

HB 37  
National Assembly for Wales  
Communities, Equality and Local Government Committee  
Housing (Wales) Bill: Stage 1  
Response from: Cardiff Council

## **Housing (Wales) Bill 2013 Cardiff Council's Response January 2014**

Cardiff Council welcomes the opportunity to provide evidence to the Communities, Equality and Local Government Committee on the proposed Housing Bill. The response addresses the key issues for Cardiff, considering each Part of the Bill in turn.

### **Part 1 – Regulation of Private Rented Homes**

It is clear that the private rented sector will be a key element in addressing housing need in the future. Cardiff Council welcomes the proposals contained within Part 1 of the Bill.

Our Housing Enforcement service currently administers the Landlord Accreditation Wales scheme (LAWs) on behalf of all 22 member Local Authorities (LAs) in Wales. The scheme was established with Welsh Government support by way of a capital grant but is now predominantly funded by contributions from each local authority. It has been running for just over 5 years and has 3060 members of which 2600 are accredited. It has also accredited 29 managing agents. The scheme is administered via a website ([www.welshlandlords.org.uk](http://www.welshlandlords.org.uk)) and collects data about its members and their property such as property portfolio size, contact details, etc. The scheme facilitates sharing of information having direct impact on the level of knowledge and professionalism of its members. 50% of landlords report that being accredited has improved something about the way they manage their portfolio. In addition the scheme has significantly assisted Councils to actively engage with landlords in their areas via Landlord Forums, distribution of newsletters, provision of training events etc. However as the scheme is voluntary there are constraints to its size and take up and its continued funding is uncertain, particularly in times of financial pressure.

The Council supports the proposals in Part 1 of the Housing Bill for a number of reasons, in particular:

- It is often difficult to locate landlords and agents of rental properties. This frustrates the Council's ability to inform them of legal requirements, changes in the law, forums & training events etc.
- Due to the lack of security offered by short hold tenancies, tenants are often reluctant to complain to the Council, without an alternative source of identification poor premises and management practice will go undetected.
- Council's do not have the resources to undertake proactive exercises to identify rented property, in a way which was possible some years ago. However, this was an ineffective and resource intensive approach which now needs replacing.

- Without having a strategic overview of rental properties in an area proactive work and project management becomes difficult and time consuming to plan and achieve.
- Conditions in the private rented sector are known to be significantly worse than any other sector.
- With the boom in the buy-to-let market over recent years and the difficulties in the housing market there are more landlords in the market who rent only one or two properties and often do not consider themselves to be a landlord (as experienced when landlords contact the current Landlord Accreditation Wales scheme). When they manage their own properties they often get it wrong, more often than not, because of lack of knowledge. For those who decide to place the property with a management company they often do so not realise that such 'agents' are not regulated in any way and often are by no means experts in their field.
- The time has come for the sector to be professionalised and both landlords and agents made more accountable for the service they are offering.

The Council welcomes the fact that the proposals in Part 1 of the Bill will build on the voluntary accreditation scheme already in place in Wales. Cardiff Council has confirmed it will host and administer the new scheme on behalf of all Councils in Wales and the 21 other Councils have given their support for this model.

However, there is much work to be done to ensure a smooth transition from LAWs to the new scheme and its effective implementation. There will be a need to up-scale the capacity of the database and resource for processing. Current systems and processes will need to be revised and significantly enhanced to deliver future requirements. Local and national arrangements will need to be established to ensure effective enforcement. Marketing will be critical to its future success.

The proposed scheme will create a comprehensive register of landlords (and agents), which isn't currently possible. This will provide contact information and statistics on the PRS. Strategically this will assist LAs to plan their improvement activities by targeting education campaigns and proactive inspection activities. It will help to make landlords and agents more aware of their responsibilities and also easier to contact about initiatives, etc. Coupled with an on-line search it will also help tenants to more easily verify landlords and agents. All this should improve the image and condition of the PRS.

LAs already have a number of powers conferred to them in relation to standards and management practices in the PRS. It is clear that the new scheme will bring an increased number of poor quality properties to the attention of the Council. This will inevitably increase service pressures at a time when local authorities are facing significant resource challenges. It is known that living in healthy housing brings wide ranging benefits to the people and communities in Wales. To achieve this will require that the proposals are properly resourced both at a national and local level. Provision is being made to ensure that the registration and licensing arrangements will be self funding, this we welcome. However, we do have concern regarding the Case law (*Hemming v Westminster*) which suggests it might not be possible to use the landlord registration scheme fees to take enforcement action against non registered/licensed landlords and agents.

