

# HOUSING (WALES) MEASURE 2011

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## EXPLANATORY NOTES

### INTRODUCTION

1. These Explanatory Notes are for the Housing (Wales) Measure 2011 (“the Measure”) which was passed by the National Assembly for Wales (“the Assembly”) on 22 March 2011 and approved by Her Majesty in Council on 10 May 2011. They have been prepared by the Welsh Assembly Government’s Housing Directorate to assist understanding of the Measure. They do not form part of the Measure and have not been endorsed by the Assembly. The Explanatory Notes should be read in conjunction with the Measure. They are not intended to be a comprehensive description of the Measure. Therefore, where a section, or part of a section, does not appear to require any explanation, none is given.
2. Part 1 of the Measure allows a local housing authority (“the authority”) to apply to the Welsh Ministers to suspend the Right to Buy and Related Rights in respect of the whole or part of the authority’s area, initially for a period of up to 5 years and the authority may apply for an extension to that period. The Assembly’s competence to legislate on this matter is found in Matter 11.5 of Field 11 of Schedule 5 to the Government of Wales Act 2006 (c.32) (“GOWA 2006”). Matter 11.5 was inserted into Field 11 of Schedule 5 by the National Assembly for Wales (Legislative Competence) (Housing and Local Government) Order 2010 made on 21 July 2010.
3. Part 2 of the Measure provides the Welsh Ministers with enhanced regulatory and intervention powers concerning the provision of housing by Registered Social Landlords. The Assembly’s competence to legislate on this matter is found in Matters 11.2 and 11.3 of Field 11 of Schedule 5 to GOWA 2006. Matters 11.2 and 11.3 were inserted into Field 11 of Schedule 5 by the National Assembly for Wales (Legislative Competence) (Housing and Local Government) Order 2010.
4. There are 3 Parts to the Measure and they are:
  - Part 1: Suspension of the Right to Buy and Related Rights**
    - Chapter 1: Directions suspending the Right to Buy and Related Rights
    - Chapter 2: Variation of Direction Suspending the Right to Buy and Related Rights
    - Chapter 3: Extension of Direction Suspending the Right to Buy and Related Rights
    - Chapter 4: Revocation of Direction Suspending the Right to Buy and Related Rights
    - Chapter 5: Applications: General Provisions
    - Chapter 6: Amendments to the Housing Act 1985
    - Chapter 7: Miscellaneous
  - Part 2: Registered Social Landlords**
    - Chapter 1: Performance
    - Chapter 2: Voluntary Undertakings
    - Chapter 3: Regulation
    - Chapter 4: Enforcement

Chapter 5: Miscellaneous and General Provisions

Part 3: Supplementary and Final Provisions

Each Part is explained in turn below.

**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.

## ***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.

***Chapter 3 – Extension of Direction Suspending the Right to Buy***

***Section 18 – Extension applications: power to apply***

47. Section 18 allows an authority to apply for an extension of a direction if they have completed a consultation exercise in the 6 month period preceding the extension application and in light of that exercise and any other relevant information, the authority have concluded that the housing pressure condition continues to exist.
48. There is a ten year limit on the length of any direction, as extended. Under subsection (2) an authority may apply for the extension of a direction which has already been extended but an extended direction cannot have effect beyond ten years from the date of the direction issued under section 6.

***Section 19 – Extension applications: consultation***

49. Section 19 outlines the consultation requirements that an authority must undertake before applying to the Welsh Ministers for an extension. This is similar to the consultation exercise required under section 2.
50. The consultation must include any other authority whose area is adjacent to the area to which it is proposed that the extended direction is to apply.

### ***Section 20 – Application for extension***

51. **Section 20** sets out the requirements which must be contained in an authority's application for an extension of a direction. The authority must explain the reasons why it has concluded that the housing pressure condition exists, why an extension is an appropriate way to deal with it, what other action it has taken to deal with it and what other action it proposes to take to reduce the imbalance between the demand for social housing and its supply within the authority's area during the proposed period of extension. The application must describe the consultation undertaken by the authority and set out the length of extension it wants which must not be for a period of more than five years from the date on which, but for Chapter 3, the direction would have ceased to have effect.

### ***Section 21 – Decision of the Welsh Ministers on the application***

52. **Section 21** sets out when the Welsh Ministers may reject an authority's application for an extension and when they must grant or refuse an application. The Welsh Ministers can reject the application if the authority has failed to provide information 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. They must issue a direction if they agree with the authority's reasons for concluding that the housing pressure condition exists and that the proposed extension is an appropriate way to address it. The Welsh Ministers must be satisfied that the authority's proposed future action to reduce the imbalance between the demand for social housing and its supply is likely to contribute to a reduction. The authority must also have consulted properly. If the authority's application fails to meet any of these conditions, the Welsh Ministers cannot grant the application. If the Welsh Ministers are satisfied as to the adequacy of the action taken to date to reduce the imbalance between the demand for and supply of social housing, and if all the other conditions are met, they must issue a direction but if they are not so satisfied they may refuse the application.

### ***Section 22 – Issue of direction as extended***

53. **Section 22** deals with the issue of a direction as extended. It is to be identical to the direction it replaces, save for the date on which it ends. Subsection (2) specifies that an extension direction has effect from the date that the existing direction ends.
54. **Subsection 29(3)** sets out that where the right to buy has been suspended for the maximum of ten years, an authority has to wait 2 years after the date on which the existing direction ends before submitting an application for a new direction.

