

# Regulation of Registered Social Landlords (Wales) Bill

## Stage 1 Committee Report

January 2018



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# **Regulation of Registered Social Landlords (Wales) Bill**

## Stage 1 Committee Report

January 2018



# About the Committee

The Committee was established on 28 June 2016. Its remit was agreed on 15 September 2016 and can be found at : [www.assembly.wales/SeneddEAAL](http://www.assembly.wales/SeneddEAAL)

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## Committee Chair:



**David Rees AM**  
Welsh Labour  
Aberavon

## Current Committee membership:



**Dawn Bowden AM**  
Welsh Labour  
Merthyr Tydfil and Rhymer



**Michelle Brown AM**  
UKIP Wales  
North Wales



**Suzy Davies AM**  
Welsh Conservative  
South Wales West



**Jane Hutt AM**  
Welsh Labour  
Vale of Glamorgan



**Mark Isherwood AM**  
Welsh Conservative  
North Wales



**Steffan Lewis AM**  
Plaid Cymru  
South Wales East



**Jenny Rathbone AM**  
Welsh Labour  
Cardiff Central

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The following Members were also members of the Committee during the scrutiny of the Bill:



**Eluned Morgan AM**  
Welsh Labour  
Mid and West Wales



**Jeremy Miles AM**  
Welsh Labour  
Neath

The following Members attended as substitutes during the scrutiny of the Bill:



**David Melding AM**  
Welsh Conservative  
South Wales Central



**Mike Hedges AM**  
Welsh Labour  
Swansea East

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## Recommendations and Conclusions

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## 1. Introduction

1. On 16 October 2017, Carl Sargeant AM, the then Cabinet Secretary for Communities and Children (the Cabinet Secretary) introduced the Regulation of Registered Social Landlords (Wales) Bill<sup>1</sup> (the Bill) and accompanying Explanatory Memorandum (the EM).<sup>2</sup> The Cabinet Secretary made a statement on the Bill in Plenary on 17 October 2017.<sup>3</sup> On 9 November 2017, the First Minister authorised Rebecca Evans AM, Minister for Housing and Regeneration (the Minister), as the new Member in Charge of the Bill.

2. The National Assembly's Business Committee agreed to refer the Bill to the External Affairs and Additional Legislation Committee (the Committee) for consideration of the general principles (Stage 1), in accordance with Standing Order 26.9. It also agreed that the Committee should report by 2 February 2018.<sup>4</sup>

### Establishing a sub-committee

3. The Committee agreed, at its meeting on 9 October 2017, to establish a sub-committee to scrutinise the Bill in accordance with Standing Order 17.17 (the Sub-Committee). The remit of the Sub-Committee was as follows:

- To consider and report on the general principles of the Regulation of Registered Social Landlords (Wales) Bill.
- The Sub-Committee will cease to exist once its parent committee reports on the general principles of the Bill or the end of January 2018 (whichever is sooner).

### The Sub-Committee's approach

4. The Sub-Committee conducted a public consultation to inform its work and received five responses. The Sub-Committee also took oral evidence from a number of witnesses. The schedule of oral evidence sessions is provided in Annex A. The Sub-Committee would like to thank all those who contributed to its work.

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<sup>1</sup> **Read the Bill as introduced**

<sup>2</sup> **Read the Explanatory Memorandum**

<sup>3</sup> Read the **Record of Proceedings**, National Assembly for Wales Plenary - 17 October 2017

<sup>4</sup> **Business Committee report on the timetable for consideration of the Registered Social Landlords (Wales) Bill**

## Consideration of the Bill by other committees

**5.** The Assembly's Constitutional and Legislative Affairs Committee and Finance Committee took evidence from the Minister for Housing and Regeneration on the Bill on 20 November and 23 November 2017 respectively.

## 2. Background

### Office for National Statistics (ONS) decision

6. On 29 September 2016 the Office for National Statistics (ONS) confirmed that Registered Social Landlords (RSLs)<sup>5</sup> in Wales had been reclassified as Public Non-Financial Corporations for the purpose of the UK national accounts and other ONS statistics.<sup>6</sup> In Wales, the new classification applies with effect from 24 July 1996, which was when the Housing Act 1996 received Royal Assent.<sup>7</sup>

7. The ONS found that RSLs in Wales were subject to public sector control due to, amongst other things:

- the Welsh Ministers' powers over the management of an RSL;
- the Welsh Ministers' consent powers over the disposal of land and the disposal of housing assets;
- the Welsh Ministers' powers over the constitutional changes of an RSL, and
- local authority controls which may arise as a result of arrangements between, mainly, Large Scale Voluntary Transfer RSLs and local authorities.

