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# The Housing (Wales) Measure 2011

# **THE HOUSING (WALES) MEASURE 2011**

Explanatory Memorandum to the Housing (Wales) Measure 2011.

This Explanatory Memorandum has been prepared by the Department for Environment, Sustainability and Housing of the Welsh Assembly Government and was laid before the National Assembly for Wales in accordance with Standing Order 23.18.

## **Members Declaration**

In my view the provisions of the Housing Measure, as introduced by me on 22 November 2010 would be within the legislative competence of the National Assembly for Wales.

Jocelyn Davies AM  
Deputy Minister for Housing and Regeneration  
Assembly Member in charge of the Measure

March 2011

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## **PART 1**

### **1. Description**

- 1.1 The Housing (Wales) Measure 2011 (“the Measure”) makes provision to support the more effective delivery of affordable Housing in Wales. The Measure contains two elements which are outlined below.
- 1.2 The Measure will take forward the commitment made in the *One Wales* coalition document enabling the Welsh Ministers, on application from a local housing authority, to suspend the Right to Buy, the Preserved Right to Buy and the Right to Acquire held by tenants of a social housing provider in Wales, in areas of housing pressure.
- 1.3 The Measure will also provide the Welsh Ministers with enhanced regulatory and intervention powers concerning the provision of housing by Registered Social Landlords.

## 2. Legislative background

2.1 The power to make Assembly Measures is provided by Part 3 of the Government of Wales Act 2006 (“the 2006 Act”). Section 93 of Part 3 of the 2006 Act allows the National Assembly for Wales (“the Assembly”) to make Measures. Section 94 requires that the provisions of a Measure fall within the Assembly’s legislative competence.

2.2 The competence relied upon for the Assembly Measure is contained in The National Assembly for Wales (Legislative Competence) (Housing and Local Government) Order 2010<sup>1</sup> (“the Order”) which amends Part 1 of Schedule 5 to the 2006 Act in Field 11 (housing) and Field 12 (local government). Article 2 of the Order inserts 8 new Matters, 7 into Field 11 (Matters 11.2 to 11.8) and 1 into Field 12 (Matter 12.18). The Order came into force on 22 July 2010.

2.3 Power over the disposals of Social Housing through the Right to Buy, the Right to Acquire and the Preserved Right to Buy are contained in Matter 11.5 as reproduced below:

Matter 11.5  
Disposals of—

- (a) social housing,
- (b) land held or used for the purposes of, or in connection with, social housing, and
- (c) land to which a provision of any of the following enactments applies—
  - (i) Part 2 of the Housing Act 1985;
  - (ii) Part 5 of the Housing Act 1985;
  - (iii) Chapter 2 of Part 1 of the Housing Act 1996;
  - (iv) Chapter 4 of Part 1 of the Housing Act 1996;
  - (v) Chapter 4 of Part 2 of the Housing and Regeneration Act 2008

(insofar as the disposal does not fall within paragraph (a) or (b) of this matter).

2.4 The right of tenants of social housing providers to buy the property in which they live is contained in 2 Acts of Parliament, the Housing Act 1985 (“the 1985 Act”) and the Housing Act 1996 (“the 1996 Act”):

- i. Part 5 of the Housing Act 1985 provides that a secure tenant has the right buy their dwelling-house (subject to conditions and exceptions). Where the landlord owns the freehold of a house,

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<sup>1</sup> S.I. 2010/1838.

the tenant has the right to acquire the freehold of the dwelling-house. Where the landlord does not own the freehold or the dwelling-house is a flat, the right is to be granted a lease of the dwelling-house. Exceptions to the right to buy are contained in Schedule 5 of the 1985 Act and the right to buy does not arise in those circumstances.

- ii. Section 171A of Part 5 to the 1985 Act sets out cases in which the right to buy is preserved, (called the Preserved Right to Buy or “PRTB”). The provisions of Part 5 continue to apply where a person ceases to become a secure tenant because the landlord has disposed of an interest in the dwelling-house to a person who is not an authority or body within section 80 of the 1985 Act (the landlord condition for secure tenancies). Section 171B of the 1985 Act sets out the extent of the PRTB and those persons to whom the provisions apply. Those tenants transferring under a stock transfer where a registered social landlord (such as a Housing Association) takes over the stock of a local housing authority have a PRTB. The tenants retain their right to buy despite the change of landlord.
- iii. Under section 16 of Part 1 of the Housing Act 1996 a tenant of a dwelling in Wales has the right to acquire the dwelling if the landlord is a Registered Social Landlord or a private Registered Provider of Social Housing, the tenancy is an assured or secure tenancy, the dwelling was provided with public money and has remained in the social rented sector and the tenant has satisfied further qualifying conditions applicable under Part 5 of the 1985 Act.

2.5 In the remainder of this document, the phrase “Right to Buy” is inclusive of the “preserved right to buy” and the “right to acquire”.

2.6 Powers over the Regulation of registered social landlords are contained in Matters 11.2 and 11.3 reproduced below;

Matter 11.2  
Social housing providers.

Matter 11.3  
Relevant social housing bodies.

Interpretation of this field

In this field—

“caravan site” means—

- (a) land on which a caravan or other mobile accommodation (apart from a tent) is stationed for the purposes of human habitation, and
- (b) land which is used in conjunction with land falling within paragraph (a) of this definition;

“local authority” means a county council or a county borough council in Wales;

“relevant social housing body” means a person (if, or insofar as, it is not a social housing provider) which has functions relating to—

- (a) social housing providers, or
- (b) social housing;

but such a person is a relevant social housing body only insofar as the person has functions relating to social housing providers or social housing;

“social housing” means any housing provided by a social housing provider;

“social housing provider” means—

- (a) a local authority, and
- (b) a person (other than a local authority) which—
  - (i) provides housing to, or
  - (ii) has functions relating to allocation of housing to, people whose needs are not adequately served by the commercial housing market; but a local authority or such other person is a social housing provider only insofar as it provides, or has functions relating to allocation of, housing.”

2.7 Current regulatory powers are vested in the Welsh Ministers by Part 1 of, and Schedule 1 to, the 1996 Act.

## **Current Regulatory Powers for Housing Associations Registered in Wales**

2.8 The Housing Associations Act 1985 confers a number of general functions on the Welsh Ministers, including functions, in section 75, to:

- facilitate the proper performance of the functions of registered social landlords;
- maintain a register of social landlords; and
- exercise supervision and control over such persons.

2.9 Section 36 of the 1996 Act provides that the Welsh Ministers may issue guidance with respect to:

- the management of housing accommodation by registered social landlords;
- the governance of bodies that are registered social landlords;
- the effective management of such bodies; and
- establishing and maintaining the financial viability of such bodies.

2.10 In considering whether action needs to be taken to secure the proper management of a registered social landlord's affairs or whether there has been misconduct or mismanagement, the Welsh Ministers may have regard to the extent to which guidance issued under Section 36 has been followed.

2.11 The Welsh Ministers also have a wide range of powers under housing legislation which include the power to make determinations as to standards of performance in connection with the provision of housing under Section 34 of the 1996 Act and specific powers under Schedule 1 to that Act.

2.12 Registered social landlords are aware that the Welsh Ministers have regard to the extent to which all relevant guidance has been followed when assessing whether regulatory action is necessary.

2.13 The Welsh Ministers issued a set of Delivery Outcomes for RSLs. The Delivery Outcomes set out "Key Expectations" which explain how the Welsh Ministers expect registered social landlords to operate in the identified areas.

2.14 Throughout, this Explanatory Memorandum the term "RSL" applies to social landlords that are registered with the Welsh Ministers under the terms of the 1996 Act. These bodies are more commonly known as "Housing Associations". Not all such associations choose to register with the Welsh Ministers, and thus become RSLs. The Measure only relates to RSLs and former RSLs. The Welsh Ministers are the regulator of RSLs.

### 3. Purpose & intended effect of the Measure

#### Right to Buy

##### Introduction

3.1 The Welsh Assembly Government's 'One Wales' programme for government contains the following commitment –

“Many communities experience severe housing pressure, with house prices far outstripping local wages. We are committed to tackling this problem in the worst affected areas using our new powers... We will draw down legislative power to the Assembly in order to suspend the right to buy in areas of housing pressure.”<sup>2</sup>

3.2 RTB has resulted in a significant reduction in the amount of social housing available for rent in Wales by people in housing need. Since 1981 over 46% of all local housing authority stock has been sold through RTB sales. Between 1997 and 2009 the number of homes rented from local authorities or RSLs reduced by 31,884. Dwellings rented from either local authorities or RSLs have fallen from 20% to 16% as a percentage of total dwellings in little over a decade.

3.3 Estimates of housing demand in Wales show that an additional 14,200 units per year are required in Wales up to 2026, over a third of which are expected to be needed in the non-market sector (i.e. social housing). These estimates show that without a large increase in new housing supply housing pressures are likely to remain throughout Wales<sup>3</sup>

3.4 In some areas, particularly in rural communities, very few properties remain in the social housing stock. The Joseph Rowntree Foundation published a detailed report<sup>4</sup> in June 2008 which highlights an increasing need for affordable housing in rural Wales. The ratio of average property price to average annual earnings is also a key indicator of need. Of the rural regions, Ceredigion recorded the highest ratio (7.3), with Powys a close second (7.1). Gwynedd, Conwy, Anglesey all scored at 6 and above. The research indicates the 2009, equivalent ratio for Wales as a whole was 5.4. These values illustrate that many people cannot access decent and affordable housing within or close to their local communities.

3.5 The numbers of vacancies in social housing has also continued to decrease as greater pressure is placed on the decreasing social housing stock. The numbers of vacant local housing authority dwellings fell from 4,500 at the end of March 2005 to 3,058 in March 2007, a fall from 2.9 to 2.0 % of the total stock. Of the 3,058 vacant dwellings only 573 were available for

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<sup>2</sup> One Wales- A progressive agenda for the government of Wales 27 June 2007 pg 16

<sup>3</sup> Housing Need and Demand in Wales 2006 to 2026, A report to the Welsh Assembly Government  
<http://wales.gov.uk/topics/housingandcommunity/research/housing/needanddemand/?lang=en>

<sup>4</sup> JRF Commission on Rural Housing in Wales – final report, June 2008

letting, many of which would have been in short term transition from one tenancy to another.

3.6 There is a risk that Right to Buy sales may impact on local authorities' efforts to deliver affordable housing in partnership with the Welsh Assembly Government. In areas of housing pressure, it is especially important to preserve a stock of social housing stock in order to meet the demands of people on modest incomes who are in housing need. To maintain the level of the social housing stock, while other actions are taken, the Measure would enable local authorities to designate areas in an application to the Welsh Ministers for approval to where the Right to Buy may be suspended for a limited period (of up to 5 years).

3.7 The objective underlying the Measure is to provide social housing providers with a period of grace (when the statutory rights are suspended) to enable the supply of affordable housing in the area to be increased by other means. When the supply and demand are in closer alignment and the period of suspension ends, it is intended that tenants will be able to exercise their statutory rights once again. The Welsh Assembly Government is seeking to improve provision for people who are homeless and need a property to rent – whilst also recognising the long term aspirations of those who wish to buy their homes.

3.8 It is intended that any application for suspension of the RTB should be based upon cogent evidence and discussed with local Registered Social Landlords and tenants' groups before being submitted. The Welsh Ministers would consider the application and decide whether or not to suspend the statutory rights. In its application (amongst other things) a Local Housing Authority must explain what action it proposes to take to reduce the imbalance between the demand for social housing and its supply within its area during the period for which the direction is to have effect. The Regulatory Impact Assessment in Part 2 of this Memorandum indicates that while suspension of the Right to Buy will protect the stock of social landlords available to meet housing need, it may impact on the local housing market and would not of itself increase the availability of housing. Therefore the Measure would allow for a period of grace in which the social housing stock can be increased by other means such as through the section 106 planning process.

3.9 The major risk of not making the legislation is that efforts to expand the available stock of affordable housing for rent will be undermined or reversed by sales under the Right to Buy. This will impair local authorities' capacity to meet statutory obligations to those presenting as homeless, or their capacity to meet other demands for social housing for rent beyond those statutory obligations. Conversely, the legislation, will allow time to increase the availability of housing for people in need.

3.10 In summary, the power to apply for suspension of the Right to Buy cannot itself create new affordable housing. It can however ensure that social housing provision is not reduced in areas of housing pressure, while other action is taken to expand it so that it is more closely aligned to demand in a local housing authority area.

3.11 The policy objective is to maintain the stock of affordable housing in pressured areas for rent by people in housing need, so that it is not diminished by sales under the Right to Buy. Possible alternative methods of achieving this aim were considered including reducing further the discount on Right to Buy sales, so as to discourage the tenant from exercising their right to buy..

3.12 These options would all reduce Right to Buy sales, but have the disadvantage that in many cases they would remove rights from tenants when there is no evidence that housing pressure exists in their area and that the Right to Buy exacerbates that pressure. The Regulatory Impact Assessment in Part 2 of this Memorandum illustrates that housing pressure is variable across Wales. The Welsh Assembly Government also recognises that local authorities, as strategic housing authorities, are best placed to assess where suspension of the Right to Buy could provide a useful addition to their powers to provide affordable housing for people in housing need. For these reasons the option chosen for the Measure is to give local housing authorities the power to apply to the Welsh Ministers for suspension within a specific pressurised area.

## **Regulation of Registered Social Landlords**

### **Introduction**

3.13 In 2007 the Deputy Minister for Housing and Regeneration commissioned a task & finish group to review of Housing in Wales. Work began in October 2007, led by Former Minister for Local Government Sue Essex. Ms Essex was joined in December by Dr Robert Smith, Director of the Regeneration Institute at Cardiff University and Dr Peter Williams, formerly Deputy Director General of the Council of Mortgage Lenders (CML). The group's findings and recommendations were published in 2008.

3.14 The report recommended the need for urgent reform and upgrading of the regulatory arrangements in Wales;

*"The requirement for more homes and better services is Wales-wide and the regulatory framework needs to ensure there are organisations fit for purpose across Wales delivering it."*<sup>5</sup>

3.15 The aim of the Welsh Assembly Government is to set up a regime which is more transparent with clear performance requirements and compliance mechanisms in place. The new regime will ensure that key organisations will be better placed to respond to the 'One Wales' and the 'Making the Connections' agendas. It will give a stronger role to local housing authorities, residents and tenants. The new regulatory regime will help RSLs make better use of their resources and help secure more resources because investors - both public and private - will have more confidence in the new regulatory regime.

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<sup>5</sup> Affordable Housing Task and Finish Group- Report to the Deputy Minister June 2008 pg 50

3.16 The work surrounding the new regulatory regime will support the objective of the One Wales programme for Government that 'Everyone has a right to an affordable home as owner, as part-owner or as tenant. A stock of good quality affordable homes is the foundation of thriving local communities'

### **New Regulatory Framework for Registered Social Landlords in Wales**

3.17 It is against this background that the Welsh Assembly Government is now developing a new modern regulatory framework. Working closely with the sector and other stakeholders, new key principles have been developed with a new approach to regulation in Wales. Wide consultation has taken place which has received positive feedback and support for this new approach.

3.18 The core principles which underpin the new regulatory framework aim to:

- drive strong accountability;
- provide a citizen focused approach;
- maintain transparency;
- retain independence and impartiality;
- deliver consistent judgments;
- inform policy review and development;
- promote effective governance and planning, improvement and shared learning and;
- drive a strategic, rather than resource intensive approach to regulation.

3.19 A range of independent outcome based business tools, such as Self Assessments, Annual reports, Audited Financial Statements and other performance indicators, sit alongside the core principles to provide management with strong and clear focus on business performance. The various tools inform the Welsh Ministers of the level performance achieved through a Housing Association Regulatory Assessment.

3.20 The Regulatory Assessment will necessitate appropriate responses. These responses will cover a potential broad range from "improvement and support" to the more formal "regulatory intervention" where there is evidence of financial or performance failure. Assessment may include specific commissioned inspections or broader themed inspections of the elements of service delivery across the sector.

3.21 An independent advisory Regulatory Board, as recommended by the Essex review, has been established, to oversee the process and provide accountability lines for the Welsh Ministers). This Board is non-statutory and is made up of representatives from key organisations in Wales and some public appointments. It will also create a robust platform for the capture of tenants' views.

3.22 The Board will receive an annual report from the Welsh Ministers on the delivery of the regulatory framework and the performance of the sector, alongside other reports and information, and will be able to provide advice as appropriate.

3.23 The RSL sector in Wales is a major contributor to the provision of affordable housing. However, in recent years the sector has been engaging in regeneration activities and community development. A study commissioned by Community Housing Cymru (CHC) in 2008 and carried out by the Welsh Economy Research Unit estimated that the RSL sector in Wales spends almost £500m a year and provides 14,000 jobs, directly and indirectly.

3.24 In order to maintain this significant level of investment and secure more funding in the future, there is a need to increase lenders' confidence in the sector. Therefore, whilst the new regulatory regime is designed to be flexible and responsive, it also needs to be sufficiently rigorous to ensure that the sector is compliant with the new delivery outcomes and remains financially strong and viable.

3.25 The Measure aims to provide additional powers to facilitate early preventative intervention by the Welsh Ministers. These powers would allow the Welsh Ministers to initially direct the organisation to take remedial or corrective measures to ensure that services to tenants continue without threat to an RSL's financial viability.

3.26 In the event of an RSL failing to respond, the Measure would provide the Welsh Ministers with powers to intervene and, where necessary, engage another suitably qualified provider to take on delivery of the service.

3.27 The Measure would also allow the Welsh Ministers, where appropriate, to impose a penalty where a RSL has failed to address certain concerns which have been drawn to its attention.

3.28 The Welsh Ministers should be able to respond to each case within a reasonably short time scale to limit any damage to the RSL, its tenants and service users, as well as the reputation of the sector.

3.29 Experience has shown that where such powers are in place, they act as an incentive to good management and a deterrent to any detrimental actions. Given the maturity and professionalism of the sector it is hoped such intervention would be very rare.

### **The effects of the legislation- Right to Buy**

3.30 This section summarises the main effects of the Measure. It should be read in conjunction with the Explanatory Notes at Annex 2, which provides a more detailed explanation of each section of the Measure.

#### Applications for suspension of the Right to Buy

3.31 The Measure provides that local housing authorities may apply to the Welsh Ministers for a direction to suspend the right to buy and related rights in its area for a period of up to 5 years if they have consulted for a period of 6 months preceding the application and, in light of that exercise, the authority concludes the condition (the housing pressure condition) exists. Local housing authorities must include a draft direction which identifies the area to which it is

apply (whether whole or part of the area), whether the direction is to apply to a relevant dwelling-house and if not, to describe the type or types of dwelling-house to which the direction is to apply. It is a local housing authority that may apply for a direction since they are best placed to decide whether an application is appropriate in terms of addressing housing provision in their area.

3.32 An application for suspension from a local housing authority must include a draft of the direction which;

- identifies the area in respect of which a direction is to apply;
- state whether it is to apply to every relevant dwelling-house within the area and, if not, describe the type(s) of relevant dwelling-house to which it is to apply.
- The period for which it the direction is to have effect not exceeding 5 years;
- An explanation why the authority has concluded the housing pressure condition exists;
- An explanation why the authority considers the direction is an appropriate response to its conclusion the housing pressure condition exists;
- explain what other action the authority proposes to take to reduce the imbalance between the demand for social housing and its supply within its area during the period for which the direction is to have effect; and
- describe how the consultation requirement has been discharged.

Repeat applications

3.33 If the Welsh Ministers have refused to grant an application for a direction, a local housing authority cannot apply for a direction that is substantially the same for a period of two years from the date of refusal.

A period of 2 years also applies to an application for a direction that is substantially the same as one already issued - whether or not that has been varied or extended.

### Guidance

3.34 The Measure provides that a local housing authority must have regard to any guidance given in writing by the Welsh Ministers in the exercise of the authority's functions under sections 3, 10, 15, 20 and 24..

### Consultation prior to making an application for suspension

3.35 Before making an application in relation to an area, the Measure provides that a local housing authority must consult—

- every social housing provider which appears to the authority to be a landlord of a dwelling-house situated in the authority's area and which the local housing authority considers would be affected by the direction;
- such bodies representing the interests of tenants in the area who the local housing authority considers will be affected,
- any other local housing authority whose area is adjacent to the area to which it is proposed that the direction is to apply, and
- such other persons, as the authority considers appropriate.

3.36 Consultation with the appropriate Registered Social Landlords could consider a number of factors including the potential effect on their business plan which may be based on anticipated receipts from Right to Buy sales.

3.37 It is for the local housing authority to decide the precise part of its area that it wishes to include in an application for suspension of the Right to Buy or which type(s) of property a direction would apply to that is under particular pressure, eg family size homes. The flexibility offered by these provisions will make a suspension application a useful mechanism to address housing needs in areas with varying supply and demand.

#### Duration of the suspension period

3.38 In preparing an application for suspension, consideration will need to be given to balancing the rights of tenants to exercise the Right to Buy with the need of other persons for available rented housing. The position may change over time as efforts to increase the supply of affordable housing reach fruition. However, demand may also change. The period for suspension should not, therefore, be so long that it becomes out of step with local conditions. The Measure therefore provides for a period of up to five years.

3.39 However, if towards the end of the suspension period, demand for social housing in the relevant area still faces housing pressure, despite the local housing authority's endeavours to improve the supply, it will be open for the local housing authority to submit an application to extend the suspension period.

3.40 The application may be for the same part of the authority's area, or a different part (e.g. if problems only exist in a smaller part of the original area-see paragraph 3.26 below). The application to extend will be decided upon the same criteria as a new application and require the same consultation criteria as in paragraph 3.34. However in addition, an application for extension must explain what other action has been taken by the authority since the issue of the original direction to address the housing pressure condition. The duration of the additional period may not exceed five years.

3.41 A local housing authority may apply for the extension which has already been extended, but an extended direction may not have effect beyond ten years from the date on which the original direction was issued.

3.42 Where the Right to Buy has been suspended up to the maximum period of ten years, a local housing authority must wait 2 years from the date on which the direction ceased to have effect before it may submit an application which is substantially the same.

### Decision Making

3.43 The Measure provides that the Welsh Ministers are able to consider an application from a local housing authority for a direction suspending the Right to Buy in any part of the local housing authority's area and must grant the application if they agree with the local housing authorities assessment of housing pressure, agree that suspension is an appropriate response, are satisfied that the actions proposed are likely to contribute to a reduction in the imbalance between the demand for social housing and its supply, and are content that the local housing authority has conducted a suitable consultation.

3.44 The Welsh Ministers must grant or reject an application within six months beginning with the date on which they decided to consider the application.

Where the Welsh Ministers grant a local housing authority's application under section 5, they must issue in writing a direction which:

- clearly identifies the area to which it applies;
- states whether the direction applies to every relevant dwelling-house within that area;
- clearly describes the type(s) of dwelling-house to which the direction applies if the direction does not apply to every relevant dwelling-house;
- states the period for which it is to have effect (must be no longer than 5 years from the date of issue).

3.45 The Right to Buy would be suspended for tenants in the area(s) covered by the direction for the period specified. The suspension would also apply to new tenancies if they start when a direction is in force and to those who exchange or succeed to a tenancy in an area where there is a direction.

