

How extending the right to buy in England could change the relationship between the government and housing associations

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In this article, [Steffan Evans](#) looks at how the extension of Right to Buy in England could alter the relationship between the government, the regulator and Housing Associations in England, and compares the situation in England with the situation in Wales.



Ever since the formation of the Tenants Service Authority and the Homes and Communities Agency in 2008 there has been a clear divide in England between the function of public investment in social housing and the regulation of social housing. Even after the Tenants Services Authority was disbanded in 2012 the Regulation Committee of the Homes and Communities Agency was established to safeguard this division.

This is not the case in Wales. There is no division between the Welsh Government's investment and regulatory functions. Whilst there have been calls by some operating within the social housing sector on the west side of Offa's Dyke to separate these functions, could a change in the regulatory relationship actually be on the way in England instead?

Social tenants of housing associations properties currently have the right to purchase their property under the "Right to Acquire" scheme in both Wales and England. There are variations in how the scheme operates each side of the border but they share two particularly important features. Firstly, the relevant Governments provide Housing Associations with a grant when a property is sold under the scheme. Secondly all proceeds from a sale (subject to some deductions) must be paid into a Disposal Proceeds Fund. The Fund may only be used to provide replacement property for rent in Wales, whilst in England associations may also use the funds to improve dwellings in a way that tackles homelessness and overcrowding.

Whilst the Welsh Government is both a regulator and investor in social housing in Wales, there is no current regulatory requirement for Registered Social Landlords to construct any properties beyond their requirements under the Disposal Proceeds Fund as set out above. With an expectation that the "right to buy" and the "right to acquire" will be scrapped in Wales, Welsh housing associations will not be legally required to construct any properties unless the Welsh Ministers decided to introduce a new discount for the sale of housing association homes. Nevertheless the lack of division between the funding and regulation functions of the Welsh Ministers does concern some that pressure could be applied indirectly on housing associations to develop property in a way that they would not wish.

In England on the other hand, despite the fact that the regulatory and funding roles of the Homes and Communities Agency are split, encouraging the development of social housing is still viewed as an objective of regulation. Section 78 of the Housing and Regeneration Act 2008 sets out the 10 fundamental objectives of regulation in England, the first of these is to "*encourage and support a supply of well-managed social housing, of appropriate quality, sufficient to meet reasonable demands.*" The Homes and Communities Agency state on their own website that they view encouraging social housing supply as a key component of their work. This however does not manifest itself as a specific requirement within the regulatory framework beyond their Disposal Proceeds Fund.

The regulatory framework in England requires registered providers to comply with all relevant statutes. If the Housing Bill announced in the Queens Speech makes it a statutory requirement for all registered providers to replace the houses sold under the "right to buy" then this will, in effect make it a regulatory requirement for registered providers to build a new house for every home that is sold under the policy. This is a significant difference

to the system currently in place. Whilst housing associations are currently required to spend their fund within three years and are only permitted to spend the funds in order to construct, purchase or renovate properties, there is no requirement on them to replace each property on a one to one basis.

A move to introduce a requirement to replace each property does appear to be in conflict with many of the regulatory requirements already in place in England. This is perhaps highlighted most vividly in The Governance and Financial Viability Standard Code of Practice. The Code emphasises the importance of risk management, and the need to balance investment with return. The code also suggests that non-discretionary expenses such as major repairs should be funded by operating costs, with capital only being used if there is a plan to ensure that operating cash flow covers operating expenses in the future.

If housing associations will have a legal requirement to replace properties sold under the right to buy, how will the regulator view this activity? If the associations have no option but to build replacement properties, then labelling the money spent doing so as a non-discretionary expense would perhaps be most accurate. If so, it will prove difficult for associations to replace properties either in the short or long term through their operating costs. If these properties are allowed to be funded by borrowing, how will the regulator strike a balance between risk management and the requirement to replace the properties?

The capital receipts received from the selloff of the properties will go some way in assisting housing associations to meet a requirement to replace each property but in areas where there are growing house prices, this might not be sufficient in covering the cost of construction or purchase. Bridging this gap is expected to become more difficult, with expectations that the cost of borrowing will increase for the sector in England following the introduction of the policy and the decision to cut amount payable under social rents.

If borrowing does become riskier, housing associations may wish to reduce their development portfolio, at least in the short to medium term as they seek alternative forms of funding. This could present the regulator with a headache and might mean that it has to decide if one aspect of regulation is more important than another.

If the regulator does choose to prioritise one aspect of the regulation framework, and turn a blind eye to certain breaches then this could have an impact on their relationship with the sector. How forthcoming will associations be about revealing breaches if they suspect that the regulator might not be concerned by it, and what will this mean for the co-regulatory approach?

There is a possibility that the policy could have an even greater impact. The Office of National Statistics has confirmed that they will consider whether Housing Association should be re-classified as public bodies for accounting purposes once more information about the policy has been published. This would potentially add up to £60 billion to the Government's debt but also raises the possibility that the relationship between English housing associations, their regulator and the Government could become far closer, a step that not many within the social housing sector in England would have predicted 12 months earlier.

About the Author

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