### ***Chapter 4 – Revocation of Direction Suspending the Right to Buy***

#### ***Sections 23 and 24 Revocation of direction***

55. An authority may apply in writing to the Welsh Ministers to revoke a direction provided the condition in section 23(2) exists. This is that the demand for social housing covered by the direction does not substantially exceed its supply or is not likely to, or even if that is the case that the exercise of the right to buy is not likely to increase that imbalance. An application must explain why the authority has concluded that this condition exists.

#### ***Section 25 – Decision of the Welsh Ministers on the application***

56. **Section 25** states that the Welsh Ministers may reject an application for revocation when the authority has failed to provide information under section 27. They must grant the application if they agree with the authority's reasons for concluding that the condition in section 23(2) exists. If granted, they must notify the authority in writing of that fact and the direction ceases to have effect on the date that the notice is given.

## ***Chapter 5: Applications: General Provisions***

### ***Section 26 – Withdrawal of application***

57. Section 26 provides that an authority may withdraw its application for a direction, or for the revocation of a direction, at any time before the Welsh Ministers have made a decision on it.

### ***Section 27 – Provision of further information***

58. Under section 27 the Welsh Ministers can obtain further information from an authority. They must reasonably consider that the information is required in order for them to deal with an application.

### ***Section 28 – Publication of directions***

59. Under section 28 an authority must publish a direction by whichever means it considers appropriate and it must take other reasonable steps to bring a direction or a revocation to the attention of persons likely to be affected.

### ***Section 29 – Restriction on repeat applications***

60. Section 29 deals with restrictions on repeat applications. If the Welsh Ministers have refused to grant an application for a direction an authority must not apply for a direction that is substantially the same, as the direction the application for which was refused, for a period of two years from the date of refusal.
61. Where a direction has been issued under section 6 (“the relevant direction”) (whether or not there has been a variation under section 13 or 17 or an extension under section 22), an authority must not during the period in subsection (5) make an application for another direction under section 1 that is substantially the same as the relevant direction. Under subsection (5), the period begins on the date the relevant direction has effect (subsection (5)(a)) and ends two years from the date when the relevant direction ceases to have effect (subsection (5)(b)). In the case of a variation under section 13 or 17, references to the relevant direction in subsections (4) and (5b) are to the direction as varied and where there has been an extension under section 22, the reference in subsection (5)(b) is to when the relevant direction ceases to have effect as extended. This means that an authority cannot make an application for a direction which is substantially the same as an existing one and which is timed to begin as soon as the existing direction comes to an end. Instead it must apply for an extension (with the additional condition of demonstrating it has taken adequate action to date to address the housing pressure condition) to which there is a limit of ten years. Otherwise the authority must wait for a period of two years to expire from the date the direction ceased to have effect.

### ***Section 30 – Guidance***

62. Section 30 provides that in the exercise of the authority’s functions under sections 3, 10, 15, 20 and 24 (which relate to authority applications), the authority must have regard to any guidance given by the Welsh Ministers.

## ***Chapter 6: Amendments to the Housing Act 1985***

### ***Section 31 – Consequence of the Welsh Ministers deciding to consider certain applications***

63. Section 31(2) inserts new section 122A into the 1985 Act which sets out the effect an application to suspend the right to buy in parts of Wales has on a claim to exercise the right to buy under section 122(1) of the 1985 Act. A claim is stayed (unless withdrawn by the tenant) if the Welsh Ministers are considering an application for a direction under section 4(1) or (2) or section 11(1) or (2) of the Measure and the right to buy claim is



made under section 122(1) of the 1985 Act in respect of a dwelling-house covered by the draft direction or enlarging elements of the draft direction. New section 122A(3) & (4) of the 1985 Act sets out what happens to the stay where the Welsh Ministers refuse to issue the direction (stay is lifted on date of refusal) or if the application for the direction is withdrawn (stay lifted on date of withdrawal).

64. If the Welsh Ministers have not granted or rejected an application for a direction within six months beginning with the date on which they decided to consider the application (see sections 4(4) and 11(4)), the stay is lifted on the day after the end of that period. If a claim to exercise the right to buy is stayed at the time the Welsh Ministers grant an application for a direction, the claim is deemed not to have been made and the computation of any period under Schedule 4 to the 1985 Act (qualifying period for right to buy and discount) is not affected.
65. Subsection (3) inserts new subsection (3) into section 124 of the 1985 Act. This sets out the periods for serving notices in respect of the right to buy when a stay is lifted.
66. Subsection (4) amends section 153A of the 1985 Act (tenant's notices of delay).

### ***Section 32 – Effect of direction to suspend the right to buy***

67. **Section 32** inserts new section 122B into the 1985 Act. While a direction suspending the right to buy has effect a tenant cannot make a right to buy claim under section 122 of the 1985 Act (tenant's notice claiming to exercise right to buy). New section 122B does not affect the computation of any period under Schedule 4 to the 1985 Act.

## ***Chapter 7: Miscellaneous***

### ***Section 33 - Interpretation of Part 1***

68. **Section 33** defines the terms used in Part 1 of the Measure.

### ***Section 34 – Consequential etc orders***

69. **Section 34** gives the Welsh Ministers power by order to make provision in consequence or for giving full effect to any provision in the Measure or make provision for applying or extending any provision about or connected with a right related to the right to buy.

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

70. The provisions in Part 2 of the Housing (Wales) Measure 2011 amend the 1996 Act. The amendments apply in relation to Registered Social Landlords (RSLs) registered by the Welsh Ministers, but they do not amend the existing law in relation to those Landlords' provision of housing in England.

