# Communities, Equality and Local Government Committee

Meeting Venue:
**Committee Room 2 - Senedd**

Meeting date:
**Thursday, 4 June 2015**

Meeting time:
**09.00**

Cynulliad Cenedlaethol Cymru
National Assembly for Wales

For further information please contact:
**Sarah Beasley**
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0300 200 6565
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## Agenda

### 1 Introductions, apologies, substitutions and declarations of interest

### 2 Historic Environment (Wales) Bill: evidence session 1 - Deputy Minister for Culture, Sport and Tourism (09.15 - 10.30) (Pages 1 - 15)

Ken Skates AM, Deputy Minister for Culture, Sport and Tourism
Gwilym Hughes, Chief Inspector, Cadw
Eifiona Williams, Lawyer, Welsh Government

Supporting documents:
Historic Environment (Wales) Bill
Explanatory Memorandum

### 3 Consideration of draft Code of Practice for Private Rented Sector Landlords and Agents - evidence session 1 (10.30 - 11.15) (Pages 16 - 55)

David Cox, Association of Residential Letting Agents
Douglas Haig, Residential Landlords Association

**4 Consideration of draft Code of Practice for Private Rented Sector Landlords and Agents - evidence session 2 (11.15 - 12.00)** (Pages 56 - 75)

Elle McNeil, Citizens Advice Cymru
Jennie Bibbings, Shelter Cymru
Steve Clarke, Welsh Tenants

**5 Papers to note** (Pages 76 - 111)

**6 Motion under Standing Order 17.42 (vi) to resolve to exclude the public from the remainder of the meeting**

**7 Historic Environment (Wales) Bill: discussion of evidence session 1 (12.00 - 12.10)**

**8 Consideration of draft Code of Practice for Private Rented Sector Landlords and Agents: discussion of evidence received in sessions 1 and 2 (12.10 - 12.30)**

**9 Inquiry into Poverty in Wales Strand 1: poverty and inequality - consideration of draft report (12.30 - 13.00)** (Pages 112 - 156)

**10 Consideration of forward work programme (13.00 - 13.15)** (Pages 157 - 164)

**11 Local Government (Wales) Bill: order of consideration for Stage 2 proceedings in Committee (13.15 - 13.25)** (Pages 165 - 170)

# Agenda Item 2

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**Response to the Welsh Government's Consultation**

***Information, periods and fees required for an application for registration and an application for a license under Part 1 of the Housing (Wales) Act 2014 – Regulation of Private Rented Housing***

**From the Association of Residential Letting Agents (ARLA)**

**April 2015**

## Background:

1. The Association of Residential Lettings Agents (ARLA) was formed in 1981 as the professional and regulatory body for letting agents in the UK. Today ARLA is recognised by government, local authorities, consumer interest groups and the media as the leading professional body in the private rented sector.

2. In May 2009 ARLA became the first body in the letting and property management industry to introduce a licensing scheme for all members to promote the highest standards of practice in this important and growing sector of the property market.

3. ARLA members are governed by a Code of Practice providing a framework of ethical and professional standards, at a level far higher than the law demands. The Association has its own complaints and disciplinary procedures so that any dispute is dealt with efficiently and fairly. Members are also required to have Client Money Protection and belong to an independent redress scheme which can award financial redress for consumers where a member has failed to provide a service to the level required.

## Period for Registration:

***Question 1:*** Do you agree that 4 weeks is an appropriate timescale for processing an application for registration?

4. Yes.
5. ARLA agrees that four weeks is an appropriate and proportionate timescale for processing an application for registration.

6. However, s.19(5) Provision of Services Regulations 2009 states that "in the event of failure to process the application within the period set … authorisation is deemed to have been granted by a competent authority, unless different arrangements are in place". The consultation does not make clear whether, in the event an application for registration is not processed within the

prescribed period, the application will be granted automatically or whether "different arrangements" will be put in place. We therefore ask the Welsh Government to clarify this issue.

7. We also ask what provisions the Welsh Government will put in place to monitor and evaluate the efficiency of Cardiff Council in processing applications for registration and what measures will be taken should the average length of time exceed the prescribed period.

## Information to be included in an application for Registration:

***Question 2:*** Do you consider that the proposed information that will be required is adequate?

8. Yes.
9. In principle we do consider the proposed information that will be required is adequate. However, we do believe there will be some practical issues in relation to maintaining and enforcing such a comprehensive database.

## Changes to be notified to the Licensing Authority:

***Question 3:*** Do you consider that the changes proposed in the regulations which have to be notified to the Licensing Authority are adequate?

10. No.
11. The four proposed additions outlined at page eight of the consultation seem sensible in principle. However, how will such additions be enforced in practice? Maintaining an accurate, up-to-date, database which only includes the information prescribed under s.16(1) will be impossible without huge resources being set aside for enforcement and monitoring activities. The consultation does not mention enforcement at any point. How will the Welsh Government / Cardiff Council enforce these proposals? Therefore, ARLA cannot support the inclusion of these additional requirements when we have no details of how these or the prescribed requirements of s.16 will be enforced.

## Period for determination of a licensing application:

***Question 4:*** Do you think that 8 weeks is a reasonable timescale for determining a licensing application?

12. Yes.
13. ARLA agrees that eight weeks is an appropriate and proportionate timescale for processing an application for licensing.

14. However, as mentioned in response to Question One above, s.19(5) Provision of Services Regulations 2009 states that “in the event of failure to process the application within the period set ... authorisation is deemed to have been granted by a competent authority, unless different arrangements are in place”. The consultation does not make clear whether, in the event an

application for licensing is not processed within the prescribed period, the application will be granted automatically or whether “different arrangements” will be put in place. We therefore ask the Welsh Government to clarify this issue.

15. We also ask what provisions the Welsh Government will put in place to monitor and evaluate the efficiency of Cardiff Council in processing applications for licensing and what measures will be taken should the average length of time exceed the prescribed period.

## Information for an application for a licence:

***Question 5:*** Do you consider that the information that will be required is adequate?

16. Yes.
17. In principle, ARLA agrees that the proposed information which will be required is adequate. However, we would like to raise three queries in relation to the proposal:

    I. There is no mention of applicants having to provide the details of rental properties in applications for licensing. We would be grateful if the Welsh Government will clarify that lists of property details will only be required on applications for registration. If letting agents applying for licensing need to register every property they manage, the administrative burden will be excessive; dramatically impacting businesses.

    II. The consultation states “if the applicant is carrying out lettings work and property management work on behalf of a landlord in the course of business, the address of any premises in the area of the Licensing Authority used for that purpose”. We take this to mean that each letting agency (rather than each individual letting agent) needs to be licensed and the application must state the address of each branch. Assuming this to be the case, does such a list of premises need to include admin-only offices? Some agencies have a separate 'hub' where they undertake back-office/administrative/Head Office functions with no direct client-interaction (i.e. somewhere that neither landlords nor tenants will ever go). We would argue that where agencies have both client facing offices (branches) and admin-only offices, only client-facing offices should be included so as to avoid consumers (landlords or tenants) attending an admin-only office.

    III. We are concerned about the definition of "Connected person" used in page 9 of the consultation document. The definition used in footnote 2 is very wide and could include the back-office staff mentioned in the point above, referencing agencies, inventory clerks and solicitors. Further, it appears to contradict the exclusions to "Lettings work" outlined in s.10 Housing (Wales) Act 2014. We would be grateful if the Welsh Government would clarify this

issue and clearly state what class of person needs to be identified in an application for licensing (for example, all staff, all client-facing staff, all fee-earning staff).

## Changes to be notified to the Licensing Authority:

***Question 6:*** Do you agree the changes proposed in the regulations which will have to be notified to the Licensing Authority are reasonable?

18. No.
19. As with the previous question, in principle, ARLA agrees the changes proposed in the regulations which will have to be notified to the Licensing Authority are reasonable. Again, as with our response to Question Three above, we would question how such additional require to will be enforced.

20. We would also like to raise concern about the requirement to notify the Licensing Authority of "any changes in identity of any connected person". Depending on the final definition of "Connected person", this could involve every letting agency in the country having to notify the Licensing Authority every time a member of staff either joins or leaves their business. The administrative burden of this exercise for both letting agents and the Welsh Government will be colossal. For example, under the current proposal, should a member of staff leave one firm and move to another, the Licensing Authority would need to be notified by the original firm that the member of staff has left (and probably that they have recruited a new member of staff) and by the new firm that they have taken on a new member of staff (possibly after another member of staff have left). The result will be that for one person moving firms, four notifications may have to be put in to the Licensing Authority. What provisions have the Welsh Government put in place to handle this volume of correspondence?

21. We would argue these proposals generate such a significant administrative burden for both agents and the Licensing Authority as well as a massive potential for inadvertent non-compliance that they are not practically implementable. Instead, we would recommend that agents provide an annual compliance declaration.

## Fees for registration and licensing:

***Question 7:*** Do you agree that the Licensing Authority should set and publish a fees policy for registration and licensing?

22. We agree that the Licensing Authority should publish a fees policy for registration and licensing. However, we feel the current proposal provides the Licensing Authority with too much authority over the setting of these fees and therefore, cannot support the proposal as laid out in the consultation document.

23. As currently outlined in the consultation document, the proposal appears as though the Welsh Government is giving Cardiff Council complete autonomy and authority to do as they wish. The consultation document does not provide for any oversight on what calculations must be used in setting the fee structure; whether by the Welsh Government or any other body. ARLA would strongly recommend that an oversight panel is established, consisting of Welsh Government, local authority, industry and tenant representatives to oversee the administration (including the fee structure) and enforcement of the scheme.

24. The consultation document does not establish what the license fee should cover. We would argue the fees should only cover the administration of the scheme. The fee should not cover enforcement as it would be unethical and highly unfair for the fees paid by legitimate law-abiding agents and landlords to be used to cover enforcement against those who bring our sector into disrepute.

## Declaration to be included in applications for registration or a licence:

***Question 8:*** Do you consider the proposed declaration is adequate?

25. Yes.
26. We consider the proposed declaration is adequate and the wording appropriate.

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Managing Director

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1 May 2015

ARLA has no objection to this response being made public by the Welsh Government.

**Response Form - Consultation on a Private Rented Sector Code of Practice for Landlords and Agents**

| | |
|---|---|
| Name: | Douglas Haig |
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| Telephone: | 029 20027 593 |
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| Organisation (if applicable) | Residential Landlords Association |

**Returning this form**
The closing date for replies is **Friday 22 May 2015**

Please send this completed form to us by email to:

**Privatesectorhousingmailbox@wales.gsi.gov.uk**

If you are sending your response by email, please mark the subject of your e-mail: **Code of Practice Consultation**

Or by post to:
Private Rented Sector
Housing Policy
Welsh Government
Rhydycar Business Park
Merthyr Tydfil
CF48 1UZ

***Publication of responses***
*Responses to consultations may be made public – on the internet or in a report. Normally the name and address (or part of the address) of its author will be published along with the response, as this helps to show the consultation exercise was carried out properly.*

| | | |
|---|---|---|
| If you would prefer your name and address not to be published, please tick here: | | |

**Question 1: Do you agree with the content of Section 1 - *Statutory Requirements: Before a tenancy*?**

| | |
|---|---|
| **Yes** | |
| **No** | ☑ |

**Do you have any other suggestions?**

*General*

Section 40(1) of the Housing (Wales) Act 2014 states "The Welsh Ministers must issue a Code of Practice *setting standards relating to letting and managing rental properties*". A major problem with this section, like others in the code, is that it merely attempts to recite existing legislation: this cannot said to be "setting standards" as these matters are already obligatory in law. As we have argued in earlier submissions, the statutory requirement sections should be removed entirely from the code.

There is a general issue that arises throughout the Questions in relation to the Consumer Protection from Unfair Trading Regulations 2008 (CPRs). We deal with this in answer to Question 11 but need to raise it here as well because of the specific reference in Question 1 to CPRs. Some aspects of the draft Code are interpretations of the CPRs and are in effect borrowed from the Competition and Markets Authority (CMA) Guidance on this topic. This gives rise to issues relevant at this stage:-

- This legislation, i.e. CPRs, only applies to landlords who are traders. The exact boundaries between who is and who is not a trader in the context of the

landlord and tenant relationship or the landlord and agent relationship has not yet been settled. Our view, which seems to gradually be gaining acceptance, is that only so called accidental landlords are to be treated as consumers and not traders. This has particular bearing on the landlord/agency relationship. Thus, if the draft Code seems to go beyond the scope of the definition of "consumer" applicable under EU legislation this would have to require the effect to require landlords to comply with the obligations not imposed on them by the general law as well as giving certain landlords protection vis a vis agents which does not exist under CPRs. Instead, BPRs apply to the landlord/agent relationship if landlord is a trader.
The CMA Guidance is predicated on all tenants being consumers and all landlords traders when dealing with the landlord/tenant relationship and all landlords being consumers when dealing with agents. This is manifestly logically inconsistent.

- The draft Code, by incorporating what is essentially the view of the CMA, is only at the moment based on what is an opinion which has not been tested in the Courts. This is because the CPRs import high level requirements based on what is set out in the EU Directive. The CMA has then tried to apply this to the day to day dealings in the private rented sector. Thus, currently the draft Code's approach is, in effect, one of elevating an opinion into a standard or a rule because by embodying this opinion in the code it is potentially putting someone's livelihood at risk if there is non compliance.

As indicated in Section 11 we must therefore question the incorporation of the principles of the CPR into the Code. Rather, CPRs and CMA Guidance should sit alongside the Code but outside it. The Code should not extend the ambit of the CMA Guidance by converting it into binding standards.

*Appointment of an Agent*

As regards the first paragraph which is expressed in mandatory terms, i.e. must, CPRs are only applicable where the recipient of the services is the consumer and the provider a trader or in the case of the BPRs where the relationship is between two persons who are traders.

Three of the topics listed under the bullet points in this paragraph, namely the UTCCRs, SGSA and UCTA, will be subsumed into new legislation when this comes into force. References will then become obsolete. The 2013 Consumer Contracts Regulations only apply if a landlord is a consumer.

Likewise, as regards the third paragraph this only applies to an agent dealing with a tenant who is a consumer; likewise, where the landlord is a consumer.

In the case of the fourth paragraph if this section is to remain in whatever form, then there should be a recommendation for the agent to specify details of how and in what circumstances a landlord client can terminate a management or lettings agreement.

