

# Report on the Regulation of Registered Social Landlords (Wales) Bill

February 2018



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# Report on the Regulation of Registered Social Landlords (Wales) Bill

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# About the Committee

The committee was established on 15 June 2016 to carry out the functions of the responsible committee set out in Standing Order 21 and to consider any other constitutional, legislative or governmental matter within or relating to the competence of the Assembly or the Welsh Ministers, including the quality of legislation.

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## Committee Chair:



**Mick Antoniw AM**  
Welsh Labour  
Pontypridd

## Current Committee membership:



**Mandy Jones AM**  
UKIP Wales  
North Wales



**Dai Lloyd AM**  
Plaid Cymru  
South Wales West



**David Melding AM**  
Welsh Conservative  
South Wales Central

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The following Member was also a member of the Committee during the scrutiny of the Bill:



**Nathan Gill AM**  
UKIP Wales  
North Wales

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## Recommendations

**Recommendation 1.** We recommend that the Minister justifies during the Stage 1 debate the reasons for introducing a Bill that amends existing UK legislation rather than one that is consolidated and free-standing. .... Page 15

**Recommendation 2.** We recommend that the Welsh Government gives careful consideration to consolidating the law in this area when the next opportunity to do so arises. .... Page 15

**Recommendation 3.** We recommend that the Minister should table an amendment to the Bill to the effect that any appointments made under sections 6 or 8 end when the relevant requirement is complied with or the relevant failure has been remedied to the satisfaction of the Welsh Ministers. .... Page 17

**Recommendation 4.** We recommend that the Minister should table an amendment to section 13(2) of the Bill to make it clear that section 81 of the *Housing Act 1988* is only repealed in respect of Wales. .... Page 18

**Recommendation 5.** We recommend that the Minister seeks confirmation from the UK Government of the timescales for the removal of references to England in the *Housing Act 1988*. .... Page 18

**Recommendation 6.** We recommend that the Minister should table an amendment so that it is clear on the face of the Bill that the new definition of “notify” is to be inserted into section 63 of the *Housing Act 1996* after the definition of “notice” and before the definition of “public sector landlord”. .... Page 19

**Recommendation 7.** We recommend that the Minister should table an amendment to the Bill to compel the Welsh Ministers to, within 14 days after a direction is given under sections 5 or 14, cause the text of the direction to be laid before the National Assembly together with a written statement to explain the purpose of the direction. .... Page 22

**Recommendation 8.** We recommend that the Minister should table an amendment to replace the wording of section 18(1) of the Bill to state that regulations may make any incidental or consequential provisions that the Welsh Ministers consider necessary for the purposes of, or in connection with, or for giving full effect to, any provision contained in or made under the Bill. .... Page 23

**Recommendation 9.** We recommend that the Minister should table an amendment to state that the powers provided by this provision shall lapse upon the date that confirmation is published by the ONS that RSLs are reclassified as private non-financial corporations..... Page 23

**Recommendation 10.** We recommend that the Minister should table an amendment to Schedule 1 of the Bill to delete the words “but the landlord may not remove an appointee until after the two month period expires” from section 7C(3) to be inserted into the Housing Act 1996..... Page 26



# 1. Introduction

## The Committee's remit

1. The remit of the Constitutional and Legislative Affairs Committee (the Committee) is to carry out the functions of the responsible committee set out in Standing Order 21<sup>1</sup> (with the exception of Standing Order 21.8<sup>2</sup>) and to consider any other constitutional, legislative or governmental matter within or relating to the competence of the National Assembly or the Welsh Ministers, including the quality of legislation.
2. In our scrutiny of Bills introduced in the National Assembly our approach is to consider:
  - matters relating to the competence of the National Assembly, including compatibility with the European Convention on Human Rights (ECHR);
  - the balance between the information that is included on the face of the Bill and that which is left to subordinate legislation;
  - whether an appropriate legislative procedure has been chosen, in relation to the granting of powers to the Welsh Ministers, to make subordinate legislation; and
  - any other matter we consider relevant to the quality of legislation.

