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Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation Document

Regulatory Reform of Registered Social Landlords

Date of issue: 8 May 2017

Action required: Responses by 3 July 2017

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Overview	<p>In September 2016, the Office of National Statistics (ONS) reclassified Registered Social Landlords (RSLs) for UK national accounting purposes as public, non – financial corporations. They were previously classified as private non – financial corporations.</p> <p>The reason for the re-classification is that RSLs are subject to central and local government controls principally through regulatory powers as set out in the Housing Act 1996.</p> <p>Regulatory reform in respect of RSLs is necessary to remove or amend the relevant regulatory controls (the indicators of Government control) so the ONS can review the classification of RSLs with the aim of returning them to the private sector for accounting purposes.</p>
How to respond	<p>Responses can be submitted by email to HousingRegulation@Wales.GSI.Gov.UK or in writing to Welsh Government’s Housing Regulation Team at the contact address below.</p>
Further information and related documents	<p>Large print, Braille and alternative language versions of this document are available on request.</p>
Contact details	<p>For further information:</p> <p>Contact: Housing Regulation Address: Welsh Government Rhydycar Business Park Merthyr Tydfil CF48 1UZ email: HousingRegulation@Wales.GSI.Gov.UK telephone: 0300 062 8973</p>
Data protection	<p>How the views and information you give us will be used</p> <p>Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.</p>

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

Foreword

In September 2016, the Office of National Statistics (ONS) reclassified Registered Social Landlords (RSLs) in Wales to the Public Non-Financial Corporations sub-sector for the purpose of national accounts and economic statistics. What might appear to be a very technical decision has potentially significant implications for the Welsh Government's commitment to work in partnership with RSLs and local authorities towards providing the Government's target of 20,000 new affordable homes during this administration.

Any private sector market borrowings taken out by the newly reclassified public sector RSLs will score as a charge against Welsh Government's capital budget. From April 2018, new Welsh Government powers to borrow to support capital infrastructure projects come into effect. However, the borrowing is limited and funding for RSLs to build and improve social housing would have to compete with other Welsh Government capital project priorities. The Welsh Government has published capital spending plans through to 2020-21 that utilises £395m of the £445m available borrowing and so there would not be sufficient capacity to accommodate RSLs' current annual borrowing requirement nor further growth in coming years.

We are considering amending or removing the central and local government controls over RSLs identified by ONS and which are mainly set out in the Housing Act 1996. Once this is achieved, ONS can reconsider the classification of RSLs in Wales with a view to reclassifying them as Private Non – Financial Corporations sector once again in order to mitigate the concerns set out above.

Regulatory reform will not mean the sector will be unregulated. One of the key considerations in developing our proposals has been the need to maintain a system of robust regulation. Responding to the need for change, a new approach to regulation is being implemented.

This document describes what we are proposing to do and sets out the reasons

I would welcome your comments.

Carl Sargeant AM
Cabinet Secretary for Communities and Children

Reclassification of Registered Social Landlords by the Office of National Statistics

Registered Social Landlords in Wales

Registered Social Landlords (RSLs) are Welsh Housing Associations registered with the Welsh Ministers under Part 1 of the Housing Act 1996. A list of current RSLs in Wales can be accessed via the following link <http://gov.wales/topics/housing-and-regeneration/publications/registered-social-landlords-in-wales/?lang=en>.

In Wales, RSLs are non-profit making, with the main purpose of managing and improving homes, providing services to tenants and residents and developing new homes.

At 31 March 2016, RSLs in Wales provided around 139,000 affordable social rented homes. They played a vital role in exceeding the Welsh Government's target of 10,000 additional affordable homes in the last Assembly. A significant proportion of the RSL development programme is funded through borrowing from the private sector to supplement Welsh Government Social Housing Grant and other funding programmes. Meeting the Welsh Government's target of 20,000 new affordable homes during the course of the current administration term is heavily dependent on a significant contribution by the RSL sector.

Reclassification

On 29 September 2016, the Office for National Statistics (ONS) published the outcome of its review of the statistical classification of RSLs in Wales, and their equivalents in Northern Ireland and Scotland. As it did for English Housing Associations, the review concluded RSLs in Wales are public, market producers and are reclassified to the Public Non – Financial Corporations sub – sector for the purpose of national accounts and other ONS economic statistics. In Wales, the decision is effective from 24 July 1996.

