Pecyn dogfennau cyhoeddus

# Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol

Lleoliad:
**Ystafell Bwyllgora 2 - y Senedd**

Dyddiad:
**Dydd Iau, 23 Ionawr 2014**

Amser:
**09:00**

Cynulliad Cenedlaethol Cymru
National Assembly for Wales

I gael rhagor o wybodaeth, cysylltwch â:

**Sarah Beasley**
Clerc y Pwyllgor
029 2089 8032
pwyllgor.CCLll@cymru.gov.uk

## Agenda

**Cyfarfod preifat cyn y prif gyfarfod (09.00 - 09.15)**

## 1 Cyflwyniad, ymddiheuriadau a dirprwyon

## 2 Bil Tai (Cymru): Cyfnod 1 - Sesiwn dystiolaeth 4 - Cymorth Cymru a Shelter Cymru (09:15 - 10:30) (Tudalennau 1 - 39)

Auriol Miller, Cyfarwyddwr Cymorth Cymru

Nicola Evans, Rheolwr Polisi a Gwybodaeth, Cymorth Cymru

John Puzey, Cyfarwyddwr Shelter Cymru

**Egwyl (10.30 - 10.45)**

## 3 Bil Tai (Cymru): Cyfnod 1 - Sesiwn dystiolaeth 5 - Cynrychiolwyr y sector rhentu preifat (10:45 - 12:00) (Tudalennau 40 - 73)

Douglas Haig, Cyfarwyddwr Cymru, Cymdeithas Landlordiaid Preswyl

Lee Cecil, Cynrychiolydd Cenedlaethol Cymru, Cymdeithas Genedlaethol y Landlordiaid

Ian Potter, Rheolwr Gyfarwyddwr, Cymdeithas Asiantaethau Gosod Preswyl

Martine Harris, Uwch-reolwr, Cymdeithas Asiantaethau Gosod a Rheoli

## 4 Bil Tai (Cymru): Cyfnod 1 - Sesiwn Dystiolaeth 6 - Cartrefi Cymunedol Cymru (12:00 - 12:30) (Tudalennau 74 - 78)

Nick Bennett, Prif Weithredwr, Cartrefi Cymunedol Cymru

Aaron Hill, Swyddog Polisi, Cartrefi Cymunedol Cymru

Chris O'Meara, Prif Weithredwr Cymdeithas Tai Cadwyn

## 5 Papurau i'w nodi (Tudalennau 79 - 96)

Communities, Equality and Local Government Committee
CELG(4)-02-14 Paper 1

# Consultation on the Housing (Wales) Bill

## Cymorth Cymru evidence to the Communities, Equality and Local Government Committee

### Background

Cymorth Cymru is the umbrella body for organisations working with vulnerable people in Wales. Our members work to assist people who are vulnerable, isolated or experiencing housing crisis, including:

- people who are homeless, or at risk of homelessness
- families fleeing domestic abuse
- people dealing with mental or physical health problems, or learning disabilities
- people with alcohol or drug problems
- refugees and people seeking asylum
- care leavers and other vulnerable young people
- older people in need of support and care
- offenders and those at risk of offending

This list is not exhaustive, and individuals may often face a range of challenges that make it difficult for them to find or maintain a stable home and build the sort of lives we all aspire to.

Cymorth Cymru's members help people address these issues, supporting them to fulfil their potential and build happy and fulfilling lives. Our members work across policy areas – including Community Justice, Social Services and Health – with the shared recognition of the key role that housing plays in promoting wellbeing.

We have three overarching objectives:

- To improve the links between policy and practice by ensuring that those working in frontline service delivery understand and are influenced by the wider policy context, and those working in policy development understand and are influenced by the experiences and knowledge of those working on the ground.
- To ensure that the sector maximises its contribution to the lives of citizens and the communities in which they live by helping to build and develop the sector's capacity and professionalism.
- To increase public understanding and support for the sector and the work it does in helping people build the lives they aspire to within the community.

## Members of Cymorth Cymru

Adref
Aelwyd HA
Agorfa
Aids Trust Cymru
Alcohol Concern Cymru
Alzheimer's Society Wales
Anheddau Cyf
ARCH Initiatives
Barnardo's Compass Partnership
Barnardo's Cymru
BAWSO
Beaufort House Move on Scheme
British Red Cross
Bro Myrddin Housing Association
Bron Afon Community Housing
Cadarn Housing Group
Cadwyn Housing Association
Caer Las Cymru
Caerphilly Council
Caerphilly Women's Aid
Calan DVS
Cardiff Community Housing Association
Cardiff Council
Cardiff Gypsy and Traveller Project
Cardiff Women's Aid
Cardiff YMCA Housing Association
Care Management Group
Cartrefi Cymru
Church Army Cardiff
CIH Cymru (Chartered Institute of Housing)
Clwyd Alyn HA
Coastal Housing
Collage
Community Housing Cymru (CHC)
Community Lives Consortium
Compass Community Care Ltd
Connect Assist
Cymdeithas Gofal / The Care Society
Cymdeithas Tai Cantref Cyf
Cymdeithas Tai Clwyd

Cymdeithas Tai Eryri
Cymorth Cymru
Cynon Taf Community Housing Group
Cyrenians Cymru
De Gwynedd Domestic Abuse Service
Denbighshire CC
Dewis Ltd
Digartref Ynys Mon Ltd
Dimensions
Diocese of Llandaff Board for Social Responsibility
Diverse Cymru
Domestic Abuse Safety Unit (DASU)
Drive
Esgyn
Family Awareness Drugs Support
Family Housing Association Wales Ltd
First Choice Housing Association
GISDA
Glyndwr Women's Aid
Gofal
Gwalia Care & Support
Gwynedd County Borough Council
Hafal
Hafan Cymru
Hafod Care Association
Haven Trust
Home Access
Homeless Link
Huggard
Ihsaan Social Support Association (ISSA) Wales
Larch
Learning Disability Wales
Linc Cymru
Llamau Ltd
Melin Homes
Mendola Associates
Mental Health Advocacy Scheme
Merthyr Valley Homes
Merthyr Women's Aid
Mind Monmouthshire
Monmouthshire CC
Neath Women's Aid
Newport Housing Trust
Newport Mind
Newport WA
Newydd Housing Association
North Denbighshire Domestic Services
North Wales Housing Association
Pembrokeshire Care Society
Pembrokeshire Housing
Pennaf Housing Group
Pen-yr-Enfys
Perthyn
Practice Solutions
RCT Homes
Reach Supported Living
Rhondda Housing Association
RNIB
Salvation Army
Save The Family Ltd
Scope
Seren Group
Shelter Cymru
Sitra
Solas Cymru
St Giles Trust
Stteps
Swansea County Council
Swansea Young Single Homeless Project (SYSHP)
Taff Housing Association
Tai Calon
Tai Pawb
Temp2Perm
The Wallich
Torfaen and Blaenau Gwent Mind
Torfaen County Council
Torfaen Mind
Torfaen Women's Aid
United Welsh Housing Association Ltd
Us UnLTD
UWIC
Vale of Glamorgan County Council
Valleys To Coast
Wales & West Housing Association

Welsh Women's Aid
Welsh Women's Aid
Colwyn
Women's Aid in
Rhondda Cynon Taff
Wrexham County
Council
Wrexham Women's Aid

## Overview of evidence

As the umbrella body for organisations working with vulnerable people, our consultation response is focussed specifically on those issues of relevance to vulnerable people. The Welsh Government recognised in its Housing White Paper that *'the need for safe, warm, comfortable shelter is one of the most fundamental human instincts*'[1] and that it is Welsh Government's responsibility '*to ensure that every citizen in Wales has the opportunity to live in a good quality, energy efficient home which is affordable*'[2]. We share this view that a decent home plays a vital role in a person's ability to build a successful life.

We fully support the Bill's drive to put a greater emphasis on prevention and relief of homelessness and we are currently engaged in the ongoing dialogue around the extension of priority need to rough sleepers. Cymorth Cymru is also part of discussions around priority need in relation of ex-offenders and we are grateful for the opportunity to help shape this specific piece of legislation as it develops.

We have also liaised with partner organisations and would like to take this opportunity to endorse the evidence provided by Shelter Cymru.

Our evidence is presented in the following format:

- General comments
- Responses to the consultation's specific points

We look forward to exploring some of the points made in our response further when we give oral evidence to the Communities, Equality and Local Government Committee.

## General comments

This Housing Bill signifies the Welsh Government's direction of travel in terms of tackling homelessness. Whilst there have been concessions made that arguably have made this Bill less progressive in terms of policy making than originally set out in the White Paper, we recognise the need to be pragmatic and take account of the current economic and political landscape.

[1] *Homes for Wales: A White Paper for Better Lives and Communities, Welsh Government, 2012*

[2] *Homes for Wales: A White Paper for Better Lives and Communities, Welsh Government, 2012*

We remain committed to supporting the Welsh Government to work towards the future phasing out of certain elements of homelessness legislation which our members – organisations that support some of the most vulnerable people in Wales – tell us is counter-productive to their work.

We would like to also use this opportunity to highlight the key role that the Supporting People Programme plays in ensuring individuals are able to maintain their tenancies as independently as possible. In Cymorth Cymru's view, the duties that this Bill will place on local authorities to ensure the relevant services are in place to support vulnerable individuals and to help prevent homelessness mean that we should now take a more strategic approach to funding the Supporting People Programme.

While the Programme enjoyed relative protection from budget cuts in Financial Year 2013-14, the year-on-year struggle to protect this budget and its outcomes could be avoided were a more strategic approach taken. The Supporting People Programme assists around 76,000 vulnerable people across Wales and delivers real cost savings to other areas of public spending. Cymorth Cymru is keen to work with Government and partners to ensure that the true value of the Programme is understood across all sectors engaged in supporting vulnerable people to ensure better services for homeless individuals and those threatened with homelessness.

Our main points are:

- The regulation of housing in the Private Rented Sector (PRS) is the cornerstone of the successful use of the PRS when discharging a local authority's homelessness duty. Attempts to remove this element of the Bill need to factor in the interconnected element of Parts 1 and Parts 2 of the Bill. Without appropriate regulation of landlords, greater use of the PRS as a means of accommodating vulnerable individuals is reckless and may lead to the exploitation of some of Wales' most vulnerable citizens and further exacerbate homelessness in Wales.

- Greater use of the PRS to alleviate demand on social housing is welcomed. This new ability for local authorities to accommodate vulnerable people in the PRS when discharging their homelessness duty must be coupled with the appropriate level of support to ensure vulnerable people are not set up to fail, and fall into possibly cyclical homelessness.

- Placing prevention and support at the heart of legislation to tackle homelessness will enable better consistency across Wales and drive up the quality of services. This needs to be in conjunction with the appropriate resources to ensure preventative services are available.

- Elements of the homelessness legislation raise concerns in terms of the consistency of application across Wales and the impact on actually tackling homelessness.

- Coproduction and co-design need to be a key feature when implementing the Bill to ensure maximum positive effect on reducing homelessness. Learning from the work undertaken by the Supporting People Programme in this area needs to be captured and built on.

## Responses to the Consultation's specific terms of reference

***1. The general principles of the Housing (Wales) Bill and the need for legislation in the following areas:***

- ***a compulsory registration and licensing scheme for all private rented sector landlords and letting and management agents;***

We are in favour of regulating private sector landlords and letting agencies. It is important to view the this new regulatory system together with Part 2 of this Bill as it has relevance to the new powers to be placed on local authorities to be able to discharge their homelessness duty through the use of the PRS. Whilst there has been much debate around the introduction of regulation of the PRS, we are concerned that discussions so far have not given consideration to its connection with the new reality of accommodating some of Wales' most vulnerable citizens in private rented housing.

We support the move to reduce the pressure on social housing through allowing local authorities to discharge their duty through use of the PRS, however it is vital that individuals are given the correct support to help them to maintain their tenancy – otherwise we will be simply setting people up to fail. We view regulation as the cornerstone to ensuring that the PRS delivers on expectations. Without such regulation, there are real concerns that vulnerable people could be negatively impacted by landlords who do not offer a high level of service, whether through ignorance or purposefully. Shelter Cymru report an overrepresentation of PRS tenants among the

clients that they work with and the main problems that are reported include harassment and illegal eviction. These issues are often caused by lack of understanding of their rights and responsibilities by both landlords and tenants, with tenants often reluctant to exercise their rights for fear of retaliation[3].

Given that this Bill will affect more people who are vulnerable and may mean that those who may have more complex needs may be accommodated in private rented housing, it is important that tenants of the PRS are afforded the same rights of protection and standards as tenants in social housing. We acknowledge that many PRS landlords and agents act responsibly, however we support an approach based on an appropriate balance of sanctions and incentives, supported by appropriate resources for those undertaking the implementation of the scheme. This will raise standards in the PRS where required.

We also need to ensure that regulation does not result in any unintended consequences – one of which being the potential to make individuals homeless if landlords feel that it is not 'worth the hassle' when mandatory registration comes into force. As such, we endorse an approach of working with landlords – especially those who may have become 'accidental' landlords – to support them to take on these duties.

To fully capitalise on this opportunity, it is vital that regulation is extended to all private landlords irrespective of whether they have one property or many properties like some of the larger or professional landlords. The positive impact that regulation will have on standards in the PRS should be equally enjoyed by tenants, regardless of whether they are vulnerable or not, and regardless of how large a portfolio of properties their landlord may own.

We also endorse proposals made by CIH Cymru to implement changes on a roll-out basis, to manage resources and capacity.

- ***reform of homelessness law, including placing a stronger duty on local authorities to prevent homelessness and allowing them to use suitable accommodation in the private sector;***

**Duty to prevent homelessness**

[3] *Shelter Cymru, Response to Homes for Wales: A White Paper for Better Lives and Communities, August 2012*

Putting prevention and support at the heart of responding to homelessness is an ethos that Cymorth Cymru has promoted since its formation. We know that preventing a housing crisis before it arises is the best option both in terms of the individual's experience as well as in financial terms for themselves and for the state. In a time of economic uncertainty it is more important than ever to ensure that public spending deliver value for money and it is our firm view that a focus on early intervention will help deliver this for Wales.

The new duty on local authorities to actively prevent homelessness will also create a more consistent approach throughout Wales towards tackling homelessness. Whilst there are example of good practice that currently exist, a more consistent approach is to be welcomed to ensure all vulnerable people throughout Wales get a high standard of service, and to ensure that these standards continue to rise.

A move toward a preventative approach will require a significant cultural shift for many local authority staff and for this shift to be effective, these changes need to be properly resourced and those involved in their implementation need to be adequately supported. We continue to develop our services to help staff in the sector to make these changes and are keen to work alongside Government and others to use our networks and influence to enable this shift.

**Homelessness Reviews and Strategies**

We support the Bill's duty to require local authorities to create more robust homelessness reviews and strategies. This opportunity to ensure 'buy in' from other areas of local government and promote the message that 'homelessness is not just a housing issue' should be maximised. Part of Cymorth Cymru's workplan is to strengthen links between the housing and health sectors and we are currently exploring how we can enable even greater join up between different sectors to ensure that vulnerable people are part of discussions and their voices, opinions and life experiences shape how support is provided.

It is important for collaboration and coproduction to be a key driver when taking this forward. Requiring local authorities to simply *consult* with key stakeholders will not deliver the same results as requiring them to *embed coproduction* at the heart of strategy and the design of services. We advise that learning should be taken from the Supporting People Programme and the way in which coproduction is enabling greater ownership and is allowing the Third Sector to become equal partners in discussions

influencing decision-making. We recognise that different areas are at different stages of this journey, and would welcome the opportunity to facilitate the sharing of good practice. This is an important element if an authority requires not-for-profit organisations to contribute to objectives within their homelessness strategy.

Given Cymorth Cymru's involvement in the development and implementation of the governance structure for the Supporting People Programme, we would be keen to facilitate any learning exchange.

**Greater use of private renting housing**

We support the move to make better use of the PRS by local authorities to reduce the pressure on social housing. There are concerns that the PRS can been seen as a panacea for Wales' housing situation and further investment might be needed to ensure that the PRS delivers on expectations. It is vital, therefore, that vulnerable individuals are given the correct support to help them to maintain their tenancy in the PRS in order to maximise the outcomes and avoid setting vulnerable people up to fail. For example, ensuring that vulnerable people are supported to gain and exercise the skills that are needed to independently maintain a tenancy as well as supporting people to achieve personal outcomes such as securing training or employment will deliver a more sustainable homeless service.

In order to make best use of the PRS, we support the introduction of a regulatory system and, as previously mentioned, we view this as an essential requirement of successful use of the PRS in terms of local authorities discharging their homelessness duty. We also suggest that the relationship between the Third Sector and the PRS is strengthened, allowing more initiatives like social lettings schemes to be implemented across Wales. It is essential that this relationship is forged to avoid vulnerable people being 'dumped' in the PRS without the support that they need. Such instances will simply lead to a revolving door of homelessness. Through the development of social letting agencies and other such initiatives that involve the third sector, we can ensure that access to the PRS is fair and open to all to combat the kind of discrimination that is currently faced by some groups.

**Priority need**

As a point of principle, Cymorth Cymru advocates for the removal of the priority need system in favour of an approach similar to the Scottish approach where all citizens who are homeless are accommodated. Given the success of this approach in Scotland, we

would like to see the Welsh Government adhere to its long-term aim of removing 'priority need' altogether. We however recognise that until we are able to reach this point, 'priority need' will remain a feature of the Housing (Wales) Bill.

Given the importance of a home and the aim of moving towards a Wales where we have a duty to house every homeless citizen, tightening the eligibility criteria for ex-offenders in priority need status is an area of concern for the organisation that we represent.

It is clear from the conversations that we have had with our members that simply putting a roof over someone's head is not enough. This is as true for those leaving prison as it is for many others. Given the high prevalence of unmet support needs among prison leavers, with many having mental health problems and substance misuse issues, there is currently not sufficient priority given to meeting the needs of this client group and addressing the root causes of reoffending. We are strongly of the opinion that the introduction of the additional barrier of a 'vulnerability test' will further exacerbate this.

It is estimated that more than 90 per cent of prisoners[4] have a mental health problem of some kind and that more than 70 per cent[5] of both male and female sentenced prisoners have at least two mental disorders. In addition, many are from disadvantaged backgrounds, have substance misuse issues and poor literacy rates. Given this, the prison population is regarded by many working in this area as vulnerable by definition.

We are concerned with the changes that have been made to priority need status for ex-offenders and the definition given in the Housing (Wales) Bill stating a need for both a local connection and vulnerability. As a national representative body, our members (who work across all 22 local authorities) regularly report a lack of consistency in the interpretation of homeless legislation. The inconsistency in the application of current priority need status for ex-offenders – with some local authorities using the 'intentionality judgement' as a way of denying accommodation – raises real concerns around the implementation of an additional 'vulnerability judgement' which could subsequently deny even more individuals access to accommodation.

A decision on whether or not someone is 'vulnerable' is in its nature subjective. When coupled with the divisive nature of this client group given the misplaced 'deserving' and

[4] (Social Exclusion Unit, 2004, quoting Psychiatric Morbidity Among Prisoners In England And Wales, 1998)
[5] (Social Exclusion Unit, 2004, quoting Psychiatric Morbidity Among Prisoners In England And Wales, 1998)

‘undeserving’ argument that is often applied to entitlement to accommodation, we foresee issues around the robustness of individual decisions made.

As called for in our response to the recent consultation on this specific issue, we would again emphasise the importance of taking an evidence-based approached towards policy making – especially in policy areas that are potentially divisive in the local community such as this. It is vital that we understand the current situation and evaluate what does and does not work for this group before major changes are rolled out. We would therefore advocate for a pilot with an open review and evaluation before priority need be removed.

**Intentionality**

Although we support the Bill’s plan to remove ‘intentionality’ for homeless families with children experiencing homelessness, Cymorth Cymru advocates for the removal of ‘intentionality’ entirely. Intentionality rulings are currently inconsistently applied across Wales, which is understandable as decisions are open to interpretation. We consider its current inclusion in this Bill as a missed opportunity and an area where a significant and positive impact could have been made to the experiences of homeless people and the organisations that work to support them.

We have received a clear message from our members who work with people with multiple needs that if intentionality is to remain for households without children, a duty to assess support needs becomes even more essential. Often, individuals who are found ‘intentionally homeless’ will more than likely be in need of some form of support to help them retain their tenancy.

If ‘intentionality’ remains in the Bill in its current form, it is important for the accompanying Guidance to include a clear time limit on intentionality rulings to ensure that vulnerable people are not barred from services for life.

**Local connection**

Local connection, like that of ‘intentionality’, is a component that ideally would not feature in any progressive homelessness legislation. Homeless people have the same right to decide where they wish to live as everyone else. Whilst we envisage this Housing Bill to be a catalyst for future change, it is important to not lose sight of the need to treat all citizens equally – regardless of whether they may be in housing crisis and despite the economic climate in which this Bill has been developed.

