

Financial implications of the Regulation of Registered Social Landlords (Wales) Bill

January 2018



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Finance Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

Tel: **0300 200 6565**
Email: **SeneddFinance@assembly.wales**
Twitter: **@SeneddFinance**

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About the Committee

The Committee was established on 22 June 2016 to carry out the functions of the responsible committee set out in Standing Orders 18.10, 18.11, 19 and 20 of the National Assembly for Wales.

Under Standing Orders 19 and 20, the committee's responsibilities include considering any report or document laid before the Assembly concerning the use of resources, or expenditure from the Welsh Consolidated Fund. This includes undertaking budget scrutiny of the bodies directly funded from the Welsh Consolidated Fund.

Under Standing Orders 18.10 and 18.11, the committee's responsibilities include oversight of the governance of the Wales Audit Office, as set out in the Public Audit (Wales) Act 2013.

The committee also considers any proposals for, and the progress of the devolution of fiscal powers to Wales as part of its responsibilities.

The committee may also scrutinise legislation introduced to the Assembly.

Committee Chair:



Simon Thomas AM
Plaid Cymru
Mid and West Wales

Current Committee membership:



Neil Hamilton AM
UKIP Wales
Mid and West Wales



Mike Hedges AM
Welsh Labour
Swansea East



Jane Hutt AM
Welsh Labour
Vale of Glamorgan



Steffan Lewis AM
Plaid Cymru
South Wales East



Nick Ramsay AM
Welsh Conservative
Monmouth



David Rees AM
Welsh Labour
Aberavon

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Chair's foreword

As a Committee we took evidence on this Bill from the Member in Charge. The provisions in the Bill will remove or amend the current regulation of the social housing sector by central and local government in order to allow the Office of National Statistics to classify Registered Social Landlords (RSLs) as private sector bodies for accounting purposes.

Whilst this change is necessary to avoid the borrowings of RSLs from being charged against Welsh Government budgets or being included within the total amount the Welsh Government is able to borrow, we were concerned that the de-regulation of the sector does pose some risks and we have explored these in this report.

Some RSLs have diversified away from their core responsibilities and it's possible that de-regulation could lead to further diversification. We were concerned that further diversification is not without financial risk. We were also concerned by the risk to the Welsh Government of being, in effect, the lender of last resort.

In spite of the de-regulation, the monitoring of RSLs' financial management by the Welsh Government will be key. We believe the Welsh Government should have a robust strategy in place to ensure that RSLs act appropriately and avoid engaging in activities which could increase the risk of financial difficulties.

Simon Thomas AM
Chair

Recommendations

Recommendation 1. The Committee recommends that the Welsh Government outlines a strategy for how it will monitor the financial performance of Registered Social Landlords in order to minimise the risks associated with deregulation of the sector..... Page 19

Recommendation 2. The Committee recommends that the Welsh Government should allocate sufficient resources to enable the Tenant Participation Advisory Service to increase its communication with tenants to ensure that they are aware and understand the change of regime as a result of this Bill..... Page 19

Recommendation 3. The Committee recommends that the Welsh Government should allocate sufficient resources for the production of guidance for Registered Social Landlords to ensure a consistent approach to implementing the new regime..... Page 19

1. Background and Overview

1. The **Regulation of Registered Social Landlords (Wales) Bill** (the Bill) was introduced on 16 October 2017 by Carl Sargeant AM, Cabinet Secretary for Communities and Children. The First Minister authorised Rebecca Evans AM, Minister for Housing and Regeneration (the Minister), as the new Member in Charge of the Bill, from 9 November 2017.
2. In September 2016, the Office of National Statistics (ONS) published its review into the **Statistical classification of registered providers of social housing in Scotland, Wales and Northern Ireland**. The review concluded that registered social landlords (RSLs) in Wales, and their equivalents in Scotland and Northern Ireland should be reclassified to the Public Non-financial Corporations sub sector for the purpose of National Accounts and other ONS economic statistics. RSLs were previously classified to the Private Non-Financial Corporations sub-sector.
3. The **Explanatory Memorandum** (EM) sets out that:
 - the purpose of the Bill is to implement regulatory reforms removing central and local government controls allowing the ONS to review the classification of RSLs, which are currently determined to be public sector organisations for accounting purposes;
 - the intended effect of the Bill is to allow the ONS to reclassify RSLs as private sector organisations for accounting purposes. The proposed regulatory reform is the minimum required for that purpose. Reclassification to the private sector will allow RSLs to access private sector borrowing.
4. The potential consequences identified by the Welsh Government of not introducing the Bill are that any private sector borrowings taken out by newly reclassified public sector RSLs will be charged against the Welsh Government budget. The Explanatory Memorandum (EM) details that these private sector market borrowings are on average £213 million per year and will increase overall Public Sector Net Borrowing.¹
5. A Regulatory Impact Assessment (RIA) is contained in the EM, which presents the estimated costs and benefits resulting from the Bill.

