



# Research Briefing **Regulation of Registered Social Landlords (Wales) Bill**

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- Bill Summary
- Summary of Stage 2 changes
- Welsh Glossary



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Research Briefing

# **Regulation of Registered Social Landlords (Wales) Bill**

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# 1. Introduction

This Bill Summary is intended to be read in conjunction with the Stage 1 report from the External Affairs and Additional Legislation Committee which was laid before the Assembly on 31 January 2018.

On 29 September 2016 the Office for National Statistics (ONS) confirmed that registered social landlords (RSLs) in Wales had been re-classified as *Public Non-financial Corporations* for the purpose of the UK national accounts and other ONS economic statistics. This means that historic RSL debt would increase public sector net debt and future borrowing will score as a charge against Welsh Government budgets. Welsh RSLs had previously been classified as *Private Non-financial Corporations*. RSLs are often referred to as housing associations.

Historic RSL debt in Wales is around £2.5 billion and the sector's annual borrowing is around £200 million. If RSLs continue to be classed as public-sector organisations then the Welsh Government would need to take steps to control RSL borrowing to ensure it is kept within overall budget limits. RSLs have committed to providing at least 12,500 affordable homes during the Fifth Assembly, and that commitment was based on the sector's freedom to borrow and make funding decisions. The Explanatory Memorandum (EM) notes that the implication of this reclassification, if it is not addressed, is 5,040 fewer new affordable homes over the current Assembly term.

The purpose of the Regulation of Registered Social Landlords (Wales) Bill (the Bill) is to reduce central and local government controls over RSLs, so that ONS can review the classification of RSLs and return them to the private sector. RSLs would then be free to continue to access private finance to supplement grants, primarily Social Housing Grant, provided by the Welsh Government. The Bill was introduced to the Assembly by Carl Sargeant AM, the then Cabinet Secretary for Communities and Children, on 16 October 2017.

It is important to note that the provisions in this Bill do not mean that the sector will be unregulated. The EM stresses that "the proposed regulatory reform is the minimum required" for the purpose of allowing ONS to reclassify RSLs in Wales.

In the same announcement by ONS, it was confirmed that registered providers of social housing in Scotland and Northern Ireland had also been re-classified. The announcement had been expected by the housing sector across the UK, and followed the reclassification of private registered providers of social housing in England (generally equivalent to RSLs in Wales) in October 2015.

The EM notes that HM Treasury has granted the Welsh Government a derogation (a delay in the re-classification taking effect) 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 for 2017-18.

Once the changes included in the Bill have been implemented, the Welsh Government expects ONS to be able to consider reclassifying RSLs in Wales as private sector organisations for the purpose of UK national accounts and other ONS economic statistics. It is anticipated that the ONS will look again at reclassification within six months of Royal Assent.

On 16 October 2017, ONS issued a [statement](#) on the classification of RSLs in Wales. In the statement it confirmed that it had already provided the Welsh Government with a provisional classification decision based on seeing a draft of the Bill. That decision is detailed in a [letter](#) from ONS to the Welsh Government dated 31 August 2017. The letter notes:

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*Having carried out an assessment on the additional information, the Secretariat determined that 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.*

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ONS stress in the letter that this is an informal assessment carried out by the Secretariat, and has not been endorsed by the Economic Statistics Classifications Committee or the Director of National Accounts and Economic Statistics.

## 2. The ONS reclassification decision

The outcome of the ONS review, *Statistical classification of registered providers of social housing in Scotland, Wales and Northern Ireland*, was announced on 29 September 2016.

While the ONS article announcing the decision highlights that the review's outcome "is a statistical matter that does not have a direct bearing on the management structure, ownership or legal status of the organisations in question", it also goes on to note that "Any potential implications arising from a classifications review (such as impacts on budgeting and fiscal management) are a policy matter for the relevant public body – in this instance the relevant devolved administrations."

The ONS review concluded that "registered providers of social housing in Scotland, Wales and Northern Ireland are public, market producers and as such they will be reclassified to the public non-financial corporations' sub-sector for the purpose of national accounts and other ONS economic statistics." In Wales, the new classification applies with effect from 24 July 1996, which was when the *Housing Act 1996* received Royal Assent.