- **a duty on local authorities to provide sites for Gypsies and Travellers where a need has been identified;**

We welcome the proposal to place a duty on local authorities to provide sites for Gypsy and Traveller communities where need has been identified. We endorse the response by Tai Pawb in this area and would welcome meaningful consultation with Gypsies and Travellers in relation to identifying needs and the provision of services. It is also vital that the settled community and elected officials are brought on board with plans so that they can also take ownership of any plans as one of the key barriers to the implementation of this proposal is the opposition to the development of new sites from elected members and the settled community.

As previously stated, the benefits of using a process that embeds coproduction and co-design is required. Local authorities need to do more than simply *consult* with key stakeholders when producing their report on identified need and merely to include *'the responses (if any) it received to that consultation'* as stated in this section is wholly unacceptable. Ensuring that all stakeholders have an equal role in discussions and decisions will deliver much better mutually agreed and lasting solutions.

**2. Any potential barriers to the implementation of these provisions and whether the Bill takes account of them.**

The current economic and political landscape in Wales and across the UK cannot be underestimated. The worst effects of the welfare reform agenda are still to be fully felt by people in Wales and coupled with rising demand for services and the increasing levels of cuts in funding, this Housing Bill alone will not have the scope to protect vulnerable people from these outside factors. We know that preventative services have a cost saving element[6] when compared to the cost of intervention at crisis point, yet services for those in crisis will still be needed, and especially so in the current context. Given this, one of the major barriers to implementation is resources.

It is vital for the prevention agenda to be properly resourced to ensure that the necessary services are available. Those at the frontline of implementing this agenda need to also be adequately supported through this 'culture change' to ensure that the Bill's aims are fully realised.

[6] *How The Supporting People Programme In Carmarthenshire Saves Money For Other Areas Of The Public Purse, September 2010*

We need to use this opportunity of Wales' first Housing Bill to enable better links between policy areas. At a time when public spending needs to deliver as significant and positive an impact as possible, ensuring that all areas of Government understand their contribution to ensuring better services for vulnerable people and the resulting benefits in doing so is becoming ever more vital.

**3. Whether there are any unintended consequences arising from the Bill.**

As addressed in question 1, the areas of concern remain:

- Local authorities discharging their homelessness duty by placing vulnerable people in the PRS without adequate support to ensure tenancy sustainment
- Use of an unregulated PRS to accommodate vulnerable people and the potential for exploitation
- Substandard PRS accommodation used to house vulnerable people
- Areas of homelessness legislation such as priority need for ex-offenders, intentionality rulings and local connection preventing individuals from securing a decent home.

**4. The financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum (the Regulatory Impact Assessment, which estimates the costs and benefits of implementation of the Bill),**

Additional costs are to be expected with the introduction of any new legislation and there will be a period where additional funding is likely to be required to enable implementation. It is important to take account of the potential cost savings to be gained through a focus on prevention and enabling new approaches and that this should be weighed against any implementation costs incurred.

In order to measure the effectiveness of the Bill and ensure value for money, the costs of implementation and the impact of changes to legislation need to be continuously and openly reviewed and communicated.

**5. The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum, which contains a table summarising the powers for Welsh Ministers to make subordinate legislation).**

We accept what is set out in Chapter 5 of Part 1 of the Explanatory Memorandum in relation to the Welsh Ministers remit to make subordinate legislation.

**Nicola Evans – Policy & Information Manager**
**Cymorth Cymru**
Norbury House, Norbury Road, Cardiff CF5 3AS
Tel (029) 2055 3687
nicolaevans@cymorthcymru.org.uk

10/01/2014

Shelter Cymru

# Response to the consultation on the general principles of the Housing (Wales) Bill

13 January 2014

## Shelter Cymru

Shelter Cymru works for the prevention of homelessness and the improvement of housing conditions. Our vision is that everyone in Wales should have a decent home. We believe that a home is a fundamental right and essential to the health and well-being of people and communities.

## Vision

Everyone in Wales should have a decent and affordable home: it is the foundation for the health and well-being of people and communities.

## Mission

Shelter Cymru's mission is to improve people's lives through our advice and support services and through training, education and information work. Through our policy, research, campaigning and lobbying, we will help overcome the barriers that stand in the way of people in Wales having a decent affordable home.

## Values

- Be independent and not compromised in any aspect of our work with people in housing need.
- Work as equals with people in housing need, respect their needs, and help them to take control of their lives.
- Constructively challenge to ensure people are properly assisted and to improve good practice.

## Introduction

Shelter Cymru welcomes the opportunity to respond to this consultation. As a general comment, we are highly supportive of the overall aims of the Bill. We feel that the Welsh Government is moving in the right direction in terms of meeting the key housing challenges

of supply, quality, affordability and homelessness. Although we would like certain elements of the Bill to go further – which we will describe later in this paper – nevertheless our view is that the Bill as currently drafted still stands to make a positive difference, particularly to those most in need of help to find secure, affordable housing.

At the time this written evidence was submitted to the Committee, we were awaiting the results of a piece of research which we believe will help to inform the debate over the private rented sector (PRS) elements of the Bill. The evidence is in the form of a Wales-wide PRS tenants' survey, carried out in partnership with British Gas, which looks in detail at tenants' experiences across a wide range of areas. The survey fieldwork was carried out between December 2013 and January 2014. We are aiming to publish the findings and circulate them to Committee Members prior to our oral evidence session on 23 January. We hope that together with this paper and our oral evidence, these submissions form a useful contribution to the scrutiny of the Bill.

## Private rented sector

*The need for legislation*

We are a vocal supporter of statutory licensing for landlords and agents. Problems in the private rented sector make up a disproportionate amount of the casework we see every year: although the sector comprises 14 per cent of the stock it contributes around 30 per cent of our casework. We see far too much unprofessional conduct from both landlords and agents and we understand only too well how landlords sometimes fail to live up to their side of the tenancy agreement because of basic ignorance about their legal responsibilities.

In 2012/13 we saw 2,485 clients living in the PRS, dealing with 8,577 problems. The types of problems we regularly see include harassment and illegal eviction; dampness and disrepair; affordability and rent increases; and disputes over tenancy terms. Frequently problems are caused by a lack of understanding among landlords and tenants about the nature of their rights and obligations and this is something we see across the sector, from large-scale 'professional' landlords to small-scale 'amateurs' with one or two properties.

The sector is growing in importance, particularly among types of household that in the past would be more likely to be found in social rented or privately owned accommodation. According to Census data, the number of tenants in the Welsh PRS has risen by 42 per cent in ten years[1]. At the same time, the number of families with dependent children in the PRS has risen by 62 per cent[2]. Many pressures are contributing to this shift including reduced access to mortgages, shortages in social housing, the impacts of the economic downturn and welfare reform.

Given these trends, and given what we know about the problems tenants often face, measures to introduce a basic level of professionalism to the sector are long overdue. As

[1] From 130,182 to 184,254. (Census 2001; Census 2011)
[2] From 38,517 to 62,430 (Census 2001; Census 2011)

recognised by the Communities and Culture Committee in 2011[3], the PRS does not have a good public image and is not generally seen as a tenure of choice. The fact is that most people in the PRS are not there as a positive lifestyle decision but rather due to a lack of alternative options, and yet the sector is increasingly seen as the only workable housing solution for growing numbers of households.

Voluntary 'light touch' approaches to landlord accreditation have been tried extensively, but the proportion of landlords who are signed up to an accreditation scheme or membership body represent a minute fraction of the total numbers in operation.

Landlord Accreditation Wales has approximately 3,050 members which accounts for around three per cent of all landlords[4]. This proportion is way too low to make a substantial impact on standards.

According to a landlord blog post on the Property118.com website: *'There are over 1 million landlords [in the UK] and yet the combined number of members of all the landlords' associations listed above is less than 50,000 in total, even though several people, like me, are members of more than one.'*[5]

Clearly 'light-touch' schemes do not have the reach necessary to reach those landlords who are either unaware of their responsibilities or uninterested in improving performance. It is therefore critical that action is taken, both to address some of the worst aspects of the sector and to raise standards generally.

As such, we very much welcome that the proposal originally put forward by the Communities and Culture Committee in 2011 – that the Welsh Government establishes '*the effectiveness and feasibility of a mandatory licensing or registration scheme for all managers of private rented sector accommodation (including landlords) in Wales'* – has now been laid before the Assembly as a fully developed proposition.

As one of the members of the Stakeholder Advisory Group, Shelter Cymru has been consulted on the proposals throughout the process. We understand that the Government has looked closely at existing similar schemes such as those in Scotland and Newham and learned what works as well as what doesn't.

In our view, the landlord licensing scheme proposed by the Government is appropriate in its scope and objectives. We disagree that the scheme is an excessive administrative burden and we disagree that it will shrink the sector. The benefits to Wales in terms of reduced homelessness, crime, anti-social behaviour, litigation and health impacts will far outweigh any perceived burdens on landlords and agents.

[3] Communities and Culture Committee (2011) Making the Most of the Private Rented Housing Sector
[4] Based on figures in the Welsh Government Housing Bill Impact Assessment, par 7.30
[5] http://www.property118.com/landlordsassociationslist/31864/

*Barriers to implementation: learning from schemes elsewhere in the UK*

In the debate in Wales, the example of the Scottish registration scheme has frequently been cited as proof that landlord licensing is doomed to failure.

Our sister organisation, Shelter Scotland, conducted a review[6] of the scheme which concluded that the scheme was not fulfilling its functions effectively. Shelter highlighted several areas of learning, including:

- Some councils were not applying the 'fit and proper person' test in any meaningful way and were not using available sanctions to stop landlords who were continuing to indulge in bad practice
- Issues – real or perceived – with legal powers, which could be preventing the councils from using sanctions
- Numbers of unregistered landlords – approximately 15 per cent at the time of the review in 2009, comprising up to 25 per cent of properties
- Landlords' continuing lack of awareness about their responsibilities
- Tenants' continuing lack of awareness about their rights
- Councils and the police not supporting tenants when they were facing eviction or having been illegally evicted
- Possible lack of capacity and budget for councils to effectively carry out their duties with regard to landlord registration
- Lack of statistical data on the effectiveness of the scheme.

In comparing the Welsh and Scottish schemes, we think it's important to note that there are some considerable differences between the two. Crucially, the Scottish scheme had no basic training requirement and with the 'fit and proper person' test not being applied in any meaningful way, this severely curtailed the effectiveness of the scheme in driving up standards.

Indeed, one of the problems identified in the Scottish Government's evaluation[7] was that there was a lack of clarity about whether improvements in standards was in fact the scheme's primary aim: '*Research participants were not clear on the purpose of Landlord Registration – is it simply to create a register of landlords? Is it intended to tackle ASB? Is it intended to drive up standards of property management and condition?*'

In contrast, the Welsh Government's scheme is precisely aimed at achieving:

1) Improved standards in the private rented sector

[6] Landlord Registration in Scotland: three years on (2009) Shelter Scotland. Available at http://scotland.shelter.org.uk/professional_resources/policy_library/policy_library_folder/landlord_registration_in_scotland

[7] http://www.scotland.gov.uk/Publications/2011/07/13111732/0

2) More information available on landlords for local authorities and tenants

3) Raised awareness by landlords and tenants of their respective rights and responsibilities[8].

Furthermore, the Welsh scheme will be administered in a different way: while in Scotland registers were maintained by individual local authorities, in Wales there will be a single scheme administered by one authority, which will mean a considerably reduced burden on individual authorities. This will also mean a reduced burden on landlords with properties in different authority areas, since they will only need to register once.

It is important to note that the Scottish scheme is not the only example of landlord registration in the UK. The London Borough of Newham introduced compulsory licensing in January 2013 in order to tackle poor property and tenancy management and associated anti-social behaviour. The scheme aims to give increased protection to an estimated 35,000 tenancies. In the first six months of the scheme:

- More than 30,000 licence applications were received and more than 22,000 issued
- 2,320 properties were targeted with warning letters - 50 per cent went on to become licensed after their first letter
- 63 multi-agency operations to tackle unlicensed landlords and poor property management were carried out
- 110 legal cases were ongoing against criminal landlords, including 67 prosecutions for failure to license
- At least 110 arrests were made by police for alleged offences including immigration, drug dealing, grievous bodily harm, theft, fraud and harassment offences. One in five unlicensed properties have been found to harbour suspected criminals.

The scheme has been endorsed by Shelter England for sending a clear signal that enforcing the law against 'rogue' landlords is a priority.

Although the Newham scheme has not yet been fully evaluated, early outcomes suggest high levels of compliance with the scheme and better enforcement against 'rogue' landlords due to a strong correlation between failure to license and other forms of criminal behaviour. A survey by the Local Government Information Unit and the Electrical Safety Council in May 2013 found that a third of English councils were considering introducing compulsory licensing following Newham's lead[9].

[8] Housing Bill Explanatory Memorandum
[9] http://www.theguardian.com/housing-network/2013/may/29/councils-considering-compulsory-landlord-licensing

*Barriers to implementation: ensuring compliance*

The experiences in Scotland and Newham suggest that robust enforcement is critical to ensuring compliance with the scheme. One of the lessons to emerge from Scotland was that local authorities found enforcing non-registration to be a resource burden. Non-registered landlords were relatively easy to identify, using a variety of methods including cross-checking Housing Benefit and Council Tax records, but authorities then struggled to make contact with the large numbers of identified unregistered landlords.

In Scotland there appeared to be a general loss of faith with the scheme, as the public realised that unregistered landlords were unlikely to face prosecution which reduced the motivation among landlords to sign up. By contrast in Newham, the six-month performance statistics published by the authority sent a clear message to the borough that failure to register could lead to serious repercussions.

The Welsh scheme has learned lessons from Scotland and Newham in this regard, and is proposing to ensure compliance via a combination of communications and enforcement activity. The Welsh scheme introduces a number of innovative approaches such as requiring landlords to include their licence number on all property listings. This is a very positive approach, which will help authorities to identify unregistered landlords as well as help tenants avoid them.

However, we caution against relying too much on tenants to drive landlord licensing through consumer choice. The PRS is a seller's market. Most advertised tenancies receive multiple applications and the average void time between tenancies is only three weeks[10]. Unfortunately, many tenants would not have the luxury of being able to choose between licensed and unlicensed landlords. Even if the Welsh Government invests substantial sums in a wide-ranging communications campaign, robust enforcement – and the effective communication of the outcomes of that enforcement – will still be critical to success.

The Welsh Government is proposing to introduce a 'Rent Stopping Order' as a measure to encourage landlords to register. The evidence from Scotland suggests that this will be a powerful incentive as a threat. However, we have some misgivings that unless such Orders are used carefully, they may expose tenants to the risk of harassment, illegal eviction and even acts of violence. If they resulted in the landlord defaulting on the mortgage they could also lead to homelessness.

We suggest that compliance with the scheme would be further enhanced by introducing a sanction that has already been used to good effect in relation to tenancy deposits and licensing of HMOs. Currently landlords who fail to protect the deposit or who operate unlicensed HMOs are prevented by the Court from issuing eviction notices (known as Section 21 Notices) until they have either protected the deposit or become licensed.

[10] ARLA Members Survey of the Private Rented Sector. Fourth quarter 2013. Available at http://www.arla.co.uk/media/466322/ARLA-PRS-Report-Q4-13.pdf

Tenancy deposit legislation was evaluated in 2012 and found to have led to 92.41 per cent compliance with the law[11]. As the Section 21 restriction is the only legal sanction for dealing with non-protection of deposits, this must be seen as an effective way to ensure compliance. It also has the advantage of being enforced in the Court, so does not represent a resource burden on local authorities. We therefore suggest that the Housing Bill be amended to include a Section 21 sanction similar to those currently contained in the Housing Act 2004.

We also argue that the scheme's effectiveness would be enhanced if the 'fit and proper person' test included a DBS (formerly CRB) check. This would avoid the same situation arising as in Scotland, where the test was not applied in any meaningful way. Although this will cost more, we would point out that the Welsh Government's proposed registration fee is extremely low and in Newham, where DBS checks are standard, the fee is ten times as high at £500.

Finally, we would emphasise the importance of the Codes of Practice, which have the potential to be a powerful tool to communicate standards and to help tenants take regulation into their own hands if needs be. We think it's important that the Codes of Practice are developed in direct consultation with PRS tenants, to ensure they are based in people's actual experiences. We would also like to see a clear process for dealing with non-compliance with the Codes. Tenants need to have ways of reporting non-compliance without fear of retaliatory acts. There also needs to be a defined process for revoking licences where there is repeated failure to comply.

*Unintended consequences: impacts on small-scale landlords*

We understand that one of the main objections to landlord licensing is that it will be a disproportionate burden on single-property landlords. We strongly disagree with this idea.

The fact is that single-property landlords make a substantial proportion of the market. Although no comparable data exists for Wales, in England the proportion of landlords who own only a single dwelling for rent is 78 per cent, owning 40 per cent of the stock[12]. To exempt this many landlords from the scheme would render it completely ineffective as a means of raising standards across the sector.

Shelter Cymru caseworkers encounter fresh examples daily of 'amateur' single-property landlords who cause problems because they have no idea what their legal responsibilities are. While we don't collect statistical data on landlord portfolio size we can provide many case studies illustrating the hardship that tenants face at the behest of single-property landlords. Some examples are included below.

[11] Harriot, S. (July 2012) Tenancy Deposit Protection: an evaluation of the legislation, five years on. Tenancy Deposit Scheme. Available at http://www.tds.gb.com/resources/files/Evaluation%20Report%20TDS.pdf
[12] Department for Communities and Local Government Private Landlords Survey 2010. Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7249/2010380.pdf

**Case study 1**

Our client was a young single female. She had been assisted by the local authority to locate a suitable flat in the private rented sector.

Two weeks after she had moved in, the landlord woke her in the early hours of the morning to say she objected to her having friends visit and she wanted her 'out'. Although there were no reasonable grounds for the landlord's objection, our client asked her friends to leave immediately. The landlord said her ex-boyfriend wanted the flat, so our client must move out.

Over the next two weeks our client faced many instances of threats and intimidation by text and in person. The landlord told our client that her ex-boyfriend would move in the following Friday. Our client was aware that this individual had a local reputation for violence and unpredictable behaviour, so she packed her things and left on the Thursday evening.

The local authority provided our client with temporary accommodation and are currently considering whether there is evidence for a criminal prosecution. It seems clear the deposit was not protected and the authority is considering how to recoup this loss to the public purse.

We have had a previous client who was a tenant of this same landlord, who complained about disrepair and poor conditions, failure to protect the deposit and failure to return the deposit at the end of the tenancy.

**Case study 2**

Our client was unlawfully evicted by his landlord, who claimed that firearms and drugs had been found at the property. In fact these claims were fabricated and the real reason was because our client's Housing Benefit had been stopped through no fault of his own.

Through the Court our client was reinstated and obtained a compensation order of £7,500. The landlord faced committal proceedings because he failed to comply with the Court order. The property remained in a poor state of repair. This case took place in 2010 and to our knowledge the landlord has still not paid the compensation back.

**Case study 3**

An individual came to us seeking assistance after he had been evicted from his own mortgaged property following marriage breakdown. He was himself a landlord and had moved into his buy-to-let mortgage property – while he still had a tenant living there. The tenant owed him £1,500 in rent and was avoiding him. Our client was unaware that there was any legal obstacle to him simply moving into the property himself while the tenant was staying away.

The client did not understand that he had illegally evicted his tenant by moving into the property without having served a valid Notice to Quit. His actions were in no way malicious, just ill informed.

**Case study 4**

Our clients were a young family renting a higher end city property. There was significant disrepair, including water penetration, damp and mould, disrepair to a first floor balcony and garage, excess cold due to a dysfunctional heating system and a problem with flushing waste from the sanitary installations.

The tenant tried many times to correspond with the landlord through his agent concerning the disrepair, with no adequate response. There were evident communication problems causing the tenant great inconvenience and some considerable distress. Due to the lack of response and since the conditions were causing harm to the family, the matter was reported to Environmental Health. Officers inspected the property and identified numerous hazards.

The authority is now taking steps to require the landlord to bring the property to a decent standard. While the problems should now be addressed, the tenant and his family still face weeks or months of disruption and difficulty. It is unlikely they will be compensated.

**Case study 5**

The tenant is a single parent who is working part time and also studying. The landlord resides in another property a few streets away. The house has major issues with damp, which has ruined furniture and has had an impact on the health of the tenant's 16-year-old son who has asthma.

The tenant has asked the landlord repeatedly to fix the damp but while he promises he will get it done, he has never fulfilled the promise. When the tenant's back door was broken it took the landlord three months to repair the door, and in the meantime the tenant had to climb through a window to hang washing out, put rubbish out and access the gas and electric meters.

The porch regularly floods which means that the mail gets ruined, and the front door has no handle or lock.

The tenant is too scared to pursue the complaints any further as she feels the landlord would evict her. She cannot financially afford to move as she believes the landlord would refuse to return her bond.

**Case study 6**

The tenant is a student and was renting a bedroom in a house also occupied by the landlord. After two weeks of moving in the tenant noticed that when he returned home in the evening the possessions in his room had been disturbed.

