

# Housing (Wales) Bill

WLGA Evidence to the  
Communities, Equality and Local  
Government Committee

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## **Introduction**

1. The Welsh Local Government Association (WLGA) represents the 22 local authorities in Wales. The three national park authorities and the three fire and rescue authorities, are associate members.
2. It seeks to provide representation for local authorities within an emerging policy framework that satisfies the key priorities of our members and delivers a broad range of services that add value to Welsh Local Government and the communities they serve.
3. The WLGA welcomes the Housing Bill and the opportunity it offers to improve housing in Wales. The Bill addresses a number of key priorities in relation to housing that local government shares and we look forward to working with Welsh Government to implement the legislation and maximise it's positive impact. Local Government has had the opportunity to work closely with Welsh Government officials on developing many aspects of the legislation to and we have welcomed this approach to the development of the draft Bill.

### **Part 1: Registration and Licencing Scheme for Private Landlords and Letting and Managing Agents**

4. The proposal to introduce a compulsory registration and licencing scheme for all private rented sector landlords and managing agents is welcomed by the WLGA. The private rented sector plays an increasingly important role in the housing system and is an important partner of local authorities in relation to their housing strategic role. The proposed scheme will enable authorities to build on the positive relationships many already have with local private landlords and support the improvement of privately rented homes.
5. The private rented sector in Wales has grown rapidly over recent years with 14% of homes in Wales being privately rented (2011 Census), almost as many as are rented

from social landlords. Research (1) suggests the private rented sector may reach 20% of the housing market in the UK by 2020.

6. The sector is very diverse and is made up of a large number of sub sectors. At one end of the spectrum it includes some high quality rented accommodation aimed at high income mobile professionals while at the other end are poor standard properties that provide accommodation for benefit dependent households. Compared with owner occupied and social rented properties the private rented sector suffers from the highest levels of disrepair. The sector also provides for some extremely vulnerable people, particularly single people and couples who find it difficult to access social housing. In some authority areas more than 60% of private sector tenants are in receipt of local housing allowance.
7. It is currently not possible for local authorities to identify the private landlords operating in their area or the properties that are privately rented and this limits their ability to develop an effective partnership with the sector or take a strategic approach to this part of the housing market. The proposed registration and licencing scheme has the potential to provide information on the private rented sector for the first time and will allow authorities to work in a more strategic way to improve the housing standards of privately rented homes and the reputation of the sector.
8. In our view the proposed scheme strikes a good balance between ensuring the management of privately rented properties meets a minimum standard, and the need to avoid burdensome regulation that might drive good landlords out of the sector. The proposed cost to landlords is minimal with Welsh Government estimating costs to be 33p per week per property for a landlord with 2 properties (2). We also believe the proposed administrative costs and training element of the scheme are proportionate given the serious impact poor property management can have on the health, well-being and welfare of tenants. It is also important to recognise that the scheme will potentially offer significant benefits for private landlords as it will enable local authorities to improve their communication with landlords and provide support, information and advice.

9. Research by the University of York (3) into the private rented sector highlights the significant proportion of landlords that own one or two properties. The study indicates that in England an increasing number of landlords own one or two properties with 73% of properties being owned by individuals or couples. 44% of these individual/couple landlords own just one property and 27% own two properties. It is likely that the private rented sector in Wales is not dissimilar to the sector in England with many being 'accidental' or 'hobby' landlords.
10. In our view it is therefore essential that the registration and licencing scheme applies to all landlords, including those who own a single property. If such landlords were excluded a very high proportion of the private rented sector would remain outside the scheme and unregistered. Anecdotal evidence from local authority private sector housing teams suggests the worst housing conditions are often found in properties owned by single property landlords, many of whom have limited understanding of their legal duties. It is also important that all tenants benefit from the scheme, particularly those who are most at risk of poor property management.
11. On it's own the scheme will not improve housing conditions in the private rented sector, however, the register will provide an information base of landlords and privately rented properties, and will improve the ability of local authorities to advise landlords on their legal obligations. It will also improve the ability of authorities to take enforcement action against the small number of landlords who refuse to take their legal duties seriously.
12. We expect and welcome the likelihood that the scheme will bring an increased number of poor quality properties to the attention of local authorities. While this will inevitably increase service pressures at a time when local authorities are facing significant challenges, improving standards in the private rented sector is a key aspect of local authority community leadership and strategic housing roles and we welcome the opportunity the registration scheme offers to work more closely with private landlords.

