

THE PROPOSED HOUSING (WALES) MEASURE 2011

RESPONSE TO THE CONSTITUTIONAL AFFAIRS COMMITTEE

1. What impact the proposed Measure will have?

The proposed Measure will

enable local housing authorities to apply to the Welsh Ministers for a direction to suspend Right to Buy and Related Rights in areas of housing pressure; and

provide the Welsh Ministers with enhanced enforcement and intervention powers concerning the provision of housing by Registered Social Landlords.

For (i) the objective underlying the policy is to provide social landlords with a period of grace (when Right to Buy, Right to Acquire and Preserved Right to Buy are suspended) to enable the supply of affordable housing in the area to be increased by other means, such as section 106 Planning Agreements, or bringing empty homes back into use as affordable housing. When the supply has been built up and the period of suspension ends, it is intended that tenants will be able to exercise their statutory rights once again.

Part (ii) will provide Welsh Ministers with a broad range of intervention and enforcement powers that are essential to strengthen the regulation of Registered Social Landlords (RSLs). The new powers will ensure that lenders' confidence in the regulatory regime for Registered Social Landlords in Wales is maintained. Lenders need to be content to continue lending to RSLs to enable improvement of the quality of social housing in Wales.

It is hoped the enhanced regulatory regime we are putting in place will mean that the intervention and enforcement powers are used very rarely. But their existence will hopefully provide a positive incentive to good management and a deterrent to actions which might damage the interests of tenants, the financial viability of RSLs and the credibility of the sector.

2. What powers are contained in the proposed Measure allowing Welsh Ministers to make subordinate legislation?

Part 1

Section 6

This section provides for the Welsh Ministers to issue a direction where they decide to grant a local housing authority's application for a direction to suspend the Right to Buy and Related Rights (under Section 5).

Section 13

This section provides for the Welsh Ministers to issue a varied direction where they grant a local housing authority's application to enlarge the area included in the original direction to suspend.

Section 17

This section provides for the Welsh Ministers to issue a varied direction where they grant a local housing authority's application to reduce the area included in the original direction to suspend.

Section 22

This section provides for the Welsh Ministers to issue a direction where they grant a local housing authority's application to extend the period of suspension.

Section 34

Section 34 gives the Welsh Ministers power to make provision they consider appropriate in consequence of, or for giving full effect to, any provision in Part 1 of the Measure or to make provision for applying or extending any provision made by Part 1 to any provision about or connected with a right related to the right to buy.

The order making powers under this section include, but are not limited to, powers to make provision which amends, repeals or revokes any provision of an Act of Parliament, Measure of the National Assembly or Subordinate Legislation to give full effect to any provision in Part One of the Measure. The Order making power will use the Negative Resolution procedure except where the Order amends repeals or revokes any provision of an Act of Parliament or Measure of the National Assembly the Affirmative Resolution procedure must be used

Part 2

Section 59

This section provides that the Welsh Ministers can by order amend the amount of penalty imposed on an RSL as a result of failing above

the current maximum of £5,000. The procedure for this order is the Affirmative procedure.

Part 3

Section 90

This section provides that the Welsh Ministers may bring the Measure into force by Order. There is no procedure for this order.

3. Why are those matters being dealt with by enabling powers rather than on the face of the proposed Measure?

The Subordinate Legislation powers contained in the proposed Measure are not enabling powers. The powers contained in the Measure are necessary to give effect to the Measure.

We have sought to ensure that Part 1 of the Measure sets out when a local housing authority may apply to Welsh Ministers for a direction suspending the Right to Buy in order to make the policy objective clear.

4. Why have affirmative or negative resolution powers been chosen in each case?

Sections 6, 13, 17 and 22

A direction is the most appropriate procedure as it is the confirmation of a Ministerial decision in response to an application from a Local Housing Authority.

Section 34

It is appropriate that consequential amendments to Acts of Parliament or Assembly Measures are made by Affirmative Procedure and changes to Subordinate Legislation made by negative procedure. This is consistent with current practice.

Part 2

Section 59

This procedure will allow Welsh Ministers to amend the maximum penalty that may be imposed on an RSL. It is therefore appropriate that the affirmative procedure is used.

Part 3- Section 90

It is usual practice that Commencement Orders are not subject to any procedure.

5. How will the powers contained in the proposed Measure affect the powers currently held by Welsh Ministers in this area?

