

Guide - The Regulation of Registered Social Landlords (Wales) Act 2018

The Act received Royal Assent on 13 June 2018.

The Regulation of Registered Social Landlords (Wales) Act 2018 (Commencement and Transitional Provision) Order 2018 brings the provisions of the Act into force which are at different dates.

The Act is on the National Assembly for Wales website page here (see stage 3): <http://www.senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=19962>

This guide summarises what the provisions of the Act might mean for your RSL. They should be read in conjunction with the Act, the Explanatory Notes and the Commencement order. This Guide does not constitute legal advice, you should take your own legal advice about how the various provisions may affect your organisation.

Timeline – The timeline for coming into force is set out in the commencement order and is summarised below. The substantive provisions commence on 15th August 2018.

15 June 2018 - sections 1, 2 and 18 of the Act come into force, these are:

- section 1 (overview of the Act)
- section 2 (meaning of “the 1996 Act”)
- section 18 (power to make further consequential amendments etc.)

15 August 2018 - any provision of the Act to the extent that it has not already been commenced before this date. These are:

- sections 3 to 5 (notification by registered social landlord of constitutional changes, etc.)
- sections 6 to 9 (powers exercisable in respect of officers and management of registered social landlord)
- section 10 (powers exercisable in respect of inquiries etc.)
- sections 11 and 12 (enforcement notices and penalties)
- sections 13 to 15 (disposal of land)
- section 16 and Schedule 1 (limit on local authority board membership and voting rights)
- section 17 and Schedule 2 (minor and consequential amendments)

Removal and transitional provision for the Disposals Proceeds Fund – see paragraphs 67-68.

Detailed Provisions

This is a section by section summary of what the Act does and what RSLs may need to do to respond.

Overview

Section 1 - Overview of this Act

1. This is an overview of the main provisions which are explained in more detail in the sections which follow.

Interpretation

Section 2 – Meaning of the “1996 Act”

10. This adopts a definition, throughout the Act, the Housing Act 1996 (c. 52) is referred to as the “1996 Act”.

Notification by registered social landlord of constitutional changes, etc.

Section 3 - Change of rules or articles

11. Section 3 amends paragraph 9 and paragraph 11 of Schedule 1 to the 1996 Act.

Paragraph 9 of Schedule 1

12. Paragraph 9 of Schedule 1 applies to an RSL which is a registered society under the Co-operative and Community Benefit Societies Act 2014. Registered societies are registered with the Financial Conduct Authority (FCA).
13. If an RSL (registered society) makes a change to any of its rules, including its name and the address of its registered office, it does not need to obtain the Welsh Ministers’ consent but it must notify the Welsh Ministers of the change. Notification is subject to any directions issued by the Welsh Ministers (section 5).

Paragraph 11 of Schedule 1

14. Paragraph 11 of Schedule 1 applies to an RSL which is registered as a company (including a company that is a registered charity).
15. If an RSL, which is registered as a company makes changes to its name, the address of its registered office or its articles of association, it does not need to obtain the Welsh Ministers’ consent but must notify the Welsh Ministers. Notification is subject to any directions issued by the Welsh Ministers (section 5).

Section 4 – Amalgamation and other structural changes

16. Section 4 amends paragraphs 12 to 14 of Schedule 1 to the 1996 Act.

Paragraph 12 of Schedule 1

17. Paragraph 12 of Schedule 1 applies to an RSL which is a registered society under the Co-operative and Community Benefit Societies Act 2014.
18. An RSL which is a registered society does not have to obtain the consent of the Welsh Ministers to a resolution to amalgamate with another society, transfer its engagements to another society, convert itself into a registered company, amalgamate with a company or transfer its engagements to a company. The RSL must notify the Welsh Ministers of the resolution. Notification is subject to any direction issued by the Welsh Ministers (section 5).
19. In addition, any notification to the Welsh Ministers of any of the resolutions referred to in the paragraph above (with the exception of resolutions for conversion of a society to a company) must be accompanied by a statement setting out the consultation the RSL carried out with its tenants before passing the resolution in question .
20. The consent of the Welsh Ministers is not required before a resolution is passed that the RSL is wound up voluntarily under the Insolvency Act 1986 or if the RSL is to be dissolved by an instrument of dissolution. The RSL must notify the Welsh Ministers. Notification is subject to any direction issued by the Welsh Ministers (section 5).

