

**Domain Regulation  
Welsh Government  
Central Consultancy and Training  
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**Contents**

	<b>Page</b>
<b>Introduction</b>	<b>2</b>
<b>Summary of Findings</b>	<b>3</b>
<b>Contents</b>	<b>5</b>
<b>The current oversight arrangements</b>	<b>5</b>
<b>What we know about performance in the sector</b>	<b>7</b>
<b>Comparison with other parts of the UK</b>	<b>11</b>
<b>What stakeholders told us</b>	<b>16</b>
<b>Options and pre-conditions</b>	<b>18</b>
<b>The Options</b>	<b>20</b>
<b>Comparing the benefits of these options</b>	<b>24</b>
<b>The barriers to these options</b>	<b>25</b>
<b>The questions going forward</b>	<b>26</b>
<b>Conclusions and recommendations</b>	<b>27</b>
<b>Annex 1: Summary of Welsh Government’s legal powers to Regulate RSLs (Housing Associations)</b>	<b>29</b>

## **Domain Regulation**

### **1. Introduction**

- 1.1 14% of Welsh households live in social housing. 4 in 10 of these are provided directly by local authorities. The remaining 6 are provided by housing associations. The Minister for Housing and Local Government has commissioned this research to explore how the interests of tenants could be protected and promoted through closer alignment of the regulatory and accountability regimes, recognising that that tenants of social housing in Wales, whether their landlord is a housing association or a local authority, face many of the same challenges in terms of holding their landlords to account for the quality of the services they receive as well as the engagement they have with their landlord. “Domain Regulation” is the term adopted to describe regulating the social housing sector to help achieve equity of outcomes for local authority and housing association tenants.
- 1.2 This potential for inequity was also reflected in the report to the Minister for Housing and Local Government (May 2019) from the Regulatory Board for Wales (RBW)<sup>1</sup> which drew attention to the “inconsistency and inequality” in the nature of housing regulation between local authority and housing association sectors, which it saw as being “disadvantageous to local authority tenant participation and access”.
- 1.3 This research began in March 2020 and was conducted during a period of extreme uncertainty for the sector arising from Covid 19. At the time of writing, while it is hard to anticipate the full context in which decisions will be made. We can anticipate that the importance of safe secure homes as crucial to the wellbeing and health of tenants, will remain central. This is clearly the view taken by Homes for All Cymru in its recent discussion paper for the Cross-Party Housing Group<sup>2</sup>.
- 1.4 We are very grateful to all those who have helped us in this research during the past few months particularly to our adviser **[Name redacted]**, members of the Regulatory Board who have been

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<sup>1</sup> <https://gov.wales/sites/default/files/publications/2019-05/regulatory-board-for-wales-performance-report.pdf>

<sup>2</sup> <https://sheltercymru.org.uk/wp-content/uploads/2020/06/XPHG-covid-discussion-paper.pdf>

encouraging in this work and to colleagues in Welsh Government whose focus has been rightly on Covid 19.

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## 2. Summary of Findings

- 2.1 The current arrangements in Wales include a central government role in setting rent policy and housing quality standards for both housing associations and local authorities, managed separately from the regulation of the housing associations. While the Auditor General for Wales is the auditor of local authorities. Taken together these various functions seem to lack coordination. Basic data is in some cases not available, although steps are being taken to address some of the gaps. For example, both housing associations and local authorities are being asked to conduct common tenant satisfaction surveys from 2021.
- 2.2 A mixed economy, of housing associations and public ownership by local authority (or in the case of Northern Ireland central government), exists in each of the four nations of the UK. Each nation has established different levels of regulatory control, with varying degrees of success. As we discuss later in the paper, the Scottish Regulator seems to have a clarity of purpose and an approach which empowers tenants to actively participate.
- 2.3 We discussed the potential for change with each of the key stakeholders in Wales; the Welsh Local Government Association (WLGA), Community Housing Cymru (CHC), Tenant Participation Advisory Service Cymru (TPAS Cymru) and Wales Audit Office (WAO), and with members of the RBW. All of them understood the concerns and contributed to this paper, with source material, references, and advice.
- 2.4 Drawing on the different regulatory approaches taken to social housing in place across the UK and our experiences from other sectors, we propose a set of preconditions for a regulatory approach that will deliver successful outcomes for tenants.

2.5 These **pre-conditions for successful Domain Regulation** are:

- Clarity of purpose.
- Leadership and good governance. Alongside a clear statement of purpose comes independent leadership and governance of the Regulatory Body distinct from policy setting.
- Good relationships with tenants, local authorities, housing associations, and other stakeholders based on no surprises, transparency, openness, shared endeavours.
- Ability to set long term outcomes/objectives.
- Ability to define, collect, analyse, and publish data.
- Adequate resourcing - financial and skills.
- Influencing and enforcement powers ranging from face to face meetings with and requests for additional information or action plans to powers to intervene if necessary, in the event of serious failure.

2.6 Based on this research, we propose three ways in which Domain Regulation could be introduced in Wales. We make an initial assessment of the benefits of these and the barriers to these alongside an option of what we call “maximising the benefits of the status quo”.

2.7 We conclude that combining all the “regulatory” functions relating to tenant services, standards and quality of service delivered to tenants of social housing and establishing a form of Domain Regulation would benefit the tenants of social housing in Wales. For example: publishing timely performance data would enable active comparisons and encourage improvements in service.

2.8 While the creation of an independent Housing Regulator, as in Scotland or England, has significant merit, it also comes at a cost and would take time to implement. Our view, at this stage, is that many of the same benefits can be achieved by a simpler approach, provided the preconditions set out above can be met, by a strengthened Housing Regulation function, separated from the housing policy function within Welsh Government.

2.9 We recommend that

1. These conclusions are tested in consultation with the key stakeholders involved in commissioning this research.
2. Welsh Government address the key questions about scope early on in designing a new model because these questions are fundamental to the design and to the resources required:
  - Homelessness – in or out?
  - Focus – tenants – current or current and future? Or tenants and investment?
  - Transparency and data sharing – the Scottish model is exemplary in its data sharing, it enables much of the data scrutiny to be done by others, but this requires investment.
  - Involvement – with tenants not about tenants – what is the mechanism for direct input of views at a national level?
3. Welsh Government with RBW reviews the **pre-conditions for successful Domain Regulation** set out above and designs an action plan to meet these, starting from its current base.
4. Welsh Government adopts a Hybrid model of Domain Regulation for the benefit of all social housing tenants.

2.10 In making these recommendations we recognise that achieving the desired outcomes will require commitment, drive, determination and careful monitoring across all parts of the system. Until a common purpose is identified, progress cannot consistently and objectively measured, it will continue be difficult to achieve equity for tenants of housing associations and local authorities.