## ***Chapter 1: Performance***

71. This Chapter amends Part 1 of the 1996 Act to strengthen the powers of the Welsh Ministers with regard to the performance of RSLs.
72. **Sections 35 to 37** insert new sections 33A to 33C before section 34 of the 1996 Act.

### ***Section 35 - Standards of performance***

73. Subsection (1) of the new section 33A gives the Welsh Ministers the power to set standards of performance for RSLs. These standards may apply to the functions of RSLs relating to the provision of housing or to the governance and financial management of the RSLs.

74. Subsection (2) provides that when setting standards, the Welsh Ministers must have regard to the desirability of RSLs being free to choose how to provide services and conduct business.

### ***Section 36 - Guidance on standards of performance***

75. Subsections (1) and (2) of the new section 33B provide that the Welsh Ministers may issue guidance in relation to the standards they set, and that the Welsh Ministers may have regard to this guidance in considering whether the standards have been met.
76. Subsection (3) provides that the Welsh Ministers may revise or withdraw such guidance.
77. Subsection (4) requires the Welsh Ministers to bring the guidance to the attention of RSLs.

### ***Section 37 - Consultation***

78. The new section 33C provides that before setting standards or issuing, revising or withdrawing guidance the Welsh Ministers must consult:
- i) one or more bodies representing the interests of RSLs,
  - ii) one or more bodies appearing to them to represent the interests of tenants, and
  - iii) one or more bodies appearing to them to represent the interests of local housing authorities.

### ***Section 38 - Information as to levels of performance***

79. This section (subsection (2)) amends section 35 of the 1996 Act so as to require the Welsh Ministers to collect information from RSLs about their level of performance, both in relation to their provision of housing in Wales and their governance and financial management.
80. Subsection (3) preserves the current duty on the Welsh Ministers to collect information about the performance of RSLs in connection with the provision of housing in England.
81. Subsection (4) amends subsection (2) of section 35 of the 1996 Act to enable the Welsh Ministers to direct each RSL to provide information to them about the level of performance achieved by the RSL in relation to each standard set under section 33A of the 1996 Act (inserted by section 35 of this Measure). A failure to comply with such a direction, without reasonable excuse, is an offence punishable by a fine not exceeding level 5 on the standard scale (currently £5,000).

### ***Section 39 - Guidance about complaints about performance***

82. This section inserts a new section 35A into the 1996 Act which allows the Welsh Ministers to publish guidance about the way in which complaints may be made to them about the performance of RSLs. The guidance may specify various matters, such as the procedure for making a complaint, the criteria to be used by the Welsh Ministers in deciding whether to investigate a complaint, and the period within which they aim to inform complainants of the outcome.
83. Subsection (3) of new section 35A provides that the Welsh Ministers may revise or withdraw such guidance.

### ***Section 40 - Consultation***

84. This section inserts a new section 35B into the 1996 Act to provide that if the Welsh Ministers issue guidance in relation to complaints about performance, they must consult on the guidance before publication.

## ***Chapter 2 - Voluntary Undertakings***

### ***Section 41 - Voluntary Undertakings***

85. **Section 41** inserts a new section 6A into the 1996 Act. Section 6A makes provision about the nature of the voluntary undertakings that may be made to the Welsh Ministers by RSLs, the procedure for making undertakings, and the effect that undertakings may have.
86. Subsection (1) provides that a RSL may give an undertaking in respect of any matter concerning housing.
87. Subsection (2) provides that the Welsh Ministers may prescribe a procedure to be followed in giving an undertaking.
88. Subsection (3) provides that the Welsh Ministers must have regard to any undertaking offered or given by a RSL when exercising a regulatory or enforcement power. Subsection (4) enables the Welsh Ministers, in addition, to take into account the extent to which such undertakings have been honoured when deciding whether to exercise such a power.
89. One of the purposes of this provision is to enable RSLs to formally notify the Welsh Ministers of actions that they propose to take, and believe are necessary to ensure that their affairs are managed in accordance with the standards set by the Welsh Ministers under section 33A of the 1996 Act. It provides a mechanism by which such commitments can be brought to the attention of the Welsh Ministers, and requires the Welsh Ministers to take account of those undertakings when determining whether to investigate the performance of RSLs, and to take enforcement action where RSLs have not complied with regulatory requirements.
90. Subsection (5) defines what is meant by a “regulatory or enforcement power”.

## ***Chapter 3 - Regulation***

### **Survey and examination**

#### ***Section 42 - Failure to give notice to occupiers***

91. This section amends section 37 of the 1996 Act so that a RSL commits an offence if it fails, without reasonable excuse, to give tenants of premises in Wales at least seven days’ notice that a person authorised by the Welsh Ministers will be carrying out a survey and examination of those premises.
92. Such a survey and examination may be carried out if it appears to the Welsh Ministers that a RSL may be failing to maintain or repair any premises in accordance with standards set under section 33A, or guidance issued under section 36, of the 1996 Act.

#### ***Sections 43 to 48: Inspection***

93. **Sections 43 to 48** insert a new Part 3A into Schedule 1 to the 1996 Act. This new Part 3A deals with inspection.

#### ***Section 43 - Inspection: Overview and application***

94. **Section 43** inserts a new paragraph 19B into Schedule 1 to the 1996 Act. This new paragraph explains that Part 3A of Schedule 1 makes provision for the inspection of a RSL’s affairs, save those affairs that relate to the provision of housing in England.

