Business and Regulatory Impact Assessment

Housing (Amendment) (Scotland) Bill

September 2017

Scottish Government
Riaghaltas na h-Alba
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BUSINESS AND REGULATORY IMPACT ASSESSMENT

Title of Proposal
Housing (Amendment) (Scotland) Bill

Purpose and intended effect

Background

Classification of Registered Social Landlords

1. The Office for National Statistics (ONS) is responsible for determining how individual sectors within the economy should be classified in the UK's national accounts.

2. On 28 September 2016, it informed the Scottish Government that it had reviewed the classification of Registered Social Landlords (RSLs) in Scotland and determined that they should be classified as public bodies for the purposes of the national accounts (RSLs had previously been classified as private bodies in the national accounts). It explained that its decision was based on an analysis of powers that the Scottish Housing Regulator (the 'Regulator') exercises over RSLs under the 2010 Act to:

- appoint a manager to an RSL;
- suspend, remove and appoint officers of an RSL;
- exercise control over the disposal of land and housing assets by an RSL (by requiring an RSL to obtain the Regulator's consent to a disposal); and
- exercise control over voluntary winding-up, dissolution and restructuring of an RSL (mainly by requiring an RSL to obtain the Regulator's consent to these actions).

3. The ONS explained, in terms of the criteria that it applies under the 2010 European System of Accounts (ESA 2010), that these powers indicate that the Regulator exercises control over RSLs. Under ESA 2010, the Regulator is classified as a central Government body public body. Consequently, the controls that the Regulator exercises through these powers are public sector control, which requires RSLs to be classified to the public sector in the national accounts.

4. The ONS also noted that further public sector controls might exist through the relationships between RSLs and local government.

5. The ONS decision in respect of RSLs in Scotland was accompanied by similar decisions, for similar reasons, in respect of the classification of social housing providers in Northern Ireland and Wales. These followed the decision by the ONS, in October 2016, to classify Private Registered Providers of Social Housing (PRPSHs) – the equivalents in England to RSLs – as public sector bodies in light of the regime for regulating them.

6. If left unchanged, the classification of RSLs as public sector bodies in the national accounts would mean that all new net borrowing by RSLs would count

against the Scottish Government's borrowing limits, which at present are £450 million in any one year and £3 billion in total. That would be a significant permanent burden on the Scottish Government's finances.

7. The Scottish Government is committed to RSLs being classified as private bodies and therefore the Housing (Amendment) (Scotland) Bill will be introduced to the Scottish Parliament on 4 September 2017, in order to enable the ONS to revisit its decision to classify RSLs to the private sector.

Objective

8. The policy objective of the Bill is to ensure that the influence the Regulator and local authorities can exercise over RSLs, is compatible with RSLs being classified by the Office for National Statistics (ONS) as private sector bodies in the United Kingdom national accounts and will provide the basis for ONS to review its RSL classification decision, as soon as possible after the Bill has received Royal Assent.

9. To that end, the Bill will:

- limit the Regulator's ability to appoint members and managers to RSLs;
- remove the need for the Regulator's consent to the disposal of assets by RSLs; and
- remove the need for the Regulator's consent to the restructuring, voluntary winding up and dissolution of RSLs.

10. The Bill also provides for the Scottish Ministers, through regulations, to make further changes to the functions of the Regulator, and to limit the ability of local authorities to influence RSLs, for example through the ability to appoint members to the board of an RSL.

11. The legislative amendments being made support and contribute towards the following National Outcome:

- "*Our public services are high quality, continually improving, efficient and responsive to local people's needs*".

12. The policy also contributes to the Scottish Government's Purpose "*To focus Government and public service on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth*".

Rationale for Government intervention

Implications of classification

13. RSLs operate independently of the Scottish Government and are free to determine with their private lenders how much they borrow. Consequently, classification of RSLs as public sector bodies in the national accounts requires the Scottish Government to accommodate RSL borrowing within its budget, but without being able to control or limit the level or extent of that borrowing.

14. The financial consequences of RSLs continuing to be classified as public sector bodies would have immediate implications for the Scottish Government's commitment to build 50,000 affordable homes. The commitment depends on the Government's planned financial support of over £3 billion for the programme being augmented by the RSL sector undertaking private borrowing of about £300 million a year. If the RSLs borrowing can no longer be counted as private borrowing, the effective cost to the Scottish Government of delivering on the commitment would, by having to include the RSL borrowing, rise to £4.5 billion.