### Implications of the ONS decision

8. The Bill's EM states that this decision meant that borrowing taken out by newly reclassified public sector RSLs (on average £200 million a year) would count as a charge against Welsh Government budgets.<sup>8</sup> Furthermore, the EM states that if RSLs "remain classified as Public Non-Financial Corporations funding for housing would be competing with other Welsh Government priorities".<sup>9</sup>

9. In Plenary on 17 October 2017, the Cabinet Secretary noted:

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<sup>5</sup> NB: RSLs are often referred to as 'Housing Associations'

<sup>6</sup> Office for National Statistics, '**Statistical classification of registered providers of social housing in Scotland, Wales and Northern Ireland: September 2016**' - September 2016

<sup>7</sup> Office for National Statistics, '**Statistical classification of registered providers of social housing in Scotland, Wales and Northern Ireland: September 2016**' - September 2016

<sup>8</sup> Explanatory Memorandum, **paragraph 3.8** - October 2017

<sup>9</sup> Explanatory Memorandum, **paragraph 3.9** - October 2017

“The impact of the ONS decision is significant, and if we don’t bring forward legislation and RSLs remain classified as public sector organisations, funding for them to build homes would have to compete with other Welsh Government priorities. We would need to either increase Welsh Government spend on social housing by around £1 billion during this Assembly term, with serious effects on our existing spending commitments, or to accept that RSLs would be able to provide significantly fewer new affordable homes and not be able to borrow to invest in existing housing stock.”<sup>10</sup>

**10.** RSLs in Wales have committed to providing 12,500 affordable homes during the course of the Fifth Assembly on the basis that the sector is free to borrow within the private sector.<sup>11</sup> According to the Welsh Government, the consequences of the ONS reclassification, if left unaddressed, would be 5,040 fewer new affordable homes over the current Assembly term.<sup>12</sup>

## Legislative competence

**11.** On introduction, the Cabinet Secretary declared the Bill to be within the competence of the National Assembly for Wales. According to the EM to the Bill:

“The National Assembly for Wales (‘the Assembly’) has the legislative competence to make the provisions in the Regulation of Registered Social Landlords (Wales) Bill (‘the Bill’) pursuant to Part 4 of the Government of Wales Act 2006 (‘GoWA 2006’). The relevant provisions of GOWA 2006 are set out in section 108 and Schedule 7.

Paragraphs 11 and 12 of Schedule 7 set out the following subjects on which the Assembly may legislate.

### Paragraph 11 – Housing

‘Housing. Housing finance except schemes supported from central or local funds which provide assistance for social security purposes to or in respect of individuals by way of benefits. Encouragement of home energy efficiency and conservation, otherwise than by prohibition or regulation. Regulation of rent. Homelessness. Residential caravans and mobile homes.’

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<sup>10</sup> National Assembly for Wales, Plenary **Record of Proceedings** - 17 October 2017

<sup>11</sup> Explanatory Memorandum, **paragraph 8.12** - October 2017

<sup>12</sup> Explanatory Memorandum, **paragraph 8.12** - October 2017

## Paragraph 12 – Local government

‘...Powers and duties of local authorities and their members and officers...’

The above subjects provide the National Assembly with the legislative competence to make the provisions contained in the Bill.”<sup>13</sup>

## The Bill’s purpose and intended effect

**12.** The EM explains that the purpose of the legislation is to implement regulatory reform removing central and local government controls to allow the ONS to review the classification of RSLs, which are currently determined to be public sector organisations for accounting purposes.<sup>14</sup> The intended effect of the Bill is to allow the ONS to reclassify RSLs as private sector organisations for accounting purposes.<sup>15</sup> The EM also states that the proposed regulatory reform is “the minimum required for that purpose”.<sup>16</sup>

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<sup>13</sup> Explanatory Memorandum, **paragraphs 2.1 - 2.3** - October 2017

<sup>14</sup> Explanatory Memorandum, **paragraph 3.1** - October 2017

<sup>15</sup> Explanatory Memorandum, **paragraph 3.2** - October 2017

<sup>16</sup> Ibid.

