

## LEASEHOLD REFORM (GROUND RENT) BILL

### Supplementary Memorandum from the Ministry of Housing, Communities and Local Government to the Delegated Powers and Regulatory Reform Committee

#### A. INTRODUCTION

1. This supplementary memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Leasehold Reform (Ground Rent) Bill (“the Bill”). The Bill was introduced to the House of Lords on 12 May and will reach Report Stage on 20 July. This supplementary memorandum identifies Government amendments to the Bill that confer powers to make delegated legislation to Welsh Ministers. The context and purpose of the powers and justifications of powers and procedure remain unchanged.

#### B. TABLED AMENDMENTS – SUMMARY OF CLAUSES AMENDED WITH DELEGATED POWERS

2. Delegated Powers are being updated in the Bill to provide Welsh Ministers with the same powers as the Secretary of State in relation to the following clauses:
  - **Clause 2 (6)(b)/Clause 22: Excepted Leases**
    - Power to specify further conditions that community-led housing must meet in order for the relevant exception from application of the Act to apply.
  - **Clause 9: Financial Penalties**
    - (9)/(10) Power to amend the financial penalty amounts to reflect changes in the value of money. This is a Henry VIII power.
  - **Clause 12: Enforcement authorities: supplementary**
    - (1) enforcement authorities must enforcement authorities to have regard to guidance issued by the Secretary of State in relation to enforcement action in England and by the Welsh Ministers in relation to enforcement action in Wales.
  - **Clause 20: Consequential Amendments**
    - (1)/(2) Power to make provision that is consequential on the Act - including provision amending an Act of Parliament (including an Act passed in the same session as this Act) and to Measures or Acts of Senedd Cymru. Consequential regulations made by the Welsh Ministers may only make provision that would be within the legislative competence of Senedd Cymru, and that the Secretary of State may make consequential regulations that could be made by Welsh Ministers only with their consent. This is a Henry VIII power.
  - **Clause 21: Regulations**
    - (1)(a) Powers to make regulations includes power to make consequential, supplementary, incidental, transitional or saving provision
    - (1)(b) Powers to make regulations includes power to make different provision for different purposes

- (3) the default procedure for regulations made under the Bill by the Welsh Ministers is the negative procedure.
- (4) The affirmative procedure is required for consequential regulations under clause 20 which amend Measures or Acts of Senedd Cymru and for consequential regulations made by Welsh Ministers which amend Acts of Parliament.

## **C. ANALYSIS OF DELEGATED POWERS BY CLAUSE**

### **Clause 2 (6)(b)/Clause 22: Excepted Leases**

- Power to specify further conditions that community-led housing must meet in order for an exception from application of the Act to apply.

*Power conferred on: Secretary of State and Welsh Ministers*

*Power exercised by: Regulations (statutory instrument)*

*Parliamentary procedure: Negative Procedure*

#### Context and Purpose

3. Paragraphs 14 to 17 of the existing Delegated Powers Memorandum dated 12 May 2021 sets out the context and purpose of the power. The power is being extended to Welsh Ministers, so that they are able to update definitions of excepted leases to ensure they were fit for the purpose of Welsh Community Housing Schemes

#### Justification for taking the powers

4. The existing justification remains.

#### Justification for the procedure selected

5. The same procedure and power is being provided for Welsh Ministers.

### **Clause 9: Financial Penalties**

- (9)/(10) Power to amend the financial penalty amounts to reflect changes in the value of money.

*Power conferred on: Secretary of State and Welsh Ministers*

*Power exercised by: Regulations (statutory instrument)*

*Parliamentary procedure: Negative Procedure*

#### Context and Purpose

6. The context and purpose are unchanged from the previous Delegated Powers Memorandum (paragraph 22). The power is being extended to Welsh Ministers so that they are able to ensure consistency of approach with other penalties in their competence.

Justification for taking the power

7. The justification for this power is unchanged, it is being extended to Welsh Ministers.

Justification for the procedure selected

8. The procedure remains unchanged, it is being extended to Welsh Ministers.

**Clause 12: Enforcement authorities: supplementary**

- (1) Implied power to issue guidance to which enforcement authorities must have regard

*Power conferred on: Secretary of State and Welsh Ministers*

*Power exercised by: guidance*

*Parliamentary procedure: no parliamentary procedure*

Context and Purpose

9. The context and purpose are unchanged from the previous Delegated Powers Memorandum (paragraphs 26 and 27). The power is being extended to Welsh Ministers.

Justification for taking the power

10. The justification for this power is unchanged, it is being extended to Welsh Ministers, so that they are able to produce their own guidance for enforcement authorities to achieve best fit with the Welsh context, including translation into Welsh

Justification for the procedure selected

11. The procedure remains unchanged.

**Clause 20: Consequential Amendments**

- (1)/(2)(3)(4) Power to make provision that is consequential on the Act - including provision amending an Act of Parliament or Measures or Acts of Senedd Cymru.

*Power conferred on: Secretary of State and Welsh Ministers*

*Power exercised by: Regulations (statutory instrument)*

- *Parliamentary procedure: Affirmative, if amending an Act of Parliament or Measures or Acts of Senedd Cymru*

Context and Purpose

12. The purpose for this is unchanged set out at paragraph 33 of the existing Delegated Powers Memorandum. It is being extended to Welsh Ministers. Consequential regulations made by the Welsh Ministers may only make

provision that would be within the legislative competence of Senedd Cymru, and that the Secretary of State may make consequential regulations that could be made by Welsh Ministers only with their consent. This is to reflect the devolution settlement in that the Secretary of State will not legislate in a devolved area without Wales's consent and Wales can only legislate consequentially in areas where they have legislative competence.

Justification for taking the power

13. The justification for this power is unchanged set out at paragraphs 34 and 25 of the existing Delegated Powers Memorandum, it is being extended to Welsh Ministers so that they can ensure alignment of this legislation with existing Welsh Law.

Justification for the procedure selected

14. The procedure remains unchanged, it is being extended to Welsh Ministers.

**Clause 21: Regulations**

- (1)(a) Powers to make regulations includes power to make consequential, supplementary, incidental, transitional or saving provision
- (1)(b) Powers to make regulations includes power to make different provision for different purposes

*Power conferred on: Secretary of State and Welsh Ministers*

*Power exercised by: Regulations (statutory instrument)*

*Parliamentary procedure: See relevant related power*

Context and Purpose

15. This clause provides that powers to make regulations in the Bill includes power to make consequential, supplementary, incidental or saving provision and different provision for different purposes.

Justification for taking the power

16. Clause 21 enables consequential, supplementary, incidental, transitional, saving or differential provision to be made if necessary in connection with the exercise of other powers under the Bill.

Justification for the procedure selected

17. The procedure applicable will be that of the relevant related power. The justification has not changed from that set out in the previous delegated powers memo set out at paragraph 39.