As regards to the terms of an engagement it is said that these terms must be fair. We are concerned at this sentence because it seems to import a general concept of "fairness". We have particular concerns regarding a similar provision later on. What

this deceptively simple sentence is suggesting is that with all relationships between landlords and agents the terms of contract have to be “fair” whatever this means. We cannot for one moment believe that this is the intention of this provision since it appears to us that it is shorthand for saying that they must comply with the UTCCRs. If it goes beyond this then there will be a huge departure by importing some overarching concept of fairness. Surely this cannot be the intention. This raises important issues relating to freedom of contract. This provision should be re-drafted so that it is clear that it is shorthand for compliance with UTCRs where they apply.

The final paragraph on page 1 regarding signing the contract only applies if the landlord is a consumer.

*Marketing and advertising*

The second paragraph regarding agent’s duties on checking consents imposes a significant burden on agents. It means that agents would be required to investigate title to ascertain joint ownership and identify those who are the lenders. Under the Property Misdescriptions Act, which the CPRs replaced, case law held that an agent was not require to check matters which were properly the role of a conveyancer. This provision therefore amounts to the imposition of a new legal requirement on agents. Likewise, it could involve checking leases to see what consents are required from the Superior Landlord/freeholder. At the very least it should be limited to the agent obtaining written confirmation from the landlord that any necessary consents had been obtained, without the agent having to carryout investigations of this kind. The Agent should only be obliged, in addition, to advise the landlord of requirements of this kind to obtain requisite consents.

In relation to the fourth paragraph there needs to be a definition of what constitutes “material information”.

We question the reference to the property particulars containing the alphabetical standard to be stated as the regulations themselves actually refer to the numerical rating 18 being specified.

In the last paragraph of this section there is reference to “transactional decision”. At the very least this needs to be defined in the glossary but we would prefer that such technical term be omitted altogether.

*Viewings*

We very much question the idea that “any other aspects which may not be immediately apparent with an initial viewing” must be disclosed. This is very wide ranging and in our view goes beyond the CMA Guidance on this subject. It introduces a significant element of uncertainty and could give rise to any number of complaints by tenants as regards non disclosure and therefore breaches of the code. This very much emphasises our point about our preference for the CPRs to run alongside this Code of Practice; rather than being incorporated in it. After all, breach of the CPRs in this context would be a breach of the law of landlord and tenant and therefore could be separately actionable as regards the fit and proper person status of any landlord or tenant. The danger here, as we point out elsewhere, is that this can be

seen to add to/go beyond the ambit of CPRs. In particular it applies CPR requirements to those who are not subject to them unnecessarily.

**Question 2: Do you agree with the content of Section 2 - *Statutory Requirements: Setting up a tenancy*?**

**Yes** ☐
**No** ☑

**Do you have any other suggestions?**

*General*

We refer you to the comments in response to question 1.

*References and checks*

The first paragraph goes beyond the scope of discrimination legislation. Age discrimination is permissible in the case of letting properties. In certain property types, such as property intended for retire,net purposes it is desirable and in some cases is a planning restriction. Likewise, there is no discrimination involved if one refuses to have children in the property. This paragraph needs to be recast accordingly.

As regards the second paragraph we consider a prospective tenant's consent must be obtained for carrying out a credit check at the very least. This is clearly required under Data Protection Legislation and is the subject of clear guidance from the Information Commissioner. It may not strictly be necessary always in the case of references in our view.

*Agreeing the tenancy*

This is an example where there is repetition. This appears both on page 7 and again on page 15. This would be eradicated in our view if the statutory requirements and best practice (although separately identified) were brought together under the same subject heading i.e. "Setting up a tenancy". – see our reply to Question 11

As regards holding deposits this ought to be a separate section in our view because it is something different to agreeing the tenancy. It is a preliminary step which precedes this particular stage.

*Rental agreement*

The final bullet point on page 7 regarding return of the deposit goes beyond the

scope of what is required by tenancy deposit schemes. They do not make a requirement for this to be incorporated in the tenancy agreement because it is covered by scheme rules, in effect. Introducing concepts of "reasonableness" where there are clear provisions in the scheme rules is confusing. The seventh bullet point in relation to tenancy agreements fails to make it clear whether fees which can be charged during the course of the tenancy, e.g. for call outs or dishonoured cheques, are within the scope of this provision since it merely refers to "letting". The next bullet point would appear to incorporate statutory increases effected under the provisions of Sections 13 and 14 of the Housing Act 1988. Since this is a statutory provision we question the need for this to be referred to.

As regards signatures of tenancy agreements it refers to the agreement being signed by both parties. It is frequently the case that agents sign, especially agents for the landlord. This should be permissible in accordance with current practice.

*Supplementary documentation*

Whilst there is a legal obligation to complete a fire risk assessment for certain properties, this is not the case for all, the statement is misleading and needs clarity.

*Deposits held for assured shorthold tenancy agreements*

The statutory timescale should be specified, i.e. 30 days, and likewise in relation to the next paragraph regarding the prescribed information.

As regards deposits in the case of the second sentence, CMA suggest that there is a mandatory obligation to make these matters clear before a deposit is taken. "Should" would appear to be inappropriate in the case of this sentence – see our general comments on appropriate terminology under Question 11.

As a general observation, it is also important to be platform neutral in a formal document. Under 'it must also include a clear description...', the reference 'satellite TV' should be replaced by 'pay TV services'.

**Question 3: Do you agree with the content of Section 3 - *Statutory Requirements: Once a property is let to a tenant*?**

**Yes** ☐
**No** ☑

**Do you have any other suggestions?**

*General*

We refer you to the comments in response to question 1.

*Introducing a tenant at the beginning of a tenancy*

We would suggest that an explanation is given that if this information is not given to the water supplier then the landlord becomes jointly and severally liable for the debt.

*Contact details*

There is reference to contact being made with a person "licensed to deal with any problems". We have had extensive correspondence already with the Welsh Government on the issue of the definition of "lettings work" as it affects the person such as tradesmen. Whilst we appreciate the provisions regarding management work are more tightly defined, does this reference to a person licensed to deal with the work exclude contact direct with tradespersons. Often emergency services are set by landlord or agent up so as to allow direct contact with retained contractors who can effect repairs in emergencies. This wording needs to be looked at again, in our view.

We also note that Section 48 of the Landlord and Tenant Act 1987 indicates: '...shall by notice furnish the tenant with an address in England and Wales at which notices (including notices in proceedings) may be served on him by the tenant...' The section of the Code should be modified accordingly to make it clear that an agent's address can be legally provided as the contact. This is important as agents that are given responsibility to manage will a property will be able to respond more quickly if contacted directly.

*Property conditions*

The second paragraph repeats/duplicates an equivalent provision under best practice and the two ought to be amalgamated into one. It needs to be made clear that HHSRS is a local authority enforcement tool and the legal obligation to comply results from the service of a local authority improvement or similar notice; not a general obligation imposed by law. We consider that the word "serious" ought to be omitted in front of "risk". By reason of category 2 hazards, HHSRS is not confined to so called serious risks. This part ought to read "a risk must be removed or mitigated".

In the case of the third paragraph we consider that the second sentence is erroneous. The liability under Section 11 of the Landlord and Tenant Act 1985 is that of the landlord; not that of the agent. We appreciate what this is trying to say namely that if day to day implementation/management is delegated to the agent then that must be returned to the landlord if the agent is unable to carry out this responsibility. Indeed, it needs to be made clear that if any kind of arrangement is included the responsibility is and remains that of the landlord contractually. We would suggest that the sentence should read "if an agent is responsible for carrying out the landlord's obligations then, in the event that the agent is unable to carry out these responsibilities for any reason, the landlord should be informed, including reasons why, so that the landlord can carry out these responsibilities for keeping the structure and exterior of the property in repair.

The fifth paragraph should read "The electrical wiring and installations…". In the seventh paragraph it should be stated as being that they must be in a safe condition at the outset of the tenancy as this is the requirement under the relevant regulations.

**Question 4: Do you agree with the content of Section 4 - *Statutory Requirements: Ending a tenancy*?**

**Yes** ☐
**No** ☑

**Do you have any other suggestions?**

We refer you to the comments in response to question 1
In the second paragraph regarding provision of evidence we would question whether there is a legal obligation as such to provide evidence and would suggest "should" should replace "must" on the second occasion where this word appears. On the other hand in the fourth paragraph "must" should replace "should" as this is a contractual obligation which we would classify as a legal obligation.

**Question 5: Do you agree with the content of Section 5 – *Best Practice: Before a tenancy*?**

**Yes** ☐
**No** ☑

**Do you have any other suggestions?**

*Pre-letting*

This provision is of fundamental concern in regard to reference to "fair" in particular but also similar concerns could focus on the use of "reasonable" in this context. To us this seems a deceptively innocuous provision but inclusion of the word it could be of fundamental importance, as we have alluded to in an earlier question. For example, could it be argued that it would not be "fair" to refuse a tenancy to a tenant who received housing benefit, or could it be said to be "fair" to decline a tenancy to be used as a tenancy extension. This needs very careful consideration particularly bearing in mind the concepts of the freedom of a landlord to contract as he/she sees fit, subject only to specific legal obligations, e.g. in relation to discrimination. In our view, there is a considerable danger of a tenant trying to enforce this provision and we would argue for the exclusion of both the words "fair" and "reasonable". This goes well beyond what cold be said to be "setting standards" under Section 40.

In any event it ought to be made clear that this requirement does not impinge on freedom of contract. A landlord should be free to choose who his/her tenants will be and whether or not to grant an extension of a tenancy, for example. This should not be within the scope of this Code.

**Question 6: Do you agree with the content of Section 6 – *Best Practice: Setting up a tenancy*?**

**Yes** ☐
**No** ☑

**Do you have any other suggestions?**

Agents should not be expected to give special consideration to prospective tenants that have a 'lack of knowledge' beyond the requirements of the CPRs; a prospective tenant should have a certain level consumer consciousness and amount of knowledge before putting themselves into a position to tenant a property. This provision flies in the face of the concept of the average consumer embodied in the CPRs. Furthermore, an agent or landlord should not be expected to make special considerations where they are not aware that a tenant is subject to something they consider to be a 'disadvantage'.

*Reference and checks*

We are concerned with the suggestion that there should be an obligation for a landlord to provide a reference. Generally speaking, a person is free to decide whether or not they will provide a reference. If such a provision is included in a Code of this kind then it would import an obligation on a landlord to give a reference. This, therefore, has implications especially around reference of potential liability, e.g. to the new landlord. This will give rise to the potential of claims by tenants against landlords not just for supposedly incorrect references but also for suggestions for loss of prospective new tenancies even though a reference is given. This is an issue which needs the most careful consideration. It would equate landlords and agents in the PRS to those such as employers in the financial services industry who are obliged to provide references. We doubt that this falls within the scope of setting standards relating to letting and management as provided for under Section 40.

*Agreeing the tenancy*

We made the point in answer to a previous question that holding deposits which preceded tenancies anyway should be dealt with as a separate paragraph and not included amongst the terms of the tenancy itself in the list.

The penultimate paragraph of this section contains a reference to "consumers". For all practical purposes we would accept that this would extend to tenants generally.

As regards pets, this should be qualified as regards the requirements of any obligations to which the landlord himself/herself is subject e.g. under the lease of a flat as well as the nature of the premises, e.g. where there is no garden. Any provision in the tenancy ought to extend to a right for the landlord to require the removal of a pet for good reason.

*Rental agreement*

The word "principles" appears to be superfluous. What is hard to prove in the case of a smaller contract is its "terms"; not "evidence" which is how you go about proving the terms".

**Question 7: Do you agree with the content of Section 7 – *Best Practice: Once a property is let to a tenant*?**

**Yes** ☐
**No** ☑

**Do you have any other suggestions?**

*Introducing tenants to the new home at the beginning of the tenancy*

The RLA believes that the recommendation to establish a written complaints procedure should go one step further by requesting that the landlord/agent outline details of how and by whom a dispute should be solved when both parties cannot agree at first instance.

It is vital to reduce the likelihood of disputes from going to court, and for mechanisms to be available for both parties to access mediation services. In the longer-term, we believe that the Residential Property Tribunal could have its remit extended so it can hear certain cases that cover a wider range of circumstances. This would ensure that disputes are dealt with more quickly and less formally in a manner which doesn't make the tenant-landlord relationship untenable. This issue has come to the fore during the progress of the Renting Homes Bill in the Assembly. A specimen complaints procedure is attached.

The requirement relating to utilities be qualified to make it clear that this applies unless it is the landlord's responsibility to pay for utilities, i.e. there is an inclusive rent. Water notification requirements should be repeated.

In the third paragraph there should be reference to refuse recycling as well as refuse collection. The position of the mains electricity switch should also be referred to.

As regards the last paragraph of this section if there is some obligation to point out risks the Welsh Government should provide an appropriate leaflet for this purpose.

*Collecting the rent*

The second paragraph should be confined to cases where payment is made in cash.

*Contact details*

We are concerned at the reference to "always being contacted". This is a very onerous burden for landlords especially small landlords who may self manage properties. We would therefore suggest the word "always" should be most certainly omitted.

As regards reporting repairs encouragement should be given to tenants to make written reports especially as email is readily available as a system of making reports. Grammatically this sentence does not read well.

*Access to the property*

We have concerns around the suggestion that access should only be requested at a time reasonable to the tenant. Just as important are considerations of what is reasonable to a contractor. Whilst we appreciate that it will not be reasonable except in an emergency to seek access late in the evening this needs to be reworded in our view to make it clear that access should be made available during normal working hours. Frequently landlords experience situations where tenants make it difficult for them to obtain access for their own reasons and the proposed wording in this regard in the Code of Practice would aid and abet such tenants. What is reasonable to such tenants is very subjective. This should be replaced by something much looser such as "due consideration being given where possible to tenants' and residents' convenience".

*Property conditions*

It is important that this aspect of the Code is carefully considered because it could inform a decision by a Court in particular circumstances as to what is reasonable when it comes down to the timescale for carrying out repairs.

Under the heading "Emergency Repairs" the words "at least" should precede the words "made safe" as an obligation because it is often unrealistic to carry out emergency repairs in the kind of timescale envisaged here. It may not be safe to do so, e.g. in high winds. We consider that the reference to the structure of the building should be omitted in the case of what is considered to be an emergency repair. If there is real danger to health etc it is covered by that limb. Otherwise it should be an urgent repair.