Consultation

Within Government

15. Scottish Government Officials responsible for developing the Bill consulted colleagues in the Housing and Social Justice Directorate, the Directorate for Financial Management and the Legal Directorate in the Scottish Government. They consulted the Scottish Housing Regulator, which operates independently of the Scottish Government. They also consulted officials in HM Treasury, and the Department for Communities and Local Government in the UK Government, and officials in the Northern Ireland Executive and the Welsh Assembly Government, and had discussions with officials in the ONS.

Public Consultation

16. Given the narrow focus and the technical nature of the Bill and its policy objective, the Scottish Government concluded that it would be disproportionate to conduct a full public consultation on a draft Bill, or on the policy content of the Bill. Instead, it engaged directly with the Regulator and with the groups and bodies that represent the interests of those who will be affected by the Bill on its plans for responding to the ONS decision to classify RSLs to the public sector.

17. The Scottish Government identified RSLs, their tenants and lenders as the groups who would be most affected by the Bill. It held regular briefings on the development of the Bill for tenants groups, UK Finance (formerly the Council Mortgage Lenders), the Glasgow and West of Scotland Forum (GWSF), and the Scottish Federation of Housing Associations (SFHA). It also briefed the Convention of Scottish Local Authorities (COSLA) and the Association of Local Authority Chief Housing Officers (ALACHO) about the development of the Bill.

18. Tenant groups were particularly concerned that the Bill would weaken the ability of the Regulator to safeguard the interests of RSLs' tenants. In meetings with the Scottish Government, some tenants went further and expressed concern that the Bill would mean an end to regulation of RSLs. The Scottish Government sought to allay such fears, explaining that the ONS had identified relatively few of the Regulator's powers as constituting public sector control, and that the Bill would change only those powers, leaving the majority of the Regulator's powers unchanged. Tenants - and their representatives - were reassured that regulation of a particular sector, such as the RSL sector, is entirely compatible with that sector being classified as private sector, and that the point at issue in the case of RSLs was the extent and nature of the Regulator's powers.

Business

19. All of the stakeholder groups recognised that the decision by the ONS to classify RSLs to the public sector posed a large risk to the ability of the Scottish Government to deliver its affordable housing programme.

20. A series of discussions with key industry stakeholders took place with the following organisations:

Organisation	Key Points arising from discussions
Scottish Housing Regulator	• Provisions in the Bill that narrow the circumstances in which the Regulator can appoint managers and officials of an RSL will have the effect of aligning the legislation with the approach to these matters that the Regulator adopts in practice. • Provisions in the Bill that remove the Regulator's power to consent to an RSL disposing of assets, restructuring, voluntarily winding- up etc. would deprive the Regulator of valuable information about developments in the sector and place the onus on RSLs to ensure that decisions previously requiring consent were considered fully by their boards. The former point would be addressed by requiring RSLs to notify the Regulator each time they took an action that previously would have required the Regulator's consent.
Scottish Federation of Housing Associations (SFHA) and the Glasgow and West of Scotland Forum (GWSF)	• In view of their members' involvement in, and commitment to, the Scottish Government's affordable housing programme, the SFHA and GWSF expressed strong support for the Bill; • Both bodies were also clear that their members saw themselves as being private bodies that operate independently under their own governance arrangements; • They considered that the changes to the Regulator's powers to appoint managers and officers were unlikely to affect the circumstances in which the Regulator made such appointments in practice; • They recognised that removing the Regulator's consent powers would place an increased onus on individual RSLs to govern themselves soundly, but believed that the sector generally should be able to meet such a challenge; and

	• GWSF were particularly concerned to ensure that the removal powers of consent should not result in any loss of tenants' existing rights to be consulted and it welcomed the provisions in the Bill that establish the continuation of such rights.
UK Finance (formerly the Council of Mortgage Lenders)	• UKF raised concerns that the Bill could weaken the ability of the Regulator to operate effectively, but was familiar with the changes that the Housing and Planning Act 2016 had introduced for the regulatory regime in England, and understood that the Scottish Government's policy was to achieve equivalent changes in Scotland; • It noted that the changes to the Regulator's powers to appoint managers and officers were unlikely to affect the circumstances in which the Regulator makes such appointments in practice and welcomed the provisions requiring an RSL to inform the Regulator whenever it took any step which under the Housing (Scotland) Act 2010 had required the Regulator's consent.

Options

21. The Scottish Government has considered two options in response to the RSL reclassification decision made by ONS. These are:

Option One: Do nothing

22. Take no legislative action meaning that RSLs continue to be classified as public sector bodies, with their net new borrowing being counted as public sector expenditure.

