



Ein cyf/Our ref MA(L)/RE/0073/18

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff
CF99 1NA

21 February 2018

Dear Mick,

I would like to thank the Constitutional and Legislative Affairs Committee for its scrutiny of the Regulation of Registered Social Landlords (Wales) Bill during Stage 1 of the legislative process. I have set out responses to the ten recommendations made in the Committee's Stage 1 scrutiny report on the Bill below.

- 1) *We recommend that the Minister justifies during the Stage 1 debate the reasons for introducing a Bill that amends existing UK legislation rather than one that is consolidated and free-standing.*

I accept this recommendation and am happy to reiterate and add to the points I made in my opening speech in the General Principles debate as to the reasons why we did not introduce a Bill to consolidate legislation in this area.

The Welsh Government is grateful for the Constitutional and Legislative Affairs Committee's continued interest in, and support for, the consolidation of devolved law.

We are very conscious of the benefits of consolidating the devolved law of Wales, thereby making that law easier to find and easier to understand, and increasing the amount of bilingual law in devolved areas. Our response to the Law Commission's recommendations in the Commission's report on the Form and Accessibility of the Law Applicable in Wales was clear about the benefits of consolidation.

However, as I am sure the Committee appreciates, there is likely to be a continuing need for Bills to change the law for particular purposes and, even though our long term aim is to consolidate devolved Welsh law, this does not mean we can commit to consolidate the law in a particular area each time we need to make changes to that law.

This is because the question of whether to undertake consolidation will always need to be considered on a Bill-by-Bill basis. This means taking into account the availability of resource, and whether it is the right time (in the light of factors such as other changes happening to the area of law) to consolidate.

If we had attempted to consolidate the whole of the law relating to RSLs as part of this Bill, it would not only have given rise to a resource issue, we would have run the risk that the consolidation process would not have been completed in time to avoid the consequences of ONS' reclassification of RSLs. Given the significance of those consequences, in my view it would have been wrong to run that risk.

As the Welsh Government's response to the Law Commission highlighted, consolidation is a major task which requires significant resource. As I know the Committee fully appreciates, consolidation is not a simple matter of copying existing legislation and transferring it into a new Bill. When legislative provisions which have been in place for many years are examined during a consolidation process, it is inevitable that they will throw up many questions about their meaning and accessibility, and whether they still operate properly in the current legislative landscape. This is particularly true where devolution has intervened since provisions were originally enacted.

The Committee has asked whether the Welsh Government could have started working on this project in October 2015 when ONS decided that English housing associations should be reclassified. The Committee also suggests that we might have been able to obtain a longer window to carry out a consolidation project, relying on an assurance from the Treasury that they could extend their temporary disapplication of accounting controls beyond March 2018, provided that we had made sufficient progress with the legislative changes considered necessary by ONS.

As I said during the debate, RSLs are of course governed by different legislation and a different regulatory regime from housing associations in England, and it was not until September 2016 that ONS published the outcome of its review in respect of RSLs. That was followed by a process of establishing with ONS exactly what legislative changes we needed to make to achieve the reclassification of RSLs.

Even if it had been technically possible to commence the project in October 2015, it would have been necessary to find significant additional policy, legal, drafting and translation resources to carry it out. At that point our existing resources were already committed elsewhere in the legislative programme.

Leaving aside the issue of the resources which would have been needed, the period starting in September 2016 would have provided much too short a window to use this Bill for a consolidation project. As regards the possibility of persuading the Treasury to extend its temporary disapplication of accounting controls on the basis that we were making sufficient progress with the legislative changes to facilitate reclassification, consolidation would have slowed that progress considerably. It is my view that it would have been inappropriate to take the risk that the Treasury would be prepared to grant an extension covering the longer process of consolidation.

2) *We recommend that the Welsh Government gives careful consideration to consolidating the law in this area when the next opportunity to do so arises.*

I accept this recommendation as the Welsh Government is actively considering the issue of the consolidation of devolved Welsh law, and how that could be taken forward. However, as I also said in response to Recommendation 1, the question of whether to undertake consolidation will always need to be considered on a Bill-by-Bill basis.