## Introduction of the Bill

3. On 16 October 2017, the **Regulation of Registered Social Landlords (Wales) Bill** (the Bill) and accompanying **Explanatory Memorandum**<sup>3</sup> was introduced by Carl Sargeant AM, Cabinet Secretary for Communities and Children. The First Minister authorised Rebecca Evans AM, Minister for Housing and Regeneration (the Minister), as the new Member in Charge of the Bill, from 9 November 2017.<sup>4</sup>

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<sup>1</sup> National Assembly for Wales, **Standing Orders of the National Assembly for Wales**, October 2017

<sup>2</sup> Functions under Standing Order 21.8 are the responsibility of the **External Affairs and Additional Legislation Committee**

<sup>3</sup> Welsh Government, **Regulation of Registered Social Landlords (Wales) Bill. Explanatory Memorandum incorporating the Regulatory Impact Assessment and Explanatory Notes**, October 2017

<sup>4</sup> **Letter from the First Minister**, 9 November 2017

4. The National Assembly's Business Committee referred the Bill to the **External Affairs and Additional Legislation Committee** on 26 September 2017, and on 10 October 2017 set a deadline of 2 February 2018 for reporting on its general principles.<sup>5</sup>

5. On 17 October 2017, we received a copy of a **letter** from the Cabinet Secretary for Communities and Children enclosing the **Statement of Policy Intent**.

6. We considered the Bill at our meeting on 20 November 2017, taking evidence from the Minister and two Welsh Government officials.

## Background

7. The purpose of the Bill is to reduce central and local government control over registered social landlords (RSLs). The Welsh Government states that this is required to enable the Office of National Statistics (ONS) to review its classification of RSLs and re-classify them as private non-financial corporations. The Explanatory Memorandum accompanying the Bill states that the Bill:

“...will amend or remove those powers which are deemed by the Office for National Statistics (ONS) to demonstrate central and local government control over Registered Social Landlords (RSLs). These changes will enable ONS to consider reclassifying RSLs as private sector organisations for the purpose of national accounts and other ONS economic statistics.”<sup>6</sup>

8. The Welsh Government states that the Bill will allow RSLs to be able to continue to access private finance to supplement grants provided by the Welsh Government. Without such reclassification, the Welsh Government states that public sector net borrowing would increase as the private sector market borrowings of RSLs (currently an average of £200 million per year) would score as a charge against Welsh Government budgets and funding for housing would be competing with other Welsh Government priorities.<sup>7</sup>

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<sup>5</sup> Business Committee, **Report on the timetable for consideration of the Regulation of Registered Social Landlords (Wales) Bill**, October 2017

<sup>6</sup> Explanatory Memorandum, paragraph 1.1

<sup>7</sup> Explanatory Memorandum, paragraph 3.8-3.9

**9.** The Explanatory Memorandum sets out that RSLs are Welsh housing associations registered with the Welsh Ministers under Part 1 of the **Housing Act 1996**.<sup>8</sup> It also outlines the intended effect of the Bill on affordable homes in Wales:

“Reclassification to the private sector will allow RSLs to access private sector borrowing to enable them to build new social housing, and continue to make a significant contribution to delivery of Welsh Government’s existing commitment of 20,000 new affordable homes.”<sup>9</sup>

**10.** The Explanatory Memorandum estimates that the implication of the reclassification, if it is not addressed, is 5,040 fewer new affordable homes over the current Assembly term.<sup>10</sup>

**11.** The Explanatory Memorandum emphasises that the “proposed regulatory reform is the minimum required”<sup>11</sup> for the purpose of allowing the ONS to reclassify RSLs.

**12.** The Welsh Government also states that the reduction or removal of controls will not leave the sector unregulated. Some involvement remains in place at both central and local government level and RSLs will also remain subject to the Regulatory Judgement Framework, which has been in place since 1 January 2017.<sup>12</sup>

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<sup>8</sup> Explanatory Memorandum, paragraph 3.3

<sup>9</sup> Explanatory Memorandum, paragraph 3.2

<sup>10</sup> Explanatory Memorandum, paragraph 8.12

<sup>11</sup> Explanatory Memorandum, paragraph 3.2

<sup>12</sup> Explanatory Memorandum, paragraphs 3.12-3.13

## 2. Legislative competence

**13.** The Explanatory Memorandum indicates that the National Assembly has the legislative competence to make the provisions in the Bill by virtue of section 108 and Part 1 of Schedule 7 to the **Government of Wales Act 2006**, specifically:

- Paragraph 11: Housing; and
- Paragraph 12: Local government.<sup>13</sup>

**14.** The Minister was satisfied that the Bill is within the National Assembly's competence.<sup>14</sup>

**15.** We also asked whether the Minister considered the Bill to be within competence once the relevant parts of the **Wales Act 2017** come into force. She told us:

