

I refer to the above subject. You advised in your communication dated 22 June 2017 that the **Regulatory Impact Assessment** {RIA} would be available for scrutiny when finalised. The decision by Welsh Government to present your Explanatory Memorandum, incorporating RIA and Explanatory Notes, to the National Assembly for scrutiny before giving the general public an opportunity to comment is viewed as an attempt to avoid public scrutiny of your proposals. Your attention is drawn to recommendation 8 of National Assembly Finance Committee Report dated October 2017. The Committee recommends that the Welsh Government should provide draft R I As as part of the consultation it undertakes in developing legislative proposals, and that it should review its wider strategy and advice to Bill teams regarding engagement with stakeholders to emphasise that this should be undertaken as early as possible.

Following the decision by **Office of National Statistics** {ONS} to re-classify Housing Associations in Wales as public non-financial corporations Welsh Government consider it necessary to amend statutes / regulations to enable ONS to review their decision and revert to the current classification: private non-financial corporation sub-sector. The RIA presented to National Assembly aims to justify the proposed change in statutes and regulations. Having now examined the documentation I offer the following observations under the respective sub-headings.

Methodology

The appraisal is fundamentally flawed. The methodology conflicts with requirements for economic appraisal and evaluation as set out in H M Treasury "Green Book" implemented in Wales through the "five case business model". That requires a **Benefit v Cost analysis** to be undertaken with future costs and monetary benefits discounted to present value using H M Treasury discount rate. Your attention is drawn to recommendation 6 of National Assembly Finance Committee Report dated October 2017. The Committee recommends that the Welsh Government improve its quality assurance processes by ensuring more thorough

internal scrutiny of R I As before they are laid before the Assembly. Your documentation should be vetted by your internal Economic Appraisal Unit and a supplementary report presented to the National Assembly on their findings. It remains unclear, at this stage, what economic appraisal expertise is available to scrutiny committees at National Assembly.

Appraisal period

RIA appraisal period of 5 years is totally inappropriate for new statutes / regulations that are likely to be in place for an extended timeframe well in excess of 5 years. Please refer to recommendation 4 of National Assembly Finance Committee Report dated October 2017. This recommends that the Welsh Government should confirm whether it intends to use the Well-being of Future Generations Act as a framework for preparing RIAs, including measuring impact over a longer term.

Subordinate legislation

The statement that "*Welsh Government will consult where it is considered appropriate to do so*" requires clarification. Your attention is drawn to recommendations 12 and 13 of National Assembly Finance Committee Report dated October 2017. This recommends that the Welsh Government notify the Assembly where subordinate legislation laid before the Assembly significantly alters the costs of the associated primary legislation, and that the Welsh Government commit to providing as full a picture of the costs of subordinate legislation as possible when proposing primary legislation.

Future regulation of Housing Associations

The statement that recent changes to the regulatory framework strengthens your approach to regulation appears to conflict with your stated objective of relaxing controls to comply with ONS requirements. The recent decision by Welsh Government to only publish **regulatory judgements** {a summary document} rather than the **regulatory assessment** that underpins the judgement calls into question

Welsh Government's commitment to openness and transparency. The new regulatory regime is more secretive making scrutiny more difficult. Your proposed legislative changes will result in a notification requirement rather than the current consenting process, while still requiring Housing Association to manage substantial public funds, but, as private corporations, not subject to the provisions of the Freedom of Information Act 2000. How are they to be accountable to the taxpayer who part-funds their activity.

Future funding streams

Welsh Government have entered into future funding agreements with Housing Associations. These agreements extend well into the future over a timeline of 30 years. I refer to **Dowry Gap Funding** and **Housing Finance Grant**. These future costs should be discounted to present value in the analysis as required in economic appraisal. Your RIA appraisal period of 5 years is totally inappropriate for economic appraisal given the future funding commitments in place.

Cost estimates

Your attention is drawn to recommendation 9 of National Assembly Finance Committee Report dated October 2017. This recommends Welsh Government ensures that relevant stakeholders are engaged with the process when it creates costings and that stakeholders are able to comment and input on those costings and confirm whether they are in agreement. This again reinforces the need for your draft RIA to be subject to a consultation process prior to presentation to National Assembly for scrutiny. It suggests that RIA should be undertaken by your Economic Appraisal Unit who have the necessary expertise in economic appraisal and evaluation.

Post-implementation review

Your statement regarding post-implementation review requires clarification. Is a review to be undertaken and, if so, over what timeframe. Recommendation 16 of National Assembly Finance Committee Report dated October 2017 requires Welsh

Government to set-out in the RIA a clear process for post-implementation review of the financial estimates, including when and what will be assessed.

Third Sector Assessment

Your conclusion that there will be no adverse impact on the third sector requires clarification. Housing Associations are Third Sector Organisations. Welsh Government are required to comply with the code of practice for funding the third sector published as an annex to the "Third Sector Scheme – January 2014". That requires evaluations to be undertaken to ensure public funds are used for the intended purpose. How is that to be achieved following re-classification of Housing Associations who will then have more freedom to diversify into commercial activity. Has the risk to public funds been properly assessed.

Welsh Language Impact Assessment

With regard to the impact on the Welsh Language, the statement that no further action has been identified is extremely disappointing. There is a need to provide evidence to support your assumptions, a need for peer review, external engagement with Welsh speaking groups, identify stakeholders or consultation list, and a need to contact the Welsh Language Unit for advice.

General Assumptions

Welsh Government has made various assumptions in an effort to justify proposals. These are based on subjective judgement not objective analysis supported by evidence. For example, no evidence has been presented to support the generic statement that housing associations provide affordable housing for "local people". Many have now set up subsidiaries to build market {not social} housing and other commercial enterprises. That process can only accelerate as controls are lifted resulting in fewer social housing and more commercial activity.

In conclusion, I do not expect you to agree with my observations. I therefore look forward to receiving your counter arguments and point by point rebuttal. It would be helpful if you could provide the relevant scrutiny committees at National Assembly and ONS with a copy of your reply as it would appear that the general public are not to be consulted on your draft or final RIA.