

# HOUSING (WALES) MEASURE 2011

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 2: Registered Social Landlords**

##### *Chapter 4 – Enforcement*

##### **Management and constitution of registered social landlords**

160. Sections 72 to 78 insert new paragraphs 15B to 15H into Schedule 1 to the 1996 Act. These give the Welsh Ministers additional powers in relation to the management of RSLs.

##### *Section 72 - Management Tender*

161. This section inserts a new paragraph 15B into Schedule 1 to the 1996 Act. Sub-paragraph (1) of new paragraph 15B specifies that the Welsh Ministers may use the power conferred by this paragraph where they are satisfied that a RSL has failed to meet a standard set under new section 33A of the 1996 Act, or that there has been misconduct or mismanagement in its affairs.
162. If the Welsh Ministers are satisfied that one of the conditions in sub-paragraph (1) is met, sub-paragraph (3) gives them the power to require the RSL to put the RSL's management functions out to tender. The Welsh Ministers must specify the process that the social landlord is to follow in putting the services out to tender and making an appointment as a result of that process.
163. The services to be tendered out may relate to the RSLs affairs generally, or may relate to specified affairs.
164. The Welsh Ministers must specify certain matters when they exercise this power, as follows:
- the constitution of the panel which has the responsibility for selection, must include provision for ensuring tenants' interests will be represented on that panel,
  - provision for ensuring that the procurement process follows best practice, and
  - the terms and conditions on which the manager is to be appointed, that will include the setting of the required standards, how those standards will be monitored and enforced, and resources.

##### *Section 73 - Management tender: supplemental*

165. This section inserts a new paragraph 15C into Schedule 1 to the 1996 Act. Sub-paragraph (1) of new paragraph 15C provides that before the Welsh Ministers require a RSL to implement the tendering process, they must give that RSL a notice which specifies the grounds on which action may be taken, warns the RSL that they are considering action under this section, and explains the effect of the paragraph.

166. Sub-paragraphs (2) and (3) provide that the notice must specify a period during which the RSL may make representations to the Welsh Ministers, and that the period must be at least 28 days and begin on the date the social landlord receives the notice.
167. Sub-paragraph (4) requires the Welsh Ministers to send a copy of the notice to any person they think appropriate. In deciding to whom it would be appropriate to send a copy, they must have particular regard to any person who provided information which has led to the giving of the notice.
168. Sub-paragraph (5) provides that the notice served must advise the RSL on whom it is served about the provisions for the landlord to give voluntary undertakings to the Welsh Ministers, and the extent to which they would accept an undertaking instead of, or in mitigation of, the use of their powers under Chapter 2.
169. Sub-paragraph (6) allows the Welsh Ministers to issue the notice in conjunction with warning notices relating to the potential use of other enforcement powers.
170. Sub-paragraph (7) provides that in deciding whether to use this power, the Welsh Ministers must have regard to the views of relevant tenants, the RSL and, if appropriate, any relevant local housing authority.
171. Sub-paragraph (8) states that a RSL served with a notice by the Welsh Ministers under paragraph 15B of the 1996 Act has a right of appeal to the High Court.

#### ***Section 74 - Management Transfer***

172. This section inserts a new paragraph 15D into Schedule 1 to the 1996 Act. The powers set out in this paragraph are exercisable following an inquiry as provided for under paragraph 20 of Schedule 1 to the 1996 Act, or an audit under paragraph 22 of that Schedule.
173. Sub-paragraphs (2) and (3) provide that the Welsh Ministers may require a RSL to transfer some or all of its management functions to a specified person. The requirement may relate to the RSL's affairs generally or to specified affairs only.
174. Sub-paragraph (4) provides that the requirement must specify the terms and conditions of the transfer (including as to remuneration) or make provision for the manner in which they are to be determined.
175. Sub-paragraph (5) gives the person to whom the management functions are to be transferred, the powers specified by the Welsh Ministers in the requirement. In addition the person to whom management is transferred by the requirement will have any other powers in relation to the RSL's business that are necessary to give effect to the purposes specified in the requirement. These specifically include the power to enter into agreements and take other action on behalf of the RSL.

#### ***Section 75 - Management Transfer: supplemental***

176. [Section 41](#) inserts a new paragraph 15E into Schedule 1 to the 1996 Act. This makes similar supplemental provision in relation to management transfer to that made in paragraph 15C of that Schedule (inserted by section 73 of this Measure) in relation to management tender.

#### ***Section 76 - Appointment of manager of registered social landlord***

177. This section inserts a new paragraph 15F into Schedule 1 to the 1996 Act. This gives the Welsh Ministers the power either to appoint an individual as manager of the RSL, or to require the RSL to appoint an individual as manager as set out in sub-paragraph (2) of new paragraph 15F.

178. The Welsh Ministers may exercise this power if they are satisfied that a RSL has failed to meet a standard set under section 33A of the 1996 Act or that there has been misconduct or mismanagement in its affairs.
179. Sub-paragraphs (3) to (5) of new paragraph 15F set out the nature of the requirement or the appointment that will be specified by the Welsh Ministers.
180. Sub-paragraph (3) provides that the Welsh Ministers may determine the matters in respect of which the manager is to be appointed.
181. Sub-paragraph (4) provides that the appointment of a manager is to be on terms and conditions (including as to remuneration) specified in or determined in accordance with the appointment of, or the requirement to appoint, a manager under sub-paragraph (3).
182. Sub-paragraph (5) gives the appointed manager any powers specified in the requirement or appointment, and any other powers in relation to the RSL's business that are required for the purposes specified in the requirement or appointment. These specifically include the power to enter into agreements and take other action on behalf of the RSL.

### ***Section 77- Appointment of manger: supplemental***

183. This section inserts a new paragraph 15G into Schedule 1 to the 1996 Act. This makes similar provision to that made in paragraph 15C of that Schedule in relation to appointment of a manager.

### ***Section 78 - Amalgamation***

184. This section inserts a new paragraph 15H into Schedule 1 to the 1996 Act. Sub-paragraph (1) of new paragraph 15H sets out the cases where this paragraph applies, which are where the Welsh Ministers are satisfied that there has been misconduct or mismanagement in the affairs of a RSL which is an industrial and provident society, or that the amalgamation of an industrial and provident society with another industrial and provident society would be likely to improve the management of its affairs.
185. Sub-paragraph (2) gives the Welsh Ministers power to bring about the amalgamation of the society with another industrial and provident society.
186. Sub-paragraph (3) specifies that an instrument providing for an amalgamation has the same effect as a resolution by that society under section 50 of the Industrial and Provident Societies Act 1965. Sub-paragraphs (4) to (6) require that a copy of the instrument be sent to and registered by the Financial Services Authority, at which point the instrument takes effect, and require that the copy is sent for registration within 14 days of the date of execution.
187. Sub-paragraph (7) provides that any body created by virtue of an amalgamation must be registered with the Welsh Ministers as a social landlord and pending registration, it is to be treated as registered.