹⁶ Letter from the Minister for Climate Change, 16 November 2021, Annex – response to question 3

23. We also note the Minister's comments in her letter of 16 November, which are relevant to our observations in paragraph 15 above and in themselves demonstrate the lack of Wales focus in the Memorandum:

*"The Committee has suggested that references are made in the LCM for the Ground Rent Bill to provisions which relate to England only. Having asked my officials to re-examine the LCM, I believe this may include the shared ownership model that is set out in paragraph 23. This model is very similar to the one that operates in Wales, in that there are caps on levels of rent and rent increases. In Wales the respective caps are slightly different to those set out in the LCM, with initial rent being capped at 2.75% of the unsold equity and rent increases thereafter limited to RPI plus 1%. I am content with the inclusion of this paragraph but we will update the figures accordingly when the supplementary LCM is laid."*¹⁷

24. We would have expected the Minister to have at least acknowledged that the Memorandum could have been better and more Wales-focused in explaining its approach.

Conclusion 1. The Memorandum laid by the Welsh Government in respect of the Bill, and which is the basis for seeking the Senedd's consent for the Bill, is not fit for purpose and has fallen below the standard we consider to be acceptable.

Recommendation 1. In advance of the debate on the relevant legislative consent motion, the Minister should explain:

- why the Memorandum lacks a Wales focus in explaining the relevant clauses, all of which fall within the Senedd's legislative competence;
- why the Memorandum did not refer to wider aspects of the leasehold reform programme potentially being outside of the legislative competence of the Senedd;
- which specific aspects of the leasehold reform programme are potentially outside of the legislative competence of the Senedd and the timing of any future UK Government Bill that they will be included in.

25. We re-assert comments made in our earlier report on the Welsh Government's Legislative Consent Memorandum on the Environment Bill regarding the need for full and transparent

¹⁷ Letter from the Minister for Climate Change, 16 November 2021, Annex – response to question 4

information, and that a Memorandum should make the case for the approach adopted and not take the Senedd's consent for granted.¹⁸

Delays to the laying of a Supplementary Legislative Consent Memorandum

26. In the Memorandum, the Minister recommends that the Senedd gives consent to the Bill subject to amendments she is seeking in order to address issues related to the Leasehold Valuation Tribunal as, well as the executive powers (i.e. regulation-making powers) for the Welsh Ministers, which we referred to earlier.¹⁹

27. The Bill was amended in July 2021 to provide the regulation-making powers to the Welsh Ministers. Confirmation that amendments were made to include powers in the Bill for the Welsh Ministers to make regulations was only provided on 24 September in response to the Local Government and Housing Committee, following its request for clarity on this issue.²⁰ In her response to that Committee the Minister said:

"Finally, whilst the Government amendments to the Leasehold Reform (Ground Rent) Bill, which were tabled on 20th July, delegated some powers to Welsh Ministers and made other appropriate changes, in order for the Bill to work effectively further amendments are necessary in my view. The UK Government has acknowledged the need for further discussion on this and our officials are working closely on appropriate amendments. However, I do not anticipate those amendments being tabled before late November or early December. Whilst a supplementary LCM would normally be laid within a fortnight of any amendments being tabled, on this occasion we are aware further important amendments are due to be tabled and so, to be more helpful to members, will look to issue a supplementary LCM at that point."²¹

28. We raised concerns with this response in a letter to the Business Committee.²²

¹⁸ Legislation, Justice and Constitution Committee, [The Welsh Government's Legislative Consent Memoranda on the Environment Bill](#), September 2021, paragraphs 14-15

¹⁹ Welsh Government, Memorandum, paragraph 87

²⁰ [Letter from the Chair of the Local Government and Housing Committee to the Minister for Climate Change](#), 24 September 2021

²¹ [Letter from the Minister for Climate Change to the Chair of the Local Government and Housing Committee](#), 1 October 2021

²² [Letter to the Business Committee](#), 29 October 2021

29. In her letter to us of 16 November, the Minister said it remained her intention to lay a Supplementary Memorandum "in late November, or early December, once all anticipated amendments to the Bill have been tabled". She added:

*"In my view, tabling a single supplementary LCM that covers all the amendments made to the Ground Rent Bill, will be much more useful to Senedd Members than multiple supplementary LCMs dealing with different amendments at different times. A single supplementary LCM will provide a complete and coherent picture while multiple supplementary LCMs will necessarily each provide an incomplete picture, and will risk introducing incoherence and confusion."*²³

30. We have already dealt with multiple Welsh Government Legislative Consent Memoranda in respect of individual UK Government Bills and, having adapted successfully to the challenges this brings, have not found this approach to be incoherent or confusing.

