



# Housing (Wales) Measure 2011

2011 nawm 5

VALID FROM 18/10/2011

## PART 2

### REGISTERED SOCIAL LANDLORDS

#### CHAPTER 1

##### PERFORMANCE

#### **35 Standards of performance**

Before section 34 of the Housing Act 1996 (but after the italic heading immediately before that section) insert—

“**33A Standards of performance**

- (1) The Welsh Ministers may set standards to be met by registered social landlords in connection with—
  - (a) their functions relating to the provision of housing, and
  - (b) matters relating to their governance and financial management.
- (2) In setting standards the Welsh Ministers must have regard to the desirability of registered providers being free to choose how to provide services and conduct business.
- (3) This section does not apply in relation to a registered social landlord's provision of housing in England.”

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### 36 Guidance on standards of performance

After section 33A of the Housing Act 1996 insert—

#### “33B Guidance on standards of performance

- (1) The Welsh Ministers may issue guidance that—
  - (a) relates to a matter addressed by a standard, and
  - (b) amplifies the standard.
- (2) In considering whether standards have been met the Welsh Ministers may have regard to the guidance.
- (3) The Welsh Ministers may revise or withdraw the guidance.
- (4) The Welsh Ministers must make arrangements for bringing the guidance to the attention of registered social landlords.”

### 37 Consultation

After section 33B of the Housing Act 1996 insert—

#### “33C Consultation

Before setting standards under section 33A, or issuing, revising or withdrawing guidance under section 33B, the Welsh Ministers must consult -

- (a) one or more bodies appearing to them to represent the interests of registered social landlords,
- (b) one or more bodies appearing to them to represent the interests of tenants, and
- (c) one or more bodies appearing to them to represent the interests of local housing authorities.”

VALID FROM 02/12/2011

### 38 Information as to levels of performance

- (1) Amend section 35 of the Housing Act 1996 (information as to levels of performance) as follows.
- (2) Before subsection (1) insert—
 

“(A1) The Welsh Ministers shall from time to time collect information as to the levels of performance achieved by registered social landlords in connection with—

  - (a) their functions relating to the provision of housing in Wales, and
  - (b) matters relating to their governance and financial management.”
- (3) In subsection (1), after “housing” insert “ in England ”.
- (4) In subsection (2), for “section 34” substitute “ section 33A or 34 ”.

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### **39 Guidance about complaints about performance**

After section 35 of the Housing Act 1996 insert—

*“Complaints about performance*

#### **35A Guidance about complaints about performance**

- (1) The Welsh Ministers may publish guidance about complaints to the Welsh Ministers about the performance of registered social landlords.
- (2) The guidance may specify (among other things)—
  - (a) the procedure to be followed in making a complaint;
  - (b) the criteria used by the Welsh Ministers in deciding whether to investigate a complaint;
  - (c) periods within which the Welsh Ministers aim to inform complainants of the result of complaints.
- (3) The Welsh Ministers may revise or withdraw the guidance.
- (4) This section does not apply in relation to complaints about a registered social landlord's provision of housing in England.”

### **40 Consultation**

After section 35A of the Housing Act 1996 insert—

#### **“35B Consultation**

Before publishing, revising or withdrawing guidance under section 35A the Welsh Ministers must consult—

- (a) one or more bodies appearing to them to represent the interests of registered social landlords,
- (b) one or more bodies appearing to them to represent the interests of tenants,
- (c) one or more bodies appearing to them to represent the interests of local housing authorities, and
- (d) the Auditor General for Wales.”

## **CHAPTER 2**

### **VOLUNTARY UNDERTAKINGS**

### **41 Voluntary undertakings**

After section 6 of the Housing Act 1996 insert—

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### *“Voluntary undertakings*

#### **6A Voluntary undertakings**

- (1) A registered social landlord may give the Welsh Ministers an undertaking in respect of any matter concerning housing.
- (2) The Welsh Ministers may prescribe a procedure to be followed in giving an undertaking.
- (3) The Welsh Ministers must have regard to any undertaking offered or given in exercising a regulatory or enforcement power.
- (4) The Welsh Ministers may base a decision about whether to exercise a regulatory or enforcement power wholly or partly on the extent to which an undertaking has been honoured.
- (5) In this section, “regulatory or enforcement power” means a power exercisable under any of the following provisions—
  - section 35,
  - section 37,
  - section 38,
  - Chapter 4A of this Part,
  - paragraphs 4 and 6 to 15H of Part 2 of Schedule 1,
  - Part 3A of Schedule 1,
  - Part 4 of Schedule 1.
- (6) This section does not apply in relation to a registered social landlord's provision of housing in England.”

### **CHAPTER 3**

#### REGULATION

VALID FROM 02/12/2011

### *Survey and examination*

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

- (1) Amend section 37 of the Housing Act 1996 (power to enter premises to carry out survey and examination) as follows.
- (2) In subsection (3)—
  - (a) the second sentence of the existing provision becomes subsection (3A),
  - (b) in subsection (3A), for “who fails to do so” substitute “ who fails, without reasonable excuse, to give the required notice in relation to premises in Wales ”, and
  - (c) after subsection (3A) insert—

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“(3B) A landlord who fails to give the required notice in relation to premises in England commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”

(3) In subsection (4), for “(3)” substitute “ (3A) or (3B) ”.