### Enlarging and reducing variations

3.46 The Measure contains provision to allow local housing authorities to request a variation of the direction to alter the areas or type of housing to which suspension applies. The provision is designed to enable the suspension process to respond to significant changes in local circumstances.

3.47 If the local housing authority is applying to vary a direction so that it applies to an area or type of housing to which it did not previously apply (ie an "enlarging variation") the application process, as outlined in section 5 of the Measure must be followed. This involves consulting with those persons outlined in section 9(3) of the Measure including any other local housing authority. If the local housing authority wishes to reduce the effect of the direction, there is no requirement for consultation prior to submitting an application for a "reducing variation".

### Effect of the Direction

3.48 The direction will state the period for which is to have effect. Where the Welsh Ministers decide to consider the local housing authority's application, any claim by a tenant to exercise the right to buy is stayed unless withdrawn by the tenant. The provision is designed to prevent properties having to be sold under the statutory schemes before the Welsh Ministers announce their decision.

3.49 Tenants would have notice of the possibility of suspension when the local housing authority consults tenants' groups as required before an application is made. However, while the Welsh Ministers are considering an application, the tenant may not claim to exercise the right to buy under section 122 of the Housing Act 1985 (see above) and any application to suspend the right to buy during consideration is stayed. If the application for a direction is granted, the claim to exercise the right to buy is deemed not to have been made.

3.50 If the Welsh Ministers have not granted or rejected an application for a direction within six months beginning with the date on which they decided to consider the application, the stay will be lifted on the day after the end of that period. However, the Welsh Ministers may still make a valid decision after six months.

### Publication of the Direction

3.51 Following the issue of a direction, as soon as reasonably practicable the local housing authority must publish it in whatever manner it thinks appropriate and take other reasonable steps to bring the direction to the attention of persons likely to be affected by it. The authority must also take other reasonable steps to bring a direction, or revocation of a direction to the attention of persons likely to be affected by it.

### **The Effect of the Measure - Regulation of Registered Social Landlords**

3.52 This section summarises the main effects of the legislation. It should be read in conjunction with the Explanatory Notes at Annex 2, which provide a more detailed explanation of each provision of the Measure

3.53 The Measure, if approved will provide Welsh Ministers with Intervention and Enforcement Powers similar to those exercisable by the Tenant Services Authority ("the TSA") which is the regulator in relation to Providers of Social Housing registered in England under the Housing and Regeneration Act 2008. The powers contained in the Measure are set out below;

### Voluntary undertaking

3.54 The Measure would enable the Welsh Ministers to accept a voluntary undertaking from a RSL in respect of any matter concerning social housing. The Welsh Ministers must have regard to that undertaking when exercising any power under the Measure. This provides a means by which the Welsh Ministers can identify a problem and ask for a voluntary undertaking to resolve it.

### Appointment of Interim Manager

3.55 The Welsh Ministers may appoint an interim manager of a RSL to manage during a moratorium on the sale of the RSL's land in the case of insolvency. The interim manager can be appointed to manage the general affairs of the RSL or for a specific matter. The Welsh Ministers already have powers under the 1996 Act to impose a moratorium on the sale of land in the case of insolvency but cannot currently appoint a manager during the moratorium period.

### Making standards mandatory and enforceable

3.56 The Measure will strengthen the powers over standards that are currently held by Welsh Ministers. These powers are intended to make enforceable the requirements imposed on RSLs, so that steps may be taken before intervention becomes necessary.

### Inspections

3.57 The Measure would provide for the Welsh Ministers to be able to arrange inspections where necessary to obtain evidence. However, the inspector may not enter residential accommodation (whether the residential accommodation is the whole of, or only part of, premises occupied by the registered social landlord).

### Enforcement notice

3.58 The Measure would enable the Welsh Ministers to issue an enforcement notice to a RSL in a range of circumstances as outlined in the explanatory notes. This would enable the Welsh Ministers to take targeted action to require a RSL to put right specific problems. The Enforcement Notice would set out the grounds on which it was given and specify the actions to be taken by the RSL and the timeframe in which they must take place.

### Penalties

3.59 The Measure provides powers for the Welsh Ministers to impose a financial penalty on a RSL in various specified circumstances. The circumstances all involve some failure on the part of the RSL to comply with requirements imposed on them. Any financial penalty issued may not exceed £5000. Before issuing a penalty notice Welsh Ministers must give the RSL a warning (pre-penalty notice). The warning will specify the grounds on which the Welsh Ministers are considering a penalty and indicate if the Welsh Ministers are willing to accept a voluntary undertaking instead of issuing the penalty.

### Compensation

3.60 The Welsh Ministers could, under the Measure, require a RSL to pay compensation to specified individuals or groups affected by the RSL's failure to meet standards or comply with undertakings. As with a penalty, the Welsh

Ministers must issue a warning notice, before requiring compensation to be paid.

#### Management tender

3.61 Under the Measure the Welsh Ministers are able to require a RSL to put its management functions out to tender if the Welsh Ministers are satisfied that the RSL has failed to meet certain standards or has mismanaged its affairs.

#### Transfer of management

3.62 The Measure would enable the Welsh Ministers to require an RSL to transfer management functions to a specified person if the Welsh Ministers are satisfied that the affairs of the RSL have been mismanaged or a transfer of certain of the RSL's management functions would be likely to improve the management of some or all of its social housing.

#### Appointment of manager

3.63 The Measure would enable the Welsh Ministers to appoint, or require the RSL to appoint an individual as manager of the RSL if the Welsh Ministers are satisfied that the RSL has failed to meet certain standards or has mismanaged its affairs.

#### Amalgamation

3.64 Under the Measure, the Welsh Ministers would be able to provide for the amalgamation of an RSL with another RSL if the Welsh Ministers are satisfied that the RSL has failed to meet certain standards or has mismanaged its affairs.

#### Restriction on Dealings

3.65 The Measure enables the Welsh Ministers to restrict certain dealings of the RSL during an inquiry. Restrictions can be imposed if the Welsh Ministers have reasonable grounds for believing the RSL has been mismanaged or to protect the interest of tenants of the RSL.

## 4. Consultation

### Right to Buy

4.1 The Assembly Government's Housing Directorate undertook a wide-ranging consultation with local housing authorities, registered social landlords and other relevant all Wales organisations during the Summer of 2008. The consultation document was also available to the public on the Welsh Assembly Government website. The directorate also held a workshop to discuss the policy proposals with a sample of stakeholders on 8 July 2008

4.2 The consultation document and summary of responses may be accessed via the following link:

<http://new.wales.gov.uk/consultations/closed/housing/suspendrighttobuy/?lang=en>

4.3 The summary of responses lists the organisations specifically invited to respond. 22 responses were received by the deadline. 9 responses were from local housing authorities, 9 were from housing associations, and the remainder were from the Tenant Participation and Advisory Service Cymru, Citizens Advice Cymru, Shelter Cymru, and Community Housing Cymru.

4.4 In addition to these 22 responses, the Wales Council for Voluntary Action responded indicating that while they welcomed being included in this consultation, they did not respond specifically to consultations on matters more appropriately covered by specialist umbrella bodies.

4.5 Respondents generally agreed with the proposals contained within the document and the Measure incorporates the views of stakeholders. For example respondents agreed that the proposals should cover secured and assured tenancies and that local housing authorities only should be able to make applications.

4.6 Respondents cited the importance of consulting tenants groups before making an application to suspend; as a result the Measure has been drafted to reflect the importance of consultation. Most respondents agreed that applicants should be able to decide on particular types of property to be subject to suspension and there was no consensus on excluding particular types of property, the Measure therefore reflects these views.

4.7 Most respondents to the consultation considered that five years was a reasonable period for suspension and that a further extension of up to five years should be permitted. The consultation asked if Welsh Ministers should have discretion to vary the extent of the area or type of housing contained in the application. Respondents considered that Welsh Ministers should not have this discretion and the Measure reflects this position.

4.8 Further to the formal consultation in 2008 the proposals for the Measure were presented the Housing Programme Board on 20 September 2010. The Housing programme board contains a wide section of stakeholders from the

housing sector, including representatives from tenants organisations and local housing authorities. The board unanimously endorsed the provisions in the Measure.

## **Regulation of Registered Social Landlords**

4.9 The development of a new Regulatory Framework for Registered Social Landlords in Wales stems from the recommendations of the 'Essex Report.'<sup>6</sup> The report was produced following extensive consultation with the RSL sector, tenants and tenant organisations as well as lenders including the Council for Mortgage Lenders. The Essex Report's recommendation for developing a new framework for Regulation, which incorporates the views of stakeholders, can be read in Chapter 4<sup>7</sup> of the report.

4.10 In April 2009, the Welsh Assembly Government consulted widely on the principles and key elements of developing a new framework for the Regulation of RSLs in the consultation document "Developing a Modern Regulatory Framework for Housing Associations in Wales".

4.11 Respondents collectively welcomed the Welsh Assembly Government's commitment to develop a modern regulatory framework and to provide the necessary internal capacity and resource. Respondents also indicated, in the main, an encouraging recognition that the core principles for the proposed new framework could provide a strong platform for development, and the key elements should provide a cohesive set of actions for RSLs and the Welsh Ministers. The summary of responses to this consultation can be found here:

<http://wales.gov.uk/consultations/housingcommunity/regulatoryframework/?lang=en>

4.12 As part of the development of a modern regulatory framework, two further consultations have been conducted. The ongoing consultation reflects the development of this framework through co-production with the housing sector. The consultations in December 2009 and March 2010 focused on Performance Standards for Registered Social Landlords. It is these standards that will be underpinned by the enforcement and intervention powers in the Measure. The results of these consultations have been developed into a set of Delivery Outcomes (or standards) for RSLs. These Delivery Outcomes have been informed by consultation but they have been jointly produced with Community Housing Cymru, the umbrella body for Registered Social Housing in Wales.

Delivery Outcomes

<http://wales.gov.uk/topics/housingandcommunity/housing/publications/deliveryoutcomes/?lang=en>

4.13 A number of important perspectives, provisos and concerns, and some common key themes, emerged from the consultation exercise, are being

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<sup>6</sup> Affordable Housing Task and Finish Group- Report to the Deputy Minister for Housing June 2008

<sup>7</sup> <http://wales.gov.uk/topics/housingandcommunity/housing/publications/essexreview/?lang=en>

reflected in the ongoing development of the framework and further consultations, notably:

- Ensuring self assessment is not a prescriptive process, but allows a local approach to reflect local circumstance;
- Establishing clear standards of service that underpin self assessment and evaluation;
- Supporting the challenge of building board capacity & empowerment to drive self assessment and change;
- Embedding a critical focus on financial viability and financial management arrangements into self assessment and the Regulatory Assessment processes;
- Ensuring the strategic housing enabling role of local housing authorities, and relationships with RSLs, are properly reflected;
- Ensuring the framework allows for evaluation of RSL engagement with, and contribution to, broader community based strategies and initiatives; and
- Considering the potential for a more holistic regulation of all social housing.

4.14 A further consultation into the approach to making performance judgements has recently been conducted<sup>8</sup>. This consultation again demonstrates a commitment to working with the sector to produce a robust regulatory framework. The regulation team is committed to review the impact of the first year of the framework and this will be carried out with 18 months in conjunction with Community Housing Cymru and RSLs.

4.15 The powers contained in the Measure support the development of a modern regulatory framework for housing in Wales. As part of the framework a set of delivery outcomes have been established for the sector. The Measure underpins these outcomes with powers designed to ensure the highest standards are achieved.

## **5. Power to make subordinate legislation**

5.1 The Measure contains provisions to make subordinate legislation. *Table 1* below sets out in relation to each provision:

- the person upon whom, or the body upon which, the power is conferred;
- the form in which the power is to be exercised;

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<sup>8</sup><http://wales.gov.uk/consultations/housingcommunity/housingframeworkphase3/?lang=en&status=open>

- the appropriateness of the delegated power;
- the applied procedure (affirmative, negative, no procedure) if any.

Table One- Summary of powers to make subordinate legislation

Section	Power Conferred on	Form	Appropriateness	Procedure	Reason for procedure
6/13/17/22 (Direction in relation to an application)	Welsh Ministers	Direction	Suitable as confirmation of decision to suspend (or extend a suspension application) or expand or reduce the area or type of property in the area in response to an application from one or more local housing authorities in Wales.	No procedure	To issue a Ministerial decision to a local housing authority on the authority's application.
34 (power to make Consequential provision)	Welsh Ministers	Order	Suitable for order as provision relates to technical details of amendments to legislation that may be needed as a result of changes made in the Measure.	Negative Resolution except Section 34(3)(a) which is subject to the Affirmative Resolution procedure where the Order amends, repeals or revokes any provision of an Act of Parliament or Measure of the National Assembly for Wales	Section 34(3)(a) requires consequential amendments to an Act of Parliament or Assembly Measure to be made via the affirmative resolution procedure. For other consequential provisions, the negative procedure is appropriate
36 (Commencement)	Welsh Ministers	Order	Suitable for Order as provision relates to coming into force of Parts 1-4 of the Measure on a date to be decided by the Welsh Ministers	No Procedure	It is usual for commencement orders not to be subject to any

					procedure.
59 (level of Penalty)	Welsh Ministers	Order	Suitable for order-making powers as they follow the intent of the Measure and will allow future amendments if needed.	Affirmative	The fact that this provision allows the Welsh Ministers to amend the maximum penalty means that the affirmative procedure is appropriate

## **6. Regulatory Impact Assessment**

6.1 A Regulatory Impact Assessment has been completed in accordance with Standing Order 23.18 (vi) for the Measure.

## A. Right to Buy

### Background and Options

6.2 This Regulatory Impact Assessment reflects the broad costs and benefits associated with Right to Buy/Right to Acquire (RTB<sup>9</sup>/RTA<sup>10</sup>) and a policy to suspend it in high demand areas. However, it should be noted that the actual impact will depend upon which local housing authorities apply for and are subsequently granted the suspension. If no local housing authorities apply to suspend, the legislation will have no impact, costs or benefits. Local housing authorities will be required to assess the costs and benefits of the suspension in their area if they choose to make an application for pressured-area status.

6.3 In addition to the uncertainty from the actual number of suspensions that are granted there is also the uncertainty generated from the housing market and wider economic conditions. As the economy moves out of recession it is difficult to forecast whether the housing market (and more crucially social housing sales) will recover to pre-recession levels. Therefore, we have not attempted to estimate monetised impacts. This impact assessment, therefore, provides an indication of the main areas where costs and benefits will arise and considers the distributional implications.

### Economic context

6.4 The credit crunch and resulting recession had a significant impact on the supply and demand for housing both in the private and social housing sectors. The demand for private sector housing fell as credit became more expensive creating so-called mortgage rationing<sup>11</sup>. Demand for private sector housing was further depressed following uncertainty over job security and wider economic conditions during the recession. This uncertainty is likely to continue following the fiscal consolidation announced by the UK Government in Budget 2010. Demand for social housing is also likely to increase as a result of the increase in the number of repossessions<sup>12</sup>.

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<sup>9</sup> The Right to Buy scheme allows secure tenants of local authorities and Registered Social Landlords to buy their home at a discounted price. Right To Buy discounts range from 32% to 70% up to a maximum of £16,000. The discount will depend on the type of property and time spent as a tenant of social housing.

<sup>10</sup> The Right to Acquire gives qualifying tenants of Registered Social Landlords a right to purchase their homes if they were provided using Social Housing Grant, or transferred from a local authority after April 1997. A flat rate discount of 25% of the market value is given, subject to an overall maximum of £16,000. The Right to Acquire does not apply to certain types of property and does not apply in designated rural areas.

<sup>11</sup> Gross mortgage lending reached an estimated £12.6 billion in December 2008, down 11% from £14.2 billion in November and 47% on December 2007, according to the Council of Mortgage Lenders. The property research company Hometrack said 28.3% of young working households were priced out of the market due to rising mortgage rates and tighter lending conditions.

<sup>12</sup> The number of repossession claims made in 2008 was 3.6% higher than in 2007 and some 35% higher than in 2009.

6.5 As a result of the fall in demand for private sector housing, average house prices fell during the recession<sup>13</sup>. This had an impact on new supply. According to the National Homebuilding Council (NHBC) the number of new homes being started in Wales decreased by 60% over the course of 2008. In 2007 the NHBC received 8,764 applications from builders building new homes; but 12 months later it was 3,640. Land-owners (including public sector) became more reluctant to sell their sites until land and property values rise again. Many developments became economically unviable leading to reduced supply of both private sector and affordable housing completions via Section 106 agreements.

6.6 As the economy recovers house prices are expected to rise again leading to a recovery in new housing completions. However, there remains some uncertainty over the strength of this recovery.

## Background

6.7 The Barker Review (2004) highlighted potential issues underlying the lack of supply and responsiveness of housing in the UK. In particular, the implications arising from a lack of suitable, affordable housing were outlined. An insufficient supply of affordable homes has the potential to result in both social and economic costs. Deteriorating affordability tends to be associated with house price volatility, which can translate into wider macroeconomic instability, as house price changes alter household spending decisions. A lack of affordable housing in a specific area may also impact upon the local economy and community if the housing needs of key workers are not met. In addition, a lack of affordable homes can lead to overcrowding with families living in accommodation that does not meet their needs; there may also be a potential increase in homelessness.

6.8 Dwelling stock estimates show a steady fall in local housing authority and RSL dwellings. The split between local housing authority and RSL dwellings is complicated following the large scale voluntary stock transfers of local housing authority housing stock to newly formed RSLs (**table A** in Annex 1 provides more details). Dwellings rented from either local housing authorities or RSLs have fallen from 20% to 16% as a percentage of total dwellings in little over a decade<sup>14</sup> (see **table B** in Annex 1). Since 1981 over 46% of all local housing authority housing stock has been sold through RTB sales. As one would expect there is a large degree of variation across local housing authority areas in Wales. As **table A** in Annex 1 shows Torfaen has the lowest percentage of owner-occupied dwellings. **Figure A** in Annex 1 shows there is a correlation between the proportion of social housing in a local housing authority area and deprivation. This suggests that any change in RTB/RTA legislation will not only have a differential impact across areas but may also have distributional implications. This will be discussed later in the review of options.

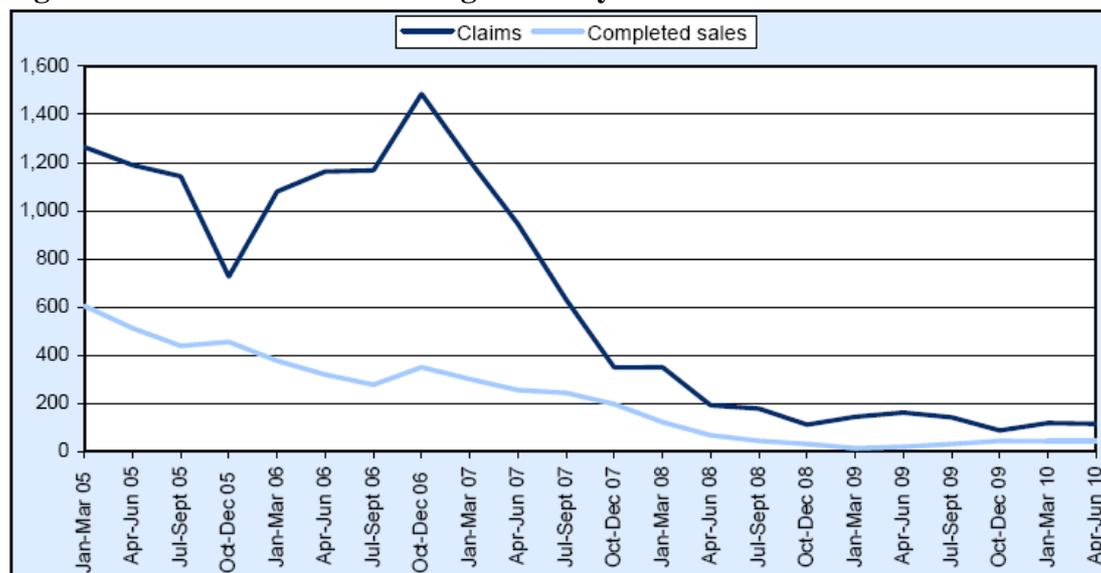
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<sup>13</sup> During 2008 average (private sector) house prices in Wales fell by over 12%.

<sup>14</sup> In 1971 dwellings rented from local authorities was some 28% with owner occupation representing 55% of the total number of dwellings. Private sector represented the remaining 16% of all dwelling in Wales.

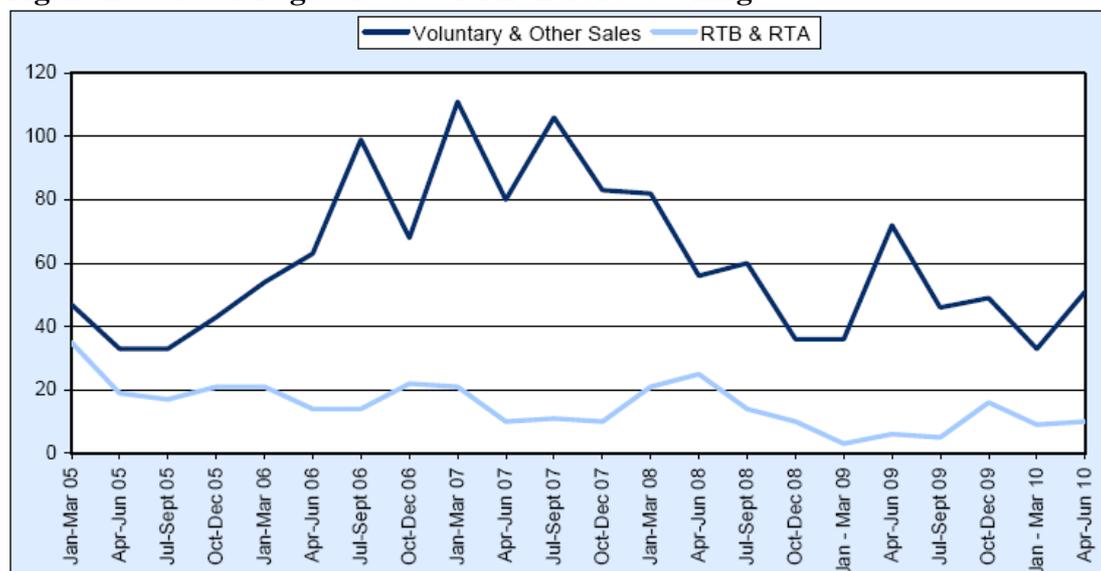
6.9 One of the main reasons for the fall in the number of local housing authority and RSL dwellings has been the increase in the number of sales, predominately under the RTB/RTA. While the volume of RTB and RTA sales have fallen in recent years as a result of the UK recession (see **Figures 1 and 2**), since 1999 over 33,500 social housing units were sold, 92% of which were through RTB or RTA, this represents 13.5% of the total local housing authority and RSL housing stock in 1999.

