HB 16
National Assembly for Wales
Communities, Equality and Local Government Committee
Housing (Wales) Bill: Stage 1
Response from: 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 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.

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

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.

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.

[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

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

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'

[7] http://www.scotland.gov.uk/Publications/2011/07/13111732/0
[8] Housing Bill Explanatory Memorandum

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].

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

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

[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

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.

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

[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

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.

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

[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

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 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.

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

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.

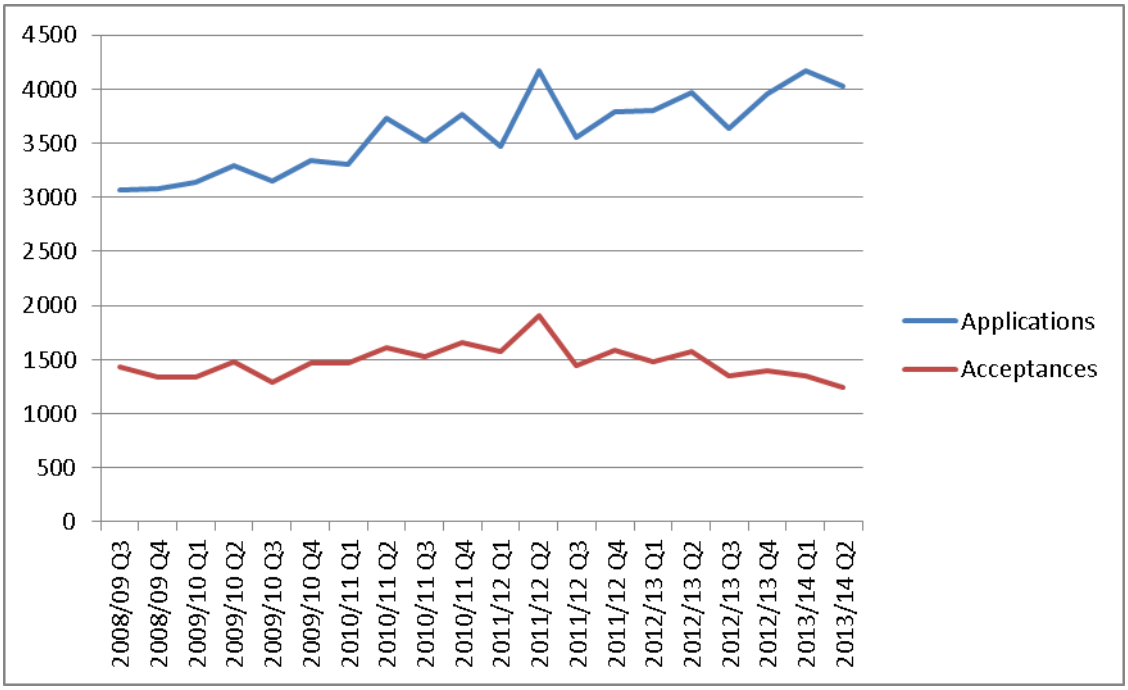

Figure 1: Homeless applications and acceptances in Wales, Q3, 2008/09 to Q2, 2013/14

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.

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

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
- 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.

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

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** 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

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

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 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

[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

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:

- 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.

[22] Humphreys, C. and Stirling, T. (2008) Necessary but not sufficient: housing and the reduction of reoffending

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.

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

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 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.

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