¹ Explanatory Memorandum, paragraph 8.9

6. The Committee took evidence from the Minister on the financial implications of the Bill on **23 November 2017**.

2. Financial implications of the Bill

7. The EM compares the costs of two options:

- Option 1: Do nothing and deal with the consequences of RSLs being classified to the public sector;
- Option 2: Introduce a Regulation of Registered Social Landlords (Wales) Bill.

Option 2 is the Welsh Government's preferred option.²

8. In addition to the annual £213 million RSL capital funding that would count as public sector borrowing if the Bill does not go ahead, the RIA identifies a transitional cost and a non-cash saving from the preferred option to introduce the Bill (option 2).³

9. The RIA states that the preferred option to implement the provisions in the Bill has a transitional cost of £33,000 to RSLs for reviewing and changing their rules e.g. the number of Board places reserved for local authority nominations. The EM states that rule changes are not absolutely necessary but it would be good governance to update rules and this is the reason costs estimates are provided in the RIA.⁴ The estimated cost of a rule change is around £3,000 for each RSL, this cost includes legal advice.⁵ The EM considers it likely that these costs will only apply to the 11 RSLs established following local authority stock transfer, however, there is a small possibility that costs could be incurred by other RSLs.⁶

10. The RIA details non-cash savings to the Welsh Government in terms of staff time as the consent regime for disposal restructures is replaced by a notification requirement. The savings are estimated to be between £9,700 and £13,000 per annum from 2018-19 and are based on 30% of a full time Executive Officer / Higher Executive Officer post.⁷

11. The Minister explained the Welsh Government's rationale for introducing the Bill:

² Explanatory Memorandum, paragraphs 7.1 – 7.3

³ Explanatory Memorandum, paragraph 8.9

⁴ Explanatory Memorandum, page 18

⁵ Explanatory Memorandum, paragraph 8.28

⁶ Explanatory Memorandum, paragraphs 8.28 – 8.29

⁷ Explanatory Memorandum, paragraph 8.31

“this wouldn’t be something that we would do if it were not for the fact that the ONS requires us to do so in order to keep the public borrowing, or the borrowing of RSLs, on the public sector. We don’t want it to show, for example, on the Welsh Government’s borrowing, because that would have a huge impact in terms of what we’re able to do not just in housing, but across Government. It would mean, for example, £1 billion showing on our borrowing, which would be £1 billion that we can’t then spend across Government. So, difficult decisions would have to be made, both in my portfolio and across the rest of Government. It could mean cuts to portfolio budgets, or it could mean that we would be unable to build around 5,000 of the 20,000 affordable homes that we’ve committed to building over the course of this Assembly.”⁸

12. The Minister also explained that the Welsh Government had held discussions with the ONS and HM Treasury as to whether there were feasible alternative ways of achieving the aim of the Bill, “but that wasn’t the case”.⁹ The official supporting the Minister added:

“HM Treasury weren’t keen, should I say, to increase our capital departmental expenditure limit, and they didn’t do it in England either, where the English RSLs and the English Government had exactly the same problem, which they have just fixed with a similar Bill. So, we did have conversations about options, and that seemed like a very difficult avenue for us to pursue.”¹⁰

13. The Minister said that assurances had been received from the ONS who had confirmed that:

“If the Bill receives Royal Assent in its current form, the totality of public sector influence exercised through central Government, local authorities and the existence of nomination agreements would not constitute public sector control.”¹¹

