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# Capita Asset Services Response to the Consultation on the Housing (Wales) Bill - Reform of Council Housing Finance

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HB 11

National Assembly for Wales  
Communities, Equality and Local Government Committee  
Housing (Wales) Bill: Stage 1  
Response from: CAPITA Asset Services

## 1. Foreword

1.1 Capita Asset Services provides treasury management and wider financial advice to some 300 local and public authority clients, many of whom are housing authorities. We also provide advice to 7 of the Welsh housing authorities, who will be impacted by this proposed change to the Housing Revenue Account.

1.2 We have read with interest the proposals for what would amount to a very significant change in the manner in which the council housing service is intended to be financed in the future, and are pleased to have the opportunity to submit these comments.

1.3 It is noted that responses to specific questions are not sought and we are only able to respond in respect of Part 5 Housing Finance. To support the review of the consultation, we have in certain instances widened the scope of our response in order to embrace what we consider to be certain additional aspects of importance.

## 2. Part 5 – Housing Finance

2.1 It is noted that Section 114 of the proposed Housing (Wales) Bill will abolish the HRA subsidy system which is currently operated by Welsh local housing authorities.

2.2 To achieve the desired outcome, the changes outlined in the proposed Housing (Wales) Bill will remove reference to Housing Revenue Account Subsidy from the relevant sections of Part VI of the Local Government and Housing Act 1989.

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### Proposed amendments to Part VI LG and Housing Act 1989

2.3 If adopted, the following sections will be repealed.

S.79 – removing ability to pay HRA subsidy to local housing authorities.

S.80 – removing method of calculating the Housing Revenue Account subsidy.

S.85 – removal of Secretary of State power to request information to enable them to exercise functions under S.80.

S.86 – removal of power to recoup HRA subsidy in certain cases.

In addition, the proposed Bill makes reference to section 80ZA (negative amounts of subsidy payable to appropriate person) and section 80B (agreement to exclude certain authorities or property).

These sections within the Local Government and Housing Act 1989 are yet to be enacted and therefore suggest this is resolved prior to the implementation of the proposed Housing Bill.

*We are in agreement with these proposed changes.*

*We suggest that our clients' legal representatives carry out a similar review to ensure they are happy with the proposed changes.*

### Proposed amendments to Schedule 4 of LG and Housing Act 1989

2.4 The first change amends Part 1 of Schedule 4 which deals with credits to the HRA. The proposed change removes Item 3 Housing Revenue Account subsidy from the list of credits taken to the Housing Revenue Account.

*Agree with this change.*

2.5 The second change amends Part 2 of Schedule 4 which deals with debits to the HRA. The proposed change is seeking to remove Item 5 and makes reference to sums payable under section 80ZA.

Part 2 Item 5 refers to Section 80(2) of the LG and Housing Act 1989.

*As Section 80 (2) provides detail on how to deal with negative housing subsidy we agree with this proposed change.*

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2.6 The final suggested change to Schedule 4 is to remove paragraph 2. Without the change, a housing authority which was not in receipt of HRA subsidy would be able to transfer the whole or part of any credit balance shown in their Housing Revenue Account to some other revenue account of theirs.

This change to current legislation will remove the ability to transfer surplus HRA balances to General Fund when HRA subsidy is abolished in Wales. It may also prevent a transfer of HRA Balances to General Fund when a Large Scale Voluntary Transfer is completed.

*Whilst we are in agreement with the proposed change, we suggest this is reviewed to ensure if a local housing authority completes a stock transfer after completion of these reforms, they can legally transfer surplus HRA funds from the HRA to GF.*

#### Settlement Payments

2.7 The Housing (Wales) Bill includes Section 115 which sets out the powers which would be made available to Welsh Ministers in respect of a 'Settlement Payment'.

2.8 We assume this will be the method used by the Welsh Government to terminate the Housing Revenue Account subsidy paid and received by local housing authorities in Wales.

2.9 The draft Bill provides the legal framework to allow the amount of the 'Settlement Payment' to be calculated and also states that a local housing authority will either make a payment; receive a payment or there will be nil payment/receipt (nil settlement).

2.10 We would expect the Welsh Government to provide a transparent approach and explain how the 'Settlement Payment' has been calculated. This will allow the local housing authorities to determine how the sum is derived. It will also support any amendments to the HRA business plan, which will ensure the HRA can produce the level of income required to fund the lifecycle cost of the proposed one off settlement.

