

Written response regarding legislation and policy consultation

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Written Evidence to:	Christine Chapman AM Chair of the Communities, Equality and Local Government Committee National Assembly for Wales
In respects of:	Housing (Wales) Bill
Date:	January 9 th 2014
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About Us

The Welsh Tenants was formed as a not for profit limited company in 1988 but has a longer history supporting and representing tenants dating back to 1977.

The Welsh Tenants mission is to *'enhance and protect the rights, representation and housing standards of those whom rent in Wales'*.

To this end we work cooperatively with our 340 member groups and associates, the Welsh Government and key stakeholders across the housing sector.

Introduction

The Tenantiaid Cymru / Welsh Tenants (WT) welcomes the invitation by the chair and cross party committee members to provide a written and oral statement to the Communities, Equality and Local Government Committee at stage 1 of the Housing (Wales) bill.

WT have been extensively involved in a number of Welsh Government working groups relating to the Bill and its tributaries providing written and oral submissions based on feedback from tenants. We have extensively engaged our members throughout its development.

This paper provides a summary of the key thoughts on those submissions, and includes our member's views on the final draft of the Housing (Wales) Bill.

We reaffirm our collective view to what we consider is an excellent bill that is a mature reflection of how legislation, policy and practice needs to develop, particularly in the area of the private landlord and letting agent mandatory licensing scheme.

Our submission is largely focused on this part of the bill as we feel this requires most scrutiny from us. We are however supportive of other elements of the bill.

We would wish to acknowledge the extensive work by all concerned in helping to shape the bill, particularly members of our "make the difference – shape the change" groups who have assisted with our response.

Summary comments

We fully support the key principles behind the bill that gives meaning to the practical issues faced by Welsh Housing, particularly the emphasis the bill places on ensuring that those whom rent are adequately safeguarded in a vastly changing housing sector.

- Private rented sector - We very much support the ability to know whether the property tenants seek to rent is managed by a competent landlord or letting agent. That prospective renters can seek reassurance that a landlord is licensed to manage and either has, or is working towards, some form of competence to understand their obligations under the law and where appropriate advise the tenant on their contractual obligations under the tenancy.
- Homelessness - We are supportive of the principle to be more proactive in relation to homelessness and to ensure fair and equal access based on identified needs to homelessness support.
- We recognize the need to place a duty on local authorities to provide Gypsies and Traveller sites where need has been identified.
- HRASS scheme – We welcome the efforts to end the Housing Revenue Account Subsidy System that will enable tenants who voted to remain with their council to better invest in their stock. We endorse the recommendation for option 3. We also support measures to enable ministers to have the necessary tools and powers to ensure that appropriate standards are applied in relation to rents, service charges and quality of accommodation.
- We fully endorse the provision to allow local authorities to charge more than the standard rate of council tax on homes empty for over a year, and would wish to see any revenues generated applied to furthering effective housing delivery in the PRS.
- Cooperative housing - We fully endorse the measure that will assist in helping to deliver the commitment to help build the cooperative sector in Wales and meet or exceed the target of 500 cooperative homes. The two prime measures will help considerably.
- We recognise the need for amendments to the Mobile Homes (Wales) Act 2013 and other provisions subject to the comments outlined below.

Response to the specific questions sought by the committee.

(A) A compulsory registration and licensing scheme for all private rented sector landlords and letting and management agents

Private should not mean secret!