### *Inspection*

#### **43 Inspection: overview and application**

After Part 3 of Schedule 1 to the Housing Act 1996 insert—

#### **“PART 3A**

#### **INSPECTION**

##### ***Overview and application***

19B (1) This Part provides for the inspection of a registered social landlord's affairs.

(2) But this Part does not apply in relation to affairs relating only to the provision of housing in England.”

#### **44 Inspection**

After paragraph 19B of Schedule 1 to the Housing Act 1996 insert—

##### **“Inspection**

19C (1) The Welsh Ministers—

- (a) may inspect a registered social landlord's affairs, or
- (b) may arrange for another person to do so.

(2) An inspection may be general or specific.

(3) If the Welsh Ministers arrange for a person to carry out an inspection, they may direct that person to discontinue it.

(4) If the Welsh Ministers arrange for a person to carry out an inspection, the arrangements may include (among other things) provision about payments.”

#### **45 Inspection: supplemental**

After paragraph 19C of Schedule 1 to the Housing Act 1996 insert—

##### **“Inspection: supplemental**

19D (1) The person carrying out the inspection must produce a written report.

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- (2) The Welsh Ministers—
  - (a) must give the registered social landlord a copy of the report, and
  - (b) may publish the report and related information.
- (3) If the Welsh Ministers have arranged for a person to carry out the inspection, that person may publish the report and related information (whether or not the Welsh Ministers have done so).
- (4) If a registered social landlord is inspected, the Welsh Ministers may charge a fee.
- (5) A registered social landlord must pay any fee charged to—
  - (a) the person with whom the Welsh Ministers have made an arrangement to carry out an inspection (if any), or
  - (b) the Welsh Ministers.
- (6) The Welsh Ministers may direct a registered social landlord to pay the fee to one of those persons.
- (7) If a fee is paid to a person other than the Welsh Ministers, that person must notify the Welsh Ministers about the payment.”

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

After paragraph 19D of Schedule 1 to the Housing Act 1996 insert—

##### **“Inspector's powers to require provision of documents or information**

- 19E
- (1) An inspector may by notice require a person to provide specified documents or information.
  - (2) A requirement may specify—
    - (a) the form and manner in which a document or information is to be provided (which may include the provision of a legible copy of information stored electronically);
    - (b) when and where it is to be provided.
  - (3) The inspector may copy or record documents or information provided.
  - (4) Failure to comply with a requirement without reasonable excuse is an offence.
  - (5) Intentionally altering, suppressing or destroying a document or information to which a requirement relates is an offence.
  - (6) If a person fails to comply with a requirement the High Court may, on an application by the inspector, make an order for the purpose of remedying the failure.
  - (7) In this paragraph “inspector” means—
    - (a) the Welsh Ministers, or
    - (b) a person authorised in writing by the Welsh Ministers to exercise the powers under this paragraph for the purpose of an inspection under paragraph 19C.”

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

After paragraph 19E of Schedule 1 to the Housing Act 1996 insert—

##### **“Inspector's powers to require provision of documents or information: supplemental**

- 19F (1) A requirement does not require a person to disclose anything which the person would be entitled to refuse to disclose on grounds of legal professional privilege in proceedings in the High Court.
- (2) A requirement does not require a banker to breach a duty of confidentiality owed to a person who is not—
- (a) the registered social landlord to whose affairs or activities the document or information relates,
  - (b) a subsidiary of that landlord, or
  - (c) an associate of that landlord.
- (3) A person guilty of an offence under paragraph 19E(4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) A person guilty of an offence under paragraph 19E(5) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to—
    - (i) imprisonment for a term not exceeding two years,
    - (ii) a fine, or
    - (iii) both.
- (5) Proceedings for an offence under paragraph 19E(4) or (5) may be brought only by or with the consent of—
- (a) the Welsh Ministers, or
  - (b) the Director of Public Prosecutions.”

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

After paragraph 19F of Schedule 1 to the Housing Act 1996 insert—

##### **“Inspector's powers of entry and inspection**

- 19G (1) An inspector may at any reasonable time—
- (a) enter premises occupied by the registered social landlord which is being inspected, and
  - (b) inspect, copy or take away documents found there.
- (2) But 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).
- (3) The reference to documents found on the premises includes (but is not limited to)—

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- (a) documents stored on computers or electronic storage devices on the premises, and
  - (b) documents stored elsewhere which can be accessed by computers on the premises.
- (4) The power to inspect documents includes (but is not limited to) the power to inspect any computer or electronic storage device on which they have been created or stored.
- (5) An inspector may require any person on the premises to provide such facilities or assistance as the inspector reasonably requests.
- (6) For the purposes of sub-paragraphs (3) and (4) an inspector may require any person having charge of a computer to provide any assistance that the inspector reasonably requests.
- (7) It is an offence for a person without reasonable excuse to obstruct an inspector exercising the powers conferred by sub-paragraphs (1) to (6).
- (8) A person guilty of an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (9) Proceedings for an offence may be brought only by or with the consent of—
- (a) the Welsh Ministers, or
  - (b) the Director of Public Prosecutions.
- (10) In this paragraph—
- “inspector” means—
    - (a) the Welsh Ministers, or
    - (b) a person authorised in writing by the Welsh Ministers to exercise the powers under this paragraph for the purpose of an inspection under paragraph 19C;
  - “residential accommodation” means accommodation of any description (including, but not limited to, a dwelling or residential accommodation in a hostel) that is occupied by one or more persons as a permanent or temporary place of residence (whether or not it is also occupied by any person for any other purpose).”