14. In response to questions as to whether the provisions in the Bill provide that there will be sufficient regulation in the RSL sector, and whether that would

⁸ Finance Committee, Record of Proceedings 23 November 2017, paragraph 404

⁹ Finance Committee, Record of Proceedings 23 November 2017, paragraph 406

¹⁰ Finance Committee, Record of Proceedings 23 November 2017, paragraph 407

¹¹ Finance Committee, Record of Proceedings 23 November 2017, paragraph 410

conflict with the ONS position on central and local government control of RSLs, the official supporting the Minister said:

“Certainly, we are very confident, as you know, that the ONS are very content with what we have in the wording that we’ve got in the current Bill about the level of control. We’re also very content that, given the amount of meetings that we have with the mortgage lenders and with UK Finance, they are content with the level of control as well.”¹²

Potential risks facing the Welsh Government

15. Page 28 of the EM highlights two risks to the Bill. These are:

- The risk of key stakeholders and Local Authorities challenging and changing the provisions in the Bill and the Bill failing to achieve reclassification from the ONS;¹³ and
- The Bill proposes that RSLs move from a consent regime to a notification requirement for disposals and constitutional changes and this could introduce an element of risk if RSLs make poor decisions.¹⁴

16. The RIA goes on to note that the Welsh Government has sought to mitigate the risk around key stakeholders challenging the provisions in the Bill through the Regulatory Advisory Group, who have worked with officials on the proposals for regulatory reforms. Members of the group include: Community Housing Cymru (the representative body for the RSL sector), the Council of Mortgage Lenders (which has now merged with other bodies to form UK Finance), Tenants Participation Advisory Service Cymru, Welsh Tenants – Tenant Representative body, Welsh Local Government Association, Regulatory Board for Wales (publicly appointed independent advisory board to the Welsh Ministers), Chartered Institute of Housing Cymru and Shelter Cymru.¹⁵

17. The RIA notes that the risk around decision making will be addressed by the performance standards contained in the new regulatory framework for RSLs. The Welsh Government consider that this sets out clear expectations around RSL

¹² Finance Committee, Record of Proceedings 23 November 2017, paragraph 422

¹³ Explanatory Memorandum, paragraph 8.34

¹⁴ Explanatory Memorandum, paragraph 8.35

¹⁵ Explanatory Memorandum, paragraph 4.1

boards making decisions, and that the framework will present a clear public judgement on the performance of individual RSLs.¹⁶

18. UK Finance’s written evidence to the Sub-Committee undertaking scrutiny on behalf of the External Affairs and Additional Legislation (EAAL) Committee highlights potential additional costs facing RSLs as a result of removing the consent regime for disposals:

“The measures are broadly consistent with the position elsewhere in the UK, and this is welcome. Government and RSLs should recognise, however, that the disposal consents regime is a powerful source of regulatory intelligence. Without it, we expect funders to ramp-up their own due diligence on a proposition, which could lead to increased costs for housing associations. In the absence of the consents regime, funders would expect association Boards, themselves, to strengthen their own self-assessment regimes.”¹⁷

19. The Minister told the Committee that she believed the regulatory framework in the Bill to be:

“the most robust system of its kind in the UK in terms of giving Government assurance about the work of RSLs, and we would expect them to continue to operate as they do now.”¹⁸

20. The Minister continued:

“Under the new Bill, they would remain accountable to Welsh Ministers and accountable to their stakeholders and their tenants as well. The performance standards offer good governance, and none of that will change. And also, when the notification comes to Welsh Government, we do have some powers there in terms of what we will require through that notification in terms of the level of information provided to us and so on. So, those safeguards all remain in place, and of course we have the formal intervention powers. None of that changes as a result of this Bill either.”¹⁹

¹⁶ Explanatory Memorandum, paragraph 8.24

¹⁷ Written evidence, External Affairs and Additional Legislation Committee, **RSL 04 UK Finance**