“...we believe the Bill would be within competence under the new framework. However, it's our intention...that it would have passed Stage 1 before the Wales Act comes into force anyway. But I can provide those reassurances.”<sup>15 16</sup>

**16.** When questioned, the Minister indicated that she was confident that the provisions of the Bill that impact on the constitution of RSLs as business associations do not fall within the exception at paragraph 4 of Part 1 of Schedule 7 to the *Government of Wales Act 2006*, (specifically the regulation of types of business association). She said that she had “received assurances...that the Bill does fall completely within the devolved subjects of housing and local government”.<sup>17</sup>

**17.** An accompanying Welsh Government official added that consideration had been given to whether the Bill fell within the exception regarding the regulation of types of business association. The official clarified why it had been concluded that the provisions in the Bill do not fall within that exception:

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<sup>13</sup> Explanatory Memorandum, paragraphs 2.1-2.3

<sup>14</sup> Constitutional and Legislative Affairs Committee (CLA Committee), 20 November 2017, RoP [23]

<sup>15</sup> CLA Committee, 20 November 2017, RoP [25]

<sup>16</sup> **National Assembly for Wales website. Legislation. Principal Appointed Day**

<sup>17</sup> CLA Committee, 20 November 2017, RoP [16]

“The regulation of types of business association is generally considered to be at a higher level—company law, law relating to co-operative and community benefit societies. This Bill just deals with the regulation and the interaction between the Welsh Ministers and RSLs, who, whilst they may be companies or registered societies, are only individual bodies that are regulated and registered with the Welsh Ministers. It does not affect the regulation of all types of companies or all registered societies.”<sup>18</sup>

**18.** The Explanatory Memorandum indicates that “consideration has been given to the impact which the Bill will have on Human Rights”.<sup>19</sup> It states:

“The objective of the Bill is to safeguard and protect the supply of social housing. This could be viewed as helping to provide decent affordable housing for some of the most vulnerable members of society. Although the right to housing is not a fundamental human right, it significantly underpins a number of Articles set out in the Human Rights Act 1998...”<sup>20</sup>

**19.** The Explanatory Memorandum adds that “safeguarding and protecting the supply of housing can therefore be regarded as having a potentially positive impact on human rights”.<sup>21</sup>

**20.** The Minister explained that the compliance with human rights is considered as part of the Bill’s competence test and stated her belief that the Bill would have a positive impact on human rights. She added that although the right to housing is not an explicit human right, “it certainly underpins some of the very important human rights, such as respect for private life and family life and correspondence, freedom of assembly and association, the right to marry and found a family, and also protocol 1, article 1, the right to the peaceful enjoyment of possessions”.<sup>22</sup>

## Our view

**21.** We note that no issues have been raised with the Minister regarding the National Assembly’s ability to make this legislation under section 108 and Schedule 7 to the *Government of Wales Act 2006*.

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<sup>18</sup> CLA Committee, 20 November 2017, RoP [17-19]

<sup>19</sup> Explanatory Memorandum, paragraph 9.20

<sup>20</sup> Explanatory Memorandum, paragraph 9.20

<sup>21</sup> Explanatory Memorandum, paragraph 9.20

<sup>22</sup> CLA Committee, 20 November 2017, RoP [27]

**22.** We also note that human rights are engaged as outlined in the Explanatory Memorandum and in the evidence provided by the Minister.

## 3. General observations

### Consolidation

**23.** The provisions of the Bill largely amend the *Housing Act 1996*. The *Housing Act 1996* is an Act of the UK Parliament, Part 1 of which applies only to Wales, and the Act has been subject to extensive previous amendment.

**24.** In response to a public consultation on the Bill undertaken by a **sub-committee of the External Affairs and Additional Legislation Committee** (sub-committee), the Tenant Participation Advisory Service Cymru **wrote** to indicate their belief that this Bill presents a missed opportunity to clarify the law on social housing regulation.

**25.** We asked the Minister why the Welsh Government had not taken the opportunity to draft consolidating legislation in this area. The Minister told us:

“Consolidation of the legislation relating to regulation would be a really significant task. It would be hugely time consuming, and it would certainly take us a lot longer than the time that we have available to us to bring forward this particular Bill...also to do it within the derogation timescales that have been provided to us by the Treasury.”<sup>23</sup>

**26.** The Explanatory Memorandum notes that HM Treasury has granted the Welsh Government a derogation (a period of grace before the accounting changes resulting from reclassification come into force) on the assumption that legislation to address the central and local government controls would be brought forward as soon as possible. The derogation is in place until the end of March 2018.<sup>24</sup>

**27.** An accompanying Welsh Government official expanded on this point:

“We've been working with the Northern Ireland and Scottish Governments to make sure that we will pass the test that the ONS have set us. It has been far more complex throughout the process than we expected and I would say that the timetable that we've been following has been tight...”