The landlord denied having been in his room. This continued until the third month when the tenant came home to find the landlord in his room. She claimed that she would do a weekly check to ensure the room was being kept clean and tidy. The tenant told her he would have been happy to show her the room on a weekly basis, but he felt he could not trust her and was unable to remain in the property. When he gave her notice she told him he couldn't leave as she didn't have the bond to give him. He suggested that he keep the next month rent in lieu of the bond but she refused this offer as she needed the rent to pay the mortgage.

**Case study 7**

The tenant was a full time student with two young children. The landlord lived abroad in Australia and told the tenant that the property was for let on a long-term basis. The property was slightly run down and when the tenant signed the two-year tenancy agreement she gained the landlord's consent to decorate and 'fix up' as she pleased. The tenant then spent considerable effort and money to bring the house to a good standard. The property was managed by an agency and there were no issues with the tenancy. However a year into the tenancy the landlords returned to the UK for a holiday and inspected the property. They were extremely happy with the state of the property and praised the work that had been done. A week later the tenant received Notice to Quit. Despite the two year tenancy there was a break clause allowing the landlord to serve a 'no-fault' notice after one year. When the tenant queried the notice with the agency they disclosed that the landlords were so impressed with the work done that they had decided to rent the property to their son, who had previously turned it down due to its run-down state. Unfortunately there is nothing within current law to prevent landlords from doing this despite the detriment it caused to the tenant and her children.

Most of the above cases represent tenants who took the step of seeking help from us and the local authority. Our concern is for the many tenants out there who put up with poor practices and comply with illegal evictions because they are unaware of their rights or unaware of where to go for assistance.

Fundamentally the question of portfolio size is irrelevant to tenants, who will feel the impact of poor practices no matter what scale their landlord's business happens to be.

This is already recognised in other areas of regulation: in food hygiene inspections, for example, even small-scale businesses must have food safety management systems in place because they serve the public and bad management can carry a serious human cost.

Poor landlord practices also lead to serious impacts on health and wellbeing and as such, there needs to be a basic level of professionalism in line with the responsibility of the role. There should be no such thing as 'amateur' landlords in Wales.

We also disagree with the argument that the training requirement is disproportionately onerous. In fact the proposal is for nothing more than a one-day training course and, should landlords feel unequal to the task of a one-day course, they are free to engage a management agent on their behalf.

Our view as a provider of legal training on housing is that one day is extremely tight to cover the range of issues that landlords need basic training on. We would like to see a more stringent requirement including an examination, to ensure the training makes a real impact. We would also like to see the proportion of lettings agency staff receiving training to be higher than two-thirds. Nevertheless, the Bill's proposals are an excellent start and we are encouraged that there will be a Continuing Professional Development requirement in the Codes of Practice.

We have not seen any evidence from Scotland or Newham that licensing has harmed the sector because of landlords leaving. While it is possible that some landlords may sell up, it does not necessarily follow that the size of the sector will reduce. The evaluation of HMO licensing[13] found that some landlords did sell up as a result of compulsory licensing. However there remain in Wales around 19,484 HMOs[14] and local authority estimates of HMO numbers have not declined since the introduction of the legislation.

*Financial implications*

Overall we support the impact assessment's description of the financial implications of licensing, although we note that the model assumes 100 per cent compliance within two years. In order to achieve this ambitious aim we would suggest (as described above) that linking failure to register with a sanction on Section 21 powers would help achieve compliance without creating a drain on local authority resources.

As already noted, the proposed fees on landlords and agents are extremely low compared with fees for similar schemes. We are keen that registration and accreditation should lead to quantifiable improvements in standards, and should be seen to do so. For this reason we would like to see fees raised if they enable a more rigorous approach to enforcement and the 'fit and proper person' test.

Finally, we do have some concerns about fees potentially being passed on to tenants. We note that the charges are low and would not represent a serious problem if they were passed on to tenants at the same rate as they are applied to landlords. However we need to ensure that landlords do not use it as an excuse for disproportionate rental or fee hikes.

We have conducted research into lettings agents' fees and charges[15] which showed high levels of set-up fees among many agents in Wales. Some were charging fees that

[13] Department for Communities and Local Government (2010) Evaluation of the Impact of HMO Licensing and Selective Licensing. Available at http://webarchive.nationalarchives.gov.uk/20120919132719/http:/www.communities.gov.uk/documents/housing/pdf/1446438.pdf
[14] Estimated figure for 2011/12. Source: StatsWales
[15] http://www.sheltercymru.org.uk/letting-agency-fees-in-wales/

amounted to up to 120 per cent of the monthly rent. The average across all agents surveyed was 45 per cent of the monthly rent. Types of charges varied considerably and could include renewal fees, 'check-in' and 'check-out' fees to hand over keys and check inventories, and non-refundable pre-contract administration fees for everyone who applied for a tenancy regardless of whether their application was successful.

The study also found that many charges were 'hidden', meaning that prospective tenants were often unable to discover the true cost of setting up a tenancy until they were well into the process of making an application, by which time they may already have handed over some non-refundable payments.

We are keen to see greater transparency over fees and charges and we hope that the Codes of Practice for both landlords and agents will include requirements about transparency in charges, conforming to the Advertising Standards Authority's recent ruling on this issue[16]. Should this prove ineffective then we may campaign for a total ban on premium charges, as is the case already in Scotland.

## Homelessness

*The need for legislation*

We have long argued for a simplified, universal homelessness service. The current legislative and policy framework is skewed towards the administration of complex tests in order to ration available help. This has led to a culture of distrust between providers and users and has meant that fewer resources have been available to carry out the primary purpose of services which is to help people in housing need.

To illustrate the need for change we would point to the most recent statistics on homelessness. These have been reported as demonstrating a reduction in homelessness but closer examination reveals that it is only homeless acceptances that have reduced. In fact, over the first six months of 2013/14 (the most recent data we have available) actual presentations were higher than they have been in any six-month period since 2005/06.

So there is a growing gap between the numbers of people presenting as homeless, and the numbers being assisted via the main duty.

As Figure 1 illustrates this is a very recent trend, only over the past four quarters. Until 2012/13 the proportion of applicants accepted as homeless held relatively steady at between 40-46 per cent every quarter. Over the last four quarters the percentage has been dropping: 37 per cent, 35 per cent, 33 per cent and most recently 31 per cent.

[16] http://www.asa.org.uk/News-resources/Media-Centre/2013/ASA-sets-deadline-for-letting-agents-to-be-up-front-about-fees.aspx

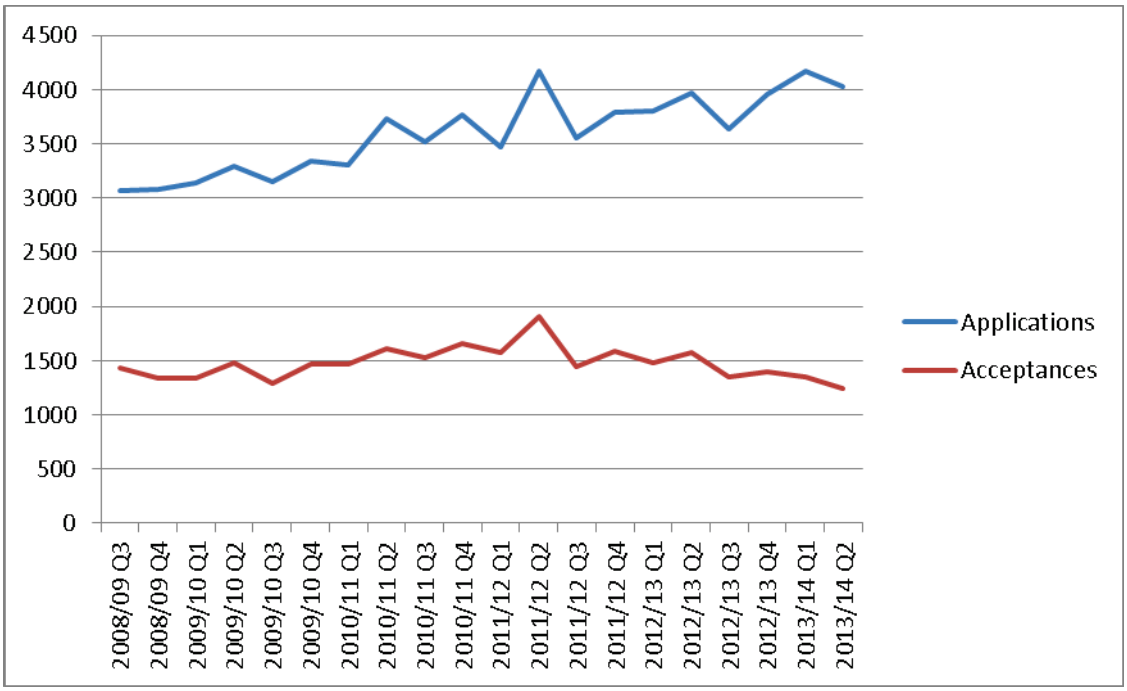


*Figure 1: Homeless applications and acceptances in Wales, Q3, 2008/09 to Q2, 2013/14*

At the same time the proportion of applicants found 'not homeless' has been increasing. Until the end of 2011/12 it held steady at around 32 per cent of applications, but in April-June 2012/13 it increased to 40 per cent and has not reduced since. In the last quarter it stood at 42 per cent.

Conversations with local authority representatives suggest that there may be numerous reasons for these trends, including:

- Authorities may be gearing up for the new statutory framework by implementing a prevention-focused approach in advance of the Bill becoming law
- Authorities may be applying the 28-day definition of homelessness more strictly
- The Under-Occupancy Penalty (or 'Bedroom Tax') is reducing demand for three-bed properties, so that larger families at risk of homelessness are securing offers via the housing register prior to a decision being made
- Better joint working with other agencies may be leading to more information-sharing about applicants' circumstances and hence more 'not homeless' decisions.

The above factors must also be seen in the light of the current economic situation, whereby service providers are under pressure to help more people with fewer resources.

To summarise: homelessness presentations are at the highest level for eight years. Despite this, the proportion of applicants found to be owed the main housing duty is in decline. This may be due to a number of reasons including local authorities' increasing use of preventative measures. Whatever the reasons are, it is clearly not acceptable that nearly seven out of ten people who approach services either receive a basic level of

assistance, as required by current law, or else are assisted outside the statutory framework.

The system as it currently stands is very much an 'all or nothing' offer. People are either entitled to secure settled housing or to basic forms of assistance. There is little in between, and this ignores the reality of people's situations and the varying nature of people's housing needs.

We need a new framework that acknowledges the many forms of prevention work that local authorities are already doing, and brings that work within the remit of the law so that people are guaranteed a certain level of assistance.

We were highly supportive of the new framework as laid out in the White Paper, and we remain supportive of much of this Part of the Bill as it currently stands. We welcome the commitment to end family homelessness by 2019, a move that will help to ensure brighter, more secure futures for hundreds of families every year who are currently trapped in cycles of repeat homelessness. This proposal is consistent with the Welsh Government's commitment to the rights of the child and, we hope, points the way towards a more rights-based approach to homelessness in future. Once this new approach for families has been put in place, we hope we will see the Welsh Government expanding the concept to include all households.

We very much welcome the ambition to create a new statutory prevention service that will be available to everyone who needs assistance. The general direction is towards a more responsive and flexible service that can help more people in more effective ways. Research carried out by Shelter Cymru and Cymorth Cymru on behalf of the Welsh Government[17] found that not everyone who presents as homeless was looking for social housing: some people wanted temporary accommodation and some wanted practical or financial assistance to find their own accommodation. Sometimes all that people needed was a comparatively modest intervention such as assistance with a bond and first month's rent.

It is very positive that the Welsh Government has taken this on board. If the new framework achieves what it sets out to do, it has the potential to create for Wales something approaching the rights-based model pioneered in Scotland.

That said, we still have some specific concerns, which we will describe in more detail later in this response. In particular these are:

- The withdrawal of the 'safe place to stay' entitlement as described in the White Paper
- The removal of priority need for prison leavers
- The application of the 'vulnerability' test
- The duty on local authorities to have regard to the best use of resources

[17] http://www.sheltercymru.org.uk/wp-content/uploads/2013/03/CEP-English.pdf

- The discharge of homelessness duties into the PRS.

We are still hopeful that, in the long run, the Welsh Government will continue to aim to abolish priority need altogether. This was proposed in the original White Paper but was dropped following concerns about resources. The new prevention service, once established, may deliver substantial savings for local authorities provided it is implemented effectively. In time, we hope the Government will revisit the proposal to eradicate priority need, given that it is a pernicious and unfair way of rationing housing that leaves many people's needs unmet.

*Barriers to implementation*

Whether the new framework functions as intended depends on many factors, including the state of local housing markets, the willingness of partner services to take on responsibility, and the extent to which households are able to have support needs met.

We would have liked to see the Welsh Government create stronger duties on local government around the provision of support, potentially along the lines of the support duty implemented by the Scottish Government. There is a very real possibility that under the new prevention duty, applicants may have support needs identified but because no suitable services are available locally, those needs will go unaddressed. This will of course make prevention work less effective because it will lead to more repeat presentations.

The new prevention service requires a complete culture change in the way that providers and users relate to each other as well as changes in relationships between different agencies. At Shelter Cymru we see this process as wholly positive and we are committed to forging healthy working relationships with local authorities and other partners. There are already some shining examples of local partnership working and we believe this leads to better outcomes for our clients.

Genuine partnerships with service users are key to preventing homelessness long-term. But in order to make such partnerships work, services need to abandon the mind-set of 'carrying out investigations', trying to catch service users in the act of lying, and instead acknowledge users' motives as valid and reasonable.

Our research has shown that some are happy to rent privately. However, the solution does not work for all. The reality is that the PRS can be expensive and insecure. There is nothing unreasonable about wanting to escape it. If this is the wish of some people approaching services, providers need to understand why they hold that view and stop seeing them as trying to cheat the system when all they are seeking is a stable living situation.

Finally, and perhaps most challenging of all, there is the upward pressure of welfare reform and the inevitability of increased presentations in years to come. When workloads are high there is always a risk that frontline staff resort to short-term quick fixes rather than look at the underlying causes of problems. The priority for the framework must be to create

a solid underpinning for these conversations with users, ensuring that affordability, quality, security and support needs are all addressed, because in the long run it will be more cost-effective to do so.

*Unintended consequences: withdrawal of the 'safe place to stay entitlement'*

We think it's important to acknowledge that the White Paper went further in a number of areas which have now been abandoned in the Bill. Some of those areas are critical for the establishment of a truly equal and person-centred service. In particular we regret the changes in the proposals relating to applicants who are actually homeless, as opposed to threatened with homelessness.

The original White Paper proposal included a 'safe place to stay' entitlement that would ensure that all homeless households that needed it could access emergency accommodation while prevention work was carried out. The entitlement would not necessarily be available to all homeless applicants but would depend on the authority's assessment of whether the household had a safe place to stay such as with family or friends.

This was in recognition of the fact that it is extremely difficult to provide services of this type to homeless households, since they are very likely to drop out of contact unless they are allowed to stay in one place.

The 'safe place to stay' entitlement has not made it through to the Bill but was abandoned following representations from local government, due to concerns over resources.

We think the Scrutiny Committee should be aware that the financial implications of offering a safe place to stay have by no means been established beyond doubt. In fact there have been three different impact assessments, each showing significantly different figures:

a) The independent impact assessment[18] commissioned by the Welsh Government based its figures on combined analysis of Welsh and Scottish data, and concluded that the 'safe place to stay' entitlement would equate to approximately 114 households per local authority per year. This would result in a total additional cost of **£401,440** for the whole of Wales.

b) Following the publication of this assessment, a rival assessment was produced by local government which has never been put into the public domain. We understand that the figure was extremely high, based on assumptions that the entitlement would lead to high levels of border-hopping from England, and that it would encourage people to abandon their own accommodation. We are unclear what the evidence base for these assumptions may be.

c) Using the two above assessments, the Welsh Government carried out its own analysis and estimated that the additional cost would be approximately **£4 million**

[18] http://wales.gov.uk/docs/desh/publications/120901housingimpacten.pdf

in the first year. This was based on certain assumptions shared with local government – that the entitlement would incentivise more people to present as homeless. While not as high as the local government figure, the Welsh Government has assumed that homelessness presentations would increase by **10 per cent**.

Until the approach has been trialled, we are not able to say with any certainty what the costs would be. However, we think that Scrutiny Committee Members should be aware of the true significance of the entitlement, in order to get a clear sense of what excluding it will mean.

The beauty of the original proposals as detailed in the White Paper was the principle of equality at the point of approach. The prevention service would guarantee that everyone would receive the same treatment and would have an equal chance of accessing help. Instead of tests being foremost, the priority would be to find out what assistance people needed and then help deliver it.

The current proposals will mean the re-introduction of priority need and local connection tests at an early stage for homeless applicants. These tests represent administrative obstacles that divert resources away from the task of helping people. They add considerable complexity to the scheme, and are a relic of the old system that should have no place in a person-centred approach.

Inevitably, the tests will lead to a two-tier service for homeless households with worse outcomes for those not in priority need. Those households, which include some of the most vulnerable in our society, will be forced to stay in unsafe situations while prevention work is carried out and may well drop out of reach entirely.

The priority need test is a traumatic process to undergo and unfairly excludes people who need assistance. It is not a measure of housing need but an indiscriminate way of rationing resources. The White Paper noted how priority need 'is clearly open to inconsistencies with single people needing to prove that they have a specific vulnerability'[19]. Overall, we see this as a retrograde step that will be a hindrance in the drive to build a more person-centred approach to service delivery.

If the 'safe place to stay' proposal is not reinstated, we hope that the Government will act on any future evaluation findings that demonstrate differential service outcomes for priority and non-priority households. We would like to see the Government carry out a trial so that it is possible to base future impact assessments on stronger evidence than is currently available.

*Unintended consequences: removing priority need for prison leavers*

Last year we worked with 569 clients who were homeless on release from prison, both through our main advice services and through Prison Link Cymru (PLC), a service we run in North Wales that assists prisoners in housing need prior to release. We feel that our

[19] Homes for Wales: A White Paper for Better Lives and Communities (May 2012) par 8.16

unique position in Wales gives us an in-depth understanding of the housing needs of prison leavers and how these can best be met.

We understand that the arguments in favour of removing priority need status for prison leavers fall into two basic categories:

- Moralistic: based on ideas about 'deserving' and 'undeserving' people in poverty; and
- Pragmatic: based on the observation that many prisoners still reoffend, despite having priority need status.

The problem with the first set of arguments is they ignore the basic fact that letting people's housing and support needs remain unmet has consequences for wider society, and those consequences carry a cost to the public purse. No matter what people might have done in their past, it makes no economic sense to deny them the opportunity to create a stable living situation as an essential first step to help them address whatever problems they may have.

The second set of arguments are weakened by the fact that there has never been a robust evaluation of the Homeless Persons (Priority Need) (Wales) Order 2001. There was no baseline monitoring established when the Order came into force and since then there has been no real effort to quantify how effective the Order has been in reducing recidivism and what relation these results may bear to the way in which priority status has been implemented in practice.

We agree that the response to the housing and related needs of prison leavers has not often been satisfactory, and that a more flexible approach is needed. However we disagree that the legal duty to accommodate prison leavers is itself to blame. Evidence from Shelter Cymru casework and research suggests that the appropriateness of the service package as a whole is a key factor affecting the likelihood of someone re-offending. We have carried out several pieces of research[20] [21] indicating that some services are implementing good practice in this area and that for at least some people leaving prison, the priority status has worked in the way that it was originally intended.

Unfortunately though, despite examples of good practice, for many prison leavers the homelessness route remains a revolving door. We believe this is because there has not been sufficient priority given to meeting the needs of this client group and addressing the root causes of homelessness and reoffending. Among our prison leaver clients there is a high prevalence of unmet support need: many are care leavers and many have mental health conditions and substance misuse issues.

A study carried out by Humphreys and Stirling in 2008[22] identified many gaps in current provision that needed addressing, including:

[20] Mackie, P. (2008) This time round: exploring the effectiveness of current interventions in the housing of homeless prisoners released to Wales. Shelter Cymru
[21] Bibbings, J (2012) Policy briefing: homeless ex-offenders in Wales, 2010/11. Shelter Cymru
[22] Humphreys, C. and Stirling, T. (2008) Necessary but not sufficient: housing and the reduction of reoffending

- Ensuring sufficient provision of appropriate accommodation including temporary accommodation, specialist and supported settings, and move-on accommodation
- Ensuring funding is in place to provide support both on an in-reach and out-reach basis
- Ironing out inconsistencies in partnership working
- Addressing gaps in knowledge and expertise among relevant staff
- Measures to address nimbyism and discriminatory attitudes that can be obstacles in setting up new services.

To this list we would also add ensuring that people are placed in decent quality accommodation that is suitable for their needs and where 'house rules' are not unreasonably difficult to adhere to. Our clients often tell us that problems in temporary accommodation are a cause of homelessness and reoffending.