The ONS review found that RSLs in Wales were subject to public sector control due to, amongst other things:

- Welsh Ministers' powers over the management of an RSL,
- Welsh Ministers' consent powers over the disposal of land and the disposal of housing assets, and
- Welsh Ministers' powers over constitutional changes of an RSL.

Further detail on the reasons for the ONS decision can be found in the Bill's EM which notes that "the review also considered local authority controls which may arise as a result of arrangements between local authorities and, mainly, Large Scale Voluntary Transfer (LSVT) RSLs." This refers to areas where there has been a transfer of housing stock from a local authority to an RSL, commonly referred to as a stock transfer.

## 3. Implications of ONS reclassification

The Welsh Government's *Explanatory Memorandum* (PDF, 1MB) to the Bill notes the central problem that the ONS decision has created:

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*3.8 The classification of RSLs in Wales as Public Non-financial Corporations will increase Public Sector Net Borrowing because private sector market borrowings taken out by the newly reclassified public sector RSLs (currently, on average £200 million per year) will score as a charge against Welsh Government budgets.*

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In plenary on **17 October 2017**, the then Cabinet Secretary for Communities and Children noted that:

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*The impact of the ONS decision is significant, and if we don't bring forward legislation and RSLs remain classified as public sector organisations, funding for them to build homes would have to compete with other Welsh Government priorities. We would need to either increase Welsh Government spend on social housing by around £1 billion during this Assembly term, with serious effects on our existing spending commitments, or to accept that RSLs would be able to provide significantly fewer new affordable homes and not be able to borrow to invest in existing stock.*

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The Cabinet Secretary went on to note the wider positive impacts that RSL spending has, for example employment and training opportunities as well as community benefits. The EM also highlights that if the decision is not reversed, it could create uncertainty for stakeholders, in particular funders.

## 4. How are Registered Social Landlords regulated?

While this Bill will reduce the extent of public sector control over RSLs in Wales, it will not leave the sector unregulated. RSLs will continue to be regulated by the Welsh Government's housing regulation team under Part 1 of the *Housing Act 1996* even if this Bill becomes law. An independent Regulatory Board for Wales has also been established and it provides advice to Welsh Ministers on the effectiveness of regulation. A Regulatory Advisory Group, which includes sector representatives (including tenants), provides advice to the Regulatory Board.

The **Regulatory Framework for Housing Associations Registered in Wales** seeks to ensure that RSLs are well governed and financially robust while delivering high quality services to their tenants and service users. It was most recently revised in January 2017, and it formally replaced the previous framework (issued in 2011) in June 2017. This new framework was developed in the knowledge that the ONS reclassification decision would require legislative changes and a reduction in central and local government controls.

Performance standards for RSLs are issued under Section 33A of the Housing Act 1996. Failure to meet a performance standard is one of the grounds for the Welsh Ministers to use regulatory and enforcement powers. While the Welsh Government sets the performance standards, it is for individual RSLs to decide how they will achieve them.

Regulation is based on the principle of co-regulation, and there is an expectation that RSLs will carry out self-evaluations of their performance which should be made publicly available. The board of each RSL, which is responsible for its governance, is required to annually provide a compliance statement to the Welsh Government confirming and demonstrating (using the results of self-evaluation) that it is complying with the performance standards.

The Welsh Government issues two public judgement statuses in respect of each RSL. One judgement is issued in respect of governance and service delivery, the other for financial viability. It should be clear to stakeholders, and any interested parties, when an RSL is not performing as well as it could be. Where an RSL is failing to meet the performance standards, there are a range of powers available to Welsh Ministers. These include:

- Appointing an interim manager.
- Commissioning additional inspections to obtain evidence.

- Issuing an enforcement notice which requires action to be taken to address a problem within a specified timescale.
- Imposing a financial penalty if an association fails to comply with requirements imposed on it by an enforcement notice.
- Requiring payment of compensation to individuals or groups affected by a housing association’s failure to meet standards or to comply with undertakings.
- Requiring management functions to be put out to tender.
- Requiring transfer of management function to a specified person.
- Appointing an individual to manage a housing association.
- Appointing a new director of an association.
- Requiring an amalgamation (merger) of a housing association with another association.
- Restricting certain dealings of an association during an inquiry
- Directing an inquiry into an association’s affairs.