13. The Housing (Wales) Bill Part 2 recognises the important role the private rented sector has to play in preventing and addressing homelessness and proposes a new local authority power which will allow use of the private rented sector to discharge their statutory homelessness duty. This is welcomed by local authorities and underlines the importance of developing a strong strategic partnership with private sector landlords and improving standards in the sector.
14. The proposed scheme has the potential to help local authorities improve housing standards and perceptions of the sector. However this can only be achieved if the registration scheme is consistently and effectively enforced and this will require effective (and proportionate) penalties and sufficient resources. An evaluation of the similar landlord registration scheme in Scotland (2011) (4) identified effective enforcement as a significant issue. We therefore have some concerns in relation to the effective enforcement of the scheme and the potential for unintended consequences to arise from the proposed rent stopping orders.
15. The Bill proposes a number of civil and criminal penalties to incentivise registration. A civil sanction of a 'rent stopping' order is proposed which would result in rent or service charges not being payable by the tenant if a landlord and the property is not licenced. We are concerned that this proposal may make a tenant vulnerable to intimidation and retaliatory action/eviction from landlords who may not understand their duty or who may choose not to comply with the law. The evaluation of the Scottish scheme, that has a similar penalty, raises concerns about the risk to tenants and identifies the difficulty of monitoring whether rent payments are being made or withheld by the tenant or not.
16. We suggest that a preferable and more effective penalty is one currently used in relation to HMO (Houses of Multiple Occupation) licencing and therefore one understood by many private landlords already. This approach prevents un-licenced landlord's from serving a Section 21 Notice (a no fault eviction notice) as the landlord registration number has to be provided to the court. In addition the local authority can serve a rent repayment order (Housing Act 2004) when a landlord has

been convicted of failing to register. However, we understand there may be some issues with this approach and the Welsh Government is further exploring whether this approach could be used. The WLGA is also seeking advice to further clarify the position, and if the legal issues can be addressed we believe this approach will be better understood by landlords, more effective and will place a tenant at less risk.

17. The WLGA fully supports the creation of a comprehensive register of landlords and agents. However this aim will only be achieved if resources are available to enforce the scheme. An important element of this is ensuring that the courts award the full cost of taking a landlord to court. We would welcome any work the Welsh Government can undertake with the judiciary to underline the importance of full costs being awarded to local authorities who take legal action against private landlords who fail to register.
18. Case law (*Hemming v Westminster*) suggests it might not be possible to use the landlord registration scheme fees to take enforcement action against non registered landlords. We understand Welsh Government lawyers are considering whether the resourcing arrangements for the Houses in Multiple Occupation (HMO) licencing schemes can be applied to the enforcement of the proposed landlord registration scheme. We welcome this and hope that it will help resolve the issue of resourcing enforcement.
19. The Bill proposes that individual local authorities have a duty to maintain an up-to-date register of rented properties, private sector landlords, responsible people and agents. We are satisfied that agreement in principle has been reached on a national approach with a single local authority administering the scheme on behalf of all authorities in Wales. We are confident that the licence fees will be sufficient to cover the cost of a single authority administering the scheme on behalf of all 22 authorities.

## **Part 2: Homelessness Legislation**

19. The WLGA strongly supports the proposal to focus homelessness legislation in Wales on prevention and to widen the safety net beyond those in the priority need groups.

