

National Assembly for Wales
Constitutional Affairs Committee

Report on the Proposed Housing
(Wales) Measure

January 2011



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Constitutional Affairs Committee

The Constitutional Affairs Committee must consider and report on any of the matters set out in Standing Order 15.2 and may consider and report on any of the matters set out in Standing Orders 15.3, and 15.6.

Powers

The Constitutional Affairs Committee was established in June 2007 (as the Subordinate Legislation Committee). Its powers are set out in the National Assembly for Wales' Standing Orders, particularly SO 15. These are available at www.assemblywales.org

Committee membership

<i>Committee Member</i>	<i>Party</i>	<i>Constituency or Region</i>
Janet Ryder (Chair)	Plaid Cymru	North Wales
Alun Davies	Labour	Mid and West Wales
William Graham	Welsh Conservatives	South Wales East
Rhodri Morgan	Labour	Cardiff West
Kirsty Williams	Welsh Liberal Democrats	Brecon and Radnorshire

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The Committee's Recommendations

Recommendation 1. We recommend that Section 37 is amended to enable Ministers to consult “such other persons as they consider appropriate.” **page 10**

Recommendation 2. We recommend that the Minister considers whether Section 48 should be amended to explicitly exclude the power of entry from private dwelling houses occupied by tenants. **page 10**

The Committee's Role

Standing Orders

1. The Constitutional Affairs Committee may consider and report on the following matters under the National Assembly's Standing Orders:
 - Standing Order 15.6 (ii) states that the Constitutional Affairs Committee may consider and report on 'the appropriateness of provisions in proposed Assembly Measuresthat grant powers to make subordinate legislation to the Welsh Ministers'.
 - Whilst it is not part of the Committee's remit to comment in the merits of the proposal which the proposed Measure is intended to implement, Standing Order 15.6(v) states that the Committee may consider and report on 'any legislative matter of a general nature within or relating to the competence of the Assembly or Welsh Ministers'.
2. The purpose of this report is to inform the Assembly's Stage 1 debate on the general principles of the proposed Measure and subsequent legislative stages.

The Proposed Measure

3. The Proposed Housing (Wales) Measure was introduced on 22 November 2010 by Jocelyn Davies AM, the Deputy Minister for Housing and Regeneration. This was followed by a legislative statement by the Deputy Minister in the National Assembly on 23 November. The proposed Measure was referred to Legislation Committee No. 2 for stage 1 (general principles) consideration with a reporting deadline of 18 January 2011.

Policy Background

4. The purpose of the proposed Housing (Wales) Measure is to enable Local Authorities to apply to the Welsh Ministers for approval of the suspension of the 'Right to Buy' in areas of housing pressure, and also to provide Welsh Ministers with a broad range of intervention powers to strengthen the regulation of Registered Social Landlords.

Legislative Competence

Delegated powers

5. The Measure contains a limited number of powers to make subordinate legislation.
6. In **Part 1**, which deals with suspending the right to buy, the only power to make Statutory Instruments is to make consequential and other amendments contained in section 34. In accordance with normal practice, this would be subject to the **negative** procedure unless it amended an Act or Measure, in which case the affirmative procedure would apply (section 89). This Part therefore contains detail that would, in other Measures that have come before the Assembly, have been provided by regulations.
7. Section 34(2) is widely drawn, by including a power to make provision ‘for applying or extending any provision made by this Part (with or without modifications) to any provision about or connected with a right related to a right to buy’.
8. Section 1 does, however, provide for the right to buy to be suspended by a ministerial direction rather than by order. This means that there will be no opportunity for the Assembly to annul the direction. There are significant consequences for those proposing to exercise the right to buy, in terms of delaying the exercise of that right for up to ten years.
9. In **Part 2**, the only delegated power is one to vary the maximum penalty from the £5,000 imposed by the Measure for an offence under that Part committed by a registered social landlord. As this is linked to the maximum fine that can be imposed by a magistrates’ court and that limit is in turn the limit on the Assembly’s legislative competence under paragraph 2 of Part 2 of Schedule 5 to the Government of Wales Act 2006, this power is only exercisable if the magistrates’ court limit is itself increased. An order under this section would be subject to the **affirmative** procedure.
10. Part 2 also refers in sections 79 and 80 to existing order-making powers in Schedule 1 to the Housing Act 1996¹. These are orders that

¹ Housing Act 1996 - 1996 c.52

may be made on an interim basis or following a final report or audit as follows –

“(b) an order directing any bank or other person who holds money or securities on behalf of the registered social landlord not to part with the money or securities without the approval of the Welsh Ministers;

(c) an order restricting the transactions which may be entered into, or the nature or amount of the payments which may be made, by the registered social landlord without the approval of the Welsh Ministers.”

11. The amendments made by sections 79 and 80 require Welsh Ministers to take all reasonable steps to give notice to the registered social landlord before exercising these order making powers.

12. In **Part 3**, section 89 contains the usual provision relating to the making of orders, including the power to make different provision for different cases etc., to make general or specific provision, and to make incidental etc. provisions. Section 90(2) contains the usual power to make Commencement Orders, which would, as usual, not be subject to a legislative procedure.

Standards

13. Under section 35, standards would be required to be met by registered social landlords, and could relate to their functions relating to the provision of housing and matters relating to their governance and financial management. Welsh Ministers may issue guidance in relation to those standards under section 36. Section 37 contains a requirement to consult ‘one or more bodies appearing to them [the Welsh Ministers] to represent the interests of registered social landlords’ before setting standards or issuing revising or withdrawing guidance.