*'There was one toilet and one shower for seven rooms over two floors. There wasn't a cooker, only a microwave and a camping grill to heat your food on. To me, for seven people, that was not sufficient and caused a great deal of aggro.'*

*'It was fantastic accommodation but it was like living in Beirut. The neighbours hated us, there were burning cars outside. The flat was OK but I felt so unsafe and scared all the time. The locals were not accepting of us and made us aware of it.'*

*'You don't want to be sat in a tiny room, staring at the walls, when you have just done that in prison. That is all I could do. You were not allowed guests there. You weren't allowed to drink, nothing. They are little things but they are your freedoms.'*

- Prison leaver service users

In Wales we may have made a mistake in the past by assuming that settled housing will by itself solve all the problems of a person leaving prison. While settled housing is not a panacea, without it other measures aimed at reducing reoffending may have limited success.

If housing is a necessary, but not sufficient, condition to prevent reoffending, then surely the solution is not to destabilise the 'necessary' condition but rather to ensure that the supporting conditions are more effectively met.

Fundamentally the problem is that there are very few housing and support options for people leaving prison, and this has led to what some have termed an 'over-reliance on the homeless route'. Typically there are extensive waiting lists for supported accommodation, and there are few private landlords willing to agree to accommodate former prisoners, particularly while they are still in custody. Our PLC service has great difficulty making

successful referrals to private landlords, even via lettings agencies that specialise in accommodating prison leavers. For these reasons we have misgivings about how effective the prevention approach will be unless it is underpinned by priority status.

If only there were enough accommodation and support for our clients, we would be strongly in favour of a prevention-led approach that can respond more flexibly to people's different circumstances. More prison leavers need proper assessments of support need to identify the underlying factors behind homelessness and offending behaviour. A person-centred approach to solving housing problems could be very positive for our clients, who are used to a more paternalistic service culture where they have little agency and are typically not well informed about their situation.

However, the crucial point is that such a partnership approach has to be backed up by real options and we fear that the new prevention duty may not provide enough incentive for local authorities to work with their partners to put those options in place. The statutory framework needs to ensure that the needs of prison leavers are not ignored despite their lack of priority status. It would be very damaging for our clients if a local authority were able to state that they had looked at 'all reasonable steps' for a prison leaver client, but because no suitable services or accommodation were available locally, they had discharged their duty with that individual remaining homeless.

We note that there is nothing specific in the draft Bill about whether people in prison will have the right to access prevention services. We think it's important to clarify this in law to prevent people falling through the net.

While the general population will have the right to seek help within 56 days of homelessness, for prison leavers there is often the need for intervention at the start of sentences in order to address any Housing Benefit issues and make an informed decision about retaining accommodation or giving it up. For this reason we would like to see a more flexible definition of homelessness for people in prison that requires services to be provided earlier than 56 days if necessary.

If homeless prisoners do not have the opportunity to engage with prevention services then, unless they can prove vulnerability, the removal of priority status will mean that many will end up spending their first night post-release as a rough sleeper.

In our experience, this first night is critical for prison leavers. If there is no available accommodation and people have to spend their first night on the streets or in a night shelter, this considerably increases the likelihood of reoffending. For most of our clients this means falling back into substance misuse and from there to acquisitive crime. This is why it's important to establish a statutory right to access prevention services while in prison.

To summarise: our preferred approach is for a new and enhanced prevention service for prison leavers that is underpinned by the existing priority need status. If the Government's proposal to remove priority status for prisoners becomes law, it will be critical to ensure that the prevention service is a strong one, and that all prisoners can access it. We feel the following need to be taken into account:

- Prison leavers need to have the right to access prevention services established in law. We would like to see a more flexible definition of homelessness for people in prison that requires services to intervene earlier than 56 days if necessary.
- There needs to be substantial investment to expand the accommodation and support options available to prison leavers.
- There needs to be a more robust approach to the assessment of vulnerability (see below) and independent advocacy needs to be available to all prison leavers presenting as homeless on release.

*Unintended consequences: the vulnerability test*

One of the most difficult aspects of our work is in liaising with local authorities over the application of the vulnerability test. The Pereira Test confers a large level of discretion on local authorities, which can lead to considerable inconsistencies in the way homeless people are treated in different parts of Wales.

The vulnerability test often leads to homelessness officers assuming a medical role which in our view is not appropriate. Our casework includes examples of scenarios this can lead to, which include:

- Officers making decisions about how high a dose of a particular antidepressant should be in order to qualify the applicant as sufficiently depressed to be 'vulnerable'
- Officers deciding that alcohol addiction does not qualify applicants as vulnerable because their addiction is down to 'lifestyle choice'
- Officers looking up particular drugs on Wikipedia rather than consulting with the GP.

In the case of prison leavers, we feel it will be particularly difficult for clients in this group to pass the test. The culture of distrust that exists between providers and users of homelessness services is especially strong around prison leavers.

Our casework reveals that prison leaver clients are more likely than any other group to experience gatekeeping. In 2012/13, 32 per cent of our homeless prison leaver clients experienced gatekeeping, compared with 17 per cent of our homeless clients overall. Local authorities attempted to dissuade our clients from making an application in various ways including telling them they might be found intentionally homeless or not priority; that there was no suitable temporary accommodation available for them; and by requiring an unreasonable burden of proof.

Our view is that many vulnerable prison leavers will find it extremely difficult to persuade a local authority to accept the fact of their vulnerability. People in these circumstances need strong advocacy to assist them to access the services to which they have a legal right. We see it as critical that all prison leavers have access to such advocacy to ensure that vulnerability is correctly identified.

We note that the Bill as currently worded has omitted ‘mental health’ from the list at Section 55(1)(c)(i) of examples why an applicant would be vulnerable as a result of a special reason. While we appreciate that the list is not exhaustive we feel this sends the wrong message and potentially moves us in the wrong direction, particularly if we are relying on the vulnerability test to identify those prison leavers who would face significant detriment due to the removal of priority need.

We would like to see the Housing Bill include a much more robust and specific definition of vulnerability to replace the Pereira Test that would ensure greater consistency and fairness. We would like to see this introduced across the board, for prison leavers as well as the general population. Our Legal Team would be happy to assist in the drafting of an amendment, if Assembly Members would find that useful.

*Unintended consequences: Having regard to the best use of resources*

The current wording of the Bill under Section 51(a) requires local authorities ‘to take reasonable steps to help, having regard (among other things) to the need to make the best use of the authority’s resources’. We understand and appreciate the need to put some controls on the maximum that can be spent on any particular case. However, it is also important that such controls are operated in a transparent way that can potentially be challenged if necessary.

The opinion of our Legal Team is that the current drafting is unhelpfully vague and will be extremely difficult to challenge. It is important that homeless applicants can be assured that local authorities will not use Section 51 as a general ‘get-out clause’ that exempts them from carrying out further prevention work.

There exist legal precedents such as the Freedom of Information Act 2000 which contain specific limits as to how much work is reasonable for a local authority to carry out. We recommend that this Section of the Bill be amended to tighten up the wording and ensure that it cannot be used in an unscrupulous way to the detriment of applicants.

*Unintended consequences: discharging homelessness duties into the PRS*

The discharge of homelessness duties into the PRS is necessary only because of the long-term pattern of underinvestment in social housing. We reluctantly accept that the only realistic way to meet housing need is to discharge homelessness duties into the PRS.

Not everyone who presents as homeless is seeking social housing. For some people the PRS is a suitable offer. However the fact is that the PRS is a much less stable solution,

as evidenced by the fact that nearly one in five homeless acceptances in the most recent quarter were due to the loss of rented accommodation[23].

There are some homeless applicants who should clearly not be in the PRS, particularly without support. Our casework includes examples of vulnerable homeless clients with support needs such as learning disabilities who have been encouraged to accept offers of PRS accommodation. In some cases these arrangements have quickly failed due to our clients' lack of independent living skills and their susceptibility to those people who see vulnerability as an opportunity to take advantage. It is a task for the new Code of Guidance to ensure that local authorities have a clear and consistent understanding of when it is appropriate to discharge into the PRS.

Our research[24] identified the fact that for many homeless people, stability in their housing situation is a priority. A six-month tenancy is inadequate in this regard, and may lead to repeat presentations. We argue that a better approach would be to require a minimum 12-month tenancy, with a two-year period during which, if the household becomes unintentionally homeless, the main housing duty still applies. This is the case in England following the Localism Act 2011.

This amendment would help to ensure that local authorities have sufficient incentive to ensure that PRS housing offers are genuinely affordable and sustainable. Local authorities would have to work with landlords and develop relationships with them, rather than sending applicants into the general PRS where they could potentially end up with unprofessional landlords. This move would also ensure that people in Wales do not have a weaker level of security than people in England.

## Gypsies and Travellers

We welcome the reintroduction of the duty on local authorities to assess the accommodation needs of Gypsies and Travellers passing through their area and meet any identified need for sites, as per the 1968 Caravan Sites Act that was repealed in 1994.

We see this as a highly positive measure that will help to prevent homelessness among some of the most excluded people in society. Although there may be some community tensions around the development of new sites, we accept the Government's position that these should be no greater than current tensions over unauthorised sites.

## Standards for social housing

We support this Part and we are optimistic that it will lead to improved standards for local authority housing, both through compliance with the Welsh Housing Quality Standard and

[23] StatsWales
[24] http://www.sheltercymru.org.uk/wp-content/uploads/2013/03/CEP-English.pdf

through a stronger link between housing quality and rent levels. We also support the move towards greater transparency and consistency for tenants.

We agree that service charges are in need of reform and we agree that those who don't receive services shouldn't have to pay. We hope that the transitional protection will provide enough support for tenants at an extremely difficult time when many are already facing multiple income reductions due to Under-Occupancy Penalty and other measures.

## Housing Finance

The exit from the Housing Revenue Account Subsidy System is very good news for tenants in Wales. We hope that the 11 local authorities will ensure the money goes towards meeting housing need.

## Co-operative Housing

We welcome this part of the Bill, which will create greater security for tenants, giving them more confidence to join a fully mutual housing co-op. It will also help to grow the sector by making fully mutual co-ops more attractive to lenders.

## Council Tax for Empty Dwellings

Increasing action to combat empty homes has been a key focus of our campaigning work for a number of years now. Until recently the issue had little political priority and numbers brought back into use annually were low. Together with initiatives such as the Welsh Government's *Houses into Homes* loan fund we are optimistic that empty homes can make a much stronger contribution to meeting housing need in years to come.

We note that local authorities will be able to retain the revenue, which may bring in up to £14.4 million per year. It's important that this revenue isn't diverted away from housing and we hope that local authorities will ensure it goes towards meeting housing need.

Prepared by: Jennie Bibbings, Policy & Research Manager

jennieb@sheltercymru.org.uk

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RESIDENTIAL LANDLORDS
ASSOCIATION

1 Roebuck Lane,
Sale, Manchester M33 7SY
Tel: 0845 666 5000
Fax: 0845 665 1845
Email:info@rla.org.uk
Website: www.rla.org.uk
Facebook: TheRLA
Twitter: @thelandlordman

Communities, Equality and Local Government Committee
CELG(4)-02-14 Paper 3

## Introduction

1. This paper serves as the official response of the Residential Landlords Association (RLA) to the Communities, Equality and Local Government Committee's request for evidence, in reference to the general principles of the Housing (Wales) Bill introduced in the National Assembly for Wales by Carl Sargeant, Minister for Housing and Regeneration, on November 18, 2013. We have confined our response to registration and licensing and the discharge of the homelessness duty in the private rented sector (PRS).

## About the RLA

2. The RLA represents 20,000 small and medium-sized landlords in the private rented sector (PRS), who manage over 250,000 properties across the UK. It seeks to promote and maintain standards in the sector, provide training for its members, promote the implementation of local landlord accreditation schemes and drive out those landlords who bring the sector into disrepute. Members also include letting and managing agents.
3. Members are required to subscribe to the RLA's code of conduct setting out their obligations to adhere to ethical standards, ensure compliance with all relevant legislation, and to provide decent and safe accommodation to tenants.

**Summary of Concerns**

**4.** Our principal concerns in relation to Part 1 of the Bill regarding the licensing and registration of landlords are :

- The registration and licensing scheme will prove ineffective in tackling ignorant and bad landlords.
- The scheme will impose unnecessary and costly requirements for good and compliant landlords.
- The Welsh Government have woefully under-estimated the cost of running an effective scheme.
- Experiences in Scotland have not been taken on board in reality and the Welsh Government has offered no proper explanation of how things will be better in Wales.
- The cost of the scheme, especially potentially the costs of onerous licence conditions will inevitably end up being paid for by tenants. The resulting cost of the increased regulatory burden will feed through into higher rents, with tenants of good landlords seeing no benefit.
- The scheme will end up as a bureaucratic machine obsessed with record keeping and processing information, directing resources away from tackling poor landlords on the ground.
- The EU Services Directive makes full recovery of costs impossible and there will be an increased burden on the tax payer.
- Despite earlier indications, accreditation as a vehicle for regulating good landlords has no place under the proposals and an alternative scheme of co-regulation involving accreditation would be a far better option, if the scheme goes ahead at all.
- The way forward is better enforcement of existing laws not piling more costly regulatory requirements across the board on landlords. More law does not mean better law.
- The Welsh Government has failed to grasp the immense task which it is taking on, particularly in rural areas, of enrolling private landlords (many of whom only have one property) into the scheme.
- A huge ongoing publicity effort will be needed.
- There is no point in running additional HMO or selective licensing anymore alongside the scheme as they simply duplicate it. Any additional requirements, e.g. in relation to HMOs, can be built into the new registration and licensing scheme.
- As to the proposed structure of the scheme we have considerable detailed concerns but the main points are :
  - the potential for excessive unnecessary and costly licence conditions. For example, rent control could be introduced by the back door
  - the inability of landlords, especially owner/occupiers, to arrange their own lettings and then pass on management to an agent without them having to go through the licensing process
  - the role of the Code of Practice is not clear
  - lack of clarity around how the scheme will be administered and the possible need for duplicate licensing by landlords operating across local authority boundaries
- The Welsh Government do not understand the huge task involved in arranging and administering training for so many landlords.
- At the end of the day, the scheme threatens investment in the private rented sector in Wales.

**Compulsory Registration and Licensing Scheme for all PRS Landlords and Letting/Management Agents**

**Registration and Licensing of Landlords**

**5.** The RLA appreciates the intent of the Government to professionalise the PRS and to address the problem of deliberate and/or inadvertent property mismanagement by landlords, but expresses serious reservations about the landlord registration and licensing requirement outlined in Part 1 of the Bill, as outlined above.

**6.** We believe that an umbrella policy mandating the registration and licensing of all landlords in an effort to address poor and unscrupulous landlord practice is counter-intuitive, and does not directly address the main problem of ignorant and criminal landlords who are a minority in the sector. The measure as proposed is excessive, imposing yet another regulatory burden and additional costs on reputable landlords who already abide by the law.

**7.** The RLA expresses concern that this measure could negatively affect housing supply, as further regulation bars entry of new landlords into the sector and further frustrates already overburdened existing landlords. Extra costs imposed on landlords most often transfer to tenants. In these times of economic insecurity and high unemployment, the broader societal impacts this measure would have, especially on the issue of homelessness, should not be taken lightly. It will also be yet another pressure on rents which will make it less attractive to rent to those on Local Housing Allowance.

**8.** The RLA has identified over 100 current Acts of Parliament or statutory regulations that specifically impact on private rented sector landlords. These contain around 400 individual requirements which could affect the way in which a landlord owns or manages his/her property and conducts tenancies. The findings of an RLA-commissioned report on Investing in Private Renting by Professor Michael Ball of Reading University reveal a regulatory system that "developed in a haphazard, uncoordinated manner over many decades." Further, the "cost-effectiveness of many requirements was never assessed when the measures were implemented, nor have recent ones been reassessed after several years in place."[1]

**9.** The RLA would like to see better utilisation and implementation of current regulation to achieve unmediated resolution to poor landlord practices. A greater use of existing powers, combined with a streamlined complaints procedure along with greater investment into tenant education should facilitate the highlighting of poor landlords. More law does not mean better law.

**10.** In the event of the introduction of the Bill as it stands, we agree with the provision in Section 4(2), allowing a licensing exception to landlords who opt to transfer management of their property to an agent. We propose that agent registration and licensing precedes any mandate for landlord licensing for a period of approximately 2 years. The RLA would like to see delayed implementation of a landlord registration requirement,

[1] Ball, Michael, Professor (Reading University). A Report for Residential Landlords Association: Investing in private renting: Landlord returns, taxation and the future of the private rented sector. <http://longertermtenancies.com/investing-in-private-rental-housing-ball-report-september-2011.pdf.>

deferring this until after agent registration and licensing has taken place. This will allow letting and management agencies an opportunity to hone and refine the requisite industry-related proficiencies to effectively operate as agents. This approach better serves the interests of both landlords and tenants as both sides will be involved with properly trained, accredited, and competent professionals, especially for those landlords likely to opt out of the full licensing and accreditation process and transfer property management authority to directly an agency.

**11.** We are concerned that the specifications of the proposed legislation do not properly consider the current status of agencies that exist in the market place. We believe that the Bill essentially encourages good landlords to pass the management of their properties into the hands of likely poorly trained agents, if agents are not required to be trained and accredited prior to landlords. The consequences otherwise could be disastrous for the health and reputation of the PRS and would be damaging for landlords and tenants, as well as having a wider impact on the state of the Welsh economy and reputation of the Welsh Government. A delay in a landlord licensing mandate will also allow the Renting Homes (Wales) Bill to catch up, which will have significant impact on the PRS as well. This impact should be understood before introducing registration and licensing for landlords.

**12.** The RLA is strongly opposed to the registration requirement in Schedule 1, Section 1 part c, mandating the disclosure of a list of properties let by landlords. This is simply a costly repetition of information already held by the Land Registry, and will completely discourage landlords from registering, thereby reducing the effectiveness of the measure. Efforts would be better channelled into enabling local authorities to better access Land Registry information when needing to identify property owned by a particular landlord. Details of our proposal are in Appendix 1. Alongside this there should be an amendment to Land Registry requirements so that all landlords have to ensure is that the address registered at the Land Registry is an appropriate service address. This would be the same as in the requirements under Section 47 and 48 of the Landlord and Tenant Act of 1987 requiring the landlord's name and a service address in England and Wales at which the landlord can be served notices; otherwise rent is not due until an appropriate service address is given.

**13.** Once the system for landlord registration, licensing and accreditation is set up, property licensing (HMO Licensing and selective licensing) should be abolished. We see no need for operating two parallel systems of licensing. This would be expensive and overly bureaucratic.

**14.** The RLA is very concerned about the potential scope of licensing conditions and the extent to which it appears they can be tailored to an individual landlord. It seems to open up the possibility of each local authority being able to introduce requirements through a non-legislative route that could become onerous, costly and difficult for landlords to comply with without a laborious process having to be followed to challenge these. It must be remembered that the cost of compliance will pass over to tenants through higher rents. The RLA would want to see very strict restraints on what conditions could be introduced through licensing. There should be a set of reasonable and realistic pre-ordained conditions to prevent the need for additional conditions unless these can be justified in an individual case.

**15.** The possibility of a rent stopping order is something we may agree with if the landlord is given every opportunity to comply. Publicity for the need to register and licence is vital and this needs to be widespread and effective. In the case of a rent stopping order being in place, any housing benefits related to the rent should not be paid to the tenant. Rent stopping orders should not be retrospective.

**Regulation of Letting and Managing Agents**

**16.** The RLA supports a stronger focus on letting and managing agents and fully endorses the stipulations of Section 5 of the Bill relating to the licensing of agents. Landlords should be receiving advice from competent agents, and as such these companies and their employees should be able to provide this advice in their specialist areas. There should be a minimum qualification level for a principal and a certain qualification level for a percentage of the staff within the company for it to have a licence. This is accepted in other professional services such as mortgages and financial advice; it is fitting that the same standard be upheld within the PRS.

**Barriers to Implementation, Financial Implications and Unintended Consequences**

**17.** There is currently no clear definition as to what the compulsory registration and licensing scheme for all PRS landlords and letting and management agents is intended to achieve. Both tenants and landlords need to know the objectives of the scheme. Key performance indicators should be clearly set out before the scheme is put into place, so that success can be properly monitored.

**18.** A 2009 review of the PRS registration scheme in Scotland revealed a process that was "unnecessarily cumbersome,[…] increased in complexity for those [landlords] trying to run their business responsibly."[2] Reviews of the scheme also revealed that it was failing to address the issue of poor landlords and protect tenants from unscrupulous practices, and that there was "a lack of awareness amongst landlords and tenants about their renting rights and abilities."[3] Whilst different from the Scottish scheme, the new Welsh scheme still fails to address how it will capture the poor landlords that have been missed from the Scottish scheme.