Paragraph 13 of Schedule 1

21. Paragraph 13 applies to RSLs which are registered companies whose registration as a social landlord has been recorded by the registrar of companies.
22. Under paragraph 13,
 - A company does not need to obtain the consent of the Welsh Ministers to apply for a court order under section 899 of the Companies Act 2006, but must notify the Welsh Ministers of the order.
 - A company does not need to obtain the consent of the Welsh Ministers to apply for a court order under section 900 of the Companies Act 2006, but must notify the Welsh Ministers of the order.
 - If a company passes a resolution under section 115 of the Co-operative and Community Benefit Societies Act 2014 for conversion into a registered society it does not need the consent of the Welsh Ministers but must notify the Welsh Ministers of the resolution.

- The Welsh Ministers' consent is no longer required for any voluntary arrangement under Part 1 of the Insolvency Act 1986 in relation to a company but the RSL must notify the Welsh Ministers of the arrangement.
- The Welsh Ministers' consent is not required before a company passes a special resolution that it be wound up voluntarily under the Insolvency Act 1986. The RSL must notify the Welsh Ministers of the resolution. In all cases, notification is subject to any directions issued by the Welsh Ministers (section 5).

Paragraph 14 of Schedule 1

23. Section 4 also removes paragraph 14 of Schedule 1, removing the Welsh Ministers' power to petition for winding up of an RSL which is a company or registered society under the Insolvency Act 1986 where an RSL is either failing to carry out its purposes or objects properly, or if it is unable to pay its debts.

Section 5 - Directions about notifications to be given to Welsh Ministers

24. Section 5 adds a further paragraph 13A to Schedule 1.
25. Under sections 3 and 4 of the Act, duties are inserted into Schedule 1 of the 1996 Act requiring RSLs to notify the Welsh Ministers of specific changes. This additional paragraph 13A allows the Welsh Ministers to issue directions specifying how they will be notified, what a notification will contain and to set a deadline for notifications. It also enables them to vary these requirements according to circumstances. A direction can apply to all or specific RSLs or RSLs of a specific description and may apply to all notifications, notifications of a certain description or in particular circumstances.
26. A direction can also dispense with a requirement to notify the Welsh Ministers and may vary or revoke a previous direction.
27. An RSL must comply with a direction which applies to it.

Powers exercisable in respect of officers and management of registered social landlord - Sections 6-12

28. The threshold for intervention by the Welsh Ministers varies depending on the relevant provision, however, the main threshold (formerly where the Welsh Ministers were satisfied that there had been misconduct or mismanagement in the affairs of the RSL) is changed.
29. The threshold for intervention which now applies arises where the Welsh Ministers are satisfied that there has been "failure to comply with a requirement imposed by or under an enactment". This includes failure to meet requirements set out in Acts of Parliament, Acts or Measures of the National Assembly for Wales, regulations and other secondary legislation made under those Acts or measures, as well as any directions or standards made under

an enactment with which an RSL is required to comply. In the case of section 6, the threshold is slightly different albeit the threshold still arises in connection with failures to meet requirements imposed by or under an enactment (see below).

30. Failure to comply with the Performance Standards and associated guidance made under section 33A and 33B(1) of the 1996 Act fall within this threshold.
31. Section 33A of the 1996 Act enables the Welsh Ministers to set standards of performance to be met by RSLs in connection with their functions relating to the provision of housing, and matters relating to their governance and financial management.