31. In questioning the completeness and quality of the Memorandum, we suggested that there was a lack of information about the amendments being sought by the Welsh Government to the Bill. The Minister replied that the Memorandum:

*"...stated that amendments were being sought in relation to the Leasehold Valuation Tribunal as well as the provision of executive powers to Welsh Ministers. Amendments have subsequently been made in relation to these issues."*²⁴

32. We do not believe that this response addresses our question.

33. As we indicated in our letter to the Business Committee, we are concerned at the excessive delay, beyond the normal two-week requirement set out in the Senedd's Standing Orders, in laying a Supplementary Legislative Consent Memorandum (Supplementary Memorandum). Some four months have now elapsed since relevant amendments were made in July that would trigger the need for a Supplementary Memorandum,²⁵ despite the debate on

²³ Letter from the Minister for Climate Change, 16 November 2021, Annex – response to question 10

²⁴ Letter from the Minister for Climate Change, 16 November 2021, Annex – response to question 4

²⁵ A Supplementary Memorandum was subsequently laid on 26 November 2021 and will be reported on separately.

the relevant consent motion being currently scheduled for 14 December²⁶ and Royal Assent for the UK Government Bill potentially expected before the end of the year.²⁷

34. In deciding to withhold crucial information from us until late in the process, the Minister is reducing the amount of time we have to scrutinise her approach to the Bill and hindering our ability to understand the basis on which she believes the Senedd should consent to all the provisions in the Bill within a devolved area.

35. We do not therefore consider the Minister's approach to be helpful as she suggests. We respectfully point out that it is for Senedd Committees to determine what is helpful to them, rather than the Welsh Ministers who are subject to their scrutiny.

Conclusion 2. We regret the delay to the laying of a Supplementary Legislative Consent Memorandum in respect of amendments made to the Bill on 20 July 2021 and consider that it has impeded our ability to scrutinise effectively the Welsh Government's decision to seek consent to legislate by means of a UK Government Bill in a devolved area.

Delegated powers

36. The Bill as introduced contained delegated powers in six clauses for the Secretary of State but none for the Welsh Ministers, despite the Bill falling within a wholly devolved policy area.

37. In the Bill as amended in the House of Lords, delegated powers were extended to the Welsh Ministers. However, not all delegated powers were extended, with some retained by the Secretary of State.

38. When we asked the Minister why some of the delegated powers only extend to the Secretary of State and what the implications would be if the relevant provisions remain unamended, she replied:

"Only three regulation making powers, excluding those relating to commencement, have not been delegated. I am content they are not critical to the effective operation of the legislation in Wales.

The first non-delegated power is for the prescription of notices to be used in relation to the exemption of business leases from the legislation (clause 2(2)).

²⁶ [Letter from the Minister for Climate Change to the Chair of the Local Government and Housing Committee](#), 22 November 2021

²⁷ [Letter from the Chair of the Local Government and Housing Committee to the Minister for Climate Change](#), 18 November 2021

I am content we do not need the power to prescribe different notices for Wales for this purpose. Not only is it a very technical matter, it is one in which it would be hard to envisage any reason for a divergence of approach between Wales and England.

The second power not delegated is for regulations to be made amending the definition of home finance plan leases, which are exempted from the Bill (clause 2(6)). The Minister in Parliament stated there are no plans to use this power, but it will be held in reserve in the event it is needed to curtail potential abuses of the exemption. I am unaware of any reason why the approach in Wales would ever need to diverge from that in England.

Thirdly, the power to make consequential amendments is not delegated (clause 21(1)). This is not an unusual situation and when legislation is made by the Senedd it will often include the power for the Welsh Ministers to make consequential changes to other, non-devolved, UK legislation.

The Bill itself already makes key consequential amendments (clauses 19-20) to primary legislation, so this power is unlikely to be used significantly in any case."²⁸

39. We are unclear whether the Minister is suggesting that the Secretary of State should have powers to make regulations in a devolved policy area.

40. We would also like to make some general observations. While there may be no plans for the Secretary of State to use some of the powers currently, that does not mean they cannot be used as permitted by the Bill. In addition, they could be used at a future date, particularly if, for example, the person who is Secretary of State changes. Furthermore, given that circumstances can often change for reasons as yet unforeseen, we are surprised that the Minister suggests that the Secretary of State should have powers to make regulations in Wales on grounds that she was "unaware of any reason why the approach in Wales would ever need to diverge from that in England".