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<sup>23</sup> CLA Committee, 20 November 2017, RoP [54]

<sup>24</sup> Explanatory Memorandum, paragraphs 4.5 and 8.7

We are under very strict timelines from the Treasury...and should we not have been able to demonstrate significant progress by March, then it is possible that the derogation would have been taken away from us..."<sup>25</sup>

**28.** The Explanatory Memorandum considers the consequences of not progressing this legislation sufficiently before the derogation from HM Treasury expires, and states that this would have a significant adverse impact on the Welsh Government's capital expenditure.<sup>26</sup>

**29.** A Welsh Government official said:

"We were focused on allowing the sector to be able to borrow. The consequences of not fixing this were catastrophic for the sector...that has been our focus, as opposed to making this a consolidation and administrative Bill... I simply don't believe that it would have been possible to do that kind of work to be able to introduce it in October."<sup>27</sup>

## Our view

**30.** We note the time constraints for producing this legislation as described by the Welsh Government, and the need for it to satisfy the ONS. Nevertheless, we do not consider that the Minister has provided enough explanation as to why there was not enough time to produce a consolidated Bill.

**31.** As highlighted in the Welsh Government's own consultation paper, the UK Government acting for England became aware of this issue in 2015.<sup>28</sup> We assume that the Welsh Government also became aware at that time.

**32.** We note that in evidence to the sub-committee of the External Affairs and Additional Legislation Committee regarding the HM Treasury derogation, a Welsh Government official stated that the Welsh Government has "been given assurances that, as long as we're seen to be progressing the Bill, then they will extend that by at least a further 12 months".<sup>29</sup>

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<sup>25</sup> CLA Committee, 20 November 2017, RoP [58-59]

<sup>26</sup> Explanatory Memorandum, paragraphs 8.7-8.12

<sup>27</sup> CLA Committee, 20 November 2017, RoP [61]

<sup>28</sup> **Welsh Government's Consultation on the Regulatory Reform of Registered Social Landlords: Consultation document**

<sup>29</sup> Sub-committee of the External Affairs and Additional Legislation Committee, 24 October 2017, RoP [114]



**33.** Given knowledge of the relevant issue to be addressed in 2015 and the potential for the extension of the derogation, we believe there could have been sufficient time to consider consolidating legislation in this area.

**Recommendation 1.** We recommend that the Minister justifies during the Stage 1 debate the reasons for introducing a Bill that amends existing UK legislation rather than one that is consolidated and free-standing.

**Recommendation 2.** We recommend that the Welsh Government gives careful consideration to consolidating the law in this area when the next opportunity to do so arises.

### Balance between what is on the face of the Bill and what is left to subordinate legislation

**34.** We asked the Minister how she had decided what to put on the face of the Bill and what to leave to subordinate legislation. The Minister told us:

“We tried to include as much detail on the face of the Bill as possible, and we were able to do that because the team have had, over quite some period, detailed discussions with the ONS in terms of what they are seeking to see us achieve through the Bill. So, we've put as much on the face as possible, but there are some limited regulation orders also within the Bill and those would be coming into force through secondary legislation. We think that's the appropriate place for them because the kind of circumstances under which we might wish to make those changes aren't yet known to us.”<sup>30</sup>

**35.** In 2016, the UK Parliament passed the **Housing and Planning Act 2016** to reduce the level of central government control over providers of social housing in England. The Scottish Government introduced the **Housing (Amendment) Scotland Bill** to the Scottish Parliament in September 2017. Both the UK Act and the Scottish Bill give their respective governments the power to deal with reducing the level of control at local government level by regulations rather than dealing with local government control on the face of the legislation.

**36.** When asked why the Welsh Government has chosen to address the issue of local government control using primary legislation rather than through regulations, the Minister said:

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<sup>30</sup> CLA Committee, 20 November 2017, RoP [29]

“The reason that we have taken this approach again relates to the fact that we are very clear in terms of what the ONS wishes to see, and that what we have put on the face of the Bill very much meets that requirement. I appreciate that we have taken a slightly different approach to that taken in Scotland on this particular issue, but we think that moving forward with secondary legislation on the same issue would take up unnecessary time...and to give others and our stakeholders the confidence and the kind of detail that they need to plan ahead.”<sup>31</sup>

**37.** Indicating that addressing local government control through primary legislation rather than through regulations was not a requirement of the ONS, a Welsh Government official added that primary legislation “will not only speed up the process, but it will also add that extra element of transparency”.<sup>32</sup>

## Our view

**38.** We are content with the balance between what is on the face of the Bill and what is left to subordinate legislation.