In the case of urgent repairs we believe that the period should be five working days instead of three. This is a more realistic timescale. In the case of windows and doors it should be made clear that this is confined to defects that impact adversely on the security of the property and that in the case of services adversely potentially affect the safety of the persons or property in order for them to be classified as urgent repairs. Likewise, in the case of heating and hot water it should be made clear that this should only extend to failures to provide the services; not minor inconveniences which are not adversely impacting on the provision of heating or hot water.

Under the heading "Other repairs" we are opposing the inclusion of the word "never". It is well known that there can be recurrent or intermittent problems which despite the best efforts of everybody concerned cannot be fixed within the timescale proposed. Instead the words "not normally" should replace the word "never".

Generally, you must realise that practicalities dictate timescale. If contractors or materials are not available these kinds of timescales are unachievable.

The pre-penultimate paragraph on page 17 should state simply "The Landlord or Agent should remind tenants…" to bring the wording into line with the "must/should" regime.

In the penultimate paragraph concerning retaliatory eviction in the first sentence the word "should" is not appropriate and under our proposal this should be replaced by

"ought not to" or, at the least, "must" as this must contravene the requirement of professional diligence under CPR.

In the final paragraph on page 17 "should always" is setting the bar too high. This may not be practicable and would in practice be dictated by the contractor's requirements. We would suggest that the words "wherever possible" replaces the word "always".

On page 18 in the first full paragraph regarding HHSRS this needs to be amalgamated with the earlier paragraph on page 11 so that there is a single section dealing with guidance on HHSRS. The fourth sentence should read "landlords and their agents should identify those …" as this could be considered to be best practice. However emphatically this should not be a legal requirement because as we pointed out HHSRS is an enforceable tool; not a standard.
"Spread of harm" is a technical term and at the least an explanation should be given in a glossary or better still this should be omitted and replaced with wording such as "increase the likely extent of the harm caused".

The next paragraph regarding inspections should address what is an appropriate interval. Importantly, the frequency of inspections should be linked to a realistic assessment by the landlord/agent as to the required frequency. If on first inspection the property is found to be in good order then this would suggest less frequent inspections are needed than in a situation where the tenant has been found to have damaged the property or there are circumstances which dictate the need for more frequent inspections.

There should be separate formal procedure laid out for tenants to report any damage or requests for repairs. This would ensure that requests are communicated to the appropriate person, and that a detailed record is held of anything being reported.

After the 'secure' heading on p.18, the statement should be just limited to 'unlawful intrusion' and the word 'unwanted' removed. 'Unwanted' may bring about a very subjective interpretation, and could give the impression that a tenant has the authority to object to entry by someone that they simply don't have the legal authority to *e.g.* stopping the boyfriend/girlfriend of another HMO tenant from entering the communal areas.

We are also concerned about the paragraph regarding warmth. In our experience some environmental health officers have particular opinions which they seek to enforce regarding gas being used as fuel instead of electricity. This is despite uncertainty about which will be cheaper in the long run. More and more electric installations are now significantly more efficient and they are safer as well as being much easier to maintain. We would therefore wish to see the addition of a provision that anything in this paragraph is not intended to suggest the particular type of fuel which should be provided for space heating so there is no required preference for gas over electricity.

We object to the suggestion that inspections for electrical installations should take place at five yearly intervals in the case of non HMO properties. This is too short a period unless specified by an electrician carrying out a test; otherwise ten years

should be the norm. With modern wiring, and installation of MCBs or RCDs being prevalent five years is simply too short an interval. After all this is an expensive test and it is unnecessary unless specifically recommended because of the condition of a particular installation.

As regards the last paragraph on page 19 again we object to the necessity to fit extractor fans where an openable window is provided. Again, this is costly and may not always be practicable in any event.

The RLA is very concerned about the paragraphs relating to the prevention of condensation. The sentence 'the property should be free from deficiencies which could lead to rising and penetrating damp', suggests that a landlord/agent can foresee every situation that may lead to damp or condensation; this is completely unrealistic. The paragraph simply doesn't demonstrate the legal responsibility that the tenant has to limit condensation, *e.g.* regularly ventilate the property and open windows.

**Question 8: Do you agree with the content of Section 8 – *Best Practice: Tenancy renewals and changes*?**

| | |
|---|---|
| **Yes** | |
| **No** | ☑ |

**Do you have any other suggestions?**

Fees is an issue which is addressed under the CMA Guide to the CPRS. Therefore we are not sure that this is appropriate in this context for reasons explained elsewhere

**Question 9: Do you agree with the content of Section 9 – *Best Practice: Ending a tenancy*?**

| | |
|---|---|
| **Yes** | |
| **No** | ☑ |

**Do you have any other suggestions?**

It would not always be possible for a landlord with multiple properties/agents to inspect a property within 24 hours of it being vacated. There should be relaxation for periods that are particularly busy for tenants vacating properties, *e.g.* June/July for those with student properties. Furthermore, it would be inappropriate for a tenant to attend a checkout: the person who undertakes the inspection needs to be free from any interference or interruption, in order to make the necessary judgements. When multiple tenants are vacating an HMO property on separate tenancies, there is also the issue of privacy, discussing one tenant's affairs in front of another.

In the last paragraph the word "follow" should be substituted for the word "seek". It seems strange to suggest that on each occasion the landlords/agents have to seek

guidance when in fact tenancy deposit schemes lay down general guide lines which are appropriate.

**Question 10: Do you have any comments on the overall format of the Code of Practice?**

| | |
|---|---|
| **Yes** | ☑ |
| **No** | |

**Could the layout be improved?**

In principle, the format of the document is fit for purpose but improvements could be made. Sometimes it may be appropriate for the landlord or agent to determine between themselves to whom the statement is applicable to in the circumstances. Cases where this option is appropriate should be identified.

Our first concern is about the separation of "statutory requirements" on the one hand and "best practice" on the other into two separate parts. This was originally proposed when the RICS Code was drawn up but subsequently changed, rightly in our view. Matters should be dealt with by reference to subject headings, e.g. access or repairs, with separate sub-sections under each such heading dealing with statutory requirements and best practice separately. The reader needs to see these matters in the same place so that a complete picture is obtained: rather than having to switch from one part to another. The second part could be overlooked by the casual reader.

Another advantage of putting matters relating to the same subject heading in one place is that it avoids repetition. We have detected a number of instances in the drafting where matters are unnecessarily dealt with twice and could and should be brought together, e.g. in relation to HHSRS. This is just one example.

We indicate in answer to Question 11 that the format should also make it clear to whom any duty or responsibility is owed, whether it be both landlord and tenant, or one or other, owing it just to the tenant or the landlord; or whether it is a responsibility just owed by an agent to a landlord.

There needs to be a glossary/definitions section. There needs to be definitions of key words such as "must" and "should", see reply to Question 11.

Some quite difficult terminology is included, e.g. references to "transactional decisions" which is a concept imported under the CPR. We do not think that its inclusion is necessary but if it were to be then, again, it should be included in a glossary.

Importantly, the Code needs to make it clear as to the different standing of the sections headed "Statutory requirements" and "Best practice" – see our reply to Question 11.

In our reply to Question 11 we raise a significant issue around the impact of the CPR

and their treatment under the Code. As we explain there, whilst we prefer omission of what is in effect the CMA interpretation of CPRs if this is to be included we feel that matters which a landlord or agent needs to be observe in order to comply with CPR should be separately identified but since these are derived from CPR then it seems sensible to include them in the "Statutory requirements" section but with different wording.

We support strongly arrangement by subject matter, e.g. access for repairs etc and also the idea of a "journey" through the tenancy. These need clarity and will enable the relevant provisions to be traced more readily.

However, to assist identifying relevant provisions there are also, in our view, to be an index. At the very least there needs to be a contents page.

Each paragraph should then be numbered to aid identification and for reference purposes.

**Question 11: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please let us know here:**

We have attached a draft complaints procedure which could be supplied in the appendix of the code, for landlords to give to tenants.

The draft Code is broken down into two sections namely statutory requirements and best practice. It is, however, unclear as to what is the status of the "best practice" section. We have to bear in mind that non compliance with the Code can lead to the loss of a licence as compliance with the Code will be a licence condition. Therefore, will it be a breach of the Code, potentially leading to the loss of a licence, if a landlord or agent fails to comply with best practice. After all, Section 40 of the Act uses the word "standards" which suggest mandatory minimum requirements which, if they are not complied with, can lead to sanctions. This inter-relates with the issue surrounding compliance with matters which are derived from the Consumer Protection from Unfair Trading Practices Regulations (CPR), to which we refer in the next paragraph. The status of "best practice" is unclear and, in our view, this needs to be spelt out, although we consider it means what is says and does not seek to impose a legally binding obligation, so it cannot invoke loss of a licence.

We have already made general observations on the CPRs in answer to Question 1 but this is an underlying theme for every Section of the draft Code. As already pointed out, the difficulty with CPRs is that they lay down "high level" principles; not detailed requirements as to the way in which landlords and agents in the PRS must operate. As with the CMA Guide to the Regulations, all one can say with safety is that if you do things in a certain way then it is most unlikely that they will be guilty of an offence or open to other enforcement action. As such, however, they are not direct legal obligations in the same way as, for example, there is a legal requirement to carry out an annual gas safety check on appliances belonging to the landlord installed in a rental property. The policy issue therefore is whether they should now be elevated to possessing such a legal status, not withstanding that in certain cases

they will not otherwise be binding on a landlord who is not a trader (e.g. someone renting out their own home) or an agent dealing with landlords who should not be regarded as consumers. For this reason, we do not consider that they can be accurately classified as statutory requirements in a code which is currently split simply between statutory requirements and best practice. The issue is firstly whether they should appear in a code of practice at all as they already dealt with in the CMA Guidance which seeks to interpret and apply the CPRs and in turn the relevant EU Directive.

Leading on from the previous two paragraphs is the issue of the use of the expressions “must” and “should” which is in line with common practice in the case of codes of practice. The draft code fails to make it clear what “must” embraces. Clearly, on any account “must” will incorporate specific statutory obligations, derived either from Acts of Parliament, Acts of the Assembly, or statutory regulations. We have tended to take a much broader view that it not only incorporates statutory obligations of this kind but also common law rules, as well as contractual terms and the rules of redress or other similar schemes to which an agent must belong. Thus, contractual obligations arising under tenancy agreements, agency agreements or legally binding obligations to third parties, e.g. insurers or mortgage lenders would fall within the categorisation of “must” in our opinion. On the other hand, “should” is simply good practice but which does not attract any legal sanction or claim (e.g. for damages) in the event of non compliance.

If the Code is to incorporate matters which potentially derive their legal basis from the CPR we believe that these should be separately worded, since they are not as such specific obligations that have been determined by the Courts or spelt out in specific regulations. In some cases, specific statutory requirements actually replicate CPR obligations but this is very much the exception rather than the rule. An example of where they do would be in relation to threatening retaliatory eviction which is clearly an aggressive practice. This is not always so clear cut. In the light of this, we would therefore propose that in addition to the usual “must” and “should” dichotomy there should be a third category of “need to” or “ought not “ for negative provisions. In other words, based on CMA Guidance if the Code is, this would be what a landlord or agent “needs to do” (or ought not to do) in order to escape the possibility of action for non compliance with the CPR. We are happy to identify those provisions of the draft Code which we consider should fall within this categorisation if this suggestion were to be adopted.

In one way, this may sound as legal pedantry but it is not. The reason for this is that a code of practice such as this undoubtedly carries great weight under EU jurisprudence when it comes to determining whether there has been a breach of the CPR. This is particularly true of the general obligation under CPR to exercise “professional diligence”. A code of practice of this kind is taken as demonstrating what are considered generally to be the requisite standards of professional diligence. This could extend to matters of “best practice” but it should not do so, in our view, i.e. those classified as “should”. Overall, they do not, however, fall within the same categorisation as “must”; hence the need for them to be differentiated, in our view.

As a statutory code, reinforced with the possibility of the loss of livelihood because of the loss of a licence, it is important, in our opinion, that there be precision and clarity

around the legal status of the various different proposed provisions of the Code. At the moment many of the provisions classified as "statutory responsibilities" duties are owed to tenants by both landlords and agents, whereas some are owed to landlords who are consumers by agents. These need to be differentiated.

This gives rise to a related policy issue as to whether this code is an appropriate vehicle for imposing duties on agents vis a vis landlords. Section 40 deals with the letting and management of properties; not necessarily governing contractual relationship between a landlord and an agent.

There are a number of potentially costly measures which are referred to, e.g. carrying out five yearly electrical checks or installing extractor fans. It is important therefore that an impact assessment be carried out. We can provide costings as appropriate. Furthermore, importantly, we strongly contend that by virtue of Section 40 there is no power to use this Code to require improvements to be carried out to a property. In other words there is no lawful authority under the legislation to stipulate in the Code of Practice that facilities or amenities should be provided or works, e.g. items of improvement, should be carried out in a property. Section 40 merely refers to "management". Based on a normal interpretation of this word, as well as the decision of the First Tier Tribunal in the case of Brown and Others v Hyndburn Borough Council, management does not extend to improvement. Management is about dealing with the state of affairs in a property as it is; not changing it. The First Tier Tribunal decision is under appeal and obviously what we say is subject to the outcome of this appeal which is due to be heard by the Upper Tribunal on the 2nd September 2015. During the course of the Bill through the Assembly the then Minister accepted this point.

Throughout the code there is a continual reference to providing supplementary written material, presumably this means printed material. The RLA believes that a landlord/agent should have the option to provide all material digitally if they choose to do so; if one followed the code rigidly, then it would be easy to envisage a situation whereby 120-150 pages needed to be printed for each new tenancy. This would not only cost the agent/landlord unnecessary expenditure, but also be a substantial environmental concern.

Longer-term fixed tenancies are currently are the agenda, but we consider it to be appropriate for the Code of Practice to be silent on this issue. We would be opposed to any suggestion that often a long term tenancy in appropriate cases should be regarded as "best practice". A landlord should not be under any obligation in our view compulsorily to offer tenancies of any particular length by virtue of any provision of the Code of Practice.

In conclusion, there are a number of points of principle and law which need to be resolved in our view before the draft proceeds further.

# Appendix

## COMPLAINTS PROCEDURE

### Your right to complain

We endeavour to provide a good service to our tenants and residents. However, sometimes things do go wrong. This is why we operate a complaints procedure. We may be able to put things right but sometimes we may only be able to explain ourselves and apologise. We will treat complaints seriously and speedily.