## 3. The regulation of Registered Social Landlords (RSLs)

### General principles of the Bill

**13.** All who gave evidence to the Sub-Committee agreed that the Bill was necessary to overcome the ONS reclassification decision and supported the general principles of the Bill on that basis.<sup>17</sup> The Tenant’s Participation and Advisory Service Cymru (TPAS Cymru) noted that “in normal circumstances” they may have concerns about some of the provisions within the Bill but that given the consequences of inaction, they supported the Bill.<sup>18</sup> Similarly, the Chartered Institute of Housing Cymru (CIH Cymru) supported the Bill citing the need for RSL borrowing to remain off the public sector balance sheet.

**14.** Stuart Ropke of Community Housing Cymru stated that a failure to reverse the ONS decision could “fundamentally change the way that housing associations operate,” adding that it would put at risk the ability of housing associations in Wales to borrow money on the private market.<sup>19</sup>

**15.** In written evidence, TPAS Cymru noted that it was disappointed that the Welsh Government had not taken this opportunity to consolidate the law.<sup>20</sup> At the same time, Matt Dicks of CIH Cymru cautioned that the purpose of the legislation was to reclassify RSLs in line with the ONS decision and that he would not wish to see anything that might “negate” or “draw back” from that reclassification.<sup>21</sup>

### The Committee’s view

**Conclusion 1.** The Committee understands the need for legislation to ensure that the ONS is able to reclassify RSLs as private sector bodies for accounting purposes. Furthermore, the Committee recognises the risks to RSLs’ capacity to borrow money if reclassification does not take place. While this Bill is properly considered to be in the public interest given the requirement to meet the standards set out by the ONS it should be viewed as a significant move towards

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<sup>17</sup> Written evidence, **Tenant Participation Advisory Service Cymru ; The Chartered Institute of Housing Cymru ; UK Finance**

<sup>18</sup> Written evidence, **Tenant Participation Advisory Service Cymru**

<sup>19</sup> National Assembly for Wales, Record of Proceedings, **paragraphs 9 and 10** - 24 October 2017

<sup>20</sup> Written evidence, **Tenant Participation Advisory Service Cymru**

<sup>21</sup> National Assembly for Wales, Record of Proceedings, **paragraph 113** - 7 November 2017

deregulation of the sector. Consequently this deregulation will require diligent risk management and effective monitoring.

**Recommendation 1.** The Committee recommends that the National Assembly for Wales agrees the general principles of the Bill.

**Conclusion 2.** The Committee notes that the Welsh Government did not take this opportunity to consolidate existing housing legislation in Wales and would encourage the Welsh Government to give consideration to doing so in the future.

## Regulation of Registered Social Landlords in Wales

**16.** The Bill amends the Housing Act 1996 in relation to:

- replacing requirements to obtain the consent of the Welsh Ministers with requirements to notify them when an RSL disposes of land or adopts any constitutional or structural change;
- local authority influence over RSLs; and
- the powers of the Welsh Ministers in relation to enforcement and intervention.

**17.** During his statement in Plenary on 17 October 2017, the Cabinet Secretary stressed that the changes brought forward by the Bill to the Housing Act 1996 will “not result in an unregulated social housing sector”.<sup>22</sup> However, the Cabinet Secretary did acknowledge during oral evidence that the provisions of the Bill did amount to deregulation of certain aspects of the RSL sector.<sup>23</sup>

### Local authority influence

**18.** Section 16 of the Bill introduces Schedule 1 which inserts a new Chapter 1A into the Housing Act 1996 to deal with the limit on local authority board membership and their voting rights. The EM explains that the Bill’s provisions (in relation to local authority control) include:

- limiting the number of reserved places for local authority appointees on any Welsh RSL board to a maximum of 24 per cent of the total number of Board members;

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<sup>22</sup> National Assembly for Wales, Plenary **Record of Proceedings** - 17 October 2017

<sup>23</sup> National Assembly for Wales, Record of Proceedings, **paragraph 184** - 24 October 2017

- removing any requirement for local authority appointees to be present to achieve a quorum;
- removing the voting rights of a local authority as a member of the RSL;
- removing any controlling voting or any other rights of consent which a local authority or local authority appointees currently have.<sup>24</sup>