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

32. Section 6 amends paragraphs 4 and 6 to 8 of Schedule 1.

Paragraph 4 of Schedule 1

33. Amendments are made to paragraph 4 of Schedule 1 to amend the threshold at which the Welsh Ministers may remove an officer under paragraph 4(2)(g).

As a result, the position is as follows:

- The Welsh Ministers are able to remove an officer of an RSL under the circumstances listed below.
- The circumstances are set out in paragraph 4(2) of Schedule 1. These are unchanged, except for paragraph 4(2)(g), which is amended and allows an officer to be removed where the officer cannot be found or does not act and their absence or failure to act is impeding the RSL's compliance with a requirement imposed by or under an enactment.

Paragraphs 6 to 8 of Schedule 1

34. Paragraphs 6, 7 and 8 of Schedule 1 give the Welsh Ministers powers to appoint persons to be an officer of RSLs
35. As a result, the position is that the Welsh Ministers can appoint a person to be an officer of an RSL which is a registered charity, a company or a registered society in place of a person whom they have removed or, where there are no officers, or where the Welsh Ministers are of the opinion that the appointment is necessary in order to ensure that the RSL complies with a requirement imposed by or under an enactment.

Section 7 – Tender or transfer of registered social landlord's management functions

36. Section 7 amends paragraphs 15B and 15D of Schedule 1. It applies to all RSLs.

Paragraph 15B of Schedule 1

37. Amendments are made to the threshold at which the Welsh Ministers can require an RSL to tender its management functions under paragraph 15B of Schedule 1.
38. As a result, the position is as follows:
- If an RSL has failed to comply with a requirement imposed by or under an enactment, the Welsh Ministers are able to require the RSL to tender all, or some, of its management functions.
 - The paragraph does not apply where the failure to comply relates only to the RSL's provision of housing in England.

Paragraph 15D of Schedule 1

39. Amendments are made to one of the thresholds at which the Welsh Ministers can require an RSL to transfer its management functions under paragraph 15D of Schedule 1.
40. As a result, the position is as follows:
- If, as a result of an inquiry or an audit (under paragraph 20 or 22 of Schedule 1), the Welsh Ministers are satisfied that an RSL has failed to comply with a requirement imposed by or under an enactment, the Welsh Ministers can require the RSL to transfer management functions to a person specified by them.
 - The paragraph does not apply where the failure relates only to the RSL's provision of housing in England.

Section 8 - Appointment of manager of registered social landlord

41. Section 8 amends the threshold at which the Welsh Ministers can appoint a manager of an RSL under paragraph 15F of Schedule 1.
42. As a result the position is as follows:
- If the Welsh Ministers are satisfied that an RSL has failed to comply with a requirement imposed by or under an enactment, the Welsh Ministers can appoint an individual as a manager of the RSL, or require the RSL to appoint an individual as a manager.
 - The appointment or requirement may relate to the management of the RSL generally, or specified affairs.
 - This paragraph does not apply where the failure relates only to the RSL's provision of housing in England.

Section 9 – Amalgamation effected by Welsh Ministers

43. Section 9 amends one of the thresholds at which the Welsh Ministers can amalgamate RSLs which are registered societies under paragraph 15H of Schedule 1. This paragraph applies to RSLs which are registered societies.
44. As a result, the position is as follows:

- If, as a result of an inquiry or an audit (under paragraph 20 or 22 of Schedule 1), the Welsh Ministers are satisfied that an RSL which is a registered society has failed to comply with a requirement imposed by or under an enactment, the Welsh Ministers may make and execute on behalf of the society an instrument providing for its amalgamation with another registered society.
- This paragraph does not apply if the failure relates only to the RSL's provision of housing in England.

Powers exercisable in respect of inquiries, etc.

Section 10 – Inquiries and reports

45. Section 10 amends paragraphs 20, 23, 24 and 27 of Schedule 1.

Paragraph 20 of Schedule 1

46. Amendments are made to the threshold at which the Welsh Ministers can direct an inquiry into the affairs of an RSL under paragraph 15H of Schedule 1.
47. As a result, the Welsh Ministers may direct an inquiry if it appears to them that the RSL may have failed to comply with a requirement imposed by or under an enactment.