**Figure 1: Number of local housing authority RTB claims and sales**



Source: Welsh Assembly Government

**Figure 2: Sales of Registered Social Landlord dwellings**



Source: Welsh Assembly Government

6.10 There is some evidence that Right to Buy can affect the mix of social housing property, with Right to Buy exercised more frequently for larger family homes than flats. For instance in 2007/08, 88.8% of Right to Buy sales in Wales were houses. This may mean certain households will not have access to social housing that is suitable for their needs in some areas. However, although the overall stock of social housing has declined, the stock of social

housing by property size has been fairly stable in Wales overall, as **Table C** in Annex 1 shows. This impact may therefore be fairly small. There has however, been a slight decline in unitary authorities stock of 3 bedroom homes. Registered social landlord stock is distributed fairly evenly between 1, 2 and 3 bedroom properties. There is however, considerable variation in the stock of property type by local housing authority.

6.11 Sales are only one aspect of the housing market. In total, over 6,000 new dwellings were completed in 2009-10, which is a fall on previous years (**Table D** in Annex 1 provides more details). The private sector was responsible for the majority of new supply on the market and very few completions by local housing authorities. The latest quarterly data (Q2 2010) shows a 35 per cent increase in new starts compared to the same time last year. The number of new starts by RSLs was the highest quarterly figure for 10 years. Despite those increases, the number of new starts is still well below pre-recession levels.

6.12 This impact assessment concentrates on the supply of affordable housing. Following the Essex Review (2008) a target for delivering 6,500 additional affordable homes between 2007 and 2011 was set by the Welsh Assembly Government. Between 2007-08 and 2008-09 65% of those affordable homes were completed<sup>15</sup>. Much of the new supply (on average 78%) was delivered by RSLs funded predominately by Social Housing Grant. While this new supply of affordable housing will contribute to ease housing pressures there is great variation in new affordable housing supply meaning that some local pressures will be unaffected (see **Figure B** in Annex 1).

6.13 Private housing market conditions will be one of the factors that will be responsible for the number of RTB and RTA sales. One of the features of RTB/RTA is the discount available whereby properties can be bought at below market valuation. These discounts range from 32% to 70% of the property's value, subject to an overall maximum of £16,000<sup>16</sup>. It should be noted that the availability of a discount is an important part of RTB/RTA policy to support first time buyers and home ownership more generally.

6.14 Clearly buying the property that households currently rent can be an attractive alternative to buying a home on the private market, especially so when private house prices are high compared to local incomes. **Table 1** shows data on affordability<sup>17</sup> and shows that affordability has worsened in recent years as a result of rising house prices relative to income growth. There is also greater pressure in some local housing authority areas in Wales. However, this ratio applies to working households only; high levels of

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<sup>15</sup> For further details see Affordable Housing Provision in Wales, 2007-08 and 2008-09, Statistical Bulletin 38/2010, Welsh Assembly Government.

<sup>16</sup> The discount will depend on the type of property (e.g. house or flat) and time spent as a tenant of a social landlord.

<sup>17</sup> Housing affordability can be measured in a number of ways. A common approach is to look at the ratio of lower quartile house prices to lower quartile incomes. An alternative is to measure deposit to income ratios and mortgage payment to income ratios. It should be noted here that UK data shows mortgage payments as a percent of income at or close to an all-time low. However, easing of affordability on this measure will only help those that either currently have a mortgage or those able to obtain a mortgage during a time when the average deposit required has been increasing (typically at 25% of the property's value).

economic inactivity in some areas (especially in the South Wales Valleys) mean a large proportion of households in these areas may also be unable to access the private housing market. The demand for social housing is likely to vary considerably between unitary authorities. **Figure C** in Annex 1 shows that average house prices in Wales have increased at a faster rate than across the UK as a whole since 2002.

**Table 1: House price affordability**

	<b>Ratio of lower quartile house price to lower quartile earnings (a) (b) (c)</b>	
	<b>2002</b>	<b>2009</b>
Isle of Anglesey	3.5	6.2
Gwynedd	3.6	6.1
Conwy	4.1	6.4
Denbighshire	3.5	5.9
Flintshire	3.3	5.6
Wrexham	3.7	5.4
Powys	4.1	7.1
Ceredigion	3.9	7.3
Pembrokeshire	4.4	7.0
Carmarthenshire	2.7	5.5
Swansea	3.1	5.4
Neath Port Talbot	2.5	..
Bridgend	3.2	4.9
The Vale of Glamorgan	4.1	6.3
Cardiff	4.9	6.4
Rhondda, Cynon, Taff	2.1	4.0
Merthyr Tydfil	1.8	..
Caerphilly	2.9	4.5
Blaenau Gwent	2.0	3.5
Torfaen	2.7	5.2
Monmouthshire	4.9	7.4
Newport	3.4	5.3
<b>Wales</b>	<b>3.3</b>	<b>5.4</b>

.. Data not available

- (a) The Annual Survey of Hours and Earnings (ASHE) is based on a 1 per cent sample of employee jobs. Information on earnings and hours is obtained in confidence from employers. It does not cover the self-employed nor does it cover employees not paid during the reference period. Information is as at April each year. The statistics used are workplace based full-time individual earnings.
- (b) Data is derived via a 2-quarterly moving average. This is because ASHE data is at April each year so to get equivalent quarterly Land Registry house price data we use the first two quarters of the year.
- (c) The 'lower quartile' property price/income is determined by ranking all property prices/incomes in ascending order. The lowest 25 per cent of prices/incomes are below the lower quartile; the highest 75 per cent are above the lower quartile.

## Purpose and Intended Effect

6.15 The objectives of the policy are to:

- preserve the stock of social housing for tenants;
- encourage local housing authorities to increase the supply of affordable housing.

6.16 It is clear from the above background that RTB and RTA sales have contributed to the decline in the number of social housing units in Wales. A reduction in the stock of social housing will reduce the supply of properties available for rent by people in housing need.

6.17 Despite the recent increase in the volume of affordable housing completions, the volume of completions by RSLs and local housing authorities has failed to keep pace with the volume of sales. Part of the reason for slow completions is that local housing authorities and RSLs can lose any new units if they are bought by tenants under the RTB/RTA thus denying the landlord a return on investment<sup>18</sup>.

6.18 Contrary to this, however, is the risk that local housing authorities and other social landlords will be less able to replenish the stock of social housing if they see a fall in income previously generated from sales<sup>19</sup>. However, unitary authorities are not able to use all the revenue from sales to increase their social housing stock. 75% of the receipt is set against the authority's notional Subsidy Capital Financing Requirement. The impact of this is a reduction in the eligible charges for capital subsidy support, which results in an increase in Housing Revenue Account negative subsidy payable to HM Treasury over a number of years. Furthermore, in reality, a substantial proportion of sales receipts available to unitary authorities in Wales in recent years have been directed towards investment in major repairs of housing stock, rather than investment in new affordable housing to replace those sold through Right to Buy<sup>20</sup>.

6.19 Alongside the policy options covered in this impact assessment, the Welsh Assembly Government is continuing a number of policies designed to increase the supply of affordable housing in Wales. Those policies include grant aid, the utilization of empty buildings and encouraging more affordable housing completions through the planning system. As those policies are being developed regardless of the policy options assessed in this impact assessment we do not include any benefits that may arise from those other

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<sup>18</sup> The Housing Act 2004 lengthened the period during which some part of the discount had to be repaid in the event of a re-sale from 3 years to 5 years. This is likely to have reduced the incentive for former tenants who have exercised Right to Buy to re-sell, at least in the short-term.

<sup>19</sup> Although this will be partially offset by the continuation of rental income from properties and by the market value of the social housing stock.

<sup>20</sup> Wilcox. S (2008), A Financial Evaluation of the Right to Buy, A Report to the National Assembly for Wales.

policies unless it is envisaged that options in relation to RTB/RTA will have a differential impact on other housing policies.

## **Rationale for Government Intervention**

6.20 The rationale for Government intervention is represented by the nature of the market failures associated with housing and especially so in the context of social housing.

6.21 At the less expensive end of the market, housing can be seen to generate wider social benefits. Those wider social benefits typically relate to health in that poor housing can result in the spread of disease<sup>21</sup>. While those forms of wider social benefits are more associated with less advanced economies, it is still the case that for many the alternative to social housing is homelessness of some form. Social housing ensures that people are able to live in homes which are of a high standard in terms of design, space, health, safety and energy efficiency.

6.22 The provision of housing can also be associated with intergenerational factors. This can arise if the social discount rate is lower than the private rate. In such circumstances individual decisions are likely to emphasis more short-term consumer-orientated expenditures while society as a whole requires longer-term allocations. Individuals will typically value the benefits of housing for themselves together with bequests to the next generation while society will typically value the benefits of housing for many generations to come. As a result individuals do not value longer term investments as highly as society does resulting in an underinvestment in housing.

6.23 Both of those externalities can be addressed through the provision of social housing and public sector housing investment.

## **7. Options**

7.1 The following policy options are considered in respect of the proposals set out in the Measure:

- **Option 1:** No intervention. No change to the current RTB/RTA policy ('do nothing');
- **Option 2:** Reduction in the discount available to tenants purchasing property;
- **Option 3:** Suspend RTB/RTA in areas of housing pressure.

7.2 The three options are outlined below, with further analysis of each presented in the subsequent section of the impact assessment.

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<sup>21</sup> Typically individuals do not account for wider social benefits when making their housing decisions. For example individuals will not typically account for the benefits to others if the spread of disease is reduced as the individual's health improves as a result of any improvement in the condition of their housing. Further details on the wider social cost of inadequate housing are available in, 'Social Impact of Poor Housing' Ecotec 2010.

### **Option 1: ‘Do Nothing’**

7.3 Option 1 was evaluated as the reference case, and involves a ‘do nothing’ approach, whereby there is no change in RTB/RTA policy. Tenants will not have any additional restrictions in the ability to buy their rented home over and above those already in place. It is expected that the volume of social housing units sales will continue at a rate that reflects demand and wider housing market conditions.

### **Option 2: Reduction in the discount available to tenants purchasing property**

7.4 Option 2 represents the intermediate option whereby some form of constraint is enforced in an attempt to reduce the volume of social housing units sold and encourage investment in social housing. At present discounts range from 32% to 70% of the market value of the property, subject to an overall maximum of £16,000<sup>22</sup>. Discount can be reduced by Welsh Ministers through current subordinate legislation powers; option 2 does not require the use of primary legislation. The maximum discount has already been reduced from the previous maxima of £50,000 and £24,000 which were introduced in 1989 and 1999 respectively. If a further reduction in the maximum discount is implemented it is envisaged that this would reduce the attractiveness of buying under the RTB/RTA thus maintaining the social housing stock above the volumes expected with the “do nothing” option. Option 2 is also expected to encourage a greater supply of new social housing units.

### **Option 3: Suspend RTB/RTA in areas of housing pressure**

7.5 Option 3 is the most interventionist option considered here. In this case local housing authority areas where housing pressures are particularly acute can suspend RTB/RTA. This option will obviously result in no RTB/RTA sales in those areas and is also expected to encourage social housing investment by local housing authorities and RSLs. This option does, however, raise some dynamic issues as the impact of this option will depend on the length of time that RTB/RTA sales are suspended. This is discussed in more detail in the following section.

## **Calculation of Costs and Benefits**

7.6 The three policy options are evaluated in terms of their broad costs and benefits. One of the difficulties in estimating the impact of the three options is the uncertainty in relation to the volume of RTB/RTA sales (see **Figures 1 and 2**). This uncertainty will arise under all three options. In addition there is uncertainty associated with the suspension of RTB/RTA in pressured areas. Suspension will be based upon an assessment of local housing market conditions and demand for social housing. Both aspects are difficult to forecast with the result that the impact of option 3 will be difficult to estimate precisely.

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<sup>22</sup> The discount will depend on the type of property and time spent as a tenant of social housing.

7.7 Given the above uncertainties, it is not possible to provide precise costs and benefits for each option. The analysis for each option considers the likely impact in a qualitative sense highlighting any distributional impacts.

7.8 There are two main categories likely to be affected by the introduction of each policy option:

- Consumers (i.e. tenants and prospective tenants); and
- Social housing providers (Local housing authorities and RSLs).

### **Impact on Consumers**

7.9 The impact on the consumer will depend on the type of consumer. Consumers that currently rent social housing units that are looking to buy through RTB/RTA will be affected by each policy option. The do nothing option will leave the position unchanged by allowing those that wish to purchase their rented property to do so. The costs to this group of consumers from options 2 and 3 will follow from restricting their ability, either through affordability from reduced discounts or temporary restriction on their right to buy/acquire, to become home owners. This will impact on the ability of those consumers to build up their asset base, reduce their ability for intergenerational transfers and reduce any likelihood of benefiting from any potential equity gain from house price appreciation.

7.10 There is also a group of consumers that require social housing to rent. They may be unable to rent from local housing authorities or RSLs due to the lack of available supply. The continuation of the RTB/RTA is expected to reduce the supply of social housing units leaving some consumers unable to rent social housing. This represents a cost to consumers as they will have to be housed in temporary housing<sup>23</sup> or become homeless. Options 2 and 3 are expected to lead to an increase in the supply of social housing units to rent through two channels. Firstly, tenants who would have previously bought their rented social housing unit may instead buy a home in the private market. Secondly, options 2 and 3 may result in an increase in new social housing completions as the threat of these units being bought by tenants will be reduced by the restrictions in affordability and access to buy their rented house<sup>24</sup>.

### **Impact on social housing providers**

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<sup>23</sup> Temporary housing can take many forms: private sector leasing schemes, refuges, hostel accommodation and Bed and Breakfast. A report by the National Audit Office (for England) reported that temporary accommodation can be an expensive option compared to longer term social housing solutions. Further details are available in the full report 'More than a roof: Progress in tackling homelessness' National Audit Office 2005

<sup>24</sup> We do not expect a significant impact on the supply of new houses in the private market as a direct result of the options considered here. It could be possible that a rise in the supply of social housing will depress demand for private housing thus reducing supply. However, the rise in the supply for social housing occurs because there are restrictions on RTB/RTA and those restrictions may well increase the demand for private housing as social housing tenants are unable to buy their rented property and may purchase from the private market as a substitute.

7.11 Each option will have an impact on social housing providers. These impacts will in the main affect the financial accounts of social housing providers and this will have an impact on the supply of social housing. The impacts can be categorised into short and longer terms impacts.

7.12 In the short term options that restrict RTB/RTA sales will result in a loss in sales income. The average sale price of a property sold by local housing authorities under the Right to Buy during the period April to June 2010 was £71,935 (including discount of almost £16,000). For local housing authorities 75% of the receipts from local housing authority sales income are set against the authority's notional Capital Financing Requirement. The impact of this is an increase in the charges on capital payable to HM Treasury over a number of years. Therefore, while sales do increase the income for local housing authorities, only 25% of this sales revenue (an average of almost £18,000 per sale) is available to finance ongoing housing related expenditures. Furthermore, evidence suggests that a large proportion of revenue available from RTB sales was allocated towards management and maintenance to existing stock rather than investing in new completions<sup>25</sup>. For RSLs all sales revenue must be credited to the Disposals Proceeds Fund. Receipts placed in the Disposals Proceed Fund may only be used to provide replacement properties for rent. Therefore the revenue is in effect recycled back into the supply of social housing. The net effect on the short run supply of housing is difficult to estimate. However, due to the restrictions placed on local housing authorities and the evidence that despite the rise in sales the stock of social housing has continued to fall, a continuation of RTB/RTA is expected to result in a fall in the supply of social housing units available for rent.

7.13 In the longer-term options that restrict the ability of tenants to buy their home are expected to encourage new completions as the threat of new homes being sold through RTB/RTA is much reduced.

7.14 The sale of housing units also means that social landlords are not liable for the ongoing maintenance and management costs associated with holding social housing units. While the majority of the management costs can be viewed as fixed costs, the maintenance costs will be dependent on the volume of social housing units. The sale of social housing units will mean a reduction in the ongoing maintenance costs. This cost will be set against the reduction in the rental income and the associated cost of administering the sale.

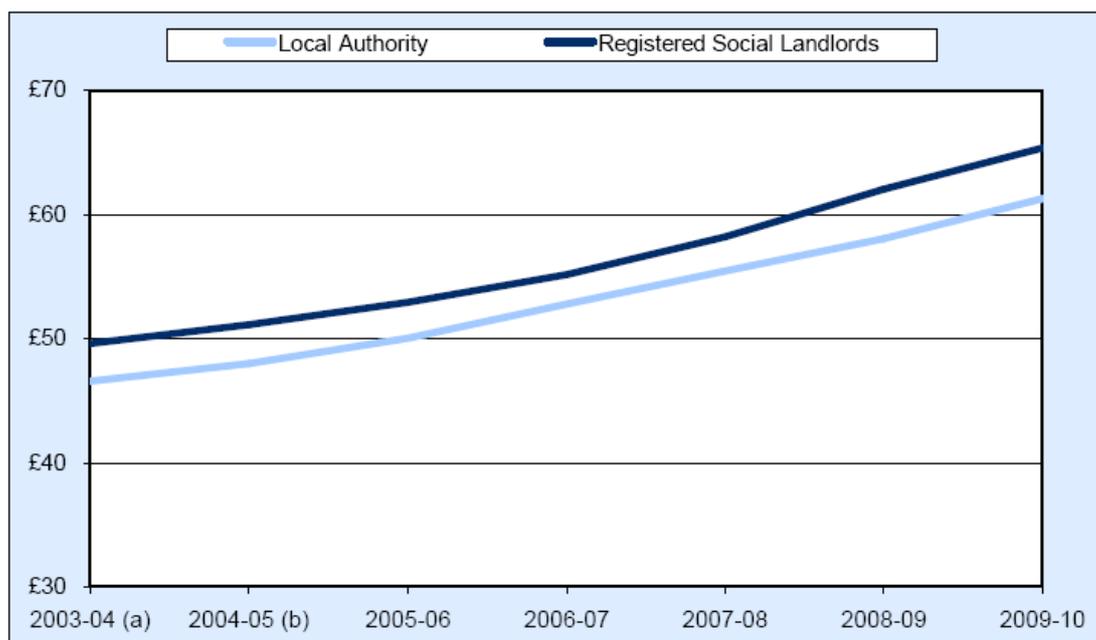
7.15 Figure 3 shows that average rents have increased by around 30 per cent between 2003-04 and 2009-10. Local housing authority rents continue to be below those of RSLs and the average weekly rent for both tenures is just over £63 per week<sup>26</sup>.

**Figure 3: Average weekly rents of all local housing authority and RSL dwellings**

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<sup>25</sup> Wilcox. S (2008), A Financial Evaluation of the Right to Buy, A Report to the National Assembly for Wales.

<sup>26</sup> Data on private sector rents are not centrally recorded in Wales.



Source: Annual WHO15 returns from local housing authorities and annual RSL1 returns from RSLs

- (a) Local housing authority rents for 2003-04 does not include data for Pembrokeshire
- (b) Local housing authority rents for 2004-05 does not include data for Merthyr Tydfil

7.16 A large proportion of maintenance costs are associated with the requirement for all social landlords to attain the Welsh Housing Quality Standard (WHQS) by 2012. It is estimated that the costs of meeting and maintaining the WHQS between 2005 and 2035 will be £3.3 billion<sup>27</sup>. Significant investment was found to be required in the early stages to meet the 2012 target with an estimated average cost per dwelling to 2012 of £11,000 (£1,600 per annum) against an ongoing cost of £700 per annum per dwelling up to 2035.

7.17 WHQS has put some pressure on the housing finances of many local housing authorities. The average cost per dwelling to meet and maintain WHQS varies by local housing authority with some unable to meet those costs from internal housing budgets. As a result, a number of local housing authorities have transferred their social housing stock to RSLs on the basis of a business plan that can both meet WHQS and achieve acceptable rent levels for tenants<sup>28</sup>.

7.18 The key question for this impact assessment is the impact that sales have on the finances of social landlords. Over the short term the requirement to meet WHQS has meant that the rental income (and other sources of income) is insufficient to cover the costs of meeting WHQS (hence the large scale voluntary transfers of local housing authority housing stock to RSLs). As a result, much of the local housing authority housing stock is deemed to have a negative valuation. However, over the medium term it must be the case that social housing units will be at worst self financed in that the rental income must exceed the management and maintenance costs. Otherwise,

<sup>27</sup> Welsh Assembly Government research project (2005), Welsh Housing quality Standard and Social Housing Renewal: Cost Model Research (SJRRR 4/05)

<sup>28</sup> At the time of writing 10 local authorities (out of 22) had transferred their stock to RSLs

maintenance will be delayed and/or rents will be increased. For this impact assessment we apply the assumption that social housing units have a positive net value and that sales represent a loss in net income to local housing authorities/ RSLs.

7.19 It should be noted that local housing authorities and RSLs are not expected to gain in terms of profit from any option<sup>29</sup>. The assumption is that any revenue gains from either the sale or net income over costs for maintaining the housing stock will be reinvested either in new completions or investment in existing properties.

### **Option 1 - 'do nothing'**

#### **Impact on consumers**

7.20 **Table B** in Annex 1 shows the number of local housing authority and RSL housing stock has fallen consistently throughout the last decade. In recent years the rate of decline has slowed somewhat following the fall in the number of social housing units sold and a rise in the number of completions. The volume of sales is clearly related to wider economic conditions with a fall during the recent recession (see **Figures 1 and 2**) expected to reverse as the economy recovers. New completions are also highly cyclical but the number of new completions has been maintained at pre-recession levels by the policy drive for an additional 6,500 affordable housing units completed by 2011. Estimates of housing demand in Wales shows that an additional 14,200 units per year are required in Wales up to 2026, over a third of which are expected to be affordable housing. Those estimates show that without a large increase in new housing supply housing pressures are likely to remain throughout Wales<sup>30</sup>.

7.21 Continuing with the current RTB/RTA policy is likely to mean that the stock of social housing will continue to decline. The erosion of the social housing stock in Wales has varied by local housing authority area. **Figure 4** shows the proportion of local housing authority housing stock sold under RTB<sup>31</sup>. It is likely that the decline in social housing stock will continue to affect certain areas more so than others.

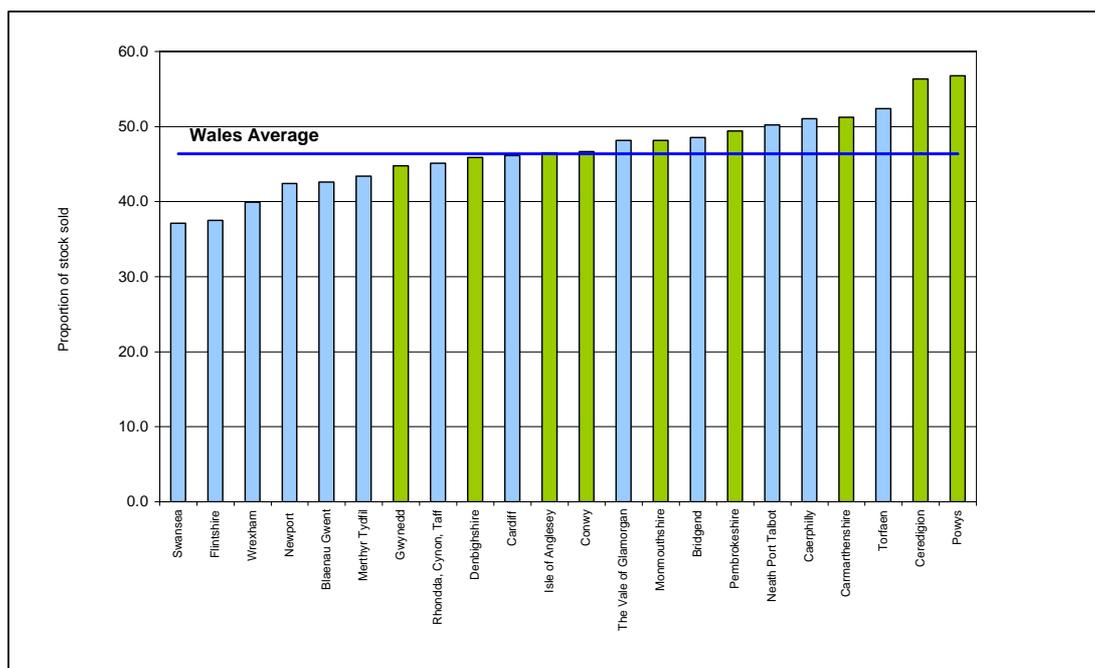
### **Figure 4: Proportion of local housing authority stock sold by RTB and other sales: 1981-April 2010 (a) (b)**

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<sup>29</sup> RSLs are set up to be not for profit.