Careful consideration will be required to ensure that resources are in place to deliver effective enforcement action. There will be a need to identify landlords who have not registered and to follow through on enforcement actions once offences have been established. Welsh Government have previously made provision, in similar circumstances, for adjustment to the revenue support grant e.g. to implement House in Multiple Occupation Licensing under the requirements of the Housing Act 2004. Alternatively, it may be possible to stipulate that fees could be used for these specific purposes or higher fees chargeable for non compliant landlords. This could prevent challenge of fees in future.

Part 1 requirements prescribe additional statutory powers and duties to be placed on Councils. This being the case, it is important to fully assess the additional burden that enforcing such a scheme would have and the best model for such enforcement.

The proposals in our view will improve housing standards and perceptions of the sector. However this can only be achieved if the scheme is consistently and effectively enforced across Wales and this will require effective (and proportionate) penalties and resources.

The Scottish registration scheme, has been evaluated and the report 'Evaluation of the Impact and Operation of Landlord Registration in Scotland' from July 2011, highlights the lack of enforcement undertaken against non-complying landlords (including striking off 'poor' landlords) and LAs actually having the resources to carry out this work. Proper consideration of resources at this stage could avoid similar criticism in Wales. The Bill proposes a number of civil and criminal penalties to incentivise registration.

The majority of the criminal penalties will involve prosecution cases which will need to be heard in a Magistrates' Court. The proposed fine levels appear adequate however do not appear consistent throughout the legislation and some levels have no limit set (e.g. 3(4)(b)).

It is pleasing to see the powers conferred in section 26 regarding documentation and information requests, however LAs must have clear investigatory powers, including Power of Entry to investigate non-compliance and also authorisations under the legislation. These are not included in the Bill as currently written.

A Rent Stopping Order (s.21 of the Bill) is not a concept the Council is comfortable with. We have concerns that a rent free period for a tenant may leave the tenant open to landlord intimidation and cause stress and vulnerability from tenants withholding rent. In addition, when Universal Credit is introduced but not administered by Councils it is hard to anticipate how well such orders would dovetail with rent paid.

Section 21 of the Bill appears to apply only to landlords who fail to licence (or put forward someone to licence) not register; we would hope it would be both. A 'Rent Penalty Notice' is a provision which applies in the Scottish registration scheme, it is acknowledged that as a form of deterrent and incentive to comply with the legislation it would be a provision with weight.

The Council would like to see that a landlord could not serve a section 21 Housing Act 1988 notice for possession if not registered / licensed; as is the case with tenancy deposit protection and HMO licensing compliance. Also it may be more appropriate to make provision for a form of Rent Repayment Order (RRO) as contained in the Housing Act 2004 regarding failure to licence a HMO. However with a RRO this process could be reviewed and be brought in line with Tenancy Deposit Protection, where the payment of (in this case) rent is on application to a County Court, following on from a successful prosecution of the landlord for failure to register and/or become licensed. The amount of rent available to be reimbursed could be set from the date of the initial investigation or up to one year. In our opinion a RRO is a better mechanism for unprotected tenants to recoup rent from an unregistered/unlicensed landlord.

There are no specific exemptions detailed in the legislation, only a definition of a 'rental property' which specifically mentions that it cannot apply to one let by a Registered Social Landlord (s. 2(1)). However there may be merit in stipulating specific exemptions in order to prevent unintended 'landlords' from being caught in the provisions e.g. educational establishments, resident landlords with up to 2 lodgers, etc.

The definitions contained in section 2 must be rigorous enough to ensure that the complex nature of property ownership, landlord and tenant contractual arrangements and management relationships cannot be manipulated to avoid compliance.

The Council is happy to work with Welsh Government and partners to ensure that this legislation is comprehensive and well tested with real scenarios of property ownership and management arrangements before being implemented.

Section 19(6) should make it clear that an application for registration or licensing is at any stage 'treated as having been withdrawn' if any of sections a-d apply.

It is anticipated by the Welsh Government that all landlords will register in the first two years of the scheme, however given the extra administrative burden on local authorities required to undertake this locally as well as joining up nationally, the likelihood is that this will not be achieved. The transition period will be difficult for local authorities and landlords alike, but tenants will be especially affected, so there will need to be a great deal of assistance to tenants to help them through the new regulations.

It is disappointing that the Bill does not address standards of accommodation in the private rented sector at the same time as improving the standards of management. There will be an expectation from tenants that because a landlord or agent may be registered and licensed by the local authority, this will mean that their properties are of a good standard.

