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Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation – summary of response

REGULATION OF REGISTERED SOCIAL LANDLORDS

September 2017

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

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Regulation of Registered Social Landlords

Summary of Consultation Responses

1. Introduction

The Welsh Government published a consultation on the regulatory reform of registered social landlords on 8 May 2017. The consultation sought views on proposals for the regulatory reform of registered social landlords (RSLs) in Wales following the decision by the Office for National Statistics (ONS) to reclassify RSLs to the public sector for accounting purposes.

The consultation document sets out the background to the consultation and can be accessed via the following link:

https://consultations.gov.wales/sites/default/files/consultation_doc_files/170508_consultation_regulatoryreformrsls_en.pdf

An analysis of the consultation responses has been reviewed alongside the proposals published in the consultation document and used to develop the Regulation of Registered Social Landlords (Wales) Bill which was announced in the First Minister's Legislative Programme statement on 27 June 2017. The Bill will include the minimum changes necessary to allow the ONS to consider reclassifying RSLs back into the private sector for accounting purposes.

2. Methodology

An eight week consultation was held between 8 May and 3 July 2017. A Welsh language impact assessment¹ was published alongside the consultation document.

There were 29 responses to the consultation. Two of the respondents requested their responses remain anonymous. The list of respondents is in the table below, with anonymity protected where requested. Copies of the responses can be provided on request.

This document presents respondents' views to the eight questions contained in the consultation document. Respondents represented a range of types, from individuals to RSLs and Community Housing Cymru (CHC), the membership body which represents all housing associations in Wales.

The quantitative analysis set out here counts each response as a single entity. Thus a response from a single individual is treated in the same way as a response from an RSL or CHC. The figures should not be taken as representing the weight to be attached to responses for that reason.

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https://consultations.gov.wales/sites/default/files/consultation_doc_files/170508_welshlanguageimpact_regulatoryreformrsls_en.pdf

Some respondents answered the Yes / No questions and went on to provide substantive comments. Others chose not to answer the Yes/No question but still provided substantive comments. Others missed out specific questions completely.

The following table provides a breakdown of the number of respondents into types based on category.

Category	Respondent
Representative Bodies/Groups (10 respondents)	Cardiff Third Sector Council Chartered Institute of Housing Cymru (CIH) Community Housing Cymru (CHC) Council of Mortgage Lenders (CML) Cymorth Cymru Tai Ceredigion Monitoring Group The Law Society Tenant Participation Advisory Service (TPAS) Cymru Welsh Local Government Association (WLGA) Woodland Resident Association
Registered Social Landlords (RSL) (9 respondents)	Bron Afon Community Housing Cartrefi Cymunedol Gwynedd Hendre Group (Hafod Resources) Melin Homes Newport City Homes (NCH) NPT Homes Tai Calon Community Housing Limited Tai Ceredigion Cyf Wales and West Housing Association
Local Authority (6 respondents)	Caerphilly County Borough Council (CBC) Torfaen County Borough Council (CBC) Flintshire County Council Conwy County Borough Council (CBC) Isle of Anglesey County Council Gwynedd Council
Individuals (2 respondents)	Mr J Bennett Mr W Jones
Wished to remain anonymous	2 respondents
Total	29 respondents

3. Key Messages

A number of key messages emerged from the consultation:

- The response to the policy proposals was generally positive with recognition that the proposals need to be implemented so that ONS can consider re-classification of RSLs thus enabling them to borrow to fund the building of affordable social housing. The majority of respondents were in favour of the proposals.
- The Welsh Government was encouraged to liaise with ONS to ensure that proposals were sufficient to enable them to reconsider the classification of RSLs.
- Respondents wanted further details about the implementation of the proposals, particularly the timescales, notification periods and thresholds which will apply. There was a call for further guidance in a number of instances.
- There was concern that commitments made to tenants should be honoured under a new regime.

4. Consultation Questions

Question 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.

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 allow for regulatory monitoring of the sector.

The Welsh Ministers would be able to direct RSLs on such matters relation 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.

- **19 respondents agreed with the proposal**
- **1 respondent disagreed with the proposal**
- **9 respondents did not state whether they agreed or disagreed**

The Tai Ceredigion Monitoring Group felt the current premise on which RSLs operate in Wales is sound and the controls in place help the Welsh Government meet their responsibilities under the various Housing Acts and regulations, ensuring community and housing assets are sufficiently resourced and well-managed on behalf of the people of Wales. They cited the improvements to social housing which have resulted from the Welsh Housing Quality standard and suggested the Welsh Ministers would be ill-advised to remove the general consent requirements.

The Tenants' Participatory Advisory Service (TPAS) pointed out that whilst, under normal circumstances, it would have concerns about the removal of the disposals consent regime, in the light of the ONS classification of RSLs, it recognises the Welsh Government needs to make these amendments. It did however take the view that under the new regime, it will be important that it be made clear to RSLs they should consult with tenants affected by proposed disposals.

Caerphilly CBC stated they would welcome an extension of the notification requirement to include local authorities as well as Welsh Ministers for strategic planning purposes.