We recognise that prevention is a much more effective and appropriate approach and local authorities across Wales are already providing housing options advice and assistance to a growing number of people who are at risk of homelessness. This is evidenced by the increasing number of households who are recorded by authorities as 'eligible but not homeless', and the reducing number of households who are statutorily homeless.

20. We recognise that in the long term prevention is a much more effective use of resources than crisis intervention. We welcome the recognition by Welsh Government that additional resources will be required to implement the legislation and support authorities to make the transition from the requirements of the current legislation to the new approach which will be required under the new legislation.
21. The WLGA fully supports the principles which underpin the proposed homelessness legislation and we consider it has the potential to significantly improve services for people at risk of homelessness in Wales. However, we suggest there are a small number of areas where some drafting in the Bill could be slightly amended to ensure the intentions of the legislation are clear and to ensure unintended consequences are avoided. These are discussed below.

### **Duty to carry out a Homelessness Review and formulate a Homelessness Strategy**

22. We appreciate that the duty to undertake a review and develop a strategy Homelessness currently exists. However, there is the opportunity to recognise and better join up with the broader strategic planning framework for local government in the Housing Bill and place a duty on local authorities to integrate the review of need and the strategic planning of homelessness services with the Single Integrated Plan.
23. We feel there would be important additional benefits to be gained from this approach as it would lead to a more holistic and corporate approach to homelessness and ensure the links are made with a wide range of other local authority strategic responsibilities such as health and wellbeing, community safety, social care, housing

supply and the private rented sector. We suggest that it would be more appropriate for local authorities to have a duty to ensure that review of need and strategic planning for homelessness is fully reflected in the Single Integrated Plan.

**Duty to take reasonable steps to prevent homelessness for anyone irrespective of local connection or intentionality**

24. The WLGA supports the widening of the safety net to include households who do not have priority need status, for example, single people or childless couples. However, we have some concerns that the duty to take reasonable steps to prevent homelessness for anyone, irrespective of local connection or intentionality could have unintended consequences.
  
25. There is no similar 'prevention' duty in England and therefore local authorities bordering England have concerns that English households at risk of homeless who have links with Wales or live on the borders of Wales might wish to access prevention services. Similarly the larger cities in Wales have concerns that the legislation will exacerbate the current trend for some households who are at risk of homelessness to gravitate to larger cities to access services. We suggest this risk could be addressed by the 'reasonable steps' duty including assistance to help someone to return to their accommodation in an authority where they have a greater connection.
  
26. We also have some concerns about the possibility that an authority could have a recurring duty to 'take reasonable steps' to prevent homelessness, irrespective of whether an individual is persistently acting in a way that will result in a risk of homelessness. This could include for example deliberate rent arrears or anti social behaviour. Given that resources for homelessness prevention are finite we consider it is appropriate for the legislation to avoid creating a recurring local authority duty if an individual is not taking reasonable steps to avoid the risk of homelessness.

**Duty to assess**

27. Local authorities recognise the value of homelessness prevention and are gradually increasing prevention services across Wales to the extent that resources currently



allow. However the constraints of the current homelessness legislation inevitably result in homelessness services being more focused on assessing eligibility for statutory homeless services and less on preventing homelessness.

28. Authorities are preparing to refocusing their services on homelessness prevention and 'problem solving' when someone first approaches the authority. We anticipate the new legislation will enable authorities to concentrate their resources on prevention activities and only be required to assess eligibility for statutory homelessness services when all efforts to prevent homelessness have failed.
29. However the legislation as currently drafted continues to place a duty on authorities to assess eligibility for statutory homelessness services when the applicant first approaches the authority. (Para 48) and to inform the applicant of the decision about eligibility (Para 49). The WLGA has been assured by Welsh Government that it is not intended that local authorities will be required to undertake the equivalent of a statutory homeless application when they first have contact with an applicant and when circumstances. We welcome this clarification as the bill as drafted would have very significant resource implications. We hope the Government will consider addressing what appears to be a drafting error during stage 2.