The availability of resources and how to prioritise their use will be a major factor in the decision as to whether to take forward a particular consolidation. However, another significant factor will be whether ongoing reforms are already underway in a particular area, and whether it would be sensible to wait until those reforms are fully implemented before embarking on consolidating legislation.

The law on RSLs is of course part of the much larger devolved area of housing. It is an area which covers a very significant amount of legislation and it is an area which the Welsh Government recognises as one which would very much benefit from consolidation.

It is an area in which we have already made significant legislative changes, and tried to make the law more accessible, for example through the Renting Homes (Wales) Act 2016, the Housing (Wales) Act 2014 and the Mobile Homes (Wales) Act 2013. Very recently of course, the Assembly passed the Abolition of the Right to Buy and Associated Rights (Wales) Act 2018.

The breadth of the area of housing means that any consolidation would require significant resource, and that issue will need to be addressed before we can take a consolidation forward.

3) *We recommend that the Minister should table an amendment to the Bill to the effect that any appointments made under sections 6 or 8 end when the relevant requirement is complied with or the relevant failure has been remedied to the satisfaction of the Welsh Ministers.*

I am not minded to bring forward an amendment to address this issue as I am concerned it could give rise to a number of difficulties.

Having an 'automatic' termination of appointment triggered by a particular circumstance could give rise to uncertainty about when a person's appointment had ended. Furthermore, it would not allow for a transition period in which the officer would remain in post while, for example, the Welsh Ministers satisfied themselves that the RSL was now capable of operating without the officer's assistance.

The current regulatory regime contains safeguards and operates in such a way that officers or managers appointed by the Welsh Ministers to deal with a specific problem will not stay in post longer than necessary.

- 4) *We recommend that the Minister should table an amendment to section 13(2) of the Bill to make it clear that section 81 of the Housing Act 1988 is only repealed in respect of Wales.*
- 5) *We recommend that the Minister seeks confirmation from the UK Government of the timescales for the removal of references to England in the Housing Act 1988*

I have considered this issue carefully and I am content that section 13(2) of the Bill, as it stands, is correct.

I appreciate that where legislation which applies in England and Wales is amended by an Act of the Assembly, the accessibility and clarity of the legislation which will continue to apply in England is of the utmost importance.

However, in respect of section 81 of the Housing Act 1988, once the requirement for an RSL to obtain consent to a disposal of land is removed, the section will no longer have any effect in relation to England.

Section 81 applies only to disposals of land by RSLs, where the RSL acquired that land from a Housing Action Trust. RSLs are registered in Wales and must be principally concerned with Welsh housing. However, this does not preclude RSLs from owning and managing property in England (although, in practice, owning and managing land in England accounts for a very small proportion of RSL operations).

In order to remove central government controls to the extent necessary to achieve the reclassification of RSLs, it is necessary to repeal section 81 in its entirety. It has already been repealed in relation to non-profit registered providers (the RSL equivalent in England).

The repeal will remove the function of the Secretary of State to consent to the disposal of former Housing Action Trust land by an RSL if that land is in England. This repeal of the Secretary of State's function raises no separate issue of principle and we are content that its effect is incidental to, or consequential on, the main purpose of the repeal which is to remove the requirement for RSLs to obtain central government consent for disposals.

- 6) *We recommend that the Minister should table an amendment so that it is clear on the face of the Bill that the new definition of "notify" is to be inserted into section 63 of the Housing Act 1996 after the definition of "notice" and before the definition of "public sector landlord".*

I am satisfied that the provision which inserts the definition of "notify" into section 63 of the Housing Act 1996 is drafted in the most appropriate way.

When inserting a new definition into a list of definitions, it is common drafting practice to provide that the new definition should be inserted "in the appropriate place", rather than identifying which existing definitions it should appear between. This is because it is possible that, before the amendment is commenced, another piece of legislation may insert another definition in the space where the amendment was going to insert a definition.

By providing that the new definition is to be inserted "in the appropriate place", it means that it can be inserted in the correct alphabetical position at the time the insertion is commenced.