**19.** UK Finance in written evidence stated that the limits on local authority control contained within the Bill were consistent with the legislation introduced elsewhere in the UK.<sup>25</sup> In his oral evidence Stuart Ropke, Community Housing Cymru, noted that changes to the governance arrangements and membership of RSL boards were already taking place as part of wider changes in the sector:<sup>26</sup>

“it’s important to remember that there’s not a one-size-fits-all situation across even the stock transfer organisations at the moment. I would cite the example of Merthyr Valleys Homes, where they’ve moved to a mutual model, which actually did reduce the influence already of local authorities, but brought a much stronger tenant voice forward there. From all our discussions with our members, there is no intention, where tenants are present on boards, to reduce their presence or their influence. I think the tenant presence on boards is best carried through when the skill sets matches the needs of the organisation.”<sup>27</sup>

**20.** Jim McKirdle of the Welsh Local Government Association (WLGA) stated that local authorities did not have concerns about the changes proposed to the Bill.<sup>28</sup> Mr McKirdle went on to state that there would continue to be “lots of ways of bringing pressure to bear other than simply through board membership”.<sup>29</sup>

## The Welsh Government’s view

**21.** During oral evidence, the Cabinet Secretary assured the Sub-Committee that local authorities would continue to have representation on RSL Boards.<sup>30</sup>

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<sup>24</sup> Explanatory Memorandum, **paragraph 3.14 (3)** - October 2017

<sup>25</sup> Written evidence, **UK Finance**

<sup>26</sup> National Assembly for Wales, Record of Proceedings, **paragraph 66** - 24 October 2017

<sup>27</sup> National Assembly for Wales, Record of Proceedings, **paragraph 66** - 24 October 2017

<sup>28</sup> National Assembly for Wales, Record of Proceedings, **paragraph 28** - 7 November 2017

<sup>29</sup> National Assembly for Wales, Record of Proceedings, **paragraph 59** - 7 November 2017

<sup>30</sup> National Assembly for Wales, Record of Proceedings, **paragraph 194** - 24 October 2017

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**22.** In terms of the 24 per cent restriction on local authority membership of RSL Boards, the Minister confirmed that the change would only affect local government appointees and stated that “Councillors can sit on boards as independent members in their own right”.<sup>31</sup>

**23.** However, when the Committee sought clarification, the ONS stated in correspondence:

“The second matter you wish to gain clarity on relates to whether a local authority Councillor who had been appointed in a personal capacity, rather than in their capacity as a local authority representative, would be considered to be a public sector appointee. In an instance such as this, the Councillor would be considered to be a public sector appointee for the purpose of our classification assessment.”<sup>32</sup>

## The Committee’s view

**Conclusion 3.** The Committee recognises the positive impact that local authority appointees can have on RSL boards but also acknowledges the requirement to move towards new models of governance within the sector.

**Recommendation 2.** In light of the conflicting messages received relating to the status of local councillors as independent members of RSL Boards, the Committee recommends that the Welsh Government clarifies the position definitively in its response to this report.

## Threshold for intervention by the Welsh Ministers and the Regulatory Framework

**24.** The Bill’s Explanatory Notes state that the current threshold for intervention in an RSL by the Welsh Ministers varies depending on the relevant statutory provision and that in general the Welsh Ministers cannot intervene unless they are satisfied that there has been “misconduct or mismanagement in the affairs of the RSL”.<sup>33</sup> The Bill imposes a new threshold of “failure to comply with a requirement imposed by or under enactment”.<sup>34</sup>

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<sup>31</sup> National Assembly for Wales, Record of Proceedings, **paragraph 129** - 24 October 2017

<sup>32</sup> **Letter from the Office for National Statistics to the Chair of the External Affairs and Additional Legislation Committee** - 24 January 2018

<sup>33</sup> Explanatory Memorandum, **paragraph 43** - October 2017

<sup>34</sup> Explanatory Memorandum, **paragraph 44** - October 2017

**25.** With regard to the new threshold for intervention, Steffan Evans of TPAS Cymru told the Sub-Committee that both the current “mismanagement” threshold and the new “failure to comply with a requirement imposed by or under enactment” lacked clarity.<sup>35</sup>

