

# HOUSING (WALES) MEASURE 2011

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Chapter 1 – Directions Suspending the Right to Buy and Related Rights*

#### *Section 1 – Power to apply for direction suspending the right to buy and related rights*

5. **Section 1** gives local housing authorities in Wales a power to apply to the Welsh Ministers for a direction suspending the right to buy and related rights.
6. Subsection (1) sets out when a local housing authority (“the authority”) may apply to the Welsh Ministers to suspend the right to buy and related rights.
7. The maximum period of any suspension in an area is five years (although authorities can apply to extend this under section 18). A consultation exercise must be completed 6 months prior to the application being made and in light of the consultation, and any other relevant information, the authority must have concluded that the condition in subsection (2) exists (ie the “housing pressure condition”). The housing pressure condition is that the demand for social housing substantially exceeds its supply or is likely to do so, and that imbalance between supply and demand is likely to increase as a result of the exercise of the right to buy and related rights.
8. Subsection (3)(a)-(d) defines the rights which are related to the right to buy for the purposes of the Measure. A secure tenant has the right in certain circumstances and subject to certain conditions and exceptions, to acquire the freehold of the dwelling-house which he occupies or to be granted a lease of that dwelling-house (the “right to buy”) under Part 5 of the Housing Act 1985 (“the 1985 Act”). The Housing Act 1996 (“the 1996 Act”) introduced a right to acquire which extends the right to buy to certain assured tenants (with modifications). The rights related to the right to buy are set out in section 1(3) of the Measure and include the right to acquire and the preserved right to buy and those rights as extended. For the purpose of these notes references to the right to buy include the right to buy and related rights.
9. Subsection (4) provides that an authority can conclude that the housing pressure condition is met in relation to all social housing in its area, to all social housing in a certain part or parts of its area or in relation to a certain type or types of social housing. Social housing includes any housing provided by a social housing provider. A social housing provider includes an authority and a person (other than an authority) which provides housing to, or has functions relating to allocation of housing to people whose needs are not adequately served by the commercial housing market. An authority or such other person is a social housing provider only insofar as it provides, or has functions relating to, the allocation of housing.
10. Subsection (5) states that a type of social housing may be identified by reference to the special needs of tenants, the description of the dwelling-house (for example, three or four bedroom houses), or by the type of social housing provider.

## ***Section 2 – Consultation***

11. This section describes the consultation procedure that the authority must undertake before applying to the Welsh Ministers for a direction to suspend the right to buy in its area.
12. Subsection (2) states that the authority must seek views on whether there is a need to apply for such a direction to suspend the right to buy.
13. Subsection (3)(a)-(d) identifies the persons to be consulted. They include –
  - a. each social housing provider which appears to the authority to be a landlord of a dwelling-house in the authority’s area and which the authority considers would be affected if its application for a direction were granted,
  - b. any body appearing to represent the interests of tenants of those dwelling-houses in the authority’s area where the landlords are social housing providers and the tenants of those dwelling-houses would be affected if the application for a direction is granted,
  - c. any other authority whose area is adjacent to the area to which it is proposed that the direction is to apply, and
  - d. other persons as the authority considers appropriate.

## ***Section 3 – Application for direction suspending the right to buy***

14. This section sets out the requirements to be met by the authority’s application for a direction to suspend the right to buy.
15. Subsection (2)(a)-(d) describes what an application must contain. The authority must prepare a draft of the direction that it wishes the Welsh Ministers to issue. That draft direction must clearly identify the area to which it applies, which could be the whole of the authority’s area or one or more parts of it. The draft direction must also make clear whether the direction is to apply to every relevant dwelling-house in that area and, if not, which type or types of relevant dwelling house to which it is to apply (e.g. it might apply only to 3 or 4 bedroom houses). The draft direction must also state the period for which the proposed direction is to have effect, which can be up to five years from the date of issue.
16. A “relevant dwelling-house” is one where the landlord is a social housing provider and the tenant has the right to buy or would have such a right if he or she met the conditions which gave rise to such a right (“landlord and tenant requirements”) and includes a dwelling-house which meets the landlord and tenant requirements after the date on which the application for a direction is made.
17. An authority’s application must also provide an explanation of the reasons why the authority has concluded that the housing pressure condition exists and an explanation of why suspending the right to buy is an appropriate way to deal with the housing pressure condition. The authority must set out the action that it intends to take, in addition to applying to suspend the right to buy, in order to address the imbalance between the demand for social housing and its supply. Finally, the application must include a description of the consultation exercise the authority has carried out.

## ***Section 4 – Consideration by the Welsh Ministers of an application***

18. Section 4 describes the process the Welsh Ministers must follow in dealing with an application, namely, when they must consider it, when they must refuse to consider the application and when they may consider it.

19. Subsection (1) provides that, if the Welsh Ministers are satisfied that an authority has met the requirements set out in section 3 for an application for a direction, they must proceed to consider whether or not to issue a direction.
20. Subsection (2) provides that if the Welsh Ministers are of the opinion that an application does not comply with section 3, they cannot consider whether or not to issue a direction but must refuse the application. However, if they consider that the failure to comply is immaterial or insignificant, they may consider the application.
21. Subsection (3) sets out the requirement to notify the authority as to whether or not the Welsh Ministers are considering an application.
22. Subsection (4) explains what counts as the day on which the Welsh Ministers decide to consider an application. It is necessary to be able to establish this day as any right to buy claim made after it is stayed under section 122A of the 1985 Act (inserted by section 31 of the Measure).
23. Subsection (5) deals with the treatment of further information (if provided before the Welsh Ministers decide to consider an application) in support of an application where provided under section 27. Any such further information forms part of that application.

### ***Section 5 – Decision of the Welsh Ministers on the application***

24. **Section 5** applies where the Welsh Ministers are considering an application.
25. Subsection (2)(a) allows the Welsh Ministers to reject an application where the authority has not complied with a request for further information made under section 27 of the Measure. They can also reject it where the authority is required to have a housing strategy under section 87(1) of the Local Government Act 2003 but that strategy, in so far as it relates to any imbalance between demand for and supply of social housing in the authority's area, is inadequate. Subsection (3) states when the Welsh Ministers must not make a decision based on the inadequacy of a strategy unless they have considered any statement required under section 87(2) of the Local Government Act 2003, and any other information which the Welsh Ministers consider relevant. A statement under section 87(2) sets out the authority's housing strategy together with other material relating to housing.
26. Subsection (4) sets out the circumstances in which the Welsh Ministers must grant the application. These are where the Welsh Ministers agree with the authority's reasons for concluding that the housing pressure condition exists and that the proposed direction is an appropriate way to deal with it. The Welsh Ministers must be satisfied that the authority's proposals for other action are likely to contribute to reducing the imbalance between the demand for social housing and its supply. The authority must also have consulted properly.
27. If subsection (4)(a)-(d) are not satisfied, the Welsh Ministers must reject the application.  
28 The Welsh Ministers must grant or reject an application for a direction within six months from when they decided to consider the application (see section 4(4)).
29. The validity of the Welsh Ministers' decision is not affected by a failure to comply with subsection (6).

### ***Section 6 – Issue of direction***

30. This section sets out what the Welsh Ministers' direction must contain. It must be in the same terms as the draft direction submitted as part of the authority's application.