

Introduction

UK Finance is a trade association formed in July 2017 to represent the finance and banking industry operating in the UK. It represents around 250 firms in the UK providing credit, banking, markets and payment-related services. The new organisation brings together most of the activities previously carried out by the Asset Based Finance Association, the British Bankers' Association, the Council of Mortgage Lenders, Financial Fraud Action UK, Payments UK and the UK Cards Association.

Scope of response and background

In addition to representing residential mortgage lenders, UK Finance members also lend to support the social housing/ RSL sectors across the UK nations, including Wales. We welcome the opportunity to provide this submission to the [call for evidence](#) as part of the Stage 1 scrutiny inquiry by the sub-Committee of the Assembly's External Affairs and Additional Legislation Committee. This written submission gives an outline of our views, which the sub-Committee will be able to explore further in our oral evidence later.

General comments

The most recent global accounts of RSLs in Wales, commercial lending and investment to the RSL sector in Wales amounted to some £2.5 billion (total facilities).

Welsh RSLs are mostly seen by private funders as a sound and stable proposition, presenting low risk and with a track record of no loss.

In addition to its vital work to protect and safeguard the interest of tenants, the Welsh Ministers also provide strong regulation, with a focus on governance strength and financial viability.

This regulation, founded on a proportionate and risk-based co-regulatory approach, backed with the ability to deploy statutory intervention powers, gives private funders comfort in the sector's strength; it supports confidence in existing and new private lending and investment on terms that enable Welsh RSLs to maximise their contribution to the delivery of the government's target of 20,000 new affordable homes in the current Assembly term.

RSLs are reliant on private finance and government grant to develop new properties.

The ONS decision to classify Welsh RSLs as public bodies means their existing and future debt becomes part of the public balance sheet. Because of the need for government to control public borrowing, it might be necessary for the Welsh Government to introduce caps on RSL borrowing, thereby limiting their capacity to develop and service existing debt.

Changes such as this will, over time, lead funders to re-evaluate their exposures in the sector and take account of what would be a fundamental shift in risk profile. There could be consequential changes in appetite and pricing for RSL debt, going forward. This would be counter-intuitive to the ambitions and purpose of RSLs and Government for the sector.

Specific comments

UK Finance and lenders have benefitted to date from constructive engagement on ONS classification issues in Wales and across the UK nations. In England, we were extensively engaged with the Department for Communities and Local Government as it worked on the development of de-regulatory measures there, that were included in the Housing and Planning Act 2016.

We are encouraged to see that the proposed measures for Wales are broadly consistent with measures elsewhere in the UK, while still responding to the Welsh context in which tenants are at the heart of regulation.

In progressing the detail of the legislation, our overarching concern is to see the implementation of measures that are sufficient to enable the ONS to restore the sector's "private" classification, without going any further than is necessary.

It is encouraging that the ONS recently stated on a provisional basis that the proposed legislation if implemented broadly in its current form would be sufficient to enable a further reclassification of RSLs as private bodies for technical accounting purposes.

Funders' perception of risk in the Welsh RSL sector; their appetite for lending/ investment to it; and the pricing available to Welsh RSLs are inextricably linked to regulation. We are clear that any regulatory changes that could go further than is necessary to address ONS issues would dilute the strength of regulation, and that this would have an impact on risk, appetite and pricing in the sector.

To maintain funder confidence in the sector at a time when there is increasing need for private finance to support the delivery of new development, we are clear that the regulator must still have access to viable statutory intervention powers that can be exercised in a timely and proportionate way to protect not only the interests of tenants but those of the sector's private and public funders.

The need to restore the RSL sector's "private" classification

We are clear that if RSLs were to remain classified as public bodies, this would represent a fundamental and significant change in the overall profile and type of funding/ investment proposition. Any application of public borrowing caps would impact on business plans, and ability to service existing (and new) debt. Funders would see changes to risk profile, and the likely response would be a review of exposures, which could lead to changes in appetite and pricing.

The implications could be a reduced ability of RSLs to attract new private investment at a time when more is needed to support delivery of the 20,000 homes target.

The appropriateness of reclassification measures

Our analysis of the measures to date is that they are broadly consistent with those already in place, or being progressed, elsewhere in the UK. This means that, taking a pan-UK view, there is consistency in the measures, which is welcome and needed by national and international lenders and investors. On balance, and taking account measures implemented or planned in the other UK nations, we feel

the Welsh measures are appropriate to address the factors identified by the ONS that led it to apply a “public” classification.

We have provided comments on key measures proposed in the Bill:

Constitutional changes (Sections 3, 4 & 5): The measures are broadly consistent with the position elsewhere in the UK, where changes see a shift to a notification regime rather than a regime which requires regulatory consent. On this basis, we believe the measures are appropriate and sufficient to address the control issues identified by the ONS.

Regulatory intervention/ powers to appoint or remove officers & managers; tender or transfer of functions; amalgamation; inquiries & reports; enforcement notices & penalties (Sections 6 – 12): Changes to the timeliness of intervention have caused concern for funders, to the extent that an intervention might have to wait until an RSL *has failed* (which might be too late) rather than when an RSL *is failing*. Having discussed and analysed the provisions in detail, however, 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. Notwithstanding, we feel the proposed approach should provide sufficient scope for regulatory intervention before an insolvency arises. We expect funders might wish to keep the operation of this new approach, if implemented, under review to ensure there are no unintended consequences that might impact their interests and exposures.

Disposal consents (Sections 13 – 15): 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.

Limit on local authority board membership and voting rights (Sections 16 and Schedule 1): The measures are broadly consistent with the position elsewhere in the UK and this is welcome.

Power to make further amendments (Section 18): We would welcome clarity as to the rationale for taking this power, and the circumstances in which it might be used. We could understand the desirability of having the power in circumstances where the ONS might not regard the enacted measures as sufficient to enable it to restore the sector's "private" classification. We are concerned, however, that the proposed power is cast too widely and is open-ended. As the ONS has already stated that the proposed measures are sufficient in principle, we are not convinced of the need for the proposed power. If it is to be enacted, we suggest that the Committee might consider a sunset provision for this power, such that it falls away at the end of the current Assembly term. Without this, we expect funders (particularly distant investors who might be less familiar with the sector) might perceive an open-ended ability of Ministers to change the functions of the regulator as a risk of indefinite uncertainty. This could reduce investor appetite and increase the possibility of reticence among funders when considering Welsh RSLs as funding/ investment propositions within the wider UK and international context.

Falling-short, meeting, or going further than necessary?

Our conclusion overall is that the proposed measures are sufficient to meet but not go further than the changes identified as necessary by the ONS. As such, we agree with the general principles of the Bill, and conclude that they are sufficient to achieve the desired outcome in terms of addressing the ONS concerns about regulatory/ government control over the sector.