The Impact of the decision to reclassify Registered Social Landlords

Reclassification has significant financial implications for Welsh Government and the RSL sector. As a result of reclassification into the public sector, Public Sector Net Debt and Public Sector Net Borrowing are increased. The increase in Public Sector Net Borrowing will occur as any private sector market borrowings taken out by the newly reclassified public sector RSLs will score as a charge against Welsh Government's capital budget. This means the annual increase in RSLs' private sector debt, which, based on current average, is £200 million per year, would count against the Welsh Government's capital budget. In addition, some £2.3 billion of historical debt would be added to the UK public sector net debt.

RSLs fund a significant proportion of their house building activity through borrowing from the private sector. Meeting the Welsh Government's target of 20,000 new affordable homes during the course of the current government is heavily dependent on a significant contribution by the RSL sector founded on the freedom to raise private sector funding to supplement social housing grant.

Without reclassification back to the private sector, funding for RSLs to build and improve social housing would have to compete with other Welsh Government capital project priorities. From April 2018, new Welsh Government powers to borrow to support capital investment projects come into effect. The annual borrowing limit is initially capped at £125m but rises to £150m from 2019/20 onwards, subject to an overall borrowing cap of £1bn. The Welsh Government has published capital spending plans through to 2020-21 that utilises

£395m of the £445m available borrowing leaving insufficient capacity to accommodate RSLs' current annual £200m average borrowing requirement or any growth in the coming years.

This would mean fewer new affordable homes and limited options for the Welsh Government to maximise the positive contributions RSLs make to the communities in which they work, including significant local employment and economic benefits. It would also result in uncertainty for stakeholders, including funders who have made long term commitments to funding an independent RSL sector.

Why are we considering regulatory reform?

A similar ONS review of English Housing Associations concluded, in the light of the regulatory controls applying (as set out primarily in the Housing and Regeneration Act 2008), English Housing Associations should be reclassified from Private Non-Financial Corporations to Public Non-Financial Corporations which occurred in October 2015.

In response, the UK Government brought forward legislation by means of amendment to the Housing and Planning Act 2016 which should enable the classification to be reversed.

The ONS review of the classification of RSLs in Wales focused on an assessment of the central and local government controls applying to RSLs, as principally set out in the Housing Act 1996, including the provisions inserted into that Act by the Housing (Wales) Measure 2011. The review also considered certain local authority controls which may arise as a result of arrangements between local authorities and RSLs.

The Welsh Government is therefore considering options to remove or amend the relevant controls. Once this is done, ONS would be able to consider reclassifying RSLs in Wales to the Private Non-Financial Corporations sector, thus mitigating the impacts and budgetary concerns set out above.

Will this mean that the Sector will be unregulated?

The removal of controls does not mean that the sector will be unregulated. A key consideration in developing proposals to address the impacts of reclassification has been the need to maintain robust regulation.

We have already been taking steps to revise and strengthen the approach to regulation in advance of any regulatory reform in response to reclassification. As a result, an improved approach to housing regulation has been developed in collaboration with key stakeholders, including the RSL sector, funders and tenants. The revised approach builds on the existing risk based approach, providing a focus on continuous improvement and, for the first time, a clear "Regulator's Judgement". The new Regulatory Judgement framework has been in place from 1 January 2017 and will be reviewed after the first annual cycle.

As part of the package, the Welsh Government consulted with stakeholders on new performance standards for RSLs. The performance standards have a much stronger focus on decision making, leadership and financial viability of RSLs and are more aligned with the way effective RSLs actually run their businesses. The consultation closed on 24 February 2017 and the final standards will be published in due course.

What changes are we considering?

In order to enable classification back to the private sector, the following central and local government controls, identified by the ONS, need to be removed or amended:

Central Government controls

1) Disposal Consents

Removal of requirement for disposal consent

The Welsh Government is considering removing any requirements for the Welsh Ministers to consent to the disposal of land by an RSL, or a former RSL, and for this to be replaced with a notification requirement. The legislation has been identified as requiring repeal or amending is set out below:

Section 9, Housing Act 1996 is the primary provision which provides that disposals of land by an RSL require the consent of the Welsh Ministers. They relate to the requirement of consent, exceptions, procedure and the effect of disposal without consent as well as the requirement for disposal consent following de-registration of an RSL.