2.11 S.117 of the proposed Housing (Wales) Bill does provide a power which would require the 'Settlement Payment' to be treated as capital.

It provides confirmation that a payment made by a local housing authority will be capital expenditure. If a payment is received by a local housing authority it will be a capital receipt.

We provide more information on this issue later.

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*We agree with these proposed changes.*

#### Further Payments

2.12 The proposed changes under S.116 would provide the Welsh Ministers with the power to make determinations requiring further payment to be made.

These payments may be to, or from, the local housing authority.  
Any future payment would be limited by two sub-sections within S.116.

These sub-sections state that there must have been a change in any matter which was taken into account when making the determination relating to the 'Settlement Payment' or the calculation of that payment. This would also relate to any previous determination or calculation under that previous determination.

Or, there must have been an error which was taken into account when making the determination or calculation under that determination.

The Welsh Ministers will also have the power to vary or revoke any determination made under S.116.

These proposed changes appear to limit any additional payments and allow for any errors to be corrected.

*We would suggest our clients discuss these clauses with their legal representatives to ensure they are happy with the content prior to making any HRA subsidy 'Settlement Payment'.*

#### Additional Provision about payments

Section 117 contains details on the framework which Welsh Ministers will use to collect the 'Settlement Payment'.

It covers the timing (to be confirmed), requirement to provide information requested by Welsh Ministers when payment is made, ability to charge interest and additional costs on any late payment.

As previously mentioned, S.117 sub-section 5 provides the capitalisation power in respect of any HRA Subsidy settlement payment or receipt.

It also introduces a new section to be inserted in Schedule 4 Local Government and Housing Act 1989, which would allow the Authority to debit late payment interest and costs (under S.117 (3) and (4)) to the Housing Revenue Account.

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*We suggest clients check these sections to ensure they are happy with the proposed changes.*

#### Provision of information upon request

2.13 Section 118 requires a local housing authority to supply Welsh Ministers with information when requested. These requests may relate to generic issues or specific cases. Where information is not supplied, the proposed Bill provides powers allowing Welsh Ministers to use assumptions and estimates where they see fit.

This power is similar to S.85 of the Local Government and Housing Act 1989, which will be repealed if the Housing (Wales) Bill is enacted.

*As this introduces a similar power to that which already exists, we do not have any further comment.*

#### Determinations under this part

2.14 Section 119 provides the power to make determinations, the key issue is that:

- When the determination relates to all local authorities representatives of local government in Wales and other persons will be consulted
- When the determination relates to a particular local housing authority Welsh Ministers must consult that local housing authority.

*We support this approach and the continuation of consultation in respect of changes to the determinations which may impact the deliverability of the HRA business plan.*

### **3. Self Financing Options**

3.1 We do not have access to information regarding the Welsh approach, but based on our knowledge of the English HRA reform, the practical aspects of this proposal are clearly very complex. To support clients, we suggest the following issues are considered as part of the consultation on HRA subsidy in Wales.

3.2 It is not explained how the one-off reallocation of housing debt would be achieved. As there has been limited consultation in respect of the calculation of the 'Settlement Payment', it is difficult to provide anything meaningful on this issue. But we do feel it is worth raising a number of issues relating to self financing options.

3.3 We acknowledge that a one off settlement could only be achieved by using debt liability as the distributing factor, as all that is being proposed in a theoretical

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sense is that present revenue amounts of positive and negative subsidy be replaced by a capital liability or benefit which can itself be converted into a revenue effect.

3.4 Based on the review of the proposed Housing (Wales) Bill, it does indicate that the legislation has been drafted in a manner which supports the use of a one off settlement payment/receipt to extinguish the current HRA subsidy system in Wales.

3.5 As previously discussed, S.117 of the proposed Housing (Wales) Bill would be designated as capital expenditure or receipts under regulation. Apart from these relatively straight forward aspects of the proposals, we consider that this section of the Paper in particular, poses many more issues warranting comment than are evident from the more confined nature of the legislation.

3.6 For authorities who would be required to make a capital payment to the Welsh Government, there would obviously need to be discretion as to how they initially financed this, whether from new external borrowing, or from internal resources.