## 5. Contents

### 3.1 This paper will cover

- The current oversight arrangements for both sectors
- What we know about performance across the social housing sector in Wales
- A comparison with how similar social housing sectors are regulated in other parts of the UK
- The views of key stakeholders, collected through initial interviews as part of this research
- The preconditions for a successful regulatory approach

- Options for consideration by Welsh Government
- Comparison of the options
- The questions going forward in the context of the Wellbeing and Future Generations Act 2015
- Conclusions and Recommendations

## 6. The current oversight arrangements

4.1 Currently, as outlined in its Regulatory Framework<sup>3</sup>, the Welsh Government regulates housing associations in Wales to:

- protect the interests of current and future tenants and other users; • ensure good quality social housing and high quality tenant services; and
- maintain the confidence of funders.

4.2 The Government has functions and powers to do this under section 75 of the Housing Association Act 1985 and the Housing Act 1996 – see Annex 1 for more details. The Regulation team within Welsh Government seek to ensure that each housing association is well governed, delivering high quality services and financially viable. Its approach is predicated on a coregulation approach, where both parties work on the basis of “no surprises”. Each housing association self-reports against a set of performance standards, set by Ministers<sup>4</sup>. Failure to meet these standards can result in regulatory and enforcement action<sup>5</sup>. Work currently being undertaken by Campbell Tickell is developing a new model for use by the regulation team to

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inform their assessment of housing association governance. An update on that project was presented to the CHC Governance Conference in March 2020<sup>6</sup>.

4.3 At a local authority level, housing is the responsibility of each of the 22 unitary local authorities (all of whom exercise strategic housing functions, although only half have a landlord function). The 11 local authority landlords providing social housing in Wales also meet requirements set out in legislation by the Welsh Government. Part 4 of the Housing (Wales) Act 2014 allows the Welsh Government to set standards and to give guidance to local authority housing providers in connection with the quality of accommodation, the rent and service charges. Alongside this,

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<sup>3</sup> <https://gov.wales/sites/default/files/publications/2019-02/the-regulatory-framework-for-housing-associationsregistered-in-wales.pdf>

<sup>4</sup> section 33A of the Housing Act 1996

<sup>5</sup> powers contained under the Housing Act 1996, as amended by the Housing (Wales) Measure 2011.

<sup>6</sup> Campbell Tickell workstream

local authorities must provide information on compliance and the government can authorise powers to intervene, require advisory services and require co-operation.

- 4.4 The Auditor General for Wales (AGW) has a duty to audit local authorities, including providing a conclusion on whether they have proper arrangements for securing economy, efficiency and effectiveness (value for money). The AGW also has a duty to undertake studies of authorities each financial year designed to make recommendations for improving economy, efficiency and effectiveness, but the scope of such studies is at the AGW's discretion (i.e. he does not have to look at housing but he can elect to do so). The AGW also has a power to do studies of service provision, including public sector housing. The AGW has conducted several audits of housing related matters and made relevant recommendations about value for money and delivery of statutory responsibilities.
- 4.5 This is not the first time Domain Regulation has been considered in Wales. A consultation paper was issued in 2010<sup>7</sup>, when three options<sup>8</sup> were considered and broadly the current arrangements were adopted. This consultation paper followed the publication of the Cave Review in England<sup>9</sup> produced for the then UK Labour Government.
- 4.6 We have looked again at the reasoning presented in the 2010 consultation and what has changed in the 10 years since. We consider it is reasonable to look at Domain Regulation again, this time from the perspective of tenants across Wales, in the context of greater devolution,

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and of more co-ordination of social housing policy including developments such as the Wellbeing of Future Generations Act (2015).

## 5. What we know about the performance across the sector

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<sup>7</sup> Welsh Assembly Government Consultation Document – Developing a modern regulatory framework for Housing Associations in Wales Date of issue 24 March 2010

<sup>8</sup> The 3 options considered were 1. The Status Quo with housing associations continuing to be regulated by the Assembly linked to the performance standards for finance, governance and service delivery, 2. A common, formal set of performance standards adopted by both local government and housing associations housing providers but evaluated by two different organisations – the Assembly in the case of housing associations and the WAO in the case of local authorities. 3. To have a common set of performance standards that form part of a single regulatory framework delivered by the Assembly.

<sup>9</sup> Every Tenant Matters: A review of social housing regulation June 2007

5.1 The RBW report in 2019<sup>10</sup> drew attention to inconsistency and inequality in tenant participation and access; we wanted to check whether this was reflected in the key indicators of performance on the issues we thought would matter most to tenants. We identified these as being:

- The quality of their homes
- The cost of their homes
- The value for money of the services they receive
- The maintenance of their homes, and
- The way they are involved in decision making about their homes.

Availability of data on each of these areas is somewhat limited. Annex 2 sets out the data currently available on the website 'Compare Your Housing Association'<sup>11</sup> which is limited in scope and is not up to date. Although we have been told there are plans to improve published data.

5.2 Following this, in July 2019 the RBW published The Right Stuff – Hearing the Tenants Voice<sup>12</sup> This is a helpful, high-level framework to help understand and undertake good tenant involvement. It is indicative rather than prescriptive and it provides prompts to stimulate thinking. It was aimed to anyone with a role or interest in tenant involvement to help them ensure their approach is robust and focused on achieving clearly articulated outcomes, whether they are in a housing association or a local authority. When it is possible to look back at events of 2020 this area of engagement may, post Covid, look very different.

5.3 The Welsh Housing Quality Standard (WHQS) was first introduced in 2002. Initial targets were set that all homes should reach the Standard by 2012. The investment needed to improve homes in the social rented sector proved to be significant and this was the key driver for the transfer of housing stock from eleven local authorities to newly created housing associations. These large-scale transfers were accompanied by investment to redress the backlog of repairs. WHQS compliance is higher for housing associations, with 99% achieving WHQS compliance (including acceptable fails) compared to 84% of local authority dwellings<sup>13</sup>. These summary

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percentages can appear to paint a misleading picture of poorer performance by local authorities than housing associations. When looking in more detail the data shows that eight

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<sup>10</sup> <https://gov.wales/sites/default/files/publications/2019-05/regulatory-board-for-wales-performance-report.pdf>

<sup>11</sup> <https://gov.wales/compare-your-housing-association>

<sup>12</sup> [https://gov.wales/sites/default/files/publications/2019-07/hearing-the-tenants-voice\\_0.pdf](https://gov.wales/sites/default/files/publications/2019-07/hearing-the-tenants-voice_0.pdf)

