

Local Government, Housing and Planning Committee

7th Meeting, 2022 (Session 6)

Tuesday 1 March 2022

Building Safety Bill – Legislative Consent Memorandum

Introduction

1. On 27 January 2022 a Legislative Consent Memorandum (LCM) for the Building Safety Bill was lodged in the Scottish Parliament. The LCM can be accessed via the link below.

<https://www.parliament.scot/-/media/files/legislation/bills/lcms/building-safety-bill/legislative-consent-memorandum.pdf>

Legislative Consent

2. The UK Parliament and the Scottish Parliament can both make laws for Scotland. Usually the Scottish Parliament makes laws on issues that are “devolved” to Scotland.

3. The UK Parliament makes laws on issues that are “reserved”. Those laws can apply to the whole UK.

4. Sometimes the UK Parliament will make laws for Scotland on:

- devolved matters
- what the Scottish Parliament can make laws about (“legislative competence”)
- the powers of Scottish ministers (“executive competence”)

5. Under the terms of the Scotland Act 2016, the UK Parliament will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament under what is known as “the Sewel Convention”. There is a formal process for the Scottish Parliament to consider such UK legislation via an LCM.

6. When the UK Parliament considers a Bill that affects Scotland, the Scottish Government prepares an LCM explaining to the Parliament how the Bill affects Scotland and why. The LCM also sets out the Scottish Government's view on whether the Scottish Parliament should consent to such a Bill.

7. Usually a Parliamentary committee will consider the memorandum before publishing a report to the Parliament. The report provides the committee's views on whether the Parliament should consent to the UK Parliament legislating in the relevant area(s) of devolved competency.

Building Safety Bill

8. The UK Building Safety Bill makes fundamental changes to the Building and Fire Safety regime in England. The Bill includes a new regime and regulator for high rise residential buildings in England. The proposed regime in England is based on a pre-emptive building standards system for buildings in scope, which adopts the approach taken by the Building Standards system in Scotland for all buildings. The Bill also introduces a new construction products regulator and introduces new disciplinary and competency processes for architects.

9. Part five of the Bill includes provisions for a New Homes Ombudsman scheme. The aim of the new Ombudsman scheme is to drive up standards in housebuilding and to independently resolve disputes between developers and purchasers where there is an issue concerning the quality of a new-build home.

10. It is Part five of the Bill that engages the need for an LCM. The UK Government has introduced amendments to the Bill that would extend the Ombudsman scheme to the devolved administrations. As the Bill now provides for the New Homes Ombudsman Scheme to apply in Scotland an LCM is required

11. The Committee is invited to consider whether it is content for these provisions to be considered by the UK Parliament.

12. The LCM notes that from consultation with stakeholders there is a clear preference for a UK wide approach to this issue.

13. Moreover, the LCM notes that the Scottish Government is supportive of such an approach. As a consequence, it is recommending that Parliament should give its consent to these provisions being considered in the UK Parliament.

Committee scrutiny

14. This Committee considered its approach to scrutiny of the LCM at its meeting on 8 February 2022 and agreed to write to the Cabinet Secretary for Social Justice, Housing and Local Government noting the Scottish Government's view that it was appropriate in this instance for the UK Parliament to legislate on those matters in the Bill that fall within devolved competence, specifically, those provisions relating to the establishment of a New Homes Ombudsman scheme.

15. The Committee also noted from the LCM that there was widespread stakeholder support for a UK-wide approach to this issue. Accordingly, the Committee considered that there would be very limited value in taking oral evidence on the LCM.

16. However, in order to inform its consideration of the LCM at this meeting, the Committee wrote to the Cabinet Secretary inviting her to confirm why she believed it was appropriate for the UK Government to legislate on this matter. The letter also invited her to provide further information on the extent of stakeholder support for a UK-wide approach.

17. The Cabinet Secretary's response as attached as an Annex.

Delegated Powers and Law Reform Committee

18. The Delegated Powers and Law Reform Committee is also required to consider the relevant provisions of an LCM. It considered this LCM at its meeting on 22 February.