**19.** The RLA expresses serious concern about the prospect of adequate enforcement of the proposed registration and licensing measures in the Bill, given the shrinking resources available to local authorities and the growing burdens being thrust on fewer enforcement officers. A 2012 UNISON study on 70 percent of UK Councils revealed an 8 percent budget decrease for environmental health services (EHS) in two years. Further, a total of 1,272 UK jobs in EHS had also been lost in two years.[4] Given the recent ruling in *Hemming v. Westminster City Council,* the RLA is also concerned about how enforcement against unlicensed individuals will be funded, especially if the intent is for a self-financing scheme. Only with high levels of enforcement in small areas where

[2]Eleanor Murphy (2012) Northern Ireland Assembly: Research and Information Service Briefing Paper-Landlord Registration 97/12 NIAR 368-12) 15 May 2012, page 3.
[3]Ibid, page 4.
[4] UNISON Local Government, 2012. Environmental Health: how cuts are putting individuals and communities at risk and damaging local businesses and economies. <https://www.unison.org.uk/upload/sharepoint/On%20line%20Catalogue/21257.pdf>

considerable resources have been concentrated, like that in the London Borough of Newham, has there been a relatively successful level of penetration. This has involved multi-sector, cross department co-ordination and independent resourcing and certainly was not self-financing. It is likely that unless an entirely separate department in each local authority is set up, the existing man power will be dedicated to database management. As such, the quality of enforcement and support will reduce and it will actually be detrimental to tenants and landlords. Such concerns have been raised by local authorities themselves.

**20.** On the face of the Bill the prospect of 22 local authorities individually operating the scheme gives rise to considerable concerns, not least for landlords who have properties in more than one area. Professor Michael Ball's report on investment in the PRS revealed a current system convoluted by a wide range of regulatory bodies, often with overlapping responsibilities.[5] There is considerable risk of lack of consistency. Whilst it is appreciated that it is intended that local authorities group together so that Cardiff City Council operates the scheme at the national level, we wonder if this will actually work effectively in practice. We believe that there should be a central body alongside local authorities to administer the scheme with local authorities being their eyes and ears on the ground. The current proposal still leaves the scheme too open to inconsistencies and landlords having to operate differently in different local authority areas.

**21.** There has been no proper or robust assessment of the cost for implementation and operation of the proposed registration, licensing and accreditation scheme. We believe that considerations given for the cost of the proposed scheme have been woefully understated and that an estimate of achieving break even at 10,000 landlords is unrealistic. At a time when Government is severely struggling to meet current financial obligations and is making drastic cuts to already insufficient budgets, duplicating expenditures on a new bureaucratic machine that already exists in some form (such as duplicating the Land Registry) may not be the most appropriate stewardship of public resources.

**22.** More effort should be placed on incentivising cooperation, rather than establishing another punitive regulatory burden that will not work. The RLA proposes a system of co-regulation[6] whereby the majority of good landlords are given the opportunity to voluntarily join an industry-run accreditation scheme, taking them out of the purview of local authority control. This would be a substitute for the Government's scheme but it would operate in tandem. It answers the criticism that accreditation is voluntary so the non compliant will not join. Such a scheme would not be a soft option, would include independent property inspections and strong sanctions against those landlords failing to abide by their obligations. This would then free local authorities' time and resources available to them under currently existing regulation to go after those operating under the

[5]Ball, Michael, Professor (Reading University). A Report for Residential Landlords Association: Investing in private renting: Landlord returns, taxation and the future of the private rented sector. <http://longertermtenancies.com/investing-in-private-rental-housing-ball-report-september-2011.pdf.>

[6]A more comprehensive explanation of the co-regulation proposal set forth by the RLA is in the attached Addendum 2- "Residential Landlords Association- A New Roadmap for the Regulation of Renting in Wales." Details include, but are not limited, to landlord registration, accreditation, and proposed funding mechanisms.

radar who bring the sector into disrepute and simply would not come forward to make themselves known under any scheme. It would expand the number of regulators; thus improving performance.

**23.** The Leeds Council PRS demonstrates that a voluntary landlord accreditation scheme can work, and can work well. This successful private landlord accreditation scheme is voluntary and has been in place in Leeds since 1997. Landlords who join agree to provide quality housing and in turn are awarded accreditation status by the Leeds City Council. In 2003 the scheme was extended to include tenant accreditation.

**24.** There is a need for better tenant education, which the current bill does not address. Informed tenants, as consumers of the PRS, will be endowed with a greater capacity to understand the implications and consequences of their choices in the PRS market, benefiting both tenants and landlords alike. The RLA would welcome an amendment to include a relevant measure addressing this issue.

**25.** The RLA supports the "Fit and proper person requirement" in Section 11 of the Bill, as we believe that such a test is an essential requirement of such a scheme. However, we believe that both a character test and competence test are warranted. Section 66 of the 2004 Housing Act could form the basis of these two tests.

**26.** The Bill provides a definition of "managing" a rental property. However, every landlord has to have some involvement in the running of their property. What is not clear is that if a landlord retains some function but delegates others to an agent does the landlord still require a licence to be able to carry out the retained functions? Currently an agent can perform poorly but it is still the landlord that can end up being liable. In our opinion, if an agent is given the authority and financial resources by the landlord to perform a management function, then it should be the managing agent that is responsible for failure, not the landlord. Related to this issue is the inclusion in the definition of managing a property of functions around arranging a letting. This will make it impossible for someone such an owner occupier to let their own home themselves and then pass over its management to an agent. To do this the owner would need to be licenced, in addition to having to register the property.

**27.** The RLA supports the idea for a Code of Practice as contained in Section 28 of the Bill, so long as the Code of Practice has a legal status similar to that of the Highway Code. This is a key component of the Bill, but the Bill fails to spell out the purpose of the Code and how it ties in with licensing. Breaches should not be subject to prosecution although breaches could be taken into account when deciding whether or not a registrant's fit and proper status might be revoked. There needs to be more clarity as to how such a code would function.

**28.** The RLA believes these proposals as they stand will encourage landlords to exit the market in Wales and more worryingly will discourage external investment into the market. At a time when more housing is needed, this is yet another indication that Wales is not open for business, as the proposed legislation is creating an increasingly complex and different legal system while also raising the cost of doing business in Wales. We know from conversations with the Council of Mortgage Lenders that they are not at all keen on this proposal. If its members do not support this then the supply of mortgage financing is likely to reduce and so the cost will increase. This will have the dual impact of reducing investment in new stock and refurbishing old stock and raise the costs for current landlords resulting in them exiting from the market. Whilst we agree with the

promotion of professionalisation and raising the standards of the sector, Part 1 of the Bill as proposed is not the way forward. If it does go ahead we would urge the adoption of our co-regulation model (see Appendix 2)

**Reform of Homelessness Law**

**29.** The RLA endorses the proposal to allow for the discharge of the homelessness and rehousing duty into the PRS. We do, however, believe that care needs to be taken in setting the standards of PRS accommodation utilised for this purpose to make sure that, inadvertently, barriers to entry are not created.

**30.** We do have concerns surrounding the re-homing of tenants who are intentionally homeless as a result of rent arrears. A major issue, when it comes to the discharge of the homeless to the private rented sector, is the acceptability to PRS landlords of tenants who have been evicted due to rent arrears, etc. We believe that tenant referencing or even tenant accreditation becomes very important in this situation, and that all social sector landlords should be expected to provide proper references for prospective tenants.

**31.** Consideration needs to be given to the idea of inspections of accommodation. This is already an issue under current housing option schemes. We believe that this is a case where accreditation can play a part. It provides an incentive for the landlord in that the landlord will have additional prospective clients to consider.

**Observations on Section 5 of the Explanatory Memorandum (power to subordinate legislation) and Table 5**

**32.** We consider that regulations made under Section 7(1)(b), Section 10(2)(b) and Section 31(1) should be subject to the affirmative resolution procedure. Otherwise, we have no comments to make on the proposed scheme.

**33.** Section 7(1)(b) and Section 10(2)(b) relate to the information which must be provided when a local housing authority determines an application for registration or licensing. These are not purely matters of detail. They are matters of substance which could equally well appear on the face of the Bill. They are important matters, particularly in relation to licensing, as there may be significant requirements imposed which lead to cost implications for applicants, e.g. requirements to provide reports on the property or criminal record bureau checks. The Assembly should have the opportunity of considering these requirements under the affirmative resolution procedure.

**34.** Section 31(1) relates to the fixing of fees. The cost of operation of this scheme is fundamental. Having regard to the decision of the Court of Appeal in Hemming v Westminster City Council, contrary to what was said at the first session of the Committee, we believe that inevitably a substantial cost is going to fall on the tax payer due to the irrecoverability of fees relating to the enforcement of the scheme itself, i.e. tracking down and dealing with non compliant landlords. There are further issues arising out of the Hemming Judgment, and we consider that the overheads of running the scheme are not recoverable either due to the provisions of the EU Services Directive. Therefore fixing fee levels is crucial and we consider that as a result this should be subject to the affirmative procedure. (See Appendix 3).

## APPENDIX 1

## RESIDENTIAL LANDLORDS ASSOCIATION

## A NEW ROAD MAP FOR THE REGULATION OF RENTING IN WALES

### Why co-regulation is a better option

1. If there is to be a national registration scheme in Wales its best chance of success would be to maximise enforcement action on an ongoing basis. To achieve this a re-think is required, in our view, so as to hive off the responsible and compliant landlords, including those who are willing to become more professional. This combination with an effective scheme for licensing managing agents in Wales would make a huge difference because local authority enforcement could then concentrate on the less compliant, as well as protecting those who continue to operate outside the system. Adding on an accreditation as an alternative for the compliant would achieve this objective.

### What accreditation can achieve alongside registration and licensing

2.

- *Effort is diverted away from enforcement under the current proposal.* The reality is that unless changes are made effort would otherwise be diverted away from dealing with those who are really the targets of the scheme. The incidence of non compliance by landlords is often random and unpredictable. There may only be a small number of hard core criminals in the total landlord population yet a very elaborate scheme is to be set up. Much of the effort is then diverted towards dealing with the compliant and responsible landlords, signing them up to the scheme and so on. Effort is also diverted away from pro-active work with inexperienced landlords helping and educating them about their responsibilities. In the light of cut backs EHOs have already commented that their role is becoming more and more desk bound; rather than them being out and about. In the Government's proposal as it stands for a national registration would accentuate this trend and, as a result, it would be counter productive.
- *The effort devoted to compliant landlords is a disservice to tenants of non compliant landlords*. The reality is that those who benefit least will be the tenants of the non compliant landlord, because so much of the effort is distracted away from them by the need to register and process the majority of compliant landlords whose tenants, in turn, derive no benefit from such schemes.

### Why promote accreditation schemes alongside registration

5. Accreditation needs to be promoted as well:-

- Accreditation schemes encourage compliant and responsible landlords – it should be seen as a badge of success.
- Good landlords can then identify themselves – members of accreditation schemes would be given a recognition number and a kite mark.

- Accreditation allows tenants to identify responsible landlords – this has happened with the star rating system for hotels over the years.
- Good landlords are differentiated from the rest and tenants can readily identify them – if a landlord does not have an accreditation number and a kite mark tenants and others can ask why. What is wrong with that landlord?
- Accreditation schemes would increase the number of regulatory bodies available to help enforcement in the private rented sector.
- Accreditation promotes education and training – everyone recognises that this is more effective in the long run than formal enforcement action.

**Changes needed if registration is introduced**

6. We believe that the Welsh Government's objectives for registration of landlords can be better achieved with the following changes:-

- Increasing the capacity for regulation by ending the current local authority monopoly on enforcement.
- Introducing effective self regulation through robust accreditation alongside licensing.
- Using accreditation to increase the number of regulators thus increasing enforcement capacity.
- Encouraging compliant landlords to join accreditation schemes.
- Ensuring that accreditation schemes enforce the same standards but in a proportionate way.
- Accredited landlords should self fund accreditation schemes.
- Local authority resources should concentrate on those landlords who do not want self regulation or who are not suitable for it.
- Landlords should have the option to put the management of their properties into the hands of licensed agents (or responsible persons).
- Local authorities should look to recover the full cost of enforcement action from those whom they have to regulate where interventions are needed.
- There should be a two stage test for landlords -
    i. A suitability test essentially based on the current so called "fit and proper person test".
    ii. A competence test - for compliant responsible landlords for whom self regulation through accreditation is appropriate and who wish to self manage.
- Accredited landlords found to be non compliant should where appropriate, be expelled from any accreditation scheme of which they are a member and would revert to local authority control or, if not suitable at all, could be banned from the letting or managing properties.
- The new system would be underpinned by a new style landlord banning order which would ban unsuitable landlords from managing or letting properties (but they would not be prohibited from owing them).
- For banned landlords local authorities would be responsible for ensuring that proper management arrangements were put into place and, if need be, for arranging management themselves where a property was owned by an unsuitable landlord. The current cumbersome system of management orders would be superseded by a new stream lined procedure of management declarations.
- As a last resort, local authorities would be able to use existing powers to compulsorily purchase properties owed by unsuitable landlords, especially if no satisfactory

management arrangements could be put in place or if the banned landlords/owner interfered with the management of the property on an ongoing basis.

- Tenant education needs to be developed to assist tenants in helping police enforcement.

**Alternative model for WALLS**

7. All landlords would have to (i) accredit or (ii) register or (iii) if not self managing appoint a licensed managing agent (or responsible person). References to managing agents include responsible persons. If the accreditation option was not chosen the landlord would either have to be registered and licensed (being subject to local authority supervision) or employ a licensed managing agent or responsible person. There would be a central nationally operated data base but with separate linked data bases for accredited landlords and those who manage via a managing agent/responsible person. Under the accreditation option the landlord would have to be pre-vetted for suitability.

**Data Bases**

8. On a central data base of all Welsh addresses every rented property should have one of the three scenarios –

    a. The landlord is registering directly with Welsh Government or is unable to use a professional body/accreditation scheme
        i. The name of the landlord.
        ii. The declared address for the landlord.
        iii. Communication details, e.g. email, telephone etc.

    b. For the landlords who employ a managing agent (or recognised person) –

        i. The name/s of the agent/registered person/s.
        ii. Branch addresses.
        iii. The agent/responsible person's own licence number (this will be the number which would be used on documentation for these landlords.

    c. For landlords who are registering with a professional body/accreditation scheme
        i. The name of the registered professional body/accreditation scheme
        ii. The contact details of the professional body/accreditation scheme
        iii. The licence details of the professional body/accreditation scheme

9. Self managing landlords who chose the licensing route –
    a. List of all of their properties including postcodes.

10. Landlords joining accreditation schemes would be required to declare all their properties to the scheme/s which record them on their data base. Scheme data bases would be linked

11. If you joined an accreditation scheme having first registered and recorded property details on the data base these would be deleted. The same would apply if a managing agent took over management of any of these properties.

12. Each licensed managing agent or responsible person would be required to keep a data base of the properties which they managed. These would be linked so they could be interrogated.

**Helping local authorities**

13. The key requirements for local authorities is the ability to link an address with an owner (or the managing agent if there is one). Our proposal addresses this. Armed with an address (but not knowing the identify of the landlord/agent) the EHO would:-

    a. Interrogate the central data base to see if the address was recorded in which case the necessary link would be provided to either an agent, professional body/accreditation scheme or directly to the landlord.
    b. If not recorded interrogate the data bases of either or both the accreditation schemes and the managing agents scheme to see if the address was recorded and again the link would be provided if it was.

14. Clearly if the landlord was not recorded on any of these data bases then he/she would be operating outside the scheme anyway and the normal detection methods would have to be applied to locate the landlord; particularly a check at H M Land Registry as to the ownership. Action could then be taken to enforce compliance.

15. Our proposals regarding co regulation through accreditation are to a large extent modelled on the current system of building regulation enforcement through approved inspectors working alongside local authority building control departments.

**Property licensing and registration**

16. As a result there should be a reduced need for property licensing schemes (whether mandatory HMO licensing, additional HMO licensing or selective licensing) which are currently increasing in numbers. As additional licensing and selective licensing schemes are bespoke these are costly. These could be largely superseded through licensing and accreditation. In particular, there would be no place for standard license conditions because these would form part of the requirements of WALLS/ accreditation schemes. There may continue to be a place for local registration and licensing schemes for non accredited landlords in some instances in problem areas.

**Effective enforcement**

17. As to enforcement the key to improvement in enforcement is to increase the overall enforcement capacity. Realistically, particularly with local government cut backs the only way to achieve this is by way of a 'two path' system of self regulation for competent landlords through accreditation alongside licensing. It is emphasised that they would have to comply with the same legal requirements. There would be an entry bar with pre-vetting. In appropriate cases e.g. a first time landlord or a landlord who is non compliant through ignorance there could be probationary membership.

**Accreditation**

18. Accreditation schemes would themselves have to be verified. They would have to provide a proper system of standards in dealing with complaints as well as

disciplinary procedures. Schemes and accredited landlords would use a kite mark. Accredited and registered landlords/licensed landlords would be given a number. Under the rules of the scheme accredited landlords would be required to use that number in tenancy agreements and other tenancy documentation. The non accredited self managing landlord would have a registration number but could not use the kite mark.

19. To give confidence to the system each recognised accreditation scheme would have to engage at least one independent environmental health consultant to advise the scheme. There would be a protocol setting out the duties and responsibilities of the individual appointed to give them the necessary independence.

20. Accreditation schemes would either be local or national. They would have to address both property and management standards and require appropriate recognised training and continuous professional development (e.g. attendance at landlord association events). There would be a code of practice combined with training would not suffice. The accredited landlord would have to pay the intention would be that the marketing advantage and hopefully the prestige attached to accreditation would mean that they would be willing to pay for the privilege. Whilst accreditation schemes would have to operate according to the basic legal standard they should be encouraged to operate to offer higher levels of accreditation such as silver and gold standards to help improve the overall standards of the sector.

21. Accreditation schemes would be required to inspect a sample of properties. Landlords would be expected to declare self compliance as well. Breach of the requirements of the accreditation scheme could lead to expulsion.

22. Those landlords who did not wish to join accreditation schemes or who were not deemed compliant landlords would be regulated by local authorities. Local authorities would have no jurisdiction over accredited landlords except to request intervention in appropriate cases.

**Funding the new regime**

23. Besides increasing enforcement capacity we have to look afresh at the way in which enforcement in the PRS is funded. The cost falls on the compliant landlord disproportionately and they do not really need to be licensed anyway. High cost licensing schemes cause resentment on the part of the compliant landlord. Regulation now needs to be largely self funded by the sector. This means ultimately the cost will fall on tenants as undoubtedly it will be reflected in rent levels. Payments made therefore need to be related to the competence of the landlord in question. Fewer fees for the compliant and more for the non compliant should be the objective.

24. Our proposals on funding are as follows:-

(1) Accreditation schemes should be self funded through fees. There should be a basic fee but additional fees charged to those members who cost the scheme more e.g. because of dealing with complaints which are found to be justified or where properties are found to be unsatisfactory on inspection. Members of the accreditation scheme would be contractually liable to pay fees and once liability

is established as with local authorities the accreditation scheme should have the power to put a charge on the property for unpaid fees.

(2) As regards local authorities they should be entitled to charge for their work, whether formal or informal enforcement is involved. The only exceptions should be:

(i) routine inspections where no problems are found (other than trivial matters)

(ii) Inspections and enforcement work following complaints which are found to have no justification

(iii) inspections which a landlord requests for guidance – we believe these should be encouraged as a way of helping the uninformed landlord. However, there would have to be restrictions on numbers of such inspections which were carried out free of charge.

(3) For the future, therefore, local authorities would look to recover the bulk of the cost of their enforcement action. Some irrecoverable items would inevitably fall on the general tax payer.

(4) The compliant landlord would therefore pay a lot less because of the more proportionate approach of accreditation but if it was found that this was being abused by individual accredited landlords they would pay more. Landlords regulated by local authorities would expect to pay the full cost if the local authority had cause to take any enforcement action (formal or informal) against them. In these ways the burden of paying for enforcement would be shifted much more to the non compliant away from the compliant.

**Banning orders**

25. We advocate a banning order (based on the Director's disqualification order procedure essentially) under which landlords who were not suitable could be banned from letting or managing properties. They would then not be permitted to be involved in these activities for a specified period of years. Orders could be suspended. Steps could be taken short of imposing an order, e.g. requiring compulsory training. There would be the option of imposing a probationary status to allow time for compliance for undertaking training.

26. It will be a criminal offence for a landlord to then be subject to such a banning order in any way in the management or letting of properties (but not owning them) without permission.

27. Orders would be made on application to the First Tier Tribunal (Residential Property) Tribunal. Sentencing Courts would not be able to make such an order because there is a need to take a more overall view of the landlord's record. The normal applicant for an order would be the local authority but a sentencing court could refer a case direct. Accreditation schemes could also apply in respect of their own members.

**Co-ordination of enforcement activities**

28. It would be very important that there was co-ordination between accreditation schemes and local authorities. This would be a key element in avoiding "gaming"

the system. For example there would need to be a centralised list of unsuitable landlords and a list of those who had failed the competence test with one or more accreditation schemes. There is no reason why a landlord should not be a member of more than one accreditation scheme so this co-ordination would be important.

**Conclusion**

29. By introducing co regulation with local authorities losing their monopoly of enforcement we believe that enforcement of housing standards can be greatly increased in Wales. We also need to address clearly the question of who pays for enforcement as this lies at the heart of the current problems. By introducing our ideas we would have a new system for Wales which was effective reasonable and proportionate. Our proposals enhance the Welsh Government's own proposition.