### What do I do if I have a complaint?

It is important that you let us know that you are unhappy and why so as to give us a chance to put things right. Please do not afraid to speak to us informally. Alternatively, you can follow our formal process.

### How to make a formal complaint

Formal complaints should always be put in writing. You can write to us or send us an email. Please make it clear that you are raising a complaint and let us know what you are complaining about. Please explain why you are making the complaint.

### How are complaints investigated

Your complaint will be investigated by [ ]. We may ask you for more information.

**How long will it take to investigate a complaint**

We will acknowledge your complaint within 5 working days. We aim to respond fully to your complaint within 15 working days. Sometimes however it may take longer in which case we will notify you of the date by which you can expect a response. Our reply will include an explanation of how we have come to the decision we have made. We will let you know whether or not we accept your complaint and if so what we will do about it.

**What can we do if you are not satisfied with your response?**

If you are not satisfied with our response then you can ask for your complaint and our initial reply to be reconsidered. Any such review will be carried out by [ ]. The same timescales and procedures as above apply in respect of any review of your complaint.

[As we are a sole operator there is no one else internally who is able to review the complaint. However, it can still be reconsidered in the light of any further comments you may wish to make].

**External review of your complaint**

By law we are required to advise you and inform you about any independent body which can provide alternative dispute resolution and this is [ ] whose website address is [ ]. We are not legally obliged to submit any dispute with you for resolution in this way [ and we are not prepared to do so]. [but we are willing to do so and abide by the outcome ].

Reporting repairs

This complaints procedure does not cover initial reports to us that repairs or other work are required at the property.

**Repairs Reports**

There is a separate reporting procedure which you need to follow. However, if after you have submitted a report, you consider that we are not dealing with it satisfactorily then you may resort to this complaints procedure.

# REPAIRS REPORTING PROCEDURE

## How to report a repair

Repairs must be reported in writing. You can do this by writing to us or by email.

Your report should have a date on it. It should say what repair or work is needed. Please make sure that you identify the room or other part of the property which is affected. You need to tell us as much as you can about the problem(s) which you are experiencing. If the repair is urgent please tell us why.

## Acknowledging the report

We will acknowledge any report in writing as soon as possible and, in any event, within [ ] days. Hopefully when acknowledging the report we will be able to tell you what we propose to do. If not, we will tell you as quickly as we can.

## Access for repairs

Under your tenancy agreement you are legally obliged to give us reasonable access to carry out the repairs. Unless it is an emergency we are required to give you at least 24 hours notice but you can, of course, agree to us having access without such notice.

## Emergency arrangements

We operate the following emergency arrangements if repairs or work is required to your property:-

Please note these facilities should only be used if there is a genuine emergency.

**What are we responsible for?**

As landlord we are responsible for the repair of the structure and exterior of the property and for certain facilities within it namely water, gas, electricity and drainage, together with space heating and water heating. For full details of our responsibilities please see your tenancy agreement. If we consider that we are not responsible for a requested repair or work then we will notify you in writing.

**Following up on requests for repairs**

Any follow up enquiries regarding repairs must also be made in writing or by email. If you are not satisfied about the way in which we are handling a request for a repair or works you can follow our complaints procedure.

**Responses to repairs**

We aim to carry out repairs in the following timescales depending on the urgency and nature of the repairs or works which you request:-

For reasons outside our control we may  not be able to adhere to these timescales in which case we will notify you of this and why.

Agenda Item 4

# Response to the Welsh Government:

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

**May 2015**

Trafalgar House | 5 Fitzalan Place | Cardiff | Tel: 02920 376750 | Fax: 02920 341541 |
www.citizensadvice.org.uk

## 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 andf Rhyl. 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 Citzens 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 Citzens 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 landscape[1]. 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 chose 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** |
|---|---|---|
| **Appointment of an agent –** *signing an agreement* | *Appointment of an agent,* p5-6<br><br>Agents must give landlords written confirmation of their instructions to manage a property on their behalf. This must include details of:<br>• fees and expenses<br>• business terms<br>• the duration of their instructions; and<br>• the extent of the agent's financial authority to authorise expenditure such as essential repairs/maintenance. (A)<br><br>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)<br><br>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) | *Appointment of an agent, p14*<br><br>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) |

| | | |
|---|---|---|
| | If a landlord signs a contract with the agent present at:<br>• their home; or<br>• at another location away from the agent's premises; or<br>• by post or online; or<br>• without having met the agent,<br>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)<br>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) | |
| **Access to the property** | *Access to the property, p10*<br>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) | *Access to the property, p17*<br>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) |
| **Renewal fees** | *Marketing and advertising, p6*<br>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) | *Tenancy renewals and changes, p20*<br>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) |

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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Response to the Welsh Government consultation on a Private Rented Sector Code of Practice for Landlords and Agents

Shelter Cymru
Shelter Cymru works for the prevention of homelessness and the improvement of housing conditions. Our vision is that everyone in Wales should have a decent home. We believe that a home is a fundamental right and essential to the health and well-being of people and communities.

Vision
Everyone in Wales should have a decent and affordable home: it is the foundation for the health and well-being of people and communities.

Mission
Shelter Cymru's mission is to improve people's lives through our advice and support services and through training, education and information work. Through our policy, research, campaigning and lobbying, we will help overcome the barriers that stand in the way of people in Wales having a decent affordable home.

Values
• Be independent and not compromised in any aspect of our work with people in housing need.
• Work as equals with people in housing need, respect their needs, and help them to take control of their lives.
• Constructively challenge to ensure people are properly assisted and to improve good practice.

Introduction
Shelter Cymru welcomes the opportunity to respond to this consultation. We are strong supporters of landlord licensing, and during 2014 we worked hard to persuade Assembly Members to pass Part 1 of the Housing (Wales) Act 2014.
Unfortunately we cannot support the Code of Practice in its current format. The draft Code needs to be restructured and rewritten to be much clearer

and more easily navigable. In its current form we do not believe it is capable of supporting compliance or best practice.

As currently presented, the separation between the 'statutory requirements' and 'best practice' sections is likely to ensure that most landlords and agents will read only what they need to read, and will probably not read 'best practice' at all.
We are also concerned that there has been no tenant involvement in defining 'best practice'. We believe that if tenants had been involved, the content of the draft Code would be considerably different.
We have identified a number of additional points that we believe need to be included – and we are convinced that engagement with private tenants themselves would identify further important points.
In partnership with other housing organisations we would be in a position to arrange this engagement within a short timescale if the Welsh Government agrees with us that the Code, and therefore the implementation of Part 1, would be more effective as a result.

Drafting points
• The structure of the Code should be revised so that statutory requirements and best practice are presented together. There should be no need to repeat all the different sections twice. Presenting both side by side will make it much more likely that both elements are read and understood. Enabling readers to distinguish between 'musts' and 'shoulds' ought to be straightforward.
• There is considerable repetition between the two sections, and 'best practice' includes numerous statutory requirements. This is likely to confuse readers, and gives the impression that anything listed under 'best practice' is essentially optional. This is a further reason why we advocate a restructure.
• The language is overly legalistic and not very user-friendly. The point of the Code should be to communicate the law, not just to reflect it. One example of this is the description of landlords' statutory duties relating to the HHSRS: 'Conditions in or around a property that contribute to a hazard and are determined to pose a serious risk must be mitigated so that they do not pose such a significant problem.' The meaning of this sentence is far from clear. The word 'mitigate' is not likely to be widely understood. The concept 'not…such a significant problem' is very weak. The sentence does

not effectively communicate the essence of the law, which is that landlords must ensure that there are no serious hazards on the premises. It would also be beneficial to include examples of such hazards.
• There are too many obscure terms used such as ‘prudence’, ‘mitigate’, ‘divulgence’, ‘diligent’ etc.
• There is too much use of the passive voice, which at times leads to a lack of clarity about who precisely is being asked to do what. One example is the HHSRS sentence above: who determines whether hazards pose a serious risk? And who should be mitigating?

Additional points
• The Code makes no mention anywhere of what penalties landlords and agents may face if they fail to comply with existing law. This is quite misleading. We argue that landlords and agents should be reminded of the potential consequences of non-compliance in each area of the Code.
• There needs to be clearer guidance regarding transparency in fees and charges. Although the Code states that ‘all non-optional fees must be disclosed and made clear’, it does not mention the requirement to include charges in property adverts and listings following the Advertising Standards Authority ruling of March 2013.
• There is no mention of excessive penalty charges, although such charges may constitute a breach of the Unfair Terms in Consumer Contract Regulations 1999 and should be included as a statutory requirement.
• The guidance on ending a tenancy needs to be much clearer. The current Code refers briefly to not evicting ‘without a possession order and following due process’. There is no mention of harassment. The Code needs to make it clear that harassment and illegal eviction are criminal offences that carry a penalty.
• There is no mention of security of tenure. Landlords and agents should be made aware that best practice is to offer tenancy lengths that meet the needs of the household, including offering longer fixed terms to tenants who have passed a probationary period and who want long-term security. Letting agents should not insist on six- or 12-month tenancy agreements as a blanket policy, just in order to maximise their renewal fees – a practice that we know is widespread.

• There is no mention of allowing tenants to decorate to their own tastes. We suggest that this is something that is important to tenants and ought to be included as best practice.
• 'Best practice' should include reference to adaptations for disabled tenants. Landlords should be asked to consider consenting to adaptations being made for tenants who require them, and should be reminded of the benefits of setting up long-term tenancies in these circumstances.
• There is no mention of steps that landlords and agents may take to assist with the prevention of homelessness. We would urge the Private Sector Housing team to engage with Homelessness on the best practice elements of the Code relating to the ending of tenancies. With the advent of Part 2 of the Housing Act, many local authorities in Wales are trying to encourage private landlords to make contact with them at an early stage, prior to eviction, in order for prevention work to take place. The most proactive authorities are going out and speaking at local landlord forums to urge members to get in touch if they have problems with their tenants that may lead to eviction and a potential homeless presentation. Furthermore, we have been contacted by numerous landlords who want guidance on how to deal with vulnerable tenants and prevent problems escalating to the point where eviction is the only solution. We think it is very important that the Code reflects this, and signposts landlords and agents to potential sources of help and support offered by the local authority and other agencies. At present there is nothing in the Code about prevention, even though the loss of a PRS tenancy is the second highest contributor to homelessness.
• Finally, best practice among landlords and agents ought to include signposting tenants to sources of independent housing advice. The best landlords in Wales are already doing this via their websites, written information and personal contacts with tenants.

For more information please contact Jennie Bibbings, Policy & Research Manager jennieb@sheltercymru.org.uk 02920 556903

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REF: WG24887/WT

Private Rented Sector
Housing Policy Division
Welsh Government
Rhydycar Business Park
Merthyr Tydfil, CF48 1UZ

Dear Sir/madam,

**RE: Codes of Practice Consultation on a Private Rented Sector Code of Practice for Landlords and Agents.**

Please find enclosed our response to the consultation regarding the Code of Practice for Landlords and Agents. I would be pleased to make myself available to discuss our response in more detail, or to consider how we can support you to develop any revisions or additions.

Yours sincerely

Steve Clarke, MD
Welsh Tenants

## 1. Welsh Tenants support for the code of practice

1.1. We recognise that a code of practice should aim high but be achievable. As well as statutory provisions relating to what a landlord/agent 'must' do, it should also aim to drive up standards of professionalism given the gravity that providing a home has for its occupants, be they disabled, young, vulnerable or old.

1.2. The code as presented is a missed opportunity to ensure that the vision for private landlordism in Wales is conveyed both in deed and practice. Welsh Tenants are therefore **unable to support the Code of Practice as presented**.

1.3. The COP is very different to what we envisaged given the input that we have received from tenants and other stakeholders. The Code of Practice needs to be clear about **to whom it is directed and to what purpose**. It reads as a poorly drafted manual, and for Welsh Tenants it does not convey the vision or the aspiration of private landlordism as drafted. The code in our view, needs to address the 'ethics' and 'practice' of the private landlord and letting agent sector in Wales. It does neither. But more important, it fails to inspire confidence in the PRS market as a renter.

1.4. On detailed elements there appears to be too much '*should'* where it needs to state '*must'*. If the document is intended to have reference to 'statute' then this needs to be clearly stated and referenced to what those obligations are.

1.5. What we have is a poorly written manual for how to be a landlord, not a clearly defined code of practice that improves the ethicacy and practice of the sector.

## 2. Language

2.1. Language should include where appropriate principles of Blooms taxonomy[1] to remove any doubt about what should be done. Sentences should relate to, knowledge, and comprehension of the landlord and use action verbs where appropriate such as *arrange, order, identify, locate, review, apply, produce*, show et cetera.

2.2. We would want the code to 'reflect accurately' the entitlements and the responsibilities of landlords and agents. There are missing obligations that we would want to see included. It does not for example discuss the professional development of people who work in the sector as employees of landlords or their conduct.

2.3. On the specifics, we would want to remove any ambiguity or doubt about what should be expected. Where it is a 'legislative compliance matter' it should state "must or "must rectify" and where it is 'desirable', it should say "landlords are encouraged" through best practice. Having the two elements listed separately is also confusing.

## 3. Structure Style, and substance

3.1. The draft Code needs to be restructured and rewritten to be much clearer and more easily navigable. In its current form we do not believe it is capable of supporting compliance, best practice or the vision for landlordism in Wales.

[1] http://www.fresnostate.edu/academics/oie/documents/assesments/Blooms%20Level.pdf

3.2. It does not discuss the Welsh Governments expectation's on customer service, courtesy, complaints and redress, the avoidance of court action or the mental health or vulnerability of clients, the outlawing of bad practice or the continual improvement of services and support. Neither does it provide an opportunity to sign post to areas where assistance could be sought relating to illegal subletting, overcrowding or overcoming problems for disabled tenants, mental health or discrimination.

3.3. Although it may be a matter of style, it is important that the document is presented as readable for the most inexperienced as well as experienced of landlords/agents. If the current emphasis is to be retained much could be done on the structure. We would prefer to have a structure that states statutory obligations, ethical matters, consequences of non-compliance and good practice relative to that section. Not separately listed.

