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HB 38

National Assembly for Wales

Communities, Equality and Local Government Committee

Housing (Wales) Bill: Stage 1

Response from: Royal Institute of Chartered Surveyors

15 August 2012

Mr Alyn Williams
Housing and Communities Team
Housing Directorate
Welsh Government
Merthyr Tydfil Office
Rhydycar
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Dear Mr Williams,

Proposals for a Better Private Rented Sector in Wales

Thank you for the opportunity to respond to the consultation dated 6 July 2012.

RICS Wales is the principal body representing professionals employed in the land, property and construction sector and represents some 4000 members divided into 17 professional groups. As part of our Royal Charter we have a commitment to provide advice to the Government of the day and in doing so we have an obligation to bear in mind the public interest as well as the interest of our members.

RICS Regulation – a separate arms length department in RICS - monitors, inspects and advises Members and Regulated Firms to uphold our professional, ethical and business standards, as well as against specific schemes. RICS Regulation takes a risk-based approach to monitoring and regulation of its schemes. In line with better regulation principles, our regulatory activities are transparent, proportionate, accountable, consistent and targeted. RICS Regulation reports to a Regulatory Board which is at arms' length from RICS. The Board has a mix of independent and

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RICS members, with an independent Chair, all appointed by an independent selection process. The Regulatory Board is accountable to RICS Governing Council. Our specific comments below in relation to the proposed changes to the regulatory framework in the Private Rented Sector in Wales should be taken in this context.

Q1 - Are these penalties appropriate?

Yes. However:

- It maybe better that there should be a gradation of specific fine levels according to seriousness of offence that would be automatic and potentially often, lower than £20,000 but therefore more likely to be imposed regularly to persuade landlords they will actually happen.
- Rent repayment orders would be appropriate, but care would need to be taken to ensure enforcement.

Q2 - Are there any other suggestions?

RICS Wales has no additional suggestions to make.

Q3 – Are we capturing the right people?

The right people are being captured by the proposed registration arrangements, although the effectiveness of the registration arrangements and associated enforcement activity will be dependent on the quality of the available baseline data about the names and contact details of all owners of private rented accommodation in Wales, Resources for maintaining data must be regularly reviewed to ensure they are adequate for registering all landlords.

Q4 – What do you think the fees should be?

The proposed annual registration fees outlined in the consultation paper may be appropriate, but this will depend upon making the scheme self-funding; if a local authority finds the scheme to be a net drain on resources the scheme could potentially not receive sufficient resources to allow it to function efficiently.

Q5 - Should the fee be dependent on the size of a property owner's portfolio?



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Provided the fee remains as low as envisaged, a fee that is the same for each individual landlord registration will ensure simplicity of administration, encourage compliance, and reduce the potential for the fees system being a deterrent to property investment. However if before implementation, the fee is markedly higher than a fresh consultation should be held to consider if some degree of proportionality should be introduced.

Q6 – Do you agree with an annual fee (which could be used to offset a larger registration/accredited training fee)?

Agree with the proposed annual fee.

Q7 – Do you think this is appropriate for a “Fit & Proper Person” test for this scheme?

We agree with the proposed approach here. RICS Wales considers, however, that the test needs to go wider to check a landlord’s suitability with regards to their responsibilities under anti-money laundering legislation and the Bribery Act. Consideration should be given to widening the test further to cover other criminal offences, especially those involving violence, although clearly there will be a need to take account of statutory requirements associated with the rehabilitation of offenders as well.

Q8 – Is this a reasonable limit for a “responsible person”?

RICS Wales considers limiting a “responsible person” to managing the property portfolio of one property owner in addition to managing any property portfolio they may own in their own right is reasonable. If a responsible person wishes to manage the portfolios of more than one property owner they are clearly operating as a lettings/management agent, and need to be subject to the registration and licensing arrangements for such businesses detailed elsewhere in the consultation paper. A different approach is required, however, for properties owned by legal entities such as businesses, rather than by private individuals. In such circumstances, the legal entity should not have the option of appointing a “responsible person” to manage their property portfolio. They must be registered and licensed themselves, or delegate management of their property portfolio to a registered and licensed lettings/management agent.

Q9 – Is this fine acceptable? Are there other penalties that could be applied?