### **Discharge into the private rented sector**

30. We welcome the proposal to give local authorities the power to use private rented housing to discharge their homelessness duty where this is appropriate. The limited supply of social housing and limited number of vacancies, particularly of smaller homes, makes it increasingly difficult to provide access to social rented homes within a reasonable period of time for many statutory homeless households.
31. There are concerns that the current statutory right of homeless households to social housing can also have the unintended consequence of making homelessness one of the few routes into social housing. This results in households on the housing register waiting a very long time for a property, or sometimes never reaching the top of the list, because homeless households have greater priority. The opportunity to use the

private rented sector will help to break the link between homelessness and social housing and also open up a much wider range of housing options for homeless households.

32. It is widely recognised that access to good quality accommodation in the private rented sector is the most effective way of preventing homelessness and can enable a household to make a planned move, rather than experience the crisis of homelessness. Authorities are therefore developing private sector access schemes in order to expand the number of suitable private sector rented properties available to people at risk of homelessness.

### **Intentional Homelessness**

33. The WLGA welcomes the proposal to allow authorities the option of applying the intentionality 'test' and allow authorities the discretion to use it for some or all of the 'priority need' groups. In our view this strikes the right balance between rights and responsibilities and will ensure local authorities are able to focus their resources on households who are unavoidably homeless.

### **Former prisoners**

34. We welcome the proposed change to the priority need status of former prisoners and the move away from automatic priority need status to priority status being based on vulnerability due to their detention. Currently all former prisoners have automatic priority if they are homeless on release and as a result they currently constitute approximately 15% of homelessness acceptances in Wales.
35. The findings of a study of homelessness services for former prisoners undertaken for the WLGA and funded by Welsh Government (2008) (5) suggested that the high levels of homelessness amongst this group were to some extent an unintended consequence of the automatic priority need status of former prisoners. This has contributed to the prison service providing minimal housing assistance to prisoners prior to their release and has effectively undermined efforts to ensure prisoners are not homeless on release.

36. Unfortunately the lack of suitably sized social rented homes has meant that many former prisoners have to be accommodated in temporary accommodation while they wait for permanent housing. Such accommodation is not conducive to resettlement, and anecdotal evidence from local authorities suggests that a relatively high proportion of former prisoners either abandon their accommodation, return to prison or become homeless again. Former prisoners do not have automatic priority need status in England and there is no conclusive evidence of higher levels of resettlement or lower levels of re-offending in Wales compared with England.
37. We believe the proposed change to the priority need status of former prisoners will allow local authorities to continue to award priority need status where an individual is homeless on release because of their detention or because they are vulnerable. There is evidence of relatively high levels of mental ill health, substance misuse and other vulnerabilities amongst the prison population and it is therefore likely that a relatively high proportion of former prisoners will have priority need status because of their vulnerability.
38. We are hopeful that the focus of the proposed legislation on early homelessness prevention will ensure that councils can provide assistance in the 56 days prior to the release of a prisoner who doesn't have a home. If local authorities have this period of time to assist a prisoner they will in many cases be able to ensure accommodation is available with family or friends, in rented accommodation or supported housing. It will be very important that the prison authorities co-operate and provide local authorities with 56 days notice of release. Co-operation from Local Health Boards, Housing Associations and other agencies will also be extremely important.

**Duty to provide accommodation for intentionally homeless families with children**

39. We support the principle of ensuring that no children are homeless. However we have some concerns about the potential unintended consequences of the proposed duty on Authorities from 2019 to provide accommodation for intentionally homeless

households with children. Authorities currently can advise families of the possibility of an 'intentionally homeless' decision in an effort to persuade families to consider the implications of negative behaviour where homelessness is avoidable. This includes anti social behaviour, giving up a tenancy with no reason or wilfully failing to pay rent. We have concerns that the proposed new duty could have the unintended consequence of leading to an increase in homeless families with children.