### *Inquiry*

#### **49 Extraordinary audit for purposes of inquiry**

In paragraph 22 of Schedule 1 to the Housing Act 1996 (extraordinary audit for purposes of inquiry), in sub-paragraph (4), for “the Welsh Ministers” substitute “the registered social landlord in respect of which the inquiry is being conducted”.



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## CHAPTER 4

### ENFORCEMENT

#### *General*

#### **50 Welsh Ministers' enforcement powers: general**

After section 50 of the Housing Act 1996 insert—

#### “CHAPTER 4A

#### ENFORCEMENT POWERS

#### *General*

#### **50A Application of Chapter 4A**

This Chapter does not apply in relation to a registered social landlord's provision of housing in England.”

#### **51 Exercise of enforcement powers**

After section 50A of the Housing Act 1996 insert—

#### “50B Exercise of enforcement powers

- (1) This section applies where the Welsh Ministers are deciding—
  - (a) whether to exercise an enforcement power,
  - (b) which enforcement power to exercise, or
  - (c) how to exercise an enforcement power.
- (2) The Welsh Ministers must consider—
  - (a) the desirability of registered social landlords 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.
- (3) In subsection (1), an “enforcement power” means a power exercisable under any of the following provisions—
  - this Chapter,
  - paragraphs 4, 6 to 8, 14 to 15B, 15D, 15F and 15H of Part 2 of Schedule 1,
  - paragraphs 20 to 27 of Part 4 of Schedule 1.”

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### *Enforcement notice*

## **52 Grounds for giving notice**

After section 50B of the Housing Act 1996 insert—

### *“Enforcement notice*

#### **50C Grounds for giving notice**

- (1) The Welsh Ministers may give an enforcement notice to a registered social landlord if they are satisfied that—
  - (a) any of the following cases applies, and
  - (b) giving an enforcement notice is appropriate (whether it is likely to be sufficient in itself or a prelude to further action).
- (2) Case 1 is where the registered social landlord has failed to meet a standard applicable to it under section 33A.
- (3) Case 2 is where there has been misconduct or mismanagement in the affairs of the registered social landlord.
- (4) Case 3 is where the registered social landlord has failed to comply with an earlier enforcement notice.
- (5) Case 4 is where the registered social landlord has failed to publish information in accordance with a requirement under section 50I(3) or 50Q(3).
- (6) Case 5 is where the interests of tenants of the registered social landlord require protection.
- (7) Case 6 is where the registered social landlord's assets require protection.
- (8) Case 7 is where the registered social landlord has given an undertaking under section 6A and failed to comply with it.
- (9) Case 8 is where an offence under this Part has been committed by the registered social landlord.
- (10) Case 9 is where the registered social landlord has failed to implement a recommendation made by the Public Services Ombudsman for Wales in a report prepared under section 16 of the Public Services Ombudsman (Wales) Act 2005.
- (11) Where the Welsh Ministers are satisfied that an offence under this Part has been committed in respect of a registered social landlord but by another person (such as a member, employee or agent of the registered social landlord)—
  - (a) Case 8 applies,
  - (b) the Welsh Ministers may give an enforcement notice to the other person, and
  - (c) this Chapter applies with the substitution of references to that other person for references to the registered social landlord.”

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### **53 Content**

After section 50C of the Housing Act 1996 insert—

#### **“50D Content**

- (1) An enforcement notice must—
  - (a) specify the grounds on which it is given,
  - (b) specify the action the Welsh Ministers want the registered social landlord to take in response to the notice,
  - (c) specify when the action is to be taken (which may be immediately on receipt of the notice), and
  - (d) explain the effect of sections 50E to 50G.
- (2) The action specified in an enforcement notice may include publishing the notice in a specified manner.”

### **54 Appeal**

After section 50D of the Housing Act 1996 insert—

#### **“50E Appeal**

A registered social landlord who is given an enforcement notice may appeal to the High Court.”

### **55 Withdrawal**

After section 50E of the Housing Act 1996 insert—

#### **“50F Withdrawal**

The Welsh Ministers may withdraw an enforcement notice by notice to the registered social landlord.”

### **56 Sanction**

After section 50F of the Housing Act 1996 insert—

#### **“50G Sanction**

- (1) In the case of an enforcement notice given to a person other than the registered social landlord by virtue of section 50C(11), the Welsh Ministers may only—
  - (a) exercise the power to issue a penalty notice to the person in accordance with the next group of sections, or
  - (b) take steps to have the person prosecuted for the offence by reference to which the enforcement notice was given.
- (2) A person to whom an enforcement notice is given on the ground in Case 8 of section 50C may not be prosecuted for the offence by reference to which

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the enforcement notice was given unless the person fails to comply with the enforcement notice.”

### *Penalty*

## **57 Grounds for imposition**

After section 50G of the Housing Act 1996 insert—

### *“Penalty*

#### **50H Grounds for imposition**

- (1) The Welsh Ministers may require a registered social landlord to pay a penalty if they are satisfied that—
  - (a) any of the following cases applies, and
  - (b) the imposition of a penalty is appropriate (whether or not as part of a response including other action).
- (2) Case 1 is where the registered social landlord has failed to meet a standard under section 33A.
- (3) Case 2 is where there has been misconduct or mismanagement in the affairs of the registered social landlord.
- (4) Case 3 is where the registered social landlord has failed to comply with an enforcement notice.
- (5) Case 4 is where the registered social landlord has given an undertaking under section 6A and failed to comply with it.
- (6) Case 5 is where an offence under this Part has been committed by the registered social landlord.
- (7) Where the Welsh Ministers are satisfied that an offence under this Part has been committed in respect of a registered social landlord but by another person (such as a member, employee or agent of the registered social landlord)—
  - (a) Case 5 applies,
  - (b) the Welsh Ministers may require the other person to pay a penalty, and
  - (c) this Chapter applies with the substitution of references to that other person for references to the registered social landlord.
- (8) In order to rely on Case 5 the Welsh Ministers must be satisfied beyond reasonable doubt that it applies.”