<sup>13</sup> <https://gov.wales/welsh-housing-quality-standard-31-March-2019>



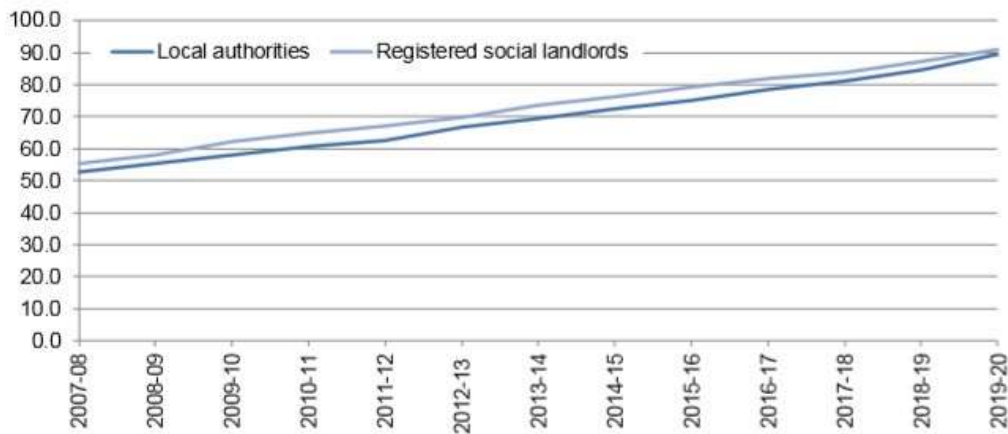
local authorities, do achieve WHQS, while three are very significant outliers<sup>14</sup> and that only one housing association has less than 95 per cent compliance<sup>15</sup>. If one of the purposes of making comparisons of housing quality is to point out where improvements are needed and to draw attention to those who can ensure these failings are addressed then the data should be disaggregated to the level of the unit at which decisions are made, in this case the individual local authority or housing association. It is not helpful to present the rounded picture for all local authorities or all housing associations as if the outcomes were in some way correlated with local authority or housing association tenure when they are not.

5.4 Rents The graph below shows little difference in average rents between housing associations and local authorities with some gradual move towards less differentiation over time. A more thorough comparison of like for like homes across a range of landlords might show more disparities. As with the WHQS data, there may be outliers hidden in the averages. Service charges may also be differentiated between and within the two parts of the sector, but on the limited data available it is difficult to reach any conclusions. We consider this is to be an area that is worth further investigation and research.

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<sup>14</sup> Flintshire, Wrexham, and Caerphilly <sup>15</sup> Valleys to Coast.

**Chart 4 – Average weekly rents (£s) of all self-contained social housing units owned and managed by Welsh social landlords (a) (b)**



Source: Annual returns from local authorities and RSLs

- (a) Includes self contained general needs, sheltered, other supported and extra care housing. Excludes all non-self contained social housing units, non self-contained bedsits and non-self contained hostels. Excludes all non social housing units.  
 (b) The rents relate to the position at 1 April before the financial year commences.

16<sup>15</sup>

5.5 Recently the Welsh Government has acted on the recommendations of the Independent Review of Affordable Housing Supply relating to Rent Policy and set a five-year rent policy to provide stability for tenants and landlords<sup>16</sup>. The certainty this offers to both local authorities and housing associations is much welcomed by the social landlords but has implications for affordability of rents (the annual increase agreed is above the rate of inflation)<sup>17</sup>. These implications may be significant for tenants, their ability to pay and in the longer term for debt levels. Several housing associations are implementing living rents, and some are not increasing rents by the maximum increase set by the national policy. Increased tenant engagement around rent policy is also expected and could be made easier if tenants had better access to data about rents across other social landlords.

5.6 Alongside this the WLGA and the CHC agreed that all the social landlords would also:

<sup>15</sup> <https://gov.wales/sites/default/files/statistics-and-research/2019-08/social-landlord-housing-stock-and-rents-31march-2019-906.pdf>

<sup>16</sup> <https://gov.wales/written-statement-5-year-agreement-rent-policy>

<sup>17</sup> One of the conclusions of a review of rent policy commissioned by Welsh Government <https://gov.wales/sites/default/files/statistics-and-research/2019-07/rent-policy-review.pdf> which noted 'Taking all these factors into account the research does allow us to suggest that there is a case for setting annual matrix increases at no more than CPI + 0.5% in the years to 2021/22, in order to limit the extent to which rents continue to rise ahead of earnings.'

- Strengthen approaches designed to ensure they minimised all evictions and deliver on a new agreement not to evict into homelessness;

- 
- Undertake a standardised tenant satisfaction survey and provide the data for publication on a central website to assist tenants in scrutinising and comparing landlord performance. First survey results to be available for publication by April 2021 and surveys to be carried out at least bi-annually thereafter;
  - Build on their existing commitment to delivering high quality homes, with an aspiration that DQR 2020 space standards will apply across tenure on sites which attract Welsh Government funding, on a phased basis from 2021; and
  - Work towards an aspiration that all new build housing, regardless of tenure, achieves energy efficiency standards of no less than EPC A on sites which attract any Welsh Government funding from April 2021.

5.7 Regulators often link the permission to increase prices to the achievement of a performance measure. This linking of the five-year rent policy to the delivery of voluntary policy objectives is in a sense a move towards domain policy management. But it is also a common regulatory tool to link a price limit to performance measures.

5.8 While this has been achieved in a voluntary manner, the Welsh Government could have achieved much of the same using its powers to set standards for local authorities under section 111 of the Housing (Wales) Act 2014<sup>18</sup> and for housing associations under section 33A of the Housing Act 1996<sup>19</sup>. The powers include the ability for Welsh Government to set standards, provide guidance and require local authorities to provide information. It also gives the Government powers to authorise intervene and act in the event of failure or likely failure to meet a standard. These Welsh Government powers extend, in respect of housing associations, to other issues including, for example Performance Standard 6 Delivery Value for Money.

5.9 The voluntary approach has been seen as preferable to a regulatable approach in the past, but it leaves the Welsh Government vulnerable to criticism if housing associations or local authorities fail to meet these voluntary commitments for their tenants. A general criticism of voluntary targets is that they are often inadequately monitored or defined, and this can result in misleading comparisons of outcomes and achievements.

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<sup>18</sup> The rules set out are pursuant to s111 (3) (a) and (b) of the 2014 Act and guidance is issued under s112 (1) (a) and (b).

<sup>19</sup> <http://www.legislation.gov.uk/ukpga/1996/52/section/33A>

5.10 Repair Services and Tenant Involvement, we found no common data sets for either repair services or tenant involvement, for either part or the whole of the Welsh social housing sector.

5.11 Anecdotally, we were told, although no evidence was provided, that housing associations probably devote more dedicated resources to tenant involvement than local authorities. We

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were also told that, in areas where local authorities and housing associations both provide housing, that the local authorities were likely to house the tenants with higher support needs. Some felt that the ability of local authority tenants to hold their landlords democratically accountable via the political process was weakened in the current climate when housing is well down the political agenda. The role of Local Authority Scrutiny Committees was not raised, and neither was evidence of their effectiveness provided. This is an area for further investigation and consideration.

5.12 While there remain distinct differences between the way the Welsh Government regulates the housing associations and the way the local authority housing function is audited by the Wales Audit Office, a lack of data, comparing the services provided to tenants in the two parts of the sector makes it difficult to assess whether tenants are receiving a fair and equitable service in all parts of Wales, regardless of the type of their landlord.

## 6. Comparison with other parts of the UK

6.1 The Scottish Housing Regulator has a statutory objective “To safeguard and promote the interests of current and future tenants, people who are homeless, factored owners, and Gypsy/Travellers.”