**26.** Many witnesses cited the **Regulatory Framework for Housing Associations Registered in Wales** (the Regulatory Framework), which was recently revised and formally adopted in June 2017, as playing a crucial role in the regulation of the sector in the future. Aaron Hill of Community Housing Cymru described how the new framework had “strengthened regulation of the sector”.<sup>36</sup> In written evidence, TPAS Cymru stated that the Welsh Government should apply the new framework “rigorously and transparently”. TPAS Cymru believed that adopting such an approach will “reassure tenants that their homes and the services they receive will remain protected after the enactment of the Bill”.<sup>37</sup>

**27.** Matt Dicks of CIH Cymru stated that “the Regulatory Framework is completely embedded in the structure and activities of these organisations within the sector” and that the regulator would be involved much earlier than at the stage where an enactment had been breached.<sup>38</sup>

**28.** UK Finance expressed concerns about the changes to the threshold for intervention stating that “an intervention might have to wait until an RSL has failed (which might be too late) rather than when an RSL is failing”,<sup>39</sup> they elaborated:

“we expect funders could take comfort from the wide definition of failure proposed in the legislation “that a registered social landlord has failed to comply with a requirement imposed by or under an enactment”, which we take as including a failure in relation to the regulatory framework. For absolute clarity, however, we suggest that consideration be given to ensuring in the legislation that the “failure to comply with a requirement imposed by or under an enactment” is clearly defined as including a failure in relation to the regulatory framework.”

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<sup>35</sup> National Assembly for Wales, Record of Proceedings, **paragraph 167** - 7 November 2017

<sup>36</sup> National Assembly for Wales, Record of Proceedings, **paragraph 27** - 24 October 2017

<sup>37</sup> Written evidence, **Tenant Participation Advisory Service Cymru**

<sup>38</sup> National Assembly for Wales, Record of Proceedings, **paragraph 168** - 7 November 2017

<sup>39</sup> Written evidence, **UK Finance**

## The Welsh Government's view

**29.** During oral evidence the Minister confirmed that failure to comply with the Regulatory Framework would constitute a failure to comply with a requirement imposed by or under an enactment.<sup>40</sup> Katie Wilson, a lawyer for the Welsh Government, added:

“...we also tried to make it clear in the explanatory notes. It does specifically say that standards issued under section 33A, and guidance under section 33B, would be considered to be a requirement imposed under an enactment.”<sup>41</sup>

**30.** The Minister also told the Committee:

“I would say that statutory action is always the last resort, which is taken when all other regulatory steps have failed. And to my knowledge, those powers have only been used once to this date, and I think that demonstrates the effectiveness of the regulatory regime. So, before exercising any of those statutory intervention powers, the regulation team's initial response will be to work alongside the RSLs, to try and explore how those problems and the issues could be resolved on a voluntary basis.”<sup>42</sup>

## The Committee's view

**Conclusion 4.** The Committee notes the proposed raising of the threshold for intervention from misconduct or mismanagement to a failure to comply with a requirement imposed by or under enactment. This is a key area of deregulation which will require careful management and as a result, the protections afforded by the revised Regulatory Framework will become more important in terms of regulating Registered Social Landlords when the legislative changes made by the Bill come into force. The Committee welcomes the review of the Regulatory Framework, including the performance standards, that is planned for 2018 and expects that review to take into account the impact of changes made by this Bill.

**Recommendation 3.** The Committee recommends that the Bill is amended to ensure that a failure to comply with the Regulatory Framework, and the

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<sup>40</sup> National Assembly for Wales, Record of Proceedings, **paragraph 106** - 21 November 2017

<sup>41</sup> National Assembly for Wales, Record of Proceedings, **paragraph 107** - 21 November 2017

<sup>42</sup> National Assembly for Wales, Record of Proceedings, **paragraph 109** - 21 November 2017

associated performance standards, is explicitly recognised on the face of the Bill as a failure to comply with a requirement imposed under an enactment.

## The role of tenants

**31.** During the inquiry, the Sub-Committee heard that the equivalent proposed legislation in Scotland, the Housing (Amendments) (Scotland) Bill provides for consultation with, and agreement of, tenants prior to significant changes to the management of their landlord.<sup>43</sup> Steffan Evans of TPAS Cymru told the Sub-Committee:

“Our view is certainly that we want tenants to be involved in this process and that the end result needs to be to ensure that there is enough community involvement in how organisations are run. I think an interesting point about boards that’s sometimes overlooked is that the Welsh Government’s view is that a board member’s a board member, be that a local authority board member, a tenant board member or a staff member, a professional individual, but it’s more about the ethos of those organisations about how we’re taking on community views. So, we’d certainly welcome making sure that tenants were able to feed into that process and how those organisations operated but, at the same time, we’d want that to be developed in a way that was permissible with this Bill allowing—you know, to be enacted in a way that refers to the ONS decision.”<sup>44</sup>