## **58 Imposition**

After section 50H of the Housing Act 1996 insert—

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### **“50I Imposition**

- (1) A penalty is imposed by the Welsh Ministers giving notice (a “penalty notice”) to the registered social landlord.
- (2) The notice must specify—
  - (a) the grounds on which the penalty is imposed,
  - (b) the amount of the penalty,
  - (c) how the penalty must be paid,
  - (d) a period within which it must be paid, and
  - (e) any interest or additional penalty which, by virtue of section 50M, is payable in the event of late payment.
- (3) The notice may require the registered social landlord to publish information about the penalty in a specified manner.
- (4) The notice must explain the effect of sections 50M(1), (3) and (5) and 50N.”

### **59 Amount**

After section 50I of the Housing Act 1996 insert—

#### **“50J Amount**

- (1) The amount of a penalty imposed on the ground specified in Case 5 of section 50H may not exceed the maximum amount of fine that a magistrates' court could impose for the relevant offence.
- (2) The amount of a penalty imposed on the ground specified in any other Case of that section may not exceed £5,000.
- (3) The Welsh Ministers may by order amend the amount specified in subsection (2).
- (4) An order under subsection (3) is to be made by statutory instrument and must not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.”

### **60 Warning**

After section 50J of the Housing Act 1996 insert—

#### **“50K Warning**

- (1) Before giving a penalty notice to a registered social landlord the Welsh Ministers must give the landlord a notice (a “pre-penalty warning”)—
  - (a) specifying grounds on which the Welsh Ministers think a penalty could be imposed,
  - (b) warning the landlord that the Welsh Ministers are considering imposing a penalty,
  - (c) including any indication that the Welsh Ministers are able to give of the likely amount of any penalty, and

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- (d) explaining the effect of sections 50L, 50M(1), (3) and (5) and 50N.
- (2) The Welsh Ministers must send a copy of a pre-penalty warning to any person they think appropriate (having regard, in particular, to any person who provided information as a result of which the pre-penalty warning is given).
- (3) A pre-penalty warning must—
  - (a) refer to section 6A, and
  - (b) indicate whether or to what extent the Welsh Ministers would accept a voluntary undertaking instead of, or in mitigation of, a penalty.
- (4) A pre-penalty warning may be combined with notice under one or more of the following—
  - (a) section 50S,
  - (b) paragraphs 15C, 15E and 15G of Schedule 1.”

## 61 Representations

After section 50K of the Housing Act 1996 insert—

### “50L Representations

- (1) A pre-penalty warning must specify a period during which the registered social landlord may make representations to the Welsh Ministers.
- (2) The period must—
  - (a) be a period of at least 28 days, and
  - (b) begin with the date on which the registered social landlord receives the pre-penalty warning.
- (3) Representations may address—
  - (a) whether a penalty should be imposed;
  - (b) the amount of any penalty that may be imposed.
- (4) After the end of the period specified under subsection (1) the Welsh Ministers must—
  - (a) consider any representations made, and
  - (b) decide whether to impose a penalty.”

## 62 Enforcement

After section 50L of the Housing Act 1996 insert—

### “50M Enforcement

- (1) A penalty is to be treated as a debt owed to the Welsh Ministers.
- (2) The Welsh Ministers may—
  - (a) charge interest on a penalty not paid during the period specified under section 50I(2)(d);

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- (b) impose one or more additional penalties where a penalty is not paid during that period.
- (3) Interest and additional penalty are to be treated as penalty (and may have the effect of increasing the penalty above a limit set by section 50J).
- (4) A penalty notice may include provision allowing a discount if the penalty is paid on or before a date specified in the notice (falling within the period specified under section 50I(2)(d)).
- (5) A person to whom a penalty notice is given on the ground in Case 5 of section 50H may not be prosecuted for the offence by reference to which the penalty notice was given.”

### **63 Appeal**

After section 50M of the Housing Act 1996 insert—

#### **“50N Appeal**

A registered social landlord who is given a penalty notice may appeal to the High Court against—

- (a) the imposition of the penalty,
- (b) its amount, or
- (c) both.”

#### *Compensation*

### **64 Grounds for award**

After section 50N of the Housing Act 1996 insert—

#### *“Compensation*

#### **“50O Grounds for award**

- (1) The Welsh Ministers may require a registered social landlord to pay compensation if they are satisfied that—
  - (a) either of the following cases applies, and
  - (b) the award of compensation is appropriate (whether or not as part of a response including other action).
- (2) Case 1 is where the registered social landlord has failed to meet a standard under section 33A.
- (3) Case 2 is where the registered social landlord has given an undertaking under section 6A and failed to comply with it.”

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

After section 50O of the Housing Act 1996 insert—

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### **“50P Persons to whom compensation may be awarded**

Compensation in respect of a failure may be awarded to one or more persons who have suffered as a result of the failure.”