6.2 On its website it describes itself as: “**Regulating to protect the interests of tenants, people who are homeless, and others who use social landlords' services.**”

6.3 This simple strapline seems to capture the clear focus of its direction and vision. So, although much of its responsibilities in relation to housing associations are like those of the Welsh Government, and relate to matters of Governance and Finance, the purpose of regulation is described solely from tenants’/citizens’ perspective.

6.4 In contrast the Welsh Government Regulation Team uses a less focused strapline “Protecting tenants and investment in Welsh Social housing”. The duality of tenants and investment displays a tension which is not present in the Scottish strapline, although the Scottish housing market is indeed dependent on adequate investment.

6.5 Looking at the Scottish Housing Regulator’s Corporate Plan<sup>20</sup>, it is clear that its work “will help to maintain lenders’ and funders’ confidence in social housing”, and that its priorities include both:

- Monitoring, assessing and reporting on housing association financial health and governance; and
- Engaging with current and potential investors in social housing and making it clear if it considers that a housing association is not a suitable partner for investors.

6.6 The role is not dissimilar to the role of the Welsh Government in respect of protecting the financial investment in housing associations. The difference comes in the presentation and the focus of all its objectives, publications, priorities, data and presentation as from the tenants’ perspective. Everything on its website is accessible, easily searchable, current and relevant. A tenant can access the Scottish Regulator’s website and find out about their landlord and their performance compared to other landlords across Scotland.

6.7 For both local authorities and housing associations, the Scottish Regulator monitors, assesses, reports, and intervenes (as appropriate) on the performance of housing activities. This means how they deliver services to:

- tenants.
- people who are homeless.
- Gypsy/Travellers who use official sites provided by these landlords; and factored owners.

6.8 For housing associations, the Scottish Regulator also monitors, assesses, reports, and intervenes (as appropriate) on the governance and financial wellbeing. It does not have this role with local authorities. In 2018-2019, it had a higher level of scrutiny with four local authorities and it formally intervened in three housing associations<sup>21</sup>, a similar number as the Welsh Government.

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<sup>20</sup> P2 of <https://www.housingregulator.gov.scot/media/1129/corporate-performance-corporate-plan-2019-2022.pdf>

<sup>21</sup> <https://www.housingregulator.gov.scot/about-us/what-we-do/our-performance/annual-report-and-accounts2018-19>

6.9 In 2019, the Scottish Regulator reviewed its approach to regulation and after consultation made some changes. Its approach is now based on:

- Landlord self-assurance – like the co-regulatory approach Welsh Government takes with housing associations, but in Scotland this extends to local authorities too.
- Empowering tenants – a significant difference from the Welsh model whereby tenants in Scotland have access to performance data and sophisticated comparison tools enabling them to hold their landlords to account

6.10 Risk-based Regulation focusing on

- Poor outcomes for tenants, people who are homeless and other service users
- Poor quality of tenant’s homes and investment failures
- Poor financial performance and management (housing associations only)
- Poor governance (housing associations only)

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6.11 For local authorities, the Scottish regulator works with partner scrutiny bodies (for Wales this would include Wales Audit Office).

6.12 The Scottish Regulator provides a very transparent data rich facility for tenants to scrutinise and challenge their landlord’s performance<sup>22</sup>. This enables the regulator to make use of the tenant’s perspective to spot and to report on problems and failures.

6.13 Like Welsh Government. it finds that weak governance lies at the root of most of the problems where it needs to intervene with Housing Associations. It seems to be operating a hybrid model of Domain Regulation with more regulatory oversight of housing associations than of local authorities.

6.14 The current regulatory approach in England does extend to local authorities but is very much focused on housing associations. The Regulator of Social Housing applies regulatory standards<sup>23</sup> to housing associations these are classified as either “economic” or “consumer”:

- Economic Standards
  - Governance and Financial Viability Standard
  - Value for Money Standard

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<sup>22</sup> [https://public.tableau.com/views/=y&:display\\_count=yes&:toolbar=no&:origin=viz\\_share\\_link&publish=yes&%3AshowVizHome=no](https://public.tableau.com/views/=y&:display_count=yes&:toolbar=no&:origin=viz_share_link&publish=yes&%3AshowVizHome=no)  
ScottishSocialHousingCharter2019/CONTENTS?:embed

<sup>23</sup> <https://www.gov.uk/government/publications/regulating-the-standards>

- Rent Standard
- Consumer Standards
  - Home Standards
  - Tenancy Standard
  - Neighbourhood and Community Standard
  - Tenant Involvement and Empowerment Standard

Only the Consumer Standards apply to local authorities.

6.15 The Housing and Regeneration Act 2008 (the Act) places a restriction on the regulator's ability to use its powers<sup>24</sup> in relation to a provider failing to meet a consumer standard. It may use its regulatory and enforcement powers only if it thinks that a standard has been failed and there are reasonable grounds to suspect that:

- the failure has resulted in a serious detriment to the provider's tenants (or potential tenants), or
- 
- there is a significant risk that, if no action is taken by the regulator, the failure will result in a serious detriment to the provider's tenants (or potential tenants).

This is a very high hurdle to meet before regulatory action can be taken.

6.15 The Green Paper "A New Deal for Social Housing" published in August 2018<sup>25</sup> in the shadow of the Grenfell Tower disaster, proposed changes to the regulatory regime in England which have not yet happened. It also set out very clearly the powers available to the English regulator at present in respect of housing associations (registered providers) and local authorities.

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<sup>24</sup> <https://www.gov.uk/government/publications/guidance-on-the-regulators-approach-to-intervention-enforcement-and-use-of-powers>

<sup>25</sup> <https://www.gov.uk/government/consultations/a-new-deal-for-social-housing>

### Key regulatory and enforcement powers of the Regulator of Social Housing

Power	Applicable to private registered providers <sup>a</sup>	Applicable to local authority landlords
Survey to assess the condition of stock	✓	✓
Inspection to establish compliance with the regulatory requirements	✓	✓
Hold an Inquiry where it suspects landlord mismanagement	✓	✓
Issue an Enforcement Notice	✓	✓
Issue Fines	✓	
Order payment of compensation to a resident	✓	
Appointment of manager to improve performance of the landlord	✓	
Transfer land to another provider to improve management of land (following an Inquiry)	✓ <sup>b</sup>	
Suspension and removal of officers in cases of mismanagement (during or after Inquiry)	✓ <sup>c</sup>	
Appoint a new officer to address service failure and improve management of company	✓ <sup>c</sup>	
Appoint an adviser to improve performance		✓
Requirement to tender some or all of its management functions	✓	✓
Requirement to transfer management of housing to a specified provider	✓	✓

a) This includes registered charities, housing associations and "for-profit" private sector landlords, b) Does not apply to registered charities, c) Applies to not-for-profit providers only

6.16 When a White Paper and legislation is prepared in England, we can anticipate significant changes to enable consumer standards to be enforced in a similar way to economic regulation

and a more rigorous approach to regulation in general. We note the reference in the Green paper to learning from other regulators such as Ofsted. That said, it is also clear that there is no intention to move the handling of individual complaints away from the Housing Ombudsman.



