

LEGISLATIVE CONSENT MEMORANDUM

PREVENTION OF SOCIAL HOUSING FRAUD BILL

Legislative Consent Motion

1. To propose that the National Assembly for Wales, in accordance with Standing Order 29.6, agrees that provisions of the Prevention of Social Housing Fraud Bill in so far as they fall within the legislative competence of the National Assembly for Wales, should be considered by the UK Parliament.

Background

2. The Legislative Consent Motion at paragraph 1 above has been tabled by Huw Lewis AM, Minister for Housing, Regeneration and Heritage, under Standing Order 29.6 of the Standing Orders (SO) of the National Assembly for Wales (the National Assembly). This Legislative Consent Memorandum is laid under SO 29.2(iii). SO 29.2(iii) prescribes that a Legislative Consent Memorandum must be laid, before the National Assembly if any Bill introduced into the UK Parliament, by virtue of amendments agreed to or tabled by a Minister of the Crown or published with the name of a Minister of the Crown in support, in either House, makes (or would make) relevant provision for the first time or beyond the limits of any consent previously given by the Assembly.

3. The Prevention of Social Housing Fraud Bill (the Bill) was introduced to Parliament on the 20th June 2012.

The Bill can be found at:

<http://services.parliament.uk/bills/2012-13/preventionofsocialhousingfraud.html>

Summary of the Bill and its Policy Objectives

4. The Bill is a Private Members Bill that was prepared by the Department for Communities and Local Government with the consent of Richard Harrington, the Member in charge of the Bill. The Bill received its second reading on 13th July 2012. The relevant amendments relating to Wales were tabled on 17 October 2012.

There are various different types of tenancy fraud; this Bill is primarily concerned with strengthening the powers of social landlords to tackle tenants who sublet the whole of their dwellings for a profit. The policy rationale behind the Bill is to ensure that social housing is occupied by those in the greatest housing need.

The Bill will create offences and make other provisions relating to sub-letting and parting with possession of social housing. Research by the Audit Commission in 2009 indicated that there are 50,000 properties in England that

are 'unlawfully occupied'. There is no comparable data available on this matter for Wales.

The term 'unlawful occupation' can cover a number of different activities including:

- (i). subletting the whole of a home,
- (ii). "key selling" and
- (iii). unauthorised succession.

Each case involves someone living in a property who should not be there. Currently where action is taken against tenants who allow their properties to be 'unlawfully occupied' these are civil matters rather than criminal offences. The Bill aims to alter this to make it a criminal offence.

Provisions

5. It is proposed that the Bill will make the following provisions:

New criminal offences of unlawful subletting by secure and assured tenants of social housing

5.1 The Bill creates two new criminal offences in respect of secure tenancies and two mirror offences in respect of assured tenancies. It will be an offence for assured and secure tenancy holders to sublet or part with possession of the whole or part of the property where the tenant knows this action to be in breach of their tenancy agreement. The second offence carries a more serious penalty and this is where it can be proved that a secure or assured tenant has acted dishonestly in parting with possession or subletting the property. Whether or not the action was dishonest will be a question of fact but is more likely to be found where the tenant made a profit from the transaction, for example by charging a market rent for the property. The penalties for dishonest offences are more severe than for the offences where dishonesty is not proven.

Provision concerning prosecution of the new offences

5.2 The Bill gives powers to local authorities to prosecute the offences and provides time limits for prosecution.

Power to require information provisions/Data access

5.3 The Bill provides regulation making powers to the Welsh Ministers to empower local authorities to require information from "specified providers" to assist in the detection or prevention of a crime or securing evidence for a conviction of offences under the Bill itself and certain offences under the Fraud Act 2006. There is also a power to make regulations making it an offence to refuse to provide such information.

Recovery of profit made by unlawful subletting

5.4 The Bill provides for courts to make orders for the recovery from tenants of profits made from unlawful sub-letting, either following conviction or in separate civil proceedings.

Assured tenants lose status

5.5 The Bill provides that assured tenants who part with possession or illegally sub-let the dwelling house cannot subsequently regain their status as an assured tenant. This brings assured tenancies into line with secure tenancies, where the restoration of secure status is already excluded following parting with possession or sub-letting by the tenant.

Provisions for which consent sought

6. Provisions in the Bill for which consent is sought:

6.1 The Bill makes provision that applies to England and Wales. The Bill also makes consequential amendments to primary legislation which extends to Wales but is not within the legislative competence of the Welsh Ministers to amend.

6.2 Clause 1 creates two new criminal offences in relation to secure tenancies which only apply where the tenant has ceased to occupy the property. In general, secure tenants are local authority tenants although other social landlords, such as registered social landlords (“RSLs”) may have secure tenants.

The offence in subsection (1) is committed where the tenant has parted with possession of, or unlawfully sublet the property, knowing it to be a breach of his tenancy agreement. The offence in subsection (2) is committed where dishonesty can be proven on the part of the tenant. It will be a defence to the offence in subsection (1) if the tenant ceased to occupy the dwelling-house and sublet or parted with possession of it because of violence or threats of violence towards him or his family (living in the dwelling house) from a person living in the dwelling-house or in the locality of the dwelling-house.