19. The Delegated Powers and Law Reform Committee's Report on the LCM was not available at the time of writing but will be published on the Parliament's reports webpage before the meeting: [Committee Reports | Scottish Parliament](#):

Next Steps

20. Following consideration of the LCM, the Committee will publish a report to the Parliament setting out its recommendations on it.

21. The Committee is required to report before the final amending stage in the UK Parliament. It is currently unclear when this is likely to take place.

22. The Committee also agreed on 8 February to undertake wider scrutiny of issues relating to building safety in the context of its consideration of the forthcoming Building (Scotland) Amendment Regulations 2022 and will consider its approach to this work at a future meeting.

Conclusion

23. **The Committee is invited to consider the LCM.**

Clerks

Local Government, Housing and Planning Committee

21st February 2022

Dear Convener,

Thank you for your letter regarding the Legislative Consent Memorandum for the provisions in the UK Building Safety Bill relating to the New Homes Ombudsman.

The Scottish Government has considered this issue carefully and reached the view that in this instance it is appropriate that the UK Parliament is given consent in this Bill. The UK Government has indicated that it is likely that the Building Safety Bill will receive Royal Assent in Spring/Summer 2022, subject to its progression in the UK Parliament.

The Scottish Government supports the aims of the New Homes Ombudsman scheme in helping buyers of new-build homes resolve disputes relating to quality effectively and efficiently, and improving standards across the housebuilding industry. Recognising this, there has been extensive discussion with the UK Government at official and Ministerial level to identify a way in which the provisions could extend to Scotland, but importantly in a manner that would respect the devolution settlement and ensure that the scheme would work for Scotland. This has resulted in provisions in the Bill requiring consultation with Scottish Ministers ahead of the arrangements for the scheme being made.

Whilst housing is a devolved matter, consumer protection is reserved and we would want to ensure that protections offered to buyers of new-build homes in Scotland can also take account of relevant consumer protection requirements. This will be more straightforward to achieve in the UK scheme which will be able to fully deliver benefits to new-build housebuyers, including in relation to consumer protection. If the Ombudsman scheme did not extend to Scotland, this could result in a gap in protections for purchasers of new build homes in Scotland.

With the introduction of the Ombudsman scheme there is also likely to be an impact on the existing voluntary codes of practice which set standards for quality for new-build homes. We want to ensure that purchasers of new-build homes in Scotland have the same protections and benefits of a statutory scheme as purchasers in the rest of the UK.

Turning to stakeholder support for having a UK wide scheme, the UK Government's 2019 consultation, 'Redress for Purchasers of New Build Homes and the New Homes Ombudsman'¹ sought views on this point. The vast majority of respondents (91%) stated that they thought the scheme should be UK wide – 92% of individual respondents and 89% of organisational respondents. The reasons given were largely around providing consistent protection for consumers regardless of location, providing efficiency, and avoiding confusion.

¹ <https://www.gov.uk/government/consultations/redress-for-purchasers-of-new-build-homes-and-the-new-homes-ombudsman>

The responses to this consultation have not been published by the UK Government however, in its response² the Law Society of Scotland supported a UK wide scheme for reasons of consistency and efficiency. The response highlighted the need for any UK wide system to be able to reflect the differing systems in place in different jurisdictions and highlighted the potential for consumers to have a lower level of protection if the scheme is limited in its geographic scope.

Homes for Scotland, which represents 200 organisations in the housebuilding industry in Scotland, also supports any such scheme being UK wide, It is strongly encouraged that any changes are UK wide in order to provide all consumers with adequate protection and to give developers clarity.

We agree with the assessments of these two organisations including due to the interactions of devolved and reserved powers.

It should be noted that joining the scheme provided for in the Bill at this point would not preclude the Scottish Government from setting up a separate similar Scottish system at a later stage. However, I consider that the LCM is the most expedient way to improve protections that will be available to new homes owners in Scotland.

Subject to the agreement of the Scottish Parliament, we will continue to work with the UK Government with the aim of achieving a scheme that works for Scotland and respects the devolution settlement. I would be happy to keep you updated as this work progresses.

Yours sincerely,

SHONA ROBISON

² [19-08-22-pllr-plc-cons-adj-consultation-redress-for-purchasers-of-new-build-homes-and-new-homes-ombudsman.pdf \(lawscot.org.uk\)](#)