3.4. For example (Access to Property, p17), we would have wished to see the structure as follows:

| | |
|---|---|
| **Statutory provision ref:** | *Narrative*:<br>Only in extreme circumstances should access to the property be required once let. It is an offence to gain access to the property without the consent of the occupier(s).<br><<List reference to the statute>> |
| **Ethics:** | L and A must arrange reasonable access with the contract holder(s) with due consideration for their life circumstances and well-being. |
| **Consequence:** | Access to the property without consent may constitute trespass or harassment, and may result in your licence being revoked. |
| **Good Practice:** | 1. Advise to have someone else present with the contract holder as a safeguard measure.<br>2. Clearly define when access must occur.<br>3. Negotiate reasonable arrangements for weekends or out of hours prior to signing the contract with the occupier.<br>4. Detail agreed access arrangements in the occupation contract. |

3.5. Note: If the code is too '*prescriptive'* it may be vulnerable to constant amendment via developments in common law. This is something that may need to be considered.

3.6. As Ministers have the powers to issue 'affirmative measures' in many areas of both the Housing (Wales) Act 2014 and the Renting Homes (Wales) bill, this should be stated in the section. The code should also have reference to guidance issued by the Welsh Government,

3.7. It also needs to make clear what force the code of practice has either as a voluntary code or as a statutory provision / guidance, many people are confused about the enforceability of guidance. If the licensee has to comply with the code then this should be clearly stated. The removal of any ambiguity is important as failure could result in revocation of the licence.

3.8. In our view the effectiveness of the codes intent is also something that we need to consider. Not just its take up.

3.9. We have also suggested that an easy read '*charter'* be devised to accompany the code of practice for landlords/agents and for occupation contract holders. This should support the Code of Practice.

## 4. Distinctions between landlord and agent

4.1. It is confusing to have the code for both the landlord and a letting agent in the same document, the evolving roles are we believe separate and distinct as the letting agent has a duty to both occupier(s) and owner(s) as landlords. Quite often both can play one off against another. What we need on the codes is clarity between who is the responsible person. We need not create confusion between what is a code of practice for people who are the landlord and people who are the manager of properties and deal with the public. We would prefer to see a clear distinction between the two in the structure. One section on landlords one section on agents.

4.2. Welsh Tenants would also like to see the devolvement of a private rented sector charter that links to the code of practice for the sector so that tenants are clearly aware of what their obligations are and that of the landlord/agent.

## 5. Tenant engagement

5.1. We recognise that it is for government to set the standards of practice they would wish to see developed via the code of practice. We of course welcome the collaborative nature of the development of the document with providers. However, it is a missed opportunity not to have engaged tenants also. We would wish to see tenants also consulted and then to have brought the two approaches together to develop a document that is amenable to all. But more importantly encourages improvement by all.

5.2. Welsh Tenants have used the term ’good to know’ which addresses an obstacle and how it was overcome using principles of co-production between providers and customers. We are concerned there has been no tenant involvement (that we are aware) in the ‘best practice’ section or even how best practice is defined or evidenced.

5.3. We believe that if tenants were involved, the content and structure of the Code as drafted would have been very different. We would therefore support a more collaborative approach to drafting between stakeholders that would produce a more ‘action centred’ document that will be actively read to ensure continual development as a landlord / agent or contract holder.

## 6. Repairs and improvements

6.1. If we are to rely upon the private rented sector to provide accommodation for our citizens of every ability, age, character, and vulnerability and to provide significant subsidy through tax advantage, housing benefit subsidy and grants in order to grow the sector, then it is a legitimate aspiration to ensure that comprehensive repair, improvement and protections are included in any code of practice for the sector, and fro the welsh Government to provide leadership on those issues through the code.

6.2. There is, we believe a missed opportunity to better define what we should expect from repair and improvements standards as providers.

6.3. A Code should have force and intent – We do not believe that the document provides either. We believe the document should clearly indicate where there are penalties, what those penalties are, and how it would impact on the licensed landlord/agent.

## 7. Timescales

7.1. We would wish to see the inclusion of timescales where appropriate for response to complaints and or repair / improvements. Particularly where these are supplementary terms negotiated between contract holder and provider.

## 8. Enforcement

8.1. There is no section within the code on the enforcement of statutory provisions and believe that this also needs to be include in a Welsh Government section.

## 9. Information provision

9.1. As the advertising of contracts are covered by Advertising Standards Authority. We would wish to see provisions that make it clear of what should be provided and how. We would also wish to see more information regarding other languages and cultures.

## 10. Charges levied on the occupier

10.1. There is no mention of Unfair Terms in Consumer Contract regulations 99 where excessive charges may be considered a breach and should be included as a statutory requirement.

## 11. Seeking to terminate a contract

11.1. The current Code does not refer to evicting *'without a possession order and following due process'*. There is no mention of harassment or undue influence. The Code needs to make it clear that harassment and illegal eviction are criminal offences that carry a significant penalty.

## 12. Ethical gaps

12.1. The document is an opportunity to list the issues the Welsh Government would consider unethical and immoral (but not necessarily illegal). This would signal a clear intent of the Welsh Government to drive up standards through periodical revisions of the code. A section should also be included about what the Welsh Government expects to happen as a result of the code.

## 13. Professional conduct of individuals acting on behalf of the landlord

13.1. As a principle, we would have expected the Welsh Government to have included a section on the appointment of people who act on behalf of a landlord or agent, to be of good character for example and perhaps a commitment to their competency development, support and improving knowledge skills and values in relation to landlordism or its sub functions.

## 14. Security of tenure

14.1. Given the opposition to reduced security, landlords and agents should be made aware that best practice is to offer tenancy lengths that meet the needs of the household, including offering longer fixed terms to tenants who have passed a probationary period and who want long-term security.

## 15. Double charging

15.1. We would have liked to have seen the issue of double charging addressed where occupiers surrender fixed term contracts early and the landlord or agent finds a replacement yet still charges for the full fixed term to maximise profit for itself.

15.2. We would have liked to have seen an expectation expressed by the Welsh Government that landlords and agents should not apply fixed terms as a blanket policy, in order to maximise renewal fees.

## 16. Rights to improvements

16.1. We know there is a significant issue where occupiers make improvements to their home and then are served a no fault default notice because the tenant refuses to pay excessive increases or the landlord now wants to pass on the improved property to their relatives. There is no mention of allowing tenants to improve the property and have the ability to reclaim costs for that approved improvement if they have to surrender the tenancy early, thus reclaiming a percentage of the investment they have made. There is no mention of the ethicacy of this practice and the encouragement of opportunities of occupiers to invest in improvements in a fair, transparent manner.

16.2. There is no mention of tenants using their welfare recipient status to apply for significant energy improvement grants and then be kicked out once the grant has been received. Or the welsh Government taking leadership and ethicacy of hiking rents as a consequence.

## 17. Disabled occupiers

17.1. There is no mention of landlords obligations to make reasonable adjustments for disabled tenants or to enable contract holders to make responsible adjustments through a right to make improvements (with permission)

17.2. Landlords should be asked to consider consenting to adaptations being made for occupiers who require them, and should be reminded of the benefits of setting up a longer-term tenancy in these circumstances.

## 18. Link between homeless prevention

18.1. There is no mention of the processes involved to assist with the prevention of homelessness for landlords. They still have to comply with pre-court action protocol

as responsible landlords. We would wish to see this included to reduce access to the courts or presentations to local authorities.

18.2. We would encourage officials at the Welsh Government to engage with Homelessness policy team on the best practice elements of the Code relating to contract termination and section 73, 75 duties in Part 2 of the Housing (Wales) Act and seek to include both information provisions in order to ensure early intervention.

## 19. Mediation

19.1. Many landlords do not understand the steps they can take to avoid costly litigation. We would therefore wish to see the inclusion of mediation as a step to preventing disputes arising in the first instance.

19.2. We also wish to see an opportunity to improve standards within the code on how to deal with vulnerable tenants. The code should encourage signposting to potential sources of independent housing advice and tenancy sustainment support.

## 20. References used in the code

20.1. The How to Rent guide issued by the DCLG is a reasonably good guide. It does seems bizarre however, that we should refer to guides that are prepared for England (How to Rent[2]) that does not relate back to the situation that reflects the Housing (Wales) Act 2014 and the Renting Homes (Wales) Bill or the mechanisms for access to justice or support provisions in Wales.

## 21. Right to adequate Housing

21.1. Finally, Welsh Government within the UK, is a signatory to a number of conventions that seek to improve the standards and accessibility of housing. The Right to Adequate Housing[3] provides some important treaty obligations. There is significant read across to the legitimate expectations that we should practice as a modern wealthy state within the European Union.

21.2. The right to adequate housing places obligations on the member states among these are, protection against enforced eviction and arbitrary destruction and demolition of one's home, the right to free from arbitrary interference with one's home privacy and family, and the right to choose one's residence, to determine where to live, and to freedom of movement. The right to adequate housing contains entitlements such as security of tenure, housing, land and property restitution, equal and non-discriminatory access to housing and participation in housing related decision making at national and community levels. The right to adequate housing also clearly defines what these mean in terms of standards and security.

21.3. There are landlords and letting agents in Wales now larger than some of the registered social landlords. We would wish to see the Welsh Government enliven these treaty obligations through the code of practice to ensure that all people who rent can enjoy the standards expressed within the treaty.

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[2] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/358454/How_to_Rent-_The_Checklist_for_Renting_in_England_FINAL_V5_Links_update_Sept_2014.pdf

[3] http://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf

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# Agenda Item 5

**4 June 2015 Papers to note cover sheet**

| Paper No: | Issue | From | Action Point |
|---|---|---|---|
| **Public papers to note** | | | |
| 6 | Renting Homes (Wales) Bill | Jocelyn Davies Chair of the Finance Committee | Financial implications of the Renting Homes (Wales) Bill |
| 7 | Renting Homes (Wales) Bill | Let Down in Wales | Additional information following the meeting on 30 April 2015 |
| 8 | Renting Homes (Wales) Bill | Tai Pawb | Additional information following the meeting on 6 May 2015 |
| 9 | Renting Homes (Wales) Bill | Shelter Cymru | Additional information following the meeting on 14 May 2015 |
| 10 | Renting Homes (Wales) Bill | Association of Residential Letting Agents | Additional information following the meeting on 14 May 2015 |
| 11 | Renting Homes (Wales) Bill | Royal Institution of Chartered Surveyors | Additional information following the meeting on 14 May 2015 |
| 12 | Renting Homes (Wales) Bill | CLA | Additional information following the meeting on 14 May 2015 |
| 13 | Renting Homes (Wales) Bill | Guild of Residential Landlords | Additional information following the meeting on 14 May 2015 |
| 14 | Renting Homes (Wales) Bill | Dŵr Cymru | Additional information following the meeting on 20 May 2015 |
| 15 | Renting Homes (Wales) Bill | Gas Board | Additional information following the meeting on 20 May 2015 |
| 16 | Renting Homes (Wales) Bill | Principality Building Society | Correspondence from the Principality Building Society about the impact of the removal of “Ground 8” provisions in respect of the housing association. |

Christine Chapman AM
Chair
Communities, Equality and Local Government
Committee

28 May 2015

Dear Christine

**Renting Homes (Wales) Bill**

As you are aware the Finance Committee invited the Minister for Communities and Tackling Poverty, Lesley Griffiths AM, to provide oral evidence in relation to the financial implications of the Renting Homes (Wales) Bill at its meeting of 25 February 2015.

As the Communities, Equality and Local Government Committee will consider and report on the general principles of the Bill, the Finance Committee wanted to provide you with its findings in relation to the financial implications of the Bill to aid in your considerations.

Members had concerns in some areas and would be grateful if you could consider these as part of your Committees wider scrutiny.

**Regulatory Impact Assessment**

The RIA does not present total cost or benefit figures for the Bill; consequently the Committee is concerned that insufficient evidence has been presented to allow for proper financial scrutiny of the Bill.

The Minister assured Members that the costings in the Explanatory Memorandum have been carefully considered and that the figures had been drawn on

experience of previous legislation, namely the Housing (Wales) Act 2014. The Minister also stated that a lot of work had been done with stakeholders.[1]

*Members consider this lack of financial information within legislation unhelpful and the CELG Committee may wish to consider this further within your overall scrutiny of the Bill.*

**Costs incurred by private landlords as a result of the Bill**

The Committee wished to understand the affordability of the Bill to private landlords, and to assess the accuracy of the estimated costs that will fall on the sector.

Members were interested in the Residential Landlords Association's ("RLA") calculations that the total additional costs of the Bill between 2015-16 and 2019-20 will actually be £45 million, over three times as much as the figure in the Regulatory Impact Assessment ("RIA").

The Minister did not agree with the RLA estimation and said they had made a crude estimation, not accounting for some landlords having substantial portfolios which means they will only incur the cost once.[2]

*Whilst the Minister clearly thinks the costs estimations are adequate, the Finance Committee think this is an area your Committee may wish to consider in its scrutiny of the Bill.*

Members questioned the Minister on the cost estimations for communicating the changes to landlords and tenants. Members were encouraged by the Minister's evidence around the total estimated cost for communications. The Committee were pleased that the estimation was based on the Government's past experience of communications of this type, particularly in relation to the Housing Act.

*Members recognise that the clarity provided through clear communication outweighs the initial expense. However, during your Committee's consideration you may wish to consider whether witnesses believe the costs accurately reflect the communication requirements.*

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[1] Finance Committee, ROP, 23 April 2015, paragraph 12

[2] Finance Committee, ROP, 23 April 2015, paragraph 14

**The financial impact of ending the six-month moratorium on private landlords obtaining 'no-fault' possession orders**

The Committee wanted to consider the financial impact of ending the ability of a court to issue a landlord with a 'no-fault' possession order in respect of a property during the first six months of a tenancy ('the six-month moratorium'). Whilst there are no costs in the RIA we were aware that evidence to your Committee raised potential financial implications to local authorities and tenants.

The Minister stated that there is no evidence to suggest that landlords are likely to change their behaviour and that given landlords do not want a high turnover of tenants, it may actually encourage the consideration of high risk occupants.[3] However, Members feel that this is a backward step for the security of private renters and believe it is likely that the cost will fall to tenants. The Committee is also concerned that, as the main reason for homelessness is loss of accommodation from the private rented sector, that costs to local authorities may rise due to increased levels of homelessness.

*The CELG Committee may wish to further consider the impact of this possible unintended consequence of the Bill on those renting in the private sector and local authorities.*

I hope you will find the points raised here helpful in your considerations as the Committee did not feel its concerns warranted a full report.

I am copying this letter to the Minister for Communities and Tackling Poverty.

Yours sincerely,

**Jocelyn Davies AM**

**Chair**

[3] Finance Committee, ROP, 23 April 2015, paragraph 74

# Let Down in Wales

*Campaigning for Private Rented Sector reform*

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol
Communities, Equality and Local Government Committee
CELG(4)-15-15 Papur 7 / Paper 7

To the Communities, Equality and Local Government Committee,

Thank you for the request for additional information.