Section 133, Housing Act 1988 provides that where a disposal was subject to the Welsh Ministers' consent under section 32 or 43 of the Housing Act 1985 (disposal of land by a local authority), and if that consent does not provide otherwise, the person who acquires land in Wales shall not dispose of it without the consent of the Welsh Ministers.

Section 171D, Housing Act 1985 relates to the preserved right to buy. The consent of the Welsh Ministers is required where a qualifying landlord who is subject to the preserved right to buy disposes of less than their whole interest in the dwelling. Section 171D applies in Wales pending the abolition of the Right to Buy (RTB).

Section 81, Housing Act 1988 sets conditions for disposal of land in Wales by an RSL which is subject to a secure or introductory tenancy and which was itself a disposal to the RSL by a Housing Action Trust. Such a disposal requires consent from the Welsh Ministers. Housing Action Trusts were not set up in Wales and these consents provisions would only apply to land so, the effect is likely to be minimal.

Introduce a New Power - Notification

We are considering replacing the requirement for consent with a duty on an RSL to notify the Welsh Ministers where it disposes or intends to dispose of any land. The notification requirement would not allow the Welsh Ministers as regulator to stop or prevent a transaction but would allow for regulatory monitoring of the sector.

The Welsh Ministers would be able to direct RSLs on matters relating to notification such as the notice period, contents of such notification, and circumstances in which the notification requirement may be dispensed with. In addition, such directions may be general or specific to an RSL, a particular property, a particular form of disposal or in any other way.

2) Power to Direct the Permitted Use of Disposals Proceeds

The Welsh Government is considering removing the power for the Welsh Ministers to specify sale proceeds and other sums to be shown separately in accounts (the disposal proceeds fund) and the power to direct the permitted uses. The legislation identified as requiring repeal or amending is set out below:

Sections 24 and 25, Housing Act 1996 sets out the power for the Welsh Ministers to specify net disposal proceeds and other sums which must be held by RSLs separately in its accounts and to direct the use of those sums. This is known as the 'disposal proceeds fund'.

We are also considering making transitional arrangements to deal with any existing disposal proceeds until abolition of the requirement. The transitional arrangements would direct the use of the sums and specify a time limit for their use.

3) Restructuring and Dissolution

The Welsh Government is considering removing any requirements for the Welsh Ministers to consent to certain restructures and dissolutions and for this to be replaced with a notification requirement where appropriate. The legislation has been identified as requiring repeal or amending is set out below:

Relevant provisions for RSLs which are registered societies:

Paragraphs 12(2),(3) of Schedule 1, Housing Act 1996 makes provision that the Welsh Ministers' consent, by order and in writing, is required before the Financial Conduct Authority (FCA) can register a resolution passed by the society for the purposes of specified restructuring provisions if the regulator has consented to the resolution and a copy of the consent accompanies the resolution sent to the FCA.

The requirement to provide a copy of the consent to the FCA would be replaced with the requirement to provide confirmation the Regulator has been notified.

Paragraph 12(4) of Schedule 1 to the 1996 Act

If the society resolves by special resolution that it be wound up voluntarily under the Insolvency Act 1986, the resolution has no effect unless--

(a) before the resolution was passed the Welsh Ministers gave their consent to its passing, and

(b) a copy of the consent is forwarded to the Financial Conduct Authority together with a copy of the resolution required to be so forwarded in accordance with section 123(3)(a) of the Co-operative and Community Benefit Societies Act 2014

The requirement to obtain consent would be replaced with a notification requirement, and so that the resolution has no effect unless a confirmation that the Welsh Ministers have been notified has been forwarded to the FCA together with a copy of the resolution required to be so forwarded in accordance with section 123(3)(a) of the Co-operative and Community Benefit Societies Act 2014.

Paragraph 12(5) of Schedule 1 Housing Act 1996 makes provision that the Welsh Ministers' consent, by order and in writing, is required where a registered society is to be dissolved by instrument of dissolution in accordance with section 119 of the Co-operative and Community Benefit Societies Act 2014 Act, before the FCA can register the instrument under section 121 or cause notice of the dissolution to be advertised under section 122, and a copy consent accompanies the instrument as sent to the authority.

The requirement to provide a copy of the consent to the FCA would be replaced with the requirement to provide confirmation the Regulator has been notified.