**32.** CIH Cymru held a similar view, and stated in additional evidence:

“We have no opposition in principle to the Welsh legislation mirroring that of Scotland and placing the rights of tenants on the face of the bill as long as the reclassification process is not compromised. We have a strong regulatory regime in Wales and it seems sensible that assurances over meaningful tenant involvement on matters such as restructure could be covered by continued monitoring and additional regulatory guidance where needed.”<sup>45</sup>

**33.** As regards the involvement of tenants and local authorities in areas that had previously undergone Large Scale Voluntary Stock Transfer (LSVST), a number of

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<sup>43</sup> National Assembly for Wales, Record of Proceedings, **paragraphs 121 to 141** - 7 November 2017

<sup>44</sup> National Assembly for Wales, Record of Proceedings, **paragraph 122** - 7 November 2017

<sup>45</sup> Additional written evidence, **The Chartered Institute of Housing Cymru** - 20 November 2017

witnesses told the Sub-Committee that the Bill did not threaten commitments made to tenants as part of those processes.<sup>46</sup>

## The Welsh Government's view

**34.** During oral evidence, the Cabinet Secretary assured the Sub-Committee that promises made by organisations involved in LSVST were sacrosanct.<sup>47</sup> The Cabinet Secretary also stated that one of the ten measurements included in the Regulatory Framework was the need to demonstrate engagement with tenants.<sup>48</sup>

**35.** In her evidence, the Minister confirmed that the Bill does not provide tenants “with any greater or lesser influence than they already have at the moment”.<sup>49</sup>

## The Committee's view

**Conclusion 5.** The Committee notes that the Bill does nothing in law to strengthen the role of tenants within the regulatory regime for RSLs and believes that this was a missed opportunity. An obvious example to examine would have been the Scottish model of a tenant's endorsement for major structural change.

**Recommendation 4.** The Committee recommends that the Welsh Government brings forward amendments to strengthen the role of tenants on RSL Boards which set out a formal process for tenant participation before certain constitutional changes and/or mergers are made.

## The move from consents to notifications

**36.** The Bill proposes moving from a consents regime to a notification regime in a number of areas.

**37.** Sections 3 to 5 remove the requirements upon RSLs to obtain consent from the Welsh Ministers for constitutional changes, amalgamations and other structural changes. The consent requirement is replaced with a requirement for RSLs to notify the Welsh Ministers of such changes.

**38.** Stuart Ropke of Community Housing Cymru said he did not see the shift from consents to notifications as significant. He commented:

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<sup>46</sup> National Assembly for Wales, Record of Proceedings, **paragraph 24** - 24 October 2017; **paragraph 70** - 7 November 2017

<sup>47</sup> National Assembly for Wales, Record of Proceedings, **paragraph 194** - 24 October 2017

<sup>48</sup> National Assembly for Wales, Record of Proceedings, **paragraph 125** - 24 October 2017

<sup>49</sup> National Assembly for Wales, Record of Proceedings, **paragraph 85** - 21 November 2017

“I am absolutely sure that any regulator, and, indeed, the Welsh Government regulator, if they saw notifications coming through that they had concerns about—I would expect the regulator to be in that housing association the following day asking questions. The reality is that the regulatory consent isn’t the only impediment to housing associations doing what they want anyway. For some of our members, they need to seek charity commission consent—these are charities—and always they have to seek the consent of their lenders, who are lenders who give good sums of money. So I don’t see a notification regime as a big change.”<sup>50</sup>

**39.** Sections 13 to 15 of the Bill amend the 1996 Act relating to the disposal of land by RSLs. The Bill will replace the need to obtain consent from the Welsh Ministers before disposing of land with a requirement to notify the Welsh Ministers and comply with any notification directions given by them.<sup>51</sup>

**40.** In written evidence, UK Finance explained that the provisions in relation to land disposals were consistent with the legislation introduced elsewhere in the UK but cautioned that the current consents regime was a “powerful source of regulatory intelligence”.<sup>52</sup>