14. In contrast with the detail provided in Part 1 of the Measure, these sections provide much less detail of how this process would work. There is no requirement that the standards be set by regulations subject to approval by the Assembly. The proposed consultation set out on the face of the Measure is very limited in nature. It does not contain a catch-all provision such as ‘such other persons as they

consider appropriate' (section 12, Proposed Safety on Learner Transport (Wales) Measure).

15. Section 40 relates to guidance about complaints. This requires Ministers to consult not only representatives of registered social landlords, tenants, and local housing authorities, as well as the Auditor General for Wales.

Powers of entry

16. A power of entry is proposed to be inserted into the Housing Act 1996 by section 48 of this Measure. This would provide for an inspector 'at any reasonable time' to 'enter premises occupied by the registered social landlord which is being inspected'.

Committee Consideration

17. We heard from the Minister² regarding the use of directions to suspend the right to buy. In particular we noted that there was no element of discretion involved. If the local authority satisfies the Minister in relation to all the requirements set out in detail in Part 1 of the Measure, the Minister will have to make a direction. In those circumstances we are satisfied that Assembly involvement in approving or annulling an order is not necessary, and that the proposed use of directions is appropriate.

18. Although section 34(2) is widely drawn due to the inclusion of a power to make provision 'for applying or extending any provision made by this Part (with or without modifications) to any provision about or connected with a right related to a right to buy', we are content with the Deputy Minister's explanation³ that 'provision about or connected with a right related to a right to buy' adequately provides for the making of consequential provisions and that the negative procedure is the most appropriate way for the consequential amendments to follow.

19. We are content that the amendments made by sections 79 and 80 requiring Welsh Ministers to take all reasonable steps to give notice to the registered social landlord before exercising these order making

² Record of Proceedings (RoP) – Constitutional Affairs (CA) Committee 1 Dec 2010 paras 119-125

³ Ibid – para 127

powers is an appropriate way to update these sections in order to ensure openness.

20. We heard from the Deputy Minister⁴ that the sector was fully involved in the development of standards, and that there was also a need to update standards regularly in the light of experience. We are content with the arrangements for the setting of standards under section 35, which registered social landlords would be required to meet, provided that Welsh Ministers issue guidance in relation to those standards under section 36 and the consultation required under Section 37 is conducted before the standards are set and guidance is issued, revised or withdrawn.

21. We noted that the consultation in respect of section 40 (which relates to guidance about complaints) is wider than the consultation required under Section 37. Consultation under section 37 appears unnecessarily restrictive, particularly in its exclusion of local authorities and tenants. Even if the Minister does not currently consider that to be appropriate under section 37, we see no reason why that section should not, at the very least, be amended to include a catch-all provision to enable Ministers to consult “such other persons as they consider appropriate”.

Recommendation 1. We recommend that Section 37 is amended to enable Ministers to consult “such other persons as they consider appropriate.”

22. We are also content with the Minister’s explanation⁵ that the provisions in respect of the power of entry, which is proposed to be inserted into the Housing Act 1996 by section 48 of this Measure, do not include private dwelling houses occupied by tenants. Nevertheless, we see no reason why the exclusion of dwelling houses should not be explicit on the face of the Measure and recommend that the Minister considers this matter further.

Recommendation 2. We recommend that the Minister considers whether Section 48 should be amended to explicitly exclude the power of entry from private dwelling houses occupied by tenants.

⁴ RoP CA Committee – 1 Dec 2010 paras 131-133

⁵ Ibid paras 143-151

Conclusion

23. Having considered the proposed Measure, and the Minister's written and oral evidence, we are satisfied that the Measure strikes the correct balance between powers on its face and the subordinate legislation powers given to Welsh Ministers.

24. We are also satisfied that the delegated powers in the proposed Measure are to be made using appropriate procedures and are proportionate and reasonable uses for the powers envisaged. There are also requirements for consultation where appropriate.

25. Nevertheless we recommend that the Deputy Minister consider bringing forward amendments in relation to sections 37 and 48 as outlined above.

26. From the perspective of the subordinate legislation provisions it contains, the Committee sees no reason why the National Assembly should not agree to the general principles of the proposed Measure.

Witnesses

27. The following witnesses provided oral evidence to the Committee on 1 December 2010. A transcript of the session can be viewed in full at www.assemblywales.org

1 December 2010

Jocelyn Davies AM	Deputy Minister for Housing and Regeneration, Welsh Government
Ceri Breeze	Head of Housing, Welsh Government
Helen Kellaway	Legal Services Department, Welsh Government
Margaret Frith	Legal Services Department, Welsh Government

List of written evidence

28. The Committee considered the following written evidence. All written evidence can be viewed in full at www.assemblywales.org

<i>Document</i>	<i>Reference</i>
Proposed Housing (Wales) Measure	CA(3)-29-10(p1)
Explanatory Memorandum	CA(3)-29-10(p2)
Legal Advisers' Report	CA(3)-29-10(p3)
23 November - Invitation to provide evidence from the Committee Chair to the Deputy Minister for Housing and Regeneration	CA(3)-29-10(p4)
30 November - The Deputy Minister's response.	CA(3)-29-10(p7)