Paragraph 23 of Schedule 1

48. Amendments are made to the thresholds at which the Welsh Ministers can make orders under this paragraph 23 of Schedule 1.
49. As a result, the position is as follows:
- The Welsh Ministers can make an order under paragraph 23 where an inquiry has been directed under paragraph 20 and the Welsh Ministers have reasonable grounds to believe that that an RSL has failed to comply with a requirement imposed by or under an enactment, and that immediate action is needed to protect the interests of the tenants of the RSL or to protect the RSL's assets.
 - The Welsh Ministers can also make an order under paragraph 23 where an interim report has been made under paragraph 20(5) as a result of which the Welsh Ministers are satisfied that an RSL has failed to comply with a requirement imposed by or under an enactment.
 - The orders that can be made are ones suspending any officer, employee or agent of the RSL who appear to the Welsh Ministers to have been responsible for the failure; directing any bank or other person who holds money or securities on behalf of the RSL not to part with the money or securities without the approval of the Welsh Ministers; or restricting the transactions which may be entered into, or the nature or amount of the payments which may be made, by the RSL without the approval of the Welsh Ministers.

Paragraph 24 of Schedule 1

50. Amendments are made to the threshold at which the Welsh Ministers can make orders under this paragraph 24 of Schedule 1.
51. As a result, the position under paragraph 24 is as follows:
- The Welsh Ministers may make an order where, following an inquiry or audit (under paragraph 20 or 22), they are satisfied that an RSL has failed to comply with a requirement imposed by or under an enactment.
 - The orders that can be made are ones removing, or suspending for up to six months, any officer, employee or agent of the RSL who appear to the Welsh Ministers to have been responsible for the failure; directing any bank or other person who holds money or securities on behalf of the RSL not to part with the money or securities without the approval of the Welsh Ministers; or restricting the transactions which may be entered into, or the nature or amount of the payments which may be made, by the RSL without the approval of the Welsh Ministers.

Paragraph 27 of Schedule 1

52. An amendment is made to one of the thresholds at which the Welsh Ministers may direct an RSL to make a transfer of land under paragraph 27 of Schedule 1.
53. As a result, the position is that the Welsh Ministers may direct a transfer where, as a result of an inquiry under paragraph 20 or an audit under paragraph 22, the Welsh Ministers are satisfied that that the RSL has failed to comply with a requirement imposed by or under an enactment. The Welsh Ministers may also do so if they are satisfied that the management of its land would be improved if it were transferred.

Enforcement Notices and Penalties

Section 11 - Enforcement notices

Section 11 amends Case 2 in section 50C of the Housing Act 1996 which gives the Welsh Ministers the power to give an enforcement notice to an RSL. Case 2 is one of 9 cases, of which the Welsh Ministers must be satisfied have arisen prior to giving an enforcement notice.

54. As a result of the amendment, the position is as follows:
- The Welsh Ministers are able to give an enforcement notice to an RSL if they are satisfied that any of the list of 9 cases applies.
 - In the case of Case 2, the Welsh Ministers must be satisfied that the RSL has failed to comply with a requirement imposed by or under an enactment. Case 2 does not apply if any of the other of the 8 cases applies.

- In all cases, the Welsh Ministers must also be satisfied that giving an enforcement notice is appropriate (whether it is likely to be sufficient in itself or a prelude to further action).

55. Subsection (10A) is added to section 50C this provides that where another case applies, the grounds specified in that case should be used as the basis for the enforcement notice. For example, if there has been a breach of a standard issued under section 33A of the 1996 Act, Case 1 would be the appropriate ground for the enforcement notice. Case 2 will only apply if no other case applies.

Section 12 - Requirement to pay a penalty

Section 12 amends Case 2 of section 50H of the 1996 Act, which gives the Welsh Ministers the power to require an RSL to pay a penalty.