Some of the existing requirements upon RSLs to obtain the consent of the Welsh Ministers before taking certain steps (such as amending the constitution of the RSL) will be replaced by requirements to notify, so the Welsh Ministers will still be able to keep abreast of activities in those areas. Where enforcement action is necessary, it will still be possible if the Bill becomes law. The Bill clarifies the threshold where the Welsh Ministers can intervene so that action can be taken where an RSL has failed to comply with a requirement imposed by or under an enactment.

Other bodies may also have some oversight of RSLs, depending on how the RSL is constituted. This includes the Financial Conduct Authority and the Charity Commission.

## 5. How other administrations addressed this issue

### England

The UK Government has legislated to address the concerns of ONS. The *Housing and Planning Act 2016* contains provisions in Chapter 4 of Part 4 to reduce the regulation of social housing in England. Subordinate legislation under Section 93 of that Act, to reduce local authority influence over PRPs has passed through the parliamentary process.

It appears that the review by the ONS in England was prompted by the Conservative Party’s 2015 election manifesto which contained a commitment to extend the Right to Buy (RTB) to assured housing association tenants in England. This proved controversial and there was considerable opposition from within the sector. The [House of Commons Library](#) noted:

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*A number [of PRPs] questioned the legitimacy of legislating to allow the sale of assets owned by charities/not-for-profit companies and the implications this might have for associations’ status as independent private bodies.*

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However, the ONS did not examine the proposals to extend RTB and took its decision to reclassify solely on the basis of the *Housing and Regeneration Act 2008*.

On 16 November 2017, the ONS announced that following passage of [The Regulation of Social Housing \(Influence of Local Authorities\) \(England\) Regulations 2017](#), it had completed an assessment of the housing associations sector in England and concluded that registered providers of social housing in England are private, market producers and as such they will be reclassified to the private non-financial corporations.

## Scotland

The Scottish Government introduced the [Housing \(Amendment\) Scotland Bill](#) to the Scottish Parliament on 4 September 2017. The Bill will amend the law on the regulation of social landlords and to reduce the influence of local authorities over registered social landlords in Scotland. The Bill is currently at Stage 2.

## Northern Ireland

The Northern Ireland Executive issued a [consultation document](#) in December 2016 on the legislative changes that could enable the ONS to reverse its decision. It seems likely that legislation will be required to enable reclassification so, given that the Assembly is currently suspended, there appears to be some uncertainty over the next steps in Northern Ireland.

*Inside Housing* reported on 6 November 2017 that civil servants in Northern Ireland have drafted a Bill to address reclassification and this will be taken through the Northern Ireland Assembly if devolved government is restored, or at Westminster if necessary.

## 6. Previous reclassification decisions

The Welsh Government has previous experience of ONS reclassification decisions. In October 2010, further education institutions (FEIs) were reclassified from the Non-Profit Institutions Serving Households (NPISH) in the private sector to the General Government sector.

The ONS decision was because of the result of various statutory controls that Welsh Ministers exercised over further education colleges in Wales. Those controls included:

- The restrictions on colleges borrowing money without the approval of the Welsh Ministers;
- The power to modify or replace the instrument and articles of governance of a further education college;
- Restricting a FEI from operating through a subsidiary.

The re-classification was addressed through the *Further and Higher Education (Governance and Information) (Wales) Act 2014*. On 27 February 2015, ONS [confirmed](#) that FEIs in Wales had been reclassified as NPISH as of 27 January 2015.

## 7. Consultation by the Welsh Government

Prior to introducing the Bill, the Welsh Government [consulted](#) with stakeholders for a period of eight weeks between May and July 2017. The consultation document sets out the background to the consultation which attracted 29 responses.

The Welsh Government's summary of the consultation responses notes that most were "generally positive" and the majority of respondents were in favour of the proposals. Issues highlighted included:

- The Welsh Government were encouraged to work closely with ONS;
- Further guidance may be needed to implement the proposals in the Bill; and
- Commitments made to tenants should be honoured under the new regime.

## 8. The Bill as introduced

The Bill contains twenty sections and two Schedules.