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We consider the level of fine proposed here to be acceptable. Revenue generated from such fines should be used to help fund the registration and licensing scheme.

RICS Wales suggests all licensing breaches should be publicised to raise consumer awareness about the registration and licensing scheme, and to deter landlords and management agents from being identified as examples of bad practice.

Q10– Are the proposed accredited training fees reasonable?

We consider the proposed accredited training fees to be reasonable. RICS will wish to have the opportunity to be considered as a potential accredited training provider.

Q11– Is this period acceptable before review?

RICS Wales agrees that a three year lifespan for a manager/landlord licence is reasonable, but it will be important to have good communications on the associated annual registration fee when communicating with managers/landlords about the licence fee. In addition, it will be essential to have robust enforcement arrangements for non-compliance with payment of either the annual registration fee or the licence fee to ensure a level playing field amongst managers/landlords, including the potential sanction of withdrawal of a licence within the three year lifespan for non-compliance.

Q12 – How would this work in practice? What are the implications?

Paragraph 34 of the consultation paper as currently drafted is rather ambiguous on what happens in circumstances where a landlord loses licensed status under the proposed Scheme, in particular as that may well happen in the middle of the life of one or more tenancies associated with their property portfolio. The Code of Practice will need to include clear rules about how the interests of existing tenants will be safeguarded while alternative management arrangements are put in place.

See also response to Q27 below about the Code of Practice referenced in paragraphs 32-34 and 64-65 of the consultation paper.

Q13 – What other forms of CPD may be appropriate?



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Paragraph 35 of the consultation paper implies that CPD will be ‘encouraged’. RICS considers that CPD should be mandatory and on an annual basis.

RICS Wales considers that any learning activity undertaken by licensed landlords/managers that has written evidence of pre-planned learning outcomes associated with new legislation and developments in property management that affect the private rented sector in Wales should be considered appropriate CPD.

Q14 – How much CPD activities should be undertaken per year and what should it entail?

RICS Wales considers at least 20 hours per annum CPD activity should be undertaken by licensed lettings/management agents, of which 10 hours should be formal learning. This is consistent with the CPD policy for RICS members effective from 1 January 2013. For licensed individual private landlords, a more proportionate approach might be to limit the requirement to 20 hours per annum CPD activity, whether formal or informal, and for the licensing and registration scheme administrators to offer some free on-line training materials as a way of encouraging compliance.

Q15 – Should CPD be used as an alternative to refresher training? Or should refresher training *and* evidence of CPD be needed to maintain the licence?

RICS Wales considers CPD can be used as an alternative to refresher training provided the manager/landlord has robust written evidence of CPD activity has maintained up to date knowledge and understanding of new legislation and developments in property management that affect the private rented sector in Wales (see also answer to Q13 above).

Q16 – Should other establishments/landlords be exempt from the mandatory register and licensing requirements?

Other than “houses that are let for holiday purposes” and possibly ;“houses that are managed or controlled by a Registered Social Landlord” RICS Wales sees no reason to make exemptions from the mandatory register and licensing requirements

Q17 – Does this go far enough?

RICS Wales considers the proposed approach in paragraph 42 of the consultation paper for two thirds of all staff involved with the letting and management of private rented sector property at each lettings/management agency branch to pass accredited training is targeted and proportionate.



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Such an approach will, of course, require effective enforcement to ensure a level playing field amongst all lettings/management agencies in Wales. Otherwise there is the potential unintended consequence of compliant businesses incurring greater costs than non-compliant businesses and the latter able to offer more competitive rates to consumers than the former and thereby take greater market share.

Q18 – Is this penalty appropriate?

RICS Wales considers the proposed maximum level of fine in paragraph 44 of the consultation paper of £50,000 for those lettings or management agencies that fail to register seems high compared with the level of fines proposed for individual landlords. RICS suggests a maximum fine of £25,000 would be more proportionate.

Q19 – Are there any other suggestions for penalties?

RICS Wales suggests all licensing breaches should be publicised to raise consumer awareness about the registration and licensing scheme, and to deter lettings and management agents from being identified as examples of bad practice

Q20 – Is this too onerous? Would it be better to make it a “duty” for the information to be made available if requested under the Scheme?

