

# HOUSING (WALES) MEASURE 2011

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

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

##### *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”.