1. About Us

The Community Housing Cymru Group (CHC Group) is the representative body for housing associations and community mutuals in Wales, which are all not-for-profit organisations. Our members provide over 158,000 homes and related housing services across Wales. In 2013/14, our members directly employed 8,400 people and spent almost £2bn (directly and indirectly) in the economy, with 81% of this spend retained in Wales. Our members work closely with local government, third sector organisations and the Welsh Government to provide a range of services in communities across Wales.

Our objectives are to:

- Be the leading voice of the social housing sector.
- Promote the social housing sector in Wales.
- Promote the relief of financial hardship through the sector’s provision of low cost social housing.
- Provide services, education, training, information, advice and support to members.
- Encourage and facilitate the provision, construction, improvement and management of low cost social housing by housing associations in Wales.

Our vision is to be:

- A dynamic, action-based advocate for the not-for-profit housing sector.
- A ‘member centred’ support provider, adding value to our members’ activities by delivering the services and advice that they need in order to provide social housing, regeneration and care services.
- A knowledge-based social enterprise.

In 2010, CHC formed a group structure with Care & Repair Cymru and CREW Regeneration Wales in order to jointly champion not-for-profit housing, care and regeneration.

Introduction

Community Housing Cymru and our members have been an active voice in the debate over devolution in Wales for a number of years. We gave evidence to both the Silk Commission and the All Wales Convention, and as advocates for housing associations in Wales, we regularly engage with both Welsh and UK Government over devolved and non-devolved policies. We have vast experience of engaging with both Welsh and UK Governments, and practical experience of the implications of the devolution settlement on policy and legislation, and how it is made in Wales.

The Draft Wales Bill, as published on 20th October, is of great concern to Community Housing Cymru and our member. We do not believe that the Reserved Powers model – in the form that is proposed by the draft Bill – is fit for purpose, nor do we believe that the draft Bill proposed will achieve the UK Government’s policy aims of a ‘stronger, clearer and fairer devolution settlement for Wales that will stand the test of time’.

However, we do welcome the policy aims set out by the Secretary of State for Wales, and wish to work constructively with all stakeholders in this process, including the Wales Office
and Welsh Government, to achieve these. Our response will highlight our concerns with the current draft, as well as the practical implications, and some potential solutions to the current situation.

**Reserved Powers**

In our response to the second phase of the Silk Commission, Community Housing Cymru advocated the adoption of a Reserved Powers model of devolution in place of the current Conferred Powers system. We believe that a Reserved Powers model, operating on the same basis – but not necessarily with all the same powers – as Scotland would bring clarity to those of us working with Welsh and/or UK Government/s. It would reduce the use of courts, and in particular the UK Supreme Court, in assessing the legitimacy of legislation passed by the National Assembly for Wales, and it could create the opportunity for a longer-lasting and clearer settlement.

However, any attempt to bring clarity has not been achieved through these draft proposals. We agree with the Wales Governance Centre’s assessment on this change; that this is not a straightforward technical change, but one that raises fundamental questions about the development of Welsh devolution.\(^1\) The success of the Reserved Powers model is dependent on how that model is put in to place; the scope of matters reserved to Westminster, and how these could potential impinge on the powers of Welsh Government and the National Assembly for Wales are key in this debate.

**Reserved Matters**

As we have continually stated, Community Housing Cymru supports a Reserved Powers model of devolution. It should afford a greater degree of clarity to the public, and to organisations engaging in the legislative and policy making environment. However, the current reservations, along with the necessity test, do not achieve this.

To resolve this situation, Community Housing Cymru believes greater consideration needs to be given to the Silk Commission’s proposals. The present list of 267 proposed reservations does not seem to have given full consideration to the thoughtful findings of this cross-party commission. The current list is clearly too long – something the Secretary of State for Wales has acknowledged – and seems to be a wish list from various Whitehall departments, which lacks in both clarity and transparency.