**39.** We welcome the approach taken by the Welsh Government to address the issue of local government control using primary legislation rather than through regulations. We wish to commend the Minister on the additional transparency this provides and we hope that she and her colleagues will take a similar approach to future legislation.

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<sup>31</sup> CLA Committee, 20 November 2017, RoP [47]

<sup>32</sup> CLA Committee, 20 November 2017, RoP [50]

## 4. Specific observations on the Bill

### Section 6 – Removal or appointment of officer of registered social landlord

### Section 8 – Appointment of manager of registered social landlord

**40.** Section 6 and section 8 of the Bill amend the grounds upon which the Welsh Ministers can appoint officers or a manager of a RSL. An officer can be appointed to ensure compliance with a requirement imposed by or under an enactment. A manager can be appointed when the Welsh Ministers are satisfied that a RSL has failed to comply with a requirement imposed by or under an enactment.

**41.** We asked the Minister whether consideration had been given to including provisions in sections 6 and 8 of the Bill regarding limiting the time for which officers or a manager of a RSL are appointed by the Welsh Ministers, where there has been a failure to comply with an enactment. We queried whether it would be clearer to state that any appointments made under sections 6 or 8 of the Bill will end when the relevant requirement is complied with or the relevant failure has been remedied to the satisfaction of the Welsh Ministers.

**42.** In response, a Welsh Government official referred to when the Act will come into force, and not the length of time for which officers or a manager may be appointed under sections 6 and 8 of the Bill.<sup>33</sup>

### Our view

**43.** It is possible that a RSL could be running adequately with an officer or a manager appointed by the Welsh Ministers still in position. Therefore we believe that the Bill should impose time limits so that any appointments made under sections 6 or 8 end when the relevant requirement is complied with or the relevant failure has been remedied to the satisfaction of the Welsh Ministers.

**Recommendation 3.** We recommend that the Minister should table an amendment to the Bill to the effect that any appointments made under sections 6 or 8 end when the relevant requirement is complied with or the relevant failure has been remedied to the satisfaction of the Welsh Ministers.

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<sup>33</sup> CLA Committee, 20 November 2017, RoP [71-72]

## Section 13 – Disposal of land: consent

**44.** Section 13 of the Bill repeals section 81 of the **Housing Act 1988**, which applies to England and Wales.

**45.** We asked the Minister if it would be clearer to state on the face of the Bill that section 81 is only repealed in respect of Wales. The Minister stated that it was her belief that the reference to England had already been removed as England is addressing this particular issue, and therefore section 81 of the *Housing Act 1988* needs to be omitted in its entirety.<sup>34</sup>

### Our view

**46.** Section 81 of the *Housing Act 1988* still contains references to England. We consider that it should be made clear that section 13 of the Bill falls within legislative competence by clearly stating that section 81 of the *Housing Act 1988* is only repealed in relation to Wales.

**Recommendation 4.** We recommend that the Minister should table an amendment to section 13(2) of the Bill to make it clear that section 81 of the *Housing Act 1988* is only repealed in respect of Wales.

**Recommendation 5.** We recommend that the Minister seeks confirmation from the UK Government of the timescales for the removal of references to England in the *Housing Act 1988*.

## Schedule 2 – Minor and consequential amendments

**47.** The Explanatory Notes state that Schedule 2 of the Bill sets out the minor and consequential amendments which will need to be made to legislation as a consequence of the other provisions set out in this Bill.<sup>35</sup>

**48.** Paragraph 9 of Schedule 2 of the Bill will not be necessary when the **Abolition of the Right to Buy and Associated Rights (Wales) Bill** comes into force as that Bill repeals section 16 of the *Housing Act 1996*. When asked if all provisions in the Bill will be reviewed in order to ensure consistency with the *Abolition of the Right to Buy and Associated Rights (Wales) Bill* once in force, the Minister gave a commitment to undertake such a review.<sup>36</sup>

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<sup>34</sup> CLA Committee, 20 November 2017, RoP [91]