6.17 As and when the Welsh Government is ready to take a view on its way forward, some dialogue with colleagues in Scotland and England would be useful.

6.18 In Northern Ireland social housing is provided by a mix of central government, through the Northern Ireland Housing Executive<sup>26</sup> and 20 housing associations. Local authorities were removed from the sector sometime in the 1970s. Regulation of housing associations is the responsibility of part of the same government department that oversees the Housing Executive. It aims to deliver a modern, tailored, proportionate and cost effective regulatory process which protects the interests of tenants.<sup>27</sup> It monitors performance, financial wellbeing and standards of governance and aims “to create through regulation a social housing sector that is viable, efficient, well governed and able to deliver homes to meet a range of needs.” The Northern Ireland Regulator publishes on its website some comparable data for each housing association<sup>28</sup> and its regulatory judgements. Contact was made with the regulatory team in Northern Ireland during this research but a combination of changes in staffing and Covid 19 has prevented dialogue.

6.19 We think there are some questions of scope to be considered arising from these comparisons in deciding the model going forward for Wales.

- Homelessness – in / or out – it is in in the Scottish model, it is part of the local authority responsibility and including it in the regulatory remit would enable the Welsh Government to monitor its effective service provision
- Focus – Tenants - current or current and future? Or Tenants and Investment? The Scottish model is clear it is the tenants in the strapline, the current Welsh strapline includes investment and feels less tenant focused
- Transparency and data sharing – the Scottish model is exemplary in its data sharing, it enables much of the data scrutiny to be done by others, but this requires significant investment.

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<sup>26</sup> <https://www.communities-ni.gov.uk/topics/housing/northern-ireland-housing-executive-nihe>

<sup>27</sup> <https://www.communities-ni.gov.uk/articles/housing-regulation>

<sup>28</sup> For example: <https://www.communities-ni.gov.uk/sites/default/files/publications/communities/housingassociation-kpr-1718-ark.pdf>

- Involvement – with tenants not about tenants – what is the mechanism for direct input of views at a national level<sup>29</sup>

It is essential that decisions are made on these matters before designing a new regulatory model for the future.

## 7. What stakeholders told us

7.1 We discussed with each of the key stakeholders: TPAS Cymru, WLGA, CHC and WAO whether there is a benefit to tenants, and future tenants, in adopting a more consistent approach to regulating all or part of social housing provision irrespective of the nature of the provider.

7.2 To give some focus to these discussions we found it helpful to talk about the four separate but interrelated aspects of housing provision very pertinent to every tenant's experience (identified above):

- The quality of their homes
- The cost of their homes
- The value for money of the services they receive
- The maintenance of their homes, and
- The way they are involved in decision making about their homes.

7.3 Each stakeholder gave their organisations view, pointed us to evidence, and reading material and other contacts. Where appropriate we also discussed the supplementary questions:

- Are there lessons to be learnt from other parts of the UK, where the regulatory systems for social housing are somewhat different?
- Could the benefits be achieved in the short run without the need for primary legislation, for example could consistent data collection and reporting be possible under a voluntary code, although compliance may be difficult to enforce?
- Would a consistent approach require significant change to the scope of the current housing associations' regulatory approach, as is now or as it is planned to be?

7.4 There was a shared concern across all the stakeholders for the tenants and an understanding that their experience might not be equitable or fair in some way. Indeed, with the notable exception of WLGA, there appeared to be a common view that the tenants of the housing associations probably got a better service and more involvement than

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<sup>29</sup> Note that this links to the forthcoming review of the framework arising from the RBW report Hearing the Tenants voice [https://gov.wales/sites/default/files/publications/2019-07/hearing-the-tenants-voice\\_0.pdf](https://gov.wales/sites/default/files/publications/2019-07/hearing-the-tenants-voice_0.pdf)

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tenants of local authorities, although no one has been able to evidence this for us. When there are consistent tenant satisfaction surveys in both housing associations and local authorities then it will be feasible to make comparisons.

- 7.5 TPAS Cymru pointed to experiences in Scotland where they had seen the tenant influence working well. They pointed to the way in which active tenants valued the ability to compare performance data against other landlords of their choosing in their own time via the public website. These tenants found it useful to compare the performance of local authorities and housing associations at a local level. While scrutiny teams within housing organisations valued the ability to get larger data sets to drill down into. The data was not used as definitive facts, but purely to identify areas to look further into. It was often used for starting conversations. The fact it was public data, on an easy to find and use website, was valued.
- 7.6 Stakeholders also understood the need for Government to understand where its money was going within the sector, and it was suggested to us that the scope of Domain Regulation could include aspects of housing policy delivered by public funds through, local authorities and housing associations, such as those funded through the Social Housing Grant<sup>30</sup>
- 7.7 Several stakeholders felt that benefits of more “regulation” in the broadest sense, would include the collection of data, monitoring, and analysis that would show where there were differences in performance and where tenants were losing out, wherever in the sector they fell. This would get past the broad-brush assumptions and assertions about parts of the sector being better or worse, often made without evidence to back them up.
- 7.8 There were mixed views on benefit of “regulation” as a separate function as opposed to other forms of legislative or government control. This was presented in a political context in which most regulatory functions in Wales are more embedded within central government than is the case in Scotland or England.
- 7.9 There was also recognition that, if the proposal were to add more responsibilities to the workload of the existing regulation function overseeing the housing associations, then stakeholders felt this was unlikely to work. They told us that the current team was already stretched and under resourced. CHC reported that housing associations would be willing to contribute financially to the costs of a more effective, more independent, regulatory body.

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<sup>30</sup> <https://gov.wales/sites/default/files/publications/2019-11/social-housing-grant-guidance-for-registered-sociallandlords-and-local-authorities.pdf>

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7.10 This view of the current Regulation Team was sought on this issue, as resource constraints had also been raised by the RBW in its report to the Minister for Housing and Local Government (May 2019)<sup>31</sup>. Since then the team has undergone some structural changes and begun a development programme. Until the interruption caused by Covid 19, the team were maintaining its commitment to deliver at least one regulatory judgement for each housing association on an annual basis and to effectively manage cases of regulatory concern. In November 2019, assurance was given to the Public Accounts Committee<sup>32</sup> “that any changes or developments to regulation, as a result of initiatives which are planned or underway, will be very carefully analysed in terms of the implications for the regulation resource base. Appropriate arrangements will also be put in place to ensure a fit for purpose regulatory regime is maintained that protects tenants and public investment in social housing”

7.11 The general stakeholder view was supportive and generally encouraging of Domain Regulation. Audit Wales queried how the requirements of Domain Regulation would sit with local authorities’ responsibilities under the Well Being of Future Generations Act given housing associations are not subject to these provisions, but all local authority services are.

7.12 We are aware that the current Local Government Bill includes provisions covering the way regulators work together to review services provided by local authorities, these are primarily intended to encourage co-ordination between different bodies. We think there could be mutual benefit to the sector to information sharing between Wales Audit Office and the regulatory body responsible for housing, but much of this could be achieved by transparency and publication of data.