Option Two: Take legislative action to enable RSLs to be classified back to the private sector

23. Introduce a Bill to the Scottish Parliament to amend those of the Regulator's powers that gave rise to the ONS private sector classification decision and therefore enable the ONS to reverse its decision and allow RSLs to be reclassified back to the private sector.

OPTION ONE

Sectors and groups affected

24. Scottish Government, RSLs, local authorities and tenants.

Benefits

25. No legislative action would need to be taken forward by Scottish Government and the Regulator would continue to operate as originally designed to do so in the Housing (Scotland) Act 2010.

Costs

26. The consequences of the ONS classifying RSLs as public corporations would be that all net new borrowing by RSLs would be classed as public sector debt. This would have a significant financial impact on the Scottish Government, as the net new borrowing by RSLs would count as public expenditure by the Scottish Government and would be scored by HM Treasury as expenditure within the Scottish Block.

27. The Scottish Government is committed to providing a budget of over £3 billion over five years to support the delivery of 50,000 new affordable homes, including those provided by RSLs and councils. This plan relies on RSLs augmenting Government funding with their own borrowing of £300 million a year. If their borrowing can no longer be counted as private, the Scottish Government would need to find up to an extra **£1.5 billion of public expenditure** to fund the same programme.

OPTION TWO

Sectors and groups affected

28. The Regulator, RSLs, local authorities, financial lenders and tenants.

Benefits

29. By taking forward legislative action to amend those of the Regulator's powers that gave rise to the ONS private sector classification decision - and therefore enable the ONS to reverse its decision and allow RSLs to be reclassified back to the private sector – the significant financial consequences for the Scottish Government outlined in option one would be avoided.

Costs

The Regulator

30. The Regulator, which is part of the Scottish Administration, considers that the changes that the Bill makes to its powers will require it to employ up to three more staff at a an annual cost of up to £177,000 and to spend about £10,000 on making

changes to its IT system. This is in consequence of the Regulator losing its powers of consent over RSLs, which the ONS identified as forms of public control.

31. These powers of consent enable the Regulator to grant or withhold consent to any RSL that wishes to dispose of assets, make changes to their constitutions, and undertake a voluntary winding-up, a dissolution or a restructuring. The need for an RSL to obtain the Regulator's consent in these cases provides the Regulator with valuable information about the financial health and governance of individual RSLs.

32. The Bill – in removing the Regulator's powers of consent – replaces them with duties on RSLs to notify the Regulator each time they undertake an action that previously had required consent. This will ensure that the Regulator continues to receive a range of information on developments in the financial health and governance of RSLs. Even so, the Regulator estimates that monitoring and assessing the financial health and governance of RSLs in these new circumstances could require it to employ one additional C1 member of staff and two B3 members of staff, at a cost of up to £177,000. It also estimates that it will need to spend about £10,000 enabling its IT system to accommodate the flow of notifications that it will receive in place of requests for consents.

Local authorities

33. The Scottish Government does not expect the Bill to impose any costs on local authorities.

Other bodies, individuals and businesses

34. UK Finance had concerns that the Bill could weaken the ability of the Regulator to continue operating effectively. It was familiar with the changes that the Housing and Planning Act 2016 had introduced for the regulatory regime in England, and understood that the Scottish Government's policy was to achieve equivalent changes in Scotland. It noted that the changes to the Regulator's powers to appoint managers and officers were unlikely to affect the circumstances in which the Regulator makes such appointments in practice. It welcomed the provisions requiring an RSL to inform the Regulator whenever it took any step which under the 2010 Act had required the Regulator's consent. However, it noted that the loss of the Regulator's powers of consent would place an increased onus on individual RSLs to govern themselves soundly, which could lead to lenders having to undertake more intensive due diligence before making new loans to an RSL. It also noted that some lenders might be concerned that removing the Regulator's powers of consent, in cases where tenants have the right to be consulted, could make tenant consultation a more uncertain exercise.

35. In view of their members' involvement in, and commitment to, the Scottish Government's affordable housing programme, the Forum and the SFHA expressed strong support for the Bill. Both bodies were also clear that their members saw themselves as being in every respect private bodies that operate independently under their own governance arrangements. Consequently, both organisations argued that securing reclassification to the private sector was an important matter of principle for them.

36. The Forum and the SFHA shared the UK Finance's assessment that the changes to the Regulator's powers to appoint managers and officers were unlikely to affect the circumstances in which the Regulator made such appointments in practice. In common with UK Finance, they recognised that removing the Regulator's powers of consent would place an increased onus on individual RSLs to govern themselves soundly, but believed that the sector generally should be able to meet that challenge.