<sup>30</sup> Housing Need and Demand in Wales 2006 to 2026, A report to the Welsh Assembly Government  
<http://wales.gov.uk/topics/housingandcommunity/research/housing/needanddemand/?lang=en>

<sup>31</sup> Data for sales of RSL stock are not available by local authority area as many RSLs own housing units in a number of local authority areas. Not all RSL sales are reported by local authority area.



Source: Quarterly local housing authority sales returns, Welsh Assembly Government

- (a) These figures have been estimated and take into account the change from districts to unitary authorities in 1996.
- (b) RTB & other sales as of January 1981 but stock estimates as of April 1981.

7.22 As discussed above, the impact on consumers from maintaining RTB/RTA will depend on the nature of the consumer. Tenants wishing to buy their home can gain from the discount that is currently available. This means that, for some, buying their own home becomes affordable whereas, without the discount, this would not be possible. Secondly, tenants can benefit from selling their property at market value, thus releasing equity. While the gain from the discount is at the expense of local housing authorities and the Welsh Assembly Government<sup>32</sup> (which fund the RTB and RTA discounts respectively) it can be of particular benefit for tenants if property prices rise and they sell the property or engage in some form of equity release<sup>33</sup>. In addition, there is the potential benefit for tenants resulting from intergenerational transfers as property assets form a large proportion of all assets transferred to future generations upon death. It is not possible to quantify these benefits as they are dependent on the volume of sales, potential for equity release and the extent of intergenerational transfers.

7.23 For consumers looking to rent a social housing unit the continuation of RTB/RTA sales is likely to mean that the supply of available housing is reduced. This is in the context of rising housing demand from new household formation and historically low levels of new housing completions<sup>34</sup>. In the

<sup>32</sup> The discount is therefore treated as a transfer from the public sector to consumers. Therefore, the impact of any options on the cost and benefits of the discount is not discussed in detail in the analysis.

<sup>33</sup> The Housing Act 2004 lengthened the period during which some part of the discount had to be repaid in the event of a re-sale from 3 years to 5 years. This is likely to have reduced the incentive for former tenants who have exercised Right to Buy to re-sell, at least in the short-term.

<sup>34</sup> Housing Need and Demand in Wales 2006 to 2026, A report to the Welsh Assembly Government

<http://wales.gov.uk/topics/housingandcommunity/research/housing/needanddemand/?lang=en>

absence of renting social housing the alternative scenarios involve either temporary housing or in the extreme homelessness. There is a wide literature on the impact of living in temporary accommodation and homelessness both of which are typically associated with poor health and wider social problems<sup>35,36</sup>. Again, it is not possible to accurately estimate the impact from the continuation of RTB/RTA for those requiring social housing as this will again depend on the volume of sales and the number of new completions or rise in the availability of properties.

7.24 It is not possible to estimate the monetary impact of maintaining RTB/RTA sales on Welsh consumers. Those in a position to buy their rented home will benefit from the discount allowed, the potential for equity release and any rise in asset values. However, continuing the RTB/RTA is likely to increase pressure on the available supply of social housing for rent. While the monetary impact of these two conflicting impacts is not clear the distributional impacts are clearer – those in a position to buy their rented house will be relatively less disadvantaged than those demanding social housing for rent<sup>37</sup>.

#### Impact on social housing providers

7.25 Continuing with the current RTB/RTA will mean that social housing provider will still gain from the income generated from sales. As discussed above, for local housing authorities only 25% of this sales income can be used as part of total housing expenditure. For RSLs, income from sales must be used to provide replacement properties for rent. On balance it is expected that option 1 will result in a fall in the number of social housing units as not all the receipts will be recycled into new supply and social housing providers still have the threat that new completions could be sold through RTB/RTA.

7.26 Sales of social housing units will mean that social housing providers are no longer liable for the maintenance costs associated with meeting and maintaining WHQS. In the short term this may be viewed as a gain to social housing providers as the cost of meeting WHQS by 2012 requires large upfront capital investment. However, over the medium term as homes are maintained at this standard the ongoing capital investment is much reduced. Therefore, beyond the short term the sale of housing units is expected to represent a net loss in income to social housing providers.

7.27 The impact of option 1 is difficult to monetise due to the uncertainties associated with the volume of RTB/RTA sales and the required level of investment needed for each property owned by social housing providers. Evidence shows that the number of social housing units has fallen mainly as a result of sales. This suggests that the continuation of RTB/RTA will result in a

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<sup>35</sup> Some recent case study evidence published by Shelter provides a useful overview: [http://england.shelter.org.uk/professional\\_resources/policy\\_library/policy\\_library\\_folder/sick\\_and\\_tired\\_-\\_the\\_impact\\_of\\_temporary\\_accommodation\\_on\\_the\\_health\\_of\\_homeless\\_families](http://england.shelter.org.uk/professional_resources/policy_library/policy_library_folder/sick_and_tired_-_the_impact_of_temporary_accommodation_on_the_health_of_homeless_families)

<sup>36</sup> A summary of the health impact of homeless is summarised in Shelter (2004) 'Survey of homeless households living in temporary accommodation: Report of preliminary findings and implications for policy and the 2004 Spending Review'

<sup>37</sup> Jones and Murie (1999) present evidence that social housing tenants that are least likely to exercise their Right to Buy are elderly, unemployed, very young, lone parents, and in the lowest paid and unskilled jobs.

continued fall in the number of social housing units. While the reduction in stock will also result in lower maintenance costs. This is expected to be offset by a fall in rental income. Over the medium term as WHQS is achieved and maintained rental income is expected to exceed costs so the larger the property portfolio the larger the expected net income for investment purposes.

### **Option 2 – Reduction in the discount available to tenants purchasing property**

#### **Impact on consumers**

7.28 The impact of option 2 on the consumer will obviously depend on the extent of the reduction in the discount. As with all the options the direct impact is difficult to estimate with any precision as this will depend on housing market and wider economic conditions.

7.29 For consumers wishing to purchase their rented social housing unit the larger the reduction in the discount the closer the purchase price will be to the market valuation. This will act as a disincentive to purchase the property and for many this will make home ownership unaffordable. Therefore, many of the benefits from home ownership (rise in asset value, intergenerational transfer, ability to benefit from equity release and sale of properties at prices above the purchase price) will not materialise. Option 2 is likely to result in fewer sales and may also encourage new social housing completions as the threat of sale is reduced as RTB/RTA becomes increasingly less attractive.

7.30 The impact of Option 2 on consumers requiring social housing will depend on any change in social housing supply. If current tenants are discouraged from buying their social housing unit then the supply of housing for rent will only increase if they decide to buy in the private housing market. Tenants may decide to continue renting which would leave supply unchanged. However, if sales do fall following a reduction in the available discount then local housing authorities and RSLs may be encouraged to invest more in new housing thus increasing available supply. However, the reduction in sales income may result in fewer new completions but for local housing authorities only 25% of this sales income is available to increase new supply. On balance it is expected that option 2 will result in an increase in the volume of social housing units available to rent and will therefore ease some of the pressure in the rented social housing market.

7.31 Again, it is not possible to place a monetary value on the likely impact. There are some clear distributional implications. The consumers most likely to lose from this option are more likely to be less disadvantaged than the group of consumers that are most likely to benefit.

#### **Impact on social housing providers**

7.32 By reducing the discount this is likely to have an impact on the ability of tenants to purchase their rented property. If the discount is reduced to such an extent that tenants are unable to afford to purchase, this will reduce the total number of sales under RTB/RTA and hence the income from sales. If

tenants continue to rent social housing then this fall in sales income will to some extent be offset by a continuation in rental income.

7.33 In the longer-term the reduction in the discount is expected to reduce the number of sales and thus will reduce the threat that new completions will be sold in the future. Option 2 is expected to encourage new investment and lead to an increase in the supply of social housing compared to option 1.

### **Option 3 – Suspend RTB/RTA in areas of housing pressure**

#### **Impact on consumers**

7.34 As with the other options under review the impact of Option 3 will depend on the type of consumer. The key issue is whether consumers view the suspension as a temporary measure to ease short term housing pressures or a longer-term shift in policy that is expected to remain in place for the foreseeable future. This adds another tier of uncertainty. The impact will also depend on the extent that this policy option is pursued by local housing authorities and this will depend on local housing market conditions.

7.35 For consumers wishing to purchase their rented social housing unit the suspension of RTB/RTA will mean that those unable to afford housing in the private market will be unable to gain from home ownership. There will of course be some consumers that will be able to afford to buy from the private market and the impact of option 3 will depend on their expectation of the longevity of the policy and their preferences. If consumers see the suspension as a temporary measure they may decide to delay purchasing a home and wait for the suspension to be lifted and then buy their rented house. In this case the volume of social housing units may remain unchanged and the availability of social housing units may not increase.

7.36 It is possible that there could be an increase in purchases just before a suspension is put in place as consumers able to buy their home do so before the suspension starts. In this case, the number of social housing units may fall further in the short term. Tenants will become aware of the possibility of suspension in their locality via the consultation process but any RTB/RTA applications submitted after the consultation period will be put on hold pending Ministerial approval. Therefore there is a limited time period for tenants to exercise their RTB/RTA following the announcement of a possible suspension in their area. This may limit the volume of purchases immediately prior to any suspension being approved.

7.37 There may be some increase in new social housing completions as local housing authorities and RSLs will not have the threat of the new completions being sold through RTB/RTA. Again, the length of suspension is critical as the longer the suspension the more likely it is that new housing investment will materialise.

7.38 For consumers wishing to rent a social housing unit the availability of supply will depend both on the behaviour of current tenants and the investment decisions of local housing authorities and RSLs. If current tenants of social housing in a position to buy see the suspension as a longer term

policy they may well buy in the private housing market thus freeing up units of social housing. This could coincide with a rise in investment as discussed above. If the suspension is seen as temporary, then supply may not increase as households postpone their purchasing decisions and remain as tenants and local housing authorities and RSLs do not increase investment as the treat of sale will remain.

7.39 As this is the more interventionist of all options, option 3 is more likely to increase the supply of social housing providing the policy is not seen as a short term measure. The key element of option 3 is that if implemented sales of social housing will be zero during the suspension period. With option 2 sales are likely to continue as a discount will still be available to tenants. Option 3 offers a higher degree of certainty than the other options considered here.

7.40 As with the other options the monetary impact of option 3 is difficult to quantify. Potentially this option will have the largest impact on easing pressures on the supply of social housing units. As with option 2 this option is more likely to benefit the more disadvantaged if the supply of social housing units increases.

#### Impact on social housing providers

7.41 Local Housing Authorities will incur administrative costs in preparing and submitting an application to suspend the RTB/RTA. However these costs should be offset by savings for Authorities resulting from not having to administer RTB applications during the period of suspension. It is difficult to provide a figure as to the cost of an application to a local housing authority as the administrative cost will depend on the size and type of each individual application.

7.42 Much of the evidence about the demand and supply of social housing (to be submitted as part of the application) should already be available from the data used by authorities to prepare their Local Housing Market Assessments which are required as part of the new Local Development Plan process. There will be some additional costs for Local Housing Authorities in consulting local RSLs and other interested bodies (e.g. tenants' groups) about the proposed application. However if the RTB/RTA is suspended this would result in savings in the costs of administering the schemes for the Local housing authority and RSL(s) in the area(s) which should offset the administrative costs of application. There would be no additional administrative costs for RSLs arising from suspension.

7.43 The average sale price of a property sold by local housing authorities under the Right to Buy during the period April to June 2010 is £71,935 (including discount of almost £16,000). However, as discussed above, for local housing authorities only 25% of the sales income can be used as part of total housing expenditure. Suspending the RTB/RTA will mean that social housing providers will not benefit from the sales income, but will continue to accrue rental income. While this may result in financial pressure to meet and maintain WHQS over the short term, over the medium to longer term social

housing providers are expected to gain net income from retaining their housing stock. This is expected to result in some increase in new completions and/or further improvements in the existing housing stock. In addition, if the suspension is used as a long-term policy option then this will reduce the threat that new completions will be sold in the future. This is expected to lead to a rise in new completions.

7.44 Whilst suspension of the RTB/RTA results in a halt in sales (and therefore sale receipts for social housing providers) this is only a temporary suspension. When the period specified in the Direction for suspension ends, tenants will be able to purchase under the RTB/RTA and receipts will once again accrue to social housing providers.

### **Impact on the Welsh Assembly Government**

7.45 The submission of applications for a direction to suspend the RTB/RTA from Local Housing Authorities will result in some additional administrative work for the Housing Directorate of the Welsh Assembly Government. It is difficult to estimate the number of applications which might be received in any one year. However, if around 5 applications were received, it is estimated that the costs of administration would be around £26,000 (ie just over £5,000 per case). The costs of administration would be met from the Housing Directorate's existing budget with other priorities and workloads adjusted accordingly to meet the demand arising from the new work. As a result no additional posts would be required to undertake this work.

### **Summary**

7.46 Continuing with the RTB/RTA throughout Wales (option 1) is likely to result in further erosion of the social housing stock, reducing the availability of suitable properties for people in housing need. Option 1 is expected to benefit the less disadvantaged consumers at the expense of more disadvantaged groups, although it is not possible to quantify the relative impacts. In the short term the reduction in the number of units may alleviate some cost pressures in meeting the WHQS but over the medium and longer term social housing providers are expected to see a fall in net income as their number of housing units falls.

7.47 Further reducing the discount (option 2) may reduce the rate of erosion of social housing stock at an all-Wales level. Evidence however, highlights considerable variability in housing pressure between specific areas and so this policy would not specifically target those areas where there is considerable social housing pressure. The impact of option 2 will depend on the extent that the discount would discourage purchases and whether tenants would purchase private housing as a substitute or continue to rent social housing.

7.48 Suspending the RTB/RTA in pressured-areas (option 3) would prevent further erosion of the social housing stock, although there could be a rise in sales immediately prior to suspension. The Measure would target pressured-areas, where the RTB/RTA has reduced the ability of unitary authorities to meet local housing needs. Local housing authorities would be required to

consult stakeholders. They would also be required to submit detailed information to support their application. This would ensure that the consequences of suspension would be clearly set out for consideration by the Welsh Ministers.

7.49 Option 3 has the greatest potential to increase the supply of social housing to rent both from suspending sales but also encouraging new housing investment. The expected rise in the supply of social housing for rent will benefit those most in housing need. Consumers that would have previously bought their home will be unable to obtain a discount during the suspension period and may remain as tenants. Some would be home owners though may be able to afford to purchase from the private sector even in the absence of the discount.

7.50 Under option 3 suspension of the RTB/RTA will only apply to properties owned by local housing authorities and RSLs. It will be for local housing authorities, in consultation with stakeholders, to decide whether they could benefit from suspension in areas of high housing pressure. Social housing providers should not therefore lose out from option 3.

7.51 It is acknowledged that suspension of the RTB/RTA will not of itself increase the supply of affordable housing this objective will be addressed by other local actions, as mentioned above.

## **Sensitivity Analysis**

7.52 As we have not attempted to provide monetary estimates we have not undertaken any sensitivity analysis. The main uncertainties for each option are discussed above.

## **Compliance with Hampton Principles**

7.53 The Hampton Review<sup>38</sup> sets out the key principles that should be consistently applied throughout the regulatory system. Hampton principles state that businesses should not have to give unnecessary information, nor give the same piece of information twice. This policy is not expected to impact on the regulatory burden of businesses as suppliers of social housing are typically public sector or quasi-public sector organisations.

## **EU Requirements**

7.54 The impact this Measure is not expected to effect any EU requirements

## **Value of Offsetting Measures**

7.55 There are no offsetting measures.

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<sup>38</sup> Hampton Review: [http://www.hm-treasury.gov.uk/bud\\_bud05\\_hampton.htm](http://www.hm-treasury.gov.uk/bud_bud05_hampton.htm)

## **Change in Greenhouse Gas Emissions**

7.56 As discussed in more detail below none of the policy options are expected to result in a significant change in greenhouse gas emissions.

## **Impact on Admin Burdens Baseline**

7.57 The impact of any changes in RTB/RTA legislation could have an impact on the management costs of social housing providers. Since both the interventionist options (Options 2 and 3) are expected to result in a fall in the number of sales it is expected that the administrative costs associated with sales will fall. However, option 3 may result in an offsetting administrative cost as local housing authorities will be required to apply to suspend RTB/RTA. However, since RTB/RTA sales are small in relation to the social housing stock<sup>39</sup> it is expected that the administration costs associated with RTB/RTA will be immaterial compared to the ongoing management costs of the total social housing stock.

## **8. Specific Impact Tests**

### **Competition Assessment**

8.1 We do not envisage that any of the policy options will have an impact on competition. Social housing is provided either by local government or social housing providers both of which are regulated. The impact of the policy options are not expected to impact significantly on the private market as home sales are conducted between individuals and the potential number of sellers is vast. There may be a rise in the volume of private sales in some areas under option 3 that might lead to a rise in activity for services associated with buying and selling houses (estate agents, solicitors and removal firms for example) in some localities (i.e. those areas that apply and are granted the right to suspend RTB/RTA). However this impact is expected to be small (in 2009 social housing sales represented just over 1% of all housing sales in Wales).

### **Small Firms Impact Test**

8.2 The policy is not expected to have a significant differential impact on small firms. The competition impact on estate agents discussed above may have an impact on small firms as many estate agents are small firms operating in particular localities. However, any impacts on the estate agents are unlikely to be different for small or larger estate agents.

8.3 It is likely that many of the firms that will benefit from the WHQS will be small firms. If social housing units are sold then under private ownership WHQS no longer applies. However, it can be considered just as likely that recent owners of former rented accommodation would be just as likely to

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<sup>39</sup> In 2008-09 there were 204 RTB/RTA sales compared to a total social housing stock of 219,887 units.

undertake maintenance on their owned property as social housing providers are to meet and maintain WHQS. We do not, therefore, expect any differential small firms impact as we envisage that approximately the same quantum of maintenance will be undertaken under each option.

### **Legal Aid**

8.4 There will be no impact on legal aid resulting from the Measure.

### **Sustainable Development**

8.5 The policy contributes to the principles of sustainable development through strengthening the emphasis on building a sustainable society by improving the supply of social housing so more people in Wales can benefit from living in suitable social housing. Counter to this however are the consumers that will be unable to buy their own home as a result of restrictions in place under Options 2 and 3. This group of consumers could be made worse off and could miss out on the benefits from home ownership thus reducing their well being.

### **Carbon Assessment**

8.6 WHQS includes measures that are expected to reduce carbon emissions from homes (efficient boilers and sufficient insulation for example). It could be argued that options that will result in more homes retained under social housing providers (options 2 and 3) will ensure that homes are more energy efficient due to the requirements set out under the WHQS. However, there are a range of home energy efficiency measures available for private households (the Home Energy Efficiency Scheme in Wales is a good example) that are expected to also improve home energy efficiency and reduce carbon emissions. Any differential impact from the policy options is therefore not considered to be significant.

### **Other Environment**

8.7 We do not consider that the policy will have any other environmental impacts.

### **Health Impact Assessment**

8.8 Options 2 and 3 are expected to result in a reduction in the number of social housing units sold and may encourage new investment in new social housing by social housing providers. This is then expected to increase the supply of social housing for rent for those most in need. The alternative option (do nothing) is expected to result in a continued increase in social housing sales and a reduction in the supply of social housing available to rent.

8.9 Poor housing conditions are associated with a range of adverse health conditions<sup>40</sup>. If there is excess demand for social housing for rent that cannot be met due to RTB/RTA sales then this may result in a rise in household housed in temporary accommodation and/or homelessness. Options 2 and 3 are therefore expected to result in some health benefits as more household can be accommodated in suitable social housing, with option 3 expected to deliver a larger quantity of benefit. We do not consider that a full health impact assessment is required as it is unlikely that these health benefits will be sufficiently large.

## Equality

8.10 According to data from Census 2001 individuals from certain ethnic minority groups are more likely to be renting social housing than for the population as a whole. In particular, households from black Caribbean and black African ethnic groups are more likely to be renting social housing while households from Asian and Chinese ethnic groups are less likely to be renting social housing. Policy in this area is therefore expected to have a differential impact on individuals from black Caribbean and black African ethnic groups.

8.11 According to data from Census 2001 individuals with a limiting long term illness are more likely to be renting social housing than the population as a whole<sup>41</sup>. The policy may have a differential impact on individuals with a limiting long term illness either by reducing those households ability to buy their tenanted property (options 2 and 3) and through any easing of supply resulting in an increased ability for household to rent social housing (also options 2 and 3) where if past trends continue will be more likely to have a limiting long term illness.

8.12 According to data from Census 2001 females are more likely to be renting social housing than males<sup>42</sup>. The policy may have a differential impact on females both on a reduced ability to buy their tenanted property (options 2 and 3) and through any easing of supply resulting in an increased ability for household to rent social housing (also options 2 and 3) where if past trends continue will be more likely to be female.

## Human Rights

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<sup>40</sup> Some recent case study evidence published by Shelter provides a useful overview: [http://england.shelter.org.uk/professional\\_resources/policy\\_library/policy\\_library\\_folder/sick\\_and\\_tired\\_-\\_the\\_impact\\_of\\_temporary\\_accommodation\\_on\\_the\\_health\\_of\\_homeless\\_families](http://england.shelter.org.uk/professional_resources/policy_library/policy_library_folder/sick_and_tired_-_the_impact_of_temporary_accommodation_on_the_health_of_homeless_families)

A summary of the health impact of homeless is summarised in Shelter (2004) '*Survey of homeless households living in temporary accommodation: Report of preliminary findings and implications for policy and the 2004 Spending Review*'

<sup>41</sup> Limiting long term illness is used as a proxy for disability here as no data are available specifically for individuals with a disability.

<sup>42</sup> Some care should be placed on interpreting these statistics as they refer to the household reference person (i.e. the reported head of the household) so it could just be the case that females are more likely to be the household reference person when a household is renting social housing.