***Section 44 - Inspection***

95. **Section 44** inserts a new paragraph 19C into Schedule 1 of the 1996 Act. Sub-paragraph (1) of new paragraph 19C allows the Welsh Ministers themselves or another person to inspect a RSL's affairs. Sub-paragraph (2) indicates that the inspection can be broad or in relation to a specific issue. Sub-paragraph (3) specifies that the Welsh Ministers may direct that an inspection is discontinued.
96. Sub-paragraph (4) specifies that if a person other than the Welsh Ministers carries out an inspection, the arrangements may include provision for payments.

***Section 45 - Inspection: supplemental***

97. **Section 45** inserts a new paragraph 19D into Schedule 1 to the 1996 Act. Sub-paragraph (1) of new paragraph 19D requires the person carrying out the inspection to produce a written report. Sub-paragraph (2) requires the Welsh Ministers to provide the RSL with a copy of the written report and permits the Welsh Ministers to publish the inspection report and any related information. Sub-paragraph (3) makes it clear that where the Welsh Ministers have arranged for another person to carry out an inspection, that person may publish the inspection report and any related information (whether or not the Welsh Ministers have done so).
98. Sub-paragraphs (4), (5), (6) and (7) together make provision for the Welsh Ministers to charge a RSL a fee for the inspection and for the payment of that fee. The Welsh Ministers may direct that payment is made to an external inspector, but if they do so, that person must notify the Welsh Ministers about that payment.

***Section 46 - Inspector's powers to require provision of documents or information***

99. **Section 46** inserts a new paragraph 19E into Schedule 1 of the 1996 Act. This paragraph specifies the powers conferred on an inspector to require the provision of documents or information.
100. Sub-paragraph (1) of new paragraph 19E allows an inspector to require any person to provide specified documents or information. Sub-paragraphs (2) and (3) provide that an inspector's request for information may specify the form in which the information is to be provided, and at which time and place. They also allow an inspector to copy or record information.
101. Sub-paragraphs (4) and (5) make it an offence to fail to comply with a requirement without reasonable excuse or to alter, suppress or destroy requested information intentionally. Sub-paragraph (6) provides, in addition, that if a person fails to comply with a requirement to provide documents or information, the Welsh Ministers or other inspector, may apply to the High Court for a remedy.
102. Sub-paragraph (7) provides that an 'inspector' means the Welsh Ministers or a person who is authorised in writing by the Welsh Ministers to exercise powers under this paragraph for the purposes of an inspection.

***Section 47 - Inspector's powers to require provision of documents or information: supplemental***

103. **Section 47** inserts a new paragraph 19F into Schedule 1 to the 1996 Act. Sub-paragraphs (1) and (2) of new paragraph 19F allow persons to refuse to disclose documents or information on grounds of legal professional privilege or banker confidentiality, (other than a duty of confidentiality owed to the landlord or its subsidiary or associate).
104. Sub-paragraphs (3) and (4) set out the liabilities relating to the two offences related to the provision of documents or information (see section 45 of this Measure). A person guilty of an offence of failing to comply with an inspector's requirement to provide documents or information is liable on summary conviction to a fine not exceeding the

level 5 on the standard scale (currently £5,000). A person guilty of intentionally altering, suppressing or destroying a document is liable on summary conviction to a fine not exceeding the statutory maximum (currently £5,000) or, on conviction on indictment, to imprisonment for up to two years, or a fine, or both.

105. Sub-paragraph (5) provides that proceedings for these offences may only be brought by or with the consent of either the Welsh Ministers or the Director of Public Prosecutions.

### ***Section 48 - Inspector's powers of entry and inspection***

106. **Section 48** inserts a new paragraph 19G into Schedule 1 to the 1996 Act. Sub-paragraph (1) of new paragraph 19G provides that an inspector may at any reasonable time enter premises occupied by the RSL being inspected, and inspect, copy or take away any documents found there. Under sub-paragraph (3), the reference to 'documents' found on premises includes documents stored on computers or electronic storage devices on the premises, and documents stored elsewhere which can be accessed by computers on the premises. The power to inspect includes inspection of any computer or electronic storage device on which such documents have been created or stored (sub-paragraph (4)).
107. Sub-paragraph (2) states that the inspector may not enter residential accommodation (whether the residential accommodation is the whole of, or only part of, premises occupied by the registered social landlord).
108. Sub-paragraphs (5) and (6) provide that the inspector may require any person on the premises to provide facilities or assistance as the inspector reasonably requests. This includes requiring assistance from any person in charge of a computer as the inspector reasonably requests.
109. Sub-paragraphs (7) to (9) specify that it is an offence for a person, without reasonable excuse, to obstruct an inspector carrying out an inspection. A person guilty of an offence is liable on summary conviction to a fine not exceeding level 3 (currently £1,000) on the standard scale. Proceedings for an offence under this paragraph may only be brought by or with the consent of either the Welsh Ministers or the Director of Public Prosecutions.
110. Sub-paragraph (10) provides that an 'inspector' means the Welsh Ministers or a person who is authorised in writing by the Welsh Ministers to exercise powers under this paragraph for the purposes of an inspection.
111. Sub-paragraph (10) also provides a definition of "residential accommodation".

## **Inquiry**

### ***Section 49 - Extraordinary audit for the purposes of inquiry***

112. **Section 49** amends paragraph 22 of Schedule 1 to the 1996 Act to provide that RSLs must meet the costs of any extraordinary audit requested by the Welsh Ministers.
113. The Welsh Ministers may require an extraordinary audit of the accounts and balance sheet of a RSL to be carried out where they are carrying out an inquiry into that RSL. The Welsh Ministers may carry out such an inquiry if it appears to them that there may have been misconduct or mismanagement in relation to the affairs of an RSL.