**Firstly, you asked for our view on "*whether the Bill will improve the condition of dwellings in the private rented sector*" and *"whether it is right that enforcement of these conditions is effectively left to contract-holders taking the matter to court".***

At present, we do not think the Bill will improve conditions in the sector. The short-termism that the Bill encourages by removing the 6 month moratorium will incentivise for a greater 'churn' of tenants in properties, so there will be less incentive for these short-lived tenants to get to know the property (and see, for example, where damp may have been temporarily covered up) and request repairs.

The moves on retaliatory eviction would, theoretically, let people know they could complain without fear of being kicked out. However, we think that the unknown and fairly intimidating possibility of needing to take the matter to court would still put off most tenants from risking challenging their landlord on repairs. We've found that tenants are often fearful of being blamed for problems, even when they know it's not their fault. We also think retaliatory eviction happens for a number of reasons, not just for asking for repairs, so would like this policy to be more encompassing and for there to be an alternative to using the courts. We would like this to be referred to the Residential Property Tribunal instead, which we will return to in more detail further on.

The Fit for Human Habitation standard is vague and would need to be very strongly communicated to both tenants and landlords to be firstly recognised and secondly actively engaged with by tenants (contract-holders) to measure up whether their home is suitable. We do not think contract-holders should have to enforce this but we appreciate that taking an independent stock take of the whole PRS in Wales would not be feasible.

However we do think improvement should be actively encouraged and incentivised to landlords. Due to the nature of low supply and high demand in much of the PRS, the landlord can still turn down the tenant who wants repairs and instead accept a tenant who will not complain about the state of the property. This also does not reflect the widespread use of letting agents who may agree improvements without checking with the landlord, or who need to use so much to-ing and fro-ing that another tenant can be confirmed in the meantime who, again, will not complain about poor conditions.

We were interested to note a suggestion from the Association of Letting Agents (ARLA) on 14th May that fixed penalty notices could be used to make Environmental Health departments into revenue generators. We would support such a move as it would incentivise them to carry out more inspections and to drive up standards more proactively. Generation Rent has also endorsed local authorities being able to retain fines in their manifesto.[1]

[1] http://www.generationrent.org/manifesto_launch

We also think the Fit for Human Habitation standard should be more ambitious and improving PRS conditions should be a priority for the Welsh Government as failure to act will only result in more properties falling into disrepair and eventually not being habitable at all. Landlords need to be taught that they will have better tenants and a better business with well-maintained properties, and there needs to be a real threat of enforcement when they do not comply. We'd like reassurance that the licensing authority will be notified when there is evidence of a landlord/agent not complying or carrying out their duties appropriately, so they can be removed from the market if there is repeated bad practice or criminal behaviour and they are proved unfit. Penalties should be used and behaviour change encouraged.

**Secondly, you asked for Let Down to expand on our proposal for a dedicated and resourced body to provide advice, legal assistance and information for tenants, such as England's Housing Ombudsman or Scotland's Housing Tribunal. You specifically asked if we believed this could be the Residential Property Tribunal (RPT) in Wales or whether an alternative body should be developed, to reduce the need to go to court to resolve disputes.**

We would very much endorse an expansion of the RPT and it seems from their evidence that they would as well. They are very well-placed as a body that can provide mediation on a range of issues, and potentially expanded to become an advisory service for all the new legislation that tenants/landlords should be vitally aware of. We are concerned at propositions from the Welsh Government of a technologically redundant CD-Rom to provide tenant education (on anti-social behaviour in this instance, suggested in the Constitutional & Legislative Affairs Committee). A website is far more appropriate and relevant today, and more cost effective. This is the easiest, cheapest and most effective way the Welsh Government could start to improve the PRS, with tenant and landlord education enthusiastically promoted across the public sector. This needs to be publicly available, not reliant on people passing along messages in a haphazard fashion.

Let Down would ideally like an Ombudsman that could champion and push for improvement in various tenant issues, like affordability, availability and security of tenure. However the RPT has the relevant housing expertise to do work in this. They can identify repetitive problems and perhaps make suggestions on how to tackle the root causes of tenants' problems, rather than just dealing with the symptoms of a poor PRS.

The RPT could even be developed to be a complaints system, as well as an arbitration system, for any breaches of the Code of Practice. Tenants could approach the RPT if complaints with their agent/landlord or local authority are not getting anywhere, or look up information on the RPT website prior to a complaint, in order to give them reassurance that their concerns are valid and worth pursuing.

Simply having an 'on-paper' support, such as a letter from the RPT that warns against breaches, or a template letter they could use as a tenant to complain, could easily be utilised at low-cost to help empower tenants to take on bad landlords. We think the English Housing Ombudsman's approach in this, before the Localism Act 'watered down' its power, is worth looking at. The mere fact that the RPT *could* intervene would go some way to addressing the power imbalance between landlords and tenants. The problem is that tenants have no one on their side and therefore no confidence in challenging landlords/agents who always seem to have the most powerful on side.

Again, awareness of the RPT would be vital and we think it should at least be a statutory obligation for tenants to be informed of their existence when they sign for a property.

Many thanks for your time and I hope you find our proposals worth considering.

All the best,
Liz Silversmith

*Co-ordinator*
***Let Down in Wales***

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Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol
Communities, Equality and Local Government Committee
CELG(4)-15-15 Papur 8 / Paper 8

# Supplementary Written Information Part Two – Communities, Equalities and Local Government Committee held on 6th May 2015

18th May 2015

For further information about this paper please contact:
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**Who we are**

Tai Pawb (housing for all) is a registered charity and a company limited by guarantee. The organisation's mission is, "To promote equality and social justice in housing in Wales". It operates a membership system which is open to local authorities, registered social landlords, third (voluntary) sector organisations, other housing interests and individuals.

**What we do**

Tai Pawb works closely with the Welsh Assembly Government and other key partners on national housing strategies and key working groups, to ensure that equality is an inherent consideration in national strategic development and implementation. The organisation also provides practical advice and assistance to its members on a range of equality and diversity issues in housing and related services.

**Tai Pawb's vision is to be:**

The primary driver in the promotion of equality and diversity in housing, leading to the reduction of prejudice and disadvantage, as well as changing lives for the better.

A valued partner who supports housing providers and services to recognise, respect and respond appropriately to the diversity of housing needs and characteristics of people living in Wales, including those who are vulnerable and marginalised.

For further information visit: www.taipawb.org

Charity registration no. 1110078
Company No. 5282554

# Introducing a standard equivalent to WHQS into the private rented sector in Wales

## 1 Introduction

1.1 We would like to thank the committee for inviting Tai Pawb to provide oral evidence on 6th May 2015, the opportunity to submit further written information on areas of interest to the committee which were unable to be covered at the hearing due to time constraints, and the opportunity to return to our members to seek further information to submit to the committee in consideration of introducing a standard for the private rented sector in Wales.

1.2 This response forms the second part of the additional information we were asked to submit to the committee. Tai Pawb has returned to our members to seek their views on 'what could be included in an equivalent to the Welsh housing quality standard (WHQS) for the private rented sector' and more broadly on the overarching principle of a standard, similar to WHQS for that sector.

1.3 We received responses mainly from our Local Authority members, although we did also receive responses from our Registered Social Landlord (RSL) members who have connections to the PRS through social letting agencies, and one Third Sector organisations.

## 2 Summary

2.1 Of those members who responded to our call for further evidence there was a mixed response the suggestion of introducing a standard for the private rented

sector. Some respondents felt that imposing any standard on the private rented sector (over and above that proposed in relation to 'fit for human habitation') would place a burden on the sector likely to have a detrimental impact on the availability and affordability of housing within the sector.

2.2 Tai Pawb echoes the responses from our members that it would be inappropriate to impose WHQS on the private rented sector, currently. However we do feel that in order to promote equality of opportunity work should be undertaken to lessen the divide between standards in this sector and that of the social housing sector. We recognise this is an ambitious target which cannot be achieved overnight. We strongly recommend that the Bill is reviewed and amended to help progress this objective.

## 3 Would WHQS be an appropriate standard for the private rented sector in Wales?

3.1 While most noted that WHQS was well placed and appropriate for the social housing in sector in Wales all felt that this standard would not be appropriate for the private housing sector for a number of reasons discussed below:

3.1.1 Most noted that the type and age of properties typical within the private housing sector would likely mean that the standard set within the current WHQS would be unachievable. There were concerns that using the WHQS would either be setting a proportion of the private rented sector up to fail, or would result in such numbers being classed as exempt from the standard that the system would, in effect, undermine itself.

3.1.2 All respondents thought that the current WHQS standard would be cost prohibitive for the private rented sector and imposing it could result in some landlords leaving the sector. There were concerns this would negatively impact on rental prices and additional demand for the social housing sector. Some respondents were concerned that those landlords who didn't leave the sector would seek to recoup these costs associated with upgrading their properties to WHQS from their tenants. Currently the Bill would allow for rent increases to cover these costs and there is no maximum % increase for rented stated in the Bill.

3.3 Most respondents suggested that lessons could be learnt from the implementation of WHQS and this is something Tai Pawb agrees with. It would be beneficial to fully understanding the difficulty that some organisations had in meeting the WHQS initial timescale and the costs that were involved. It is useful to remember that many landlords within the private sector are not owners of vast property portfolios with multi-million pound turn-over but individuals with one or two properties.

# 4 What could a standard for the private rented sector look like?

4.1 Echoing the concerns related to achievability other respondents welcomed a standard but felt that WHQS would not be achievable. We had respondents who commented that whilst they recognised that improvement within the private rented sector was desirable there was a potential that imposing any standard within the private rented sector could drive landlords away. The available evidence from England in relation to the Decent Homes Standard doesn't support this and was suggested by other respondents as a potential standard to be considered. It would, however, be advisable, to consider any potential to inadvertently shrink the private rented sector when setting a standard for the sector. Tai Pawb agrees a standard such as the Decent Homes Standard used in England would be worth exploring in greater detail.

4.2 We would recommend, however, that before any amendments are made to the Bill in relation to this that a full consultation is undertaken with tenants, landlords of the private rented sector, and those with expert knowledge of the sector, specifically on this issue. On that basis we will not be providing detailed commentary on the shape of any new standard, over and above those already outlined. However we will provide some additional broad considerations and concerns relating to setting an appropriate standard.

4.2.1 From the respondents comments it seems likely that the scale and reach of WHQS would be unreasonable for many landlords in the private rented sector. This is a view which Tai Pawb supports, although we would suggest an alternative standard over and above 'fit for human habitation' should be fully explored. We echo the concerns expressed to us by our members that introducing a standard which is too high could result in landlords being unwilling to rent to those perceived as more 'risky' tenants – younger people and those leaving prison (a disproportionate number of which will be BME males). The concern from landlords would be related to the cost of repair to property damaged. This was a comment made in relation to a recent event discussing the impact of the new homelessness duty and removal of the 6 month moratorium but is equally applicable here.

4.2.2 The private rented sector, by its very nature, varies considerably. Any standard would, ideally, need to be applicable for all properties within the sector. Having several standards for different property types potentially based on age, size, location etc would make any system far too complicated for tenants, landlords, and those enforcing the standard.

4.2.3 Potentially any standard which is set too high could have a significant negative impact on local authorities being able to discharge homelessness into the private rented sector, due to both a lack of available stock, and reluctance for landlords to rent to those they perceive as more 'risky' tenants (see above).

4.2.4 While it has been noted that under Part 4, Chapter 2 s91-92 of the Bill there is provision for a property to be kept in good repair during the tenancy and

enables potential contract holders to request additional terms to be added in relation to improvements which are to be made to the property by the landlord. Some people may not be able to negotiate in this way and could be disproportionately impacted these would likely be; older and younger people, disabled people, and those from BME backgrounds.

4.2.5 A number of respondents highlighted if a standard were to be introduced into the private rented sector that to make it meaningful it would have to be inspected, enforced, and be consistent. Consistency is a particular concern for some of our members – noting the variability of housing stock within the private rented sector and then further questioning how a universal standard could be applied to both the private and social rented sectors? Local Authority Environmental Health teams are already likely to see an increase in work when landlord registration and licensing is introduced for the private rented sector. It is unlikely that Local Authorities would have the capacity to undertake inspection and enforcement of a private rented sector standard without additional resources being made available. If private landlords were able to self certificate that they have met the standard that would help reduce the impact on Local Authorities, however there would need to be a mechanism for tenants to report landlords and properties which fall below the standard. This approach would result I a large amount of awareness raising of the standard within the population of Wales, introduction of a reporting mechanism, and support and advocacy made available for those individuals who may be unable to make reports without assistance (again this is likely to impact on particular equality groups).

4.2.6 Tai Pawb recognises the concerns expressed in responses from our members. We are concerned that if any standard were to be introduced that would need to be meaningful and helps to increase the standard of housing in the private rented sector whilst still protecting the most vulnerable. Given this we have real concerns that imposing a standard which is too high could have the unintended impact of pushing up rents, making people who already struggle to afford rents in the private rented sector effectively excluded. Some of our members are already starting to see particular groups being pushed out of the private rented sector due to rental prices, particularly impacting those who are claiming benefits. There is a huge potential that an over ambitious standard for the this sector would result in yet higher rents and further increase demand on an already oversubscribed social rented sector and increased reliance on 'slum landlords'. In relation to equality this is likely to negatively impact on those groups of people who have low income levels (people from BME backgrounds, older people, younger people, and disabled people).

# 5 Conclusion

5.1 We would like to reiterate our opening comment:

'Tai Pawb echoes the responses from our members that it would be inappropriate to impose WHQS on the private rented sector, currently. However we do feel that in order to promote equality of opportunity work should be undertaken to lessen the

divide between standards in this sector and that of the social housing sector. We recognise this is an ambitious target which cannot be achieved overnight. We strongly recommend that the Bill is reviewed and amended to help progress this objective.'

I've looked for the data on outcomes of ASB-related possession proceedings as requested by Mark Isherwood AM and unfortunately the data isn't available. MoJ possession stats don't record the grounds used for eviction, and neither does our casework data system.

There is a lack of statistical evidence on the outcomes of discretionary possession proceedings. This means unfortunately that the dissent between ourselves and the landlord lobby on the effectiveness of discretionary grounds remains unresolved.