### Overview

**Section 1** of the Bill provides an overview of the provisions of the Bill and makes no substantive provision.

### Interpretation

**Section 2** of the Bill defines the *Housing Act 1996* (the 1996 Act).

### Notification by registered social landlords of constitutional changes, etc.

**Sections 3-5** inclusive of the Bill amend provisions of the 1996 Act to remove the requirements upon RSLs to obtain consent from Welsh Ministers to constitutional changes, amalgamations and other structural changes, and replace them with requirements upon RSLs to notify the Welsh Ministers of such changes.

Welsh Ministers will be able to issue directions relating to the notification such as the notice period and the circumstances where notice may be dispensed with.

The EM notes in paragraph 8.35 that this move from a consent regime to a notification requirement introduces a degree of risk if RSLs make poor decisions. This also applies to disposals of land, referred to below.

### Officers and management of registered social landlords

**Sections 6-9** inclusive of the Bill amend provisions of the 1996 Act relating to the powers exercisable by the Welsh Ministers in respect of officers and management of registered social landlords.

The Explanatory Notes highlight that the current threshold for intervention by the Welsh Ministers varies depending on the relevant statutory provision. However, generally intervention cannot happen unless Welsh Ministers are satisfied that there has been misconduct or mismanagement. The new threshold for intervention imposed by this Bill is “failure to comply with a requirement imposed by or under an enactment”. This includes UK Acts as well as Assembly legislation and also any directions or standards issued under an Act of the Assembly or the UK Parliament.

### Inquiries

**Section 10** of the Bill amends provisions of the 1996 Act relating to the powers exercisable by the Welsh Ministers in relation to inquiries into RSLs.

Currently, Welsh Ministers may direct an inquiry into an RSL if it appears there has been misconduct or mismanagement. The Bill changes this threshold and Welsh Ministers will be able to direct an inquiry if it appears that the RSL has failed to comply with a requirement imposed by or under an enactment.

## Enforcement notices and penalties

**Sections 11-12** inclusive of the Bill amend provisions of the 1996 Act relating to enforcement notices and penalties. These changes relate to amending the list of “cases” that must apply before an enforcement notice or penalty can be issued. The amendments in the Bill replace references to misconduct and mismanagement with references to failure to comply with a requirement imposed by or under an enactment, as in other sections of this Bill.

## Disposals of land

**Sections 13-15** inclusive of the Bill amend the 1996 Act relating to disposals of land by RSLs. Registered social landlords are currently required to obtain the consent of the Welsh Ministers for disposals of land. The Bill will change this to a requirement to notify Welsh Ministers and comply with any notification directions given by them.

It appears that RSLs which are registered charities would need consent from the Charity Commission before certain disposals of land if the Bill is passed as introduced. Following legislative changes in England, a [reminder](#) to associations has been issued by the Charity Commission.

**Section 15** abolishes the Disposal Proceeds Fund. At present, RSLs are required to show certain net disposal proceeds separately in their accounts. This includes sales under the Right to Acquire scheme to tenants. Those funds can only be used as determined by Welsh Ministers.

## Board membership and voting rights

**Section 16** of the Bill introduces Schedule 1 which inserts a new Chapter 1A into the 1996 Act to set a limit on local authority nominated board membership and voting rights to restrict local authority control over RSLs.

This section will primarily affect those registered social landlords created following Large Scale Voluntary Transfer (commonly called stock transfer) where a proportion of board places are reserved for local authority nominees and where there are any particular local authority voting rights, including effectively powers of veto on certain matters or decisions.

## General

**Sections 17-20** inclusive of the Bill contain general provisions relating to the introduction of Schedule 2 (which deals with minor and consequential amendments) the coming into force of the Bill, and its short title. Section 18 provides that the Welsh Ministers may make consequential amendments for the purpose of giving full effect to any provision made by or under this Bill.

## 9. Stage 2 amendments

Stage 2 consideration took place in Committee on 12 March 2018.

Amendments 1, 2 and 3, in the name of Rebecca Evans AM, the Minister for Housing and Regeneration, were agreed.