1. **Sector growth** - The private rented sector represents 14% of all housing provided in Wales and is expected to reach 20% by 2020. We acknowledge that private landlords and letting agents provide a vital role in communities and that many provide good standards of accommodation, management and ethical standards. However, the sectors rapid growth and the struggle to provide below market rents equates to the need to tackle management standards and the rights and obligations in the sector, particularly as more vulnerable groups have to rely on this form of accommodation.
2. **Government investment in the sector** - Tenants should have a right to know from whom they rent. This information is vital to target and deliver on a range of policy initiatives in cost effective ways. Devolved and non-devolved areas of government provide considerable investment in the sector. Recent research indicates that buy-to-let landlords obtain £2 billion in tax relief at an average of 40% relief (20-50% range). The HMRC conservatively estimates around £500million in tax fraud due to ignorance or intentional evasion. In Wales 48% of “working and non-working” private renters claim housing benefit to offset rents at Local Housing Allowance (LHA) rates. Wales has seen the biggest rise in rents 3.1% (LSL property services) with average rents now at £573 pcm. Wales has a right to demand better standards of the sector.
3. **Stock condition** - In many areas of Wales we have older stock that require considerable investment. While the social housing renter has seen vast improvements in stock through policy initiatives such as Welsh Housing Quality Standards (WHQS), the PRS still has the highest number of unfit stock. Former council housing sold under right to buy represent more than 50,000 properties in Wales, many of which are now in the hands of private landlords that own between 1 and 3 properties.
4. **Energy efficiency** - Both devolved and non-devolved governments commit millions on energy improvement grants to the sector. WT have seen cases where welfare claimants have accessed grants on behalf of their landlords to later have their tenancy agreements terminated once improvements are made. Government and the tax payer has a right to demand better standards across the board for the considerable investment it makes.
5. **Comparison of responsibilities** - Under the Right To Manage regulations 1994 (and subsequent amendments) secure tenants are able to take on certain

aspects of the management of their homes. To do so, they have to meet a comprehensive set of procedures that includes an assessment of their “competence to manage” by an independent agent. The process for doing so requires a minimum of two years and three key stages that includes feasibility, development, independent assessments of competence to manage and registration. There is something perverse that because of “tenure status” tenants have to undertake this procedure, while there is no “mandatory registration or competency assessment” for landlords who manage potentially several hundreds of properties. Further, there is no ‘requirement’ to belong to a professional body or institute, only recommendations to do so. The law needs to recognise that mandatory registration and competence is something that cannot be ignored for any longer.

6. **Public interest** - There is considerable public interest in ensuring that local authorities know whom private renters are, for the effective enforcement and assessment of local markets and to respond to concerns regarding rights and obligations that impact on local public service provision. There are also significant fears among the tenant community regarding major landlords (including those in Wales) who have publicly stated “they may have to withdraw access to housing benefit claimants”. Reports suggest that this is irrespective of whether they are “working or not”, or “in arrears or not”.
7. **Knowing who your landlord is** - Current and prospective tenants should have a right to know who their landlord is. Government as system steward should also be in a position to bar certain people from managing homes, particularly where they have had criminal or civil proceedings brought against them through incompetence, negligence, acts of fraud or other proceedings. It is unsatisfactory to have a position where the local authority has the means to sign-post tenants to the private market, potentially into a situation worse than whence they came. The considerable governmental investment in the sector means that ‘private’ should not mean ‘secret’.
8. **Servitude and exploitation**— Recent reports suggest that the number of immigrants in the UK is largely unknown, this is no different here in Wales. People awaiting asylum decisions or having been refused asylum and lost to the system have to have shelter as well as those who may have lost homes due to sanctions or other reason. Not all are registered homeless and/or appropriately managed. People live in “Housing Above Retail Premises” (HARPs), some do so, in a variety of retail outlets in return for shelter - sometimes illegally. This may also be the case for people who have simply fallen out of the system. Trading Standards and environmental health recognise this as such. We wholly endorse the principle that if ‘you rent shelter’, then local government should know that you do so, and can target appropriate information to the landlord and their occupiers in order to properly perform their legal functions in a cost effective way.