¹⁸ Finance Committee, Record of Proceedings 23 November 2017, paragraph 453

¹⁹ Finance Committee, Record of Proceedings 23 November 2017, paragraph 453

21. The official supporting the Minister added that Welsh Government officials meet with UK Finance and all the major lenders quarterly, and stated his belief that stakeholders felt that the regulatory framework in the Bill was “fit for purpose”,²⁰ and that it is actually more powerful in influencing behaviour than the legislative control that the Welsh Government has.²¹

22. In response to questions about cost implications for the Welsh Government of enforcing and policing of the regulatory framework, the Minister confirmed that there would be no increased cost, but actually a slight decrease due to notifications being less intensive in terms of the work Welsh Government would need to do.²²

23. The Minister’s official added that he was confident that the relationship between the Welsh Government and RSLs was strong enough to ensure sufficient scrutiny of compliance:

“we feel that there is enough scrutiny in the relationship we have—that very close, highly concentrated relationship that we have—that the other countries in the UK do not have. We have a far lower ratio of regulation manager to RSL than anywhere else, so we have that time to work with them and assure all the stakeholders, which would be both ourselves, the tenants and the lenders, that their investments and that their homes are safe.”²³

24. Following on from the work done by the Public Accounts Committee on regulation of RSLs,²⁴ which looked in detail at the risks and benefits of diversification of RSLs, an official accompanying the Minister highlighted that diversification away from the core business of RSLs to provide social housing is not as prevalent in Wales as in England.²⁵ The official also highlighted that this Bill does not change anything in terms of the framework for regulating RSLs in terms of powers to ensure that tenants’, lenders’ and the Welsh Government’s investments are protected adequately.²⁶

²⁰ Finance Committee, Record of Proceedings 23 November 2017, paragraph 455

²¹ Finance Committee, Record of Proceedings 23 November 2017, paragraph 503

²² Finance Committee, Record of Proceedings 23 November 2017, paragraphs 459-461

²³ Finance Committee, Record of Proceedings 23 November 2017, paragraph 463

²⁴ Public Accounts Committee, **[Inquiry into Regulatory Oversight of Housing Associations](#)**

²⁵ Finance Committee, Record of Proceedings 23 November 2017, paragraph 440

²⁶ Finance Committee, Record of Proceedings 23 November 2017, paragraph 509

25. The Minister's officials confirmed that, under the provisions in the Bill, the Welsh Government's enforcement or intervention powers would not change so that it would be able to intervene in an emergency.²⁷ This means that there is potential for the Welsh Government to be the lender of last resort to RSLs experiencing financial difficulty, and for the debt of the individual RSL to be transferred to the public sector until another solution was found. The officials supporting the Minister explained that this was unlikely to happen, and that in the first instance the Welsh Government would look for another RSL or local authority to take over the organisation and any debt.²⁸

Welsh Government costs and savings

Staffing costs

26. The EM states that it anticipates a non-cash saving in terms of staff time as the consent regime for disposal restructures is replaced by a notification requirement. The savings are estimated to be between £9,700 and £13,000 per financial year from 2018-19 and are based on reductions of 30% of a full time Executive Officer / Higher Executive Officer post.²⁹

27. However, the Scottish Government, which is progressing a similar Bill, the Housing (Amendment) (Scotland Bill) at present, sets out additional staff costs of around £175,000 to the Scottish Housing Regulator in ~~its RIA~~ as a result of losing its powers of consent. While it considers that no longer having to consider applications for consent should lead to a saving in staff resources for the Regulator, this is outweighed by additional costs. The Scottish Government's RIA states that:

"No longer having to consider applications for consent should lead to a saving in staff resources for the Regulator. On the other hand, having to review the notifications that it receives instead of applications for consent, and then follow up any issues arising from these reviews, is likely to prove more time consuming. The Regulator also identified that it would need to engage more closely with a greater number of RSLs to

²⁷ Finance Committee, Record of Proceedings 23 November 2017, paragraphs 426-427

²⁸ Finance Committee, Record of Proceedings 23 November 2017, paragraphs 428-446

²⁹ Explanatory Memorandum, paragraph 8.31

compensate for the loss of assurance that the consents framework currently provides.”³⁰

28. The Scottish Government’s RIA also highlights that it expects the Scottish Housing Regulator to incur one-off additional costs of £10,000 to make changes to its IT system to enable it to accommodate the flow of notifications that it will receive in place of requests for consents.