## ***Chapter 4 – Enforcement***

114. **Sections 50 to 71** insert a new Chapter 4A into the 1996 Act. Chapter 4A deals with the enforcement action that the Welsh Ministers may take against RSLs.

***Section 50 - Welsh Ministers' enforcement powers: general***

115. This section inserts a new section 50A into the 1996 Act. This new section provides that Chapter 4A does not apply in relation to a RSL's housing in England.

***Section 51 - Exercise of enforcement powers***

116. This section inserts a new section 50B into the 1996 Act. This new section applies where the Welsh Ministers are deciding whether to exercise an enforcement power, which power to exercise, or how to exercise a power. It provides that in all these circumstances, the Welsh Ministers must consider:
- (a) the desirability of RSLs being free to choose how to provide services and conduct business;
  - (b) whether the failure or other problem concerned is serious or trivial;
  - (c) whether the failure or other problem is a recurrent or isolated incident;
  - (d) the speed with which the failure or other problem needs to be addressed
117. Subsection (3) defines an 'enforcement power' as a power exercisable under any of the statutory provisions listed in that subsection.

**Enforcement Notice**

118. **Sections 52 to 56** insert new sections 50C to 50G into the 1996 Act. These new sections describe the arrangements relating to the giving of enforcement notices to RSLs.

***Section 52 - Grounds for giving notice***

119. This section inserts a new section 50C into the 1996 Act to specify the grounds on which the Welsh Ministers may give an enforcement notice to a RSL. Subsection (1) of new section 50C specifies that the Welsh Ministers must be satisfied that one of the cases for issuing an enforcement notice applies and that an enforcement notice is the appropriate intervention power to use, whether alone or as a potential precursor to further action.
120. Subsections (2) to (10) specify the cases that may form the basis for giving an enforcement notice as follows:
- that a RSL has failed to meet a standard established by the Welsh Ministers;
  - that the affairs of a RSL have been mismanaged;
  - that the RSL has failed to comply with an earlier enforcement notice;
  - that the RSL has failed to publish information in accordance with a requirement under sections 50I(3) or 50Q(3);
  - that it is required to protect the interests of tenants;
  - that it is necessary to protect the assets of a RSL;
  - that a RSL has failed to comply with an undertaking that it has given to the Welsh Ministers;
  - that an offence under Part 1 of the 1996 Act has been committed by a RSL;
  - that a RSL has failed to comply with a recommendation made by the Public Service Ombudsman for Wales;
121. Subsection (11) provides that where the Welsh Ministers are satisfied that an offence under Part 1 of the 1996 Act has been committed in respect of a RSL but by another person (e.g. a member or employee), the Welsh Ministers may serve an enforcement

notice on the other person rather than the RSL and, in such cases, references in Chapter 4A of the 1996 Act to the RSL should be read as references to that person.

### ***Section 53 - Content***

122. This section inserts a new section 50D into the 1996 Act to specify what an enforcement notice must include. It must specify which of the cases in section 50C of the 1996 Act are the grounds for the enforcement notice, the specific action which the RSL must take in response to the notice, the date by when the specified action must be taken, and the effect of an appeal or withdrawal.
123. Subsection (2) permits the Welsh Ministers to specify in an enforcement notice that the notice must be published in a specified manner.

### ***Section 54 - Appeal***

124. This section inserts a new section 50E into the 1996 Act to provide that a RSL served with an enforcement notice may appeal against it to the High Court.

### ***Section 55 - Withdrawal***

125. This section inserts a new section 50F into the 1996 Act to provide that the Welsh Ministers may withdraw an enforcement notice.

### ***Section 56 - Sanction***

126. This section inserts a new section 50G into the 1996 Act.
127. Subsection (1) of new section 50G places limitations on the further steps that may be taken by the Welsh Ministers where the enforcement notice has been served on a person (other than the RSL) under section 50C(11) of the 1996 Act. In these circumstances, the Welsh Ministers may only issue a penalty notice (as set out in sections 50H to 50M of the 1996 Act), or take steps to instigate a prosecution in relation to the offence which provided grounds for service of the enforcement notice. Subsection (2) provides that a person who has been served with an enforcement notice under Case 8 of section 50C of the 1996 Act may be prosecuted for the offence which gave grounds for that enforcement notice only if they have failed to comply with that notice.

## **Penalty**

128. [Sections 57 to 63](#) insert new sections 50H to 50N into the 1996 Act. These new sections describe the arrangements relating to the imposition of penalties on RSLs.

### ***Section 57 - Grounds for imposition***

129. This section inserts a new section 50H into the 1996 Act to specify the grounds on which the Welsh Ministers may decide to require RSLs to pay penalties. As well as being satisfied that one of the cases specified in this section applies, the Welsh Ministers must also be satisfied that a penalty is appropriate for the identified problem.
130. Subsections (2) to (6) of new section 50H specify the cases where the Welsh Ministers may issue a penalty. These cases are where:
  - the RSL has failed to meet a standard under section 33A;
  - the affairs of the RSL have been mismanaged;
  - the RSL has failed to comply with an enforcement notice;
  - the RSL has failed to comply with an undertaking that it has given to the Welsh Ministers;

- where offences under Part 1 of the 1996 Act have been committed by the RSL.
131. Subsection (7) provides that where the Welsh Ministers are satisfied that an offence has been committed in respect of a RSL by another person, the case for imposing a penalty is that which is set out in subsection (6), and the Welsh Ministers may require that other person rather than the RSL to pay the penalty. This subsection also provides that, in such cases, references in Chapter 4A of the 1996 Act to a RSL should be read as references to that other person.
132. Subsection (8) requires the Welsh Ministers to be satisfied beyond reasonable doubt if they wish to rely on the case described in subsection (6) as a basis for the imposition of a penalty.

