



Response to the Welsh Government:

Consultation on a Private Rented Sector Code of Practice for Landlords and Agents

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About Citizens Advice Cymru

Citizens Advice is an independent charity covering England and Wales operating as Citizens Advice Cymru in Wales with offices in Cardiff and Rhydolunau. There are 19 member Citizen Advice Bureaux in Wales, all of whom are members of Citizens Advice Cymru, delivering services from over 375 locations.

The advice provided by the Citizens Advice service is free, independent, confidential and impartial, and available to everyone regardless of race, gender, disability, sexual orientation, religion, age or nationality.

The majority of Citizens Advice services staff are trained volunteers. All advice staff, whether paid or volunteer, are trained in advice giving skills and have regular updates on topic-specific training and access to topic-based specialist support including housing.

The twin aims of the Citizens Advice Bureau service are:

- to provide the advice people need for the problems they face
- to improve the policies and practices that affect people's lives.

Local Bureaux, under the terms of membership of Citizens Advice provide core advice based on a certificate of quality standards on consumer issues, welfare benefits, housing, taxes, health, money advice, employment, family and personal matters, immigration and nationality and education.

The Citizens Advice Service now has responsibilities for consumer representation in Wales as a result of the UK Government's changes to the consumer landscape¹. From 1st April 2014 this includes statutory functions and responsibilities to represent post and energy consumers.

We are happy for our response to be made available to the public.

¹ On 1st April 2013 responsibility for consumer representation was transferred from Consumer Focus to the Citizens Advice Service (including Citizens Advice Cymru) following the UK Government's review of the consumer landscape.

Summary of Key Points

We believe the proposed Code of Practice fails to support the policy intent of improving practice within Private Rented Sector (PRS). We do not support the current Code as is presented within the consultation and believe it could lead to a decrease in good practice.

We believe the Code of Practice should be rewritten to clearly outline:

- the standards and expected behaviours required by landlords and letting agents
- the legal basis for establishing the code
- how to report a suspected or known breach of the code and what action may be taken
- *all* relevant statutory requirements, inclusive of occupier's liability, right to redress and complaints
- emergency contact detail requirements to ensure properties are made safe and without risk to health

Should the current format be taken forward with two types of information held within one document, these should be more clearly identifiable throughout.

The best practice section is a mixture of information provision and best practice guidance. We advocate it is revised so that it only contains best practice information.

We would welcome working with Welsh Government to ensure tenant engagement in the development of the referenced tenants guide '*How to rent*' as well as the complimentary [Tenants Pack](#) Welsh Government have previously committed to creating.

We also advocate that prior to the Code's introduction that Welsh Government clarify how improvements in practice will be identified and monitored as a part of the ongoing evaluation of the impact of the Housing (Wales) Act 2014.

Response

We believe the Code of Practice outlined for consultation is a missed opportunity to improve practice across the PRS and it fails to adequately support the policy intent of clarifying and improving practice of landlords and letting agents.

We believe that the Code of Practice should be rewritten to clearly outline what behaviours are expected of landlords and letting agents. This new Code of Practice could then form part of the suite of wider documents (including those outlining both statutory requirements and best practice) in development to support the implementation of the Housing (Wales) Act 2014. This would reflect existing Code of Practices that outline expected behaviours in addition to relevant regulatory frameworks, such as the [Civil Service Code](#), [Code of Practice for Social Care Workers](#), and the [Code of Conduct for Health Care Support Workers in Wales](#). Each of these 'codes' are in addition to their wider legal and regulatory framework, but make clear the intent to the reader of how the individual they come into contact with should behave. They are short, clearly written and accessible documents designed to ensure the public understands the code, how it applies to them and what to do if they think people are in breach of the code.

The proposed code of practice reduces existing expectations on landlords and letting agents in Wales who are currently signed up to [Landlord Accreditation Wales Code of Conduct](#), undermining the policy intent of improving practice within the PRS in Wales. Similarly, the code diminishes established expected behaviours applicable to members of professional and accredited bodies for PRS landlords and letting agents, such as the [National Landlord Associations Code of Practice](#), the [Property Ombudsman's Code of Practice for letting agents](#), [Residential Landlords Associations Code of Conduct](#) and [Association of Residential Letting Agents](#). We are concerned that this could lead to a decline in service to tenants, particularly with regards to making timely repairs as those landlords signed up to the LAW code of conduct are already committed to what is listed in best practice information and could choose not to continue this practice when becoming a registered landlord.