I've also looked for the kind of 'market-level' evidence that was requested by Alun Davies AM about the impact of the removal of the moratorium. There is a lack of data in this area too, and of course it's difficult to assess the impact of a policy measure that hasn't been implemented anywhere – but I would draw the Committee's attention to the Welsh Government's survey finding that around 50 per cent of landlords say that the moratorium prevents them from letting to 'high-risk' groups.

On this basis it would be possible to project that up to half of landlords may consider giving monthly periodic contracts, rather than fixed terms, to at least some of their tenants in future if they perceive a risk. This would have a widespread impact on tenant security.

I hope this supplementary information is useful. Please don't hesitate to get in touch if I can assist further.

**Supplementary Evidence to the National Assembly for Wales'**

**Communities, Equalities and Local Government Committee**

***On the Renting Homes (Wales) Bill***

**From the Association of Residential Letting Agents (ARLA)**

**May 2015**

## Background:

1. The Association of Residential Lettings Agents (ARLA) was formed in 1981 as the professional and regulatory body for letting agents in the UK. Today ARLA is recognised by government, local authorities, consumer interest groups and the media as the leading professional body in the private rented sector.

2. In May 2009 ARLA became the first body in the letting and property management industry to introduce a licensing scheme for all members to promote the highest standards of practice in this important and growing sector of the property market.

3. ARLA members are governed by a Code of Practice providing a framework of ethical and professional standards, at a level far higher than the law demands. The Association has its own complaints and disciplinary procedures so that any dispute is dealt with efficiently and fairly. Members are also required to have Client Money Protection and belong to an independent redress scheme which can award financial redress for consumers where a member has failed to provide a service to the level required.

## Request for Additional Information:

***Question 1:*** Whether the Bill does anything to help letting agents deal with antisocial behaviour

4. ARLA is content with the provisions in clauses 55 and 56 of Chapter 7, Part 3 of the Bill. However, we note there is no specific Ground for Possession on the basis of anti-social behaviour within the Bill.

5. At present, landlords will have to use the discretionary Ground of breach of contract outlined at clause 156. It is exceptionally difficult for landlords to demonstrate anti-social behaviour. This is why, in cases of anti-social behaviour today, landlords generally use the no-fault possession Ground. In most cases, neighbours and/or other tenants living in the property do not wish to testify for fear of the anti-social tenant and therefore, landlords have little or no evidence to support a claim for anti-social behaviour. If the Ground was mandatory, landlords would find it easier to persuade neighbours / other tenants to testify. If there is the possibility that the anti-social tenant may return, then neighbours or other tenants are highly unlikely to offer to testify

for the landlord. Leaving the only route to possession a discretionary Ground under clause 156 will render clauses 55 and 56 unenforceable in practice.

***Question 2:*** The Bill proposes a procedure that will allow a landlord to recover possession of a property without the need to obtain a possession order from the Court. How big a problem is abandonment for letting agents and how do they currently deal with it?

6. Abandonment poses a significant problem for landlords and letting agents as it can take a long time to lawfully regain possession of an abandoned property; all whilst no rent is being paid by the abandoning tenant and the landlord cannot re-let as they may be prosecuted for illegal eviction. In turn, this causes the landlord significant financial hardship and can put a mortgaged property at risk of repossession.

7. Generally, landlords and letting agents currently use the no-fault possession Ground to recover possession of a property that has been abandoned. ARLA therefore welcomes the approach contained within the Bill to allow recovery of possession without the need for Court intervention.

***Question 3:*** What risks do the abandonment proposals in the Bill present to agents, and in particular how would they serve notice on the contract-holder?

***Question 4:*** Do you have a view on whether the proposals in the Bill relating to abandonment could be improved, particularly in relation to ensuring vulnerable people are not exploited?

8. ARLA welcomes the principles behind clause 216 relating to repossession of abandoned dwellings; however the measure has an obvious flaw. It would be impossible for a landlord to serve a tenant with a notice of repossession on the basis of abandonment, by simple virtue of the fact that the tenant would not be at the property to receive it.

9. Confusingly however, clause 243(3)(c), which defines a dwelling as subject to a contract, seems to offer a solution to this, while, conversely, clause 218(2), on contact-holder remedies, provides the tenant with the grounds for defence. Therefore it is clear that further clarification is needed on this matter.

10. We believe that the provision affording tenants six months to set aside an abandonment claim, afforded via clauses 218(1) and 224(1), is too long and should be shortened to eight weeks. We believe it is reasonable to expect a tenant to reply within two months if they have not abandoned a property, while six months allows people enough time to move properties, end that subsequent tenancy before demanding their original tenancy back.

11. Schedule 10 makes frequent reference to the “contract-holder and his or her family”. ARLA believes that this could be misinterpreted that a landlord would need to accommodate both the

tenant and the tenant's family (regardless of whether the family actually lived with the tenant during the tenancy). In particular, clause 4(4) indicates that a private landlord would have to provide alternative accommodation capable of meeting social housing standards. Such a provision leaves open the possibility of a tenant demanding that the landlord replace his or her studio flat with a four bedroom house in order to accommodate his family, which is neither right nor fair.

12. We recommend that this Schedule be amended to state that only the original tenant and other permitted occupiers have a right to suitable alternative accommodation. Clause 4(4) should also be reworded to say that the landlord is obligated to only provide a property similar in both size and rental value to that which was abandoned.

***Question 5:*** Finally, you will have noted that the Bill uses the county court (or High Court) for a number of purposes. A number of responses to the public consultation proposed alternative bodies and processes to settle disputes that arise under the Bill. Do you have a view on whether the Residential Property Tribunal, or an alternative body, could be developed to reduce the need to go to court to resolve disputes?

13. ARLA would argue the current County Court (or High Court) process for possession proceedings is inefficient and fails to adequately serve either landlords or tenants. As stated in our evidence session, County Court Judges must adjudicate across the whole span of civil law cases. This prevents them from being specialists in any one field. Therefore, they are not always up-to-date on the law and lawyers acting on behalf of the parties often have to explain recent legislative changes and new precedents before judges can make their determinations.

14. Creating a specialist Housing Court (which could perhaps sit in the County Court one day per week and only hear landlord and tenant law claims; including possession proceedings) or moving such cases to the Residential Property Tribunal will overcome this problem as judges will be appointed for their knowledge and expertise in the field. This will both expedite cases (as judges will be experts in their field and therefore Court time and resources will not be wasted explaining new legislation or case law) and also improve consistency in judgments across the Welsh Court.

***Question 6:*** Whether this would allow contract-holder to exercise their rights more effectively?

15. It is also important to factor in the distress going to court places on all parties. As explained above, it is a time-consuming, usually expensive and difficult process to understand. Therefore, we believe that taking landlord and tenant cases out of the County Court system will benefit the whole sector as drawn out possession proceedings and inconsistent application of precedent causes misery and uncertainty for tenants, landlords and letting agents.

16. It is ARLA's firm opinion that when combining the proposals outlined in the Bill to simplify the tenancy regime as well as creating an efficient Court process, this Bill would be the most sensible and effective legislative improvement to the private rented sector since the foundation of the modern sector in the Housing Act 1988.

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Managing Director

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26 May 2015

Response to additional questions

 Whether the Bill does anything to help letting agents deal with anti-social behaviour;

Providing a standard form of words dealing with anti-social behaviour this is welcomed. This will remove inconsistency with wording between Landlords. The potential flexibility to evict the perpetrator is noted, however the situation remains that the surviving contract holder may still be at risk of losing their home if they cannot fully meet their contract terms individually.

What is not clear is whether a landlord is able to serve a termination notice on all tenants if he so wishes. While domestic abuse can certainly be perpetrated by one party unilaterally, some forms of anti-social behaviour can be the joint efforts of tenants. A landlord may find himself needing to establish blame for each perpetrator within a larger group to evict those that cause disturbance – if each blames the other, collecting evidence will be impossible and it will be necessary to evict all tenants.

 The Bill proposes a procedure that will allow a landlord to recover possession of a property without the need to obtain a possession order from the court. How big a problem is abandonment for letting agents and how do they currently deal with it?

 What risks do the abandonment proposals in the Bill present to agents, and in particular how would they serve notice on the contract-holder?

 Do you have a view on whether the proposals in the Bill relating to abandonment could be improved, particularly in relation to ensuring that vulnerable people are not exploited?

Abandonment is a particular ‘grey area’. The practical issues with determining if a property is abandoned are an issue. At present it often relies on local information advising the agent or Landlord that a tenant has vacated the property. The issue is normally noticed through the build-up of rental arrears and a change of conduct by the tenant and lack of communication. Court can be time consuming and costly and lead to delays dealing with fundamental works such as ensuring the property is heated in frosty times.

If the property has not been abandoned, then a Notice delivered to the property will be received. Stipulating other locations, such as parents/guarantor, place of work, with a referee etc. all create risk of harassment and breach of confidentiality. Service by text or social media cannot be proven. Only the property is a point of certainty.

The six month period contained within the Bill for the tenant to reappear is not agreeable. If the procedures have been correctly followed to confirm that the tenant has abandoned the property, this needs to be the end of the Contract. There should not be a requirement for the

Landlord to reinstate the Contract nor find alternative housing. Once proved by serving the relevant Notices, this should be the end of the Contract and rights thereafter.

We are concerned that the 6 month period for a tenant to come back and restart the tenancy or be offered alternative accommodation will be open to manipulation and will be very harsh on a landlord who will likely have let the property on by then. We would urge strongly that this clause is removed.

 Finally, you will have noted that the Bill uses the county court (or High Court) for a number of purposes. A number of responses to the public consultation proposed alternative bodies and processes to settle disputes that arise under the Bill. Do you have a view on whether the Residential Property Tribunal, or an alternative body, could be developed to reduce the need to go to court to resolve disputes?

 Whether this would allow contract-holders to exercise their rights more effectively?

The trend in litigation is to ADR, reducing costs and giving easier access for non-professionals. Where possible this principle should be adopted for proceedings. Very tight timescales should be provided, especially on postponed hearings due to a party submitting evidence on the day etc. Delay costs not just money but stress and uncertainty for all parties concerned.

In Scotland the way of dealing with disputes was changed under the Agricultural Holdings Act 2003, requiring disputes to be heard within the Scottish Land Court rather than Arbitration. This has caused considerable problems with Landlord and Tenant relationships. The costs of Court often meant that the threat of taking a matter to Court often lead parties accepting a position that was not agreeable just to avoid the costs of going to Court. The process was onerous and was used as a threat in many cases to urge the other party to settle a dispute rather than face Court. There was also a concern on the outcome of taking an issue to Court to be heard by a Judge, rather than a panel of experts who dealt with practical issues on a daily basis through the course of their profession.
There has been a lot of work undertaken through SAAVA to re-introduce a short form arbitration which would reduce costs and encourage parties to engage the Tribunal to provide a solution to a problem.

RICS would welcome an expert tribunal or application to a professional body for appointment of an Expert for determining disputes. This would encourage Contract Holders to exercise rights more effectively.

I look forward to your response.
Yours sincerely,
Christine Chapman AC / AM
Cadeirydd / Chair

**Whether the proposals for landlord's notice are an improvement on current arrangements for Section 21 notices;**

The CLA is relieved that section 21 is essentially being echoed in clause 172 of the Bill as the "notice only" ground is a fundamental factor in landlords' willingness to let residential property and was key to the regeneration of the sector under the Housing Act 1988. We are, however very concerned that the court's ability to make an order for possession on the basis of this notice is expressed to be "subject to a defence based on the contract-holder's human rights". This would seem to weaken the mandatory nature of the ground.

**Whether you have any concerns that proceedings for possession will have to be issued within two months of the notice expiring;**

Our concerns here are that in some cases this will put landlords under pressure to act more quickly than they would otherwise have done. Sometimes, landlords are prepared to wait and see if matters (such as rent arrears) improve after the service of a notice whereas, if it is going to expire, they are more likely to feel the need to persevere with the eviction. The two month window is, in our view, too restrictive.

**The Bill proposes a procedure that will allow a landlord to recover possession of a property without the need to obtain a possession order from the court. How big a problem is abandonment for private landlords and how do they currently deal with it?**

In the CLA's experience this is a very big problem for landlords when it occurs as it is very difficult for them to know how to proceed. They are often embroiled in the expense of trying to track down missing tenants so as to issue possession proceedings and, to make matters worse, clear up mess and tenants' belongings that have been left at the property. This aggravation is made worse by the fact that the rent is not being paid and they are unable to re-let the property for fear of being accused of carrying out an illegal eviction. Landlords are in an impossible position when tenants do a "runner" and the proposals in the Bill are to be welcomed in principle.

Additionally we welcome the provisions of clause 217 as landlords are often left to deal with tenants' furniture and clutter it is very important that the parties are clear that these can and will be disposed of at no expense to the landlord. The interplay with the provisions of the Torts (Interference with Goods) Act1977 will need some consideration.

**What risks do the abandonment proposals in the Bill present to private landlords?**

The requirement on the landlord to carry out "*such inquiries as are necessary*" to confirm whether the contract holder has abandoned the property needs to be clarified as the landlord would need to know if they have done enough, especially as this will form their basis of a defence if they are subsequently challenged by a tenant. If landlords cannot be sure they have done enough, then they are not in reality going to feel able to repossess the property for at least 6 months in any event, until the window for a tenant's challenge has expired. This runs the risk of totally removing any perceived benefit for landlords whose property could remain empty with no rent being paid for a further 6 months.

What is going to happen if the court rules that the occupation contract continues to have effect under clause 218(3)(a) but, in the meantime the property has been re-let to a new tenant?

What if landlords are not in a position to provide "*suitable alternative accommodation*"?

The ability for a court to be able to "*make any other order it thinks fit*" seems potentially draconian and extreme.

The potential for tenants to abandon a property and then behave in a vexatious way, claiming that they have not in fact left the property is an alarming prospect for landlords.

Unless very clear guidance is given (preferably in the statute) as to what constitutes “necessary” inquiries, the potential for protracted disputes seems vast.

**Do you have a view on whether the proposals in the Bill relating to abandonment could be improved, particularly in relation to ensuring that vulnerable people are not exploited?**

We would suggest that the period in clause 218 (1) be reduced to a maximum of 2 or 3 months. This would be a more proportionate window given that the expressed aim of this provision is to help landlords move forward in cases where the tenant has already neglected their contractual responsibilities.