8.13 We consider that the policy is compatible with the European Convention on Human Rights.

### **Rural Proofing**

8.14 Policy in this area could have a differential impact on rural areas. As Table 1 shows affordability is particularly high in many rural areas and many rural local housing authorities have sold a larger proportion of their housing stock through RTB than the average for Wales as a whole (see Figure 3). Therefore rural areas in Wales may see particular housing pressure and may be more likely to apply for suspending RTB/RTA than other parts of Wales.

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## **B. Registered Social Landlords**

### **9. Background and Options**

9.1 This Regulatory Impact Assessment reflects the broad costs and benefits associated with increasing the regulation and intervention powers of Welsh Ministers over Registered Social Landlords. However, the actual impact will depend upon the use of the specific powers.

9.2 The enhancement of intervention powers must be set in the context of the wider development of a revised framework for the regulation of RSLs in Wales.

### **Regulation of Registered Social Landlords**

9.3 The following options are considered in respect of the proposals set out in the Measure:

**Option One:** Do Nothing

**Option Two:** Introduce an Assembly Measure to provide the Welsh Ministers with further powers covering intervention and regulation of Registered Social Landlords.

#### **Option One- Do Nothing**

9.4 'Do Nothing' would impact on the momentum already achieved by the implementation of a revised regulatory framework for Wales by limiting the intervention options that the Welsh Ministers have as the regulator.

9.5 The Welsh Assembly Government is seeking to improve the regulation of RSLs through the new regulatory framework. As part of the development of the framework the Welsh Assembly Government has worked with the sector to produce a series of 'Delivery Outcomes' for RSLs in order to drive up standards. It is hoped that the maturity of the RSL sector, alongside the new framework, will be enough to improve the quality of housing and services to tenants. However the Welsh Assembly Government requires the necessary ability for early intervention in order to safeguard services for tenants.

9.6 Option One would mean working within existing legislative frameworks. The Welsh Ministers have some existing regulatory powers: The Housing Associations Act 1985 confers a number of general functions on the Welsh Ministers along with further powers contained in Part 1 of, and Schedule 1 to, the 1996 Act. The existing legislative framework in relation to the regulation of RSLs is set out in part two of the Explanatory Memorandum.

9.7 These existing powers are limited in scope, however, and only enable the Welsh Ministers to address some of the issues in relation to the regulation of RSLs. The current powers do not give the Welsh Ministers the ability for early intervention where financial viability or services to tenants are threatened. The

Welsh Ministers under the current arrangement only have limited ability to intervene in the management of an RSL to safeguard services for tenants.

**Option Two: Introduce an Assembly Measure to provide the Welsh Ministers with further powers covering regulation of Registered Social Landlords, relating to Intervention and Enforcement.**

9.8 This option would most effectively achieve the policy objective of establishing a robust and transparent regulatory regime for the RSL sector in Wales. The regulatory powers would be sufficiently rigorous to ensure that the sector is compliant with the new delivery outcomes and remains financially strong and viable.

9.9 This option will provide the Welsh Ministers with Intervention and Enforcement powers similar to those exercisable by the Tenant Services Authority – being the regulator of Social Housing in England under provisions in the Housing and Regeneration Act 2008. The powers are outlined in section three of the Explanatory Memorandum.

9.10 Consultation on the development of the regulatory framework has demonstrated that the sector supports these powers. The Council of Mortgage Lenders as well as tenant organisations are, in particular, supportive of increasing the regulatory powers of Welsh Ministers.

9.11 In response to consultation the CML stated; ‘... in Wales, lenders’ key concerns are around how the Welsh Ministers will ensure the financial viability of the sector and that housing associations have good governance arrangements in place. We welcome the progress made on this through the development of robust, evidence-based self assessment, a set of delivery outcomes linked to governance and viability and a risk based proportionate approach to regulation in future. The key outstanding points for lenders are the delivery of formal judgements on viability and government by the Welsh Ministers and a statutory basis for the Welsh Ministers’ objectives and intervention and enforcement powers.’

9.12 The design of the regulatory framework is built upon a co-regulatory and proportionate approach and it is hoped that the use of statutory interventions powers is minimal. However where such powers are in place, they act as an incentive to good management and a deterrent to any detrimental actions.

## **10. Options analysis, costs and benefits**

10.1 There are three main categories likely to be affected by the introduction of each policy option:

- Tenants (current and prospective);
- Registered Social landlords; and
- The Welsh Ministers

### **Tenants**

10.2 As discussed above tenants tend to have limited choice within the social housing sector and as a consequence have limited bargaining power if services delivered are found to be unsatisfactory. There are a series of powers already in place to protect the rights of tenants and the RSL sector in Wales has a good track record in delivering good quality social housing services. It is envisaged that further strengthening the regulatory powers in Wales will ensure that tenants receive the highest service possible and that the Welsh Ministers can intervene early to safeguard services for tenants.

### **Registered Social Landlords**

10.3 There would be no additional cost as a direct result of the provision in the Measure. RSLs already have an obligation to meet costs associated with providing information and supporting the regulatory framework. There could be an additional burden where the Welsh Ministers choose to make use of an intervention or enforcement power. However there have only been a handful of associations who have got into difficulties in the last 25 years, and only one that is obsolete as a result of failings. Based on such experience it is not expected that there will be a large scale deployment of the intervention powers contained in the Measure.

10.4 The new regulatory framework involves working closely with RSLs to support them to address shortcomings before interventions become necessary. Consultation on the development of the regulatory framework has demonstrated that the sector supports extending the powers in line with Option Two.

10.5 One of the arguments in favour of regulation is that it can provide reassurance to financial providers. There are currently 37 RSLs to which the powers contained in the measure could be applied. The size of the sector is set to expand further through Large Scale Voluntary Transfer (LSVT). In 2009 over 40% of homes in the Welsh social housing sector had transferred to the RSL sector by LSVTs from local housing authorities. The significant driver in the increase in the RSL sector in Wales through LSVT is the need to meet the Welsh Assembly Government's Welsh Housing Quality Standards by 2012. LSVTs unlock private finance in order to improve the condition of stock transferred from local housing authorities. During 2010 the RSL sector in Wales anticipates drawing down in the region of £300m of private finance<sup>43</sup>. Lenders therefore need to be confident in the sector to provide finance to drive up quality for tenants<sup>44</sup>. Strengthened Regulatory powers are intended to enable this.

### **The Welsh Ministers**

10.6 Increasing the regulatory role of the Welsh Ministers could result in a rise in regulation costs. The cost of developing and implementing the new regulatory framework and the additional resources needed has already been

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<sup>43</sup> Council of Mortgage Lenders Response to Developing a Modern Regulatory Framework for Housing Associations in Wales Third Phase Consultation

<sup>44</sup> Meeting the Challenge- The 2009 Financial Statement of Welsh Housing Associations pg 9

provided for within the Housing Directorate budget as outlined in paragraph 10.20.

## **Option One**

### **Benefits**

10.7 The introduction of a new regulatory framework will see benefits for tenants, contractors, lenders and RSLs themselves. The framework will be more transparent with clear performance requirements and more proportionate as it will be built on a risk based model. The new framework will be delivered through close working with the sector. The Delivery Outcomes were produced jointly with Community Housing Cymru, the umbrella body for RSLs in Wales therefore ensuring the regulatory framework will be fit for purpose.

10.8 However in enforcing these standards, the Welsh Ministers only have limited powers under current legislation.

10.9 Whilst there would be benefits in introducing a new regulatory framework for RSLs, it is only with enhanced regulatory and intervention powers that this framework becomes sufficiently robust. The intervention powers also support lenders and tenants in having confidence in the RSL sector.

### **Costs**

10.10 There would be no administrative, implementation or running costs as a result of doing nothing.

10.11 The cost of developing and implementing the new regulatory framework and the additional resource needed has already been provided for within the Housing Directorate running costs.

10.12 There could be a reduction of finance in the RSL sector as a result of Option One. Current regulatory powers concerning RSLs are contained in the Housing Act 1996. These powers are not as comprehensive as those held by the regulators in England and Scotland. It could therefore be argued that the assurance which regulation gives to financial providers (who lend to the sector in Wales) is reduced.

## **Option Two**

### **Benefits**

10.13 Introducing a new regulatory framework for RSLs alongside increasing the intervention and regulation powers for the Welsh Ministers would most effectively meet the policy aim of providing a robust and transparent regulatory regime for the RSL sector in Wales. Furthermore the intervention powers will provide lenders with sufficient confidence to provide finance to the sector. The powers will also provide greater reassurance to RSL tenants.

10.14 There are many economic benefits from maintaining a strong and robust RSL sector. Information from the 2009 Financial Statements of Welsh Housing Associations indicate housing property cost totals £3.5bn and is backed by grants of £2.2bn.

10.15 A study commissioned by Community Housing Cymru (CHC) in 2008 and carried out by the Welsh Economy Research Unit estimated that the RSL sector in Wales spends almost £500m a year and provides 14,000 jobs directly and indirectly. The research also indicated that for every housing association (RSL) employee, two and a half jobs are secured elsewhere in the Welsh economy<sup>45</sup>. In order to maintain this significant level of investment and to secure more funding in the future, there is a need to increase lenders' confidence in the sector.

**Table Estimated Economic Impacts of the Housing Associations of Wales on the Welsh Economy 2008/09**

	<b>Direct Impact:</b> RSL Sector Output/ Employment	<b>Indirect Impact:</b> (Supplier effect + Induced Income effect)	<b>Total Impact</b>
Output £m	487	511	998
Gross Value Added (GVA) £m	114	218	332
Employment: Full Time Equivalents (FTEs)	4,100	10,440	14,540

\* To provide an estimate of the direct GVA impact, total wage spend of Welsh RSLs was used. This total should be treated as indicative only.

10.16 As outlined, the RSL sector is set to increase through LSVT in order to meet the Welsh Assembly Government's Welsh Housing Quality Standards by 2012. LSVTs unlock private finance in order to improve the condition of stock transferred from local housing authorities. A benefit of the legislation therefore is enabling lenders to be confident in the sector to provide finance to drive up quality for tenants.

10.17 Safeguarding the sector is particularly important. During the economic downturn, the sluggish private sector housing market has dampened consumption and economic growth, and suppressed private sector construction activity. The social housing sector has been important in preserving sector capacity in very difficult times.

<sup>45</sup> The Housing Associations of Wales- Measuring the Impact II Welsh Economic Research Unit 2009

10.18 Although regulation is sometimes portrayed as burdensome, a report commissioned by the Department for Business, Innovation and Skills (BIS) concluded that there is widespread support for regulation<sup>46</sup>. The report also indicates a further benefit of effective regulation in maintaining consistent standards and ensuring consumers receive a common level of service regardless of location.

10.19 The Delivery outcomes established for RSLs in Wales commit them to providing the highest standards. Linked with the commitment to reach the Welsh Housing Quality Standard by 2012, further intervention powers provide a strong incentive to improve the standard of affordable housing.

## **Costs**

10.20 The cost of developing and implementing the new regulatory framework is provided for within the running costs of the Welsh Assembly Government's Housing Directorate this includes cost associated with implementing the intervention and enforcement procedures provided by the Measure.

10.21 The use of the intervention and enforcement powers is unlikely to require additional costs as these have already been considered and approved when the regulation team was established in light of the Essex report in 2008. The proactive focus of the framework means that the programme budget (outlined below) was established to fund early support work with RSLs when a problem is identified by the regulator. Thus the budget is designed to be "front loaded" rather than set up to fund reactive deployment of interventions at a late stage.

10.22 The Directorate's Regulation Unit has a budget of £695,000 for 2010-2011. This figure includes staffing costs of £514,000. There are 9.5 full time equivalent posts in the team, which covers all regulation activity and consent work. Resources are targeted at areas of greater risk - with 2.5 posts focusing on full time analysis of the financial viability of associations to provide early warning of any potential viability issues.

10.23 The remaining £181,000 forms the programme budget. This includes the set up cost of the new framework. It is from this budget that costs associated with using the powers in the Measure would fall. For example, the Measure contains a power of inspection. Based on current regulation work, it is estimated that an inspection commissioned in response to a concern raised about a particular function of an RSL, such as development, would cost between £5,000 and £7,000. The amount of inspections conducted will depend on specific circumstances and it is hoped that the close working relationship of the Regulation team will mean that an inspection is a rare occurrence. There are currently 37 RSLs to which the powers contained in the Measure could apply.

10.24 The Measure also contains a power to appoint an interim manager of an RSL. It is estimated, based on appointing a manager at senior level that the potential cost to the Welsh Assembly Government of securing a

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<sup>46</sup> The Benefits of Regulation: A public and business perceptions study October 2009

replacement could be approximately £10,000. The full costs of employing the interim manager would fall to the RSL.

10.25 As with the power to conduct inspections, it is hoped that such an intervention would be a rare occurrence. An intervention on a voluntary basis has only happened once in the last three years. The programme budget will also be used to commission specialist independent support and advice, for example auditing a particular function where the regulator has become aware of a problem, or requesting legal advice before undertaking an intervention.

10.26 Further provisions in the Measure relate to putting in place voluntary agreements or issuing financial penalties on an RSL. The costs associated with administering these actions has been provided for in the budget of the Regulation Unit.

10.27 The regulatory framework operates on a co-regulatory basis. RSLs themselves already have an obligation to meet costs associated with providing information and supporting the regulatory framework. The provisions in the Measure would not provide any additional costs to RSLs unless the Welsh Ministers choose to make use of an intervention and enforcement provision.

10.28 The range of intervention powers which would be available to the Welsh Ministers under the Measure include potential for penalties up to a maximum of £5,000.

10.29 The costs associated with use of intervention and enforcement powers set out above are estimates. It is not possible to quantify exact cost associated with the use of these provisions as this will depend on the specific circumstances of the intervention. The intention for the regulatory framework is that these powers are only exercised as a last resort. The relationship model being applied will allow for early intervention in order to address issues through voluntary undertaking, the costs of which are provided for in the existing Regulation Budget. The case management approach means that any intervention by the Welsh Ministers will be commensurate with local circumstances, taking into account the needs of tenants

## **Summary**

10.30 In response to the Essex Review, a new regulatory framework for RSLs has been developed. This framework is designed to increase transparency, accountability, raise standards and improve financial viability by producing a series of 'Delivery Outcomes' for RSLs designed in consultation with the sector. This framework however cannot provide the powers for the Welsh Ministers to intervene early in order to safeguard services for tenants without legislation.

10.31 Option One provides the base case where the regulatory framework is provided within the existing legislative framework by adopting those delivery outcomes. It is envisaged that this new framework can be delivered with minimal additional costs both to the RSL sector and the Welsh Assembly Government. Tenants are expected to benefit as the new framework is

expected to improve the quality of housing and associated services. RSLs may also benefit as the new framework is expected to provide reassurances to financial providers thus improving access to private sector funds. There remains a risk, though, that option one does not provide a sufficiently robust regulatory framework as the Welsh Ministers will be unable to intervene early to safeguard services to tenants.

10.32 Option Two is designed to include the power for the Welsh Ministers to intervene if poor performance has been identified. Services to tenants are expected to be safeguarded as the powers are expected to incentivise good management and deter detrimental actions of RSLs. Option Two will also place the regulatory framework in Wales on a level footing with that in England and Scotland. This is expected to provide assurance to private sector lenders improving access to funds for RSLs. Option Two is not expected to lead to significant additional costs as the model has been developed in consultation with the sector and it is not expected that the additional powers will be triggered on a regular basis due to the maturity and historic performance of the RSL sector in Wales. Option Two is, therefore, expected to deliver the additional benefits that a robust regulatory framework can deliver, without any significant additional cost.

## **11. Specific Impact Tests**

### **Competition Assessment**

11.1 These proposals should have a positive impact on competition by improving the provision of information about performance and providing intervention powers to enforce a coherent set of standards.

### **Small Firms' Impact Analysis**

11.2 The proposals are unlikely to affect small for-profit firms. The emphasis on less, but more effective, regulation, to ensure standards for tenants and viability, means that the burden on most well performing RSLs should decrease.

11.3 A report commissioned by the Department of Business Innovation and Skills outlines that Small Business owners are quick to point out that regulation evens out the playing field, giving them a chance in a competitive market dominated by large players. They also find it helps improve the quality of services by setting a minimum standard, to which all business owners must comply<sup>47</sup>.

### **Legal Aid**

11.4 No extra cost or benefit envisaged.

### **Sustainable Development**

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<sup>47</sup> The Benefits of Regulation: A public and business perceptions study October 2009

11.5 Social: If regulatory reform encourages landlords to manage better, engage with tenants more, and at least continuing their current level of voluntary involvement in neighbourhood activities such as work training programmes, then Option Two could involve major social benefits for many of the most vulnerable in society.

11.6 RSLs themselves also have an important part to play in working with local housing authorities to secure local wellbeing.

11.7 There are no anticipated social costs.

### **Environmental**

11.8 The Welsh Housing Quality Standard includes a number of measures in relation to energy efficiency. It could be argued that a more robust regulatory framework will ensure that WHQS is being delivered. However, the differential impact in terms of delivering against WHQS between the options is not expected to be significant as RSLs are already delivering against WHQS

### **Carbon Assessment**

11.9 No new costs or benefits envisaged.

### **Other Environment**

11.10 No new costs or benefits envisaged.

### **Health Impact Assessment**

11.11 There is evidence that suggests the quality of housing can have an impact on the health of residents. Good quality social housing is important in bringing health benefits to tenants in deprived areas, and reducing health inequalities. Improved regulation helps ensure good management and maintenance of homes, and promote social integration to ensure positive health and mental health benefits.

### **Equality Impact Assessment**

11.12 It is likely that regulatory reform will have a positive impact on Ethnic Minorities groups.

11.13 The Welsh Ministers (under all options) will continue to seek to promote community cohesion and tenant empowerment, helping to encourage more choice of high quality homes, better community facilities and more economic opportunities. The 'Delivery Outcomes' for RSLs contain specific references to equality.

11.14 Disabled people will not be disproportionately affected by changes to the regulatory system. However the aim is to support all social tenants.

11.15 We believe the provisions to be compatible with ECHR.

## **Rural Proofing**

11.16 The Welsh Assembly Government does not believe these proposals will have any negative effects on rural businesses or the communities associated with them.

## Annex 1

**Table A: Dwelling stock estimates by tenure and local housing authority, at 31 March 2009 (a)**

*Percent of total dwellings*

	Rented from local authorities (a)	Rented from registered social landlords (b) (c)	Owner-occupied, privately rented, intermediate and other tenures
Isle of Anglesey	12	2	86
Gwynedd	11	4	85
Conwy	-	11	89
Denbighshire	8	5	87
Flintshire	12	4	85
Wrexham	20	3	78
Powys	9	4	87
Ceredigion	6	3	91
Pembrokeshire	10	4	86
Carmarthenshire	11	3	85
Swansea	13	6	81
Neath Port Talbot	14	5	81
Bridgend	-	14	86
The Vale of Glamorgan	7	4	89
Cardiff	10	8	83
Rhondda, Cynon, Taff	-	15	85
Merthyr Tydfil	-	23	77
Caerphilly	15	4	81
Blaenau Gwent	20	5	76
Torfaen	-	25	75
Monmouthshire	-	13	87
Newport	0	20	80
<b>Wales</b>	<b>8</b>	<b>8</b>	<b>84</b>

Source: Welsh Assembly Government

- (a) Data are not National Statistics
- (b) Data are taken from the annual social Housing Stock return for local housing authorities and registered social landlords. Data has been affected by the large scale voluntary stock transfers of local housing authority stock. Excludes intermediate and other tenures not at social rents
- (c) Includes Abbeyfield Societies, almshouse Charities and Co-ownership societies. Excludes 460 rented stock owned by English registered social landlords. These dwellings appear in the owner-occupied, privately rented and other tenures category.

**Table B: Dwelling stock estimates, by tenure at 31 March. (a)(b)(c)**

	Rented from local authorities (d)		Rented from registered social landlords (e)		Owner-occupier and other tenures (f)		Privately rented		Total
	Number	Per cent	Number	Per cent	Number	Per cent	Number	Per cent	Number
1996-97	204,158	16	47,612	4	891,144	72	100,461	8	1,243,376
1997-98	201,057	16	50,382	4	887,748	71	112,341	9	1,251,528
1998-99	197,423	16	51,908	4	915,387	73	94,231	7	1,258,949
1999-2000	193,006	15	53,877	4	903,259	71	116,853	9	1,266,994
2000-01	187,720	15	54,999	4	904,514	71	127,267	10	1,274,500
2001-02	182,916	14	56,687	4	931,882	73	110,254	9	1,281,739
2002-03	177,081	14	57,483	4	924,787	72	129,924	10	1,289,275
2003-04	162,276	13	64,723	5	945,403	73	124,556	10	1,296,957
2004-05	157,516	12	65,009	5	950,235	73	132,647	10	1,305,407
2005-06	155,768	12	65,770	5	954,971	73	136,974	10	1,313,483
2006-07	154,412	12	66,652	5	967,106	73	134,618	10	1,322,788
2007-08	131,524	10	89,299	7	974,321	73	136,234	10	1,331,379
2008-09	112,996	8	106,891	8	954,710	71	163,893	12	1,338,490

Source: Welsh Assembly Government

(a) At 31 March 2009. Data are not National Statistics

(b) Data has been affected by the large scale voluntary stock transfers of local authority stock. For further details see Quality Information section.

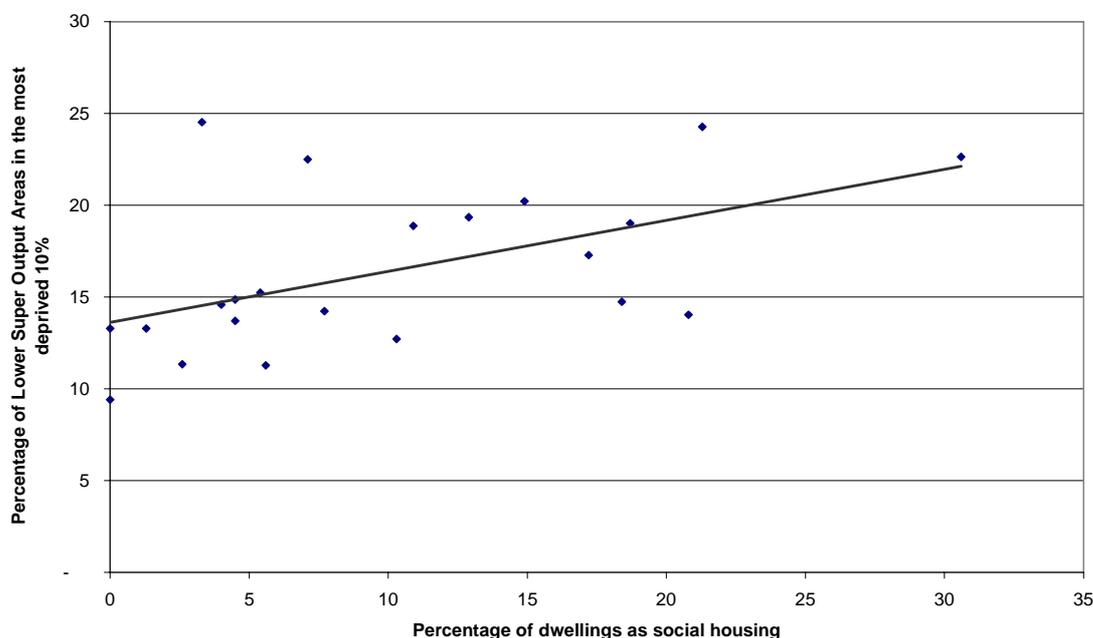
(c) Due to rounding, the percentages may not equal 100% and the total column may not equal the sum of the different tenures

(d) Prior to 2008-09 data are from the Housing Revenue Account Subsidy (HRAS) second advance form. For 2008-09 data are from the annual Social Housing Stock return from local authorities.

