

# Report on the Legislative Consent Memoranda for the Social Housing (Regulation) Bill

13 December 2022

## 1. Background

1. On 18 August 2022, the Minister for Climate Change laid a Legislative Consent Memorandum ("the LCM") on the Social Housing (Regulation) Bill ("the Bill") before the Senedd. A supplementary LCM ("SLCM(2)") was laid on 5 October. The Minister wrote to the Llywydd on 24 October stating her intention to lay a further supplementary LCM. The further SLCM ("SLCM(3)") was laid on 17 November 2022.
2. On 20 September 2022, the Business Committee referred the LCM to the Local Government and Housing Committee ("the Committee") and the Legislation, Justice and Constitution Committee for consideration, with a reporting deadline of 1 December 2022. On 22 November, the Business Committee referred SLCM(3) to both committees and agreed a revised reporting deadline of 13 January 2023.
3. We first considered the LCM and SLCM(2) at our meeting on 27 October. We also considered correspondence relating to the LCM at our meeting on 16 November. We considered SLCM(3) at our meeting on 24 November.
4. The Memoranda will be debated in Plenary on 17 January 2023.

## 2. The LCM and SLCMs

5. Paragraphs 5 to 16 of the LCM summarise the Bill and its policy objectives. Paragraph 17 sets out the clauses in the Bill which have particular relevance to matters within the legislative



competence of the Senedd. Paragraphs 18 to 26 set out the provisions in the Bill for which consent is being sought by the UK Government.

**6.** Paragraph 29 of the LCM sets out the Welsh Government's conclusion that it is appropriate to deal with these provisions through a UK Bill.

**7.** The SLCM laid on 5 October provides an update after 42 amendments were made to the Bill during its passage through the House of Lords. 39 of the 42 amendments make provisions which fall within the legislative competence of the Senedd.

**8.** Paragraphs 17 to 45 of the SLCM set out the changes to the Bill since the publication of the LCM. Paragraphs 47 to 48 set out the Welsh Government's conclusion that it supports the Bill and the amendments made.

**9.** The second SLCM laid on 17 November outlines 32 amendments tabled by the UK Government, one amendment tabled by a non-government peer, which was supported by the UK Government and one amendment not supported by the UK Government. The amendments were considered and agreed at Lords Report Stage on 18 October. These amendments fall within the legislative competence of the Senedd.

**10.** Paragraphs 18 to 34 of the second SLCM set out the amendments to the Bill since the publication of the first SLCM. Paragraphs 36 to 37 set out the Welsh Government's position on the amendments. Paragraphs 40 to 41 set out the Welsh Government's conclusion that it supports the Bill and the amendments.

### 3. Provisions for which consent is sought

#### **The LCM and SLCM(2)**

**11.** While the Bill focuses on the regulation of social housing in England, some England-based registered providers own/manage social housing stock in Wales. Therefore, to the extent the Bill applies to the regulation of England-based registered providers that own/manage social housing stock in Wales, the Bill has a purpose within the legislative competence of the Senedd.

**12.** The Senedd's consent is being sought by the UK Government for each of the following clauses (as amended in Committee) because they relate to social housing, which is not reserved under Schedule 7A to the Government of Wales Act 2006.

#### **Clause 1**

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**13.** Requires the regulator to support the provision of housing that is 'safe' (this is in addition to the regulator's current duty to support the provision of housing that is 'well managed' and of 'appropriate quality').

**14.** The regulator is also given a new objective, which is to require registered providers to be transparent with tenants.

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## **Clause 2**

**15.** Requires the regulator to set up an Advisory Panel, comprising voices from across the sector, including tenants and landlords.

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## **Clause 3**

**16.** Broadens the existing power for the regulator to require persons to provide documents or information for purposes connected to its regulatory functions.

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## **Clause 4**

**17.** Clarifies that the regulator may charge fees for applications for initial registration as registered providers of social housing (even for unsuccessful applications).

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## **Clause 5**

**18.** Empowers the regulator and the housing ombudsman to exchange information quickly and effectively, to provide better protection for tenants.

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## **Clause 6**

**19.** Amends the eligibility criteria for registration as a registered provider, so that providers meet certain corporate requirements, allowing the regulator to regulate them in an appropriate manner.

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## **Clause 7**

**20.** Enables the regulator to make the registration of social housing providers conditional upon their ability to meet, on registration, regulatory standards.

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## **Clause 8**

**21.** Enables the regulator greater flexibility when determining a provider's status as either a profit-making organisation or a non-profit organisation. This allows the regulator to designate the provider's status according to the substance of how the provider operates.

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## **Clause 9**

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**22.** Allows the regulator to de-register a private registered provider that fails to meet certain standards.

## **Clause 10**

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**23.** Requires a registered provider to designate a health and safety lead.