**Finally, you will have noted that the Bill uses the county court (or High Court) for a number of purposes. A number of responses to the public consultation proposed alternative bodies and processes to settle disputes that arise under the Bill. Do you have a view on whether some disputes (other than possession claims) would be better dealt with by the Residential Property Tribunal rather than the courts?**

The CLA welcomes all measures that would reduce cost and delay to parties who are already dealing with difficult situations.

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27 May 2015

Dear Christine Chapman

**Reference Renting Homes (Wales) Bill: request for additional information following the evidence session on 14 May**

Thank you for your request for further information which I answer below.

Before beginning if we may take this opportunity to mention something that we didn't quite get time to reply during the morning (through nobody's fault).

## Retaliatory eviction

In respect of retaliatory evictions, we fully support the principle but are genuinely fearful of the real life problems that could arise.

The statistics that are being loosely thrown around are with respect nonsense. They are almost exactly the same principle in collection as those provided for by Citizens Advice Bureau / Shelter when tenancy deposit legislation was introduced.

I forget the exact figures now (but they are available as responses to consultations), it was claimed that around 26% (I think) of all deposits were disputed by tenants.

These statistics like the retaliatory eviction statistics were taken from sources such as CAB offices or shelter helplines.

The industry was adamant at the time that the tenancy deposit statistics were unfounded but we were entirely ignored and the legislation pushed

through (which is almost impossible to fully comply with due to its complexity).

With respect, the collection of those statistics is like me standing in front of a supermarket door and asking "will you buy baked beans today?" Of course a high percentage will say "yes" because that's why they are there in the first place.

The actual tenancy deposit results have shown over the last 7 years that the industry was absolutely correct and the other organisations were entirely wrong. In fact the average dispute rate is only 1.9% [1]

With respect, the guess work with retaliatory eviction statistics are being taken in the same manner and this is a real worry. The industry is fearful that governments will listen to the nonsensical statistics that are without foundation and could extend possession proceedings considerably and cost considerably more.

The only true way to establish statistics is by an independant survey on the street with a sufficient number of people to be authoritative.

The other problem with retaliatory eviction statistics is what was the question? In a large number of cases we deal with both personally or through our help-line, when rent arrears starts, the first thing that happens is that the tenant alleges some repair just to try to avoid paying the rent that month. The repair is often something that is so negligible that they haven't bothered to report it for months and certainly didn't warrant the withholding of an entire months rent. The landlord will then serve notice but it is not in retaliation for the request to repair, it is retaliation for (a) not reporting the repair several months ago which would have made the repair easier and (b) the rent arrears. Yet, when asked, it is submitted in many cases, the tenant would claim the notice was served "after a request for repairs" which isn't the whole story.

We noted in the response pack for the evidence hearing, an Assembly official commented "a single retaliatory eviction is one too many". Well I

1 Source: DPS year in review but all schemes report similar results - http://www.depositprotection.com/documents/dps-year-in-review-2014.pdf

don't think that is a fair statement without context. We would agree that one is too much if no regular possession for genuine reasons were affected by any legislation attempting to deal with this. If however 10,000 possessions are likely to fail or be considerably delayed despite being truly genuine - then we think the affected single retaliatory eviction needs to be considered appropriately.

We believe that if we have to have this legislation, the only realistic way is to use a system like that being introduced in England. We think the balance is about right in that the repair must first be notified in writing and then the local authority contacted. The advantage of the local authority having to inspect is that there is a third party assessing the repair with a right to appeal to a tribunal for the landlord or tenant.

The main problem with the England system though is that it is very open for abuse. There is however a simple fix in our view.

With the England system, the tenant must first complain to the landlord and then if no reply is made by the landlord within 14 days, the tenant must contact the local authority about the "same or substantially same repair as reported to the landlord" (those aren't the exact words but are the effect). However, if the local authority inspect and then serve a notice, the notice may contain anything for the section 21 to be invalid for example a simple extractor fan not working could render possession invalid even if the tenant never complained to the landlord or council about the extractor fan.

The simple change needed is that (a) the notice from the local authority must include a category 1 hazard (even if it also includes other items such as extractor fan not working) and (b) must include the "same or substantially the same repair as reported by the tenant to the landlord and council" (even if it also includes other things).

This way at least there is a third party confirmation that the original repair request from the tenant was genuine and that it was serious enough to be category 1.

This requirement of local authority intervention reduces the need for decision making by the court because otherwise surveyor reports would be needed which can cost thousands of pounds. If a tenant was proved wrong they would have the costs to pay which could be a serious debt.

This makes it perfectly fair on the existing tenant and will allow for repairs to be notified without fear of retaliation but it greatly assists with protecting genuine possession proceedings from too much abuse (no system will ever be perfect).

We also like the small number of exemptions in the England model such as genuine sale of the property (which is heavily defined to avoid abuse by landlords).

## Landlord's notice (is it improvement on section 21?)

The current proposals are very similar to the existing 'section 21 notice' provisions.

It is useful that the date of expiry being the last day of a period is not contained within the proposals (this is something being removed in England by the Deregulation Act 2015).

It is noted however that the notice must expire "after" the last day of the term. We would have thought this would be better (and probably intended to say) "on or after" the last day of the term otherwise it could be confusing.

## Landlord's notice (proceedings issued within 2 months)

It is of concern that proceedings must be commenced within 2 months of expiry of the notice under the proposals.

In reality, this will actually increase possessions rather than decrease them.

Let's take an actual genuine example that we have ongoing right now.

We have a tenant who we have served a section 21 notice on because he had set fire to the flat. He has also flooded the flat below on 3 separate occasions. Finally, it is alleged by neighbours that he is anti social and dealing drugs from the premises.

All that being said, the tenant actually pays the rent reasonably on time.

The tenant is struggling to find another place and so keeps contacting us for another month extension before we commence proceedings which, because of the moderate payment frequency, we have allowed on occasion.

If however, there was a rule requiring us to seek possession within a certain time-scale there is absolutely no question whatsoever that we would have had no option but to commence proceedings within the given time-frame because we simply cannot allow this tenant to remain in our property for much longer.

We entirely accept the position that a notice should have some time-limit though and we believe the current system of a section 8 notice (breach of term or non payment of rent) is about right with a 12 months time limit.

It is our view that 6 months is also too short for the above reasons in that landlord's will be absolutely forced to take possession proceedings when otherwise they might have just held off to see what develops. (The tenant example above has been allowed longer than 6 months from expiry before commencing proceedings but no way would we leave it 12 months).

If your interested (and I mention this because it was mentioned at the hearing), this is my reasoning as to why I think a short term tenancy that then turns into a long term tenancy would be disastrous and would actually result in more possessions.

Taking the above true case which is relatively normal (except the fire) for many landlords, if that tenant had a short tenancy which was about to

extend into a longer fixed term, there would be no way a landlord would take the risk and would be forced to commence possession proceedings far quicker than otherwise. At least with the current system, there is no rush for a landlord who is willing to tolerate what many wouldn't think of tolerating for any period.

## Abandonment

Abandonment is a genuine problem. Not just because of frequency but also not knowing what advice to give when asked. Currently a court order is required which takes a long time in particular because some form of notice must first be given. This is only contributing to an already clogged court system.

We support proposals to change the way abandonment is dealt with.

It is our view that the proposals strike a reasonable balance and vulnerable tenants are protected by the need of not just one but two notices in writing.

The requirement for both notices is that the landlord gives it to the contact-holder. We think that this should be required to be by way of recorded delivery (now called "signed for" we believe). This assists both parties because if it's never signed for nor collected, that goes towards the reasonable enquiries about occupation and also the document is safely held by the post office for anytime collection by a tenant. This also gives legislators the confidence that a notice will be properly served and the receipt will be required during any proceedings that may follow. This would avoid potential problems of landlords claiming to have hand delivered the notice but also helps genuine landlords because where statute requires service by recorded delivery, that is sufficient service even if not collected. The current wording seems to imply that the notice must be delivered to wherever the former tenant is now residing which of course by nature of abandonment is unlikely to be known.

Statutory guidance would be useful in respect of what would be

regarded as “reasonable enquiries”.

We are concerned about the provisions which would allow a court to order alternative accommodation. Most landlords only have one or two properties which on average are occupied for 18 months (according to tenancy deposit schemes data). Therefore the providing of alternative accommodation would be impossible.

Even those with larger portfolios would always try to ensure they remain full at all times and so unlikely to have any suitable accommodation available.

As licensing will be in force by this time, will it not be sufficient to deal with any breach of abandonment in some way within the licence? Potentially that could be a far greater penalty than alternative accommodation?

## Alternative body for settling disputes

I would agree with other responses that the court is not best placed to deal with possession proceedings and housing related disputes. It’s a very specialist area and unfortunately we see a large percentage of cases failing not because of some defence by a tenant but because of intervention by the court not understanding the rules. An appeal or application to restore is then necessary which is almost always successful and just took up yet more time in the court system wholly unnecessarily. The irony is that when this happens, all the additional costs are added to the tenants debt - all because the court didn’t understand the rules!

We fully support the idea that the Residential Property Tribunal Wales would be more suited to ordering possession and dealing with disputes. Because it would become their primary work, they would have a much better understanding of landlord & tenant law and would likely produce fairer decisions all round.

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We also believe that the time-scale when a hearing must take place in relation to possession and in particular rent arrears, should be reduced. Currently it is between 4 and 8 weeks which is simply unfair especially when the landlord had to wait for two months arrears before even serving notice let alone commencing proceedings.

I find it hard to find any other industry which is expected under law to carry on working for a person despite not being paid for easily up to six months or more! I'm quite certain any person would not like two months wages to be withheld before they could even start a procedure that could take several months before stopping the non-payment - and throughout having to carry on working exactly as before? That is the real world reality of what a landlord is expected to do.

Finally, the current system of having to use a county court bailiff is simply unfair and submitted commonly why a landlord feels forced to take their own action.

There is currently no statutory time limit when a bailiff must attend after a request (and fee) paid. This can lead to weeks or months before attendance purely because of cuts in the system and a reduction in numbers of bailiffs. This is all despite the tenant being in breach of a court order and more often than not, not paying any rent for their occupation of the premises.

It is currently possible to employ a High Court Sheriff but a transfer must be made from the County Court to the High Court which is just more time and unnecessary costs. These costs are normally added to the tenants debt by the court.

This is a good opportunity to look at this element after-all we are discussing dealing with a tenant who is now in breach of an order from the court so there cannot be much objection to that being enforced properly?

I hope the above is of assistance to you.

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A. Thompson.

Adrian Thompson

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol
Communities, Equality and Local Government Committee
CELG(4)-15-15 Papur 14 / Paper 14

**Response from Dŵr Cymru – contracts with 16-17 year olds**

In response to your letter, we are a statutory water and sewerage undertaker and as such, we do not enter into contracts with our customers and we provide a supply and service to properties in the area that we serve regardless of the age of those people occupying them.

Since January 2015, landlords in Wales have had to inform the water company serving rental properties they own in Wales about tenants in their properties within 21 days of tenants moving in. If this isn't done, the landlord can become jointly and severally liable with the tenant for any outstanding charges. So, we will always seek to recover unpaid charges either from the tenant if we have their details, or from the landlord if they had not advised us of the tenant's details.

British Gas
Looking after your world

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Christine Chapman AM
Chair, Communities, Equality and Local Government Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

26 May 2015

Dear Chris

**Re: Renting Homes (Wales) Bill**

Thank you for your request for information, following evidence given to the committee during scrutiny of the Renting Homes (Wales) Bill. Colleagues have advised me of the processes followed by British Gas for customers under the age of 18.

In routine circumstances, British Gas does not set up an account in the name of anyone under the age of 18. Instead we would ask for the account to be established in the name of a guarantor, until the customer is no longer a minor.

In cases where there is no guarantor available, the process will depend on the circumstances at the property where the customer is looking for British Gas to supply energy:

1) Where British Gas is already the supplier

- Where a pre-payment meter is already installed, the minor will be required to remain on this payment type at least until they reach the age of 18
- Where a credit meter is installed, the minor would be encouraged to accept the install of a pre-payment meter.

2) Where a minor is looking to switch to British Gas

- We would not take on the account of anyone under the age of 17 - instead, a guarantor would be required.

I am aware that there was discussion at the committee this week as to whether minors would be disadvantaged by requiring to pay for their energy by pre-payment meter.

The committee may be interested in the following information about the way British Gas looks after its pre-payment customers:

- Our customers with pre-payment meters pay the same as other customers who pay by cash or cheque;
- Unlike most other suppliers, we have always offered fixed rate tariffs to pre-payment customers to give them the option and peace of mind of fixing their energy prices over a longer period;

- We do not charge customers for replacing a pre-payment meter with a credit meter, nor do we charge to fit a pre-payment meter;
- We are leading the way in smart pre-payment meters, allowing customers on a pre-payment meter to have the advantages available from smart meters. Smart pre-pay is currently being trialled by around 5,000 customers and is transforming the way our customers manage and top up their energy.

Following our submission of evidence around gas and electrical safety, we are taking a close interest in your committee's scrutiny of the Bill. Please do get in touch if there's any further information that would be helpful to you and the committee.

Yours sincerely,

**Nick Speed**
Public Affairs Manager, British Gas

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Our Ref: PH/MDPBSC
Your Ref:
Date: 20th May 2015

Ms Christine Chapman
Chair
National Assembly for Wales
Communities, Equality and Local Government Committee
Cardiff Bay
**CARDIFF**
CF99 1NA

RECEIVED
27 MAY 2015

Dear Ms Chapman,

**Renting Homes [Wales] Bill**

Thank you for your letter in respect of the above and in particular about the impact of the removal of "Ground 8" provisions in respect of housing associations.

The committee has asked us to consider the impact on our stance to the housing association sector as a result of this change given that Principality is a major lender to the sector.

I can confirm that the Society does indeed have a significant commitment to the sector in Wales which stands at c£160m. It would be fair to say we supported the CML view for the retention of this right – not least on the basis that we detected it would be exercised sensitively, selectively and as a last resort by the sector.

Equally, however, it would not be our view that rental income streams for the sector would be materially weakened by this change and our assessment of the strength of individual associations encompasses a very broad range of indicators of which this aspect would be a relatively minor part. On that basis I can confirm that the Principality's stance to the sector would be unlikely to change either in the guise of financial commitment or terms / pricing.

I trust this addresses the query but needless to say stand ready to discuss the matter further as required.

Yours sincerely

PETER HUGHES
MANAGING DIRECTOR PRINCIPALITY COMMERCIAL

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# Agenda Item 10

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# Agenda Item 11

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