41. The position is, however, unclear because it would appear that the Welsh Ministers were provided with regulation-making powers in respect of clause 2(6) in July, a point acknowledged

²⁸ Letter from the Minister for Climate Change, 16 November 2021, Annex – response to question 11

in a Supplementary Memorandum laid on 26 November and which we intend to report on separately.²⁹

42. We consider that the Welsh Ministers should be provided with all the regulation-making powers in devolved areas. We do not consider it appropriate for some powers to make regulations in a devolved area to be retained by the Secretary of State because of the Minister's reasoning that they could be exercised infrequently or because of an expectation that policy would not diverge between Wales and England.

43. Moreover, providing the Welsh Ministers with all the necessary regulation-making powers would ensure that all regulations relating to leasehold reform as it applies in Wales will be bilingual and subject to scrutiny by the Senedd. It would also avoid having some regulations made by the Welsh Ministers and some by the Secretary of State, which would make Welsh law less accessible.

44. One of the issues raised as a concern during the Bill's passage through the House of Lords was that the majority of the Bill's provisions will not be commenced on a specified date.³⁰ Instead, they will be subject to commencement regulations by the Secretary of State. There are no commencement powers for the Welsh Ministers in the Bill for provisions relating to Wales. This is in contrast to the Building Safety Bill, which is the subject of Welsh Government Legislative Consent Memoranda, where some commencement provisions have been provided to the Welsh Ministers in respect of Wales.

45. We asked the Minister to explain the approach adopted. She replied:

"The provisions of the Ground Rent Bill will apply equally across Wales and England in a way that is not true in relation to the Building Safety Bill. Furthermore, our expectation is that the publicising of the new legislation will be a collaborative effort between ourselves and the UK Government.

Given this position, it would not be appropriate that the Bill is commenced at different times in Wales and England, so providing commencement powers to the Welsh Ministers is unnecessary."³¹

²⁹ Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No.2) Leasehold Reform (Ground Rent) Bill, 26 November 2021, paragraph 24 and Annex A

³⁰ See analysis in House of Commons Library, [Leasehold Reform \(Ground Rent\) Bill 2021-22](#), September 2021, section 3.7

³¹ Letter from the Minister for Climate Change, 16 November 2021, Annex – response to question 12

46. We note the concerns of the House of Lords regarding commencement provisions in the Bill. We consider that the Welsh Ministers should have control over the commencement of the leasehold reform provisions for Wales following Royal Assent. Such an approach would not prevent the same provisions being commenced in Wales at the same time as they are commenced in England.

47. In light of our views on the regulation-making and commencement powers in the Bill, we make the following recommendation.

Recommendation 2. Before seeking the Senedd's consent for the Bill, the Minister should ensure that it is amended to provide that all delegated powers to make subordinate legislation in Wales in devolved areas are to be exercised by the Welsh Ministers.

48. Timely publication of a Supplementary Memorandum related to the amendments made to the Bill in July would have enabled us to examine these issues in more detail, including the reasons why the Welsh Ministers consider it appropriate to provide the Secretary of State with powers to make subordinate legislation in a devolved policy area and that we would expect to be the responsibility of the Welsh Ministers.

Reasons for using a UK Government Bill

49. The Memorandum sets out a number of reasons why the Welsh Government is seeking consent for a UK Government Bill rather than bringing forward its own legislation (see paragraphs 9 and 10). Our letter to the Minister sought to explore the reasons for this approach.

50. In terms of the origin of the Bill and the role of the Law Commission, we specifically asked the Minister whether the Commission recommended an England and Wales Bill and whether it prepared draft clauses. In response she said:

"The Law Commission found that the overwhelming majority of consultees who answered its question as to whether there should be any difference between how Wales and England should be treated under a reformed regime, thought that there should not. The Commission therefore concluded that there are no aspects of a reformed regime that should diverge between Wales and England. However, the Ground Rent Bill is not itself part of the Law Commission's recommendations but rather a Bill that paves the way for those recommendations to be implemented in future legislation. Therefore, in

this instance, the Commission has played no role in drafting the Bill's clauses."³²

51. We asked about the Welsh Government's capacity to legislate. The Minister told us:

"Legislating in these two areas is very much a priority for this Government. However, as set out in our Legislative Programme, we have many other priorities, and to deliver them all we have to take a pragmatic and indeed an innovative approach. I consider proceeding in the way we propose is in the interests of the people of Wales...