9. **Equality under the law** - For far too long, certain unscrupulous landlords and letting agents in the private rented sector have been able to flout key considerations of equality and fairness that other renters have enjoyed. Practices such as excluding people from accessing accommodation because of mental health, their culture or religious beliefs and or disability should not be permitted. WT are firmly of the belief that the rights and obligations of both landlords and tenants should not be solely determined by 'whom they rent too or from' but by the laws, policy's and principles that we want to see enacted here in Wales. We firmly believe that a mandatory registration scheme will better triangulate the policy, practices and evidence concerning the effectiveness of policy and practice and help to engage consumers in making choice more of a reality.
10. **Phasing** - There are some who consider that letting agents should be mandatorily included first, and then landlords phased in over time or, to restrict registration too letting agents solely. **We do not subscribe to this view.** The mandatory registration is we believe linked to a range of reforms within Wales' vision for a fairer renting system. The Rented Homes (Wales) draft legislation 2015 seeks to introduce two tier's of tenancy agreement that ensures that anyone who rents their accommodation has access to "a tenancy agreement". Framing legislation, utilising principles contained in the European Convention on Human Rights, UK equalities legislation and consumer protection principles is a mature reflective approach, one that many tenants in Wales will benefit from once enshrined in statute. The timing of both registration for all landlords and letting agents and the introduction of the rented homes bill are inextricably linked allowing time for registration to work. We see phasing may seriously impact on the success of both bills. However we must ensure that registration is vigorously promoted in equal measure across all Local authority areas.
11. **Consumer engagement** - We have long advocated for a better system of accountability for renters in all markets through the formation of localised communities of interest and place to compliment landlord's interactions with local authorities for addressing consumer issues via trading standards, environmental health and as strategic regulators and partners.
12. Work undertaken by ourselves to better understand private tenants as consumers in addition to research undertaken by the Welsh Government, Consumer Focus Wales, Shelter Cymru, CIH Cymru and many others have also consistently highlighted tenants concerns regarding the need to have more knowledge of the sector its providers and its customers.
13. The process of knowing who provides, and working with tenants has helped to improve the registered social landlord sector immensely over the past 25 years. We need to learn the lessons of that era and apply them to the private rented sector. It is our firm belief that this must start with registration.

14. **Reciprocal consumer choice** - There is now extensive information concerning 'individuals' whom rent in the private rented sector via the growth of "landlord referencing agency services" with lists of tenants who may pose a "risk" to private landlords and letting agents. However, there are no similar provisions for tenants to seek such assurances that their landlord or managing agent is both a "fit and proper person" and that they have the "knowledge, skills and capacity" to be so. If we are to adopt principles of giving consumers choice and aim for fairness in the rented market, then we need to ensure that landlord practices are reciprocated with transparency and accountability for consumers to ensure fairness and guard against potential abuses of powers.
15. Tenants believe that the system needs to change. It appears confusing to most whom rent, that to own and drive a car (which can put others at risk of harm) you need a Motor vehicle test certificate, insurance, and a test to prove your competence to drive, yet you can own and let a home, which is arguably as dangerous, without proof of competency or transparency concerning whom the authorities can pursue to offer guidance or prosecute - should an issue arise.
16. **Rent to Rent schemes** – In England (and no doubt here in parts of Wales) there is a growth of "Rent 2 rent" schemes where small investors rent properties to tenants enabling them to sub-let. These occasionally neither agents nor landlords that let tenancies with the express purpose of renting out to other tenants covertly. They often fall under the radar of local authorities as the tenancy agreement does not highlight that they are potentially running an unlicensed HMO or abuse their powers. Failure to ensure that ALL landlords have to register may mean a growth in rent 2 rent schemes.

Is this the right scheme?

17. **Voluntary registration schemes** – VRS while proving extremely useful to engender interest by the sector, has enabled good landlords to gather together to consider the impacts on their industry and work with local authorities to improve standards among themselves. However the LAWS (Landlord Accreditation Wales) has only managed to attract some 2000 members. The majority of these are already registered with landlord and letting agent trade bodies and therefore has attracted the reasonably 'compliant' as opposed to addressing the training and support needs of landlords who are 'non-compliant' or ignorant of their responsibilities.
18. **Local authority licensing** – Many landlord representative bodies argue that there are considerable powers available to local authorities (even though poorly matched with resources). However local licensing schemes are restricted to Houses of Multiple Occupation (HMOs) and areas where there is considerable Anti Social Behaviour (ASB). Under the Housing Act 2004 councils can only adopt "*local licensing*" as opposed to "*additional licensing*"

where there are HMOs, where demand is significantly low (such as high levels of voids) or considerable ASB. Widening licensing without reform of the law opens local authorities up to the potential of “judicial review”. Ward wide areas subject to licensing has a potential to also de-value properties and stymie investment. This also means placing particular emphasis on ASB in a community in order to justify the imposition of a license which is not good for landlords, renters, investors or the wards concerned. Further, such schemes only work where there are considerable efforts and resources applied by the local authority in partnership with a range of stakeholders to address standards, compliance and competency issues - which are considerably rationed within trading standards and environmental enforcement departments.