Relevant provisions for RSLs which are registered companies:

Paragraph 13(2), (3) and (5) of Schedule 1, Housing Act 1996 applies to a company whose registration as a social landlord has been recorded by the registrar of companies. It sets out requirement for the Welsh Ministers consent to be issued, in writing, before certain arrangements and reconstructions can be effected.

The requirement to provide a copy of the consent to the registrar of companies would be replaced with the requirement to provide confirmation the Regulator has been notified.

Paragraphs 13(4), (7) and (8) of Schedule 1, Housing Act 1996 makes provision that the Welsh Ministers consent, by order and in writing (copy required by registrar), is required before the registrar of companies may register a resolution under section 115 of the Co-operative and Community Benefit Societies Act 2014 for conversion of a registered company into a registered society.

The requirement to provide a copy of the consent to the registrar would be replaced with the requirement to provide confirmation the Regulator has been notified.

Paragraph 13(6) of Schedule 1 to the 1996 Act

If the company resolves by special resolution that it be wound up voluntarily under the Insolvency Act 1986, the resolution has no effect unless--

(a) before the resolution was passed the Welsh Ministers gave their consent to its passing, and

(b) a copy of the consent is forwarded to the registrar of companies together with a copy of the resolution required to be so forwarded in accordance with section 30 of the Companies Act 2006.

The requirement to obtain consent to be replaced with a notification requirement, and so that the resolution has no effect unless a confirmation that the Welsh Ministers have been notified has been forwarded to the registrar of companies together with a copy of the resolution required to be so forwarded in accordance with section 30 of the Companies Act 2006.

Welsh Ministers' power to present winding up petition:

Paragraph 14 of Schedule 1, Housing Act 1996 provides certain grounds for the Regulator to present a winding up petition under the Insolvency Act 1996. The grounds include where the landlord is failing properly to carry out its purposes or objects.

Changes of Rules/Articles of Association

Paragraphs 9 and 11 of Schedule 1, Housing Act 1996 makes various provisions where the Welsh Ministers' consent is required.

Paragraph 9 relates to a registered society whose registration as a social landlord has been recorded by the FCA. Notice shall be given to the Welsh Ministers of any change of the society's name or registered office, any other amendment of the society's rules is not valid without the consent of the Welsh Ministers. Consent shall be given by order in writing and a copy shall be sent to the FCA.

Paragraph 11 relates to a company, including a company which is a registered charity whose registration as an RSL has been recorded by the registrar of companies. Notice shall be sent to the Welsh Ministers of any change of the company's name or registered office. Any other alteration of the company's articles of which notice is required to be given to the registrar of companies is not valid without the consent of the Welsh Ministers. Consent shall be given by order in writing and must be sent to the registrar.

There would be a requirement to notify the regulator where consent is currently required.

Introduce a New Power – Notification in connection with Restructuring and Dissolutions

We are considering introducing a duty for RSLs to notify the Welsh Ministers of such changes to replace the dissolution and restructuring consents. The notification requirement would not allow the Welsh Ministers as regulator to stop or prevent a transaction but will ensure the regulator always has a current list of regulated bodies. The Welsh Ministers would be able to direct RSLs on matters relating to the notification such as the notification period, circumstances in which the notification requirement may be dispensed with. In addition, contents of such notice and may be general or specific to an RSL, particular kinds of notifications or in any other way.

4) Regulatory Powers - Enforcement

The Welsh Government is considering changing the conditions or threshold under which the Welsh Ministers can take specified action, as set out below. It is proposed that the threshold will be linked to where an RSL has failed to comply with any of its statutory duties or to meet a regulatory requirement set by the Regulator using any of its statutory powers. This would replace the current position, where such powers arise in the event of "misconduct or mismanagement", or where it is felt necessary for the "proper management" of the RSL. The legislation has been identified as requiring repeal or amending is set out below, all are paragraphs of Schedule 1 to the Housing Act 1996:

Paragraphs 15D – Management Transfer

The Welsh Ministers may require the transfer of management functions to a specific person following an inquiry or audit if they are satisfied there has been misconduct or mismanagement in the affairs for the RSL, and such a transfer of certain of a RSLs management functions would improve the management of some or all of its affairs.