It is unclear from the proposed code as laid out in the consultation document, who the target audience is. If this document is to inform landlord, letting agents and the general public about the practice they can expect when dealing with landlords or agents, additional information is required to support it. This should clearly outline:

- the legal basis for establishing the code
- what the code means to landlords and letting agents day-to-day practice
- how to report a suspected or known breach of the code
- what action may be taken as a result of reporting a breach of the code.

We believe the Code of Practice should clearly outline the standards required by landlords and letting agents and their expected behaviours.

We also advocate that prior to the Code's introduction that Welsh Government clarify how improvements in practice will be identified and monitored as a part of the ongoing evaluation of the impact of the Housing (Wales) Act 2014.

Statutory Requirements

The statutory requirements reiterate existing legislative duties applicable to landlords and letting agents. No additional information is contained within this section. As such, this could be written in a considerably shorter and in a more informative format making use of hyperlinks to relevant legislation, regulation, guidance and plain English / Welsh overviews. For a non-online/digital version of this information, the reader could be signposted to relevant hard copy information and informed of where and how to access information online.

This section of the code does not include information on occupier's liability, right to redress or complaints. We believe that should the existing format be taken forward then these areas should be added to the statutory requirements information.

In a similar manner, while contact detail requirements are listed within '*contact details*' section they are not referenced within the 'property conditions' for ensuring adequate access to landlords to make emergency repairs, ensuring a property is safe and without risk to health. We believe this should be explicitly stated as is the case within the best practice information and would welcome the Code taking this forward. This would also echo what is put forward under the Renting Homes Bill.

Best Practice

We believe there are a number of issues with this aspect of the Code which can be summarised as:

- '*Must*' is used, however we suggest '*should*' is more appropriate when writing about best practice as opposed to statutory requirements and subsequent practice
- We do not support the referencing and inclusion of '*oral only agreements*' within the best practice information. This is in conflict with what is deemed as best practice across the sector and the Renting Homes Bill.
- The Housing, Health and Safety Rating System (HHSRS) information is just that, information. It is not 'best practice' guidance or information, but explains how the system operates.

These examples illustrate the confusion of the current document's content which varies between information provision and best practice guidance. We advocate that revision work is undertaken to ensure that if this approach to the Code is taken forward, then it is done so in a clear and consistent manner clarifying what is best practice and separating information into a separate resource.

Further, within the 'Setting up a tenancy' section reference is made to '*the Welsh Government's Tenant Guide 'How to rent'*'. However, we are unaware of this document, cannot see it available online, and are unaware of any consultation or co-production work with tenants, tenant associations, of housing advice providers to create this. We have long supported the need for a tenants information pack to be designed with tenants to meet their information needs clearly outlining roles and responsibilities of landlords, letting agents and tenants alike. We would therefore welcome working with Welsh Government to help ensure that appropriate and accessible public information is created with the end users and to ensure that this proposed referenced 'how to rent' guide compliments the [Tenants Pack](#) Welsh Government have committed to creating to support Part 1 of the Housing Act.

We welcome the Welsh Government's ongoing commitment to equality and diversity, as seen by the best practice statement regarding being '*considerate of circumstances when dealing with consumers who might be disadvantaged because of their age, infirmity, lack of*

knowledge, lack of linguistic ability, economic circumstances or bereavement'. However, we ask for greater clarity on how landlords and agents will be supported to achieve this aim. As made clear in [our previous response](#) regarding the training provision to accompany registration we advocate that best practice equal opportunities information is made available and publicised to improve practice across the sector.

Format

Should the current format be taken forward with two types of information held within one document, these should be more clearly identifiable throughout. The current document split into statutory requirements and best practice chapters is not adequately formatted to make clear to the reader the distinctions. We believe this is likely to lead to confusion for all parties (landlords, letting agents and tenants), raise expectations of what is required of landlords and agents in relation to 'best practice' being considered 'statutory' due to their inclusion within the Code of Practice.