- 7) *We recommend that the Minister should table an amendment to the Bill to compel the Welsh Ministers to, within 14 days after a direction is given under section 5 or 14, cause the text of the direction to be laid before the National Assembly together with a written statement to explain the purpose of the direction.*

I have considered this issue and I am content that, given the nature and the content of the directions to be given under the new provisions in sections 5 and 14 of the Bill, the provision as it currently stands is proportionate in the circumstances. Therefore I have decided against bringing forward an amendment in respect of this issue.

However, I am more than happy to give a commitment that directions given under the new provisions will be published on the Welsh Government's website.

The scope of the directions to be given under these provisions is very limited. The directions will deal with the delivery, form and content of notifications to be given to the Welsh Ministers, and the deadlines for doing so. The directions therefore deal with administrative matters.

There are already a number of other direction making powers in the Housing Act 1996, and across a wide variety of legislation, which are not required to be laid before the Assembly.

- 8) *We recommend that the Minister should table an amendment to replace the wording of section 18(1) of the Bill to state that regulations may make any incidental or consequential provisions that the Welsh Ministers consider necessary for the purpose of, or in connection with, or for giving full effect to, any provision contained in or made under the Bill.*

The power in section 18 is a narrow one. It could not be used to do anything which is not closely connected with the Bill's provisions.

Regarding the Committee's recommended wording, my view is that a requirement for an amendment to be "necessary", rather than "appropriate", before it can be made under this power is too strict a test to apply. There may be several ways of dealing with a particular provision which is affected by the Bill, and the Welsh Ministers need to be able to choose the one which is most appropriate to make the law clear and operate properly.

If the Welsh Ministers could do no more than was strictly necessary in making an amendment, it may limit their ability to make the existing law work effectively following the changes made by the Bill.

In relation to a recommendation from the External Affairs and Additional Legislation Committee, I have asked my officials to develop an amendment to indicate more clearly the scope of the power.

- 9) *We recommend that the Minister should table an amendment to state that the powers provided by this provision shall lapse upon the date that confirmation is published by the ONS that RSLs are reclassified as private non-financial corporations.*

It may be helpful if I confirm that this power cannot be used to make further amendments for the purposes of facilitating the reclassification of RSLs by ONS. It is for the purpose of making amendments which arise as a result of the changes to the law which are specifically made by the Bill.

If the power to make amendments were to lapse as suggested by the Committee and the amendment regulations had not yet been made, our ability to make them would be at an end.

Furthermore, although we do our utmost to identify all the provisions which need amending and deal with them in a single set of regulations, it is always possible that a provision may come to light subsequently. It is also possible that provisions made after the date of reclassification need to be amended.

I consider therefore that an amendment power that lapses as suggested by the Committee would be too restrictive to ensure we are able to amend all the provisions which may be affected by this Bill.

10) We recommend that the Minister should table an amendment to Schedule 1 of the Bill to delete the words "but the landlord may not remove an appointee until after the two month period expires" from section 7C(3) to be inserted into the Housing Act 1996.


I have accepted this recommendation in principle and will bring forward an amendment to address the issue raised by the Committee.

I would also like to take this opportunity to clarify one point raised in the report regarding paragraph 9 of Schedule 2 to the Bill and the interaction with the Abolition of the Right to Buy and Associated Rights (Wales) Act 2018 (the 2018 Act). The date for final abolition has now been set as the 26 January 2019 (see the Abolition of the Right to Buy and Associated Rights (Wales) Act 2018 (Commencement and Saving Provisions) Order 2018). If this Bill progresses as anticipated, it should come into force before final abolition takes place. Therefore, section 16 of the Housing Act 1996 will need to be amended by this Bill, before being repealed by the 2018 Act on 26 January 2019.

I hope this letter is helpful in setting out responses to the Committee's report. I will also be writing to the Chairs of the External Affairs and Additional Legislation Committee and the Finance Committee with regard to their Stage 1 reports, and will copy the letters to all three Committee Chairs.

I look forward to continuing to work with Members as the Bill progresses through the Assembly process.

Yours sincerely,



Rebecca Evans AC/AM
Y Gweinidog Tai ac Adfywio
Minister for Housing and Regeneration