### ***Section 58 - Imposition***

133. This section inserts a new section 50I into the 1996 Act to provide that a penalty is imposed by a written notice being served on a RSL. Subsection (2) of new section 50I requires the notice to specify which of the cases listed in subsections (2) to (6) of section 50H of the 1996 Act is the basis for the notice, the amount of the penalty that must be paid, how the penalty must be paid, the deadline for the payment, and any interest or additional penalty payable in the event of late payment.
134. Subsection (3) allows the notice to require the RSL to publish information about the penalty. Subsection (4) requires the notice to explain the enforcement action that may be taken in the event of non-payment and the right to appeal to the High Court against the penalty.

### ***Section 59 - Amount***

135. This section inserts a new section 50J into the 1996 Act which provides that the amount of the penalty that may be imposed on the ground specified in Case 5 (where an offence has been committed by a RSL) of section 50H of the 1996 Act may not exceed the maximum amount that the court could impose for that offence. In all other cases the maximum amount of penalty that the Welsh Ministers may impose is £5,000. The Welsh Ministers may amend this maximum penalty of £5,000 by affirmative resolution order.

### ***Section 60 - Warning***

136. This section inserts a new section 50K into the 1996 Act which sets out a warning procedure which must be followed before a penalty notice can be imposed. The Welsh Ministers must give a RSL a notice, called a “pre-penalty warning”, which must specify the grounds on which they think a penalty could be imposed, warn the RSL that the Welsh Ministers are considering imposing a penalty, include any indication the Welsh Ministers can give of the likely amount, and explain the RSL’s right to make representations (section 50L of the 1996 Act), the enforcement action that may be taken in relation to penalties (section 50M of the 1996 Act) and the RSL’s right to appeal against the penalty (section 50N of the 1996 Act).
137. Subsection (2) requires the Welsh Ministers to send any other person that it thinks appropriate, a copy of the pre-penalty warning. 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 pre-penalty warning.
138. Subsection (3) requires the Welsh Ministers to refer to section 6A of the 1996 Act (inserted by section 41 of this Measure and which permits RSL’s to offer voluntary undertakings) and indicate in its pre-penalty warning whether the Welsh Ministers would accept a voluntary undertaking instead of, or in mitigation of, a penalty.
139. Subsection (4) allows the Welsh Ministers to combine the pre-penalty warning with warnings about the use of its other enforcement powers.



### ***Section 61 - Representations***

140. This section inserts a new section 50L into the 1996 Act which allows RSLs issued with a pre-penalty warning to make representations to the Welsh Ministers.
141. Subsection (2) of the new section 50L specifies that the minimum period for representations must be at least 28 days, beginning on the date on which the RSL receives the pre-penalty warning.
142. The representations may address whether a penalty should be imposed, or the likely amount of any penalty
143. Subsection (4) provides that at the end of the period for representations the Welsh Ministers must consider any representations that have been made, and decide whether to impose a penalty.

### ***Section 62 - Enforcement***

144. This section inserts a new section 50M into the 1996 Act which specifies how penalties will be enforced, and provides sanctions for late payment or non-payment. Penalties are treated as a debt to the Welsh Ministers once a penalty notice is issued.
145. Subsection (2) of the new section 50M allows the Welsh Ministers to charge interest on penalties that are not paid by the date specified in the penalty notice and to impose additional penalties for late payment. In such cases, subsection (3) provides that the additional sums are also treated as penalties, and that these additional amounts may have the effect of increasing the penalty above the limit set by section 50J of the 1996 Act.
146. Subsection (4) gives a discretionary power to the Welsh Ministers to offer an early payment discount if the RSL pays the penalty in advance of the date specified in the penalty notice.
147. Subsection (5) specifies that if the penalty notice is served on a person under Case 5 of section 50H of the 1996 Act, that person may not be prosecuted for the offence which is the ground for requiring the payment of the penalty.

### ***Section 63 - Appeal***

148. This section inserts a new section 50N into the 1996 Act which gives a RSL the right to appeal to the High Court against the imposition of, and amount of, a penalty.

### **Compensation**

149. [Sections 64 to 71](#) insert new sections 50O to 50V into the 1996 Act. These new sections describe the arrangements relating to the imposition of a requirement on a RSL to pay compensation.

### ***Section 64 - Grounds for Award***

150. This section inserts a new section 50O into the 1996 Act which specifies the grounds on which the Welsh Ministers may require a RSL to pay compensation. The Welsh Ministers must be satisfied either that the RSL has failed to meet a standard of performance as set out in section 33A of the 1996 Act, or that the RSL has failed to comply with an undertaking that it has given to the Welsh Ministers under section 6A of that Act. They must also be satisfied that the award of compensation is appropriate.

### ***Section 65 - Persons to whom compensation may be awarded***

151. This section inserts a new section 50P into the 1996 Act which indicates those circumstances under which compensation may be awarded. It should be awarded to a person or persons who have suffered as a result of the failure that forms the basis for awarding compensation.