**41.** In its response to the Welsh Government’s consultation (and shared with the Sub-Committee) Community Housing Cymru highlighted the fact that RSLs which are registered charities would need to obtain consent from the Charity Commission.<sup>53</sup> The Cabinet Secretary subsequently confirmed that two of the 34 main RSLs “have some charitable action within their organisations of any significance”.<sup>54</sup> Stuart Ropke added during oral evidence:

“The reality is that the regulatory consent isn’t the only impediment to housing associations doing what they want anyway. For some of our members, they need to seek charity commission consent—these are charities—and always they have to seek the consent of their lenders, who are lenders who give good sums of money. So I don’t see a notification regime as a big change. I think it changes the way we

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<sup>50</sup> National Assembly for Wales, Record of Proceedings, **paragraph 22** - 24 October 2017

<sup>51</sup> Explanatory Memorandum, **paragraph 93 and 94** - October 2017

<sup>52</sup> Written evidence, **UK Finance**

<sup>53</sup> Welsh Government, ‘**Regulation of Registered Social Landlords, summary of consultation responses**’ - September 2017

<sup>54</sup> National Assembly for Wales, Record of Proceedings, **paragraph 149** - 24 October 2017

operate slightly, but I still don't think it would preclude regulatory action being taken if the regulator has seen an issue."<sup>55</sup>

**42.** Section 15 of the Bill also abolishes the Disposal Proceeds Fund, removes the requirement for RSLs to show proceeds separately in their accounts and removes the ability of the Welsh Ministers to determine how such proceeds should be used.<sup>56</sup>

**43.** In written evidence, CIH Cymru broadly welcomed the removal of ministerial consent for disposal of land. However, they also suggested that guidance around the notification procedure in this area would be useful to ensure consistency across the sector.<sup>57</sup>

**44.** Jim McKirdle of the WLGA told the Sub-Committee that he did not have any concerns about the changes to disposal of land but added that clear guidance would be required to ensure consistency and transparency around the process.<sup>58</sup> Similarly, Stuart Ropke of Community Housing Cymru stated during oral evidence that it was important in terms of transparency and accountability for RSLs to continue to provide information about proceeds from the disposal of land in the public domain after the Bill comes into force.

## The Welsh Government's view

**45.** When asked about the potential for increased risk in moving from consent to notification, the then Cabinet Secretary said:

“...there's always a proportion of risk pre and post the development of this piece of legislation. As I said earlier, I've exhausted all options in terms of the ability not to legislate here, but we are in a position where we have to, as in the other administrations. That amount of risk there has been based upon our framework, which we pre-introduced here, so it's in operation already, and RSLs are complimentary but cautious about the approach that we take in terms of our regulatory function here. It's a very powerful toolkit, because the grade system of that is as powerful as—if you start to lose grades, your ability to borrow—. In fact, chief execs of organisations and chairs of organisations, if there is a

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<sup>55</sup> National Assembly for Wales, Record of Proceedings, **paragraph 26** - 24 October 2017

<sup>56</sup> Explanatory Memorandum, **paragraphs 109 and 110** - October 2017

<sup>57</sup> Written evidence, **The Chartered Institute of Housing Cymru**

<sup>58</sup> National Assembly for Wales, Record of Proceedings, **paragraph 33** - 7 November 2017

downgrading of an organisation, I would think that their positions would be precarious at best—their long-term positions.”<sup>59</sup>

**46.** Ian Williams, Deputy Director for Homes and Places at the Welsh Government noted:

“...there is guidance along with the performance standards already in place. If we move to this notification process, then there will be guidance, on which we’ll work with the regulatory advisory group, which is a group that includes the sector, tenants, local government. We’ll work with them to work through new guidance that will mitigate any risks of poor behaviour or poor decisions in the sector regarding notification as opposed to consent.”<sup>60</sup>

**47.** The Minister stated that the Welsh Government already has powers to issue regulatory guidance, and that is usually done through circulars. She went on to note that this had happened in the past in relation to tenant consultation on certain types of disposals.<sup>61</sup> Ian Williams, Deputy Director for Homes and Places at the Welsh Government explained that there was already guidance issued to RSLs on tenant consultation, and that the Welsh Government would be happy to share any draft guidance relating specifically to issues connected to this Bill with the Committee.<sup>62</sup>

## The Committee’s view

**Conclusion 6.** The Committee notes that the proposed change from a consent regime to a notification regime could result in a loss of regulatory intelligence. Furthermore, the Committee notes that removing the requirement for RSLs to publish the proceeds from the disposal of land could reduce transparency in the sector.