Unfortunately we will have to wait for the Tenancy Reform Bill to begin to address the standards issue, through the aim of "Requiring landlords to ensure there are no Category 1 hazards under the Housing Health & Safety Rating System". We agree with this proposal in principle, however, there are practical issues and resource implications which would need addressing. There are 29 potential hazards detailed

under the HH&SRS - the category of any hazard will depend upon a calculation involving likelihood of occurrence and severity of outcome. It is unlikely that landlords will be aware of all/any of the hazards and certainly will not be able to determine the category of the hazard.

Although this would begin to address the issue of standards, this approach is much more onerous than what is required; Category 1 hazards are those leading to death or chronic illness and no reasonable landlord would contemplate allowing such hazards on their premises. Any such assessment will need to be undertaken by qualified local authority officers, adding to an already stretched workload. An approach is needed that defines *minimum* standards to be met in all circumstances so that landlords are clear on the standards of rental accommodation that is expected in Wales.

The proposed legislation still lacks clarity around issues such as registering those landlords that operate in multiple local authority areas and how to manage any resulting split enforcement responsibilities across local authorities.

Overall, Cardiff Council would advocate a more phased approach, initially only registering and licensing agents and responsible persons and tackling the larger proportion of landlords once the new administrative regime has been embedded.

We are still disappointed that security and affordability of the sector for tenants has not been addressed in the Housing Bill. Although this is clearly a problematic area, it is felt that these are essential elements which need to be considered if the private rented sector is going to provide a practical solution to housing need.

## **Part 2 – Homelessness**

Cardiff Council has long supported the prevention of homelessness agenda, developing a number of practical solutions to advise and assist households at risk of homelessness. However this has been hampered under current legislation by the requirement to also undertake a statutory homelessness assessment at the same time. The Public Services Ombudsman for Wales has highlighted that any indication of potential homelessness should lead to such a statutory assessment being undertaken and that the household is informed of any decision and resulting action to be taken.

Under the new legislation it would appear that this concept has been carried forward, with a continued duty on local authorities to assess eligibility for statutory services (section 48) and inform households of decisions (section 49) whilst trying to prevent their homelessness through the new duty to assist. This would appear to be overly burdensome at a point of crisis and would impede the local authority's ability to focus on the prevention activities required. More clarification is needed as to the intentions of the Welsh Government in the meaning of this duty.

We have some concerns that the duty to take reasonable steps to prevent homelessness for anyone, irrespective of local connection or intentionality could have a greater impact on local authorities such as Cardiff. We already see large numbers of homeless people gravitate to the capital to access services which are always at

maximum capacity and with ongoing financial constraints, services are being reduced. We support the suggestion of the Welsh Local Government Association that this risk could be addressed by including in the 'reasonable steps' duty assistance to help someone to return to their accommodation in an authority where they have a greater connection.

Section 56 as currently drafted adds further confusion to duties as from this draft it is not clear whether this relates to an inter/relief duty for all irrespective of priority need or whether it only applied to priority need cases. The inclusion of the reference to other local authorities needs further clarification in this context to fully ensure that the intention of the Welsh Government in this section is made clear to all. Similarly if local connection applies to anyone across all the duties this needs to be made clearer.

We believe that the sections quoted in 53(4)b have been included in the wrong order and that the wording in brackets to reflect the duties has been transcribed incorrectly. Also, we would query whether section 54(3)a should also included reference to Welsh local authorities.

In our opinion some opportunities for greater clarification have been missed in the current drafting of the Bill, specifically in terms of the definition of local connection and the shared duties to 16 and 17 year olds. Firstly for local connection (section 64), the detail in subsection 2 could be clarified to detail the exact criteria for normal residency and family associations as outlined in current practice.

In terms of the shared duties to 16 and 17 year olds, the Bill could have provided the Welsh Government with a distinct overriding and clear piece of legislation to outline the steps that should be taken by both the local housing authority and the local Children's Services function working together when dealing with this client group.

We also wonder whether the requirement in section 45(2) to consider affordability in determining if accommodation is suitable to occupy should not also be a requirement to consider when discharging all duties in Part 2, especially into the private rented sector. This will ensure that any preventative work or sourcing of alternative accommodation has a realistic opportunity of being successful for the applicant and will avoid possible future presentations.

As outlined in Part 1, the responsibility of the standard of privately rented accommodation cannot be determined simply by accessing a registered and licensed landlord. If local authorities are to discharge their duties into the private rented sector, it would be best practice to ensure that the property is of a suitable standard, as currently when providing bonds for families. Although there would be an additional burden on local authorities to undertake these inspections, it would go hand in hand with the new duties under Part 1 and help to improve the sector as a whole.

