

REGULATORY APPRAISAL

THE SOCIAL HOUSING OMBUDSMAN (WALES) REGULATIONS 2005

Purpose and intended effect of the Measure

1. The purpose of the Regulations is to make provision about the investigation by the Social Housing Ombudsman for Wales (SHOW) of complaints made against social landlords in Wales. Such social landlords are commonly referred to as registered social landlords (RSLs), or housing associations.
2. Currently, investigation of complaints against social landlords is undertaken by Assembly officials. Complainants may ask the Assembly to consider investigating their complaint after they have exhausted the social landlord's internal complaints procedure.
3. Over the past 2 years (from 1 April 2002 to 31 March 2004), the National Assembly for Wales has received 93 written complaints. Of these, only 8 were investigated by the Assembly with the remaining 85 re-directed to the relevant social landlord for investigation under its complaints procedure.
4. The Housing Act 2004 (Commencement No. 1) (Wales) Order 2005 will commence section 228 and Schedule 12 along with consequential amendments made as a result of the establishment of SHOW.
5. Section 228 of the Housing Act 2004 (the 2004 Act):
 - inserts a new section 51A in the Housing Act 1996 and provides that for the purpose of investigating complaints made about social landlords in Wales there shall be an office of Social Housing Ombudsman for Wales. The person who is the Local Commissioner for Wales will also be the SHOW;
 - inserts a new section 51B into the Housing Act 1996, which gives the Assembly power to make provision by regulations for the investigation by the SHOW of complaints made about social landlords in Wales; and
 - inserts a new section 51C into the Housing Act 1996, which defines the meaning of "social landlord in Wales" and "publicly-funded" dwelling. It also provides that the Assembly may by order add to or amend the descriptions of landlords, who are to be treated as social landlords in Wales.
6. New Schedule 2A is inserted into the Housing Act 1996 and sets further provision about SHOW in particular status, remuneration etc, staff and advisers, delegation of functions, reports and determinations, expenses, absolute privilege for communications, disclosure of information, accounts and audit, accounting officer and examinations into the use of resources.

7. The Public Services Ombudsman for Wales (PSOW) Act 2005 received Royal assent on 7 April 2005. This means that the office of SHOW will be “subsumed” under the PSOW. Those provisions pertaining to the SHOW (such as the abolition of existing bodies and offices, transfer of property, staff etc and amendments and repeals) will be commenced by Assembly Order. It is anticipated the PSOW Act should be fully commenced on 1 April 2006.

Risk Assessment

8. There are no risks to social landlords or complainants associated with these Regulations. The Social Housing Ombudsman for Wales will not normally investigate a matter unless satisfied the matter has been brought to the attention of the social landlord and that the social landlord has been given reasonable opportunity to investigate and respond to the complaint in accordance with the social landlord’s complaints procedure. The SHOW can investigate if reasonable in the circumstances. The difference (once the Regulations come into force) is that after the landlord’s complaints procedure has been followed and the complainant remains dissatisfied, he/she will make a complaint to the SHOW (rather than the Assembly) provided the matter is one that falls within those matters the SHOW may investigate.

Options

Option 1 - Do Nothing

9. Currently, investigation of complaints against social landlords is undertaken by Assembly officials. Therefore this situation would continue.

Option 2 – Make the Legislation

10. At present, investigation of complaints against social landlords in Wales is undertaken by the Assembly. The Assembly also undertakes a regulatory role in respect of social landlords under the Housing Act 1996. The Regulations will mean that complainants will be provided with an independent means of investigation of complaints made against social landlords.

Benefits

11. The Assembly currently undertakes a regulatory role in respect of social landlords in Wales. The SHOW will provide an independent means of investigating complaints against social landlords in Wales.

Costs

12. These have been estimated at £130,000 for year 1 and will be subject to review in following years. These costs have been calculated by the Local Commissioner for Wales (who will be the SHOW). The costs will be accommodated from within the existing allocation for the Management and Promotion Budget Expenditure Line, and will be paid direct to the office of the Social Housing Ombudsman for Wales.

Competition assessment

13. The introduction of the Regulations will not have any impact on other sectors (social landlords or complainants) and no competition filter is necessary.

Consultation

With Stakeholders

14. A public consultation on the policy framework for the draft Regulations was carried out between 28 January 2005 and 25 February 2005. Those stakeholders consulted were: the Welsh Federation of Housing Associations; the Chartered Institute of Housing Cymru; TPAS Cymru; the Welsh Tenants Federation; the Citizens Advice Bureaux; the Local Commissioner for Wales; the Commission for Racial Equality; Race Equality First; Tai Pawb; and the Local Commissioner for Wales.

15. Two responses were received to the consultation from Tai Pawb and Race Equality First. They put forward queries relating to the following areas:

- the manner in which reports were to be communicated and published;
- regulatory and race impact assessments;
- oral complaints;
- matters which may not be investigated;
- time limits of complaints; and
- special reports.

16. The same organisations were consulted on the content of the draft Regulations between 27 April 2005 and 17 May 2005. Four responses were received from the Welsh Tenants Federation, the Welsh Federation of Housing Associations, the Citizens Advice Bureaux and the Local Commissioner for Wales. They welcomed the creation of the office of the Social Housing Ombudsman for Wales and associated Regulations. Comments, together with our responses are given in paragraphs 17-25 below.

17. The amendment to draft regulation 2 in respect of the entry for “relevant action” does not mirror the provision in section 7(3)(b) of the Public Services Ombudsman for Wales Act 2005 (PSOW).

18. Regarding draft regulation 4(2) and the addition of the words “or had”, this wording has been added so that it accords more fully with section 9(1) of PSOW.