(e) Prior to 2008-09 data are from the annual RSL1 to 4 forms from registered social landlords. For 2008-09 data are from the annual Social Housing Stock return from registered social landlords.

(f) Includes, owner-occupied, intermediate and other tenures.

**Figure A: Social housing and deprivation**



Source: Welsh Assembly Government

**Table C: Percentage of Social Housing Stock in Wales by Property Size**

## Local housing authority Stock

	<b>1 bedroom</b>	<b>2 bedroom</b>	<b>3 bedroom</b>	<b>4+ bedroom</b>
2003/04	19.7	32.6	45.7	1.9
2004/05	20.1	33.4	44.6	1.9
2005/06	20.4	33.6	44.0	1.9
2006/07	20.5	33.7	43.9	1.9
2007/08	20.6	33.8	43.7	1.9
2008/09	20.0	34.3	43.7	1.9

Source: Welsh Assembly Government

## Registered Social Landlord Stock

	<b>1 bedroom</b>	<b>2 bedroom</b>	<b>3 bedroom</b>	<b>4+ bedroom</b>
2006	33.1	33.5	30.8	2.5
2007	33.0	33.6	30.7	2.6
2008	30.7	32.9	33.8	2.6

Source: Welsh Assembly Government

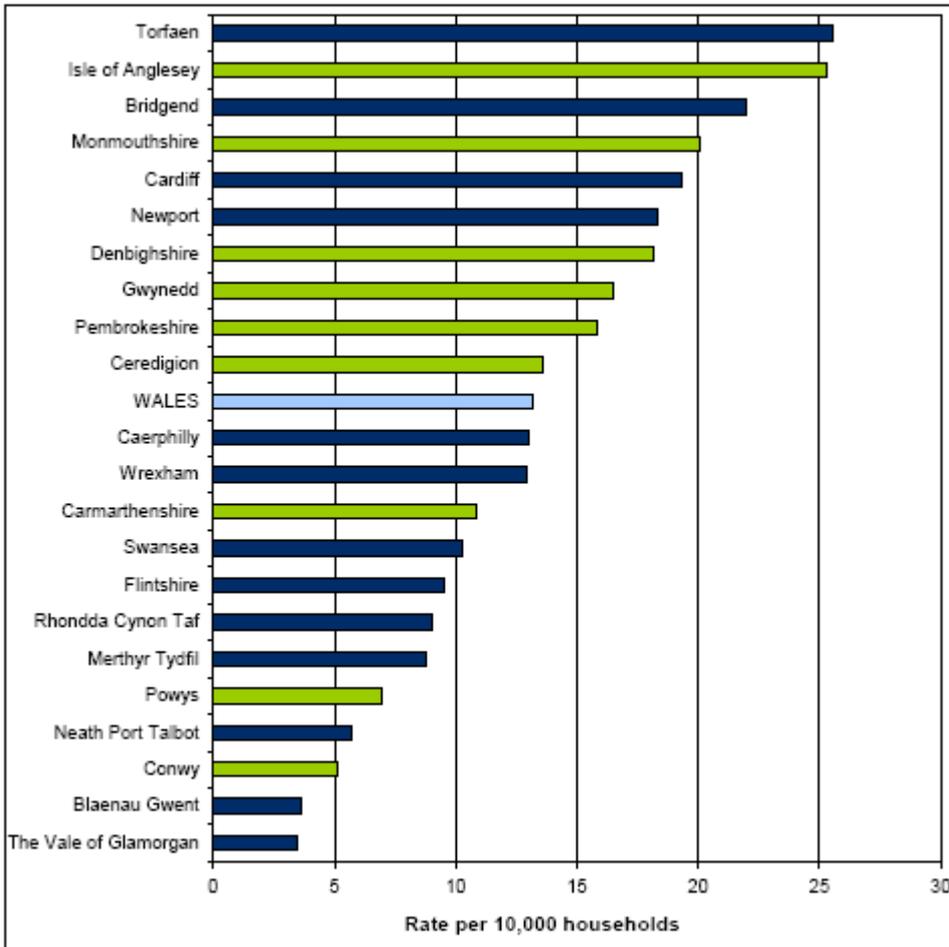
**Table D: New dwelling completions by tenure (a)**

	Private sector	RSLs	Local authorities	Total
1999-2000	7,860	846	0	8,706
2000-01	7,386	900	47	8,333
2001-02	7,494	711	68	8,273
2002-03	7,522	782	6	8,310
2003-04	7,863	417	16	8,296
2004-05	7,986	475	31	8,492
2005-06	7,883	347	19	8,249
2006-07	8,988	346	0	9,334
2007-08	8,316	343	5	8,664
2008-09	6,429	692	0	7,121
2009-10	5,291	880	3	6,174

Source: WHO2 returns from local housing authorities

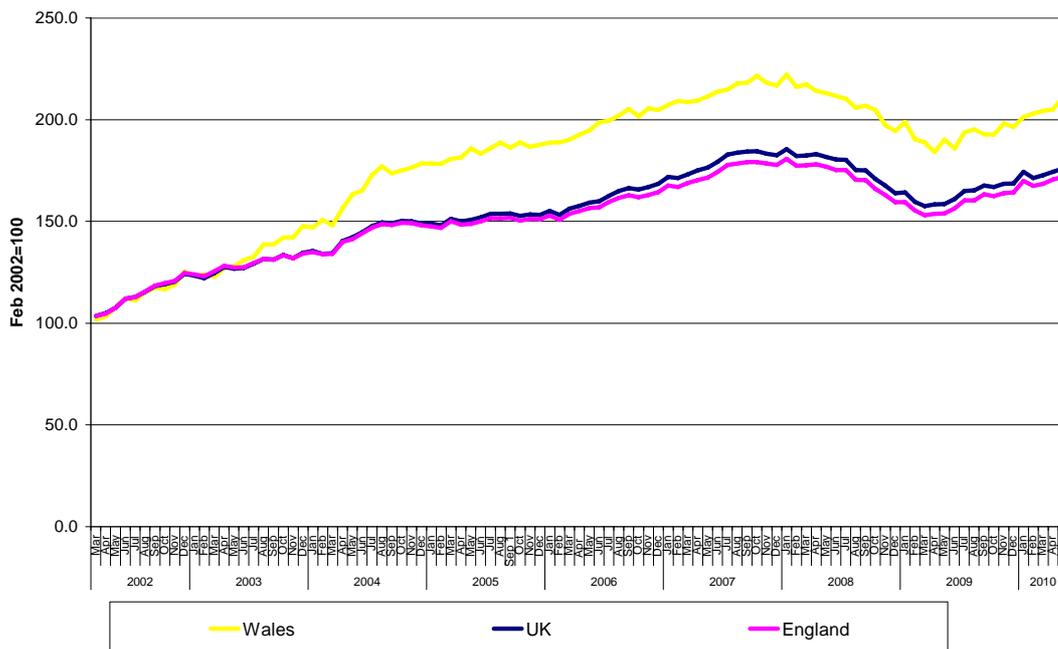
- (a) Figures include all dwellings inspected by the National House Building Council. Excludes acquisitions and hostel bedspaces.

**Figure B: Affordable housing provision, all tenures, rate per 10,000 households, 2007-08**



Source: Affordable Housing provision data collection, Welsh Assembly Government

**Figure C: House Price Index**



## **12. Post implementation review**

12.1 The Welsh Assembly Government's Housing and Regulation Department will liaise with Local Housing Authorities to monitor the effectiveness of the provisions in the Measure.

12.2 The information required for applications to suspend the Right to Buy and for subsequent extensions will provide an evidence base against which the policy can be evaluated.

# HOUSING (WALES) MEASURE 2011

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## EXPLANATORY NOTES

### INTRODUCTION

1. These Explanatory Notes are for the Housing (Wales) Measure 2011 (“the Measure”) which was passed by the National Assembly for Wales (“the Assembly”) on 22 March 2011 and approved by Her Majesty in Council on 10 May 2011. They have been prepared by the Welsh Assembly Government’s Housing Directorate to assist understanding of the Measure. They do not form part of the Measure and have not been endorsed by the Assembly. The Explanatory Notes should be read in conjunction with the Measure. They are not intended to be a comprehensive description of the Measure. Therefore, where a section, or part of a section, does not appear to require any explanation, none is given.
2. Part 1 of the Measure allows a local housing authority (“the authority”) to apply to the Welsh Ministers to suspend the Right to Buy and Related Rights in respect of the whole or part of the authority’s area, initially for a period of up to 5 years and the authority may apply for an extension to that period. The Assembly’s competence to legislate on this matter is found in Matter 11.5 of Field 11 of Schedule 5 to the Government of Wales Act 2006 (c.32) (“GOWA 2006”). Matter 11.5 was inserted into Field 11 of Schedule 5 by the National Assembly for Wales (Legislative Competence) (Housing and Local Government) Order 2010 made on 21 July 2010.
3. Part 2 of the Measure provides the Welsh Ministers with enhanced regulatory and intervention powers concerning the provision of housing by Registered Social Landlords. The Assembly’s competence to legislate on this matter is found in Matters 11.2 and 11.3 of Field 11 of Schedule 5 to GOWA 2006. Matters 11.2 and 11.3 were inserted into Field 11 of Schedule 5 by the National Assembly for Wales (Legislative Competence) (Housing and Local Government) Order 2010.
4. There are 3 Parts to the Measure and they are:

#### **Part 1: Suspension of the Right to Buy and Related Rights**

- Chapter 1: Directions suspending the Right to Buy and Related Rights
- Chapter 2: Variation of Direction Suspending the Right to Buy and Related Rights
- Chapter 3: Extension of Direction Suspending the Right to Buy and Related Rights
- Chapter 4: Revocation of Direction Suspending the Right to Buy and Related Rights
- Chapter 5: Applications: General Provisions
- Chapter 6: Amendments to the Housing Act 1985

Chapter 7: Miscellaneous

## **Part 2: Registered Social Landlords**

Chapter 1: Performance

Chapter 2: Voluntary Undertakings

Chapter 3: Regulation

Chapter 4: Enforcement

Chapter 5: Miscellaneous and General Provisions

## **Part 3: Supplementary and Final Provisions**

Each Part is explained in turn below.

### **COMMENTARY ON SECTIONS**

#### **CHAPTER 1 - DIRECTIONS SUSPENDING THE RIGHT TO BUY AND RELATED RIGHTS**

##### **Section 1 - Power to apply for direction suspending the right to buy and related rights**

5. Section 1 gives local housing authorities in Wales a power to apply to the Welsh Ministers for a direction suspending the right to buy and related rights.
6. Subsection (1) sets out when a local housing authority ("the authority") may apply to the Welsh Ministers to suspend the right to buy and related rights.
7. The maximum period of any suspension in an area is five years (although authorities can apply to extend this under section 18). A consultation exercise must be completed 6 months prior to the application being made and in light of the consultation, and any other relevant information, the authority must have concluded that the condition in subsection (2) exists (ie the "housing pressure condition"). The housing pressure condition is that the demand for social housing substantially exceeds its supply or is likely to do so, and that imbalance between supply and demand is likely to increase as a result of the exercise of the right to buy and related rights.
8. Subsection (3)(a)-(d) defines the rights which are related to the right to buy for the purposes of the Measure. A secure tenant has the right in certain circumstances and subject to certain conditions and exceptions, to acquire the freehold of the dwelling-house which he occupies or to be granted a lease of that dwelling-house (the "right to buy") under Part 5 of the Housing Act 1985 ("the 1985 Act"). The Housing Act 1996 ("the 1996 Act") introduced a right to acquire which extends the right to buy to certain assured tenants (with modifications). The rights related to the right to buy are set out in section 1(3) of the Measure and include the right to acquire and the preserved right to buy and those rights as extended. For the purpose of these notes references to the right to buy include the right to buy and related rights.
9. Subsection (4) provides that an authority can conclude that the housing pressure condition is met in relation to all social housing in its area, to all

social housing in a certain part or parts of its area or in relation to a certain type or types of social housing. Social housing includes any housing provided by a social housing provider. A social housing provider includes an authority and a person (other than an authority) which provides housing to, or has functions relating to allocation of housing to people whose needs are not adequately served by the commercial housing market. An authority or such other person is a social housing provider only insofar as it provides, or has functions relating to, the allocation of housing.

10. Subsection (5) states that a type of social housing may be identified by reference to the special needs of tenants, the description of the dwelling-house (for example, three or four bedroom houses), or by the type of social housing provider.

## **Section 2 – Consultation**

11. This section describes the consultation procedure that the authority must undertake before applying to the Welsh Ministers for a direction to suspend the right to buy in its area.
12. Subsection (2) states that the authority must seek views on whether there is a need to apply for such a direction to suspend the right to buy.
13. Subsection (3)(a)-(d) identifies the persons to be consulted. They include –
  - each social housing provider which appears to the authority to be a landlord of a dwelling-house in the authority’s area and which the authority considers would be affected if its application for a direction were granted,
  - any body appearing to represent the interests of tenants of those dwelling-houses in the authority’s area where the landlords are social housing providers and the tenants of those dwelling-houses would be affected if the application for a direction is granted,
  - any other authority whose area is adjacent to the area to which it is proposed that the direction is to apply, and
  - other persons as the authority considers appropriate.

## **Section 3 – Application for direction suspending the right to buy**

14. This section sets out the requirements to be met by the authority’s application for a direction to suspend the right to buy.
15. Subsection (2)(a)-(d) describes what an application must contain. The authority must prepare a draft of the direction that it wishes the Welsh Ministers to issue. That draft direction must clearly identify the area to which it applies, which could be the whole of the authority’s area or one or more parts of it. The draft direction must also make clear whether the direction is to apply to every relevant dwelling-house in that area and, if not, which type or types of relevant dwelling house to which it is to apply (e.g. it might apply only to 3 or 4 bedroom houses). The draft direction must also state the period for which the proposed direction is to have effect, which can be up to five years from the date of issue.

16. A “relevant dwelling-house” is one where the landlord is a social housing provider and the tenant has the right to buy or would have such a right if he or she met the conditions which gave rise to such a right (“landlord and tenant requirements”) and includes a dwelling-house which meets the landlord and tenant requirements after the date on which the application for a direction is made.
17. An authority’s application must also provide an explanation of the reasons why the authority has concluded that the housing pressure condition exists and an explanation of why suspending the right to buy is an appropriate way to deal with the housing pressure condition. The authority must set out the action that it intends to take, in addition to applying to suspend the right to buy, in order to address the imbalance between the demand for social housing and its supply. Finally, the application must include a description of the consultation exercise the authority has carried out.

#### **Section 4 – Consideration by the Welsh Ministers of an application**

18. Section 4 describes the process the Welsh Ministers must follow in dealing with an application, namely, when they must consider it, when they must refuse to consider the application and when they may consider it.
19. Subsection (1) provides that, if the Welsh Ministers are satisfied that an authority has met the requirements set out in section 3 for an application for a direction, they must proceed to consider whether or not to issue a direction.
20. Subsection (2) provides that if the Welsh Ministers are of the opinion that an application does not comply with section 3, they cannot consider whether or not to issue a direction but must refuse the application. However, if they consider that the failure to comply is immaterial or insignificant, they may consider the application.
21. Subsection (3) sets out the requirement to notify the authority as to whether or not the Welsh Ministers are considering an application.
22. Subsection (4) explains what counts as the day on which the Welsh Ministers decide to consider an application. It is necessary to be able to establish this day as any right to buy claim made after it is stayed under section 122A of the 1985 Act (inserted by section 31 of the Measure).
23. Subsection (5) deals with the treatment of further information (if provided before the Welsh Ministers decide to consider an application) in support of an application where provided under section 27. Any such further information forms part of that application.

#### **Section 5 – Decision of the Welsh Ministers on the application**

24. Section 5 applies where the Welsh Ministers are considering an application.
25. Subsection (2)(a) allows the Welsh Ministers to reject an application where the authority has not complied with a request for further information made under section 27 of the Measure. They can also reject it where the authority is required to have a housing strategy under section 87(1) of the Local Government Act 2003 but that strategy, in so far as it relates to any imbalance between demand for and supply of social housing in the authority’s area, is

inadequate. Subsection (3) states when the Welsh Ministers must not make a decision based on the inadequacy of a strategy unless they have considered any statement required under section 87(2) of the Local Government Act 2003, and any other information which the Welsh Ministers consider relevant. A statement under section 87(2) sets out the authority's housing strategy together with other material relating to housing.

26. Subsection (4) sets out the circumstances in which the Welsh Ministers must grant the application. These are where the Welsh Ministers agree with the authority's reasons for concluding that the housing pressure condition exists and that the proposed direction is an appropriate way to deal with it. The Welsh Ministers must be satisfied that the authority's proposals for other action are likely to contribute to reducing the imbalance between the demand for social housing and its supply. The authority must also have consulted properly.
27. If subsection (4)(a)-(d) are not satisfied, the Welsh Ministers must reject the application.
28. The Welsh Ministers must grant or reject an application for a direction within six months from when they decided to consider the application (see section 4(4)).
29. The validity of the Welsh Ministers' decision is not affected by a failure to comply with subsection (6).

### **Section 6 – Issue of direction**

30. This section sets out what the Welsh Ministers' direction must contain. It must be in the same terms as the draft direction submitted as part of the authority's application.

## **CHAPTER 2 - VARIATION OF DIRECTION TO SUSPEND THE RIGHT TO BUY**

### **Section 7 – Meaning of “enlarging variation” and “reducing variation”**

31. Section 7 defines an “enlarging variation” and a “reducing variation” of a direction. An enlarging variation involves amending a direction to increase the area caught by it or to add to the types of dwelling houses caught. Because an enlarging variation applies to a larger area or a greater number of houses, the procedure for applying for such a variation is similar to that for applying for a direction under Part 1. A reducing variation involves amending the direction so that it applies to a smaller area or fewer houses, so a less extensive procedure applies.

### **Section 8 – Enlarging variation: power to apply**

32. Section 8 sets out the circumstances in which an authority may apply to the Welsh Ministers for an enlarging variation of a direction. These are similar to the circumstances for applying for a direction under section 1 save that a time limit applies here. The authority must apply for the variation at least six months before the direction is due to come to an end. The condition that must exist before an authority can apply is similar to the housing pressure condition set out in section 1, and this must exist in relation to those elements of the direction that are to be extended by the variation.

### **Section 9 – Enlarging variation: consultation**

33. Section 9 provides for the consultation exercise that an authority must undertake before it may apply to the Welsh Ministers for an enlarging variation of a direction. This is similar to the consultation that must be carried out under section 2.
34. The consultation must include any other authority whose area is adjacent to the area to which it is proposed that the enlarging elements of the direction are to apply.

### **Section 10 – Application for enlarging variation**

35. Section 10 sets out the requirements which must be met by an authority's application for an enlarging variation. As with an application for a direction under Part 1, an application for an enlarging variation involves preparing a draft of the direction that the authority wishes the Welsh Ministers to issue and an explanation of the reasons the authority considers the condition referred to in section 8 exists and why an enlarging variation would be an appropriate way to deal with it. The authority must explain what other action it will take, in addition to the suspension of the right to buy, in order to tackle the imbalance between the demand for and supply of social housing.

### **Section 11 – Consideration by the Welsh Ministers of an application for an enlarging variation**

36. Section 11 sets out when the Welsh Ministers must consider an application for an enlarging variation and when they must refuse to consider it. This is similar to section 4. Where an application meets the requirements set out in section 10, the Welsh Ministers must proceed to consider whether to issue a direction. If the application does not meet any of those requirements the Welsh Ministers must reject the application at this stage.

### **Section 12 – Decision of the Welsh Ministers on the application**

37. Section 12 applies where the Welsh Ministers are considering an authority's application for an enlarging variation and sets out when they may reject the application, when they must not make a decision, where they must grant the application and when they must reject the application. The Welsh Ministers can reject the application if the authority has failed to provide information it was required to give under section 27 or if its housing strategy is inadequate in so far as it deals with the imbalance between the demand for and the supply of social housing.
38. The Welsh Ministers must grant the application for an enlargement if they agree with the authority's opinion why the condition set out in section 8(2) exists and that the variation is an appropriate response. The Welsh Ministers must also be satisfied that the authority's proposals in its application under section 10(2)(d) are likely to contribute to a reduction in the imbalance between the demand for social housing and its supply. The authority must also have consulted properly.
39. If subsection (4)(a)-(d) are not satisfied, the Welsh Ministers must reject the application.

40. The Welsh Ministers must grant or reject an application for an enlarging variation within six months from when they decided to consider an application (see section 11(4)).
41. The validity of the Welsh Ministers' decision is not affected by a failure to comply with subsection (6).

### **Section 13 – Issue of direction as varied to include enlarging elements**

42. Section 13 sets out what the varied direction must contain. It must be in the same terms as the draft direction included in the authority's application for an enlarging variation.

### **Section 14 – Reducing variation: power to apply**

43. Section 14 makes provision for an authority to apply for a reducing variation of a direction where there is no longer a need to suspend the right to buy. The authority must be satisfied that the demand for social housing in the part of the authority (or in respect of the type of houses) where the varied application will apply no longer substantially exceeds the supply or is not likely to do so, or even if that is the case, that the exercise of the right to buy will not increase the imbalance.

### **Section 15 – Application for reducing variation**

44. Section 15 outlines the requirements to be contained in an application to the Welsh Ministers for a reducing variation. The authority must prepare a draft of the direction it wishes the Welsh Ministers to issue and explain the reasons why it believes the condition set out in section 14(2) exists.

### **Section 16 – Decision of the Welsh Ministers on the application**

45. Section 16 sets out when the Welsh Ministers may reject an application for a reducing variation and when they must grant the application. They can reject it if the authority has failed to provide information it was required to give. They must issue a direction if they agree with the authority's view that the condition set out in section 14 exists, and must refuse to issue a direction if they do not agree.

### **Section 17 – Issue of direction as varied to include reducing elements**

46. Where an application is granted under section 16, section 17 sets out what the varied direction must state. It must be on the same terms as the draft direction included in the authority's application for a reducing variation.

## **CHAPTER 3 – EXTENSION OF DIRECTION SUSPENDING THE RIGHT TO BUY**

### **Section 18 – Extension applications: power to apply**

47. Section 18 allows an authority to apply for an extension of a direction if they have completed a consultation exercise in the 6 month period preceding the extension application and in light of that exercise and any other relevant information, the authority have concluded that the housing pressure condition continues to exist.

48. There is a ten year limit on the length of any direction, as extended. Under subsection (2) an authority may apply for the extension of a direction which has already been extended but an extended direction cannot have effect beyond ten years from the date of the direction issued under section 6.