## **Clause 11**

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**24.** Gives the Secretary of State power to make regulations imposing duties on registered providers relating to electrical standards.

## **Clause 12**

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**25.** Amends the process for a moratorium on the disposal of a registered provider's land. During such a housing moratorium, the prior consent of the regulator is required before the land can be sold – this protects social housing stock while solutions can be explored to support providers that are in financial difficulties. The clause sets out the events that trigger the commencement of a moratorium.

## **Clause 13 (and Schedule 1)**

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**26.** Applies the housing administration regime and the housing moratorium regime to private registered providers that are limited liability partnerships.

## **Clause 15**

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**27.** Imposes requirements on profit-making registered providers to notify the regulator of various restructuring and dissolution events.

## **Clause 16**

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**28.** Requires registered providers that are companies and registered societies to notify the regulator if a registered society that is not a registered provider resolves to transfer its engagements (i.e. assets, liabilities etc.) to the registered provider.

## **Clause 17**

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**29.** Adds new requirements on registered providers to notify the regulator of changes to the constitution of the registered provider.

## **Clause 18**

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**30.** Adds requirements on registered providers to notify the regulator of events that may affect the control of the registered provider.

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#### **Clause 19**

**31.** Enables the regulator to set standards on registered providers on the provision of information and transparency to their social housing tenants and to the regulator.

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#### **Clause 20**

**32.** Enables the regulator to issue a code of practice in relation to its consumer standards.

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#### **Clause 21**

**33.** Enables the Secretary of State to direct the regulator in relation to standards requiring registered providers to comply with rules about providing information to tenants.

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#### **Clause 22**

**34.** Removes general grounds for the exercise of intervention powers by the regulator, when a registered provider fails to meet standards. Instead, the Bill ( Schedule 3) adjusts the grounds on which the regulator can exercise those intervention powers.

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#### **Clause 23**

**35.** Gives the regulator power to direct registered providers to collect, process and publish information concerning their performance in relation to standards set by the regulator.

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#### **Clause 24**

**36.** Reduces the minimum notice period the regulator must give to a registered provider and tenant before a survey of the condition of the premises can be carried out.

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#### **Clause 25**

**37.** Enables the regulator to require a registered provider to prepare and implement a performance improvement plan.

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#### **Clause 26**

**38.** Enables the regulator to arrange emergency remedial action on premises to remedy failures by the registered provider that cause imminent serious health and safety risks.

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#### **Clause 27**

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**39.** Gives the regulator stronger enforcement powers in relation to registered charities that have not received public assistance.

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#### **Clause 28**

**40.** Requires the regulator to inform the Charity Commission when it exercises certain enforcement powers against registered charities.

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#### **Clause 29**

**41.** Clarifies the regulator may use its powers in relation to premises on lawn where there is a Crown or Duchy interest.

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#### **Clause 30 (and Schedule 3)**

**42.** Provides for various regulatory and enforcement powers of the regulator.

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#### **Clause 31**

**43.** Clarifies that leased homes will cease to be social housing, no matter how the lease ends. This clause also closes a loophole which potentially allowed a registered provider to dispose of social housing stock without notifying or seeking consent of the regulator. This clause has some retrospective effect. It will apply to leases that were granted on or after 10 June 2022.

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#### **Clause 32**

**44.** Widens the meaning of “subsidiary” so that it applies to bodies other than companies.

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#### **Clause 33 (and Schedule 4)**

**45.** Amends the process for appealing against deregistration decisions and enforcement action.

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#### **Clause 34**

**46.** Gives the housing ombudsman various powers, including a power to issue a code of practice relating to complaints-handling.

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#### **Clause 35 (and Schedule 5, except paragraph 36)**

**47.** Makes various minor and consequential amendments.

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#### **Clause 36**

**48.** Gives the Secretary of State power to make regulations that are consequential on the Bill.

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## **SLCM(3)**

**49.** SLCM(3) outlines the amendments which require the Senedd's consent as they apply to the regulation of England-based registered providers with social housing in Wales.

### **Clause 1**

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**50.** Adds an additional duty on the regulator, which is to support the provision of housing that is energy efficient.

### **Clause 7**

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**51.** Amends the eligibility criteria for registration as a registered provider, so that providers meet certain corporate requirements, allowing the regulator to regulate them in an appropriate manner.

### **Clause 15**

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**52.** Removes specific requirements on profit-making registered providers to notify the regulator of various restructuring and dissolution events. The requirements are removed as a consequence of clauses 16 and 17.

### **Clause 16**

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**53.** Removes a requirement for the regulator to make a decision as regards registration where a provider converts from a company to a registered society. Therefore, the provider's registration will continue (as will the obligations of the provider).