## Section 18 regulation-making powers

**48.** Section 18 provides the Welsh Ministers with powers to make further amendments as a consequence of the provisions of the Bill once enacted. John

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<sup>59</sup> National Assembly for Wales, Record of Proceedings, **paragraph 138** - 24 October 2017

<sup>60</sup> National Assembly for Wales, Record of Proceedings, **paragraph 144** - 24 October 2017

<sup>61</sup> National Assembly for Wales, Record of Proceedings, **paragraph 91** - 21 November 2017

<sup>62</sup> National Assembly for Wales, Record of Proceedings, **paragraph 91, 92 and 98** - 21 November 2017

Marr of UK Finance highlighted some concerns in relation to these powers. Mr Marr told the Committee:

“The regulation-making power, the catch-all at the end—I can entirely see the rationale for it from the Government’s perspective, but I think for it to be left entirely open-ended, certainly given the recent announcements from the ONS in England and the interim statement here in Wales, would probably be a little bit unnecessary, and by leaving the ability to make regulations completely open I think there is a risk that funders, particularly those who, as I say, are distant and possibly less familiar with the sector, might see that as an open-ended risk, because this is an issue that we would like to see closed down.”<sup>63</sup>

49. He added:

“...for a regulation-making power to be left open significantly longer than that, I think, would be rather unnecessary.”<sup>64</sup>

## The Welsh Government’s view

50. During oral evidence, the Minister told the Sub-Committee:

“Those section 18 powers, perhaps we should have used a different title within the Bill, but they’re certainly consequential, or powers to make consequential amendments, or to amend the Bill in a way that is appropriate in consequence of any provision made, or for the purpose of giving full effect to that Bill.”

51. In response to questioning, Katie Wilson, a lawyer for the Welsh Government also confirmed that the section 18 powers could not be used to respond to a further requirement from the ONS to change the regulation of RSLs.<sup>65</sup>

## Our view

**Conclusion 7.** The Committee notes that the Minister herself recognises an ambiguity in respect of the wording for the powers contained in section 18.

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<sup>63</sup> National Assembly for Wales, Record of Proceedings, [paragraph 52](#) - 21 November 2017

<sup>64</sup> National Assembly for Wales, Record of Proceedings, [paragraph 52](#) - 21 November 2017

<sup>65</sup> National Assembly for Wales, Record of Proceedings, [paragraphs 139 and 140](#) - 21 November 2017

**Recommendation 5.** The Committee recommends that the Welsh Government brings forward an amendment to clarify that the regulation-making powers in section 18 provide the power to make consequential amendments only.

**Recommendation 6.** The Committee recommends that the National Assembly conducts post-legislative scrutiny of the Bill should it become an Act to ensure in particular that tenants' rights are safeguarded and that RSLs are not disposing of land and assets in a way unanticipated by the Welsh Government.

## Annex A – List of oral evidence sessions

The following witnesses provided oral evidence to the Committee on the dates noted below. **Transcripts of all oral evidence sessions** can be viewed on the Committee's website.

Date	Name and Organisation
24 October 2017	Aaron Hill, Community Housing Cymru Stuart Ropke, Community Housing Cymru Carl Sargeant AM, Cabinet Secretary for Communities and Children Ian Williams, Welsh Government Katie Wilson, Welsh Government
7 November 2017	Jim McKirdle, Welsh Local Government Association Matthew Dicks, Chartered Institute of Housing Cymru Tom Broadhead, Chartered Institute of Housing Cymru Steffan Evans, TPAS Cymru
21 November 2017	John Marr, UK Finance Peter Hughes, Principality Building Society Rebecca Evans AM, Minister for Housing and Regeneration Ian Williams, Welsh Government Katie Williams, Welsh Government

## Annex B – List of written evidence

The following people and organisations provided written evidence to the Committee. All **consultation responses and additional written information** can be viewed on the Committee's website.

Organisation	Reference
Tenant Participation Advisory Service Cymru	<b><u>RSL01</u></b>
The Chartered Institute of Housing Cymru	<b><u>RSL 02</u></b>
Conwy County Borough Council	<b><u>RSL 03</u></b>
UK Finance	<b><u>RSL 04</u></b>
Wynne Jones	<b><u>RSL 05</u></b>