37. The Forum was particularly concerned to ensure that the removal of the Regulator's powers of consent should not result in any loss of tenants' existing rights to be consulted. It welcomed the provisions in the Bill that establish the continuation of such rights.

Scottish Firms Impact Test

38. As part of our engagement with key stakeholders, the Scottish Government conducted meetings with a number of key stakeholders. This enabled us to seek feedback on whether the provisions within the Bill were sufficient in order to enable the ONS to reverse its classification decision and what impact, benefits or difficulties such changes would have to both the Regulator, RSLs, lenders and tenants. In relation to the provisions within the Bill, we asked:

- Taking each of the ONS concerns and related Scottish Government response in turn, what would be the impact on your day-to-day business? Particular focus should be given to any financial or resourcing impacts.
- Do you have any wider concerns in relation to the powers of the Regulator being reduced?
- What are your thoughts on the proposed delegated powers?
- Can you think of any impact these changes would have on people due to protected characteristics such as age, race, disability, etc?

39. Paragraph 20 summarises the feedback gathered during the stakeholder meetings that have taken place.

Competition Assessment

40. Full consideration has been given to the Office of Fair Trading's Competition Assessment criteria in relation to the Housing (Amendment) (Scotland) Bill. We do not envisage that the Bill will result in:

- directly limiting the number or range of suppliers;
- indirectly limiting the number of range of supplies;
- limit the ability of suppliers to compete; or
- reduce suppliers' incentives to compete vigorously.

Test run of business forms

41. Implementation of any of the two options being presented does not create any new business forms.

Legal Aid Impact Test

42. Having considered the Bill and its explanatory documents, the Scottish Legal Aid Board do not expect that the changes will result in any increase in the expenditure of the legal aid fund.

Enforcement, sanctions and monitoring

43. The provisions within the Bill do not contain any offences and therefore enforcement action and sanctions are not applicable.

44. No formal monitoring and reporting on the provisions within the Bill will be established.

Implementation and delivery plan

45. The Bill will be introduced to the Scottish Parliament on 4 September 2017 and is expected to commence in June 2018.

Post implementation review

46. Given the purpose of the Bill, no formal post-implementation review is expected to take place after the Housing (Amendment) (Scotland) Bill comes in to force.

Summary and recommendation

47. The Housing (Amendment) (Scotland) Bill will be introduced to the Scottish Parliament on 4 September 2017. The Bill will:

- remove the need for the Regulator's consent to the disposal of assets by RSLs;
- limit the Regulator's ability to appoint members and managers to RSLs; and
- remove the need for the Regulator's consent to the restructuring, voluntary winding up and dissolution of RSLs.

48. It also provides for the Scottish Ministers, through regulations, to make further changes to the functions of the Regulator, and to limit the influence that local authorities can exert over RSLs.

49. The legislative action must be taken to enable the ONS to reclassify RSL to the private sector. Were that not to happen:

- all net new borrowing by RSLs would have to be count against the Scottish Government's borrowing limits, which would have the immediate effect of increasing the cost of the Scottish Government's affordable housing programme by £300 million a year – the amount RSLs are currently borrowing in support of the £3 billion that the Government is providing to deliver 50,000 affordable houses in the current Parliament.

50. The Bill, with its provisions as drafted, is the only means of providing the ONS with the basis for reclassifying RSLs back to the private sector.

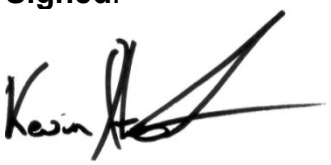
Summary of cost and benefits table

Option	**Total benefit per annum:** - economic, environmental, social	**Total costs per annum:** - economic, environmental, social - policy and administration
Option One: Do nothing	• Scottish Government do not need to take forward primary legislation; • The Regulator does not need to implement any amendments to their current working practices; •	• The Scottish Government is committed to providing a budget of over £3 billion, over five years, to support the delivery of 50,000 new affordable homes. This plan relies on RSLs augmenting Government funding with their own borrowing of £300 million a year. • If RSL borrowing can no longer be counted as private, the Scottish Government would need to find up to **an extra £1.5 billion of public expenditure** to fund the same programme.
Option Two: Primary legislation to amend the relevant powers of the Regulator	• Takes legislative action to reduce or amend the powers of the Regulator to enable ONS to revisit their classification decision; • Would ensure that RSL borrowing is not classed as public sector borrowing and scored, by HM Treasury, as expenditure within the Scottish Block.	• costs to implement new working practices within the Regulator in light of amendments made in the Bill, resulting in an increase of £100,000 in the Regulator's cash budget for 2017-18

Declaration and publication

I have read the impact assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy; and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:



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