A number of respondents, particularly housing associations, wanted further detail about how the proposal would work in practice. This included further details about

the notification period and any proposed thresholds for exemption/de minimus levels for notification. CHC recommended the Welsh Government adopts a similar set of values to those which underpin the notifications regime in England and produce similar guidance setting out the circumstances in which notification is required and where exemptions apply.

One issue which was highlighted by CHC and a number of other respondents was the effect legislation would have on those housing associations which have charitable status and are constituted as companies. These are directly regulated by the Charity Commission who, in turn, regulate the disposal of land by charities under the provisions of the Charities Act 2011.

The Council of Mortgage Lenders (CML) cautioned it should be made clear to RSLs that, in the event of the removal of the duty to obtain the consent of the Welsh Ministers before disposing of land, RSLs may still need to obtain the consent of lenders, depending on what was set out in their loan agreements or business plans. They also pointed out RSLs should be actively discussing proposed disposals with the Welsh Government as the sector regulator as part of broader discussion of issues which might impact on their ability to meet performance standards.

Question 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 account (the disposal proceeds fund) and the power to direct the permitted uses.

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

- **15 respondents agreed with the proposal**
- **3 respondents disagreed with the proposal**
- **11 respondents did not state whether they agreed or disagreed**

Of the three respondents who disagreed with this proposal, it appears there is some degree of misunderstanding of what the Disposals Proceeds Fund is and which type of disposal funds it must include. Their comments appear to relate to Recycled Capital Grants, which is not affected by this proposal.

There was support for the view that proceeds should be invested to meet local housing priorities and the belief RSLs are best placed to make decisions about the use of funding locally.

There was support for Welsh Government's proposal to introduce transitional arrangements for the use of disposal funds. Some respondents sought greater

clarity, such as suggesting transitional arrangements should only apply to disposals already being processed, whilst at least one RSL thought transitional arrangements unnecessary. CHC expressed concerns about the introduction of legislation setting time limits for the use of funds and directing their use, which might be construed by ONS as “control” and urged the Welsh Government to work closely with ONS on this issue.

The CML suggested it should be made clear the removal of the Disposal Proceeds Fund would not interfere with arrangements to pay creditors under insolvency law. However, these proposals do not affect insolvency law.

Question 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.

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

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 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 may be general or specific to an RSL, particular kinds of notifications or in any other way.

- **18 respondents agreed with the proposal**
- **2 respondents disagreed with the proposal**
- **9 respondents did not state whether they agreed or disagreed**

The Tai Ceredigion Monitoring Group felt it is properly a matter for the Welsh Ministers to sanction proposed mergers, restructuring and dissolution arrangements, that the leverage of assets in these circumstances should be controlled and there should be accountability and sanction for developments and provision of housing services. The Woodland Park Resident Association expressed concern about the protection of vulnerable tenants.

Although Gwynedd Council did not state whether it agreed or disagreed with the proposal, it did express concern the proposed legislation did not differentiate between housing associations which had been established following a housing stock transfer and other housing associations. They felt that, at time of transfer, the promise of close liaison with elected council members might have persuaded tenants to support the stock transfer. Following restructuring or merger, there is a danger the link with local residents is lost. Consequently, Gwynedd Council asked whether there

should be a different way of dealing with housing associations established following a housing stock transfer.

CHC agreed with the proposal but called for clarity for RSLs about the new regime and engagement with other organisations involved (such as the Financial Conduct Authority). All of the RSLs which responded agreed with the proposals and a number repeated the points raised by CHC around engagement with other organisations and clarity around the arrangements for the new notifications regime. The Chartered Institute of Housing Cymru also welcomed the prospect of further guidance.

Question 4 – Regulatory Powers: Enforcement

The Welsh Government is considering changing the conditions or threshold under which the Welsh Ministers can take specified action. 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.

- **17 respondents agreed with the proposal**
- **1 respondent disagreed with the proposal**
- **11 respondents did not state whether they agreed or disagreed**

The Tai Ceredigion Monitoring Group was sympathetic to the need to return RSLs to the private sector but still felt the Welsh Government, as regulator, should not lose powers at a time of economic uncertainty.

There was a call for either greater clarity around what might constitute failure to comply with a regulatory requirement or for assurance the Welsh Government’s response would be proportionate. The CIH Cymru stated their expectation that regulation should play an increasingly important role with enforcement action being seen as a last resort, utilised only when all else had failed.

The CML expressed concerns an RSL would have to have failed before action was taken, which has the potential to damage the wider Welsh RSL sector by increasing perceptions of higher risk amongst potential lenders. The CML called for the regulator to be enabled to intervene effectively and proportionately when failure is happening rather than after the event.

Question 5 – Local Government Controls

Introduce a new power to reduce Local Authority influence over RSLs in Wales

The ONS has indicated the current arrangements, usually contractual, between local authorities and, in most cases, Large Scale Voluntary Transfer (LSVT) 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.

- **17 respondents agreed with the proposals**
- **2 respondents disagreed with the proposals**
- **10 respondents did not state whether they agreed or disagreed**

Of the local authorities to respond, only Cyngor Sir Ynys Mon disagreed. Although Gwynedd council did not state whether it agreed or disagreed, it did express the opinion that if the number of local authority Board members is to be limited for RSLs which were set up following the transfer of housing stock, then, measures should be introduced in order to protect or strengthen tenant representation. This view was shared by Woodland Park Resident Association which also agreed with the proposal.