19. **Private rented sector and the need for legislation** - The WT has argued for recognition and action on reforming the Private rented sector for many years. We fully recognise that by and large landlords and letting agents are professional bodies wishing to deliver good customer care and professional standards of service. However, the same can be said of registered social landlords. This does not negate the argument for registration for the RSL sector and where appropriate refocusing regulation.
20. **Prevention work** - The need for local authorities and the Welsh government to identify the risks posed by the sector and of consumers is critical in order to perform preemptive work. The Welsh Tenants acknowledge that the Welsh Government and all stakeholders need to work constructively with the sector to improve perceptions and better support private landlords and tenants with information, advice and training in addition to effective enforcement.
21. **Existing regulation powers** - The provision of ‘housing health and safety’ of ALL residential dwellings is contained in the powers local authorities have under the health and safety rating system introduced under the Housing Act 2004. However the HHSRS requires local authorities to provide “statutory intervention” only where there is a “category 1 hazard” through the provision of closure orders or prohibition notices which means serious detriment causing death or injury.
22. The majority of issues faced by tenants relate to category 2 hazards that only gives “discretionary intervention powers” by local authorities, these are often resource dependent. Therefore resources and action are focused on those that cause greatest potential harm. The Act itself therefore is not an effective deterrent in dealing with the majority of consumer concerns regarding standards. We do not support the position as proposed by Parliament regarding private rented sector, that is to effectively “reduce red tape”, this should not mean holding a ‘white flag’ to the issues that consumers face in addressing standards and the challenges in the private rented market.

23. **Legislation** - The arguments by representatives of the sector is that there is a considerable body of legislation and guidance to enable government and its agencies to address bad landlords and or failures in the market. However, the Law Commission and indeed the research conducted by Professor Julie Rugg (Rugg review 2008) argued that we need to address standards. This has been endorsed by the Essex review and subsequent 'Affordable housing inquiry' that followed and indeed the recommendations made by the Communities equality and local government committee.
24. **Consumer protection** – There is a considerable body of evidence by consumer organisations and indeed by landlords themselves that more needs to be done to bring fairness and better consumer choice in the private rented market and to “better improve the perceptions of the sector” to provide more choice and accountability. Issues such as “fees”, “tenancy agreements” and “charging” (by landlords as well as letting agents) and other matters, require that local authorities can efficiently exercise their functions. Knowing who the landlord is, having a competency test, meeting fit and proper persons criteria and strengthening access to information advice and support is we believe the right approach.
25. In brief we are of the firm belief that registration will not by itself improve the sector, but will undoubtedly improve our knowledge and understanding of the sector and its challenges and hence the responses required to improve this rapidly growing sector.
26. The mandatory scheme
- Tenants expressed support for the scheme even though the fees (as envisaged) would be passed on to them, they appeared to be accepting of this provided there are considerable gains in standards. In this respect we would wish to see private rented sector tenant forums established across local authority areas that feeds into a national voice, as we have argued.
 - They endorsed the view that local authorities needed to collaborate to ensure administration is effective so as not to increase fees. Any registration scheme needs to ensure good data protection for tenants as well as landlords.
 - We would wish to ensure that there are more formal structures of reporting to local authorities for landlord's with more than 100 properties with the “ability of local authorities to call to account providers and to bring responsible persons before scrutiny committees”.

- Tenants wished to see better “Tenants Support” and that local authorities make use of the range of enforcement powers they already have.
- They did not support the phasing of registration but stated that registration for landlord’s and their agents should commence as soon as practicable to ensure that future legislation on Rented Homes is introduced in a timely fashion, thus allowing private landlords and their letting agents time to adjust to the Rented Homes provisions.

(B) Reforming homelessness law including placing a stronger duty on local authorities to prevent homelessness and allowing them to use suitable accommodation in the private rented sector.