Case 2 is one of 5 cases, of which the Welsh Ministers must be satisfied have arisen prior to requiring an RSL to pay a penalty.

56. As a result of the amendment, the position is as follows:
- The Welsh Ministers may require an RSL to pay a penalty if they are satisfied that any of the list of 5 cases applies.
 - In the case of Case 2, the Welsh Ministers must be satisfied that the RSL has failed to comply with a requirement imposed by or under an enactment. Case 2 does not apply if any of the other of the 5 cases applies.
 - In all cases, the Welsh Ministers must also be satisfied that the imposition of a penalty is appropriate (whether or not as part of a response including other action).
57. Subsection (6A) is added to section 50H this provides that where another case applies, the grounds specified in that case should be used as the basis for the penalty. For example, if there has been a breach of a standard issued under section 33A of the 1996 Act, Case 1 would be the appropriate ground for the penalty. Case 2 will only apply if no other case applies.

Disposals of land

58. Prior to amendments being made by the Act, RSLs were required to obtain the consent of the Welsh Ministers for disposals of land under section 9 of the 1996 Act, section 171D of the Housing Act 1985, and sections 81 and 133 of the Housing Act 1988. Sections 13 and 14 of the Act remove those requirements and impose a duty to notify the Welsh Ministers.
59. Section 9 of the 1996 Act (as amended by section 14 of the Act) will apply to any disposal by an RSL, meaning the RSL must notify the Welsh Ministers of a disposal. Notifications are subject to any notification directions issued by the Welsh Ministers (section 5).

Section 13 and 14 –Disposal of land: consent

60. Section 13 amends section 171D of the Housing Act 1985 (c. 68) and repeals section 81 and amends section 133 of the Housing Act 1988 (c. 50).

61. As a result, the position is now as follows:

- Under section 8 of the 1996 Act, an RSL can dispose of land it holds in a manner which it thinks fit. But it must notify the Welsh Ministers of the disposal (see section 14)
- The Welsh Ministers may issue directions about how they should be notified. A direction may be about how and when notification must be given, or what it must contain or may set a deadline for giving a notification.
- The Welsh Ministers can specify to which RSLs a direction applies and to which disposals or types of disposals it applies. A direction can also dispense with a requirement to notify the Welsh Ministers or revoke or vary a previous direction.
- An RSL must comply with a direction which applies to it.

Section 15 – Disposal Proceeds fund

62. Section 15 omits sections 24 to 26 of the Housing Act 1996.

63. Sections 24 to 26 are repealed in order to remove the requirement to show disposal proceeds separately in accounts, and to remove the ability of the Welsh Ministers to determine how such proceeds should be used.

Section 15 of the Act does not have effect, in relation to a registered social landlord, until the earliest of

1. (a) the date on which the funds in that RSL's disposal proceeds fund are fully exhausted; or
(b) the date on which the RSL notifies the Welsh Ministers that it is unable to use or allocate, or continue to use or allocate, funds in that RSL's disposal proceeds fund in accordance with a determination made by the Welsh Ministers under section 25 of the 1996 Act; or
(c) 15 August 2021.

Notwithstanding paragraph (1), an RSL who has a disposal proceeds fund on 15 August 2018 is not required, under section 24 of the 1996 Act, to account for the proceeds of any disposal after that date within its disposal proceeds fund.

If within the period set out in paragraph (1) an RSL (A) transfers its disposal proceeds fund to another RSL (B), then B's management of that fund is treated under paragraph (1) as if it were A.

Section 16 - Limit on local authority board membership and voting rights

64. Schedule 1 inserts a new Chapter 1A into Part 1 of the 1996 Act (social rented sector regulated by the Welsh Ministers), to place restrictions on the control that local authorities may have on RSLs. Further notes are set out in paragraphs 94 -105 below.

Section 17 - Minor and consequential amendments

65. Schedule 2 sets out amendments made to other legislation as a consequence of the Act.

Section 18- Power to make further consequential amendments etc.

