

This document relates to the Housing (Amendment) (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 4 September 2017

Housing (Amendment) (Scotland) Bill

Financial memorandum

Introduction

As required under Rule 9.3.2 of the Parliament's Standing Orders, this Financial Memorandum is published to accompany the Housing (Amendment) (Scotland) Bill, introduced in the Scottish Parliament on 4 September 2017.

The following other accompanying documents are published separately:

- Explanatory Notes (SP Bill 20-EN);
- a Policy Memorandum (SP Bill 20-PM);
- statements on legislative competence by the Presiding Officer and the Scottish Government (SP Bill 20-LC).

This Financial Memorandum has been prepared by the Scottish Government to set out the costs associated with the measures introduced by the Housing (Amendment) (Scotland) Bill. It does not form part of the Bill and has not been endorsed by the Scottish Parliament.

The purpose of the Housing (Amendment) (Scotland) Bill is to ensure that public sector influence over registered social landlords (RSLs) is compatible with RSLs being classified by the Office for National Statistics (ONS) as private sector bodies in the United Kingdom national accounts. The Bill achieves this objective by amending certain provisions of the Housing (Scotland) Act 2010 ("the 2010 Act") that relate to the regulation of social landlords and by making other provisions relating to the regulation and governance of RSLs.

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Background

Classification of RSLs as public sector bodies in the national accounts

The ONS is responsible for determining how individual sectors within the economy should be classified in the UK's national accounts. On 28 September 2016, it informed the Scottish Government that it had reviewed the classification of RSLs in Scotland and determined that they should be classified as public bodies for the purposes of the national accounts¹ (RSLs had previously been classified as private bodies in the national accounts).

ONS explained that its decision was based on an analysis of certain powers that the Scottish Housing Regulator ("the Regulator") is able, under the 2010 Act, to exercise over RSLs. In terms of criteria that the ONS applies under the 2010 European System of Accounts (ESA 2010), these powers indicate that the Regulator exercises control over RSLs. Under ESA 2010, the Regulator is classified as a 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.

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

Financial implications of RSL classification

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.

Furthermore, as matters stand at present, 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 would require 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. In such

¹<https://www.ons.gov.uk/economy/nationalaccounts/uksectoraccounts/articles/statisticalclassificationofregisteredprovidersofsocialhousinginScotlandWalesandNorthernIreland/September2016>

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circumstances, and in the interests of being able to manage its finances, the Scottish Government might have to introduce public control over borrowing by RSLs.

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 during the current Parliament. 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 over the life of the Parliament.

Scottish Government policy

Given these implications, the Scottish Government's policy is to create the circumstances that will enable the ONS to reclassify RSLs to the private sector. The provisions of the Bill are intended to create these circumstances by reducing those of the Regulator's powers that the ONS identified as public control over RSLs, and by providing for the Scottish Ministers, through regulations, to reduce local authority influence over RSLs.

In view of the Scottish Government's policy and undertaking to legislate, HM Treasury has confirmed that it does not expect borrowing by RSLs to be recognised in Scottish Government budgets while work to legislate is in hand.

Costs on the Scottish administration

The Scottish Government

As outlined in paragraphs 3 to 10 above, the ultimate purpose of the Bill is to avoid the Scottish Government having to account in its budget for all new net borrowing undertaken by RSLs. The Scottish Government estimates that achieving this objective will have the effect of saving it from having to find an additional £300 million a year to fund its affordable housing programme in the financial years 2017-18 to 2020-21. Depending on the levels of future affordable housing programmes and borrowing by RSLs, it would be saved from having to find comparable amounts in subsequent

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years. The provisions of the Bill will not give rise to any costs for the Scottish Government.

The Regulator

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 an annual cost of up to £176,065, 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.

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. In addition to providing an important protection for the interests of tenants, 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.

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.

No longer having to consider applications for consent should lead to a saving in staff resources for the Regulator. On the other hand, having to review the notifications that it receives instead of applications for consent, and then follow up any issues arising from these reviews, is likely to prove more time consuming. The Regulator also identified that it would need to engage more closely with a greater number of RSLs to compensate for the loss of assurance that the consents framework currently provides.

This will be important to help the Regulator meet its objectives to maintain the confidence of lenders to the RSL sector. The Regulator estimates in these new circumstances that it might need to employ one additional C1 member of staff and two B3 members of staff, at a cost of up to £176,065 (table 18.1 on the following page provides further detail). It also estimates that it will need to spend about £10,000 in 2018-19 on enabling its IT

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system to accommodate the flow of notifications that it will receive in place of requests for consents.

Regulator staffing changes	Estimated costs per annum (commencing financial year 2018/19)
Additional C1 level member of staff	£69,981
Two additional B3 level members of staff	£106,084
Total	£176,065

Table 18.1: Estimated costs for staff changes within the Regulator as a result of the Bill

The Scottish Government acknowledged these and other pressures on the Regulator by including in the Budget Bill for 2017-18 an increase of £100,000 in the Regulator’s cash budget for 2017-18 (from £3.7 million to £3.8 million). It will consider further, as part of the subsequent spending reviews, the level of funding that the Regulator requires to meet its statutory objective of safeguarding and promoting the interests of tenants and other users of the services of social landlords.

Costs on local authorities

The Bill will enable the Scottish Ministers by regulations, to limit the ability of local authorities to exercise influence over RSLs. Based on its understanding of current constitutional arrangements between local authorities and individual RSLs, the Scottish Government expects the regulations that the Scottish Ministers intend to make will apply to a few local authorities only.

The effect of the regulations will be to limit the influence that a local authority can exercise over an RSL, for example through the presence on an RSL board of local authority councillors nominated by a local authority, or through the ability to veto changes to an RSL’s constitution. Where a local authority exercises such influence, it may see a modest reduction in costs as a result of that influence being limited. However, as the cost to a

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local authority of having councillors on an RSL board is in itself unlikely to be significant, any saving will not be significant. The Scottish Federation of Housing Associations (SFHA) and Glasgow and West of Scotland Forum of Housing Associations (GWSF) have not suggested that those RSLs that have a constitutional relationship with a local authority will face any additional costs as a result of the regulations.

Costs on other bodies, individuals and businesses

From its discussions with the bodies representing RSLs and their lenders, the Scottish Government considers that the Bill could impose some relatively small administrative costs on RSLs and their lenders and investors.

RSLs

The SFHA and GWSF consider that removing the Regulator's powers of consents should not result in RSLs having to undertake additional due diligence in respect of those decisions that would previously have required the Regulator's consent. That is on the basis that RSLs will already undertake sufficient due diligence before making such decisions. They consider it possible, however, that some RSLs might in future have to undertake more work to reassure lenders, if lenders were to perceive that the changes made by the Bill make it riskier to lend to RSLs. If that were to happen, it would probably lead to an increase in RSL administrative costs, which at this stage cannot be quantified.

RSLs currently meet the costs of consulting tenants as part of the administrative costs of running their businesses. That will continue to be the case after the Regulator's powers of consent have been removed.

Lenders and investors

UK Finance considers that some RSL lenders and investors may conclude that the changes the Bill makes in the powers of the Regulator, particularly in connection with the removal of the Regulator's powers of consent, require them to undertake more due diligence of their own before making loans to RSLs. If that were to happen, it would probably lead to an increase in lenders' administrative costs, which ultimately would be passed on to RSLs. At this stage it is not possible to quantify what these costs would be.

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