1. **General provisions** – We welcome the Homelessness reforms as proposed in Part 2 of the bill as an opportunity to strengthen the rights of citizens to find shelter and sustain their accommodation where it is reasonable for them to do so. There are opportunities (as others in the sector have argued) to “strengthen equality” by ensuring that people with protected characteristics are not indirectly discriminated against. We also welcome the broad definition of “domestic abuse” provided in the bill that supports the intentions outlined in the Domestic Abuse (Wales) bill.
2. The Welsh Tenants have dealt with many cases where the lack of available budgets to respond to a pressing repair need has been used as an excuse to deny a tenant their right to repair. A right should not be consigned to a budgetary consideration. For the Welsh Tenants, a ‘right is a right’ and a ‘responsibility is a responsibility’ it must be clear and unambiguous.
3. We are concerned about the phrase contained in section 51a that the authority is *“required to take reasonable steps to help, having regard (among other things) to the need to make the best use of the authority’s resources”*. There is either a required responsibility or there is not a requirement to exercise this responsibility. If there is a responsibility to prevent homelessness and to respond within 56 days then you cannot restrict this to a budgetary consideration. There is either a statutory responsibility or there is a ‘discretionary one’. This needs to be made clearer for information and support bodies to properly interpret the proposed duty.
4. **Pro action v’s reaction** - We welcome the reforms to homelessness legislation which places a “duty” on authorities to adopt a more “preventative” as opposed to “reactive” approach. The preventative work adds further strength

to the argument to have a whole sector approach to registration for all who provide accommodation, not just the lettings industry, otherwise we would see a two tier approach to preventative work.

5. **Extended periods intervention** - We also welcome extending the period of intervention to 56 days from the current 28 days (the widely used notice to quit (NTQ) period). We fully endorse this approach, giving local authorities prevention duty longer to intercede. It would be useful to extend the NTQ period to 56 days in the model tenancy agreement under the proposed Rented Homes Bill.
6. **Definition of vulnerability** – Members have cautiously welcomed removing former prisoners from the priority need category group, unless they qualify as “vulnerable”. They are of the opinion that there are flows in the access to “priority needs status” that does need to be bridged to enable other vulnerable groups to have fair and equal access to accommodation, for example, people suffering mental health disorders.
7. We do however recognise that there is a need for more research in this area to ensure that we have a system of prioritisation that prevents abuse by any group, regardless of their real or perceived status. Better definition of “vulnerability” would therefore be helpful in this regard.
8. **Family Homelessness** – Access to a secure home is a basic human necessity, however the right should always be balanced with responsibilities. We particularly welcome the defence of the right of children in Wales to be accommodated as a family.

(C) Duty on local authorities to provide sites for Gypsies and Travellers where a need has been identified.

1. We welcome the strengthening of the duty to provide Gypsies and Traveller sites. We recognise that there are several local authorities that have struggled to provide appropriate sites even though need has been identified. A statutory duty where there is a clearly identified need will help address accessing sites illegally which is an issue raised by Gypsies and Traveller communities.

(D) Standards for local authorities on rents services charges and quality of accommodation

1. **Standards for local authorities** – Welsh Tenants welcomes provisions contained in sections 94-97 in respect of standards for rents, service charges and quality of accommodation. We recognise that while there are provisions to ensure standards in respect of financial matters, there is a deficiency in relation to rents, service charges and quality of homes. We welcome the

intention of ministers to ensure that standards within the retained local authority stock mirror the provisions elsewhere for social housing.

(E) Reform of the Housing Revenue Accounting Subsidy System

1. Reform of the Housing Revenue Accounting System (HRASS) is overdue, it is a system that tenants have lobbied for change for many decades via the 'daylight robbery' and other campaigns. Having been consulted over the reform of the system we have supported the huge efforts made by the Welsh Government and all stakeholders on seeking to reform the system that disadvantages Wales. We fully recognise the need to ensure that Ministers have the appropriate powers to ensure that this occurs.
2. In this regard the Welsh Tenants very much supports "Option 3" to abolish the HRASS and recognises the disadvantages of options 1 & 2. We agree that option 1 offers no additional resources for investment in WHQS and option 2 requires voluntary agreement of all 11 authorities which would be difficult to achieve. We further recognise that option 2 would not be supported by HM Treasury England.
3. Tenants who have voted to stay with the council deserve the opportunity to have sustained improvements to their homes. The estimated £33million resource this would generate would be welcomed by tenants to reduce debt and help achieve the Welsh Housing Quality Standard. And for those that are close to achieving they would be in a stronger position to begin to build much needed social housing.
4. Transparency in how and when WHQS is achieved still requires some work in Wales. We would wish to see "local charter agreements" in place for those who have yet to achieve WHQS, and for those that have, how the standard would be maintained through continual investment including environmental improvements. The charter should set out a clear and concise road of travel including the resources applied and being accountable to local, regional and national tenant representatives. This will be an historic and hugely welcomed agreement by the tenants' movement.