In the case of the Ground Rent Bill, legislating through a UK Government Bill is not just the pragmatic approach that supports the best use of our resources, it is also the best approach for ensuring coherent and comprehensive legislative reform. If we choose not to collaborate with the UK Government on the leasehold reform programme, and choose instead to pursue our legislative reform on a Wales only basis, that reform would take longer and divert precious time and resources from areas where a securing legislation specific to Wales is essential. More importantly, it could result in a set of reforms that are incomplete, or do not properly mesh with reforms that the UK Government make in relation to Wales in respect of elements of the programme that may fall outside of the Senedd's legislative competence.

... No stakeholder in Wales has raised any specific concerns about the content of the Ground Rent Bill, and the only correspondence I have received has been supportive of the proposed leasehold reforms – and called upon us to ensure they extend to Wales."³³

52. In considering this latter comment, while we note the Minister's recognition that stakeholders have been instrumental in the Bill's development, we also note her acknowledgement that "there has not been a specific consultation on the Ground Rent Bill itself."³⁴

53. According to the Minister:

³² Letter from the Minister for Climate Change, 16 November 2021, Annex – response to question 6

³³ Letter from the Minister for Climate Change, 16 November 2021, Annex – response to question 2

³⁴ Letter from the Minister for Climate Change, 16 November 2021, Annex – response to question 5

*"Drafting a single Senedd Bill that covers all the desired aspects of leasehold reform would be a very considerable undertaking resulting in a bill of great length and complexity. Even if it were practically possible for us to legislate in relation to every aspect of leasehold reform in the current Senedd Term, I consider it likely that it would require more than one Bill. However, as has been set out above, it is not at all clear that the Senedd will have the legislative competence to legislate in every aspect of leasehold reform."*³⁵

54. We asked about the implications of making these provisions in UK Government Bills for the accessibility of Welsh law. The Minister said that in allowing the UK Parliament to legislate it was inevitable that the primary legislation is in English only "and that is clearly regrettable". However she added that "the competence issues ... mean that a collaborative approach is likely to best meet our commitment to ensuring that the law in Wales is coherent and accessible." She also noted that regulations and guidance made under the Bill once enacted, will be bilingual. As we indicated earlier, the Minister also acknowledged that a measure related to leasehold reform would appear in a Senedd Bill on building safety.³⁶

55. We also asked about the implications for scrutiny, highlighting concerns that Senedd Members have not had the opportunity to scrutinise the Bill in detail. The Minister told us:

*"The Ground Rent Bill is a short bill of 27 clauses, arguably only 19 of which are substantive, which achieves its policy objectives neatly and simply. Members have an opportunity to scrutinise it as part of the legislative consent process and I think the Bill's comparative brevity should allow them to do that with a good degree of rigour."*³⁷

56. She also said:

*"I hope that given how short this Bill is, Senedd Members will feel that they have sufficient time to scrutinise it."*³⁸

57. In addition, the Minister told us:

"Consenting to the UK Government legislating in respect of Wales will help to ensure that a coherent approach is adopted across all aspects of the reforms."

³⁵ Letter from the Minister for Climate Change, 16 November 2021, Annex – response to question 8

³⁶ Letter from the Minister for Climate Change, 16 November 2021, Annex – response to question 3

³⁷ Letter from the Minister for Climate Change, 16 November 2021, Annex – response to question 5

³⁸ Letter from the Minister for Climate Change, 16 November 2021, Annex – response to question 10

At the same time, my department will work with the UK Government to make sure that Welsh interests are properly taken into account and properly protected. I think this is the best way of advancing the interests of leaseholders in Wales whilst ensuring proper respect is paid to the devolution settlement."³⁹

58. We do not share the Minister's views regarding the level of scrutiny available to Senedd Members in relation to the Bill and as she describes in her letter.

59. We would respectfully point out that the size of a piece of legislation, whether a Welsh Government Bill or a UK Government Bill that is the subject of a Legislative Consent Memorandum, is not the determining factor in how much time is required for scrutiny.

60. We note that the Welsh Government's Programme for Government⁴⁰ contains a commitment to legislate on leasehold reform within this Senedd term and to take action to enact recommendations made by the Law Commission to make improvements in the law in relation to residential leasehold and commonhold. However, we also note that it does not clearly state that a UK Government Bill will be used as the means of legislating.