### ***Section 66 - Award***

152. This section inserts a new section 50Q into the 1996 Act which specifies the process for giving a notice to a RSL that requires payment of compensation, and the content of that notice. Compensation is awarded by the Welsh Ministers giving written notice (a “compensation notice”) to the RSL and the person or persons to be compensated.
153. Subsection (2) of new section 50Q provides that compensation notices must set out:
- the grounds on which compensation is awarded,
  - the amount of the compensation award,
  - the person or persons who are to be compensated,
  - the period within which that compensation must be paid, and
  - any interest or additional compensation payable in the event of late payment.
154. The notice may require the RSL to publish information about the award and must explain the effects of sections 50U (enforcement) and 50V (appeal) of the 1996 Act.

### ***Section 67 - Impact***

155. This section inserts a new section 50R into the 1996 Act which requires the Welsh Ministers to take account of any information available to it about the financial situation of the RSL when considering awarding compensation and when considering the amount. The Welsh Ministers must consider the likely impact on the RSL’s ability to provide services and in particular, must aim to avoid jeopardising its financial viability, existing financial commitments, and ability to remedy the problem.

### ***Section 68 - Warning***

156. This section inserts a new section 50S into the 1996 Act which allows for the issue of a ‘pre-compensation warning’ and specifies a similar procedure to that in section 50K(1) of the 1996 Act (pre-penalty warnings), as inserted by section 60 of this Measure.

### ***Section 69 - Representations***

157. This section inserts a new section 50T into the 1996 Act which allows the RSL to make representations to the Welsh Ministers in relation to compensation. The process specifies a similar procedure to that in section 50L of the 1996 Act (pre-penalty warnings - representations), as inserted by section 61 of this Measure.

### ***Section 70 - Enforcement***

158. This section inserts a new section 50U into the 1996 Act which makes provision for compensation payments to be enforced in a similar manner to section 50M of the 1996 Act, as inserted by section 62 of this Measure. Compensation is treated as a debt to the person or persons to whom it has been awarded. The Welsh Ministers may award interest or additional compensation for non payment or late payment of compensation.

### ***Section 71 - Appeal***

159. This section inserts a new section 50V into the 1996 Act which gives a RSL the right to appeal to the High Court against the award of compensation or the amount of compensation awarded.

## **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.

**Amendments relating to inquiries or audits**

188. **Sections 79 to 82** make amendments to paragraphs 23 to 26 of Schedule 1 to the 1996 Act to amend the Welsh Ministers' powers in relation to matters consequential to the carrying out of inquiries or audits under that Schedule.

***Section 79 - Restrictions on dealings during an inquiry***

189. This section amends paragraph 23 of Schedule 1 to the 1996 Act by inserting a new sub-paragraph (2A). This sub-paragraph requires the Welsh Ministers to take reasonable steps to give notice to a RSL before making an order to restrict the dealings of the RSL during an inquiry. It also requires the Welsh Ministers to take reasonable steps to give notice to the landlord and the person to whom the order will directed where the Welsh Ministers propose to make an order directing a bank (or other person) holding money or securities on behalf of a landlord not to part with the money or securities during an inquiry.

***Section 80 - Restrictions on dealings following an inquiry or extraordinary audit***

190. This section makes an equivalent amendment to that made by section 79 by amending paragraph 24 of Schedule 1 to the 1996 Act. It does this by inserting a new subparagraph (3A) in relation to dealings following an inquiry or audit. A new subparagraph (7) is also inserted into paragraph 24, stating that any restriction on dealings following an inquiry or extraordinary audit will have effect until it is revoked by the Welsh Ministers.

***Section 81 - Disqualification of removed person***

191. This section amends paragraph 25 of Schedule 1 to the 1996 Act by inserting a new sub-paragraph (4A). Paragraph 25 disqualifies a person removed from office under certain statutory provisions from acting as an officer of a RSL, and requires the Welsh Ministers to keep a register of all persons removed from office under those provisions. The Welsh

Ministers may, however, waive a person's disqualification. Where they do so, new sub-paragraph (4A) will require the Welsh Ministers to show the details of any waivers in the register.

### ***Section 82 - Acting while disqualified***

192. This section makes a number of amendments to paragraph 26 of Schedule 1 to the 1996 Act.
193. The effect of the amendment in subsection (2) is to increase the period for which a person guilty of an offence of acting as an officer of a RSL while disqualified may be imprisoned on summary conviction. At present, such a person may be imprisoned for up to six months, but subsection (2) will enable such a person to be imprisoned for up to 12 months.
194. The effect of subsection (3) is to prevent this increased period of imprisonment from being imposed in relation to an offence committed before section 282 of the Criminal Justice Act 2003 has been commenced.
195. Under paragraph 26 of Schedule 1 to the 1996 Act, the Welsh Ministers may order a person to repay sums to a RSL or to the Welsh Ministers where that person has acted as an officer of that landlord while disqualified and has received payments or benefits in connection with that role. Subsection (4) inserts a new sub-paragraph into paragraph 26 to enable the landlord or the Welsh Ministers to recover that sum as a debt if the disqualified person fails to comply with an order.

### ***Chapter 5- Miscellaneous and General Provisions***

196. **Sections 83 to 88** make various miscellaneous and general amendments to the 1996 Act.