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

1. Given the demand for housing, bringing empty homes into use is an excellent way of making best use of existing resources that are under utilised. We welcome the additional funding to ensure that local authorities have the appropriate resources to deliver on this commitment.

2. We also support the provision to vary the council tax charge as a disincentive for owners to leave homes empty. We do however need to clarify the position for the RSL sector in relation to empty homes given the impacts of welfare reform on some parts of Wales where abandonment or demand has fallen off due to their remoteness, condition, accessibility or viability.

(G) The Provision of cooperative Housing Associations

1. We support the provisions contained in Part 6 section 120-121 to enable fully mutual housing associations to grant assured tenancies. We welcome the initiative that will enable co-operative schemes to develop social housing projects.
2. The assured tenancy agreement will be replaced by a model “secure tenancy agreement” for all assured tenancies. Given the proposed reforms outlined in the draft Rented Homes (Wales) bill, there needs to be consistency with those provisions.

(H) Amendments to the Mobile Homes (Wales) Act 2013

1. We recognise the need to amend legislation.

2. Potential barriers to the implementation of these provisions and whether the Bill takes account of them.

1. **PRS registration** - Despite the collaborative nature of the bill. We are aware of the concerns as expressed by the private rented sector. We are also aware of the difficulties other devolved administrations have had in ensuring that the registration scheme captures all landlords. The success of the registration scheme requires that there is consistency of effort.
2. When Scotland introduced the same, there was varying degrees of priority applied to the registration scheme, meaning that some did well while others did not. We would recommend that an "PRS Advisory body" be established with appropriate consumer representation to monitor the registration scheme and the aims of part 1 of the bill. Such a body would advise the minister accordingly.

3. Whether there are any unintended consequences arising from the bill

1. Welsh Tenants have seen a huge rise in the interest in private rented sector and the corresponding difficulties renters face, both in terms of "resolving disputes", "lack of understanding of the rights and obligations" and other matters. The levels and expectation of support is set to grow exponentially over time. We do believe that there will be a pressing need to "engage with private renters" in the same way local authorities have engaged with private landlords and government has ensured that social tenants have appropriate independent advocacy and a voice.
2. **Awareness campaigns** - We understand that there will be many landlords who may not be permitted under their mortgage arrangements to let their property. These tend to be not those who are utilising letting agents to manage their home. The scope and range of information available to landlords and renters will need to be increased considerably as well as national awareness raising campaigns. This will require considerable investment and a national advertising campaign to ensure all landlord's and tenants are aware of their obligations.
3. **Specific support** - It is our firm belief, based on discussions with small landlords and owners of 1 or two properties that they will not register and place the property in the hands of managing agents. Many small landlords may consider ending their tenancy arrangements or putting the property in the hands of letting agents, they should be supported to do so. Letting agents and or tenants impacted by these changes need to be aware of a potential surge in the growth of letting agents as a consequence. This is we believe will be an opportunity to increase jobs growth in Wales and letting agents either current or as "social letting agents in the RSL sector may require support to meet the corresponding demand.

- 4. Financial implications of the bill (as set out in Part 2 of the Explanatory Memorandum (the regulatory Impact Assessment which estimates the costs and benefits of implementation of the Bill)).**
 1. We have nothing further to add and support the general assumptions outlined in the EM.

- 5. The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum which contains a table summarizing the powers for Welsh Ministers to make subordinate legislation).**
 1. We fully support the powers being made available to Ministers to ensure that they have a range of powers and tools to ensure a whole system approach to housing.

End