#### **66 Award**

After section 50P of the Housing Act 1996 insert—

#### **“50Q Award**

- (1) Compensation is awarded by the Welsh Ministers giving notice (a “compensation notice”) to—
  - (a) the registered social landlord, and
  - (b) the person to be compensated.
- (2) The notice must specify—
  - (a) the grounds on which the compensation is awarded,
  - (b) the amount of the compensation,
  - (c) the person to be compensated,
  - (d) a period within which it must be paid, and
  - (e) any interest or additional compensation which, by virtue of section 50U(2), is payable in the event of late payment.
- (3) The notice may require the registered social landlord to publish information about the compensation award in a specified manner.
- (4) The notice must explain the effect of sections 50U(1) and (3) and 50V.”

#### **67 Impact**

After section 50Q of the Housing Act 1996 insert—

#### **“50R Impact**

- (1) This section applies when the Welsh Ministers are considering—
  - (a) whether to award compensation, or
  - (b) the amount of compensation to award.
- (2) The Welsh Ministers must take account of any information available to them about the financial situation of the registered social landlord.
- (3) The Welsh Ministers must consider the likely impact of the compensation on the registered social landlord's ability to provide services.
- (4) In particular, the Welsh Ministers must aim to avoid—
  - (a) jeopardising the financial viability of the registered social landlord,
  - (b) preventing the registered social landlord from honouring financial commitments, or



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- (c) preventing the registered social landlord from taking action to remedy the matters on the grounds of which the compensation might be awarded.”

## 68 Warning

After section 50R of the Housing Act 1996 insert—

### “50S Warning

- (1) Before giving a compensation notice to a registered social landlord the Welsh Ministers must give the landlord a notice (a “pre-compensation warning”)—
  - (a) specifying grounds on which the Welsh Ministers think compensation could be awarded,
  - (b) warning the landlord that the Welsh Ministers are considering awarding compensation to a specified person,
  - (c) including any indication that the Welsh Ministers are able to give of the likely amount of any compensation, and
  - (d) explaining the effect of sections 50T, 50U(1) and (3) and 50V.
- (2) Before giving a pre-compensation warning the Welsh Ministers must consult the Public Services Ombudsman for Wales.
- (3) The Welsh Ministers must send a copy of a pre-compensation warning to any person they think appropriate (having regard, in particular, to any person who provided information as a result of which the pre-compensation warning is given).
- (4) A pre-compensation warning must—
  - (a) refer to section 6A, and
  - (b) indicate whether or to what extent the Welsh Ministers would accept a voluntary undertaking instead of, or in mitigation of, awarding compensation.
- (5) A pre-compensation warning may be combined with notice under one or more of the following—
  - (a) section 50K,
  - (b) paragraphs 15C, 15E and 15G of Schedule 1.”

## 69 Representations

After section 50S of the Housing Act 1996 insert—

### “50T Representations

- (1) A pre-compensation warning must specify a period during which the registered social landlord may make representations to the Welsh Ministers.
- (2) The period must—
  - (a) be a period of at least 28 days, and

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(b) begin with the date on which the registered social landlord receives the pre-compensation warning.

(3) Representations may address—

- (a) whether compensation should be awarded;
- (b) the amount of any compensation that may be awarded.

(4) After the end of the period specified under subsection (1) the Welsh Ministers must—

- (a) consider any representations made, and
- (b) decide whether to award compensation.”

## **70 Enforcement**

After section 50T of the Housing Act 1996 insert—

### **“50U Enforcement**

- (1) Compensation is to be treated as a debt owed to the person to whom it is awarded.
- (2) The Welsh Ministers may —
  - (a) award interest on compensation not paid during the period specified under section 50Q(2)(d);
  - (b) award additional compensation where compensation is not paid during that period.
- (3) Interest and additional compensation are to be treated as compensation.”

## **71 Appeal**

After section 50U of the Housing Act 1996 insert—

### **“50V Appeal**

A registered social landlord who is given a compensation notice may appeal to the High Court against—

- (a) the award of compensation,
- (b) its amount, or
- (c) both.”

*Management and constitution of registered social landlords*

## **72 Management tender**

After paragraph 15A of Schedule 1 to the Housing Act 1996 insert—

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*“Management etc*

**Management tender**

- 15B (1) This paragraph applies if the Welsh Ministers are satisfied that—
- (a) a registered social landlord has failed to meet a standard under section 33A, or
  - (b) there has been misconduct or mismanagement in the affairs of the registered social landlord.
- (2) But this paragraph does not apply where the misconduct or mismanagement relates only to the registered social landlord's provision of housing in England.
- (3) The Welsh Ministers may require the registered social landlord to implement a process specified by them for the purpose of—
- (a) inviting persons to apply to undertake management functions of the registered social landlord, and
  - (b) selecting from the applications and making an appointment.
- (4) A requirement may relate to—
- (a) the registered social landlord's affairs generally, or
  - (b) specified affairs.
- (5) A requirement must include—
- (a) provision about the constitution of a selection panel (which must include provision for ensuring representation of tenants' interests),
  - (b) provision for ensuring best procurement practice (and consistent with any applicable procurement law), and
  - (c) provision about the terms and conditions on which the manager is to be appointed (including provision about—
    - (i) setting, monitoring and enforcing performance standards, and
    - (ii) resources).”