In moving towards a Reserved Powers model, clarity and coherence should not be achieved by removing areas of the Assembly’s competence, or by imposing new and unnecessary restrictions on legislative powers.

**The New Restrictions**

The Bill as it currently stands places a large number of new restrictions on the Assembly’s legislative competence; we will explore the specifics of some of the subjects reserved later in our response, but we are concerned about some of the practical impacts on the courts.

As raised in the paper submitted by Emyr Lewis, the question of determining whether an Act of the Assembly is within competence or not can be raised in any proceedings, in the same way as can the question of whether an Act of Parliament is compatible with EU law or Convention Rights.

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\(^1\) Wales Governance Centre, *Delivering a Reserved Powers Model of Devolution for Wales*, 2015
Community Housing Cymru is concerned that this will impact on the application of private law in some tenant and landlord cases, and grant judges too much scope to determine whether legislation meets tests set out in Schedule 7B.

**Necessity Test**

As stated throughout this response, Community Housing Cymru has made it clear that we fully support a move towards a Reserved Powers model of devolution for Wales. However, the necessity test set out by this Bill would fatally undermine this intention.

Through the Housing (Wales) Measure 2011, the Housing (Wales) Act 2014 and the Renting Homes Bill, among others, we have a huge range of experience of the various models of devolution that Wales has been through, and the impact this has on legislation and the legislative process. The pre-2011 system of Legislative Competence Orders (LCOs) was complex, caused numerous delays and offered very little transparency to voters, or those involved in the legislative process. The introduction of a necessity test would take a dangerous back towards this model of devolution. It is unnecessary and undermines the law-making powers of the National Assembly for Wales.

Community Housing Cymru believes that the next iteration of this Bill should drop the necessity test and ensure that the primary law making powers of the National Assembly for Wales are not further undermined by any forthcoming proposals. The legislature, i.e. The National Assembly for Wales, is a democratically elected body of representatives, and in making new legislation or modifications to existing legislation, and within the constraints of a clear and coherent Reserved Powers model of devolution, should be allowed to determine what is necessary to achieve their legislative aims.

We are also concerned about the potential for ‘mission creep’. While the power for sign off on a necessity test ultimately lies with the Secretary of State for Wales, the influence and power of other UK Government departments e.g. DWP, or Treasury, would be of concern. For example, a decision or legislation impacting on social housing rent, and therefore housing benefit, would be of interest to other these other departments. Housing policy, and many other areas of devolved policy, are inextricably linked for UK-wide issues e.g. welfare, the economy. However, this does not mean Welsh Government should not be able to develop policy that meets the needs and the will of the people of Wales without restriction from the UK Government.

**Practical Implications**

Along with our concerns about the technical drafting of this legislation, the practical implications of the current proposals are a threat to the principle of subsidiarity and the ability of the National Assembly to deliver on their legislative and policy aims.

Housing policy is probably one of the areas where devolution has allowed Wales and England to diverge most on policy. The settled will of the people of Wales over the last 16 years has been investment in affordable housing; not without considerable benefits to the UK as a whole. Devolution has allowed Welsh Government to invest capital funding into affordable housing, in turn keeping rents, and ultimately the UK’s overall benefits bill, lower than it would have been without this significant policy divergence. However, one of the instruments the National Assembly for Wales in achieving this has been the Housing (Wales) Act 2014. Both the Welsh and UK Governments agree that this legislation would have fallen foul of the Necessity Test proposed in the draft legislation. Community Housing Cymru is of the view that the devolved settlement should be clear that UK Government has no role to play in determining the competence of the National Assembly.
to legislate on areas such as the Private Rented Sector, empty homes or homelessness provisions.

This is one practical illustration of where the current proposals fail to meet the Secretary of State’s ambition for a long lasting, clear devolution settlement. There are others, and without significant amendments, the draft Bill will not clear up the devolution settlement but just lead to further confusion.

25 November 2015