<sup>35</sup> Explanatory Memorandum, Annex 2: Explanatory Notes, paragraph 127

<sup>36</sup> CLA Committee, 20 November 2017, RoP [86]

**49.** Paragraph 13 of Schedule 2 of the Bill inserts the words “‘notify’ means notify in writing” into section 63 of the *Housing Act 1996* “in the appropriate place”. We asked the Minister if paragraph 13 of the Bill should be amended to make the provision clearer as to where these words are to be inserted. An accompanying Welsh Government official told us:

“...the notification requirements inserted by the Bill are inserted into the Housing Act 1996, and there's already a definitions section in there that says "'notice' means notice in writing", but the wording in our notifications sections just says they have to notify the Welsh Ministers. So, it's just to round it off, really, to say that 'notify' also means 'notify in writing'. So, it will apply to the notification provisions as set out in the Bill.”<sup>37</sup>

## Our view

**50.** We welcome the Minister’s commitment to reviewing all the provisions in the Bill to ensure consistency with the *Abolition of the Right to Buy and Associated Rights (Wales) Bill* once in force. We would expect the Minister to undertake such a review at the earliest opportunity to permit full scrutiny of this legislation.

**51.** For the purposes of clarity, we consider that the specific location to which the definition of “notify” is to be inserted should be set out in the Bill.

**Recommendation 6.** We recommend that the Minister should table an amendment so that it is clear on the face of the Bill that the new definition of “notify” is to be inserted into section 63 of the *Housing Act 1996* after the definition of “notice” and before the definition of “public sector landlord”.

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<sup>37</sup> CLA Committee, 20 November 2017, RoP [88]

## 5. Observations on specific powers to make subordinate legislation

### Background

**52.** The Bill includes four powers permitting the Welsh Ministers to make subordinate legislation (mainly in the form of Orders). The rationale for the use of these powers and for the National Assembly procedure attached to them is contained in chapter 5 of the **Explanatory Memorandum**. The Welsh Government has also provided a document outlining the **policy intent for subordinate legislation** to be made under this Bill.

**53.** Of the four powers to make subordinate legislation:

- one is subject to the negative or affirmative procedure depending on whether the regulations amend primary or secondary legislation;
- two are inserted into the *Housing Act 1996* and are subject to the negative procedure; and
- one has no procedure – the power to make commencement orders.<sup>38</sup>

**54.** The Bill also inserts into the *Housing Act 1996* two powers to make directions which are not subject to any procedure.<sup>39</sup>

**55.** Our scrutiny session focused on those powers of most interest to us and our consideration below considers the specific matters that we wish to draw to the attention of the National Assembly.

### Section 5 – Directions about notifications to be given to Welsh Ministers

#### Section 14 – Disposal of land: notification

**56.** Section 5 of the Bill inserts new paragraph 13 into Schedule 1 of the *Housing Act 1996*. This provides the Welsh Ministers with the power to issue directions to RSLs regarding the technical and practical aspects of any notifications issued by

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<sup>38</sup> Explanatory Memorandum, Chapter 5, pages 13-14

<sup>39</sup> Explanatory Memorandum, Chapter 5, page 15

the RSLs to the Welsh Ministers, in relation to constitutional or structural changes to a RSL.<sup>40</sup>

**57.** Section 14 of the Bill inserts new section 9(3) into the *Housing Act 1996* and gives the Welsh Ministers the power to issue directions to RSLs regarding the technical and practical aspects of any notifications issued by the RSLs to the Welsh Ministers, in relation to certain disposals of land by a RSL.<sup>41</sup>

**58.** The Explanatory Memorandum specifies that there is no National Assembly procedure applied to these directions.<sup>42</sup> There is also no requirement for them to be laid before the National Assembly.

**59.** The definition of “enactment” does not specifically include directions. Therefore, it is not clearly set out that such directions would be an “enactment” and failure to comply with them would result in a possible enforcement or penalty notice.

**60.** Given the importance of the content of these directions to RSLs, we asked the Minister if it would be appropriate for a National Assembly scrutiny procedure to be applied to these directions. A Welsh Government official told us:

“The directions are going to be very narrow in scope and will only be issued to RSLs. Their content is limited to the delivery, form and content of the notification and the deadline for giving notification. Therefore, they are very administrative in nature. It's appropriate for directions—and we've commonly found that directions aren't subject to any Assembly procedure because they are so administrative. That's consistent with other direction-making powers in the Housing Act 1996, which obviously these are going into, but also in wider legislation.”<sup>43</sup>

## Our view

**61.** In our view, given the importance of these directions (as failure to comply would result in a possible enforcement or penalty notice) and to aid transparency, we would wish to see any such direction laid before the National Assembly within 14 days of the direction being given.