61. As we keep highlighting, and as the Minister appeared to acknowledge in evidence to the Local Government and Housing Committee,⁴¹ using a UK Government Bill to deliver legislation in a devolved area provides less opportunity for detailed scrutiny than using a Bill introduced into the Senedd. As we drew attention to in our report on the Welsh Government's Legislative Consent Memoranda on the Environment Bill, seeking the consent of the Senedd to permit the UK Parliament to legislate means that the ability of Members of the Senedd to hear expert evidence, listen to the views of stakeholders in Wales and table amendments to test, challenge and influence the Welsh Ministers—a key tool of scrutiny—ceases to be available.⁴²

62. We are also surprised to see the Minister suggest, as she has done in similar terms before,⁴³ that her department will work to ensure Welsh interests are protected. As our report

³⁹ Letter from the Minister for Climate Change, 16 November 2021, Annex – response to question 7

⁴⁰ Welsh Government, [Programme for Government](#), 15 June 21

⁴¹ Local Government and Housing Committee, [RoP](#) [13 and 16], 17 November 2021

⁴² Legislation, Justice and Constitution Committee, [The Welsh Government's Legislative Consent Memoranda on the Environment Bill](#), September 2021, paragraphs 14-15

⁴³ Legislation, Justice and Constitution Committee, [The Welsh Government's Legislative Consent Memoranda on the Environment Bill](#), September 2021, paragraph 18

on the Welsh Government's Legislative Consent Memoranda on the Environment Bill also stated:

"Fully protecting Welsh needs and interests through legislation is the function of the Senedd in devolved areas."⁴⁴

63. We reiterate this point again.

64. We are also not entirely clear how the Minister's justification for using a UK Government Bill is in accord with the Welsh Government's principles for UK Bills provided to us by the Counsel General,⁴⁵ in particular given her references to taking "a pragmatic and indeed an innovative" approach that makes "the best use of our resources."⁴⁶

Recommendation 3. The Minister should, in advance of the debate on the relevant consent motion explain how the approach adopted by the Welsh Government as advocated in her letter of 16 November 2021 (in particular as referred to in paragraphs 21 to 22 and 49 to 57 of this report) is consistent with the Welsh Government's principles for UK Bills.

65. We also wish to comment on two other points in the Memorandum.

66. We note that the Memorandum says that "England and Wales share legal and conveyancing professions" in seeking to justify the use of a UK Government Bill.⁴⁷ We believe this justification has little merit, not least because it is a situation that applies equally to other professions who act in devolved areas.

67. The Memorandum states that the UK Government will have "been able to introduce legislation to Parliament far sooner than the Senedd's timetable would allow".⁴⁸ Decisions regarding when to introduce legislation for scrutiny in the Senedd are a matter for the Welsh Government and once a Bill is introduced, a timetable for scrutiny will be set by the Business Committee in accordance with Standing Order 26. We consider it inappropriate for the Welsh Government to use arguments relating to the Senedd's timetable for scrutiny to justify using a UK Government Bill to legislate in a devolved area.

⁴⁴ Legislation, Justice and Constitution Committee, The Welsh Government's Legislative Consent Memoranda on the Environment Bill, September 2021, paragraph 22

⁴⁵ Letter from the Counsel General, 22 October 2021, Annex B

⁴⁶ Letter from the Minister for Climate Change, 16 November 2021, Annex – response to question 2

⁴⁷ Welsh Government, Memorandum, paragraph 83

⁴⁸ Welsh Government, Memorandum, paragraph 84

68. When we asked the Minister for her views on the cumulative constitutional implications of asking and allowing the UK Parliament to legislate in the two wholly devolved areas (leasehold reform and building safety), she replied:

"I consider the cumulative constitutional implications to be limited. Working collaboratively with the UK Government to achieve provisions for Wales that will update and modernise outdated legislation in a devolved area, does not in any way alter or undermine the fact that the Senedd has legislative competence in this area. We have the ability to make amendments in the future if that is needed."⁴⁹

69. We note however that in relation to leasehold reform, the suggestion that amendments can be made to legislation in the future by the Senedd contradicts the arguments used by the Minister of the need for legislation on leasehold reform to be on an England and Wales basis.

Conclusion 3. We are not persuaded by the Minister's views on the approach adopted in relation to the Bill and we remain deeply concerned by the Welsh Government's approach to using, so extensively, UK Government Bills to legislate in devolved areas.

⁴⁹ Letter from the Minister for Climate Change, 16 November 2021, Annex – response to question 1