29. The official supporting the Minister explained that the Scottish legislation required additional resources as that system would be moving closer to the one operated in Wales, he said:

“we noted when we were talking to the Scots about why they were asking for extra resources was that they were going to a system that will be closer to the way that we operate, with that very close relationship. What they actually said was that ‘The Regulator also identified that it would need to engage more closely with a greater number of RSLs’. We already do that. They have a lot more RSLs than we do; they are an independent regulator. They will move closer to a system such as ours.”³¹

30. The Minister added that she did not expect there to be any IT-related costs for Wales because of the system that’s already in place.³²

Guidance

31. The RIA highlights that it is not expected that there will be any specific guidance or literature produced by the Welsh Government solely as a result of the Bill’s provisions. However, a number of the **consultation responses** on the proposals for the Bill called for guidance from the Welsh Government on implementing these, particularly the timescales, notification periods and thresholds which will apply.

32. The Minister told the Committee that any guidance issued as a result of the Bill would be done “through the normal course of business” through the Welsh Government’s relationships with RSLs, local authorities and other stakeholders.

³⁰ **Housing (Amendment) (Scotland) Bill, Financial Memorandum**

³¹ Finance Committee, Record of Proceedings 23 November 2017, paragraphs 468-470

³² Finance Committee, Record of Proceedings 23 November 2017, paragraph 472

She added that she didn't "expect to incur an additional cost beyond the normal course of business".³³

33. The official supporting the Minister provided further detail on how guidance and communication with stakeholders would happen:

"It also will happen in our quarterly regulatory advisory group, which has tenant representation through the Tenant Participation Advisory Service, and mortgage lenders via UK Finance. It also has RSLs and RSL chief executives, and local authorities as well, which are an important part of this. So, that will be the other conduit for communication, but you're right: there has to be clear guidance."³⁴

34. The Minister subsequently provided a technical note to the Committee outlining how the changes are communicated with tenants. It referred to evidence provided by TPAS to the Sub-Committee scrutinising the Bill:

"it's certainly been communicated well within the sector in terms of the professional level. I don't think there's any doubt about that. We've drawn on conversations with tenants, our tenant networks, regulation events and had some conversations with tenants at those."

35. The technical note continued:

"In addition, officials have presented at various tenant meetings to ensure that tenants have the opportunity to hear about the proposals and there was a public consultation explaining the proposals in detail.

The Welsh Government has and will continue to work with TPAS within the existing contract to ensure the message on the implications of the Bill is disseminated as widely as possible."³⁵

Costs of the Bill to Registered Social Landlords

36. Pages 26 and 27 of the RIA set out details of the additional costs to RSLs that may result from the Bill. While there are potential costs of £261,000 to all 87 RSLs that operate in Wales, the RIA states that the majority of RSLs will not face costs, and that estimated costs are £33,000 for the 11 RSLs established following local

³³ Finance Committee, Record of Proceedings 23 November 2017, paragraph 475

³⁴ Finance Committee, Record of Proceedings 23 November 2017, paragraph 477

³⁵ Finance Committee, **FIN(5)-01-18 PTN6, 11 January 2018**

authority stock transfer. This is because RSLs may review their governance arrangements to change their rules in areas such as the number of Board places reserved for local authority nominations following the legislation being enacted. While the legislation being in place will mean that it is not absolutely necessary that RSLs make changes, the RIA states that good governance would suggest that they update their rules and that this will cost an estimated £3,000 per RSL.

37. The RIA states that it is ‘very unlikely’ that RSLs not established as a result of stock transfer will face additional costs as they are not as likely to be affected by the local authority control changes resulting from the Bill.

38. The Chartered Institute of Housing Cymru’s written evidence to the Sub-Committee undertaking scrutiny on behalf of the External Affairs and Additional Legislation Committee set out two challenges the Bill needs to address in relation to RSLs formed after local authority stock transfer. These are that:

“Stock transfer RSLs came into existence as a result of local government councillors agreeing to ballot tenants. It will therefore be important to inform and reassure tenants of arrangements in place to ensure a continued positive relationship between the local authority representatives and councillors.

