

HB 65
National Assembly for Wales
Communities, Equality and Local Government Committee
Housing (Wales) Bill : Stage 1
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Consultation on the Housing (Wales) Bill

**Evidence paper to the Communities Local Government
and Equality Committee**

**Centre for Applied Community Sciences
Cardiff Metropolitan University**

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Introduction

- 1 Thank you for the invitation to present evidence to the Communities, Equality and Local Government Committee of the National Assembly for Wales for the stage one scrutiny of the Housing (Wales) Bill. This paper has been produced on behalf of the academic staff team within the Centre for Applied Community Sciences at Cardiff Metropolitan University. Within this group there is substantial and wide ranging expertise in teaching, researching and working within the housing policy and practice arena. The views presented in this paper are informed by this collective knowledge and experience and are intended to provide an independent and impartial critique of the proposals contained within the Housing (Wales) Bill.
- 2 The team is generally supportive of the aims and aspirations of the Housing Bill. The interventions proposed are to a certain extent more realistic and achievable than those put forward in the preceding White Paper and it is clear that Welsh Government has taken on board a number of concerns previously highlighted by the housing sector in developing this draft legislation.
- 3 We share the concerns of others regarding the need for well drafted and appropriate legislation in Wales and the risks of trying to fix non-legislative problems with legislative solutions. Many of the problems in the current housing market in Wales have at their root cause a shortage of supply and without addressing some of these wider macro-economic and housing market issues there is a limit to what a Housing Bill can achieve. Notwithstanding this, the Bill, as currently drafted, does stand to make a positive difference to those in need of secure, well-managed housing. Our overall concerns are primarily centred on the practical implementation of the Bill. The detail of these is set out in our responses to individual questions however they broadly relate to:
 - The phasing of the introduction of some of the proposals and the need for an incremental approach
 - The resource implications and their impact on local authorities in particular
 - Potential consistency of interpretation and application of the proposals across different organisations
 - The need for clear and detailed guidance to underpin the legislation
 - The requirement for robust monitoring, evaluation and research to measure the impact of the various proposals within the Bill at appropriate stages

Part 1: Compulsory registration and licensing scheme for all private rented sector landlords and letting and management agents

- 4 The private rented sector trend in recent years has been a sector which is growing both in absolute size and in its relative proportion of the total housing stock¹. There is a general assumption that the profile of private rented sector tenants is shifting alongside this trend and that the sector is increasingly housing household types that have not traditionally accessed this sector, of which families with children are a notable example. There has also been an assumption that the profile of landlords has changed with 'reluctant' or 'accidental' landlords increasing as a result of wider housing market and economic influences. It is the combined impact of these trends and the growing realisation that the sector will play an increased role in meeting the housing needs of lower income or vulnerable people, that sit behind the proposals for increased regulation through registration and licensing.
- 5 Evidence suggests² that the private rented sector does not have a good public image and is not regarded as a tenure of choice. Its role in the UK housing system is one which generally meets the needs of those who lack alternative options (falling between access to homeownership and access/ eligibility for social rented housing). If the Welsh Government's policy response is to see the private rented sector as the only workable housing solution for households whose housing needs cannot be met elsewhere, then there is a clear case for a regulatory framework which improves standards, professionalises the sector and offers increased protection to vulnerable tenants. This is particularly relevant given the proposals under Part 2 of the Bill to allow local authorities to make use of the private rented sector in discharging homelessness duties.
- 6 Overall, we support the aim within the Housing (Wales) Bill to move to a national registration and licensing scheme for all private rented sector landlords. As well the intended benefits around the quality of property and management within the private rented sector, the introduction of this scheme will do much to improve our knowledge of the sector which hitherto has been significantly underdeveloped. There is currently no mechanism for local authorities to identify either the private landlords operating in their area or the properties that are privately rented. As such, we have no accurate picture of the true scale of private renting or the detailed characteristics of landlords and tenants within this sector. This has far reaching implications, not least for local authorities' abilities to strategically assess and plan within their local and regional housing market areas.
- 7 We are aware of the views of some groups who suggest that the introduction of a national registration and licensing scheme will act as a disincentive to new landlords

¹ Welsh Housing Statistics: Dwelling Stock Estimates

² NAW (2011) Making the Most of the Private Rented Housing Sector. Report by the Communities and Culture Committee.