The WLGA agreed with the proposal but added where large scale voluntary transfers have taken place, the relationship between local authority and the recipient RSL is very important, being vital to ensuring commitments given to tenants are delivered. The WLGA considers it important for the Welsh Government to ensure these commitments are delivered and also recognises local authorities are reliant on the co-operation of these transfer recipients in order to deliver a range of statutory duties. These points were also made by others. The TPAS Cymru called for the Welsh Government to consult with the tenants affected by the proposals to limit local authority board membership. The proposal does not change the commitment given to tenants at the time of transfer, nor does it change any expectations in terms of co-

operation between LSVTs and local authorities, some of which are set out in other legislation.

Other RSLs, such as Bron Afon and NCH, welcomed the proposals, citing their trusting relationships with local authorities, growing maturity as organisations and the ability to appoint a skills-based board as beneficial to business delivery. NCH cautioned the proposed 24% limit may be wrongly viewed by local authorities as a minimum membership entitlement. Wales and West Housing Association felt the proposals do not go far enough and suggested it was for the RSLs to determine their own Board selection processes.

The CIH Cymru recognised the need to change the nature of local authority control over RSLs, but cautioned further work may be necessary in order to ensure legislation does not have negative and unintended consequences on the effectiveness of boards. They also sought clarity about the definition of “local authority member”, whether this was solely a direct appointee or merely someone with a local authority background.

The Tai Ceredigion Monitoring Group disagreed with the proposal, and were concerned the changes may affect the relationship between local authorities and RSLs in local communities.

Question 6

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.

- **No respondents identified any adverse impacts arising from the proposals**

Gwynedd Council cautioned that without including provisions to protect the Welsh language, it was difficult to see how the proposals would represent a positive step in supporting the use of Welsh.

One of the individuals who responded commented in detail on, and questioned the validity of, the Welsh Government’s Welsh Language impact assessment, citing a lack of evidence the proposals have the potential to impact positively on the use of the Welsh language and Welsh speaking communities. However, five respondents commented that they agreed with the Welsh Government’s Welsh Language impact assessment which highlighted the potentially positive impact of the Bill on Welsh speaking communities.

Question 7

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.

The TPAS suggested all publications relating to the proposed changes should be made readily available in both English and Welsh in a format which is easy to use.

A respondent who wished to remain anonymous pointed out there is already a requirement to consider and accommodate the use of the Welsh language and ensure treatment of the Welsh language is no less favourable than the treatment of English. The provisions in the Welsh Language (Wales) Measure 2011, specifically the principle that the Welsh language should be treated no less favourably than the English language, apply to RLS.

Gwynedd Council suggested there should be clear requirements regarding the use of the Welsh language set out in the regulatory framework. They acknowledged this would be difficult to enforce without legislation.

The Woodland Park Resident Association cautioned excessive requirements to accommodate the Welsh language may be viewed as a hindrance rather than an opportunity.

Question 8 – Any other issues

We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please report them.

A number of respondents, as well as commenting on the continuing need for affordable housing in Wales, used the consultation to provide positive comments on the proposals put forward by the Welsh Government and also commented positively on the new regulatory judgement framework.

CHC and a number of RSLs used this opportunity to stress that it is vital legislation is enacted in order to allow the ONS to reverse its classification. Following the lead of CHC, a number of RSLs also took the opportunity to point out that RSLs should be able to pay their board members in order to attract the skills which they require. The issue of payment of RSL Board members is under consideration following a

recommendation from the Public Accounts Committee in their report into the regulatory oversight of housing associations in Wales².

Melin Homes questioned whether the proposals would satisfy ONS and enable them to reconsider the classification decision. Wales and West Housing Association and the TPAS considered the need to legislate represents an opportunity to take a more fundamental look at the legislation in place, making it easier to understand and reducing the administrative burden placed on RSLs without impacting on their effectiveness.

In their response, the Law Society questioned whether proposals were likely to satisfy ONS. They queried the rationale for the choice of proposals and what they perceived as an absence of detail, recommending that the Welsh Government seek an indication from ONS of whether they are likely to consider the proposals sufficient to consider re-classifying RSLs.

Next Steps

The Welsh Government will bring forward legislation during 2017/18 based on the policy proposals in the consultation. The proposed Bill will set out the minimum changes necessary to enable the ONS to reconsider classification of RSLs. It will only include provisions in relation to key controls identified by the ONS, where failure to remove or amend it will not achieve the purpose of the Bill. Should the Bill successfully pass the Assembly's scrutiny process, a number of the points raised in the responses to the consultation will be clarified during the implementation of the Bill and the subsequent issuing of directions. These include, any regulatory expectations, set out in guidance, concerning subjects such as consultation with tenants for certain disposals, transitional arrangements, the way the notifications system will work and how the changes to local authority influence over RSLs will be introduced.

<http://www.assembly.wales/laid%20documents/cr-ld11151/cr-ld11151-e.pdf>