## 8. Options and Pre-Conditions

8.1 We think there are three/four options:

1. Set up a new independent regulatory body to regulate all aspects of local authority and housing association housing functions and tenant involvement in a consistent manner across Wales

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<sup>31</sup> <https://gov.wales/sites/default/files/publications/2019-05/regulatory-board-for-wales-performance-report.pdf>

<sup>32</sup> <https://business.senedd.wales/documents/s96632/Update%20from%20the%20Welsh%20Government%20-%2025%20November%202019.pdf>

2. Adopt a hybrid approach which builds on the current model of regulating housing associations and adds relevant elements for local authorities (we outline two approaches to this option A and B)

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3. No change from the current practice – we have called this maximising the benefits of the status quo.

8.2 For either option 1 or 2 to be successful we suggest there are some preconditions, without which either option would be unlikely to deliver to expectations. These basic features are common to most successful regulatory functions and probably matter more than the exact nature of the option chosen. Some of these are currently present to a greater or lesser extent and some have been debated for some time and remain unresolved. Therefore, making these a reality would require some significant changes in the regulatory approach currently in place as well as the resources dedicated to the regulation of social housing.

8.3 These pre-conditions are:

- **Clarity of purpose.** We are struck by the clarity of the Scottish Regulator’s statement of purpose, its tenant focus and how this seems to drive its agenda and communication. A similar single tenant focussed strapline for Domain Regulation in Wales would provide focus and direction which all could identify with.
- **Leadership and good governance.** Alongside a clear statement of purpose comes independent leadership, and governance of the Regulatory Body distinct from policy setting. This may be a role for the Regulatory Board for Wales. We suggest that there should be a clear governance structure, accountability, and leadership. Most regulatory bodies also set up an advisory group or panel of customers or in this case tenants with a direct reporting line to the governing body organisation. This would be a separate group to the current Regulatory Advisory Group which comprises stakeholder representatives.
- **Good relationships with tenants, local authorities, housing associations, and other stakeholders based on no surprises, transparency, openness, shared endeavours.** To achieve real change in performance and co-operation, then a national tenants’ group

of some kind will need to work with the new regulatory arrangements, and both local authorities and housing associations will need to accept that the Regulatory Body is there to be supportive of good performance.

- **Ability to set long term outcomes/objectives.** Long term planning is central to any sector relying on infrastructure. The current five-year rent agreement is a step towards this, as are the long term aims on energy efficiency and evictions. The regulatory body should be able to give certainty to regulatory expectations to enable regulated organisations to plan ahead.
- **Ability to define, collect, analyse, and publish data.** Consistent, comparable, data publicly available for scrutiny by tenants and tenant representative bodies will be critical to supporting the regulatory body in assessing both the current performance of local authorities and housing associations and their performance in future.
- **Adequate resourcing (financial and skills).** To regulate effectively the team will need to be adequately resourced. The current Welsh Housing Regulation Team, regulating only the housing associations, and relying on other parts of Welsh Government for some functions that in other jurisdictions might be done by the regulator has an annual running cost in the order of £750k. <sup>33</sup> This is less than a quarter of the cost of the Scottish Housing regulator, but it is not clear how much of the current “regulatory” activity happens elsewhere within Welsh Government, how big the gaps are in the model we favour below and what efficiencies might be found by bringing functions together.
- **Influencing and enforcement powers** ranging from face to face meetings with and requests for additional information or action plans to powers to intervene if necessary, in the event of serious failure. The current regulatory teamwork with housing associations on a risk based, co-regulation approach seeking to avoid surprises and to identify and address issues swiftly and in dialogue as and when they arise. The team has established working relationships with each of the housing association boards and in the main this works well. The need for escalation and formal intervention is rare and the use of formal regulatory powers is as intended a last resort. This model could be continued under any of the options under consideration. At present the legal powers available to regulate local authorities in Wales are more limited than those pertaining to housing associations, extending them further would require primary legislation. In our view the precondition for effectiveness is that there is an escalation process and an effective deterrent to poor standards or service, the Scottish Regulator has differential

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<sup>33</sup> It is of note that the Scottish Housing Regulator<sup>34</sup> has a budget of £4.2m and 44 staff. In comparison stand alone Welsh regulatory bodies comparable to Scotland and Option 1 in 2018-19.:Qualifications Wales<sup>34</sup> a budget of £8m and a fte of 77 , Estyn<sup>34</sup> annual operating costs - £11m and 110 fte , Social Care Wales<sup>34</sup> £19m and 111 fte.

powers for local authorities and housing associations and it may be useful to check whether this is a concern in Scotland.

8.4 We are aware that the current Local Government Bill includes provisions covering the way regulators work together to review services provided by local authorities; these are primarily intended to encourage co-ordination between different bodies. We think there could be mutual benefit to the sector to information sharing between Wales Audit Office and the regulatory body responsible for housing, but much of this could be achieved by transparency and publication of data.

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## 9. The Options

### 9.1 Domain Regulation Option 1 The Redesign Option

9.1.1 This option would start with tenants, and ideally involve tenants in determining a set of common regulatory standards to be met by both local authorities and housing associations. While the detail would need to be worked out, a working assumption would be that there would be standards relating to:

- Tenant involvement
- Tenant Satisfaction
- Rent
- Housing Quality and stock condition
- Health and Safety
- Value for money
- Repairs and maintenance
- Effective Governance
- Effective Financial Management
- (with the last two adapted as necessary to take account of the distinct nature of local authorities and housing associations).

9.1.2 New legislation would be needed to set up a new regulatory model to create a new Welsh Housing Regulator like the ones in England and Scotland. The costs and timescales for the establishment of Qualifications Wales might give some indication of the scale of the task.

## **9.2 Domain Regulation Option 2a The Hybrid Approach**

9.2.1 This option starts with the current approach to regulating the housing associations and the audit of local authorities by the Wales Audit Office. It takes the ten current performance standards that housing associations are expected to meet now and adapts these to apply to local authorities as well as housing associations. Some of these could be applied to local authorities now, but extending the list beyond, rents, service charges and housing quality would require primary legislation.

**PS.1** Effective Board and executive management with a clear and ambitious vision for the Registered Social Landlord

**PS.2** Effective and appropriate tenant involvement and high quality and improving services

**PS.3** Comprehensive assessment of the business impacts of current and emerging risks, including new business and development opportunities, with robust risk management arrangements

**PS.4** Clearly evidenced self-evaluation and statement of compliance

**PS.5** A track record of achieving positive outcomes, responding appropriately to new challenges and performance issues

**PS.6** Delivering value for money in all areas of the business

**PS.7** Compliance with regulatory and statutory requirements and guidance

**PS.8** A financial plan which delivers and supports the business plan and effective monitoring of financial performance

**PS.9** Effective management of treasury operations ensuring sufficient liquidity at all times

**PS.10** A clear understanding of liabilities and asset performance

9.2.2 This option could be characterised as taking the current housing association model and applying it to local authorities. Not only would it be seen like that by local authorities and housing authorities it would not promote the thinking needed about whether each standard was focussed on tenants needs. Simply applying these standards to local authorities is unlikely to



achieve the involvement or focus on tenants which we think is the aim of Domain Regulation so we would also offer an option 2b.