entering the sector and may therefore have unintended consequences. The suggested costs to landlords and letting agents do not appear to be at a level which would deter potential new entrants to this sector and seem proportionate given that the scheme will also potentially offer benefits to landlords in terms of additional support, information and advice. Concerns have also been raised that, as well as the cost of the scheme, new landlords may be deterred from entering the sector due to the additional bureaucracy or time demands such as the training requirement. Overall, our knowledge of housing markets suggests that market forces will exert a greater degree of control on the willingness of landlords to enter this sector than any additional burden created by a new regulatory framework. Whilst there is a demand for homes and a profit to be made from private renting, landlords will be generally be willing (if not happy) to comply with whatever requirements are placed on them. The biggest risk to the sector is a sudden shift in the overall housing market leading to significant numbers of 'reluctant' landlords looking to 'cash in' their accumulated assets.

- 8 Publicity should make the low cost of registration to the landlord very clear in order to reassure landlords and also to avoid unintended consequences in terms of rent rises. There are concerns in current discretionary licensing schemes that landlords have used the scheme as an excuse to drive up rents. In such circumstances tenants have suffered and landlords have gained perverting the ethos of the legislation. Publicity will also be needed to highlight the new requirements on landlords and agents and to make tenants aware of how they can check the status of their current or future landlord.
- 9 We share the concerns of others regarding the resource implications associated with the introduction of this national scheme, particularly in respect of enforcement. Given the large number of landlords who will be required to register in each area of Wales, it is not feasible for the local authority to prosecute every one who does not comply. An interim solution needs to be considered to deal with such high volumes of unregistered people/organisations. Local authorities could be able to charge increased fees to landlords/agents who do not register after a set period of time to reflect the additional cost of enforcement in bringing them into the scheme. The assertion that court fines will be used to partly fund this scheme can be called in to question as costs are rarely given in full by the courts and most cases do not get as far as court, but still incur heavy costs.
- 10 We are also aware of the views of some consultees that registration and licensing should not necessarily apply to all landlords in a blanket way. Given the evidence that a growing proportion of the private rented sector is owned by landlords with just one or two properties³ there is a strong case that over time all landlords should be brought within the scheme. It is often these landlords that have the most limited knowledge of their legal responsibilities and the most to gain from the

³ Rugg, J & Rhodes (2008) The Private Rented Sector: its contribution and potential. University of York.

additional information and advice that will hopefully come with registration. However, due to the resource implications of a 'big bang' approach that we have already outlined, it seems sensible to advocate an incremental approach to the implementation of the scheme. This would allow any teething problems (in terms of IT, administration etc.) to be ironed out at an early stage and allow local authorities to monitor and respond to any increased demands on their capacity. We suggest that letting and management agents would be the obvious point at which to start this process as they are fewer in number and more visible than individual landlords.

- 11 An incremental approach to implementation would also allow the potential for early independent monitoring and evaluation to consider the operation and impact of the scheme, and how effective it is from the perspective of different stakeholders.
- 12 We would recommend that landlords who employ an agent should also require registration. Agents have very little power to influence a landlord should they refuse to allow works to be done at a property to comply with legislation. If the landlord does not have to register they can effectively 'hide' from some parts of the legislation. Both parties must be held responsible for the condition of the premises.
- 13 Any criteria for loss of registration should be well thought through and very clearly set out in the legislation. Ambiguity in the Housing Act 2004 over what a landlord or agent has to do lose their fit and proper person status and how they can go about recovering that fit and proper person status makes enforcing such legislation extremely difficult. Legislation around loss of registration also carries with it high risk of compensatory claims for local authorities, making them reluctant to use it where any ambiguity exists.
- 14 The Housing Act 2004 and subsequent legislation are poorly drafted and unclear in many places. This has led to problems with understanding and enforcing the legislation. This concern should be paramount when drafting the new legislation. Advice should be sought from local authority enforcement officers in the phrasing to prevent the use of costly case law to clarify issues that should have been apparent at the time of drafting.

Part 2: reform of homelessness law, including placing a stronger duty on local authorities to prevent homelessness and allowing them to use suitable accommodation in the private sector;

- 15 The overall changes to the framework of homelessness legislation are to be broadly welcomed. The new focus on preventative duties and widening the safety net beyond those in priority need groups are positive steps which to a certain extent bring the current practice of many organisations on to a statutory footing.

