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.