## APPENDIX 2

## RESIDENTIAL LANDLORDS ASSOCIATION

## A LOW COST ALTERNATIVE REGISTRATION SOLUTION

### Introduction

If the Welsh Government is determined to bring in a solution of all property registration for owners of rented properties in Wales, we would rather see a low cost option that is already in place and has already overcome many of the technical challenges. Large government databases have proven to be costly, late in development and ultimately not perform. Also as there is already a database that holds details of property and by definition the contact details of the owner, it seems a waste of time and resources to develop an alternative.

### The Land Registry Solution

The Land Registry already has approximately 80% of all land and property registered on its scheme, much of the unregistered property or land is likely to be older stock that has not changed hands for many years and therefore is less likely to be owned by a landlord. It has an office based in Wales, contains address details of the owners of all the registered land on its database and has extra information like exact boundaries of property, other interested parties in the land and even lease information. It has a very useful online facility that can very quickly download this information and a fully fledged online and telephone support service to help with enquiries. Each registration even has its own unique title reference number which can be used. The land registry even has the ability to include an extra address and an email address, which could be the address of a managing agent.

### Adjustments to the Current System

Currently many landlords put their registered address on the land registry as the address of the property. A lot of the time this is because they may have lived there at one time or another. As there is no requirement to change the address with the land registry, this often does not happen when the owner moves. Similarly, when a landlord moves or changes office, agent or solicitor, they often do not consider updating the land registry.

Instead of requiring an independent database, it could instead require that landlords ensure their property is registered on the land registry and keep the contact address of the land registry as a service address on which notices could be served. It could also require that one of the addresses on the land registry database is the address which is included in Section 48 of the tenancy agreement given to the tenant. As a result, this would ensure the land registry is a more accurate database and would marginally increase the 80% recording rate of property on the system. It would also decrease the cases of property fraud where people claim to own a property.

### How Would it Be Used?

When questioning why registration of landlords is a useful thing it was answered mostly that when there is an issue with a property a local authority needs a contact to get hold of to resolve the issue, whether it is with a tenant or condition of the property. This solution would enable this process and give an Environmental Health Officer a lot more information as well. If the property was not on the system then we would be in the same position as an alternative database and tracing and enforcement action would be taken in the same way.

**Conclusion**

Using the land registry system would require minimal changes to the database, be a much lower cost solution, result in an automatic high percentage of registration rate and drive more data into the existing database. It would be pooling resources and would not require an independent database to build and maintain.

**APPENDIX 3**

**RESIDENTIAL LANDLORDS ASSOCIATION**

**BRIEFING – WELSH GOVERNMENT PROPOSED REGISTRATION AND LICENSING SCHEME**

## Introduction

1. The decision of the Court of Appeal in the Westminster Sex Shop Fees case (Hemming (t/a Simply Pleasure) Limited v Westminster City Council) has radically altered the landscape so far as fixing fees for regulatory authorisations such as for the Welsh Government proposed registration and licensing is concerned. The case looks at the way in which the European Services Directive (ESD) operates to curtail the ways in which domestic UK legislation provides for fees to be charged by local authorities to landlords for authorities and licences.
2. These licences will be granted for 5 years as opposed to the customary annual renewal for most other licences. The Westminster case was concerned with the annual licensing of sex establishments but the same principles apply, perhaps subject to certain modifications; as a result of this different pattern.

## Principles when setting licensing fees

3. The following principles should now apply –
   (1) The Council cannot include the costs of enforcing the licensing scheme against unlicensed landlords in the licence fee. This is prohibited by the ESD. This is the main finding in the Westminster Case.
   (2) The ESD came into force on the 29th December 2009 and the ESD will apply in relation to the first fee set after that date.
   (3) A Council can only charge for :-
      (i) the actual and direct administrative costs of investigating the background and suitability of the landlord applicant and
      (ii) the cost of monitoring the compliance by licensed landlords with the terms of their licences
   (4) Fees must be reasonable and proportionate.

(5) Under the ESD the fee must not exceed the cost of the authorisation procedures and formalities together with the monitoring costs (for registered/licensed landlords).

(6) The Council can require an application to be accompanied by a fee. The ESD curtails any statutory powers.

(7) Surpluses and deficits for previous years in relation to permitted elements for which a fee can legitimately be charged can be carried forward. Surpluses and deficits cannot be carried forward in respect of elements which are not properly chargeable.

(8) Fees can only cover the actual cost of the application process (plus monitoring) i.e. only the cost of processing the application and monitoring can be charged.

(9) Set up charges for the scheme cannot be recovered.

(10) Overheads and general administrative costs cannot be recovered. This means that the running and capital costs of the relevant Council Department cannot be charged as part of the fee.

(11) Fees can only be charged for the procedures themselves i.e. steps which are followed in processing the application for a licence or for its renewal (plus monitoring of the licence holder) which means that only the administrative costs involved for vetting applications and for monitoring compliance with licence terms are payable.

(12) The Council cannot make a profit.

(13) A formula can be used to set charges so long as it is based on the cost of the actual authorisation process (plus monitoring costs). A Council can include costs for monitoring based on its broad experience of what has occurred in the past.

**Fixing the Fee**

4. It is for the Council not the Courts to fix the fee. The Council must act lawfully and in accordance with any guidance given to it by the Court as to how the fee is to be determined. If it is necessary as a result for the Council to re-determine a fee then the same principles apply in relation to the re-determination. The Court

itself will not calculate the fee. If the fee is prescribed by the Welsh Government the same principles apply.

**Recovery of overpaid fees**

5. (i) Any impermissible overcharge can be recovered by way of a claim for restitution.
   (ii) The time limit for such a claim is six years and the normal three months time limit which applies to judicial review does not apply in this instance. As part of the process the Council may have to re-determine what is a reasonable charge in line with any guidance given by the Court. The amount overpaid will then have to be calculated. Giving credit by way of carry forward does not apply to an impermissible overcharge so it has to be refunded. Interest is payable in addition.

**Consequences**

6. Importantly any element of the fee that cannot be recovered must fall on the Council Tax payer, i.e. the Council's general fund; not the general body of licensed landlords.
7. As indicated above, general administrative costs cannot be recovered nor running costs for administering licensing. It follows, therefore, that many of the items which are currently included in the fees may not be permissible. Impermissible items include rent, lighting, transport and central support costs Instead, only a reasonable amount for the direct processing costs, i.e. time spent by Council Officers can be charged for. This could perhaps be based on a proper hourly rate plus direct on costs such as employers national insurance and pension contributions usually paid with a realistic and reasonable assessment of the time involved in actually considering and dealing with the application as well as issuing out the paperwork. In addition any time spent on inspections and monitoring of compliance by licence holders could also be included, according to the judgement.

**Additional requirements under the ESD**

The ESD also deals with the time to be taken in processing applications. It requires local authorities to publically state the time to be taken to process the application. There is provision for extending the time limit in a case involved complexity. Subject to this if the authority fails to process the application within the stated time then the applicant can automatically assume that the application is granted.

Communities, Equality and Local Government Committee

CELG(4)-02-14 Paper 4

**Introduction**

1. The National Landlords Association (NLA) exists to protect and promote the interests of private residential landlords across the United Kingdom including Wales.

2. With more than 22,000 individual landlords from around the United Kingdom and over 100 local authority associates, we provide a comprehensive range of benefits and services to our members and strive to raise standards in the private rented sector.

3. The NLA seeks a fair legislative and regulatory environment for the private rented sector while aiming to ensure that landlords are aware of their statutory rights and responsibilities.

**General Comments**

4. The National Landlords Association (NLA) would like to thank the committee for providing the opportunity to comment on this proposal.

5. The proposed for the private rented sector that is proposed by the Welsh Government does raise concerns for the NLA.

6. The NLA are encouraged that the Welsh Government wishes to see investment within the private rented sector. This will only happen if the correct mechanisms are in place and there is a stable environment for people to make investment opportunities.

7. The NLA believes that any changes to the private rented sector need to be carefully balanced. Additional burdens on the landlords in a contract with obligations on the tenant have to be equally balanced. Focus on increasing the stability of the sector must be the aim of the policy. Social policy should be dealt with through other appropriate legislation.

8. It should be the shared objectives of all parties involved to facilitate the best possible situation for landlords and tenants. Best practice should be recognised and shared.

9. Communication and arbitration between landlords and tenants is the best way to resolve problems that arise from time to time. Although in certain situations they escalate and the NLA believes that a tribunal body should be set up by local authorities to resolve these problems when they arise, so prevent claims intensifying to court and costs on both sides.

10. The NLA is a long-term advocate of online learning, particularly given the part-time status of many smaller landlords.

11. The NLA's Online Library has demonstrated that landlords and agents are happy to engage with issues and subjects online, at their convenience. This has proved to be a means of keeping individuals up-to-date in respect of their skills and knowledge of changing responsibilities and obligations

12. The NLA welcomes the development of social letting agencies, but believes that they will only work when there is equality in the partnership, otherwise landlords will not get involved in the numbers that the government requires.

13. The introduction of a register will require resources to be allocated to the area it to work i.e. tenant information officers, landlord liaison officers, anti-social behaviour staff, community workers and enforcement staff. This cost cannot be met through register; after recent Court cases.

14. There are currently over 100 pieces of legislation that a landlord has to comply with. An understanding of the laws that the private rented sector has to comply with can be misunderstood. A landlord is expected to give the tenant a "quiet enjoyment", failure to do so could result in harassment case brought against the landlord. Thus legislation has to be proportional.

15. The introduction of a register cannot be a replacement for enforcement. In Scotland a significant number of landlords are still not registered.

16. The use of enforcement against the criminal landlords is required, legislation alone will not remove them. There are significant powers already available which authorities can use.

17. The NLA would like to take this opportunity to raise a number of concerns and queries.

18. WALLS is afforded a significant degree of authority in the proposals, however the only options provided for its management are; continued administration by Cardiff CC, or another local authority. Likewise there is discussion of input from the other 22 local authorities, but no reference to any input from the supply side or consumer representatives. This highlights a number of questions pertinent to landlords in Wales:

    (i) What is the justification for the decision not to organise a full and transparent tender to select an appropriate administrator?
    (ii) Why is it anticipated that running WALLS will be left solely to LHAs?
    (iii) What representation of landlords, agents and tenants is expected?
    (iv) What scope is there for a representative board of trustees to oversee the eventual organiser?
    (v) What process will be established for the auditing and oversight of WALLS?
    (vi) As a non-governmental body what is the basis for appointing it as administrator of significant fines for example; for not using the appropriate registration number as outlined in paragraph 22?
    (vii) What is the justification for appointing WALLS as the sole licensing body, when it is expected that third parties will provide much of the training? Has any assessment been made of the potential efficiency savings possible were training bodies permitted to award licensing on completion of relevant training?

19. The certainty that the government proposes is welcome, the concern will be the interpretation by the courts. Equally that the regulations are balanced and provide parity between the parties (landlord/tenant).

**Conclusion**

20. The aims that the Welsh Government has identified do raise concerns some as highlighted we believe that they require further work. The changes that are proposed are significant and needs to be correct first time; otherwise they could destroy the sector which would take a significant time to rebuild.

21. The increase in demand for privately rented accommodation is due to a number of reasons. The proposals for the private rented sector could kill the sector if they are incorrect. The changes should be based on the legality within law of a contract and not for social engineering.

22. Again, the NLA would like to thank the committee for the opportunity to respond and hope you find our comments useful.

Communities, Equality and Local Government Committee

CELG(4)-02-14 Paper 5

Dear Sir

**Consultation on the Housing (Wales) Bill**

I would thank you for the opportunity to respond to the above. I note the wide ranging content of the Bill some of which is not our area of expertise and accordingly I will respond to the issues of the Private Rented Sector where ARLA is strongly represented, particularly amongst the larger agencies operating in Wales thus dealing with a large part of the tenancies created for landlords who choose to use an agency. As an organisation ARLA deals across all jurisdictions within the UK and is well placed to see what works and does not work and have long lobbied for some of the concepts contained within the Welsh Bill.

I would initially endeavour to explain some of the requirement to join ARLA as I feel this will help explain some of our responses to the more specific questions raised in the consultation document. At present we have individuals as members and since 2008 membership has required to be by qualification to an agreed minimum standard. Currently for a Principal, Partner or Director (PPDs) that is NVQ Level 3 through a recognised regulated qualification. This requires approximately 120 hours of study. For an employee member it has been the same although we have now introduced a Level 2 which is 90 hours of study. These are modular, with 4 units in each qualification and can be taken at the same time or individually. PPDs are also required to hold Professional Indemnity Insurance for their business, belong to a Consumer Redress Scheme (one of those recognised under Consumer and Estate Agency Redress Act 2007) and will also be flexible to recognise others appointed under The Enterprise and Regulatory Reform Act of 2013. It is also a requirement that clients funds are held in a correctly designated client bank account, ring fenced from the business, and this is subject to an annual audit by an independent accountant. The PPD is also required to belong to a Client Money Protection Scheme, which protects the consumer should the member agent mis-appropriate clients funds. There are certain scheme limits to this. Consumer redress does not cover this aspect and only offers financial protection for a service failure or breach.

When looking at the options under the Regulatory Impact Assessment we would fully support the recommendation of option 7.3.3. It is important however that the body responsible for the policing of this is proactive rather that reactive. It was seen in Scotland when landlord registration was introduced that some local authorities were much more vigorous and as a result appear to have avoided the problems of non-registration in a more robust manner than those who “waited on the voluntary uptake”. This does not necessarily require prosecution; however when a landlord is advised of the error of their ways there does require to be follow up if ignored. A register in itself does not improve the standard of the property and thus does not always mean a better experience for the consumer. The current regime under HHSRS is felt by many to be too cumbersome and it is noted that DCLG are currently reviewing this piece of legislation. Wales will require addressing this issue also.

Any register must allow all local authority areas to be updated from a single point on the website and thus a landlord covering several local authority areas will be able to make all the necessary data entry at a single point of contact

with the register. This has been a frustration of the Scottish Scheme. There was even a case where a local authority took legal agent against an HMO landlord whilst at the same time a different authority was granting further licenses for new HMO's. The problems complained about were not of the landlord's making or within his control but a co-ordinated approach would have prevent a very frustrated judicial hearing.

7.13

There is mention of requirement to provide information on the changes being introduced; however the challenge of this requires to be fully recognised. It is noted that the intention is to use existing local authority information and that is to be welcomed. Benefit claims are a huge source of such data as are council tax records. However when speaking with officials from Newham Council in London, who introduced a compulsory licensing scheme for landlords in January 2013, they discovered a more fragmented sector than they had previously envisaged. It is to be hoped that Wales will recognise the fact that any individual acting on behalf of the owner is an agent. There is much anecdotal evidence that the experience of a tenant renting a property managed by one individual on behalf of another is subject to some of the poorest practices, not necessarily through deliberate ploy, but through ignorance of a very complex legal structure and process. It is noted that The Welsh Government are proposing to make amendments in the future to the tenancy regime, and whilst laudable it has to be queried whether all the proposal could or should be made at the same time. There could be major cost savings for the landlords and agents in the training requirements.

7.27

Organisations such as ours can benefit from assisting with the marketing and promotion of the option to agents. We see this as an opportunity to develop in Wales and as such will want to communicate the benefit and support we can provide to agents and the consumer. We have always believed that there is only so much that can be achieved on a voluntary basis, and whilst we continue to grow our numbers from just over 5000 in the UK in 2010 to just under 7000 at the end of 2013 we acknowledge that a mandatory regulatory requirement for agents is the ultimate option.

7.35

We note the comments on the size of the market and have no better guesstimate however we would advise that the costs to an agent are greater than stated. Typically our members, either employers or employees pay £200 membership on an annual basis. Client Money Protection costs the business £297 regardless of the number of offices, and Consumer Redress does vary but typically £100 per branch office. Accountant's reports for the business vary between £750 for a single well managed client account to several thousands of pounds for multi office practices. Professional Indemnity Insurance is typically starting at £300 per annum and will depend on turnover of business and claims record. We note that many business owner (PPD) members applying to join are actually requiring to take out a new policy.

7.47

The impact will depend on the veracity of enforcement. Scotland has introduced quite a cumbersome system for dealing with property standards and repairs through The Private Rented Housing Panel who were initial dealing with complaints concerning maintenance by carrying out site visits where desk based adjudication should have been possible, or an officer reporting to the Panel rather than the whole tribunal making a several hour round trip to investigate.

7.48
We agree this is the best option and gives the system the robustness required. Whilst there will be noises about landlords leaving the sector many will find alternative routes and there is strong evidence of landlords looking to expand portfolios. The benefit could be the desired outcome of a better educated and practiced sector for the benefit of all. Much has been made about the increasing complaints to Ombudsman Schemes but it has to be recognised that they are filling a role which did not exist 10 years ago and the consumer is only now starting to realise that they have an option other than the court system.
7.49
We agree in essence with all points except vi) where in most cases the tenant should have had a cost free access through the local authority regarding poor property standards and vii) where we query whether the PRS is always the guilty party in a mixed community, which we believe is the assumption being made.

Co-operative Housing.
As with any new source of housing it is imperative that the potential for impact on other forms of tenure are recognised. There is a distinct possibility that this proposal could impact on the first time buyer and the investor landlord. There is much evidence of shared equity schemes causing problems further down the line as the circumstances of those who were the original occupiers changes. Single people becoming young families who are unable to gain access to the correct housing for their changed circumstances require to be acknowledged and the problem addressed.

There is a need in certain areas for an increase in stock and it is important that new build is in the areas of demand and future economic strength.

Council tax on empty homes is a very emotive subject for the Private Rented Sector and any scheme requires to take notice of the degree of effort being made to bring the property into use. A perfectly adequate property can be un-occupied due to the lack of demand and not the lack of effort. Care needs to be taken to ensure there is no double jeopardy of a person being unable to sell or rent due to lack of demand.

It is noted that in section 28 (p155) a proposal for a code of practice. At present there is a Code of Practice operated by The Property Ombudsman and it is recommended that this form the basis of any agent Code. Notice requires to be taken of Guidance Provided by OFT under the Consumer Protection form Unfair trading Regulations 2008 and the Unfair Terms in Consumer Contract Regulations 1999.

Yours faithfully

Ian C. Potter FARLA FRICS
Managing Director
Association of Residential Lettings Agents

# ALMA Response to Housing ( Wales ) Bill

## CONSULTATION ON THE HOUSING ( WALES ) BILL

The Association of Letting and Management Agents (ALMA) is a self-regulating organisation, which encourages best practice in the lettings' industry throughout South Wales. ALMA are supported by Cardiff County Council and meet regularly to discuss issues affecting the sector and to ensure our members are kept to date with changes that may affect them and their clients. ALMA members are required to hold Professional Indemnity Insurance and be a member of an approved scheme (such as ARLA, NAEA, NALS or RICS).

We have been asked to consider the Housing ( Wales ) Bill and the need for legislation in certain areas. Our reply refers solely to the proposal for a compulsory registration and licensing scheme for all private sector landlords and letting and management agents. We have been asked to comment on the terms of reference for the inquiry which are to consider -

- General principles of the Bill
- Any potential barriers to this Bill?
- Are there any unintended consequences to the Bill?
- Financial implications, costs of implementation?
- Appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation

## GENERAL PRINCIPLES OF THE BILL

In principle, ALMA members wholeheartedly support the introduction of any measures designed to improve standards within the private rented sector. The PRS has been the subject of considerable research over recent years. For example, a major review of the PRS in England in 2008, culminating in the Rugg Review, which identified measures needed to improve the sector, which will no doubt be further expanded upon by Dr Rugg in her response. A Consultation on " Proposals for a better Private Rented Sector in Wales" opened on 6 July 2012 and at the time, ALMA submitted a response, which was essentially that we are in full support of both landlord and agent licensing but feel that agent licensing should be implemented prior to landlord licensing. There are a number of reasons behind this which are explained in further detail later on in this response.

# ALMA Response to Housing ( Wales ) Bill

## POTENTIAL BARRIERS TO THE BILL

The first thing to establish is exactly how many landlords there are in Wales? There are various figures quoted in the Bill of around 17,000 to 30,000 landlords, but figures in the explanatory notes allude that the figures " could be" much higher - between 70,000 and 130,000. The truth is that we do not know exactly how many landlords there are in Wales and the huge difference in the estimates is very worrying.

ALMA feel that the main potential barrier to the Bill therefore lies in the fact that due to lack of thorough research into landlord numbers, the cost of implementing and administering this scheme has been totally underestimated. The business plan is flawed and a much more commercial approach needs to be adopted.

DTZ produced a report on the first five years of landlords registration Scotland which made a number of recommendations which don't seem to have been taken into account prior to the release of the 2012 consultation document. There is a danger that if landlord licensing is commenced in Wales without further research, similar results to Scotland could be reproduced and the 'worst' landlords not being captured.

Further research would also show whether or not a landlord registration scheme would actually help to increase standards in the sector, and if so, in what way. The Scottish experience shows us that landlord registration may not necessarily provide the answer.

We feel that the huge sums of money needed to administer the scheme, could be better spent on enforcement of housing conditions.