Subsection (4) provides that the tenant will not have committed the offence in subsection (1) where the person who occupies the dwelling-house as a result of the tenant’s actions is a person entitled to apply to a court for a right to occupy the dwelling-house, or to have the tenancy transferred to them. In practice this will include the tenant’s current or former spouse, civil partner or cohabitant.

6.3 Clause 2 creates two offences in relation to assured tenants of Registered Social Landlords. The offences and penalties are in substantially the same terms as those that apply in relation to secure tenants under Clause 1. The offences do not apply to RSL leaseholders with a shared ownership.

6.4 Clause 3 provides for time limits for the bringing of prosecutions for the new offences created by sections 1 and 2, and gives powers to local authorities to prosecute the offences. Subsection (5) enables a local authority to prosecute an offence under clause 1 or 2 (or an associated offence of aiding, abetting, counselling or procuring etc as defined in clause 8(8) - Interpretation) whether or not the local authority is or was the landlord of the property and whether or not the property is within the prosecuting local authority's area. This enables one local authority to prosecute offences committed in RSL properties and in properties owned and managed by other local authorities.

6.5 Clause 4 makes provision for unlawful profit orders in criminal proceedings for offences under Clause 1 or Clause 2 (and for related offences). An unlawful profit order is an Order requiring a convicted offender to pay the landlord an amount representing the profit made by the offender as a result of the conduct that constituted the offence. Where an offender is convicted, the court must decide whether to make an unlawful profit order, and may make such an Order instead of, or in addition to dealing with the offender in any other way (subsection (2)). If a court decides not to make an unlawful profit order it must give reasons for that decision when it passes sentence on the offender (subsection (4)).

The maximum amount payable under such an order is determined by subsection (6). This provides for calculating the amount of profit made as the total amount received by the offender as a result of the unlawful conduct minus the rent paid by the offender to the landlord during the period in which the conduct was committed. Subsection (8) requires the court to have regard to the offender's means when deciding whether to make an Order, and determining the amount recoverable under any Order made.

6.6 Clause 5 allows social landlords to seek an unlawful profit order in civil proceedings against secure and assured tenants who, in breach of their tenancy, have ceased to occupy and sub-let or parted with possession of their properties and who have received money as a result of that conduct. (It does not apply to RSL leaseholders with shared ownership leases). The amount to be paid is calculated in the same way as in criminal proceedings in Clause 4.

Subsection (6) provides that where an unlawful profit order has already been made against the tenant following a conviction in criminal proceedings, an Order in civil proceedings may only be for the recovery of an amount of profit made by the tenant that exceeds the amount payable under the criminal order (or which the landlord has failed to recover under that Order).

6.7 Clause 6 ensures that RSL assured tenants will lose assured status permanently if they sublet or part with possession of the whole property in breach of their tenancy agreement. This puts those tenants on equal footing with secure tenants. The loss of assured status means that the landlord may end the tenancy by giving notice and this makes possession proceedings more simple. This clause does not apply to RSL leaseholders with shared ownership leases.

6.8 Clause 7 provides the Welsh Ministers with a new power to make regulations which will authorise local authorities to request information from “specified persons” for the purposes of housing fraud investigation. “Housing fraud investigation purposes” means purposes relating to the prevention, detection or securing evidence for a conviction of offences under the Bill itself and certain offences under the Fraud Act 2006.

6.9 Clause 8 provides the Welsh Ministers with a new power to make regulations creating an offence that may be committed by a person by refusing or failing to provide any information when required to do so by a “specified person”. The punishment for the offence is limited to a fine not exceeding level 3 on the standard scale (currently £1,000). Where the offence continues after conviction, the regulations may provide for a daily fine (of not more than £40) to be added for every day that the information is not provided.

6.10 Clause 9 provides that the “appropriate authority” for the purposes of making regulations for Wales under Clauses 7 and 8 is the Welsh Ministers and that the regulations must be made by statutory instrument and subject to the affirmative resolution procedure.

6.11 It is the view of the Welsh Government that the provisions referred to in paragraphs 6.1 to 6.10 fall within the National Assembly’s legislative competence as set out in Subject 11 (Housing) of Schedule 7 to the Government of Wales Act 2006 or fall within the scope of section 108(5) of the Government of Wales Act 2006 in that the provisions are incidental to the exercise of functions that are within the legislative competence of the Assembly.

Advantages of utilising this Bill

7.1 It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill as it represents the most appropriate and proportionate legislative vehicle to enable these provisions to apply in Wales at the earliest opportunity.

7.2 Using this UK Bill will also ensure that the powers are available on a consistent basis across Wales and England simultaneously. Consultation results demonstrated that Welsh stakeholders were keen to have the same tools to deal with social housing fraud as England and this is the fastest route at present to make them available to more effectively tackle on-going fraud.

Financial Implications

8.1 There are no anticipated financial implications for the Welsh Government of the relevant provisions of this Bill which cannot be absorbed as part of existing obligations.

8.2 There may be additional duties at a local authority and housing association level when social landlords choose to exercise the powers.

Huw Lewis AM
Minister for Housing, Regeneration and Heritage
October 2012