**73 Management tender: supplemental**

After paragraph 15B of Schedule 1 to the Housing Act 1996 insert—

**“Management tender: supplemental**

- 15C (1) Before acting under paragraph 15B(3) the Welsh Ministers must give the registered social landlord a notice—
- (a) specifying grounds on which action might be taken under that paragraph,
  - (b) warning the landlord that the Welsh Ministers are considering action under that paragraph, and
  - (c) explaining the effect of this paragraph.

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- (2) The notice must specify a period during which the registered social landlord may make representations to the Welsh Ministers.
- (3) The period must—
  - (a) be a period of at least 28 days, and
  - (b) begin with the date on which the registered social landlord receives the notice.
- (4) The Welsh Ministers must send a copy of a notice under sub-paragraph (1) to any person they think appropriate (having regard, in particular, to any person who provided information as a result of which the notice is given).
- (5) A notice under sub-paragraph (1) must—
  - (a) refer to section 6A, and
  - (b) indicate whether or to what extent the Welsh Ministers would accept a voluntary undertaking instead of, or in mitigation of, action under paragraph 15B(3).
- (6) Notice under sub-paragraph (1) may be combined with notice under one or more of the following—
  - (a) sections 50K and 50S,
  - (b) paragraphs 15E and 15G.
- (7) In imposing a requirement the Welsh Ministers must have regard to views of—
  - (a) relevant tenants,
  - (b) the registered social landlord, and
  - (c) if they think it appropriate, any relevant local housing authority.
- (8) A registered social landlord may appeal to the High Court against a requirement under paragraph 15B(3).”

#### **74 Management transfer**

After paragraph 15C of Schedule 1 to the Housing Act 1996 insert—

##### **“Management transfer**

- 15D (1) This paragraph applies if, as a result of an inquiry under paragraph 20 or an audit under paragraph 22, the Welsh Ministers are satisfied that—
- (a) there has been misconduct or mismanagement in the affairs of the registered social landlord, or
  - (b) a transfer of certain of a registered social landlord's management functions would be likely to improve the management of some or all of its affairs.
- (2) But this paragraph does not apply where—
- (a) the misconduct or mismanagement relates only to the registered social landlord's provision of housing in England, or

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- (b) the transfer would be likely to improve the registered social landlord's management of its affairs only in relation to the provision of housing in England.
- (3) The Welsh Ministers may require the registered social landlord to transfer management functions to a specified person.
- (4) A requirement may relate to—
  - (a) the registered social landlord's affairs generally, or
  - (b) specified affairs.
- (5) Transfer is to be on terms and conditions (including as to remuneration) specified in, or determined in accordance with, the requirement.
- (6) A transferee manager is to have—
  - (a) any power specified in the requirement, and
  - (b) any other power in relation to the registered social landlord's affairs required by the manager for the purposes specified in the requirement (including the power to enter into agreements and take other action on behalf of the registered social landlord)."

## **75 Management transfer: supplemental**

After paragraph 15D of Schedule 1 to the Housing Act 1996 insert—

### **“Management transfer: supplemental**

- 15E (1) Before acting under paragraph 15D(3) the Welsh Ministers must give the registered social landlord a notice—
- (a) specifying grounds on which action might be taken under that paragraph,
  - (b) warning the landlord that the Welsh Ministers are considering action under that paragraph, and
  - (c) explaining the effect of this paragraph.
- (2) The notice must specify a period during which the registered social landlord may make representations to the Welsh Ministers.
- (3) The period must—
- (a) be a period of at least 28 days, and
  - (b) begin with the date on which the registered social landlord receives the notice.
- (4) The Welsh Ministers must send a copy of a notice under sub-paragraph (1) to any person they think appropriate (having regard, in particular, to any person who provided information as a result of which the notice is given).
- (5) A notice under sub-paragraph (1) must—
- (a) refer to section 6A, and
  - (b) indicate whether or to what extent the social landlord would accept a voluntary undertaking instead of, or in mitigation of, action under paragraph 15D(3).

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- (6) Notice under sub-paragraph (1) may be combined with notice under one or more of the following—
  - (a) sections 50K and 50S,
  - (b) paragraphs 15C and 15G.
- (7) In imposing a requirement the Welsh Ministers must have regard to views of—
  - (a) relevant tenants,
  - (b) the registered social landlord, and
  - (c) if they think it appropriate, any relevant local housing authority.
- (8) A registered social landlord may appeal to the High Court against a requirement under paragraph 15D(3).”

## 76 Appointment of manager of registered social landlord

After paragraph 15E of Schedule 1 to the Housing Act 1996 insert—

### “Appointment of manager of registered social landlord

- 15F (1) This paragraph applies if the Welsh Ministers are satisfied that—
- (a) a registered social landlord has failed to meet a standard under section 33A, or
  - (b) there has been misconduct or mismanagement in the affairs of the registered social landlord.
- (2) But this paragraph does not apply where the misconduct or mismanagement relates only to the registered social landlord's provision of housing in England.
- (3) The Welsh Ministers may—
- (a) appoint an individual as a manager of the registered social landlord, or
  - (b) require the registered social landlord to appoint an individual as a manager.
- (4) An appointment or requirement may relate to the management of —
- (a) the registered social landlord's affairs generally, or
  - (b) specified affairs.
- (5) Appointment is to be on terms and conditions (including as to remuneration) specified in, or determined in accordance with, the appointment or requirement.
- (6) A manager is to have—
- (a) any power specified in the appointment or requirement, and
  - (b) any other power in relation to the registered social landlord's affairs required by the manager for the purposes specified in the appointment or requirement (including the power to enter into agreements and take other action on behalf of the registered social landlord).”