Tackling agent licensing first has a number of advantages - It would give an opportunity for further essential research to take place on landlord licensing, which could then be introduced at a later stage, if sufficient evidence has been collated to support its introduction. Once this research is completed, it will allow the scheme to develop clear aims and methods for reaching those aims, and will hopefully avoid the situation where a large proportion of rogue landlords remain unregistered.

Agent licensing is an easier task to tackle, and holds practical advantages for bringing in first; such as agents will need to be licensed prior to landlords instructing them, and as the scheme allows a year to do so, there will effectively be a cross over period where unlicensed landlords who have not had an opportunity to gain their licence, could be instructing agents who have.

This period will allow the scheme to further market itself to what is a much larger audience, by promotion through letting and management agents who have had to go through the process already, thereby saving much needed costs of advertising to the local authority.

Agent regulation is more easily achievable and could on its own result in a dramatic increase in standards that would noticeably improve the sector.

During the period when only agent licensing would exist, there are still powers that the local authority can use (HHSRS & HMO regulations) to improve property standards and to protect consumers.

It is noted that some work will need to be undertaken to ensure that any scheme meets a minimum standard. We would suggest that the model that ARLA has adopted where the director and Principle/Partner/Director need to be qualified would be a good basis.

It is imperative that agents (and landlords) that are up to the required standard already are able to enter the scheme with very little difficulty and cost. The scheme cannot be one of bureaucracy nor overly onerous.

Secondly, for the scheme to work (especially for landlord licensing) an extensive marketing scheme needs to be put into place. It is not acceptable for enforcement or marketing to be done on the 'grapevine'. As such a budget and clear plan needs to be produced on how the target audience is going to be reached.

To help move the scheme forward and to evolve, it is recommend that a stakeholder group is set up which can monitor and improve the scheme particularly through its early stages. Landlords will want to feel that they have been listened to and have had some sort of engagement with the process as this will ultimately mean they will be more likely to comply and encourage others to do so. ALMA would be interested in being involved in such a stakeholder.

There seems to be a significant question mark over funding for enforcement. If we understand it correctly, enforcement cannot be directly funded by the scheme so the fees paid by the good landlords cannot be used to chase the " rogues"? If this is the current thinking, then enforcement will fall to the local authorities, however in the current economic climate of stringent cut backs, it may be difficult for the authority to maintain a constant approach, as there will be many other competing departments, some with more pressing priorities.

## UNINTENDED CONSEQUENCES

Failure to carry out further research could be counter productive and deter landlords from entering the market, or worse still, actively encourage them to purchase property outside Wales. In the current climate , we feel that we should be positively encouraging investment into Wales. If in a few years time, it is found that the scheme has not been effective, and there are many landlords and agents who are still unregistered and operating without penalty, the scheme may inadvertently create animosity.

# ALMA Response to Housing ( Wales ) Bill

We welcome the provision in 1.4.2(a) which allows a landlord not to be licensed if they delegate the management of a property to an agent. This should avoid the situation where landlords have to attend professional training when they have no part in the management of the property as is currently the case with HMO licensing. One of our member agents had a landlord who delegates management to them and is an Army Doctor who had to return from a field hospital in Afghanistan to attend landlord training. This seemed fairly ludicrous!

There will be the inevitable situation of fees spiralling upwards as the scheme progresses, and this could have a negative effect - increased costs levied upon agents and landlords, could result in higher rents being charged in an attempt to recoup back some of the extra expenditure, meaning that tenants ultimately will be penalised.

## FINANCIAL IMPLICATIONS/COSTS

There will be substantial costs associated with the implementation of this Bill to the local authority, landlords and letting agents.

A large proportion of the cost to local authorities is quoted in the Bill as being the cost of the additional staff needed to administer the registration and licencing process, assist in marketing and promotion activity, and deal with queries from landlords. The Bill has budgeted for ten administrative staff – however, if the actual number of landlords is unknown, this estimate of ten staff could be completely insufficient to handle the volume of enquires and applications.

Cardiff Council recently increased the 2014 licence fees for HMOs and part of the increase was attributed to the fact that the staffing costs involved in the administration of HMO licencing, were approximately **double** the amount generated in income, meaning that the number of landlords had been grossly underestimated – exactly the same scenario is going to happen with landlord licencing and registration without the robust research needed.

Agents who are currently regulated, already pay subscription fees to their respective professional body, plus the costs of training staff , examination fees, provision of compliance and industry training etc etc so any extra costs should not be prohibitive. The explanatory notes state that an agents entry in the register must record the number of persons who "manage properties on behalf of the agent" – further clarification is required as to what exactly " managing" means in this context?

## APPROPRIATENESS OF THE POWERS IN THE BILL FOR WELSH MINISTERS TO MAKE SUBORDINATE LEGISLATION

We offer no comment on this.

# REGISTRATION OF PRIVATE SECTOR LANDLORDS

Briefing paper (extract)

## Review of the Scottish Registration Scheme

Scotland has had a compulsory scheme of Landlord Registration for around six years.

The system set out to be 'light touch' but now imposes fines of up to £50,000 for non-registration. However prosecutions for non-compliance are rare. There is a perception that the scheme appears to be preoccupied with the registration process itself rather than enforcement. Powers are little used and regarded as ineffective.

An examination of the Scottish Landlord Registration Scheme rules as published on it's website, along with the complex guidance to local authorities published elsewhere, reveals a system with highly complex regulations which is likely to be administratively burdensome.

There is also concern that it's effect is limited at best. Recent research by a private tenants action group in Edinburgh found that no landlord has ever been struck off the register, despite some being convicted of serious housing offences. Community activists in Edinburgh and Glasgow have recently launched a campaign to lobby councils for the effective enforcement of legislation against what they regard as 'criminal' landlords.

A report on the scheme's first five years of operation was commissioned by the Scottish government from DTZ and was published at the end of 2011.

The report (Evaluation of the Impact and Operation of Landlord Registration in Scotland) catalogues a number of important failings:-

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*It continues to be difficult to quantify exactly how many landlords have not yet registered and whether they do not register because they are unaware of the requirement to do so or because they ignore this requirement.*

*The research findings reveal .. that there is no guarantee that management of property among private sector landlords reaches a specified standard.*

*Many local authorities do not have a performance and monitoring system in place for Landlord Registration.*

*Problems associated with the landlord website... add to the administrative burden.*

*There continue to be many frustrations with the system and suggestions for improvement.*

*(over..*



*The fee payment system generates delays in payment processing and failed payments are resource intensive and take a long time to rectify.*

*Fees do not cover costs... resources are focused on the administration of the scheme rather than investigation or enforcement activity.*

*The evidence collected suggests that Landlord Registration has not removed the 'worst' landlords from the sector."*

*There is no clear understanding of the overall administrative costs.*

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In the light of the above information, a respected letting agent with offices in Glasgow and Edinburgh was contacted and asked for their experience of the Scottish Scheme.

Fiona Docherty, Regional Representative for ARLA in Scotland stated that she would be content to have her views presented to the Wales PRS working group.

Ms Docherty regards the registration system as 'shambolic' and not having led to any increase in standards and, the only landlords registered are the 'good or better ones' and that enforcement is poor:-

*'The scheme was brought in 2006. The aims which you will no doubt have read were to clean up the sector, root out "rogue" landlords and ensure those letting were "fit and proper". The costs were £55 to register and £11 per property. Registrations could be either paper or online. The main problems with landlord registration are:-*

*Landlords perceive this as just another piece of useless legislation to bang them over the head with. A further cost which offers no tangible benefit. It has reached only the good landlords.*

*Effectiveness on the sector? – no improvements noted whatsoever. The councils do not have the resources to carry out checks to root out "rogue" landlords and those that are on it are as usual those 'above the radar'.*

*I am not aware of any prosecutions or landlords being struck off the register*

*Admin – the website is not fit for purpose, this is frustrating for landlords and agents alike. After five years the website is still a nightmare to navigate and hopeless at finding out if properties are registered, even if they are the ones you manage.*

*Renewals system is poor. We have had some very angry landlords who have been threatened with de-registration and rent penalty notices having received no prior notification of renewal.*

*Penalties for non-registration now up to £50K, not light touch.*

Grŵp Cartrefi Cymunedol Cymru

Community Housing Cymru Group

Communities, Equality and Local Government Committee
CELG(4)-02-14 Paper 7

**Communities, Equality & Local Government inquiry into the general principles of the Housing (Wales) Bill**

**Community Housing Cymru Group response**

## 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 155,000 homes and related housing services across Wales. In 2012/13, our members directly employed 8,000 people and spent over £1bn in the Welsh economy. 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 the Centre for Regeneration Excellence Wales (CREW) in order to jointly champion not-for-profit housing, care and regeneration.

Grŵp Cartrefi Cymunedol Cymru

Community Housing Cymru Group

## General Comments

CHC welcomes this opportunity to respond to the consultation on the Housing (Wales) Bill. The Bill is a comprehensive piece of legislation, covering a wide range of areas in the housing sector, which will affect housing associations both directly and indirectly. We have given our views on the individual principles of the bill in our written response below.

1. **A compulsory registration and licensing scheme for all private rented sector landlords and letting and management agents;**

CHC welcomes the intention of Welsh Government to improve private rented housing through a compulsory registration and licensing scheme. The private sector will play an increasingly important role in the housing system, with some research suggesting the private rented sector may reach 20% of the housing market in the UK by 2020[1].

We recognise the opportunity this scheme brings to improve the quality and management of the sector, and will hopefully provide tenants with a greater choice of well-managed homes across Wales. In our view, the proposed scheme strikes a good balance between ensuring the management of privately rented properties meets a minimum standard, and the need to avoid burdensome regulation. As such, the costs and training requirements for private landlords are not so onerous that they are likely to be discouraged from letting their homes.

We also note the support from the Welsh Local Government Association for this scheme, and agree with them that the scheme will be essential in raising standards in line with the introduction of the ability of local authorities to discharge their homelessness duty to the private rented sector.

However, we do have some concerns over the implementation of the scheme, and whether it will fully address the problems faced by the private rented sector

Traditionally, the private rented sector has been extremely difficult to access for low income families, placing extra burden on the supply of social housing. The issues in accessing the sector have often related to a lack of security of tenure, and a lack of housing supply. These issues are not addressed by this scheme, but will be major barriers to improving the private rented sector in Wales.

2. **Homelessness legislation**

[1] Pattison, B. et al (2010) Tenure trends in the UK Housing System

Registered Social Landlords have a key role to play in preventing and addressing homelessness, and we support the focus from Welsh Government, in policy and legislation, on preventing homelessness.

Co-operation, and partnership working between RSLs and local authorities is excellent in many parts of Wales, and RSLs also offer a host of services to prevent homelessness, such as family mediation, care and support for vulnerable groups, and hostel provision.

We have some concerns regarding the strengthening of the duty on housing associations to cooperate with local authorities in discharging their homelessness duty and the provision of accommodation for people who become homeless.

We are not in favour of increasing the duty upon the sector at a time where both a lack of housing supply and welfare reform, in particular the bedroom tax, present considerable barriers to both allocating and finding suitable accommodation, a challenge we face jointly with our local authority colleagues.

CHC commissioned research in partnership with WLGA, funded by Welsh Government, exploring the ways in which greater partnership working around homelessness can be fostered between housing associations and local authorities. Preliminary findings revealed much good practice across Wales, but some existing challenges, including confusion over roles and responsibilities and inconsistent practice.

The research recommended a number of actions across key areas for housing associations, local authorities and Welsh Government – these recommendations included:

- Development of local agreements setting our role, responsibilities and expectations of each partner in discharging the duty
- All parties to meet regularly to discuss effectiveness and appropriateness of common housing registers, common allocations policy and arrangements for nominations
- The Welsh Government to issue clear guidance on the application of housing associations' responsibilities under the Delivery Outcome which requires them to balance the need to sustain communities, as well as to give reasonable preference to those in greatest housing need or homeless.

We feel that much of what is desired through the strengthening of the duty may be reasonably achieved by the undertaking of the recommendations within this research.

3. **A duty on local authorities to provide sites for Gypsies and Travellers where a need has been identified**

We recognise that gypsy and traveller communities represent one of the most socially excluded groups in Wales and we welcome measures which improve their entitlement to culturally appropriate housing and amenities.

This should extend to providing long-term settlement sites to ensure that families in this community are able to more effectively engage with health and educational services. The CHC Group would argue that in the context of a local authority's role in assessing and understanding housing demand in an area, authorities should be making adequate provision for those demands and we welcome this proposal.

4. **Standards for local authorities on rents, service charges, and quality of accommodation**

CHC believes that it is important that all tenants in social housing have good quality homes and services, whether they live in a local authority or housing association home. RSLs have invested heavily in their homes, with many of them now having reached the Welsh Housing Quarterly Standard. We welcome moves for all social housing to achieve this standard.

5. **Reform the Housing Revenue Account Subsidy system**

CHC welcomes the agreement in June 2013 between Welsh Government and HM Treasury to remove Wales from the Housing Revenue Account Subsidy, giving stock-retaining local authorities the opportunity to improve homes, and in some cases, build new affordable homes.

6. **The power for local authorities to charge more than the standard rate of council tax on homes empty for over a year**

CHC welcomes the move to give local authorities discretion to charge more than the standard rate of council tax on empty homes, and in line with our response to the consultation on this issue, we strongly believe that funds raised by this policy should be ring-fenced for investment in housing and housing-related services.

7. **The provision of housing by co-operative housing associations**

CHC supports the Welsh Government in its ambition to increase the supply of co-operative housing, which will extend the range of housing options available in Wales. We welcome this part of the bill, which will remove some of the current barriers to the development of co-operative housing, and we are hopeful that it will both increase supply and bring new finance into the sector.

**Community Housing Cymru Group**
**January 2014**

Eitem 5

**Carl Sargeant AC / AM**
**Y Gweinidog Tai ac Adfywio**
**Minister for Housing and Regeneration**

Llywodraeth Cymru
Welsh Government

Ein cyf / Our ref: LF/CS/00016/14

Christine Chapman AM
Chair
Communities, Equality and Local Government Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

14 January 2014

Dear Christine

**Housing (Wales) Bill - CELG Committee – Request for Further Information**

Thank you for inviting me to the Communities, Equality and Local Government Scrutiny Committee on12 December 2013 to discuss the Housing (Wales) Bill.

At the meeting I promised to provide the Committee with further information on a number of issues. I am pleased to provide this information, which is listed below with reference to where the information can be found in the attachments to this letter.

1. Differences between the registration and licensing scheme for the private rented sector in Scotland and our proposed scheme (Annex 1).

2. A note on other aspects of proposals for the private rented sector (electrical safety standards and costs of enforcement (Annex 2).

3. Information on our proposals for a better approach to helping people who are homeless or at risk of becoming homeless (Annex 3).

4. A breakdown of the housing-related borrowing limit to include existing borrowing and the new debt to fund the buy-out from the Housing Revenue Account Subsidy Scheme is set out at (Annex 4).

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

English Enquiry Line 0845 010 3300
Llinell Ymholiadau Cymraeg 0845 010 4400
Correspondence.Carl.Sargeant@wales.gsi.gov.uk

After the Committee's session, you wrote to me seeking further clarification on a number of additional points which were not reached during the session itself. I am pleased to provide information in response to your request. The information is provided in Annex 5 to Annex 9 along with some further information to clarify certain points raised by Members of the Committee.

I would also like to take this opportunity to flag up with you a very useful visit I made in early January 2014 to Leeds City Council to learn more about their landlord accreditation scheme which is operated on behalf of the council by the Residential Landlords Association. I met with representatives of the Council and the Residential Landlords Association and would suggest that it would be helpful to the Committee to call them to provide evidence on the private rented sector aspects of the Bill. Should you wish to follow this up, my private office would be able to provide you with relevant contact details.

I trust that my response to the Committee's request and the additional information I have supplied will assist Members in their scrutiny of the Housing (Wales) Bill. Should you or any Member have any further queries or require more information on any aspect, please do not hesitate to contact me.

Yours sincerely

**Carl Sargeant AC / AM**
Y Gweinidog Tai ac Adfywio
Minister for Housing and Regeneration

## Annex 1 – Policy Position in Scotland

### PRIVATE RENTED SECTOR – ANALYSIS OF UK PROPOSED AND EXISTING LEGISLATION

| | Accreditation | Landlord Registration | Letting Agent Registration | Landlord Licensing | Letting Agent Licensing | HMO Licensing | Tenancy Deposit Scheme |
|---|---|---|---|---|---|---|---|
| **Wales** | Voluntary | Proposed | Proposed | Proposed | Proposed | √ | √ |
| **Scotland** | Voluntary | √ | Proposed* | None | None | √ | √ |
| **England** | Voluntary | None | None | None | None | √ | √ |
| **N.Ireland** | Information on Northern Ireland is patchy but we do know they are planning to introduce landlord registration | | | | | | |

(* Management agents have to register in Scotland. Letting agents do not have to be registered)

### LESSONS LEARNED FROM SCOTTISH APPROACH TO LANDLORD REGISTRATION INCLUDE:

- We intend to have a national scheme thus the same rules will apply irrespective of location and local authorities will act collaboratively, sharing information. (In Scotland they have a central register but each local authority applies their own rules e.g. the fit and proper person test can be applied differently in one area compared to another);
- We propose one registration/one registration number covering all Wales (in Scotland, if you submit hard copies of registration documents you need to send these to the local authority in which your properties lie with different numbers being allocated for each local authority);
- Our registration will last 5 years (in Scotland the registration covers 3 years and Scottish authorities' enforcement teams spend more time chasing up those who have initially registered but do not re-registered rather than those who have never complied);
- We have greater powers of enforcement available from the start (Scotland have used a light-touch and increasing levels of fines post introduction as the scheme has embedded and evidence suggest this has caused confusion);
- We will have a mandatory, national training element with a Code of Practice attached (In Scotland training is voluntary and varies between local authorities);
- The public will be able to access to certain aspects of the register e.g. the managers name. There will not be automatic disclosure of the landlord's name in Wales because of potential security issues;
- Our scheme includes agents from the start (Scotland are currently looking to address letting agents); and
- We have appeals to the Residential Property Tribunal (Scotland are introducing something similar).

## Annex 1 – Policy Position in Scotland

### Differences in Proposals in Scotland and Wales

1. The Housing (Scotland) Bill introduces regulation of letting agents; including a mandatory register; statutory requirements regarding letting agents' practice; and a mechanism for resolving disputes between letting agents and their customers.

2. The Housing (Wales) Bill that has been introduced goes further than this and will require letting and managing agents to become registered and licensed in order to operate. Becoming licensed as an agent will involve being a member of a recognised professional body e.g. the Association of Residential Letting Agents (ARLA) and the National Approved Letting Scheme (NALS). This will ensure that agents have the correct procedures and safeguards, like client money protection, in place. Licensing in Wales will also require agents to comply with a code of practice which will cover issues like dispute resolution.

3. Under the Scottish proposals agents will be registered for three years. The three year registration period has proved problematic for the registration of landlords under the existing legislation in Scotland, as the time period is too short and causes difficulties with enforcement. In Scotland the ability of letting agents to charge fees to tenants has been restricted but in reality this has resulted in rental levels being increased.

4. Under the proposals for Wales the time period for registration will be five years. There are no such plans to impose restrictions on letting agent's fees in Wales but there will be a requirement, under the Code of Practice, for letting and management agents to provide details of the fees that they charge to all potential tenants that they engage with.

5. Enhancing local authority powers to tackle disrepair in the private sector. Chapter 4 of the Housing (Scotland) Act 2006 introduced a repairing standard which is proposed to be modified by the Housing (Scotland) Bill to enable appeals in certain cases where there are disputes to be heard by an independent tribunal. An equivalent appeals mechanism is already in place in Wales.

6. No such standard exists in Wales but quality of housing and the health and safety of people in all tenures of housing is covered by the Housing, Health and Safety Rating System (HHSRS). HHSRS was introduced by Part 1 of the Housing Act 2004, which covers England and Wales. The system does not apply to Scotland. The rating system enables local authorities to target conditions in residential property that pose a risk to the health and safety of its occupiers. In determining the risk, the local authority must have regard to the risk in relation to the most potentially vulnerable occupiers i.e. older people or the very young. The assessment of the risk is scored on a scale which is divided into two categories. Those which score on the high on the scale (and therefore the greatest risk) are called category 1 hazards, for example an open stair case without a banister. Those that fall lower down on the scale and pose a lesser risk are called category 2 hazards, for example a stair case with a couple of spindles missing. Where a condition of a property is classified as a category 1 hazard a local authority is under a duty to take

**Annex 1 – Policy Position in Scotland**

the appropriate enforcement action. If the problem poses a category 2 hazard the authority may take enforcement action. The types of enforcement action available to an authority under HHSRS include:

- service of a hazard awareness notice;
- service of an improvement notice;
- making a prohibition order;
- making a demolition order; and
- declaring a clearance area.

7. HHSRS is a comprehensive system which is specifically geared toward the health and safety of the occupants of all types of housing irrespective of tenure. As such, it goes further and is superior to the Scottish repairing standard.