### **9.3 Domain Regulation Option 2b The Hybrid Approach with a tenant focus**

9.3.1 This variation on option 2 would require more change for housing associations to ensure they could demonstrate tenants' needs were at the forefront of their strategic thinking. This would mean reconfiguring the performance standards and applying these to both local authorities and housing associations. As in Option 2a, some of these could be applied now, but extending the list beyond, rents, service charges and housing quality would require primary legislation.

9.3.2 We would envisage involving all stakeholders in this process, but for illustrative purposes we would suggest standards such as the following might emerge:

**PS.1** Effective Board and executive management with a clear and ambitious vision for the benefits of tenants of the Social Landlord

**PS.2** Effective and appropriate tenant involvement and high quality and improving services

**PS.3** Tenant involvement in comprehensive assessment of the business impacts of current and emerging risks, including new business and development opportunities, with robust risk management arrangements

**PS.4** Clearly evidenced self-evaluation and statement of compliance including tenant scrutiny processes

**PS.5** A track record of achieving positive outcomes for tenants, responding appropriately to new challenges and performance issues

**PS.6** Delivering value for money for tenants in all areas of the business

**PS.7** Compliance with regulatory and statutory requirements and guidance

**PS.8** A financial plan which delivers and supports the business plan and effective monitoring of financial performance and affordable rents/service charges for tenants

**PS.9** Effective management of treasury operations ensuring sufficient liquidity at all times

**PS.10** A clear understanding of liabilities and asset performance

9.3.2 This is, as becomes apparent below, our favoured model, because it brings many benefits without as many barriers as Option 1 whilst also encouraging some fresh thinking and a fresh start for both housing associations and local authorities together. The standards listed here do

look very like those currently set for housing associations but there is scope for challenge and change in the process.

**9.4 Domain Regulation Option 3 – Maximising the benefits of the Status quo by adding data collection and performance reporting**

9.4.1 It would be stretching the term to describe the current regulatory approach as “Domain Regulation”. However, if all the current domain policy management and regulatory type activities of the Welsh Government were taken together and if the steps announced with the rent policy statement in January 2020 were monitored and put into effect, these could be described as a limited form of “Domain Regulation”. Over time it may be possible to build more performance monitoring and policy implementation into this model and, if alongside this, more transparency could be built in, then the evidence base to support or refute the need for further interventions could be established.

**10. Comparing the Benefits of these Options**

10.1 The table below attempts to make an initial subjective assessment of the relative benefits of the four options under consideration here. There is by necessity a significant element of guess work, but the table should serve to facilitate a discussion about the relative merits of the options.

<b>Benefits for Discussion</b>	<b>Option1 The Redesign Option</b>	<b>Option 2a The Hybrid Approach</b>	<b>Option 2b The Hybrid Approach with a tenant focus</b>	<b>Option 3 Maximising the benefits of the Status Quo</b>
Independent of policy makers	□□□			
Likely to deliver improved services to all social housing tenants in long term	□□□	□	□□□	□

Equitable outcomes for tenants of LAs and HAs	□□□	□□	□□□	
Tenant involvement in design	□□□		□□	
Tenant focused	□□□		□□	
Good fit with Wellbeing of Future Generations ways of working	□□□		□□	
Transparency and Accountability	□□□	□□	□□	
Acceptable to Stakeholders	□□□		□□	□
Long term value for WG	□□□		□□	

## 11. The Barriers to these Options

11.1 Alongside these benefits there are also several barriers to be overcome to achieving any of these options. In a similar vein to the benefits table, the barriers table below is set out as a discussion starter on the relative hurdles to be overcome in achieving any of these possible options.

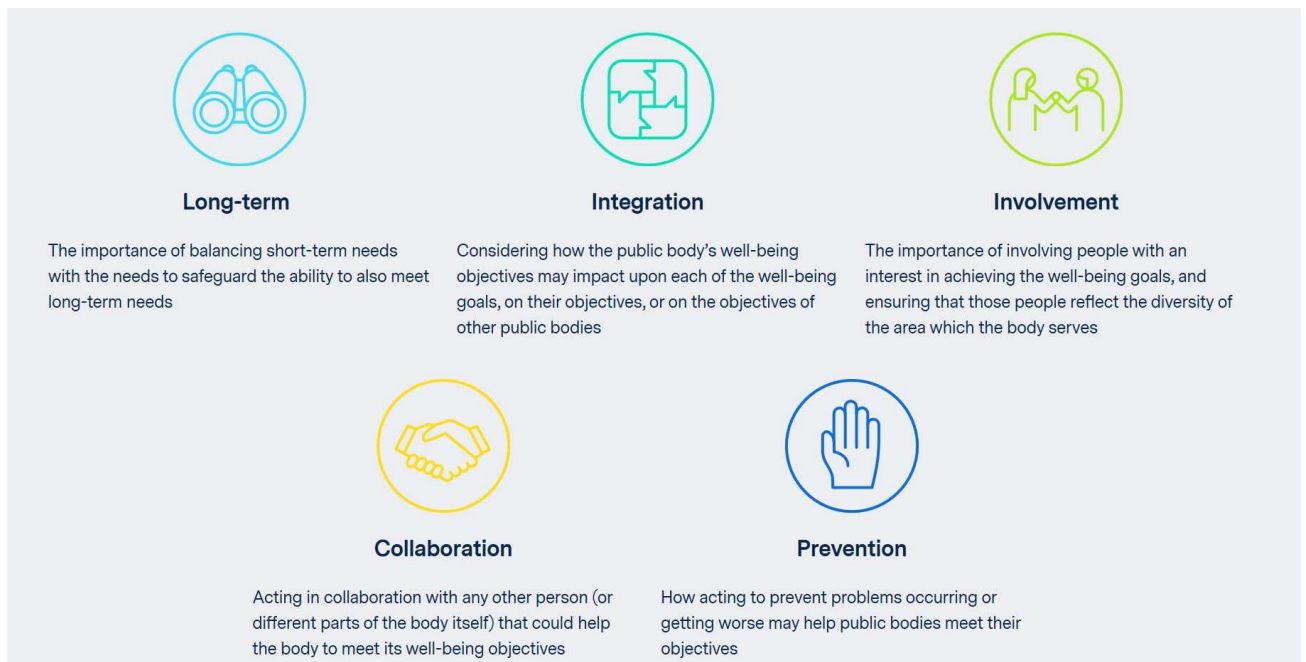
Barriers for Discussion	Option1 The Redesign Option	Option 2a The Hybrid Approach	Option 2b The Hybrid Approach with a tenant focus	Option 3 Maximising the benefits of the Status Quo
Requires set up of new Regulatory Body/Directorate	xxxxx	xx	xx	x
Requires Primary Legislation	xxxxx	xx	xx	

Requires consultation and consensus	xxx	xxx	xxx	xx
Cost/Degree of change to LAs	xxx	xx	xx	x
Cost/Degree of change to HAs	xxxx		xx	x
Cost to Welsh Government	xxxxx	xx	xx	x
Time delay	xxxxx	xx	xxx	x

The □ and x in the tables above indicate based on a on a scale of 1-5 the relative benefits and barriers of the options presented. These are necessarily subjective and are offered as a way of prompting a discussion and challenge to the conclusions presented here.