### **Clause 17**

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**54.** Sets out what the regulator is required to do where a registered society is restructured and it results in the creation of a new body or in the transfer of engagements to a body which is not a registered provider. This new section requires the regulator to decide whether or not to register the body and describes how the body should be treated pending that decision.

### **Clause 18**

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**55.** The notification requirements in this clause are amended in consequence of the changes made in clause 17, as regards the regulator's decision whether or not to register the body.

### **Clause 21**

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**56.** This new clause gives the regulator additional power to set standards relating to the competence and conduct of registered providers.

## **Clause 22**

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**57.** The various powers of the regulator to take enforcement action are amended in consequence of clause 21.

## **Clause 24**

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**58.** Adds a standard relating to energy demand, and outlines a new requirement on the regulator to have regard to the UK Government's strategy on reducing energy demand for social housing properties, which the Secretary of State is also required by this clause to publish.

## **Clause 25**

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**59.** Makes amendments relating to the Secretary of State's power to issue directions, in consequence of the additional powers given to the regulator to set standards under clause 21.

## **Clause 27**

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**60.** Makes amendments to the regulator's power to direct registered providers to provide information about their performance, in consequence of the additional powers given to the regulator to set standards under clause 21.

## **Clause 28**

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**61.** Extends the period the regulator must give to a registered provider and tenant before a survey of the condition of the premises can be carried out.

## **Clause 29**

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**62.** Imposes new duties on the regulator to produce, publish, implement and maintain a plan to carry out inspections of registered providers.

## **Clause 30**

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**63.** The regulator's powers to hold registered providers to account have been amended, in consequence of the additional powers given to the regulator to set standards under clause 21.

## **Clause 31**

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**64.** Clarifies the notice of entry requirements in the event of emergency remedial action, for example, that notice need only be given when the dwelling is occupied.

## **Schedule 5 (except paragraph 48)**

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**65.** Various amendments have been made to Schedule 5, including clarifying that:

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- the regulator's power to set standards extends to energy efficiency standards;
- the Secretary of State may direct the regulator about setting standards in energy efficiency;
- the regulator's duty to consult tenant representative bodies refers to social housing tenant representative bodies specifically.

## 4. Reasons for making these provisions in Wales

**66.** Paragraph 29 of the LCM paragraphs 44 and 45 of SLCM(2) set out the Welsh Government's reasons for making provisions for Wales in the Bill. The LCM states:

*"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."*

**67.** Paragraph 45 of SLCM(2) states:

*"The intention is that the Bill, as amended at 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 am content that these provisions should be made in a UK Parliamentary Bill."*

**68.** Paragraph 40 of SLCM(3) reiterates the Welsh Government's view that it is appropriate to deal with these provisions in a UK Parliament Bill. It also states:

*"the proposals in the Bill as a whole, and in the relevant amendments tabled and agreed at Lords Report 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."*

## 5. Committee consideration and conclusion

**69.** We initially considered the LCM and SLCM(2) at our meeting on 27 October. We noted that SLCM(2) states:

*"there are relatively few 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."*

**70.** We wrote to the Minister for Climate Change on 31 October to request further details on the number of properties in Wales which fall into this category and their location. We considered the Minister's response on 16 November.

**71.** We note that the Minister's response confirms that there are 18 England-based Registered Providers who own and manage approximately 530 homes/units in Wales which will be subject to the changes proposed in the Bill. Although the number of properties is relatively small (compared to over 169,000 homes/units owned and managed by Wales-based providers), we believe that, in principle all legislation relating to devolved areas of competence should be made in Wales and subject to full scrutiny by the Senedd.

**72.** We considered SLCM(3) at our meeting on 24 November.

**73.** We strongly believe that the short amount of time allocated to the legislative consent process is insufficient to enable us to fully understand the impact of provisions on the lives of people in Wales. We are concerned that legislating in this way can disadvantage people in Wales as they have fewer opportunities to feed their views to those making the legislation and we do not have the opportunity to test the provisions with Welsh stakeholders. In principle, we believe that the legislative consent process should only be used by the Welsh Government in exceptional circumstances.

**74.** We are also concerned by the timescale of the Welsh Government laying SLCM(3). We note that the Minister's letter to the Llywydd stated that due to the late notification of the amendments being tabled, it would not be possible to lay SLCM(3) within the normal two-week Standing Order deadline. We believe this to be unsatisfactory and highlights the weakness of the legislative consent process, which results in a lack of scrutiny – decisions on primary legislation in devolved areas cannot be rushed and must be considered carefully to make sure it is right for Wales.

**75.** Despite the concerns outlined above, most Members feel that they are able to recommend that the Senedd gives its consent to legislate on these devolved matters on this occasion. One Member of the Committee, Mabon ap Gwynfor MS, disagrees with the majority view and believes that consent should not be granted.