## Annex 2 – Private Rented Sector

### Electrical Safety Standards

1. It is currently proposed that compliance with the Code of Practice will be a license condition and therefore failure to comply could lead to a licensed person losing his/her licence to let or manage rental property. For this reason it is important that the Code does not include requirements to be met that are not already set out in existing legislation as it would not be appropriate to introduce new statutory requirements through a Code rather than through the legislative process.

2. We are currently considering whether a part of the Code could be used to include some examples of best practice in relation to electrical safety but failure to meet any suggested voluntary standards would not result in the loss of a landlord's licence. It is therefore possible that information on best practice in relation to electrical safety could be included in the best practice part of the Code but the content is still to be determined. However, severe electrical hazards such as bare wiring would be covered by the Housing, Health and Safety Rating System and would be a category 1 hazard.

### Note of enforcement costs

3. The intention has always been that the costs associated with enforcement would be met out of the registration fees generated by the scheme. We acknowledge that the *Hemming* case may present a difficulty with this but are confident that a solution to the problem that the case poses can be found.

4. Local authorities cannot use fees for enforcement across the board. The issue in *Hemming* was that fees could be used for enforcement against registered or licensed persons (particular where adherence to conditions / codes is a matter taken into account in considering registration or licensing) but not enforcement against people who are not registered or licensed.

5. In terms of taking action against unregistered / unlicensed persons – the most likely route for the recovery of costs of enforcement would be through costs sought in the event of successful court proceedings.

**Annex 3 – Homelessness**

**Report by Cardiff University (which provided the evidence base for the increase in the period where an applicant is considered to be "threatened with homelessness" from 28 to 56 days).**

1. This report can be accessed via the following links:
http://www.senedd.assemblywales.org/documents/s7352/Impact analysis of existing homelessness legislation in Wales.pdf

http://wales.gov.uk/docs/desh/publications/120131improvehomelessframeen.pdf

**The meaning of "vulnerable" in section 55(1)(j) in relation to people who have served a custodial sentence**

2. The issue that arose during the Committee meeting on 12 December 2013 was whether the provisions of section 55(1)(j) were saying-
   (a) that all former prisoners are vulnerable and therefore are in priority need (subject to there being a local connection); or
   (b) that only vulnerable former prisoners (where the vulnerability is a result of having been in custody) are in priority need (subject to there being a local connection).(see paragraphs 166 to 192 of transcript of CELG meeting on 12 December 2013).

3. The interpretation described at paragraph 2(a) above is only possible if the words *"who is vulnerable as a result of"* are treated as being merely descriptive and inoperative. The courts will assume that words in legislation are intended by the legislature to have an effect, unless there is an indication that the material is explanatory. There is no such indication in respect of those words in section 55(1)(j). Consequently, we think that the interpretation at paragraph 2(a) is not one that a court is likely to adopt.

4. People are "vulnerable" under the current law on priority need for assistance with homelessness if they have a less than normal ability to fend for themselves or such that they would suffer more harm than would ordinary homeless people (as established by case law - see v *Camden London Borough Council ex parte Pereira [1999] 31 HLR 317* and *Osmani v London Borough of Camden* [2004] EWCA Civ 1706)). The Government's view is that this is the test that the courts would likely to apply in the case of section 55(1)(j) of the Bill and, as explained above, the vulnerability would have to be the result of having been in custody of the kind mentioned in sub-paragraphs (i) to (iii) of that provision.

5. I have established a Prisoner Accommodation Resettlement Working Group to inform the development of Statutory Guidance on this issue and also to promote the development of pathways for assisting former prisoners to find suitable accommodation.

## Annex 3 – Homelessness

### The absence of specific reference to mental illness in the category for priority need in section 55(1)(c)(i)

6. The provision at section 55(1)(c) is not intended to change the current law on priority need for assistance with homelessness, but the wording has been changed from the equivalent provision in section 189(1)(c) of the Housing Act 1996. It has been changed for two reasons:
   (a) to remove language which is now thought to be thought inappropriate; that is, the reference to "mental handicap", and
   (b) to more clearly express the current legal meaning of section 189(1)(c) of the 1996 Act as developed by case law.

7. The meaning of section 189(1)(c) of the 1996 Act has been considered on a number of occasions by the higher courts and it cannot be fully understood without reference to that case law. That provision says:
   "(1) The following have a priority need for accommodation…
   (c) a person who is vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason….".

8. The case law shows that local housing authorities and applicants for assistance applying section 189(1)(c) in real cases have misdirected themselves on the legal meaning of the provision. One issue which is not clear from the drafting of the section 189(1)(c) is whether or not the meaning of “other special reason” is limited by the preceding words which mention old age, mental illness and handicap and physical disability. In *R v Kensington & Chelsea London Borough Council ex parte Kihara and others* [1997] 29 HLR 147 the court held the following points of law about the interpretation and application of section 59(1)(c) of the Housing Act 1985, from which section 189(1)(c) of the 1996 Act is derived:
   (c) the *ejusdem generis* ("of the same kind") rule has no application for the purpose of construing “other special reason”. Those words in section 59(1)(c) of the Housing Act 1985 constitute a free-standing category which, although to be construed in its context, is not restricted by any notion of physical or mental weakness other than that which is inherent in the word vulnerable itself; though the word “reason” is in the singular, it entitles the housing authority to look at a combination of circumstances;
   (d) the word “special” indicates that the difficulties faced by the applicant are of an unusual degree of gravity, and are such as to differentiate the applicant from other homeless persons; financial problems by themselves are not capable of amounting to a “special reason” within the meaning of section 59(1), but the applicants in *Kihara* were Asylum seekers, had no capital, no income, were prohibited from obtaining employment, had no family or friends in the country and could not speak English; their circumstances were such that they could be considered to be vulnerable.

9. This is the underlying reason for the focus of section 55(1)(d) of the Bill being the "special reason" rather than particular examples of "special reason" like old age and mental illness as in section 189(1)(c) of the 1996 Act. The policy (and the current law) is that the special reasons for the person’s vulnerability are not to be limited to physical or mental weakness. This is why the provision starts with "special reason" and follows that with examples rather than a list intended to limit the generality of "special reason".

10. The word "mental" does not appear in relation to "illness" because it is intended to indicate that "illness" of any kind is capable of being a "special reason", not just mental illness. The reference to "mental handicap" has been removed altogether and both physical and mental disabilities are covered by the simple reference to "disability".

**Clarification on the use of the words "for example" in section 55(1)(c)(i).**

11. The use of examples (and the expression "for example") in legislation is quite common (see, for example, Charities Act 2011 section 246, Child Support Act 1991 section 33, Children Leaving Care Act 2000, section 2, Scotland Act 1998 Schedule 5 Part II specific reservations Section A1). There are well over 100 Acts currently in force that use the expression "for example". Examples have also been used in recent Assembly legislation (see Public Audit (Wales) Act 2013 Schedule 1 paragraph 28 and section 27 of the Social Services and Well-Being (Wales) Bill (as amended at Stage 2)).

12. The use of "for example" in legislation is a helpful use of plain words to indicate that what follows are examples of things included within the ambit of a general category that are not intended to limit the ambit of that general category.

**The existing regulation and inspection regime for homeless hostels**

13. The Housing (Wales) Bill will link with existing legislation which requires the local authority to satisfy itself that the accommodation it offers under its homelessness duties must be suitable for the applicant and their household. Hostels are covered by this legislation, including the Homelessness (Suitability of Accommodation) (Wales) Order 2006 which sets specific standards for all shared accommodation secured by local authorities under their homelessness duties. These provisions require the authority to consider the suitability of the accommodation in regard to their health, social services, family and other needs, and also whether the accommodation is affordable given the applicant's financial resources.

14. The Code of Guidance on Homelessness and Allocations expects local authorities to inspect all properties used in the discharge of their homelessness duties. http://wales.gov.uk/docs/desh/publications/120813allocateaccommodationen.pdf

15. Rents in hostels are usually made up of a core rent and other charges. The local authority would need to decide whether rents were eligible for housing benefit.

16. Hostels are also subject to the Housing Health and Safety Rating System (provided for by Part 1 of the Housing Act 2004) which can be used by Environmental Health Officers to assess suitability. In most cases, hostels will also be classed as 'houses in multiple occupation' and many will be required to be licensed under Part 2 of the Housing Act 2004

17. The Fire Service also has a role in inspecting the fire safety of hostels.

## Annex 3 – Homelessness

**A note on reciprocal arrangements between local authorities for housing homeless people.**

18. There are no formal reciprocal arrangements in place for the resettlement of homeless persons; the current legislation allows Local Authorities to seek assistance in discharging their homelessness duties through other bodies such as Housing Associations or other Local Authorities. (Section 213 Part VII Housing Act 1996)

19. This provision is included in the Housing (Wales) Bill 2013 under section 78.

20. The request for assistance in discharging homelessness duties normally arises where an applicant does not have a local connection to the area being referred to, or has connection in 2 or more areas and is owed a duty by the Authority they have presented to, but wishes to be transferred to the other Local Authority area.

21. Each case is considered on a case by case basis and the current code of guidance sets out a process for referral and response from the Authority receiving the referral.

22. The example given at the Communities, Equality and Local Government Committee 12 December 2013 was specific to former offenders who may not want to return to their home area as this may put them at risk of re-offending. This example, if supported by other agencies or departments, should be considered by the referring and receiving Authority.

23. The current statutory Code of Guidance states:

> *"18.38 Other local authorities experiencing less demand for housing may be able to assist a local authority by providing temporary or settled accommodation for homeless and other 'reasonable preference' applicants. This could be particularly appropriate in the case of applicants who would be at risk of violence or serious harassment in the district of the local authority to whom they have applied for assistance. Other local authorities may also be able to provide accommodation in cases where the applicant has special housing needs and the other local authority has accommodation available which is appropriate to those needs. Under s.213(1) of the 1996 Act, where one local authority requests another to help them discharge a function under Part 7, the other local authority must co-operate in providing such assistance as is reasonable in the circumstances. Local authorities are encouraged to consider entering into reciprocal and co-operative arrangements under these provisions."*

24. Cases that are subject to Multi-Agency Public Protection Arrangements are dealt with separately. Former prisoners who pose a high risk to the public are managed through a multi agency approach with membership from Police, Social Services, Local Authority Housing Departments, The National Probation Service and other relevant bodies.

25. There will be circumstances where a former offender will not be able to return to their local area either due to victim issues or for their own safety. Once these risks have been identified it may be appropriate to refer the individual to another Local Authority

area even though they do not have a connection to the Local Authority. These arrangements are normally agreed on a reciprocal agreement and the receiving authority may “swap” a case they are having difficultly resettling with the referring LA. These cases are referred on a case by case basis and the main driver is the management of the former offender and the management of risk.

## Annex 4 - Housing Revenue Account Subsidy - Local Authority Borrowing

**A breakdown of the housing-related borrowing limit to include the existing borrowing and the new debt fund the buy-out.**

1. As part of the agreement, which will enable local authorities to exit the Housing Revenue Account Subsidy (HRAS) system, HM Treasury required a limit to be set for future housing related borrowing. The £1.85 billion borrowing cap that has been agreed at the all Wales level will provide for local authorities to bring their homes up to the Welsh Housing Quality Standard and broadly meet the borrowing requirements as set out in their existing business plans. The table below provides a breakdown of the estimated borrowing cap at the All Wales level, based on the latest information available. These figures will be subject to change.

| | **£m** |
|---|---|
| LHA's existing borrowing for housing at April 2013 | 459.41 |
| Estimated new debt that LHAs will be required to take on to fund the HRAS settlement value which will require annual interest payments totalling £40m | 919.50 |
| Estimated borrowing headroom | 471.09 |
| **Borrowing Limit that has been agreed with HM Treasury** | **1,850.00** |

2. The distribution of both the HRAS settlement value and the borrowing cap will be developed by an HRAS Reform Project Board and then be subject to detailed consultation with the Welsh Local Government Association and the eleven stock retaining authorities.

**Additional Questions Post-Committee**

**Annex 5 – Private Rented Sector**

**What consideration was given to making more use of existing selective licensing powers before introducing further legislation in this area?**

1. It is my view that the existing powers in the Housing Act 2004 are not sufficient to protect tenants; as selective licensing powers can only be used in certain areas and I want to introduce a fair scheme for the whole private rented sector in Wales.

2. It is not possible to compare the proposal for a registration and licensing scheme in the Housing (Wales) Bill with the selective licensing powers that are in the 2004 Act, as the latter are property based rather than person based.

3. The Housing (Wales) Bill is proposing a light-touch approach to regulating the whole of the private rented sector with an essential training element to ensure all tenants receive good quality housing.

**Will the code of practice provided for in section 28 include requirements in relation to Carbon Monoxide detectors and, if so, what will these be?**

4. Our approach on carbon monoxide remains based on voluntary action, raising awareness and improving incident reporting.

5. It is possible that information on best practice in relation to carbon monoxide detectors could be included in the best practice part of the code of conduct but the content is still to be determined. However, failure to meet any suggested voluntary standards would not result in the loss of a landlord's licence

**Additional points to note:**

**Registration –**

6. ‘A further important consideration is that our proposals on landlord registration are intended to provide a light touch approach with no barriers to registration.’. We wanted to ensure there is nothing to stop any landlord registering the properties they own. However that registration will not constitute any status other than being registered and complying with the legislation.

7. Once registered, the owner/landlord can decide whether they wish to manage the properties themselves or to appoint an agent to manage on their behalf. If the decision is to self-manage then the licensing process begins with a Fit and Proper Person test and the requirement to undertake training – which in most cases will involve attending a one day training course. For the sake of clarification, landlords who choose not to manage the properties themselves will not need to be licensed as the obligation will be on the letting or management agent.

**Additional Questions Post-Committee**

**Annex 5 – Private Rented Sector**

**Number of landlords –**

8. In the draft transcript published on the National Assembly for Wales' website, the figure quoted for the number of landlords is incorrect. I understand that this is being corrected, but for clarity I wish to confirm that we estimate that there are between 70,000 and 130,000. This estimate is based on our knowledge of the number of properties in the private rented sector (approx. 183,000) which is then divided by the average number of properties owned by landlords which varies from 1.4 to 3 depending on which organisation you speak to. Interestingly, the Residential Landlords Association recently suggested there were 80,000 landlords in Wales.

**Single property landlords –**

9. Several Committee members questioned why our proposals will require landlords with only one property to register. I was also asked whether I had any evidence to suggest that these were the worst landlords. I have never suggested that landlords with one property are any worse, or any better, than landlords with multiple properties. Our proposals are built on equity and fairness for all – we are requiring all landlords to register. In this way we ensure that all tenants can expect at least the same standard of management and, at the same time, avoid the situation where less scrupulous landlords with two or three properties try to avoid registration and licensing by "transferring" ownership to family members etc.

10. Any proposal to treat landlords with one property (and, more particularly, the tenants of those landlords) differently from those with larger portfolios (and their tenants) would need to be considered very carefully in the light of Human Rights legislation. At the moment there is no rational argument or strong evidence base to support such a move.

11. I would repeat that I do not think our proposals will prove to be too onerous. The costs will not be high and, once registered, the potential 'burden' of attending a one day training course every five years should not be deterrent. Feedback from the existing Landlords Accreditation Wales scheme, which has around 3,000 accredited members, suggest that the vast majority of landlords found the course informative and beneficial.

**Additional Questions Post-Committee**

**Annex 6 – Homelessness**

**Why have you not included provision in the Bill for the Welsh Ministers to approve homelessness strategies (similar to that provided elsewhere in legislation, e.g. Welsh in Education Strategic Plans required under the School Standards and Organisation (Wales) Act 2013)?**

1. We have not included provision in the Housing (Wales) Bill for Welsh Ministers to approve local homelessness strategies. This is because this duty has been in existence since 2003 and local authorities have been planning these services with increasing success since then. This is quite distinct from the position with Gypsy Traveller arrangements.

2. My officials are in regular contact with local authorities, each of whom has prepared an action plan in preparation for the new homelessness legislation, and we will continue to monitor their progress in planning for delivery of homelessness services.

**What the term "help to secure" provided in section 56 will mean in practice and how you will ensure that this term is interpreted consistently in each local authority area?**

3. The duties to help to secure accommodation lie at the heart of our proposals. We intend it to be a local authority duty to engage on an individual casework basis with the applicant who seeks assistance. Local authorities will need to identify why applicants are at risk of homelessness and how these risks can be addressed. They will also need to work with the applicant to identify options for resolving their housing problem and do everything they reasonably can to help them retain or find accommodation. Examples of the activities that are expected to be involved in this are included in section 50 of the Housing (Wales) Bill.

4. I have established a cross-sector working group to develop statutory guidance on our proposed legislation. This group is currently examining these duties to help and relieve homelessness and will set out clear and detailed guidance on how we expect these duties to be delivered.

## Annex 7 – Standards and Social Housing

**Why there is a need to reform local authority rents and how this relates to the abolition of the Housing Revenue Account Subsidy?**

1. Currently local housing authorities set their rents in accordance with the local authority guideline rent system, which is an integral part of the Housing Revenue Account Subsidy system.

2. Once the HRAS system is abolished this will mean that the existing local authority guideline rent system will also end and there will be no legislative framework in place to control local housing authority rents.

3. It is necessary to control local housing authority rents as they impact directly on the level of housing benefit claimed. There is potential for Welsh Government budgets to be reduced where the UK Government's welfare costs increase as a consequence of rising local authority rent levels in Wales that are considered disproportionate to that in England.

**What are the implications of the provisions on service charges for social housing on the level of service charges for tenants, in particular will this mean an increase in charges for some tenants?**

4. The Housing (Wales) Bill will allow Welsh Ministers to set standards for rents and service charges. This will ensure that rents and service charges are charged separately and clearly identified. This will increase transparency for tenants.

5. Currently, both rents and service charges are subject to annual increase. This will continue under the new standard with each local housing authority being responsible for separating rents from service charges, implementing annual increases and considering the impact upon tenants.

6. The Welsh Government has recently announced that it is setting up a task and finish group to develop a framework and guidance for services charges to ensure consistency across both local authority and housing association sectors.

**Additional Questions Post-Committee**

## Annex 8 – Housing Finance & Housing Revenue Account Subsidy

**Over what period will local authorities be required to continue to make interest payments on the Housing Revenue Account Subsidy settlement debt?**

1. Local authorities are required by HM Treasury to buy themselves out of the HRAS via a lump sum payment and will take on new debt to fund this. The agreement that has been secured with HM Treasury is based on the amount of annual interest payments local authorities will pay in total each year i.e. £40 million. The distribution of the payment will be subject to consultation.

2. The basis of this agreement provides certainty to local authorities as their share of the annual interest will remain constant. The buy-out figure will be determined a short period before the settlement date and will be dependant upon the interest rate applicable at that time. This provides local authorities with the flexibility to fund the settlement value according to their local treasury management requirements and to determine the type and length of loans. We can not pre-judge the loan period as this will be a local decision.

3. The key outcome from this agreement is that all local authorities will be better off in revenue terms than they would have been if the existing Housing Revenue Account Subsidy system remained in place. This is because the amount of interest they will pay each year i.e. £40 million will be lower than the amount of HRAS that is returned to HM Treasury each year under the existing system i.e. £73 million.

**Additional information to note:**

4. The Housing (Wales) Bill includes the legislative provisions for Welsh Ministers to determine the calculation of the HRAS settlement value for each local authority.

5. The UK Government recently published a draft Wales Bill which includes provisions for limits to be set for housing debt in Wales. Part 3 of the Wales Bill provides for HM Treasury to determine the maximum amount of debt that can be held, in aggregate, by local housing authorities in Wales. The Wales Bill also provides for Welsh Ministers to determine the calculation of housing debt that is to be treated as held by local housing authorities and the maximum amount of debt each local housing authority may hold.

**Annex 9 – Additional Information**

## Part 6 - Co-operative Housing

1. During the Committee meeting I was asked about considering co-operative housing as affordable housing via S106 agreements.

2. I have given this some consideration and on the basis of existing Planning Policy a co-operative housing association is already able to deliver affordable housing on a social rented or intermediate basis. Alongside this co-operative housing associations are also able to, and some have, become RSLs. Therefore S106 agreements would already apply to co-operative housing.

3. Planning Policy Wales (PPW) states that:

   *"Affordable housing for the purposes of the land use planning system is housing where there are secure mechanisms in place to ensure that it is accessible to those who cannot afford market housing, both on first occupation and for subsequent occupiers."*

   PPW goes on to add that for schemes that: *"provide for stair-casing to full ownership … there must be secure arrangements in place to ensure the recycling of capital receipts to provide replacement affordable housing. Affordable Housing includes social rented housing and intermediate housing."*

   It also says: "*Affordable housing includes social rented housing owned by local authorities and registered social landlords and intermediate housing where prices or rents are above those of social rent but below market housing prices or rents."*

4. Technical Advice Note 2 - Planning and Affordable Housing (TAN 2), provides more detailed guidance to local planning authorities on the provision of affordable housing. It discusses ways of keeping housing affordable in the future. TAN 2 states:

   *"An effective way of achieving control over occupancy is to involve a registered social landlord (RSL). An RSL's continuing interest in the property will ensure control over subsequent changes of ownership and occupation."*