

ALMA Response to Housing (Wales) Bill

CONSULTATION ON THE HOUSING (WALES) BILL

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

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

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

GENERAL PRINCIPLES OF THE BILL

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

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POTENTIAL BARRIERS TO THE BILL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

UNINTENDED CONSEQUENCES

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

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

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

FINANCIAL IMPLICATIONS/COSTS

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

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

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

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

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

We offer no comment on this.

REGISTRATION OF PRIVATE SECTOR LANDLORDS

Briefing paper (extract)

Review of the Scottish Registration Scheme

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

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

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

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

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

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

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

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

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

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

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

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

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

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

There is no clear understanding of the overall administrative costs.

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

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

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

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

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

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

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

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

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

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