3.7 For those authorities who qualify for a capital receipt<sup>1</sup>, there would need to be a similar discretion as to how they utilised this. For example, they might not have financed their debt liability with actual loans, and would need to invest the receipt to produce investment income for the HRA. Having said this, however, where actual loans do exist, any intention that debt liability and loans should be reduced would involve recognition and reimbursement of premature redemption and premiums/discounts.

3.8 We refer later to our concern that any necessary reimbursement to a local authority that arises under these proposals in respect of additional revenue costs, including premiums, should be actually and transparently received, and not bound up within any form of national settlement process.

3.9 Clearly the key issue that arises under the debt redistribution approach is how the payment and receipt amounts are to be assessed, both as regards the overall amount of annual revenue support or liability envisaged as necessary, and the range of interest rates to be taken into account when converting these into a capital sum. We would expect our clients to be provided with sufficient information to determine how the settlement amount for their local housing authority has been calculated.

3.10 We would envisage that any settlement amount would be based on a financial model approach. If this approach is used, the exercise may be based upon assumed or notional situations, without having regard to individual circumstances. We

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<sup>1</sup> As the 11 Welsh local authorities all pay subsidy back to UK Treasury via Welsh Government, we do not expect this situation to arise.



question how a local housing authority can sustain and maintain their own homes on an equitable basis, if no regard is to be had to particular individual circumstances.

3.11 We would suggest there would need to be considerable scope for variation in costs built into such a model approach. For example, loan interest costs are presently at an all time low point, and will fluctuate dramatically over a 30 year period.

3.12 We have mentioned above that a key factor under the model type of approach will be to provide sufficient resources and scope for expenditure needs and cost fluctuation within the component parts. The introduction of a much longer business plan period questions the accuracy of forecasting under a one off settlement approach, and may involve considerable hope that increasing future rent levels will compensate for any unplanned costs.

3.13 We would anticipate that the current Item 8 type of approach is the appropriate mechanism for continued charging of the HRA for loan interest costs. However, this basis of charge relies upon the CRI approach, and it may be more appropriate to consider the loan pool arrangements which were used by English housing authorities when they undertook HRA subsidy reform in 2012.

3.14 It is worth noting that under the current subsidy system, a housing authority can recharge the HRA share of premiums and discounts to the HRA. This arrangement is covered by the HRA subsidy determination, which caps the maximum recovery period for HRA share of premiums or discounts to 10 years. We would expect this to continue under any proposed 'ring fence' system but accept that some form of discretion may be required to ensure that future HRA business plans are sustainable.

3.15 We would welcome more information relating to the safeguards that would be introduced to ensure that no authority found itself in the position of not being able to balance their HRA as a consequence of the one off settlement.

*It is noted that the self-financing issue is not part of the consultation but we have raised some key points for consideration and would welcome the opportunity to provide further views when consultation on any proposed 'Settlement Payments' is released.*

#### **4. Borrowing under Self Financing**

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4.1 The only comment we will make at this stage is that we would not expect the proposed changes to implement more strict controls on borrowing for HRA purposes than apply at present, or would apply to other forms of borrowing.

An authority has a statutory ability to borrow whatever sums it requires for any purpose relevant to its functions, subject to affordability, which applies equally to its GF or HRA requirements. If the Welsh Ministers were to exercise a specific HRA borrowing constraint, this would not fit with devolved responsibility given to local authorities in respect of borrowing. Any cap on the level of HRA borrowing may impinge upon any proposals for new development etc outside of the subsidy system. Many major repairs and improvements are also capital in nature, and it is not yet clear whether the one off settlement will be sufficient to achieve the ongoing financing of these.

4.2 We have one final point to make at this stage and that relates to how a local housing authority may fund any increase in the HRA share of the Capital Financing Requirement. We would expect each Authority to have complete discretion when it comes to raising finance to meet any HRA 'Settlement Payment'. This would allow them to comply with the requirement of the CIPFA Prudential Code and ensure that any increase in the HRA share of CFR is affordable, prudent and sustainable. If earmarked loans with fixed maturity dates are taken, this may result in increased interest costs and significant re-financing risk.

*We note that borrowing under self financing is not part of the Housing (Wales) Bill consultation but feel that it is important to raise some issues for consideration. We would welcome the opportunity to provide additional views when consultation on funding proposals is released.*

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