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<sup>40</sup> **Statement of Policy Intent**

<sup>41</sup> **Statement of Policy Intent**

<sup>42</sup> Explanatory Memorandum, Chapter 5, page 15

<sup>43</sup> CLA Committee, 20 November 2017, RoP [45]

**Recommendation 7.** We recommend that the Minister should table an amendment to the Bill to compel the Welsh Ministers to, within 14 days after a direction is given under sections 5 or 14, cause the text of the direction to be laid before the National Assembly together with a written statement to explain the purpose of the direction.

## Section 18 – Powers to make further amendments

**62.** The Explanatory Notes to the Bill state that section 18 provides that the Welsh Ministers may make consequential amendments for the purpose of giving full effect to any provisions set out in the Bill.<sup>44</sup>

**63.** Section 18(1) of the Bill contains a Henry VIII power (where regulations are used to amend primary legislation) and provides that the Welsh Ministers may make such provision amending, repealing or revoking any enactment as they consider appropriate in consequence of any provision made by or under the Bill or for the purpose of giving full effect to any provision made by or under the Bill.

**64.** Section 18(4) provides that where regulations are made under section 18(1) which amend or repeal either an Act (or Measure) of the Assembly or an Act of the UK Parliament (i.e. when exercising the Henry VIII power), the power under section 18(1) is subject to the affirmative procedure.

**65.** Section 18(5) provides that where any other regulations are made under section 18(1) they would be subject to the negative procedure.

**66.** We asked why the affirmative procedure does not apply to all regulations made under section 18, regardless of whether they amend primary legislation. The Minister told us that this section provides the power to make essentially consequential amendments, and that the approach taken is in line with the Counsel General's guidance.<sup>45</sup>

**67.** In response to the sub-committee's public consultation on the Bill, UK Finance **wrote** to express their concerns that the proposed power in section 18 is too wide.

**68.** We asked the Minister if she was satisfied with the breadth of powers that exist in this section. The Minister told us that she believed section 18 provided an

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<sup>44</sup> Explanatory Memorandum, Annex 2: Explanatory Notes, paragraph 113

<sup>45</sup> CLA Committee, 20 November 2017, RoP [31]



appropriate breadth of powers to enable the Welsh Ministers to make amendments that would be of a consequential nature.<sup>46</sup> The Minister added:

“We've had discussions as to what the appropriate wording would be in terms of section 18, and I think the concern there was that the word 'appropriate' is perhaps too wide. However, we believe that, in practical terms, it would enable us to have a reasonable and proper way to approach the consequential powers there in terms of giving effect to the purposes behind the legislation. Anything more narrow might tie our hands unnecessarily and not give us all of the options that would be required.”<sup>47</sup>

## Our view

**69.** Section 18 contains the only free standing regulation-making powers in the Bill. We welcome section 18(4) of the Bill, which provides that where regulations amend primary legislation they will be made subject to the affirmative procedure.

**70.** However, if the regulations are to deal with consequential powers and to make consequential amendments, as stated by the Minister, we consider that the wording of section 18(1) of the Bill should be amended accordingly to provide only for what is needed.

**71.** We also note that the purpose of this Bill is to enable the ONS to consider reclassifying RSLs as private non-financial corporations. Once this has been done, we do not see why it would be necessary for the Welsh Ministers to exercise their powers under section 18 any further.

**Recommendation 8.** We recommend that the Minister should table an amendment to replace the wording of section 18(1) of the Bill to state that regulations may make any incidental or consequential provisions that the Welsh Ministers consider necessary for the purposes of, or in connection with, or for giving full effect to, any provision contained in or made under the Bill.

**Recommendation 9.** We recommend that the Minister should table an amendment to state that the powers provided by this provision shall lapse upon the date that confirmation is published by the ONS that RSLs are reclassified as private non-financial corporations.

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<sup>46</sup> CLA Committee, 20 November 2017, RoP [35]

<sup>47</sup> CLA Committee, 20 November 2017, RoP [39]

## Schedule 1 – Limit on local authority board membership and voting rights

**72.** Schedule 1 of the Bill introduces a new chapter 1A into the *Housing Act 1996*. The provisions in this new chapter impose limits on local authority board membership and voting rights in respect of RSLs.