Families with children will not be subject to the intentionality test and a target date of 2019 has been set for ending all family homelessness - this is an aim that all those working in housing would like to see achieved. However, there is some concern that, even with improved support and more holistic services, it will be seen as a reason for some people not to pay their rent and may encourage anti-social behaviour. It may

well increase the dependency culture which is so destructive in our community. However, the Council welcomes the opportunity to disregard intentionality locally, following the appropriate notifications.

Given the investment in the social housing sector over recent years, it is disappointing that the duty on RSLs to assist local authorities has not been properly strengthened. Additionally, the legislation as drafted refers predominantly to the housing authority and again the opportunity has been missed to ensure a wider corporate local authority duty to assist with homelessness.

We would welcome sight of the revised Code of Guidance as soon as possible so that we can be sure of the intended meanings of these new duties and can begin to prepare appropriately for the enforcement of this new legislation.

### **Part 3 – Gypsies and Travellers**

Cardiff Council already provides the most accommodation for Gypsy and Travellers in South East Wales. The two sites at Shirenewton and Rover Way provide 80 pitches. The need for Gypsy and Traveller accommodation is an important matter for the Council to resolve and is a key issue for the new Local Development Plan (LDP) which is currently at Deposit stage. The recent needs assessment undertaken shows that an additional 108 pitches are needed up to 2026.

A separate study has indicated a need for a replacement site for Rover Way and the Council has identified a potential new site to deliver 65 pitches. Currently the Welsh Government is able to financially support the development of 1 new site per year and this is unlikely to change in future as the allocation of £1.5M remains for the development of a single new site (based on the cost of developing a 12 pitch site). Whilst this may be sufficient to support local authorities whose requirements are less, this would not be sufficient to support our proposed development of a 65 pitch site, or indeed the further 102 required to meet the identified need. As you will be aware, the number of new pitches required in Cardiff is considerably higher than all other local authorities within Wales and we query why the available funding bears no relation to identified need.

### **Part 4 – Standards for Social Housing**

We recognise the need to ensure that all social housing meets required standards and acknowledge that there should be more alignment and transparency across all social landlords. Cardiff Council has substantially reached the Welsh Housing Quality Standard and has an ongoing programme of maintenance activity to ensure our stock delivers good quality homes for our tenants.

### **Part 5 – Housing Finance**

Cardiff sees this proposal as enabling further utilisation of the Housing Revenue Account to meet housing need in the city. The legislation gives the Welsh Government the power to set a settlement figure and the power to revisit this in case of error/change in circumstances. It is unclear what is meant by the latter, but we presume this does not infer that funding can be clawed back in future years.

The Bill provided the Welsh Government with powers to request information from authorities, however we would like assurances that this will be no more onerous than the current subsidy system.

There is no mention of any options to switch borrowing headroom temporarily or permanently within the overall Cap; this is an approach which some authorities may find useful in the short term.

With regards to the Right to Buy, the intentions regarding capital receipts are not mentioned. Cardiff would obviously prefer to retain all receipts locally.

The Explanatory Memorandum suggests overall savings to Wales being between £73m - £40m p.a, but this does not take into account any Debt Repayment i.e. only includes interest.

It is noted that the Major Repair Allowance is to remain in place subject to ongoing availability of funding from the Welsh Government. The Council welcomes this as it is a major contribution to our ongoing capital works programme to improve our stock.

We believe that in the drafting of this Bill, a further missed opportunity has been made to bring Gypsy sites under the remit of the HRA.

## **Part 6 – Allowing Fully Mutual Housing Associations to Grant Assured Tenancies**

Cardiff Council does not have any specific comments relating to Part 6 of the Bill.

## **Part 7 – Council Tax for Empty Dwellings**

The Council would welcome the facility to increase Council Tax on vacant properties, as it has been advocating this for a number of years. This reflects the resources allocated to deal with the problems caused by vacant properties and would act as a deterrent to owners who keep properties vacant. The Council would, however, reiterate its comment in previous consultations that the rate should be up to 200% rather than the 150% suggested. We would also request that any additional income should be retained by the Council and not reduced from future RSG settlements.

Cardiff Council supports the premise of the Welsh Local Government Association for the Bill's provisions to be extended to include a similar charge on second homes, of which there it is estimated that there is a considerable number on Cardiff.

## **Conclusions for Cardiff**

The overall direction and vision set out in the Housing Bill is welcomed. However, some further detail is required in order to provide greater clarity for appropriate implementation.

In terms of the wider programme, the various Bills currently being considered by the Welsh Government operate somewhat in silos and consideration should be given to how they interact. For example, the legislative programme could address the friction

between the existing Homelessness and Children's Act legislation as it affects homeless 16-17 year olds.