- 16 The requirement on local authorities to carry out a homelessness review and formulate a homelessness strategy is an important stage in responding pro-actively and strategically to homelessness at a local and regional level. It is essential that homelessness strategies do not stand alone but are closely integrated with wider housing and community strategies if they are to have the required impact. Homelessness is a symptom of wider housing market failure and only by looking holistically at housing and support needs can local authorities respond effectively.
- 17 The proposal to allow local authorities to discharge their homelessness duties using the private rented sector is one of the more radical steps in the Housing (Wales) Bill. If implemented it will have a number of positive consequences including breaking the link between homelessness and social housing and opening up a much wider range of housing options to homeless households. However, we must question the degree to which the private rented sector is currently geared up to respond to this new challenge, particularly in light of the proposals outlined in Part 1 of the Bill. Consideration needs to be given to the quality of accommodation being offered and the extent to which it represents an affordable and sustainable solution to an individual household. There is a significant potential role for the growing number of social lettings agencies being developed by social landlords to offer a specific package of support in implementing the duties under this section of the Bill, through longer term leasing arrangements, intensive housing management and support etc.
- 18 The Bill proposes improved cooperation between local authorities and housing associations and places additional duties on the latter. This, again consolidates what is generally already happening in practice across Wales but should help bring a greater degree of consistency to this collaboration. We would be interested to hear the views of financial lenders in respect of these new duties, in terms of whether they feel this represents an increase risk for housing associations. In the current economic environment, any new responsibilities or duties that are perceived as increasing the level of risk to organisations could potentially lead to corresponding increase in the cost of private lending.
- 19 The greater protection offered to children experiencing homelessness within a household found to be intentionally homeless, by awarding a right to the full homelessness duty, provided that it is the first time they have been found to be intentionally homeless within the past five years is a progressive step and commensurate with the UN Convention on the Rights of the Child. We note that the proposals on intentionality within the original White Paper to adopt the Scottish example of a rights based model of homelessness legislation have been retracted. The consistency of application of the intentionality test has been a long standing issue in homelessness practice and should therefore be closely monitored and the impact evaluated.

- 20 The point about consistency of application across local authorities is a key issue and can be applied to most of the changes to the homelessness legislation (the vulnerability test for example) and indeed to many other aspects of the Bill.
- 21 The proposals to remove priority need for former prisoners has to date been one of the most controversial proposals within the Bill and is an issue which tends to polarise public opinion. The evidence regarding suitable accommodation being a necessary but not sufficient prerequisite in the prevention of reoffending is well cited⁴. If the proposals to remove priority need status for former prisoners are enacted then it is essential that they have the right to access prevention services at the earliest possible stage (perhaps earlier than the 56 day period where possible). The changes in this Bill must not lead to people becoming street homeless on release from prison. Ensuring that this does not happen will require effective partnership and collaboration across a range of different agencies and that the right resources are put into accommodation and support services for this group of people. There will also be a need for very clear guidance on how 'vulnerability' is being decided in respect of former prisoners across different local authorities. Finally, the impact of this change in terms of reoffending level as well as the personal impact on former prisoners should be undertaken at an appropriate stage.

Part 3: a duty on local authorities to provide sites for Gypsies and Travellers where a need has been identified

- 22 The new duties on local authorities in respect of Gypsy and Traveller sites are to be welcomed. This is often a contentious local issue and a lack of local public and political support has meant that the needs of Gypsies and Travellers have not been met in some parts of Wales. The introduction of statutory duties around assessing and meeting the needs of this group will in all likelihood increase focus and activity.
- 23 However, the problems of political and public opposition will not be resolved by legislation alone. We would suggest that strong leadership and support from Welsh Government on this issue will be needed to ensure that these proposals are fully implemented.

Part 4: standards for local authorities on rents, service charges and quality of accommodation;

- 24 The proposals under this section of the Bill are necessary to ensure consistent standards across different parts of the social housing sector in Wales.
- 25 It is important that local authorities are obliged or compelled to comply with the new deadline of 2020 in meeting the Welsh Housing Quality Standard (eight years after the original deadline). This is particularly significant for those tenants who

⁴ Humphreys, C and Stirling, T. (2008) Necessary but not sufficient: housing and the reduction of reoffending. Welsh Government: Cardiff

continue to live in homes that are in poor condition. Given the new requirements being placed on the private rented sector elsewhere in the Bill the social housing sector should lead by example in terms of compliance with national quality standards.