**73.** Schedule 1 of the Bill inserts a new section 7C into the *Housing Act 1996*, which deals with the removal of local authority appointees to reduce their number to no more than 24 per cent of the board of the RSL.

**74.** Under section 7C(3) of the Bill, the RSL must remove the necessary local authority appointees within four months of the date upon which section 7C(5) comes into force, but cannot make any removals during the first two months of the four month period.

**75.** Section 7C(4) states that during the first two months, it is for the local authorities to notify the RSL which local authority appointees are to be removed. If they do not do so, section 7C(6) permits the RSL to select the appointees to be removed.

**76.** Section 7C(5) states that where the local authority gives notice within the two month period, the RSL must remove those appointees. However, the Explanatory Notes to the Bill do not state that the RSL must wait until the initial two month period has expired before removing the nominated appointees; it only states if “a local authority nominates appointees to be removed, those appointees must be removed”.<sup>48</sup>

**77.** We asked the Minister if it would be clearer to state on the face of the Bill when local authority appointees can be removed after they have been nominated by the local authority. The Minister replied:

“...there will be two months before the provisions come into date after the commencement Act, and that will have the effect of RSLs having a six-month period to reduce the local authority appointees to 24 per cent...on the commencement date, RSLs that have more than 24 per cent local authority nominees on their board will have two months for the local authority to decide which of their nominees to remove from the board, and a further two months, then, for the RSL to decide which

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<sup>48</sup> Explanatory Memorandum, Annex 2: Explanatory Notes, paragraph 120

nominees to remove if the local authority itself fails to decide which nominees to remove.”<sup>49</sup>

**78.** A Welsh Government official added that the RSLs with over 24 per cent of local authority appointees on their boards are aware of the proposed timescales.<sup>50</sup>

**79.** Schedule 1 of the Bill also inserts section 7J(1) into the *Housing Act 1996* which gives the Welsh Ministers the power by Order to provide that the provisions of the new chapter are not to apply to specified RSLs that are wholly controlled local authority subsidiaries. This power is subject to the negative procedure.<sup>51</sup> The statement of policy intent states:

“This power will only be used if the current policy position changes to allow local authorities to be the “parent” of an RSL, which is not permitted at present. In the case that an RSL is a wholly controlled local authority subsidiary, the limits on local authority influence do not need to apply.”<sup>52</sup>

**80.** In addition, Schedule 1 of the Bill inserts section 7J(7) into the *Housing Act 1996*. This gives the Welsh Ministers the power by Order to provide that a RSL of a specified description be treated as a wholly controlled local authority subsidiary for the purposes of section 7J generally and any Order made under it. The Explanatory Memorandum says:

“This allows for innovative models of RSLs proposed by local authorities to be included in the definition of wholly controlled local authority subsidiary. Therefore it allows for the provisions limiting local authority influence to be disapplied to such RSLs controlled by local authorities.”<sup>53</sup>

**81.** This power is subject to the negative procedure and the statement of policy intent reiterates that this power “is only intended to be used where there is a model proposed by a local authority which the Welsh Ministers consider should be exempt from the provisions limiting local authority influence”.<sup>54</sup>

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<sup>49</sup> CLA Committee, 20 November 2017, RoP [75]

<sup>50</sup> CLA Committee, 20 November 2017, RoP [81]

<sup>51</sup> Explanatory Memorandum, Chapter 5, page 14

<sup>52</sup> **Statement of Policy Intent**

<sup>53</sup> Explanatory Memorandum, Chapter 5, page 14

<sup>54</sup> **Statement of Policy Intent**

**82.** The Minister told us:

“...were we to... introduce policies in future that would be under section 7J(1) and 7J(7), then we would obviously consult on any policy change.”<sup>55</sup>

## Our view

**83.** With regard to the new section 7C of the *Housing Act 1996* set out in Schedule 1, we do not see why a RSL must wait for two months before removing an appointee from its board once it has been notified which appointees are to be removed. We consider that this may cause unnecessary delay and uncertainty.

**Recommendation 10.** We recommend that the Minister should table an amendment to Schedule 1 of the Bill to delete the words “but the landlord may not remove an appointee until after the two month period expires” from section 7C(3) to be inserted into the *Housing Act 1996*.

**84.** We note that the powers prescribed under sections 7J(1) and 7J(7) are technical in nature. We consider that it is appropriate for the powers to be subject to the negative procedure.

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<sup>55</sup> CLA Committee, 20 November 2017, RoP [33]