### **Section 19 – Extension applications: consultation**

49. Section 19 outlines the consultation requirements that an authority must undertake before applying to the Welsh Ministers for an extension. This is similar to the consultation exercise required under section 2.
50. The consultation must include any other authority whose area is adjacent to the area to which it is proposed that the extended direction is to apply.

### **Section 20 – Application for extension**

51. Section 20 sets out the requirements which must be contained in an authority's application for an extension of a direction. The authority must explain the reasons why it has concluded that the housing pressure condition exists, why an extension is an appropriate way to deal with it, what other action it has taken to deal with it and what other action it proposes to take to reduce the imbalance between the demand for social housing and its supply within the authority's area during the proposed period of extension. The application must describe the consultation undertaken by the authority and set out the length of extension it wants which must not be for a period of more than five years from the date on which, but for Chapter 3, the direction would have ceased to have effect.

### **Section 21 – Decision of the Welsh Ministers on the application**

52. Section 21 sets out when the Welsh Ministers may reject an authority's application for an extension and when they must grant or refuse an application. The Welsh Ministers can reject the application if the authority has failed to provide information under section 27 or if its housing strategy is inadequate in so far as it deals with the imbalance between the demand for and the supply of social housing. They must issue a direction if they agree with the authority's reasons for concluding that the housing pressure condition exists and that the proposed extension is an appropriate way to address it. The Welsh Ministers must be satisfied that the authority's proposed future action to reduce the imbalance between the demand for social housing and its supply is likely to contribute to a reduction. The authority must also have consulted properly. If the authority's application fails to meet any of these conditions, the Welsh Ministers cannot grant the application. If the Welsh Ministers are satisfied as to the adequacy of the action taken to date to reduce the imbalance between the demand for and supply of social housing, and if all the other conditions are met, they must issue a direction but if they are not so satisfied they may refuse the application.

### **Section 22 – Issue of direction as extended**

53. Section 22 deals with the issue of a direction as extended. It is to be identical to the direction it replaces, save for the date on which it ends. Subsection (2) specifies that an extension direction has effect from the date that the existing direction ends.

54. Subsection 29(3) sets out that where the right to buy has been suspended for the maximum of ten years, an authority has to wait 2 years after the date on which the existing direction ends before submitting an application for a new direction.

## **CHAPTER 4 - REVOCATION OF DIRECTION SUSPENDING THE RIGHT TO BUY**

### **Sections 23 and 24 Revocation of direction**

55. An authority may apply in writing to the Welsh Ministers to revoke a direction provided the condition in section 23(2) exists. This is that the demand for social housing covered by the direction does not substantially exceed its supply or is not likely to, or even if that is the case that the exercise of the right to buy is not likely to increase that imbalance. An application must explain why the authority has concluded that this condition exists.

### **Section 25 - Decision of the Welsh Ministers on the application**

56. Section 25 states that the Welsh Ministers may reject an application for revocation when the authority has failed to provide information under section 27. They must grant the application if they agree with the authority's reasons for concluding that the condition in section 23(2) exists. If granted, they must notify the authority in writing of that fact and the direction ceases to have effect on the date that the notice is given.

## **CHAPTER 5: APPLICATIONS: GENERAL PROVISIONS**

### **Section 26 - Withdrawal of application**

57. Section 26 provides that an authority may withdraw its application for a direction, or for the revocation of a direction, at any time before the Welsh Ministers have made a decision on it.

### **Section 27 - Provision of further information**

58. Under section 27 the Welsh Ministers can obtain further information from an authority. They must reasonably consider that the information is required in order for them to deal with an application.

### **Section 28 - Publication of directions**

59. Under section 28 an authority must publish a direction by whichever means it considers appropriate and it must take other reasonable steps to bring a direction or a revocation to the attention of persons likely to be affected.

### **Section 29 - Restriction on repeat applications**

60. Section 29 deals with restrictions on repeat applications. If the Welsh Ministers have refused to grant an application for a direction an authority must not apply for a direction that is substantially the same, as the direction the application for which was refused, for a period of two years from the date of refusal.
61. Where a direction has been issued under section 6 ("the relevant direction") (whether or not there has been a variation under section 13 or 17 or an extension under section 22), an authority must not during the period in subsection (5) make an application for another direction under section 1 that

is substantially the same as the relevant direction. Under subsection (5), the period begins on the date the relevant direction has effect (subsection (5)(a)) and ends two years from the date when the relevant direction ceases to have effect (subsection (5)(b)). In the case of a variation under section 13 or 17, references to the relevant direction in subsections (4) and (5b) are to the direction as varied and where there has been an extension under section 22, the reference in subsection (5)(b) is to when the relevant direction ceases to have effect as extended. This means that an authority cannot make an application for a direction which is substantially the same as an existing one and which is timed to begin as soon as the existing direction comes to an end. Instead it must apply for an extension (with the additional condition of demonstrating it has taken adequate action to date to address the housing pressure condition) to which there is a limit of ten years. Otherwise the authority must wait for a period of two years to expire from the date the direction ceased to have effect.

### **Section 30 – Guidance**

62. Section 30 provides that in the exercise of the authority’s functions under sections 3, 10, 15, 20 and 24 (which relate to authority applications), the authority must have regard to any guidance given by the Welsh Ministers.

## **CHAPTER 6: AMENDMENTS TO THE HOUSING ACT 1985**

### **Section 31 – Consequence of the Welsh Ministers deciding to consider certain applications**

63. Section 31(2) inserts new section 122A into the 1985 Act which sets out the effect an application to suspend the right to buy in parts of Wales has on a claim to exercise the right to buy under section 122(1) of the 1985 Act. A claim is stayed (unless withdrawn by the tenant) if the Welsh Ministers are considering an application for a direction under section 4(1) or (2) or section 11(1) or (2) of the Measure and the right to buy claim is made under section 122(1) of the 1985 Act in respect of a dwelling-house covered by the draft direction or enlarging elements of the draft direction. New section 122A(3) & (4) of the 1985 Act sets out what happens to the stay where the Welsh Ministers refuse to issue the direction (stay is lifted on date of refusal) or if the application for the direction is withdrawn (stay lifted on date of withdrawal).
64. If the Welsh Ministers have not granted or rejected an application for a direction within six months beginning with the date on which they decided to consider the application (see sections 4(4) and 11(4)), the stay is lifted on the day after the end of that period. If a claim to exercise the right to buy is stayed at the time the Welsh Ministers grant an application for a direction, the claim is deemed not to have been made and the computation of any period under Schedule 4 to the 1985 Act (qualifying period for right to buy and discount) is not affected.
65. Subsection (3) inserts new subsection (3) into section 124 of the 1985 Act. This sets out the periods for serving notices in respect of the right to buy when a stay is lifted.
66. Subsection (4) amends section 153A of the 1985 Act (tenant’s notices of delay).

### **Section 32 – Effect of direction to suspend the right to buy**

67. Section 32 inserts new section 122B into the 1985 Act. While a direction suspending the right to buy has effect a tenant cannot make a right to buy claim under section 122 of the 1985 Act (tenant's notice claiming to exercise right to buy). New section 122B does not affect the computation of any period under Schedule 4 to the 1985 Act.

## **CHAPTER 7: MISCELLANEOUS**

### **Section 33 - Interpretation of Part 1**

68. Section 33 defines the terms used in Part 1 of the Measure.

### **Section 34 – Consequential etc orders**

69. Section 34 gives the Welsh Ministers power by order to make provision in consequence or for giving full effect to any provision in the Measure or make provision for applying or extending any provision about or connected with a right related to the right to buy.

## **PART 2: REGISTERED SOCIAL LANDLORDS**

70. The provisions in Part 2 of the Housing (Wales) Measure 2011 amend the 1996 Act. The amendments apply in relation to Registered Social Landlords (RSLs) registered by the Welsh Ministers, but they do not amend the existing law in relation to those Landlords' provision of housing in England.

## **CHAPTER 1: PERFORMANCE**

71. This Chapter amends Part 1 of the 1996 Act to strengthen the powers of the Welsh Ministers with regard to the performance of RSLs.
72. Sections 35 to 37 insert new sections 33A to 33C before section 34 of the 1996 Act.

### **Section 35 - Standards of performance**

73. Subsection (1) of the new section 33A gives the Welsh Ministers the power to set standards of performance for RSLs. These standards may apply to the functions of RSLs relating to the provision of housing or to the governance and financial management of the RSLs.
74. Subsection (2) provides that when setting standards, the Welsh Ministers must have regard to the desirability of RSLs being free to choose how to provide services and conduct business.

### **Section 36 - Guidance on standards of performance**

75. Subsections (1) and (2) of the new section 33B provide that the Welsh Ministers may issue guidance in relation to the standards they set, and that the Welsh Ministers may have regard to this guidance in considering whether the standards have been met.
76. Subsection (3) provides that the Welsh Ministers may revise or withdraw such guidance.

77. Subsection (4) requires the Welsh Ministers to bring the guidance to the attention of RSLs.

### **Section 37 - Consultation**

78. The new section 33C provides that before setting standards or issuing, revising or withdrawing guidance the Welsh Ministers must consult:

- i) one or more bodies representing the interests of RSLs,
- ii) one or more bodies appearing to them to represent the interests of tenants, and
- iii) one or more bodies appearing to them to represent the interests of local housing authorities.

### **Section 38 - Information as to levels of performance**

79. This section (subsection (2)) amends section 35 of the 1996 Act so as to require the Welsh Ministers to collect information from RSLs about their level of performance, both in relation to their provision of housing in Wales and their governance and financial management.
80. Subsection (3) preserves the current duty on the Welsh Ministers to collect information about the performance of RSLs in connection with the provision of housing in England.
81. Subsection (4) amends subsection (2) of section 35 of the 1996 Act to enable the Welsh Ministers to direct each RSL to provide information to them about the level of performance achieved by the RSL in relation to each standard set under section 33A of the 1996 Act (inserted by section 35 of this Measure). A failure to comply with such a direction, without reasonable excuse, is an offence punishable by a fine not exceeding level 5 on the standard scale (currently £5,000).

### **Section 39 - Guidance about complaints about performance**

82. This section inserts a new section 35A into the 1996 Act which allows the Welsh Ministers to publish guidance about the way in which complaints may be made to them about the performance of RSLs. The guidance may specify various matters, such as the procedure for making a complaint, the criteria to be used by the Welsh Ministers in deciding whether to investigate a complaint, and the period within which they aim to inform complainants of the outcome.
83. Subsection (3) of new section 35A provides that the Welsh Ministers may revise or withdraw such guidance.

### **Section 40 - Consultation**

84. This section inserts a new section 35B into the 1996 Act to provide that if the Welsh Ministers issue guidance in relation to complaints about performance, they must consult on the guidance before publication.

## **CHAPTER 2 - VOLUNTARY UNDERTAKINGS**

## **Section 41 - Voluntary Undertakings**

85. Section 41 inserts a new section 6A into the 1996 Act. Section 6A makes provision about the nature of the voluntary undertakings that may be made to the Welsh Ministers by RSLs, the procedure for making undertakings, and the effect that undertakings may have.
86. Subsection (1) provides that a RSL may give an undertaking in respect of any matter concerning housing.
87. Subsection (2) provides that the Welsh Ministers may prescribe a procedure to be followed in giving an undertaking.
88. Subsection (3) provides that the Welsh Ministers must have regard to any undertaking offered or given by a RSL when exercising a regulatory or enforcement power. Subsection (4) enables the Welsh Ministers, in addition, to take into account the extent to which such undertakings have been honoured when deciding whether to exercise such a power.
89. One of the purposes of this provision is to enable RSLs to formally notify the Welsh Ministers of actions that they propose to take, and believe are necessary to ensure that their affairs are managed in accordance with the standards set by the Welsh Ministers under section 33A of the 1996 Act. It provides a mechanism by which such commitments can be brought to the attention of the Welsh Ministers, and requires the Welsh Ministers to take account of those undertakings when determining whether to investigate the performance of RSLs, and to take enforcement action where RSLs have not complied with regulatory requirements.
90. Subsection (5) defines what is meant by a “regulatory or enforcement power”.

## **CHAPTER 3 - REGULATION**

### **Survey and examination**

#### **Section 42 - Failure to give notice to occupiers**

91. This section amends section 37 of the 1996 Act so that a RSL commits an offence if it fails, without reasonable excuse, to give tenants of premises in Wales at least seven days’ notice that a person authorised by the Welsh Ministers will be carrying out a survey and examination of those premises.
92. Such a survey and examination may be carried out if it appears to the Welsh Ministers that a RSL may be failing to maintain or repair any premises in accordance with standards set under section 33A, or guidance issued under section 36, of the 1996 Act.

#### **Sections 43 to 48: Inspection**

93. Sections 43 to 48 insert a new Part 3A into Schedule 1 to the 1996 Act. This new Part 3A deals with inspection.

#### **Section 43 - Inspection: Overview and application**

94. Section 43 inserts a new paragraph 19B into Schedule 1 to the 1996 Act. This new paragraph explains that Part 3A of Schedule 1 makes provision for the inspection of a RSL’s affairs, save those affairs that relate to the provision of housing in England.

### **Section 44 - Inspection**

95. Section 44 inserts a new paragraph 19C into Schedule 1 of the 1996 Act. Sub-paragraph (1) of new paragraph 19C allows the Welsh Ministers themselves or another person to inspect a RSL's affairs. Sub-paragraph (2) indicates that the inspection can be broad or in relation to a specific issue. Sub-paragraph (3) specifies that the Welsh Ministers may direct that an inspection is discontinued.
96. Sub-paragraph (4) specifies that if a person other than the Welsh Ministers carries out an inspection, the arrangements may include provision for payments.

### **Section 45 - Inspection: supplemental**

97. Section 45 inserts a new paragraph 19D into Schedule 1 to the 1996 Act. Sub-paragraph (1) of new paragraph 19D requires the person carrying out the inspection to produce a written report. Sub-paragraph (2) requires the Welsh Ministers to provide the RSL with a copy of the written report and permits the Welsh Ministers to publish the inspection report and any related information. Sub-paragraph (3) makes it clear that where the Welsh Ministers have arranged for another person to carry out an inspection, that person may publish the inspection report and any related information (whether or not the Welsh Ministers have done so).
98. Sub-paragraphs (4), (5), (6) and (7) together make provision for the Welsh Ministers to charge a RSL a fee for the inspection and for the payment of that fee. The Welsh Ministers may direct that payment is made to an external inspector, but if they do so, that person must notify the Welsh Ministers about that payment.

### **Section 46 - Inspector's powers to require provision of documents or information**

99. Section 46 inserts a new paragraph 19E into Schedule 1 of the 1996 Act. This paragraph specifies the powers conferred on an inspector to require the provision of documents or information.
100. Sub-paragraph (1) of new paragraph 19E allows an inspector to require any person to provide specified documents or information. Sub-paragraphs (2) and (3) provide that an inspector's request for information may specify the form in which the information is to be provided, and at which time and place. They also allow an inspector to copy or record information.
101. Sub-paragraphs (4) and (5) make it an offence to fail to comply with a requirement without reasonable excuse or to alter, suppress or destroy requested information intentionally. Sub-paragraph (6) provides, in addition, that if a person fails to comply with a requirement to provide documents or information, the Welsh Ministers or other inspector, may apply to the High Court for a remedy.
102. Sub-paragraph (7) provides that an 'inspector' means the Welsh Ministers or a person who is authorised in writing by the Welsh Ministers to exercise powers under this paragraph for the purposes of an inspection.

### **Section 47 - Inspector's powers to require provision of documents or information: supplemental**

103. Section 47 inserts a new paragraph 19F into Schedule 1 to the 1996 Act. Sub-paragraphs (1) and (2) of new paragraph 19F allow persons to refuse to

disclose documents or information on grounds of legal professional privilege or banker confidentiality, (other than a duty of confidentiality owed to the landlord or its subsidiary or associate).

104. Sub-paragraphs (3) and (4) set out the liabilities relating to the two offences related to the provision of documents or information (see section 45 of this Measure). A person guilty of an offence of failing to comply with an inspector's requirement to provide documents or information is liable on summary conviction to a fine not exceeding the level 5 on the standard scale (currently £5,000). A person guilty of intentionally altering, suppressing or destroying a document is liable on summary conviction to a fine not exceeding the statutory maximum (currently £5,000) or, on conviction on indictment, to imprisonment for up to two years, or a fine, or both.
- 105 Sub-paragraph (5) provides that proceedings for these offences may only be brought by or with the consent of either the Welsh Ministers or the Director of Public Prosecutions.

### **Section 48 - Inspector's powers of entry and inspection**

106. Section 48 inserts a new paragraph 19G into Schedule 1 to the 1996 Act. Sub-paragraph (1) of new paragraph 19G provides that an inspector may at any reasonable time enter premises occupied by the RSL being inspected, and inspect, copy or take away any documents found there. Under sub-paragraph (3), the reference to 'documents' found on premises includes documents stored on computers or electronic storage devices on the premises, and documents stored elsewhere which can be accessed by computers on the premises. The power to inspect includes inspection of any computer or electronic storage device on which such documents have been created or stored (sub-paragraph (4)).
107. Sub-paragraph (2) states that the inspector may not enter residential accommodation (whether the residential accommodation is the whole of, or only part of, premises occupied by the registered social landlord).
108. Sub-paragraphs (5) and (6) provide that the inspector may require any person on the premises to provide facilities or assistance as the inspector reasonably requests. This includes requiring assistance from any person in charge of a computer as the inspector reasonably requests.
109. Sub-paragraphs (7) to (9) specify that it is an offence for a person, without reasonable excuse, to obstruct an inspector carrying out an inspection. A person guilty of an offence is liable on summary conviction to a fine not exceeding level 3 (currently £1,000) on the standard scale. Proceedings for an offence under this paragraph may only be brought by or with the consent of either the Welsh Ministers or the Director of Public Prosecutions.
- 110 Sub-paragraph (10) provides that an 'inspector' means the Welsh Ministers or a person who is authorised in writing by the Welsh Ministers to exercise powers under this paragraph for the purposes of an inspection.
111. Sub-paragraph (10) also provides a definition of "residential accommodation".

## **Inquiry**

### **Section 49 - Extraordinary audit for the purposes of inquiry**

112. Section 49 amends paragraph 22 of Schedule 1 to the 1996 Act to provide that RSLs must meet the costs of any extraordinary audit requested by the Welsh Ministers.
113. The Welsh Ministers may require an extraordinary audit of the accounts and balance sheet of a RSL to be carried out where they are carrying out an inquiry into that RSL. The Welsh Ministers may carry out such an inquiry if it appears to them that there may have been misconduct or mismanagement in relation to the affairs of an RSL.

#### **CHAPTER 4 - ENFORCEMENT**

114. Sections 50 to 71 insert a new Chapter 4A into the 1996 Act. Chapter 4A deals with the enforcement action that the Welsh Ministers may take against RSLs.

##### **Section 50 - Welsh Ministers' enforcement powers: general**

115. This section inserts a new section 50A into the 1996 Act. This new section provides that Chapter 4A does not apply in relation to a RSL's housing in England.

##### **Section 51 - Exercise of enforcement powers**

116. This section inserts a new section 50B into the 1996 Act. This new section applies where the Welsh Ministers are deciding whether to exercise an enforcement power, which power to exercise, or how to exercise a power. It provides that in all these circumstances, the Welsh Ministers must consider:
- (a) the desirability of RSLs being free to choose how to provide services and conduct business;
  - (b) whether the failure or other problem concerned is serious or trivial;
  - (c) whether the failure or other problem is a recurrent or isolated incident;
  - (d) the speed with which the failure or other problem needs to be addressed
117. Subsection (3) defines an 'enforcement power' as a power exercisable under any of the statutory provisions listed in that subsection.

##### **Enforcement Notice**

118. Sections 52 to 56 insert new sections 50C to 50G into the 1996 Act. These new sections describe the arrangements relating to the giving of enforcement notices to RSLs.

##### **Section 52 - Grounds for giving notice**

119. This section inserts a new section 50C into the 1996 Act to specify the grounds on which the Welsh Ministers may give an enforcement notice to a RSL. Subsection (1) of new section 50C specifies that the Welsh Ministers must be satisfied that one of the cases for issuing an enforcement notice applies and that an enforcement notice is the appropriate intervention power to use, whether alone or as a potential precursor to further action.
120. Subsections (2) to (10) specify the cases that may form the basis for giving an enforcement notice as follows:
- that a RSL has failed to meet a standard established by the Welsh Ministers;
  - that the affairs of a RSL have been mismanaged;

- that the RSL has failed to comply with an earlier enforcement notice;
  - that the RSL has failed to publish information in accordance with a requirement under sections 50I(3) or 50Q(3);
  - that it is required to protect the interests of tenants;
  - that it is necessary to protect the assets of a RSL;
  - that a RSL has failed to comply with an undertaking that it has given to the Welsh Ministers;
  - that an offence under Part 1 of the 1996 Act has been committed by a RSL;
  - that a RSL has failed to comply with a recommendation made by the Public Service Ombudsman for Wales;
121. Subsection (11) provides that where the Welsh Ministers are satisfied that an offence under Part 1 of the 1996 Act has been committed in respect of a RSL but by another person (e.g. a member or employee), the Welsh Ministers may serve an enforcement notice on the other person rather than the RSL and, in such cases, references in Chapter 4A of the 1996 Act to the RSL should be read as references to that person.

### **Section 53 - Content**

122. This section inserts a new section 50D into the 1996 Act to specify what an enforcement notice must include. It must specify which of the cases in section 50C of the 1996 Act are the grounds for the enforcement notice, the specific action which the RSL must take in response to the notice, the date by when the specified action must be taken, and the effect of an appeal or withdrawal.
123. Subsection (2) permits the Welsh Ministers to specify in an enforcement notice that the notice must be published in a specified manner.

### **Section 54 - Appeal**

124. This section inserts a new section 50E into the 1996 Act to provide that a RSL served with an enforcement notice may appeal against it to the High Court.

### **Section 55 - Withdrawal**

125. This section inserts a new section 50F into the 1996 Act to provide that the Welsh Ministers may withdraw an enforcement notice.

### **Section 56 - Sanction**

126. This section inserts a new section 50G into the 1996 Act.
127. Subsection (1) of new section 50G places limitations on the further steps that may be taken by the Welsh Ministers where the enforcement notice has been served on a person (other than the RSL) under section 50C(11) of the 1996 Act. In these circumstances, the Welsh Ministers may only issue a penalty notice (as set out in sections 50H to 50M of the 1996 Act), or take steps to instigate a prosecution in relation to the offence which provided grounds for service of the enforcement notice. Subsection (2) provides that a person who has been served with an enforcement notice under Case 8 of section 50C of the 1996 Act may be prosecuted for the offence which gave grounds for that enforcement notice only if they have failed to comply with that notice.

### **Penalty**

128. Sections 57 to 63 insert new sections 50H to 50N into the 1996 Act. These new sections describe the arrangements relating to the imposition of penalties on RSLs.