## 12. The questions going forward

12.1 The ways of working in the Well-Being of Future Generations (Wales) Act 2015; looking long term, integrating, involvement, collaboration and prevention sit well with a system of regulation that involves tenants in determining the outcomes they want and looking equitably at both housing associations and local authorities.



12.2 However, this also sets the scene for several of the questions that would need to be addressed in designing Domain Regulation for Wales.

- Long Term
  - Is there a clear imperative for Domain Regulation in Wales? The strapline?
    - Can this bring about better, safer, more homes for all?
- Prevention
  - Is homelessness in or out of scope?
- Integration
  - Can this bring about better ways of working between housing associations and local authorities?
- Collaboration
  - Will there be sufficient stakeholder buy in to make this work?
- Involvement
  - Can Tenants have a strong enough voice without a national tenant body?

## 13. Conclusion and Recommendations

13.1 We conclude that introducing Domain Regulation would benefit the tenants of social housing in Wales. By enabling standards to be compared, measured, set, monitored, and if necessary enforced, tenants will be able to compare the service they receive with that expected elsewhere in Wales and expect the regulator to take action where their provider consistently fails to live up to expectations.

13.2 While the creation of an independent Housing Regulator, as in Scotland or England, has significant merit, it also comes at a cost, including new legislation and a significant set up time delay. Our view, at this stage, is that many of the same benefits can be achieved by a simpler approach, if the **preconditions for successful Domain Regulation** set out below can be met, in our Option 2B within a newly created Housing Regulation [Directorate] within Welsh Government.

13.3 These **pre-conditions for successful Domain Regulation** are:

- Clarity of purpose.
- Leadership and good governance. Alongside a clear statement of purpose comes leadership, and governance of the Regulatory Body distinct from policy setting.
- Good relationships with tenants, local authorities, housing associations, and other stakeholders based on no surprises, transparency, openness, shared endeavours.
- Ability to set long term outcomes/objectives.
- Ability to define, collect, analyse, and publish data.
- Adequate resourcing financial and skills.
- Influencing and enforcement powers ranging from face to face meetings with and requests for additional information or action plans to powers to intervene if necessary, in the event of serious failure.

13.4 In our view achieving desired outcomes requires commitment, drive, determination and careful monitoring across all parts of the system. Until a common purpose can be identified, and progress can be measured consistently and objectively measured it will continue be difficult to achieve equity.

13.5 **We recommend that**

1. These conclusions are further tested in consultation with the key stakeholders involved in commissioning this research.
2. Welsh Government address the key questions about scope early on in designing a new model because these questions are fundamental to the design and to the resources required:
  - Homelessness – in or out?
  - Focus – tenants – current or current and future? Or tenants and investment?
  - Transparency and data sharing – the Scottish model is exemplary in its data sharing, it enables much of the data scrutiny to be done by others, but this requires investment.
  - Involvement – with tenants not about tenants – what is the mechanism for direct input of views at a national level?
3. Welsh Government with RBW reviews the **pre-conditions for successful Domain Regulation** set out above and designs an action plan to meet these, starting from its current base.
4. Welsh Government adopts a Hybrid model of Domain Regulation for the benefit of tenants.

**[Name redacted] Central Consultancy and Training July 2020**

### **Annex 1 Summary of Welsh Government’s legal powers to Regulate RSLs (Housing Associations)**

Housing Associations Act 1985 (as amended), such as to facilitate the proper performance of the functions of registered social landlords and to maintain a register of social landlords and to exercise supervision and control over such persons. The Welsh Ministers must exercise their general

functions subject to and in accordance with the provisions of the Housing Associations Act 1985 and Part 1 of the Housing Act 1996 (as amended by the Measure).

The Welsh Ministers have powers under the 1996 Act to regulate registered social landlords in Wales. Part 1 of the 1996 Act is amended by Part 2 of the Measure and provides the Welsh Ministers with enhanced regulatory and intervention powers concerning the provision of housing by registered social landlords and the enforcement action that may be taken against them.

Under section 33A(1) of the Housing Act 1996, the Welsh Ministers may set standards of performance to be met by registered social landlords in connection with their functions relating to the provision of housing and matters relating to their governance and financial management. Under section 33B (1) of the 1996 Act, the Welsh Ministers may issue guidance that relates to a matter addressed by a standard and may amplify the standard. Section 33C of the 1996 Act requires the Welsh Ministers to consult various bodies before setting section 33A standards or issuing section 33B guidance. The Regulatory Framework sets Standards of Performance under section 33A of the 1996 Act and gives guidance under section 33B, both set out in Appendix 2.

## Annex 2

<b>Housing Association Information<sup>34</sup></b>		
<b>Summary of information held on “Your Housing Association” comparison website</b>	<b>Latest Data</b>	<b>Number of years data</b>
<b>Data about your Housing Association</b>		
Number of staff employed by housing association	2017	1
Number of staff per home owned or managed by housing association	2017	1
Number of housing association homes	2017	1
Amount of deficit or surplus made by housing association (£)	2017	1
Total housing association turnover (£)	2017	1
<b>Financial data about your housing association</b>		
Total unpaid rent per home (£)	2017	1
Cash generated from each home (before repayment of loans and other costs) (£)	2017	1
Cost per housing association home of major repairs and components (£)	2017	1

<sup>34</sup> <https://gov.wales/data-about-your-housing-association>



Management costs per housing association home (£)	2017	1
Operating costs for lettings per housing association home	2017	1
Cost per housing association home for reactive repairs (£)	2017	1
Total rent per home (£)	2017	1
<b>Tenant satisfaction data<sup>35</sup></b>		
What tenants think of the area they live	?	Incomplete
If tenants think their rent is good value for money	?	Incomplete
If tenants trust their housing association	?	Incomplete
If tenants think their housing association listens to them	?	Incomplete
Is the service provided by the housing association what tenants expect	?	Incomplete
What tenants think about the quality of their home	?	Incomplete
What tenants think about the service provided by the housing association	?	Incomplete
What tenants think about how the housing association deals with antisocial behaviour	?	Incomplete
What tenants think about how their housing associations deals with repairs and maintenance	?	Incomplete
<b>Standard of housing stock</b>		
Housing stock that has not met the standard	2017-18	3
Housing stock that has met the standard	2017-18	3
Housing stock that has not met the standard, but the reason is currently acceptable. For example, when work has not been completed on a home due to cost, timing or residents choose not to have the work done.	2017-18	3

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<sup>35</sup> The tenant data is not recorded by year collected nor is there a complete set of data for any of these indicators