The repetition of statutory information within the best practice information is likely to cause confusion as sometimes it is copied completely, as is the case with the first paragraph of '**Agreeing the tenancy**' on pages 7 and 15 of the consultation document and sometimes alternative wording is used with similar meaning as is highlighted below:

Area	Statutory Requirements information	Best Practice information
<p>Appointment of an agent – signing an agreement</p>	<p><i>Appointment of an agent, p5-6</i></p> <p>Agents must give landlords written confirmation of their instructions to manage a property on their behalf. This must include details of:</p> <ul style="list-style-type: none"> • fees and expenses • business terms • the duration of their instructions; and • the extent of the agent’s financial authority to authorise expenditure such as essential repairs/maintenance. (A) <p>The agent must give these details to the landlord before the landlord is committed or has any liability towards them. The landlord should be given sufficient time to read and understand the agreement before signing. (A)</p> <p>Terms of engagement must clearly state the scope of the work the agent will carry out and any additional responsibilities. The terms must be fair and must be written in plain and intelligible language. (A)</p>	<p><i>Appointment of an agent, p14</i></p> <p>The landlord and agent should sign and date a term of engagement detailing their business arrangements, and which party is responsible for specific aspects of the letting and management arrangements. Any subsequent changes to terms of engagement must be confirmed in writing and signed by both parties. (L & A)</p>

	<p>If a landlord signs a contract with the agent present at:</p> <ul style="list-style-type: none"> • their home; or • at another location away from the agent’s premises; or • by post or online; or • without having met the agent, <p>the landlord must be given a right to cancel that contract within 14 calendar days from the date of signing. If the landlord requires the contract to start before the end of this cancellation period the agent must obtain confirmation of this in writing. (A)</p> <p>Agents who want to appoint a subagent must first obtain the landlord’s authorisation. Appointing a subagent without authorisation may be considered a breach of duty unless it is contained within the agent’s terms of engagement. (A)</p>	
<p>Access to the property</p>	<p><i>Access to the property, p10</i></p> <p>Except in the case of an emergency, tenants must be given at least 24 hours’ notice, in writing or by the residents preferred means requesting access to the property. The access should be requested at a time reasonable to the tenant and must explain who will be entering the property. (L & A)</p>	<p><i>Access to the property, p17</i></p> <p>Access to the property should only be requested at a time reasonable to the tenant and it should be clear who will be entering the property. (L & A)</p>
<p>Renewal fees</p>	<p><i>Marketing and advertising, p6</i></p> <p>All non-optional fees must be disclosed and be made clear so that prospective tenants can clearly understand all the costs which they will have to pay should they enter into a tenancy. The same applies should a tenant be expected to make any transactional decision at a later date relating to the tenancy, such as any fees applicable for renewal of the contract. (L & A)</p>	<p><i>Tenancy renewals and changes, p20</i></p> <p>All fees payable and potentially payable on any tenancy renewal or change to a tenancy should be clearly and transparently communicated to the client prior to that client making a transactional decision to enter into a contractual relationship in the first place. (L & A)</p>

The confusion is likely to be increased where best practice is iterating common law such as is highlighted in the first above example, **Appointment of an agent**. Within the brief best practice statement, the first sentence reiterates statutory requirement information with less detail while as the second sentence '*Any subsequent changes to terms of engagement must be confirmed in writing and signed by both parties*' goes far beyond the statutory requirements information and contract law requirements.

Should Welsh Government take forward the proposed code we would advocate that careful consideration is given to the formatting of the document and it is tested with an appropriate range of applicable users (landlords, letting agents and tenants) to ensure the reader is clear on what is statutory and what is best practice. We would suggest that consideration is given to merging the information from the two separate aspects of the code under the given headings ('before a tenancy', 'setting up a tenancy' etc.) while clearly identifying what is statutory and what is best practice. This could be done through the use of different fonts, colours, tagging the text or tables, whilst maintaining accessibility and ease of use.. This would remove repetition, tie both parts together better yet ensure clarity to the reader on duties and suggested practice.

For any further information, please contact:

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