

HOUSING (WALES) MEASURE 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Registered Social Landlords

Chapter 4 – Enforcement

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.