66. Section 18 provides that the Welsh Ministers may make amendments which are consequential on or for the purpose of giving full effect to any provision made by or under the Act.

Section 19 - Coming into force

67. Provisions of the Act will come into force in accordance with a commencement order made by Welsh Ministers, other than sections 19 and 20 which come into force on the day after the day on which the Act receives Royal Assent. Full details are given on page 1

Section 20 – Short title

68. This section establishes the Act's title as the Regulation of Registered Social Landlords (Wales) Act 2018.

Schedule 1

69. Schedule 1 is introduced by section 16.
70. The Schedule introduces a new Chapter 1A into Part 1 of the 1996 Act. Chapter 1A contains sections 7A to 7J.
71. This Chapter limits a local authority's influence over the board of an RSL, for example, having reserved places on the board and the power of veto over certain matters, and removes their voting rights as member.
72. Section 7A defines the key terms for the purposes of Chapter 1A.
73. Under section 7B, **after 15th August 2018**, no appointment may be made to a board of an RSL which would result in local authority appointees amounting to more than 24% of the board members of the RSL. This provision takes precedence over any rules of the RSL.
74. Section 7C sets out the procedure for RSLs and local authorities to follow to reduce the number of local authority appointees on an RSL board to ensure that no more than 24% of the members of the board of the RSL are local

authority appointees (the 24% limit). The purpose of this restriction is to give the local authority which appointed the members the opportunity to nominate which of its appointees are to be removed under section 7C

75. In the absence of a local authority nomination, the appointees to be removed should be selected by a majority vote of the non-local authority board members (see section 7D).

Summary:

- RSLs must comply with the reduction to 24% before the expiry of 4 months from the commencement date i.e. 15th December 2018 (4 months from the commencement date of 15th August).
- Local authorities may nominate which Board members to remove up to 2 months from the commencement date so in the period from 15th August to 15th October.
- If a local authority does not make any nominations in that time, the Act provides for the RSL to decide which members to remove and requires them to take that action by 15th December, the expiry of the 4 month period.

Local authorities and RSLs can agree changes on a voluntary basis in the pre commencement period should they so wish.

76. Section 7E provides that the provision of, any constitution or rules which require one or more local authority appointees to be present in order for a meeting to be quorate has no effect.
77. Under section 7F, any provision in an RSL's constitution or rules which requires more than 75% of the votes cast to pass a resolution is to be treated as only requiring 75% of the votes cast.
78. Under section 7G, any provision in an RSL's constitution or rules which requires the consent of the local authority or the local authority appointee before the RSL's rules or constitution can be changed, or provision which gives a local authority or local authority appointee the power of veto, is to be treated as having no effect. This provision takes precedence over rules so that the consent of any local authority nominee or the local authority as a corporate body is not required for a change to rules or the constitution.
79. Under section 7H, any provision in the rules or constitution of an RSL which gives a local authority the right to vote on resolutions of the RSL in the local authority's capacity as member of the RSL, is to be treated as having no effect. This provision takes precedence over rules. Local authorities no longer have a right to vote on resolutions of the RSL as a member (shareholder).
80. Under section 7I, any provision in an agreement between an RSL and another person which would, if it were included in an RSL's rules or constitution, be

treated as having no effect because of this Chapter, is to be so treated. This will capture, for example, any contractual agreements entered into between a local authority and an RSL as a result of stock transfer and the relevant provision in Chapter 1A supplants any contractual arrangements between local authorities and RSLs.

81. The Welsh Ministers may, by order, provide that any or all of the provisions of Chapter 1A do not apply to RSLs which are wholly-controlled local authority subsidiaries. This provision future proofs in the event a local authority is able or permitted to register an RSL which it wholly controls. **NB This is not permitted under current RSL registration criteria in Wales.**

Schedule 2

82. Schedule 2 sets out minor and consequential amendments made to legislation as a consequence of the other provisions set out in this Act.