40. We recognise the value of troubled families being provided with an integrated package of support in order to avoid future homelessness, however we have concerns about the resource implications of this proposal. We therefore hope there will be an opportunity to work closely with the Welsh Government in the period preceding 2019 to consider how these services can be resourced.

#### **Duty on Registered Social Landlords (RSL)**

41. Registered Social Landlords (RSL's) have a crucial role to play in preventing and addressing homelessness and are an important strategic partner of local authorities. Their role is particularly important in the 11 local authority areas where housing stock has been transferred to a Housing Association. We are pleased that co-operation between authorities and RSL's is very good in many parts of Wales; however, unfortunately this is not the case everywhere.
42. Over past decades considerable amounts of public money have been invested in RSL's in Wales and this has enabled them to build up significant assets in terms of housing stock and land. Many RSL's have used this asset base to contribute to the wellbeing of the communities they work in and to advance social objectives. Unfortunately RSL's are facing an increasingly challenging environment with reduced levels of social housing grant and the adverse impact of welfare reform. Local authorities therefore have concerns that co-operation from RSL's in the future will be by no means certain.
43. The WLGA continues to work with Community Housing Cymru (CHC), the representative body for RSL's, to promote closer partnership working between the two sectors. However not all RSL's fully recognise the importance of co-operation and

therefore we support the Welsh Government proposal to strengthen the legal duty on RSL's to co-operate with authorities. We are concerned however the proposed new duty to co-operate, "unless it is incompatible with (the RSL's) duties" or "will have an adverse effect on its functions" does not markedly strengthen the duty. We therefore welcome the efforts of the Welsh Government to strengthen the duty further. The WLGA is also be looking at ways in which this duty can be strengthened and co-operation ensured through the Bill.

### **Resource Implications of the Homelessness Legislation**

44. The WLGA welcomes the proposed homelessness legislation and the clear focus it places on early homelessness prevention. The approach promoted will enable local authorities to move to a preventative, 'problem solving' approach and focus resources on helping people to avoid the crisis of homelessness.
45. We are hopeful that in the longer term this focus on prevention will reduce homelessness and help authorities to make more effective use of resources. However it was clear from an impact assessment by the WLGA and the Welsh Government that the legislation will initially cost more as local authorities will have a duty to provide prevention services for anyone who is threatened with homelessness within the next 56 days, which is a new burden.
46. We welcome the additional resources being made available in 2014-15 (£4.9m) and in 2015-16 (£3.2m) to assist with the additional cost of implementing the legislation. In addition we are aware that the Welsh Government is undertaking a review of current Section 180 funded homelessness projects to ensure they are focused on homelessness prevention and we understand there is a possibility that some additional resources may be available to local authorities through this funding stream in future years to help them prepare for and implement the legislation.
47. The WLGA welcomes the recognition that local authority resources are finite, and the proposed duty to 'take reasonable steps' being conditional and subject to 'the need to make best use of the authority's resources.'

### **Part 3: Gypsies and Travellers**

48. The WLGA recognises the importance of reviewing and planning to meet the accommodation needs of Gypsy and Travellers. Current accommodation needs assessments show a significant undersupply of permanent and transient sites for Gypsy Travellers and we look forward to working with local authorities and Welsh Government officials to help authorities address this.
49. Gypsy and Traveller communities in Wales have faced (and continue to face) deep-rooted discrimination over many generations. Sadly this makes it extremely difficult and time consuming to gain planning consent of sites due to local resistance to specific proposals. The WLGA is committed to working with local authorities and Welsh Government to provide the leadership necessary to take this very challenging work forward.
50. There are currently eighteen permanent sites provided by thirteen authorities and no transient sites in Wales; however 14 local authorities have indicated a commitment to developing new sites and authorities in some regions, such as North Wales, are working together to take a strategic approach to meeting need across the region. We welcome the support the Welsh Government is offering in terms of grants for existing and new sites.