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## **77 Appointment of manager: supplemental**

After paragraph 15F of Schedule 1 to the Housing Act 1996 insert—

### **“Appointment of manager: supplemental**

15G (1) Before acting under paragraph 15F(3) the Welsh Ministers must give the registered social landlord a notice—

- (a) specifying grounds on which action might be taken under that paragraph,
- (b) warning the landlord that the Welsh Ministers are considering action under that paragraph, and
- (c) explaining the effect of this paragraph.

(2) The notice must specify a period during which the registered social landlord may make representations to the Welsh Ministers.

(3) The period must—

- (a) be a period of at least 28 days, and
- (b) begin with the date on which the registered social landlord receives the notice.

(4) The Welsh Ministers must send a copy of a notice under sub-paragraph (1) to any person they think appropriate (having regard, in particular, to any person who provided information as a result of which the notice is given).

(5) A notice under sub-paragraph (1) must—

- (a) refer to section 6A, and
- (b) indicate whether or to what extent the Welsh Ministers would accept a voluntary undertaking instead of, or in mitigation of, action under paragraph 15F(3).

(6) Notice under sub-paragraph (1) may be combined with notice under one or more of the following—

- (a) sections 50K and 50S,
- (b) paragraphs 15C and 15E.

(7) The Welsh Ministers may require a manager to report to them on the affairs specified in the appointment or requirement under paragraph 15F(3).

(8) A registered social landlord may appeal to the High Court against an appointment or requirement under paragraph 15F(3).”

## **78 Amalgamation**

After paragraph 15G of Schedule 1 to the Housing Act 1996 insert—

### **“Amalgamation**

15H (1) This paragraph applies if as a result of an inquiry under paragraph 20 or an audit under paragraph 22, the Welsh Ministers are satisfied that—

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- (a) there has been misconduct or mismanagement in the affairs of a registered social landlord which is an industrial and provident society, or
  - (b) the management of the affairs of a registered social landlord which is an industrial and provident society would be improved if the landlord were amalgamated with another industrial and provident society.
- (2) But this paragraph does not apply where—
- (a) the misconduct or mismanagement relates only to the registered social landlord's provision of housing in England, or
  - (b) the amalgamation would improve the management of the registered social landlord's affairs only in relation to the provision of housing in England.
- (3) The Welsh Ministers may make and execute on behalf of the society an instrument providing for the amalgamation of the society with another industrial and provident society.
- (4) An instrument providing for the amalgamation of a society (“S1”) with another has the same effect as a special resolution by S1 under section 50 of the Industrial and Provident Societies Act 1965 (amalgamation of societies by special resolution).
- (5) A copy of an instrument must be sent to and registered by the Financial Services Authority.
- (6) An instrument does not take effect until the copy is registered.
- (7) The copy must be sent for registration during the period of 14 days beginning with the date of execution, but a copy registered after that period is valid.
- (8) Any body created by virtue of an amalgamation must be registered as a social landlord by the Welsh Ministers, and pending registration is to be treated as registered.”

#### **79 Restrictions on dealings during an inquiry**

In paragraph 23 of Schedule 1 to the Housing Act 1996 (powers exercisable on interim basis), after sub-paragraph (2) insert—

“(2A) Before making an order under sub-paragraph (2)(b) or (c) the Welsh Ministers must take all reasonable steps to give notice to the registered social landlord and, in the case of an order under sub-paragraph (2)(b), to the person to whom the order is directed.”

#### **80 Restrictions on dealings following an inquiry or extraordinary audit**

- (1) Amend paragraph 24 of Schedule 1 to the Housing Act 1996 (powers exercisable as a result of final report or audit) as follows.
- (2) After sub-paragraph (3) insert—



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“(3A) Before making an order under sub-paragraph (2)(c) or (d) the Welsh Ministers must take all reasonable steps to give notice to the registered social landlord and, in the case of an order under sub-paragraph (2)(c), to the person to whom the order is directed.”

(3) After sub-paragraph (6) add—

“(7) An order under sub-paragraph (2)(c) or (d) has effect until revoked by the Welsh Ministers.”

### **81 Disqualification of removed person**

(1) In paragraph 25 of Schedule 1 to the Housing Act 1996 (disqualification as officer of registered social landlord), after sub-paragraph (4) insert—

“(4A) The register must show details of any waivers.”

### **82 Acting while disqualified**

(1) Amend paragraph 26 of Schedule 1 to the Housing Act 1996 (persons acting as officer while disqualified) as follows.

(2) In sub-paragraph (1)(a) for “six months” substitute “ 12 months ”.

(3) After sub-paragraph (1) insert—

“(1A) In relation to an offence committed before the commencement of section 282 of the Criminal Justice Act 2003 (short sentences) the reference in sub-paragraph (1)(a) to 12 months has effect as if it were a reference to 6 months.”

(4) After sub-paragraph (4) add—

“(5) If a person fails to comply with an order directing repayment, the registered social landlord or the Welsh Ministers (as the case may be) may recover the sum or specified amount as a debt.”

## **CHAPTER 5**

### **MISCELLANEOUS AND GENERAL PROVISIONS**

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

After section 43 of the Housing Act 1996 insert—

#### **“43A Appointment of interim manager**

(1) During a moratorium the Welsh Ministers may appoint an interim manager of the registered social landlord.

(2) An appointment may relate to the registered social landlord's affairs generally or to affairs specified in the appointment.