The important role of local authorities in safeguarding vulnerable individuals and the need to ensure that views of local authorities are fully considered and represented as the HA formulates and updates its own plan for delivering cost-effective and high quality services.”³⁶

39. In response to questions regarding the cost of communicating the changes with tenants, the official supporting the Minister explained that the Tenant Participation Advisory Service (TPAS) are contracted to communicate with tenants on behalf of RSLs. He said that a steering group ‘Hearing the Tenants Voice’ was working with TPAS to work out the best way of communicating with tenants and acknowledged that although communicating about a Bill is “particularly difficult”, but did not believe that it was a financial challenge.³⁷ The official concluded:

“We’re not anticipating anything above the RIA and the normal cost of doing business. We have a contract that TPAS won, I think it was a year

³⁶ Written evidence, External Affairs and Additional Legislation Committee, **RSL02 The Chartered Institute of Housing Cymru**

³⁷ Finance Committee, Record of Proceedings 23 November 2017, paragraph 480

ago, which still has a year to run, so, I don't see anything on top of that."³⁸

Costs of subordinate legislation

40. The Bill includes powers for the Welsh Ministers to make related subordinate legislation and directions. The Committee has previously commented during its scrutiny of other Bills that amending primary legislation through secondary legislation does not allow for sufficiently robust scrutiny by the Assembly. Although RIAs will be produced to show the costs and benefits when subordinate legislation is introduced, this information is not included in the costs and benefits set out in this Bill.

41. The Minister told the Committee:

“The only subordinate legislation that we would envisage coming as a result of the Bill would be consequential amendments, as we discussed in the previous committee, in terms of anything that might be necessary to give effect to the Bill. It wouldn't be anything above and beyond what's set out in the RIA.”³⁹

Committee view

42. The Committee notes and accepts the Welsh Government's rationale for introducing this Bill, and agrees that the provisions are necessary in order to ensure that registered social landlords are classified as private sector organisations thus avoiding their borrowings being charged against the Welsh Government budget.

43. The Committee has some concerns around the regulation of the RSL sector under the Bill's provisions, however it notes the assurances provided by the Minister and her officials that despite the removal of central and local government control, a robust regulatory framework will remain in place. Despite these assurances, the Committee is unconvinced by the view expressed that the regulatory framework that has been introduced is a more powerful tool to influence the behaviour of RSLs than the legislative control that the Welsh Government has.

³⁸ Finance Committee, Record of Proceedings 23 November 2017, paragraph 496

³⁹ Finance Committee, Record of Proceedings 23 November 2017, paragraph 513

44. The Committee believes that there are substantial risks facing the Welsh Government around deregulation of the sector. These include RSLs further diversifying away from their core business into new areas, and the potential financial liabilities of the Welsh Government as lender of last resort to RSLs in financial difficulties. It believes that the Welsh Government should consider how it will monitor these risks.

45. The Committee is mindful of the fact that, if the Bill is passed, changes will be made without a requirement for tenants of RSLs to vote on them, and so believes it will be important to communicate with tenants to ensure that they are aware and understand the change of regime. Whilst noting the arrangements to communicate with tenants through the Tenant Participation Advisory Service, including officials presenting at tenant meetings, the Committee is concerned that no additional resources have been allocated for the important task of raising awareness of the changes.

46. The Committee believes that adequate guidance should be available to RSLs to ensure a consistent approach to implementing the new regime, and is concerned that the Welsh Government has not committed to producing specific guidance above and beyond 'the normal course of business', or allocated funding for this purpose.

Recommendation 1. The Committee recommends that the Welsh Government outlines a strategy for how it will monitor the financial performance of Registered Social Landlords in order to minimise the risks associated with deregulation of the sector.

Recommendation 2. The Committee recommends that the Welsh Government should allocate sufficient resources to enable the Tenant Participation Advisory Service to increase its communication with tenants to ensure that they are aware and understand the change of regime as a result of this Bill.

Recommendation 3. The Committee recommends that the Welsh Government should allocate sufficient resources for the production of guidance for Registered Social Landlords to ensure a consistent approach to implementing the new regime.