### **Part 4: Wales Housing Quality Standard and Standards**

51. We recognise the value of consistent standards in the social housing sector in Wales and understand this aspect of the Bill is proposed to better align local authority and housing association sectors. We recognise the value of having consistent standards of accommodation, rent policy and approach to setting service charges and the increased transparency this will provide for tenants.
52. In the past local authorities have traditionally pooled their service charges and are now at varying stages in the challenging task of disaggregating charges. This is a time consuming process and it will be important that authorities are given sufficient time to undertake this work.

53. We understand that all 11 Authorities with stock have either reached WHQS or have business plans in place to achieve the standard by 2020. The complex and bureaucratic Housing Revenue Account Subsidy system (HRAs) has in the past made it difficult for authorities to plan with certainty but we are hopeful that authorities will be exiting from the HRAs in April 2015 and will then be in a position to plan strategically for the first time. Unfortunately the settlement reached with the UK Treasury will impose a borrowing cap on authorities, but it is not yet clear how this will impact on their ability to reach WHQS by 2020 (for those who have not yet achieved it). It will be important that this is taken into account in relation to the 2020 target.

### **Part 5: Housing Finance**

54. We welcome the settlement reached between the Welsh Government and the UK Treasury and the prospect that local authorities with housing stock will become self-financing from April 2015. The settlement will ensure that each of the eleven authorities will be better off and will be able to accelerate their work to improve homes and in some cases build new affordable homes. We understand this part of the Bill incorporates the appropriate legislative changes required to allow the current HRAs system to be dismantled. We look forward to the opportunity for a new era of council house building in Wales from April 2015.

### **Part 6: Allowing Fully Mutual Housing Associations to grant assured tenancies**

55. The WLGA recognises the role that fully mutual co-operative housing can play in extending the range of housing options in the Welsh housing market. We welcome this part of the Bill that will remove some of current barriers to the development of co-operative housing and allow fully mutual co-operatives to grant assured and short-hold assured tenancies. We are hopeful that this will improve the ability of fully mutual co-operatives to access loan finance.

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

56. The WLGA welcomes the proposal to provide local authorities with the discretionary power to increase council tax on “dwellings that have been both unoccupied and substantially unfurnished for a continuous period of at least one year”. It is difficult to accurately calculate the number of long-term empty properties, but it is estimated to be between 18,000 – 23,000 long-term empty homes in Wales.
57. There is a significant under supply of homes across Wales and every local authority is therefore working hard to bring as many empty homes back into use as possible. The £20million Welsh Government ‘Houses into Homes’ recyclable loan scheme is extremely helpful in this work and this proposed new power to charge additional council tax will provide an additional ‘tool’ that will discourage owners from leaving houses empty without good reason.
58. It is important that local authorities have the power to increase council tax up to a level that will act as a disincentive to owners who might leave property empty. The WLGA proposed a charge of up to 200% of council tax to be raised after a property is empty for 12 months (rather than 150%) and this figure was arrived at from a survey of authorities on the appropriate maximum level of increase. We hope that the level this power will provide by which council tax can be increased will be given further consideration in order that local authorities can use this power in a way that will be most effective.
59. The primary purpose of the discretionary power is to incentivise owners not to leave homes empty, but it is possible that it will also generate a small amount of additional income which authorities can use to further enhance their work to bring empty homes back into use or to provide more affordable homes.
60. We ask that consideration will also be given to providing authorities with discretionary powers to increase council tax on second homes up to the same level as empty homes. A WLGA survey in 2011 estimated there are over 23,000 second homes in Wales that equates to 1.4% of all homes. Second homes tend to be concentrated in



rural areas where second homes make up a much higher proportion. In Gwynedd for example 8.7% of homes are second homes. This clearly has a negative impact on the sustainability of many rural communities and often pushes house prices up beyond the reach of local people.

61. It has been estimated that a council tax charge of up to 200% could generate an additional income of over £22m (WLGA 2012) which could be used to offset the negative impacts of second homes and contribute to increasing the supply of affordable homes and other key community services such as crucial bus services.

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