(3) But an appointment may not relate to affairs relating only to the provision of housing in England.

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- (4) Appointment is to be on terms and conditions (including as to remuneration and expenses) specified in, or determined in accordance with, the appointment.
- (5) An interim manager has—
  - (a) any power specified in the appointment, and
  - (b) any other power in relation to the registered social landlord's affairs required by the manager for the purposes specified in the appointment (including the power to enter into agreements and take other action on behalf of the landlord).
- (6) But an interim manager may not—
  - (a) dispose of land, or
  - (b) grant security over land.
- (7) The Welsh Ministers may give the interim manager general or specific directions.
- (8) The Welsh Ministers may revoke or amend any directions given.
- (9) An appointment under this section comes to an end with the earliest of the following—
  - (a) the end of the moratorium,
  - (b) the agreement of proposals made under section 44, or
  - (c) a date specified in the appointment.
- (10) If a person ceases to be an interim manager before the appointment has come to an end, the Welsh Ministers may appoint a new interim manager in place of that person.”

#### **84 Removal of officers**

- (1) Amend Schedule 1 to the Housing Act 1996 as follows.
- (2) In the heading to paragraph 4, for “director, trustee, etc” substitute “ officer ”.
- (3) In paragraph 4 (general power to remove officer), in sub-paragraph (1)—
  - (a) after “remove” insert “ an officer of a registered social landlord. ”;
  - (b) omit paragraphs (a) to (c).
- (4) In paragraph 5 (restriction on power of removal in case of registered charity), in sub-paragraph (1), for “a director or trustee” substitute “ an officer ”.

#### **85 Appointment of new officers**

- (1) Amend Schedule 1 to the Housing Act 1996 as follows.
- (2) In the heading to paragraph 6, for “director or trustee” substitute “ officer ”.
- (3) In paragraph 6 (registered charity: power to appoint new officer)—
  - (a) in sub-paragraph (1), for “a director or trustee” substitute “ an officer ”;
  - (b) in paragraph (b) of sub-paragraph (1), for “no directors or no trustees” substitute “ no officers ”;

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- (c) in paragraph (c) of sub-paragraph (1), for “director or trustee” substitute “ officer ”;
  - (d) in the second sentence of sub-paragraph (1), for “directors or trustees” substitute “ officers ”;
  - (e) in sub-paragraph (5), for “director or trustee” substitute “ an officer ”.
- (4) In the heading to paragraph 7, for “director” substitute “ officer ”.
- (5) In paragraph 7 (company: power to appoint new officer)—
- (a) in sub-paragraph (1), for “a director” in both places substitute “ an officer ”;
  - (b) in paragraph (b) of sub-paragraph (1), for “no directors” substitute “ no officers ”;
  - (c) in paragraph (c) of sub-paragraph (1), for “director” substitute “ officer ”.
- (6) In the heading to paragraph 8, for “new committee member” substitute “ officer ”.
- (7) In paragraph 8 (industrial and provident society: power to appoint new officer)—
- (a) in sub-paragraph (1), for “a committee member” substitute “ an officer ”;
  - (b) in paragraph (b) of sub-paragraph (1), for “no members of the committee” substitute “ no officers ”;
  - (c) in paragraph (c) of sub-paragraph (1), for “committee member” substitute “ officer ”;
  - (d) in the second sentence of sub-paragraph (1), for “committee members” substitute “ officers ”.

## 86 Charities that have “received public assistance”

In section 58 of the Housing Act 1996 (definitions relating to charities), after subsection (1) insert—

“(1A) For the purposes of this Part a registered charity has received public assistance if at least one of the following conditions is satisfied—

- (a) the charity has received financial assistance under section 24 of the Local Government Act 1988 (assistance for privately let housing accommodation);
- (b) the charity has received financial assistance under section 19 of the Housing and Regeneration Act 2008 (financial assistance);
- (c) the charity has had housing transferred to it pursuant to—
  - (i) a large scale disposal, within the meaning of section 34 of the Housing Act 1985, for which consent was required under section 32 or 43 of that Act, or
  - (ii) a qualifying disposal that was made under section 135 of the Leasehold Reform, Housing and Urban Development Act 1993;
- (d) the charity has received a grant or loan under—
  - (i) section 18 (social housing grants),
  - (ii) section 22 (assistance from local authorities),
  - (iii) section 58 of the Housing Associations Act 1985 (grants or loans by local authorities),

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- (iv) section 50 of the Housing Act 1980, section 41 of the Housing Associations Act 1985 or any enactment replaced by that section (housing association grant),
- (v) section 51 of the Housing Act 1988 or sections 54 or 55 of the Housing Associations Act 1985 (revenue deficit grant or hostel deficit grant),
- (vi) section 79 of the Housing Associations Act 1985 (loans by Housing Corporation),
- (vii) section 31 of the Housing Act 1974 (management grants), or
- (viii) any enactment mentioned in paragraph 2 or 3 of Schedule 1 to the Housing Associations Act 1985 (pre-1974 grants and certain loans).”

#### **87 Minor definitions**

In section 63 of the Housing Act 1996 (minor definitions: Part 1), in subsection (1), insert in the appropriate places—

““action” includes inaction, proposed action and decision;”

““misconduct” includes any failure to comply with the requirements of this Part of this Act;”

““representations” means representations in writing;”.

#### **88 Minor and consequential amendments**

The Schedule contains minor and consequential amendments.

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