We regard the proposed information requirements on individual lettings and management agents as outlined in paragraphs 47 and 48 of the consultation paper to be reasonable. RICS suggests, however, that to avoid the information requirements proposed in paragraph 48 becoming unnecessarily burdensome on both lettings/management agents and the Scheme administrators, that lettings/management agents should supply an updated list of each individual landlord’s name and correspondence address for whom they manage/let properties on an annual basis, and at other times on request by the Scheme administrators.

Q21 – Should the fee be dependent on number of offices or, alternatively, portfolio size?

RICS Wales suggests the fee should be dependent on the property portfolio size of the particular lettings/management agent.



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Q22 – Is this the right person/persons to undertake the suitability test? If not, who should undertake the test?

Yes.

Q23 – Is this a reasonable period of time?

Yes.

Q24 – Should agents have a minimum recognised professional qualification? If so, what should that be?

Yes. A relevant NVQ level 3 equivalent should be the minimum professional qualification for lettings and management agents operating in the private rented sector in Wales.

Q25 – Do you agree that new letting/management agents should be licensed before commencing business?

Yes.

Q26 – Is this a reasonable time period? Should it be renewed every three years as proposed for landlords? If so, why?

RICS Wales considers the proposed licensing period for lettings and management agents should be three years to ensure consistency with the proposed licensing period for landlords. Such an approach would also reduce the potential for confusion and misunderstanding about these different elements of the registration and licensing scheme. It will be important to have good communications on the associated annual registration administration fee when communicating with lettings and management agents about the licence fee. In addition, it will be essential to have robust enforcement arrangements for non-compliance with payment of either the annual registration administration fee or the licence fee to ensure a level playing field amongst agents, including the potential sanction of withdrawal of a licence within the three year lifespan for non-compliance.

Q27 – Do you have any other comments on the proposals?



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With regard to paragraph 59 of the consultation paper, RICS confirms we will be considering whether to apply to become an approved professional body under the Scheme.

Turning to paragraph 70 of the consultation paper, RICS would welcome clarification that the proposed fine detailed here will be imposed on a letting/management agent not a landlord. This paragraph as currently drafted is somewhat ambiguous on this point.

RICS Wales suggests that the Welsh Government will need to publicise the registration and licensing scheme proposals beyond Wales, in particular to those lettings and management agents who are based on the England/Wales border and who conduct business in both, and to ensure the scheme applies equally to those agents and landlords resident outside Wales.

Promoting the highest professional and ethical standards and acting in the public interest are core values of the RICS. The *RICS UK Residential Property Standards* (commonly referred to as the 'Blue Book') outlines the duties and responsibilities that those practicing as estate, lettings and managing agency practitioners owe to their clients and consumers. It is a useful source of reference not only for RICS members, but also others practicing in this field, and clients and customers as well.

RICS Wales notes that paragraphs 32-34 of the consultation paper introduce the concept of a proposed Code of Practice, and that there are further references to this Code in paragraphs 65 & 66. However, there is no clear statement of who will own this Code, and how the Code will be enforced. RICS Wales considers that such a statement is vital as part of the ongoing communications work by the Welsh Government about these proposals, and suggests there is a need for a read across from the Code to the Blue Book as well. RICS Wales is prepared to help on the latter. In any case, we will ensure that if the proposals contained in this consultation paper are introduced, the annual review of the Blue Book will reflect that development, including suitable cross references to the proposed new Code of Practice.

Many agency businesses operate in both sales and lettings, and RICS Wales considers the regulatory arrangements in Wales should reflect that fact. Such an approach would both ensure minimum levels of consumer protection, and provide businesses operating in sales and lettings with a clear, simple and consistent approach that is lacking in the current unnecessarily complex regulatory arrangements. In summary, there is potential here to enhance consumer protection and minimise burdens on business. RICS Wales recognises that we have a role to play, in particular in the development of industry-wide standards that are recognised by property professionals, businesses and consumers alike, including common minimum standards of entry and practice. RICS Wales argues there is wider legislative reform that is required. We stand ready to work with Welsh Government and other stakeholders to reduce regulatory complexity and deliver the one touch regulatory framework outlined above that the residential property market so desperately needs to aid business growth, improve informed consumer decision making, and strengthen consumer protection.



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If you have any queries in respect of this response please do not hesitate to contact me.

Yours sincerely,

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