- 26 The Bill also gives some flexibility in terms of how standards can be set in future. This should not be seen as an ability to ‘move the goalposts’ but gives Welsh Government the ability to ensure that Wales’ social housing stock is fit for purpose in the long term and ensures that this legislation is ‘future-proofed’ as far as possible.
- 27 In order to ensure the revised deadline is achieved there is a need for continuous and consistent monitoring arrangements, and for early intervention and support should it become evident that local authorities are in danger of slipping behind in their progress. Welsh Government has a clear leadership role to play in this issue.
- 28 Proposals for rents and service charge standards are also to be welcomed. These proposals will help ensure greater consistency and transparency for those in receipt of services and will help local authorities to benchmark across their activities.
- 29 Consideration should be given as to how the proposals under this section of the Bill are intertwined with those under section 5 below. For example, the final arrangements for exiting the Housing Revenue Account subsidy system might impact on certain local authorities’ ability to meet the 2020 target. Local authorities should not be ‘set up to fail’ by these new arrangements.

Part 5: reform the Housing Revenue Account Subsidy system;

- 30 The agreement between the Welsh Government and the UK Treasury to reform the Housing Revenue Account Subsidy system is positive and long overdue. This section of the Bill sets out the necessary legislative changes to allow the current system to be dismantled.
- 31 Depending on the final settlement, the move towards self-financing will give an impetus to the achievement of WHQS, increase transparency to tenants in respect of the link between rent paid and services received and in some cases allow local authorities to consider developing new homes. It is important that achievement of WHQS takes priority and hence why sections 4 and 5 of the Bill should be considered in tandem.

Part 6: the power for local authorities to charge more than the standard rate of council tax on homes empty for over a year;

- 32 Homes may be empty for a wide range of reasons, for example between change of occupants or whilst undergoing modernisation, repair or conversion. Empty homes such as these are a necessary feature of any well-functioning housing system.

- 33 The problem of longer term or problematic vacancies has risen up the political and policy agenda in recent years in response to wider macro-economic pressures, a shortage of supply and increased demand for social housing. There is now a great deal of consensus about the advantages of initiatives to bring back in to use those homes that are inactive in the housing market and have been empty for more than six months.⁵
- 34 Initiatives to bringing empty homes back in to use tend to start with ‘softer’ approaches such as providing information, advice and support to owners, (as evidenced through Welsh Government’s Houses into Homes scheme) with ‘harder’ enforcement solutions, using a broad range of legislative powers currently available to local authorities, only being used when other methods have failed.
- 35 The proposals within the Housing (Wales) Bill to allow local authorities the power to charge 50 per cent more than the standard rate of council tax on homes that have been empty for a year or more adds another tool to the extensive range of options already open to local authorities. The advantage of this intervention compared to other legal solutions is that it would be simple and quick to implement, would have immediate effect, is easy for owners to understand and would potentially act as a disincentive to owners of long-term empty properties.
- 36 As with most enforcement solutions, the use of this tool will be most effective as a last resort when more preventative or supportive approaches have failed, but it does provide a useful bridge between this supportive work and the more resource intensive and bureaucratic legal solutions available to local authorities. With all cases of empty homes, there is a need to tailor the solution to the particular situation as there is no ‘one size fits all’ response i.e. charging additional council tax will be a deterrent to certain owners but not all.
- 37 We understand that there has already been some debate about whether the proposals in the Bill should be amended to allow local authorities to vary the amount of council tax charged in line with the length of time that a property has been empty; a so-called ‘staircasing’ approach. This would seem a sensible way forward that would allow local flexibility.
- 38 Guidance supporting the legislation should make it clear which properties should be exempted from the powers under this section as there may be very good reasons why a property has remained empty for longer than a year. Examples might include an owner who has had to stay in hospital for a protracted length of time, or an older person who has entered a residential care environment but is hoping to be able to return home.

Part 7: the provision of housing by Co-operative Housing Associations;

- 39 We understand that the proposals in the Bill will remove some of the current barriers to the development of cooperative housing and allow fully mutual

⁵ CIH and Shelter (2009) Empty Properties: Making the Most of the Existing Stock. Key information briefing Issue 9

cooperatives to grant assured and short-hold assured tenancies and that this will encourage the provision of private loan finance to such organisations.

40 Recent research⁶ has suggested that there is a degree of public appetite for this type of housing and this legislation is likely to give some security and confidence to current and potential tenants. Overall, co-operative housing could make a small but interesting contribution to the range of housing options in the Welsh housing market.

Part 8: amendments to the Mobile Home (Wales) Act 2013.

41 We have no comments to make regarding Part 8.

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⁶ Wales Cooperative Centre (2013) research into the potential demand for cooperative housing in Wales. Available at <http://www.walescooperative.org/index.php?clD=826&cType=document> Last accessed 17.01.14