### ***Section 83 - Insolvency, etc. of registered social landlord: appointment of interim manager***

197. This section inserts a new section 43A into the 1996 Act which gives the Welsh Ministers power to appoint an interim manager to manage a RSL's affairs during a moratorium. Such a moratorium will come into being where any of the steps mentioned in section 41 of the 1996 Act (relating to insolvency etc.) are taken.
198. Subsection (2) of new section 43A of the 1996 Act enables an interim manager to be appointed in relation to the RSL's affairs generally, or in relation to specific affairs.
199. Subsection (3) requires the appointment to be made on terms and conditions which must be specified in, or determined in accordance with, the appointment.
200. Subsection (4) provides that an interim manager is to have any power specified in the appointment, and any other power in relation to the RSL's affairs required by the manager for the purposes specified in the appointment. However, subsection (6) provides that an interim manager may not dispose of land or grant security over land.
201. Subsections (7) and (8) enable the Welsh Ministers to give directions to the interim manager and to amend or revoke such directions.
202. Subsection (9) provides that the appointment of an interim manager comes to an end at the end of the moratorium, at the time when proposals as to the future ownership and management of the RSL is agreed, or on a date specified in the appointment, whichever is the earliest. If a person ceases to be an interim manager before that end date (for example, due to illness or death), subsection (10) enables the Welsh Ministers to appoint a new interim manager.

#### ***Section 84 - Removal of officers***

203. This section amends paragraphs 4 and 5 of Schedule 1 to the 1996 Act so as to expand the powers of the Welsh Ministers in relation to the removal of the officers of a RSL. The Welsh Ministers are currently able to remove only certain types of officers (for example, the directors and trustees of a RSL which is a registered charity). The amendments will enable the Welsh Ministers to remove any person who is an “officer” of a RSL within the meaning given by section 59 of the 1996 Act.
204. The Welsh Ministers may remove an officer on grounds such as bankruptcy, disqualification under the Company Directors Disqualification Act 1986 or Charities Act 1983, or failure to act.

#### ***Section 85 - Appointment of new officers***

205. This section makes amendments to paragraphs 6, 7 and 8 of Schedule 1 to the 1996 Act so as to expand the powers of the Welsh Ministers to appoint officers of an RSL. The Welsh Ministers are currently able to appoint only certain types of officers (for example, the directors and trustees of a RSL which is a registered charity). The amendments will enable the Welsh Ministers to appoint any kind of “officer” within the meaning given to that term by section 59 to the 1996 Act.
206. The Welsh Ministers may appoint a new officer of a RSL where they have removed an officer, where there are no officers in place for a RSL, or where they consider that such an appointment is necessary for the proper management of a RSL’s affairs.

#### ***Section 86 - Charities that have “received public assistance”***

207. This section amends section 58 of the 1996 Act (definitions relating to charities) by inserting a new subsection (1A). This new subsection defines the circumstances in which a registered charity will be regarded as having ‘received public assistance’ for the purposes of the Part 1 of the 1996 Act. These include circumstances in which the charity has been given financial assistance for privately let accommodation under section 24 of the Local Government Act 1988, or has had housing transferred to it under section 34 of the 1985 Act or section 135 of the Leasehold Reform, Housing and Urban Development Act 1993, or has received a grant or loan under various provisions, including social housing grant under section 18 of the 1996 Act.

#### ***Section 87 - Minor definitions***

208. This section amends section 63 of the 1996 Act (minor definitions applying to Part 1 of that Act) by inserting definitions of ‘action’, ‘misconduct’ and ‘representations’ to the list of definitions in that section.

#### ***Section 88 - Minor and consequential amendments***

209. This section introduces the schedule of minor and consequential amendments.

### **Part 3- Supplementary and Final Provisions**

#### ***Section 89 - Orders***

210. **Section 89** sets out the general provisions that apply to the making of orders under the Measure. Subsection (1) provides that any power of the Welsh Ministers to make an order under the Measure is exercisable by statutory instrument and includes power to make different provision for different cases, areas, authorities and descriptions of authority; to make provision generally or in relation to specific cases; to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Welsh Ministers think fit. Subsections (2)-(4) set out the procedural requirements applying to the making of these orders. An order made under section 34 is to be made

by the negative resolution procedure unless it amends an Act of Parliament or Measure of the National Assembly for Wales, in which case the affirmative resolution procedure applies.

### ***Section 90 - Commencement***

211. Section 90 sets out when the various Parts of the Measure come into force. Part 3 of the Measure is commenced two months after the day on which the Measure is approved by Her Majesty in Council. The remaining parts are commenced by order of the Welsh Ministers.

### ***Section 91 - Short Title***

212. The short title of the Measure is the Housing (Wales) Measure 2011.

### ***Schedule***

213. The schedule contains minor and consequential amendments.

## **RECORD OF PROCEEDINGS IN THE ASSEMBLY**

214. The following table sets out the dates for each stage of the Measure's passage through the National Assembly for Wales. The Record of Proceedings and further information on the passage of this Measure can be found on the National Assembly for Wales' website by clicking on the dates in the table below.

<i>Stage</i>	<i>Date</i>
Proposed Measure introduced	22 November 2010
Stage 1 - Committee consideration of general principles <sup>1</sup>	23 November 2010 2 December 2010, 9 December 2010 12 January 2011 (private session)
Stage 1 - Debate in plenary on general principles	25 January 2011
Stage 2 - Committee consideration of amendments	16 February 2011
Stage 3 - Plenary consideration of amendments	22 March 2011
Stage 4 - Passing of the Measure in Plenary	22 March 2011
Date of Royal Approval	<b>10 May 2011</b>
* undertaken by Legislation Committee No.2	