Right to Buy

The Welsh Ministers do not have the power to suspend the Right to Buy. The Welsh Ministers do have power under Part 5 of the Housing Act 1985 to make an order amending the maximum amount of discount available to tenants. The proposed Measure supports the policy of providing local housing authorities with a period of grace, while statutory rights are suspended, to allow the stock of affordable housing to be increased by other means.

Registered Social Landlords

The new proposed intervention and enforcement powers will enable the Welsh Ministers to act quickly, at early stages of any non-compliance or under-performance, to ensure that services to tenants and residents, and financial viability are maintained as well as protecting the reputation of the sector.

Currently under Part 1 and Schedule 1 of the Housing Act 1996, the Welsh Ministers have powers to ensure the proper management of Registered Social Landlords and to address issues arising from mismanagement or misconduct. The Welsh Ministers can:

recover social housing grant (section 27)

obtain information (sections 30 to 33)

set standards of performance (sections 35 and 35)

issue guidance (section 36)

authorise entry into premises for survey and examination (sections 37 and 38)

control disposals of land and appoint managers in the event of threatened insolvency and similar issues (sections 39 to 50)

remove or appoint a Director or a Committee member (paragraphs 4 to 8 of Schedule 1)

petition for winding up of an RSL and direct transfer of its assets (paragraphs 14 to 15 of Schedule 1)

direct an Inquiry into the Affairs of RSLs (paragraphs 20 to 23 of Schedule 1)

Direct transfer of land as a result of inquiry (paragraph 27 of Schedule 1).

But in order to exercise any of the powers under the 1996 Act, there has to be a considerable amount of material evidence that failure to intervene would have major impact on the RSL and services to tenants and residents. Furthermore, there is a lack of intermediate powers. The Welsh Ministers have, for example, the power to wind-up an RSL but not to take intermediate steps such as issuing an enforcement notice.

The status of the Delivery Outcomes, which set out the Welsh Ministers' expectations in terms of performance standards for Registered Social Landlords in Wales, is "guidance" under section 36 of the Housing Act 1996. As such, any non-compliance with the Delivery Outcomes (i.e. the Welsh Ministers' expectations) which may result in under-performance in providing services or affect financial viability, does not allow the Welsh Ministers to intervene immediately although they may have regard to non-compliance with the guidance. The provisions in the proposed Measure would allow the Delivery Outcomes to become performance standards. Failure to meet these would then be a ground for taking enforcement action.

There are a number of powers contained in the proposed Measure that are similar to those provided to Welsh Ministers by the 1996 Act, the paragraphs below explain how these powers are enhanced by the proposed Measure **Inspector's powers of entry and inspection**

Under the 1996 Act, the Welsh Ministers may authorise a person to enter premises of RSL on 28 days' notice [s.37(2)].

The proposed Measure (sections 43 to 48) provides that an inspector may at any reasonable time enter premises occupied by the RSL being inspected, and inspect, copy or take away any documents found there.

Appointment of manager of registered social landlord

Under the 1996 Act during a moratorium on disposal of land due to threatened insolvency, the Welsh Ministers may make proposals as to the future ownership and management of the land held by an RSL. Welsh Ministers may during a moratorium appoint a manager by order to implement the proposals if the proposals so provide.

The proposed Measure (section 76) would enable the Welsh Ministers to appoint, or require the RSL to appoint an individual as manager of the RSL if the Welsh Ministers are satisfied that the RSL has failed to meet certain standards or has mismanaged its affairs, not just during a moratorium.

Removal of officers

Section 84 amends paragraphs 4 and 5 of Schedule 1 to the 1996 Act so as to expand the powers of the Welsh Ministers in relation to the removal of the officers of a Registered Social Landlord. The Welsh Ministers are currently able to remove only certain types of officers (for example, the directors and trustees of a RSL which is a registered charity).

The amendments will enable the Welsh Ministers to remove any person who is an "officer" of a RSL within the meaning given by section 59 of the 1996 Act.

6. How does the Government intend to implement these powers?

Part 1 - Suspending the Right to Buy

For the implementation of Part One of the Measure the intention is to undertake a consultation on guidance in respect of applications for local housing authorities.

Part 2 - Registered Social Landlords

The enhanced intervention powers are part of a wider package of regulatory reform which has been developed through working closely with the sector. The powers are required to support the new Regulatory approach. Under the new Welsh Regulation framework, RSLs should be regularly self-assessing their organisation's performance and financial viability. This information should be shared with the Welsh Ministers on an on-going basis. This approach should allow for early action before statutory intervention becomes necessary. As stated in question one it is hoped that the powers will be rarely used.