Paragraph 15F – Appointment of Manager

The Welsh Ministers may appoint a manager, or require an RSL to appoint a manager, where they are satisfied that the RSL has failed to meet a standard, or there has been misconduct or mismanagement in the affairs of the RSL.

Paragraph 15H – Amalgamation

The Welsh Ministers may amalgamate an RSL which is a registered society with another RSL which is a registered society if as a result of an inquiry or audit they are satisfied there has been misconduct or mismanagement in the affairs of the RSL and the management of the affairs would be improved if the landlord were amalgamated with another RSL.

Paragraph 23 – Interim Powers during inquiry

Where there is an ongoing inquiry and the Welsh Ministers have reasonable grounds to believe there has been misconduct or mismanagement in the affairs of the landlord and immediate action is needed to protect the interests of tenant, or the assets of the landlord, or where an interim report of the inquiry as a result of which the Welsh Ministers are satisfied there has been misconduct or mismanagement in the affairs of the RSL the Welsh Ministers may make one of the orders specified in this paragraph. This includes an order suspending an officer.

Paragraph 24 – Powers exercisable as a result of final inquiry or audit

Where the Welsh Ministers are satisfied as a result of an inquiry or audit there has been misconduct or mismanagement in the affairs of an RSL one of the orders specified in this paragraph may be made. This includes an order removing or suspending an officer.

Paragraph 27 – transfer of land

Where the Welsh Ministers are satisfied as a result of an inquiry or audit there has been misconduct or mismanagement in its administration or the management of the land would be improved if there were a transfer of land, the Welsh Ministers may direct such a transfer to another RSL or to the Welsh Ministers.

Paragraphs 4 and 6 - 8 - The Welsh Ministers may remove (paragraph 4) or appoint officers to an RSL which is a charity, company or registered society (paragraphs 6, 7 and 8 of Schedule 1, 1996 Act respectively) in certain circumstances. An officer may be removed where, amongst other reasons, he cannot be found or does not act and his failure to act is impeding the proper management of the RSLs affairs. In the case of the appointment of an officer, this can be done in place of a person removed by the Welsh Ministers, where there are no officers, or where the Welsh Ministers are of the opinion that it is necessary for the proper management of the RSL to have an additional officer.

The Welsh Ministers power to appoint officers must not enable the appointment of a majority of officers.

Local Government Controls

5) Introduce a new power to reduce Local Authority (LA) influence over RSLs in Wales.

ONS has indicated the current arrangements, usually contractual between local authorities and, in most cases, Large Scale Voluntary Transfer RSLs, for reserved places on RSL Boards, and in some cases holding particular voting rights, including effectively powers of veto on matters including constitutional change, are indicators of control and therefore require reform.

The policy proposal is to introduce powers to:

- limit reserved places for local authority appointees on any Welsh RSL Board to a maximum of 24% of the total number of Board members at any time;
- remove local authority appointees before the end of their term and allow any necessary constitutional changes to be made;
- remove any controlling voting or any other rights of consent which local authority appointees currently have including as Board members or shareholders;
- remove any requirement for local authority appointees to be present to achieve a quorate meeting; and
- remove any requirement for any other specific local authority consent separate to any voting rights.

Any such provisions would override any existing rights for local authorities to nominate Board places whether arising through RSL rules or contracts.

Consultation Questions

Consultation Response Form	
<p>Your name:</p> <p>Organisation (if applicable):</p> <p>Email / telephone number:</p> <p>Your address:</p>	
Question	Your Response
<p><u>Q1 Disposal Consents</u></p> <p>Do you agree with the proposals set out in 1) above? If not, please tell us why.</p>	
<p><u>Q2 Disposal Proceeds Fund</u></p> <p>Do you agree with the proposals set out in 2) above? If not, please tell us why.</p>	
<p><u>Q3 Restructuring and Dissolution</u></p> <p>Do you agree with the proposals set out in 3) above? If not, please tell us why.</p>	
<p><u>Q4 Regulatory Powers</u></p> <p>Do you agree with the proposals as set out in 4) above? If not, please tell us why.</p>	
<p><u>Q5 Local Authority Controls</u></p> <p>Do you agree with the proposal as set out in 5) above? If not, please tell us why.</p>	

<p>Q6: We would like to know your views on the effects that such legislation could have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.</p>	
<p>Q7: Please also explain how you believe such proposed legislation could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.</p>	
<p>Q8: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them</p>	

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here: