



Huw Irranca-Davies MS
Chair – Legislation, Justice and Constitution Committee
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13 December 2021

Dear Huw,

Thank you for the Committee's report of 7 December on the legislative consent memorandum on the Leasehold Reform (Ground Rent) Bill and for the Committee's report of 9 December on supplementary legislative consent memorandum (Memorandum No.2). I write in response to the recommendations made by the Committee in its reports. The recommendations and my response are set out below.

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.*

In response to the first bullet point, I think it is vital to bear in mind that the provisions of the Bill apply equally to both Wales and England. They are intended to address an unfairness in relation to a system that currently operates in exactly the same way across both countries. Research has also shown that leaseholders in Wales face the same issues regarding unfairness as those in England¹. Therefore, save for a few minor exceptions (relating, for example, to the existence of the Leasehold Valuation Tribunal in Wales) the Bill addresses that unfairness in exactly the same way across the two countries. It therefore does not have a specific Wales focus.

¹ [Research into the sale and use of leaseholds in Wales | GOV.WALES](https://gov.wales/research-sale-and-use-leaseholds-wales) See: <https://gov.wales/research-sale-and-use-leaseholds-wales>

In relation to the second bullet point, the Memorandum stated that *'given the complexity of the existing leasehold legislation, a coherent and consistent approach would be beneficial to both England and Wales.'* Although not explicitly mentioned, the potential issue of competence in relation to aspects of wider leasehold reform is an important element of the 'complexity' to which the Memorandum refers and which underpins desirability of a consistent legislative approach across the two countries. I accept that the point could have been made more clearly and I understand the Committee's view that would have been helpful. However, the focus of the Memorandum is on competence in relation to the current Bill rather than on potential legislation to be made in the future.

In answer to the final bullet point, the Committee is aware that future leasehold reform will be based around the recommendations made by the Law Commission in its three reports dealing with different aspect of leasehold reform; namely leasehold enfranchisement, commonhold and the right to manage. I am unable to comment at this time on which specific aspects of the further legislation may or may not deal with matters that are not within the legislative competence of the Senedd as the legislation has not yet been drafted. I feel it is appropriate at the current time that the focus should be on working with the UK Government to secure a coherent set of legislative reforms that work for all leaseholders, irrespective of where they live. Regarding the timescale for the introduction of those further legislative reforms, the stated aim of the UK Government is for a Bill to be brought forward in the next session of Parliament.

Recommendation 2 (and the recommendation set out in the report of 9 December).
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.

For the reasons set out my letter to the Committee, and which the Committee has quoted in paragraph 8 of its report², I do not consider it necessary for the powers that have not been delegated to the Welsh Ministers, to be delegated. I therefore do not intend to pursue further amendments to Bill that would result in the delegation of these powers. The debate schedule for 14 December will be the last time that, in light of the Bill's timetable, the Senedd will have to debate and have a meaningful vote on the motion.

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.*

The Welsh Government's principles for UK Bills document sets out that primary legislation in devolved areas should be enacted by the Senedd but it also states clearly *'that there are, and will continue to be, circumstances in which it is sensible and advantageous if provision which would be within the Senedd's legislative competence is sought for Wales in UK Parliament Bills, with the consent of the Senedd'*.

The document says that *'taking provision in a UK Bill can enable pragmatic solutions to be reached in a timely fashion, while simultaneously respecting the legislative competence of the Senedd through the legislative consent process. It can be a matter of practical good government for such provisions to be included in a UK Bill.'*

² My letter of the 16 November referenced a power to make regulations amending the definition of home finance plan leases. It suggested that this power was at Clause 2(6) of the Bill. This should have been Clause 2(8).

I am confident that the approach I outlined in my letter to the Committee properly accords with the spirit of these principles. Three of the five examples of situations where taking provision in a UK Bill is said by the document to be appropriate, relate directly to the circumstances of this Bill or to the further leasehold reform legislation that is to follow. These situations are:

- *when the UK Government's legislative proposal would also be appropriate for Welsh circumstances but there is no time available for similar provisions to be brought forward in the Senedd;*
- *where the interconnected nature of the relevant Welsh and English administrative systems mean that it is most effective and appropriate for provision for both to be taken forward at the same time in the same legislative instrument;*
- *where the UK Bill covers both devolved and reserved matters and the UK Parliament route must be taken in order to achieve the policy objective.*

The ways in which these examples are pertinent are, I believe, reflected in the information that I have previously provided to the Committee.

I trust that the responses I have provided above will prove useful.

I am copying this letter to John Griffiths MS, Chair of the Local Government and Housing Committee.

Yours sincerely



Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change