19. During consultation it was raised whether a complainant would have a further right of appeal, reference or review to the Assembly. However, provision for a further right of appeal, reference or review to the Assembly was not considered necessary because the policy intent for SHOW was that SHOW (rather than the Assembly) would investigate complaints made against social landlords in Wales and not the Assembly.

20. Regarding the amendments to regulation 7(5) and paragraphs (7)-(9) relating to SHOW having the same powers as the High Court, and in relation to obstruction and contempt (amended Regulation 8), there is no power to insert such a provision under the Housing Act provisions.
21. Regarding regulation 14, there is no specific provision in the regulations in respect of 51B(2)(g)(ii), namely the powers of SHOW to make a determination, which includes power to make orders with regard to compensation as this would accord more fully with the position under the PSOW Act.
22. In respect of amended regulation 13 'Publicity for complaints procedures', there is no power under Section 51B (Investigation of complaints) to make regulations placing such a (financial) obligation on a social landlord, nor has this provision been consulted upon. It was also considered that this could be achieved by alternative means such as a circular or letter to social landlords, etc.
23. If social landlords had to 'take reasonable steps to provide information to the public and tenants' about those matters under paragraph (1) (a)-(c), there would be a cost implication for social landlords involved in doing so. Given that the office of SHOW is to be abolished when the PSOW is fully commenced, then it would not be feasible to include such a provision.
24. The Local Commissioner will be working in close collaboration with the Welsh Federation of Housing associations to explore appropriate mechanisms for ensuring that the message about SHOW is conveyed to the public. The Local Commissioner also plans to issue a new leaflet about SHOW's jurisdiction as soon as the regulations are in force.
25. Under regulations 7(4), (6) and 11, it was considered that the most that SHOW could do is request information/documents (rather than require). If they are not provided, SHOW can draw such inferences as considered appropriate

With Subject Committee

26. The proposed SHOW Regulations were notified to the Social Justice and Regeneration Committee via the list of forthcoming legislation on 17 November 2004 (SJR-16-04 (p.4) Annex). The item has remained on the list ever since. The Regulations were identified for detailed scrutiny at its meeting on 26 January 2005 (SJR-01-05 (p.4) Annex). A copy of the Consultation documents, which had been issued on 28 January 2005 were also circulated to members of the Committee on 8 February 2005. The Committee considered the draft Regulations, and the related Housing Act 2004 (Commencement No. 1) (Wales) Order 2005 on 27 April 2005 (SJR-06-05(p.2) Annex 1 & 2). The attached annexes provide details of the discussion that took place. The Regulations did not require amendment as a result of the discussion by the Committee.

Review

27. When provisions in the Public Services Ombudsman Act in respect of SHOW are commenced by NAW Order (see paragraph 7 above) (due around Spring 2006), the Regulations will be no longer needed; therefore no review is necessary.

Summary

28. The Regulations set out the provision about the investigation by the SHOW of complaints made against social landlords in Wales.

Annex 1

Comments from SJR Committee 27 April 2005

During Committee on 27 April, Peter Black AM raised the issue of publicity in relation to the SHOW and what plans there were to ensure that the public knew about the service that the SHOW would offer.

Mrs Hart gave an undertaking to update Committee members on publicity arrangements.

Publicity will be approached from 3 angles;

1. As soon as the Regulations are made by the Assembly (hopefully early July), officials will ensure that information about the SHOW is put onto the Assembly web site. Officials will also write to registered social landlords, together with those organisations with whom the Assembly consulted with (Welsh Federation of Housing Associations, Chartered Institute of Housing, TPAS Cymru, Welsh tenants Federation, Citizens Advice Bureaux, Commission for Racial Equality, Race Equality First, and Tai Pawb).
2. The Local Commissioner (who will be the SHOW) plans to issue a new leaflet about the SHOW's jurisdiction as soon as the regulations are in force.
3. The Local Commissioner is also working in close collaboration with the Welsh Federation of Housing associations to explore appropriate mechanisms for ensuring that the message about SHOW is conveyed to the public.

National Assembly for Wales

REPORT BY THE SOCIAL JUSTICE AND REGENERATION COMMITTEE

Social Housing Ombudsman for Wales Regulations

1. The Committee considered the above Regulations at its 27 April 2005 meeting. The item had been remitted to Committee for scrutiny by the Minister for Social Justice and Regeneration.

2. The Regulations make provision for the Social Housing Ombudsman for Wales (SHOW) to investigate complaints made against social landlords in Wales.

3. There were no proposals for amending the draft regulations but Members raised the following points:

- **How will the office of the Social Housing Ombudsman for Wales be publicised to tenants?**

Response: The Minister advised that she would update Committee on publicity arrangements for the SHOW in her next written report which would be available prior to the Plenary debate.

- **How would the SHOW be appointed?**

Response: The person who is the Local Commissioner for Wales will also be the SHOW, as set out in section 51A(2) of the Housing Act 1996.

- **Would there be any budgetary savings for the Department when the role is transferred?**

Response: Budget provision has been in place for 5 years in anticipation of this role and would be transferred to the Ombudsman when the role is operational.

- **Would there be any provision to exclude frivolous and vexatious complaints?**

Response: The SHOW will need to give a written statement of the reasons where he decided not to carry out an investigation.

- **The draft Regulations refer to grounds where a complainant has a remedy by way of proceedings in a Court of Law. Should the complainant be unable to afford the costs, would the case proceed?**

Response: This would be for the SHOW to decide on a case by case basis.

Janice Gregory AM
Chair, Social Justice and Regeneration Committee