

Regulation of Registered Social Landlords (Wales) Bill

On 29th September 2016, the Office for National Statistics (ONS) announced that Welsh Registered Social Landlords (RSLs) had been reclassified as “Public Non-Financial Corporations” and would thus be considered as public sector bodies for the purposes of national accounts.

The decision was announced alongside separate decisions by the ONS to reclassify housing associations in Scotland and Northern Ireland, and it came a year after the ONS’ reclassification of housing associations in England.

The decision in Wales will add £2.5bn of debt to the UK’s balance sheet, and could mean that future borrowing by Welsh housing associations would be counted against the Welsh Government’s borrowing limit.

Background

The Office for National Statistics (ONS) assesses bodies and transactions against international rules to decide how they should be treated in the National Accounts. The categorisation of economic entities and their respective expenditures need to conform with the ONS classification system and in turn the European system of accounts (ESA) and the wider system of national accounts (e.g. with the IMF, OECD, United Nations and World Bank).

From time to time, the ONS undertakes “classification reviews” of various bodies and transactions within the economy. The key test applied to determine whether a body is public or private is:

“... does the government exercise significant control over the general corporate policy of the unit? The international guidance defines control as the ability to determine general corporate policy, and this can be exercised through the appointment of directors, control of over half of the shareholder’ voting power, though special legislation, decree or regulation”.

In 2015, housing associations in England were reclassified as public sector bodies by the ONS, adding £60bn of debt to the UK Government accounts. The UK Government responded quickly to legislate to this change, inserting clauses into the Housing and Planning Act 2016.

Scottish and Northern Irish housing associations were reclassified on the same day as Welsh associations, and the Scottish Government brought forward its own legislation in September 2017.

The Decision

Through its investigations into the status of Welsh housing associations, ONS concluded that housing associations are subject to public sector control in accordance with control indicators sets out in international accounting rules.



The ONS concluded that housing associations are subject to public sector controls due to, amongst other things:

1. Welsh Ministers' **consent powers** over the disposal of land and the disposal of housing assets
2. Welsh Ministers' powers over the **management of an RSL** if they have not acted and their failure to act is impeding the proper management of the RSL's affairs
3. Welsh Ministers' powers over the **management of an RSL**, in particular the power of Welsh Ministers to appoint a new manager or officer of the RSL if the Ministers are of the opinion that it is necessary for the proper management of the RSL's affairs to have an additional officer
4. Welsh Ministers' powers over **constitutional changes of an RSL**, in particular the requirement for consent to any change of an RSL's articles of association where the RSL is a company
5. Welsh Ministers' **consent powers** over the amalgamation and dissolution of a RSL, which is a registered society, and the arrangement and reconstruction of a RSL which is a company
6. Welsh Ministers' powers of the **management of an RSL**; in particular the power of Welsh Ministers to transfer management functions to a person they specify if an inquiry or an audit has found there to be mismanagement in the affair of the RSL, or if Welsh Ministers feels a transfer of certain management functions would be likely to improve the management of some or all of its affairs.

The decision to reclassify housing associations in Wales was backdated to the Housing Act 1996, which established these controls. The controls identified above were very similar to those identified in England, Scotland and Northern Ireland.

From their work in England, the ONS were also aware that local authority controls over some housing associations may constitute public sector control, and between April and August 2017, they determined that there were Local Authority controls – particularly over stock transfer associations – which would impact on classification.

Impact

The ONS' decision is a technical accounting decision, but one which could have wider ranging impacts on the delivery and funding of public services in Wales. The initial impact of the decision was to assign the £2.5bn of borrowing held by Welsh housing associations on the public sector balance sheet.

We understand that in the immediate aftermath of the ONS' decision, that Welsh Government agreed provisions with UK Government to ensure that there will be no significant immediate impact on the day-to-day operation of housing associations. This followed similar agreements in England, Scotland and Northern Ireland.

However, in the long term, the decision would mean that any future borrowing by Welsh housing associations would be counted against the Welsh Government's borrowing limit. There has also been concern in the sector about the ability of HM Treasury to effectively cap the borrowing of housing associations, as they already do with local authorities.



The borrowing powers of housing associations stretch public investment from Welsh Government, and attract private investment into some of Wales' poorest communities – for example when receiving Social Housing Grant to build a new home, the grant is normally received at 58% of the cost of building, and it is the sector's ability to borrow that makes the building of that affordable home viable. Alongside this, more than quarter of the homes built by housing associations since 2008 have been built without social housing grant, thanks to the borrowing power of the sector.

Any limit placed on the borrowing of housing associations in Wales would risk Welsh Government's ability to deliver on its 20,000 affordable target, and potentially worsen the housing crisis in Wales.

The Bill

Community Housing Cymru warmly welcomes the publication of the Regulation of Registered Social Landlords (Wales) Bill. If passed, we believe that the Bill and the strengthened regulatory framework for housing associations – launched by Welsh Government earlier this year - would work in tandem to ensure that the regulation of housing associations continues to meet the needs of associations, tenants and Government.

In an inquiry into the regulation of housing associations in Wales earlier this year, the National Assembly for Wales' Public Accounts Committee stated that this legislation must be proportionate and ensure that Welsh Government has sufficient powers to protect the interests of stakeholders. We believe this legislation meets this challenge, and the new regulatory framework and regulatory judgements equip the regulator with a range of powers to protect the interests of all stakeholders, and in particular tenants.

We believe the Bill in its current form deals appropriately and sufficiently with the controls identified by ONS in their reclassification and we note that in a letter to Welsh Government¹, published by the ONS, they have said:

"...if the Bill receives Royal Assent in its current form, the totality of public sector influence exercised through central government, local authorities and the existence of nomination agreements would not constitute public sector control"

While this has only been determined through an informal assessment by ONS, and it is not indicative of the result of a full classification review, it is encouraging that the ONS has come to this conclusion and that they have indicated a willingness to carry out the full review once the legislation is passed.

We strongly urge AMs to support the passage of this Bill to return housing associations to reverse ONS' initial classification decision, and to ensure that housing associations in Wales can continue to provide affordable homes to end the housing crisis and build a stronger Wales.

¹ <https://www.ons.gov.uk/news/statementsandletters/statementonclassificationofwelshhousingassociations>

Mae cyfyngiadau ar y ddogfen hon