

HOUSING (WALES) MEASURE 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Chapter 2 - Variation of Direction to Suspend the Right to Buy

Section 7 – Meaning of “enlarging variation” and “reducing variation”

31. **Section 7** defines an “enlarging variation” and a “reducing variation” of a direction. An enlarging variation involves amending a direction to increase the area caught by it or to add to the types of dwelling houses caught. Because an enlarging variation applies to a larger area or a greater number of houses, the procedure for applying for such a variation is similar to that for applying for a direction under Part 1. A reducing variation involves amending the direction so that it applies to a smaller area or fewer houses, so a less extensive procedure applies.

Section 8 – Enlarging variation: power to apply

32. **Section 8** sets out the circumstances in which an authority may apply to the Welsh Ministers for an enlarging variation of a direction. These are similar to the circumstances for applying for a direction under section 1 save that a time limit applies here. The authority must apply for the variation at least six months before the direction is due to come to an end. The condition that must exist before an authority can apply is similar to the housing pressure condition set out in section 1, and this must exist in relation to those elements of the direction that are to be extended by the variation.

Section 9 – Enlarging variation: consultation

33. **Section 9** provides for the consultation exercise that an authority must undertake before it may apply to the Welsh Ministers for an enlarging variation of a direction. This is similar to the consultation that must be carried out under section 2.
34. The consultation must include any other authority whose area is adjacent to the area to which it is proposed that the enlarging elements of the direction are to apply.

Section 10 – Application for enlarging variation

35. **Section 10** sets out the requirements which must be met by an authority’s application for an enlarging variation. As with an application for a direction under Part 1, an application for an enlarging variation involves preparing a draft of the direction that the authority wishes the Welsh Ministers to issue and an explanation of the reasons the authority considers the condition referred to in section 8 exists and why an enlarging variation would be an appropriate way to deal with it. The authority must explain what other action it will take, in addition to the suspension of the right to buy, in order to tackle the imbalance between the demand for and supply of social housing.

Section 11 – Consideration by the Welsh Ministers of an application for an enlarging variation

36. **Section 11** sets out when the Welsh Ministers must consider an application for an enlarging variation and when they must refuse to consider it. This is similar to section 4. Where an application meets the requirements set out in section 10, the Welsh Ministers must proceed to consider whether to issue a direction. If the application does not meet any of those requirements the Welsh Ministers must reject the application at this stage.

Section 12 – Decision of the Welsh Ministers on the application

37. **Section 12** applies where the Welsh Ministers are considering an authority's application for an enlarging variation and sets out when they may reject the application, when they must not make a decision, where they must grant the application and when they must reject the application. The Welsh Ministers can reject the application if the authority has failed to provide information it was required to give under section 27 or if its housing strategy is inadequate in so far as it deals with the imbalance between the demand for and the supply of social housing.
38. The Welsh Ministers must grant the application for an enlargement if they agree with the authority's opinion why the condition set out in section 8(2) exists and that the variation is an appropriate response. The Welsh Ministers must also be satisfied that the authority's proposals in its application under section 10(2)(d) are likely to contribute to a reduction in the imbalance between the demand for social housing and its supply. The authority must also have consulted properly.
39. If subsection (4)(a)-(d) are not satisfied, the Welsh Ministers must reject the application.
40. The Welsh Ministers must grant or reject an application for an enlarging variation within six months from when they decided to consider an application (see section 11(4)).
41. The validity of the Welsh Ministers' decision is not affected by a failure to comply with subsection (6).

Section 13 – Issue of direction as varied to include enlarging elements

42. **Section 13** sets out what the varied direction must contain. It must be in the same terms as the draft direction included in the authority's application for an enlarging variation.

Section 14 - Reducing variation: power to apply

43. **Section 14** makes provision for an authority to apply for a reducing variation of a direction where there is no longer a need to suspend the right to buy. The authority must be satisfied that the demand for social housing in the part of the authority (or in respect of the type of houses) where the varied application will apply no longer substantially exceeds the supply or is not likely to do so, or even if that is the case, that the exercise of the right to buy will not increase the imbalance.

Section 15 – Application for reducing variation

44. **Section 15** outlines the requirements to be contained in an application to the Welsh Ministers for a reducing variation. The authority must prepare a draft of the direction it wishes the Welsh Ministers to issue and explain the reasons why it believes the condition set out in section 14(2) exists.

Section 16 – Decision of the Welsh Ministers on the application

45. **Section 16** sets out when the Welsh Ministers may reject an application for a reducing variation and when they must grant the application. They can reject it if the authority has failed to provide information it was required to give. They must issue a direction if

they agree with the authority's view that the condition set out in section 14 exists, and must refuse to issue a direction if they do not agree.

Section 17 – Issue of direction as varied to include reducing elements

46. Where an application is granted under section 16, section 17 sets out what the varied direction must state. It must be on the same terms as the draft direction included in the authority's application for a reducing variation.