Section 9 of the Bill amends paragraph 15H of Schedule 1 to the *Housing Act 1996*, which enables Welsh Ministers to force an amalgamation of two registered societies. The effect of amendment 1 is to clarify that paragraph 15H of Schedule 1 to the *Housing Act 1996* (which is amended by section 9 of the Bill), will continue to apply only in relation to RSLs which are registered societies. The Minister clarified the need for the amendment:

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*The Bill, as drafted, created some ambiguity as to whether or not paragraph 15H would apply only to registered societies after the amendments had been made. The intention of the Bill was for paragraph 15H to maintain the status quo and remain only applying to registered societies. This intention is clear in the explanatory notes.*

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The Constitutional and Legislative Affairs Committee [report](#) (PDF, 612KB) recommended that the Minister should table an amendment to Schedule 1 to 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*. Amendments 2 and 3 give effect to that recommendation. The effect of these amendments together is to allow RSL Board members to be removed once they have been nominated by the local authority, without the RSL having to wait for the expiry of two months from commencement of the Bill to carry out the removal.

While amendments 5 and 6 (relating to tenant participation and in the name of David Melding AM) were not agreed, the Minister noted the following:

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*As a consequence of this Bill, we will update and issue statutory guidance under section 33B of the Housing Act [1996], and that will set out regulatory expectations on RSLs, including on such matters as consultation. I reiterate my offer to the committee to share the draft guidance, which I made in my written response to the committee's report. The Scottish Bill maintains the status quo there, and our Bill, as drafted, maintains the status quo here, but I have listened carefully to the concerns of this committee, Members elsewhere, and also to stakeholders, including TPAS Cymru and the Chartered Institute of Housing throughout the scrutiny process this far. I do intend to bring forward an amendment at Stage 3 to address these concerns about tenant consultation.*

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Amendments 8, 13 and 14 (in the name of David Melding AM) related to failure to comply with an enactment and were not agreed. The amendments would have ensured that the Regulatory Framework and the associated performance standards were explicitly recognised on the face of the Bill as requirements imposed by or under an enactment. The Minister commented:

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*Standards issued under section 33A of the Housing Act 1996 impose requirements on RSLs and are therefore clearly requirements imposed under an enactment. These standards form part of the regulatory framework. The changes are set out in the explanatory notes accompanying the Bill, and I can give the committee my commitment that I'll instruct officials to review and, if required, amend the explanatory notes to give additional clarity.*

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Amendment 23 in the name of David Melding AM was not moved. All other amendments were in the name of David Melding AM and were not agreed.

Stage 3 consideration will take place in plenary on 24 April 2018.

# 10. Welsh Glossary

## Terms used in the Bill

adroddiad – report

adroddiadau – reports

aelodaeth o fwrdd – board membership

camreoli – mismanagement

camymddwyn – misconduct

cronfa enillion o warediadau – disposal proceeds fund

cyfarwyddydau – directions

cyfuno – amalgamation

erthyglau – articles

gwarediadau tir – disposals of land

gwaredu tir – disposal of land

hawliau pleidleisio – voting rights

hysbysiad gorfodi – enforcement notice

hysbysiadau – notifications

hysbysu – notify

landlord cymdeithasol cofrestredig – registered social landlord

newidiadau cyfansoddiadol – constitutional changes

newidiadau strwythurol – structural changes

rheolau – rules

rheolwr – manager

ymchwiliad – inquiry

ymchwiliadau – inquiries

## Other relevant terms

cydsyniad – consent

cymdeithas dai - housing association

Safon Ansawdd Tai Cymru – Welsh Housing Quality Standard

trosglwyddo – transfer

trosglwyddo gwirfoddol ar raddfa fawr – large scale voluntary transfer

ymgyngoriad – consultation

## **General terms**

Asesiad Effaith Rheoleiddiol - Regulatory Impact Assessment (RIA)

canllawiau - guidance

costau pontio - transitional costs

costau rheolaidd - ongoing costs

Cydsyniad Brenhinol - Royal Assent

Cyfnod 1 - Stage 1

cymhwysedd deddfwriaethol - legislative competence

egwyddorion cyffredinol - general principles

enw byr - short title

is-ddeddfwriaeth - subordinate legislation

Memorandwm Esboniadol - Explanatory Memorandum

Papur Gwyn - White Paper

penderfyniad ariannol - financial resolution

ymgyngoriad - consultation

Yr Aelod sy'n gyfrifol (am y Bil) - Member in charge (of the Bill)