### **Section 57 - Grounds for imposition**

129. This section inserts a new section 50H into the 1996 Act to specify the grounds on which the Welsh Ministers may decide to require RSLs to pay penalties. As well as being satisfied that one of the cases specified in this section applies, the Welsh Ministers must also be satisfied that a penalty is appropriate for the identified problem.
130. Subsections (2) to (6) of new section 50H specify the cases where the Welsh Ministers may issue a penalty. These cases are where:
- the RSL has failed to meet a standard under section 33A;
  - the affairs of the RSL have been mismanaged;
  - the RSL has failed to comply with an enforcement notice;
  - the RSL has failed to comply with an undertaking that it has given to the Welsh Ministers;
  - where offences under Part 1 of the 1996 Act have been committed by the RSL.
131. Subsection (7) provides that where the Welsh Ministers are satisfied that an offence has been committed in respect of a RSL by another person, the case for imposing a penalty is that which is set out in subsection (6), and the Welsh Ministers may require that other person rather than the RSL to pay the penalty. This subsection also provides that, in such cases, references in Chapter 4A of the 1996 Act to a RSL should be read as references to that other person.
132. Subsection (8) requires the Welsh Ministers to be satisfied beyond reasonable doubt if they wish to rely on the case described in subsection (6) as a basis for the imposition of a penalty.

### **Section 58 - Imposition**

133. This section inserts a new section 50I into the 1996 Act to provide that a penalty is imposed by a written notice being served on a RSL. Subsection (2) of new section 50I requires the notice to specify which of the cases listed in subsections (2) to (6) of section 50H of the 1996 Act is the basis for the notice, the amount of the penalty that must be paid, how the penalty must be paid, the deadline for the payment, and any interest or additional penalty payable in the event of late payment.
134. Subsection (3) allows the notice to require the RSL to publish information about the penalty. Subsection (4) requires the notice to explain the enforcement action that may be taken in the event of non-payment and the right to appeal to the High Court against the penalty.

### **Section 59 - Amount**

135. This section inserts a new section 50J into the 1996 Act which provides that the amount of the penalty that may be imposed on the ground specified in Case 5 (where an offence has been committed by a RSL) of section 50H of the 1996 Act may not exceed the maximum amount that the court could impose for that offence. In all other cases the maximum amount of penalty that the

Welsh Ministers may impose is £5,000. The Welsh Ministers may amend this maximum penalty of £5,000 by affirmative resolution order.

### **Section 60 - Warning**

136. This section inserts a new section 50K into the 1996 Act which sets out a warning procedure which must be followed before a penalty notice can be imposed. The Welsh Ministers must give a RSL a notice, called a “pre-penalty warning”, which must specify the grounds on which they think a penalty could be imposed, warn the RSL that the Welsh Ministers are considering imposing a penalty, include any indication the Welsh Ministers can give of the likely amount, and explain the RSL’s right to make representations (section 50L of the 1996 Act), the enforcement action that may be taken in relation to penalties (section 50M of the 1996 Act) and the RSL’s right to appeal against the penalty (section 50N of the 1996 Act).
137. Subsection (2) requires the Welsh Ministers to send any other person that it thinks appropriate, a copy of the pre-penalty warning. In deciding to whom it would be appropriate to send a copy, they must have particular regard to any person who provided information which has led to the giving of the pre-penalty warning.
138. Subsection (3) requires the Welsh Ministers to refer to section 6A of the 1996 Act (inserted by section 41 of this Measure and which permits RSL’s to offer voluntary undertakings) and indicate in its pre-penalty warning whether the Welsh Ministers would accept a voluntary undertaking instead of, or in mitigation of, a penalty.
139. Subsection (4) allows the Welsh Ministers to combine the pre-penalty warning with warnings about the use of its other enforcement powers.

### **Section 61 - Representations**

140. This section inserts a new section 50L into the 1996 Act which allows RSLs issued with a pre-penalty warning to make representations to the Welsh Ministers.
141. Subsection (2) of the new section 50L specifies that the minimum period for representations must be at least 28 days, beginning on the date on which the RSL receives the pre-penalty warning.
142. The representations may address whether a penalty should be imposed, or the likely amount of any penalty
143. Subsection (4) provides that at the end of the period for representations the Welsh Ministers must consider any representations that have been made, and decide whether to impose a penalty.

### **Section 62 - Enforcement**

144. This section inserts a new section 50M into the 1996 Act which specifies how penalties will be enforced, and provides sanctions for late payment or non-payment. Penalties are treated as a debt to the Welsh Ministers once a penalty notice is issued.
145. Subsection (2) of the new section 50M allows the Welsh Ministers to charge interest on penalties that are not paid by the date specified in the penalty notice and to impose additional penalties for late payment. In such cases, subsection (3) provides that the additional sums are also treated as penalties,

and that these additional amounts may have the effect of increasing the penalty above the limit set by section 50J of the 1996 Act.

146. Subsection (4) gives a discretionary power to the Welsh Ministers to offer an early payment discount if the RSL pays the penalty in advance of the date specified in the penalty notice.
147. Subsection (5) specifies that if the penalty notice is served on a person under Case 5 of section 50H of the 1996 Act, that person may not be prosecuted for the offence which is the ground for requiring the payment of the penalty.

### **Section 63 - Appeal**

148. This section inserts a new section 50N into the 1996 Act which gives a RSL the right to appeal to the High Court against the imposition of, and amount of, a penalty.

### **Compensation**

149. Sections 64 to 71 insert new sections 50O to 50V into the 1996 Act. These new sections describe the arrangements relating to the imposition of a requirement on a RSL to pay compensation.

### **Section 64 - Grounds for Award**

150. This section inserts a new section 50O into the 1996 Act which specifies the grounds on which the Welsh Ministers may require a RSL to pay compensation. The Welsh Ministers must be satisfied either that the RSL has failed to meet a standard of performance as set out in section 33A of the 1996 Act, or that the RSL has failed to comply with an undertaking that it has given to the Welsh Ministers under section 6A of that Act. They must also be satisfied that the award of compensation is appropriate.

### **Section 65 - Persons to whom compensation may be awarded**

151. This section inserts a new section 50P into the 1996 Act which indicates those circumstances under which compensation may be awarded. It should be awarded to a person or persons who have suffered as a result of the failure that forms the basis for awarding compensation.

### **Section 66 - Award**

152. This section inserts a new section 50Q into the 1996 Act which specifies the process for giving a notice to a RSL that requires payment of compensation, and the content of that notice. Compensation is awarded by the Welsh Ministers giving written notice (a "compensation notice") to the RSL and the person or persons to be compensated.
153. Subsection (2) of new section 50Q provides that compensation notices must set out:
  - the grounds on which compensation is awarded,
  - the amount of the compensation award,
  - the person or persons who are to be compensated,
  - the period within which that compensation must be paid, and
  - any interest or additional compensation payable in the event of late payment.
154. The notice may require the RSL to publish information about the award and must explain the effects of sections 50U (enforcement) and 50V (appeal) of the 1996 Act.

### **Section 67 - Impact**

155. This section inserts a new section 50R into the 1996 Act which requires the Welsh Ministers to take account of any information available to it about the financial situation of the RSL when considering awarding compensation and when considering the amount. The Welsh Ministers must consider the likely impact on the RSL's ability to provide services and in particular, must aim to avoid jeopardising its financial viability, existing financial commitments, and ability to remedy the problem.

### **Section 68 - Warning**

156. This section inserts a new section 50S into the 1996 Act which allows for the issue of a 'pre-compensation warning' and specifies a similar procedure to that in section 50K(1) of the 1996 Act (pre-penalty warnings), as inserted by section 60 of this Measure.

### **Section 69 - Representations**

157. This section inserts a new section 50T into the 1996 Act which allows the RSL to make representations to the Welsh Ministers in relation to compensation. The process specifies a similar procedure to that in section 50L of the 1996 Act (pre-penalty warnings - representations), as inserted by section 61 of this Measure.

### **Section 70 - Enforcement**

158. This section inserts a new section 50U into the 1996 Act which makes provision for compensation payments to be enforced in a similar manner to section 50M of the 1996 Act, as inserted by section 62 of this Measure. Compensation is treated as a debt to the person or persons to whom it has been awarded. The Welsh Ministers may award interest or additional compensation for non payment or late payment of compensation.

### **Section 71 - Appeal**

159. This section inserts a new section 50V into the 1996 Act which gives a RSL the right to appeal to the High Court against the award of compensation or the amount of compensation awarded.

### **Management and constitution of registered social landlords**

160. Sections 72 to 78 insert new paragraphs 15B to 15H into Schedule 1 to the 1996 Act. These give the Welsh Ministers additional powers in relation to the management of RSLs.

### **Section 72 - Management Tender**

161. This section inserts a new paragraph 15B into Schedule 1 to the 1996 Act. Sub-paragraph (1) of new paragraph 15B specifies that the Welsh Ministers may use the power conferred by this paragraph where they are satisfied that a RSL has failed to meet a standard set under new section 33A of the 1996 Act, or that there has been misconduct or mismanagement in its affairs.
162. If the Welsh Ministers are satisfied that one of the conditions in sub-paragraph (1) is met, sub-paragraph (3) gives them the power to require the RSL to put the RSL's management functions out to tender. The Welsh Ministers must specify the process that the social landlord is to follow in putting the services out to tender and making an appointment as a result of that process.
163. The services to be tendered out may relate to the RSLs affairs generally, or may relate to specified affairs.

164. The Welsh Ministers must specify certain matters when they exercise this power, as follows:
- the constitution of the panel which has the responsibility for selection, must include provision for ensuring tenants' interests will be represented on that panel,
  - provision for ensuring that the procurement process follows best practice, and
  - the terms and conditions on which the manager is to be appointed, that will include the setting of the required standards, how those standards will be monitored and enforced, and resources.

### **Section 73 - Management tender: supplemental**

165. This section inserts a new paragraph 15C into Schedule 1 to the 1996 Act. Sub-paragraph (1) of new paragraph 15C provides that before the Welsh Ministers require a RSL to implement the tendering process, they must give that RSL a notice which specifies the grounds on which action may be taken, warns the RSL that they are considering action under this section, and explains the effect of the paragraph.
166. Sub-paragraphs (2) and (3) provide that the notice must specify a period during which the RSL may make representations to the Welsh Ministers, and that the period must be at least 28 days and begin on the date the social landlord receives the notice.
167. Sub-paragraph (4) requires the Welsh Ministers to send a copy of the notice to any person they think appropriate. In deciding to whom it would be appropriate to send a copy, they must have particular regard to any person who provided information which has led to the giving of the notice.
168. Sub-paragraph (5) provides that the notice served must advise the RSL on whom it is served about the provisions for the landlord to give voluntary undertakings to the Welsh Ministers, and the extent to which they would accept an undertaking instead of, or in mitigation of, the use of their powers under Chapter 2.
169. Sub-paragraph (6) allows the Welsh Ministers to issue the notice in conjunction with warning notices relating to the potential use of other enforcement powers.
170. Sub-paragraph (7) provides that in deciding whether to use this power, the Welsh Ministers must have regard to the views of relevant tenants, the RSL and, if appropriate, any relevant local housing authority.
171. Sub-paragraph (8) states that a RSL served with a notice by the Welsh Ministers under paragraph 15B of the 1996 Act has a right of appeal to the High Court.

### **Section 74 - Management Transfer**

172. This section inserts a new paragraph 15D into Schedule 1 to the 1996 Act. The powers set out in this paragraph are exercisable following an inquiry as provided for under paragraph 20 of Schedule 1 to the 1996 Act, or an audit under paragraph 22 of that Schedule.
173. Sub-paragraphs (2) and (3) provide that the Welsh Ministers may require a RSL to transfer some or all of its management functions to a specified person.

The requirement may relate to the RSL's affairs generally or to specified affairs only.

174. Sub-paragraph (4) provides that the requirement must specify the terms and conditions of the transfer (including as to remuneration) or make provision for the manner in which they are to be determined.
175. Sub-paragraph (5) gives the person to whom the management functions are to be transferred, the powers specified by the Welsh Ministers in the requirement. In addition the person to whom management is transferred by the requirement will have any other powers in relation to the RSL's business that are necessary to give effect to the purposes specified in the requirement. These specifically include the power to enter into agreements and take other action on behalf of the RSL.

#### **Section 75 - Management Transfer: supplemental**

176. Section 41 inserts a new paragraph 15E into Schedule 1 to the 1996 Act. This makes similar supplemental provision in relation to management transfer to that made in paragraph 15C of that Schedule (inserted by section 73 of this Measure) in relation to management tender.

#### **Section 76 - Appointment of manager of registered social landlord**

177. This section inserts a new paragraph 15F into Schedule 1 to the 1996 Act. This gives the Welsh Ministers the power either to appoint an individual as manager of the RSL, or to require the RSL to appoint an individual as manager as set out in sub-paragraph (2) of new paragraph 15F.
178. The Welsh Ministers may exercise this power if they are satisfied that a RSL has failed to meet a standard set under section 33A of the 1996 Act or that there has been misconduct or mismanagement in its affairs.
179. Sub-paragraphs (3) to (5) of new paragraph 15F set out the nature of the requirement or the appointment that will be specified by the Welsh Ministers.
180. Sub-paragraph (3) provides that the Welsh Ministers may determine the matters in respect of which the manager is to be appointed.
181. Sub-paragraph (4) provides that the appointment of a manager is to be on terms and conditions (including as to remuneration) specified in or determined in accordance with the appointment of, or the requirement to appoint, a manager under sub-paragraph (3).
182. Sub-paragraph (5) gives the appointed manager any powers specified in the requirement or appointment, and any other powers in relation to the RSL's business that are required for the purposes specified in the requirement or appointment. These specifically include the power to enter into agreements and take other action on behalf of the RSL.

#### **Section 77- Appointment of manger: supplemental**

183. This section inserts a new paragraph 15G into Schedule 1 to the 1996 Act. This makes similar provision to that made in paragraph 15C of that Schedule in relation to appointment of a manager.

#### **Section 78 - Amalgamation**

184. This section inserts a new paragraph 15H into Schedule 1 to the 1996 Act. Sub-paragraph (1) of new paragraph 15H sets out the cases where this paragraph applies, which are where the Welsh Ministers are satisfied that there has been misconduct or mismanagement in the affairs of a RSL which is

an industrial and provident society, or that the amalgamation of an industrial and provident society with another industrial and provident society would be likely to improve the management of its affairs.

185. Sub-paragraph (2) gives the Welsh Ministers power to bring about the amalgamation of the society with another industrial and provident society.
186. Sub-paragraph (3) specifies that an instrument providing for an amalgamation has the same effect as a resolution by that society under section 50 of the Industrial and Provident Societies Act 1965. Sub-paragraphs (4) to (6) require that a copy of the instrument be sent to and registered by the Financial Services Authority, at which point the instrument takes effect, and require that the copy is sent for registration within 14 days of the date of execution.
187. Sub-paragraph (7) provides that any body created by virtue of an amalgamation must be registered with the Welsh Ministers as a social landlord and pending registration, it is to be treated as registered.

#### **Amendments relating to inquiries or audits**

188. Sections 79 to 82 make amendments to paragraphs 23 to 26 of Schedule 1 to the 1996 Act to amend the Welsh Ministers' powers in relation to matters consequential to the carrying out of inquiries or audits under that Schedule.

#### **Section 79 - Restrictions on dealings during an inquiry**

189. This section amends paragraph 23 of Schedule 1 to the 1996 Act by inserting a new sub-paragraph (2A). This sub-paragraph requires the Welsh Ministers to take reasonable steps to give notice to a RSL before making an order to restrict the dealings of the RSL during an inquiry. It also requires the Welsh Ministers to take reasonable steps to give notice to the landlord and the person to whom the order will be directed where the Welsh Ministers propose to make an order directing a bank (or other person) holding money or securities on behalf of a landlord not to part with the money or securities during an inquiry.

#### **Section 80 - Restrictions on dealings following an inquiry or extraordinary audit**

190. This section makes an equivalent amendment to that made by section 79 by amending paragraph 24 of Schedule 1 to the 1996 Act. It does this by inserting a new subparagraph (3A) in relation to dealings following an inquiry or audit. A new sub-paragraph (7) is also inserted into paragraph 24, stating that any restriction on dealings following an inquiry or extraordinary audit will have effect until it is revoked by the Welsh Ministers.

#### **Section 81 - Disqualification of removed person**

191. This section amends paragraph 25 of Schedule 1 to the 1996 Act by inserting a new sub-paragraph (4A). Paragraph 25 disqualifies a person removed from office under certain statutory provisions from acting as an officer of a RSL, and requires the Welsh Ministers to keep a register of all persons removed from office under those provisions. The Welsh Ministers may, however, waive a person's disqualification. Where they do so, new sub-paragraph (4A) will require the Welsh Ministers to show the details of any waivers in the register.

#### **Section 82 - Acting while disqualified**

192. This section makes a number of amendments to paragraph 26 of Schedule 1 to the 1996 Act.
193. The effect of the amendment in subsection (2) is to increase the period for which a person guilty of an offence of acting as an officer of a RSL while disqualified may be imprisoned on summary conviction. At present, such a person may be imprisoned for up to six months, but subsection (2) will enable such a person to be imprisoned for up to 12 months.
194. The effect of subsection (3) is to prevent this increased period of imprisonment from being imposed in relation to an offence committed before section 282 of the Criminal Justice Act 2003 has been commenced.
195. Under paragraph 26 of Schedule 1 to the 1996 Act, the Welsh Ministers may order a person to repay sums to a RSL or to the Welsh Ministers where that person has acted as an officer of that landlord while disqualified and has received payments or benefits in connection with that role. Subsection (4) inserts a new sub-paragraph into paragraph 26 to enable the landlord or the Welsh Ministers to recover that sum as a debt if the disqualified person fails to comply with an order.

## **CHAPTER 5- MISCELLANEOUS AND GENERAL PROVISIONS**

196. Sections 83 to 88 make various miscellaneous and general amendments to the 1996 Act.

### **Section 83 - Insolvency, etc. of registered social landlord: appointment of interim manager**

197. This section inserts a new section 43A into the 1996 Act which gives the Welsh Ministers power to appoint an interim manager to manage a RSLs affairs during a moratorium. Such a moratorium will come into being where any of the steps mentioned in section 41 of the 1996 Act (relating to insolvency etc.) are taken.
198. Subsection (2) of new section 43A of the 1996 Act enables an interim manager to be appointed in relation to the RSL's affairs generally, or in relation to specific affairs.
199. Subsection (3) requires the appointment to be made on terms and conditions which must be specified in, or determined in accordance with, the appointment.
200. Subsection (4) provides that an interim manager is to have any power specified in the appointment, and any other power in relation to the RSL's affairs required by the manager for the purposes specified in the appointment. However, subsection (6) provides that an interim manager may not dispose of land or grant security over land.
201. Subsections (7) and (8) enable the Welsh Ministers to give directions to the interim manager and to amend or revoke such directions.
202. Subsection (9) provides that the appointment of an interim manager comes to an end at the end of the moratorium, at the time when proposals as to the future ownership and management of the RSL is agreed, or on a date specified in the appointment, whichever is the earliest. If a person ceases to be

an interim manager before that end date (for example, due to illness or death), subsection (10) enables the Welsh Ministers to appoint a new interim manager.

#### **Section 84 - Removal of officers**

203. This section amends paragraphs 4 and 5 of Schedule 1 to the 1996 Act so as to expand the powers of the Welsh Ministers in relation to the removal of the officers of a RSL. The Welsh Ministers are currently able to remove only certain types of officers (for example, the directors and trustees of a RSL which is a registered charity). The amendments will enable the Welsh Ministers to remove any person who is an “officer” of a RSL within the meaning given by section 59 of the 1996 Act.
204. The Welsh Ministers may remove an officer on grounds such as bankruptcy, disqualification under the Company Directors Disqualification Act 1986 or Charities Act 1983, or failure to act.

#### **Section 85 - Appointment of new officers**

205. This section makes amendments to paragraphs 6, 7 and 8 of Schedule 1 to the 1996 Act so as to expand the powers of the Welsh Ministers to appoint officers of an RSL. The Welsh Ministers are currently able to appoint only certain types of officers (for example, the directors and trustees of a RSL which is a registered charity). The amendments will enable the Welsh Ministers to appoint any kind of “officer” within the meaning given to that term by section 59 to the 1996 Act.
206. The Welsh Ministers may appoint a new officer of a RSL where they have removed an officer, where there are no officers in place for a RSL, or where they consider that such an appointment is necessary for the proper management of a RSL’s affairs.

#### **Section 86 - Charities that have “received public assistance”**

207. This section amends section 58 of the 1996 Act (definitions relating to charities) by inserting a new subsection (1A). This new subsection defines the circumstances in which a registered charity will be regarded as having ‘received public assistance’ for the purposes of the Part 1 of the 1996 Act. These include circumstances in which the charity has been given financial assistance for privately let accommodation under section 24 of the Local Government Act 1988, or has had housing transferred to it under section 34 of the 1985 Act or section 135 of the Leasehold Reform, Housing and Urban Development Act 1993, or has received a grant or loan under various provisions, including social housing grant under section 18 of the 1996 Act.

#### **Section 87 - Minor definitions**

208. This section amends section 63 of the 1996 Act (minor definitions applying to Part 1 of that Act) by inserting definitions of ‘action’, ‘misconduct’ and ‘representations’ to the list of definitions in that section.

#### **Section 88 - Minor and consequential amendments**

209. This section introduces the schedule of minor and consequential amendments.

### **Part 3- Supplementary and Final Provisions**

#### **Section 89 - Orders**

210. Section 89 sets out the general provisions that apply to the making of orders under the Measure. Subsection (1) provides that any power of the Welsh

Ministers to make an order under the Measure is exercisable by statutory instrument and includes power to make different provision for different cases, areas, authorities and descriptions of authority; to make provision generally or in relation to specific cases; to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Welsh Ministers think fit. Subsections (2)-(4) set out the procedural requirements applying to the making of these orders. An order made under section 34 is to be made by the negative resolution procedure unless it amends an Act of Parliament or Measure of the National Assembly for Wales, in which case the affirmative resolution procedure applies.

### **Section 90 - Commencement**

211 Section 90 sets out when the various Parts of the Measure come into force. Part 3 of the Measure is commenced two months after the day on which the Measure is approved by Her Majesty in Council. The remaining parts are commenced by order of the Welsh Ministers.

### **Section 91 - Short Title**

212. The short title of the Measure is the Housing (Wales) Measure 2011.

### **Schedule**

213. The schedule contains minor and consequential amendments.

## **RECORD OF PROCEEDINGS IN THE ASSEMBLY**

214. The following table sets out the dates for each stage of the Measure's passage through the National Assembly for Wales. The Record of Proceedings and further information on the passage of this Measure can be found on the National Assembly for Wales' website by clicking on the dates in the table below.

<b>Stage</b>	<b>Date</b>
Proposed Measure introduced	<b><u>22 November 2010</u></b>
Stage 1 - Committee consideration of general principles*	<b><u>23 November 2010</u></b> <b><u>2 December 2010, 9</u></b> <b><u>December 2010</u></b> 12 January 2011 (private session)
Stage 1 - Debate in plenary on general principles	<b><u>25 January 2011</u></b>
Stage 2 - Committee consideration of amendments	<b><u>16 February 2011</u></b>
Stage 3 - Plenary consideration of amendments	<b><u>22 March 2011</u></b>

Stage 4 - Passing of the Measure in Plenary	<b><u>22 March 2011</u></b>
Date of Royal Approval	<b>10 May 2011</b>

\* undertaken by Legislation Committee No.2