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Llywodraeth Cymru
Welsh Government

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Chair
Communities, Equality and Local Government Committee
National Assembly for Wales
Cardiff Bay
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Dear Christine

Housing (Wales) Bill - CELG Committee – Request for Further Information

Thank you for inviting me to the Communities, Equality and Local Government Scrutiny Committee on 12 December 2013 to discuss the Housing (Wales) Bill.

At the meeting I promised to provide the Committee with further information on a number of issues. I am pleased to provide this information, which is listed below with reference to where the information can be found in the attachments to this letter.

1. Differences between the registration and licensing scheme for the private rented sector in Scotland and our proposed scheme (Annex 1).
2. A note on other aspects of proposals for the private rented sector (electrical safety standards and costs of enforcement (Annex 2).
3. Information on our proposals for a better approach to helping people who are homeless or at risk of becoming homeless (Annex 3).
4. A breakdown of the housing-related borrowing limit to include existing borrowing and the new debt to fund the buy-out from the Housing Revenue Account Subsidy Scheme is set out at (Annex 4).

After the Committee's session, you wrote to me seeking further clarification on a number of additional points which were not reached during the session itself. I am pleased to provide information in response to your request. The information is provided in Annex 5 to Annex 9 along with some further information to clarify certain points raised by Members of the Committee.

I would also like to take this opportunity to flag up with you a very useful visit I made in early January 2014 to Leeds City Council to learn more about their landlord accreditation scheme which is operated on behalf of the council by the Residential Landlords Association. I met with representatives of the Council and the Residential Landlords Association and would suggest that it would be helpful to the Committee to call them to provide evidence on the private rented sector aspects of the Bill. Should you wish to follow this up, my private office would be able to provide you with relevant contact details.

I trust that my response to the Committee's request and the additional information I have supplied will assist Members in their scrutiny of the Housing (Wales) Bill. Should you or any Member have any further queries or require more information on any aspect, please do not hesitate to contact me.

Yours sincerely



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Annex 1 – Policy Position in Scotland

PRIVATE RENTED SECTOR – ANALYSIS OF UK PROPOSED AND EXISTING LEGISLATION

	Accreditation	Landlord Registration	Letting Agent Registration	Landlord Licensing	Letting Agent Licensing	HMO Licensing	Tenancy Deposit Scheme
Wales	Voluntary	Proposed	Proposed	Proposed	Proposed	√	√
Scotland	Voluntary	√	Proposed*	None	None	√	√
England	Voluntary	None	None	None	None	√	√
N.Ireland	Information on Northern Ireland is patchy but we do know they are planning to introduce landlord registration						

(* Management agents have to register in Scotland. Letting agents do not have to be registered)

LESSONS LEARNED FROM SCOTTISH APPROACH TO LANDLORD REGISTRATION INCLUDE:

- We intend to have a national scheme thus the same rules will apply irrespective of location and local authorities will act collaboratively, sharing information. (In Scotland they have a central register but each local authority applies their own rules e.g. the fit and proper person test can be applied differently in one area compared to another);
- We propose one registration/one registration number covering all Wales (in Scotland, if you submit hard copies of registration documents you need to send these to the local authority in which your properties lie with different numbers being allocated for each local authority);
- Our registration will last 5 years (in Scotland the registration covers 3 years and Scottish authorities' enforcement teams spend more time chasing up those who have initially registered but do not re-registered rather than those who have never complied);
- We have greater powers of enforcement available from the start (Scotland have used a light-touch and increasing levels of fines post introduction as the scheme has embedded and evidence suggest this has caused confusion);
- We will have a mandatory, national training element with a Code of Practice attached (In Scotland training is voluntary and varies between local authorities);
- The public will be able to access to certain aspects of the register e.g. the managers name. There will not be automatic disclosure of the landlord's name in Wales because of potential security issues;
- Our scheme includes agents from the start (Scotland are currently looking to address letting agents); and
- We have appeals to the Residential Property Tribunal (Scotland are introducing something similar).

Annex 1 – Policy Position in Scotland

Differences in Proposals in Scotland and Wales

1. The Housing (Scotland) Bill introduces regulation of letting agents; including a mandatory register; statutory requirements regarding letting agents' practice; and a mechanism for resolving disputes between letting agents and their customers.
2. The Housing (Wales) Bill that has been introduced goes further than this and will require letting and managing agents to become registered and licensed in order to operate. Becoming licensed as an agent will involve being a member of a recognised professional body e.g. the Association of Residential Letting Agents (ARLA) and the National Approved Letting Scheme (NALS). This will ensure that agents have the correct procedures and safeguards, like client money protection, in place. Licensing in Wales will also require agents to comply with a code of practice which will cover issues like dispute resolution.
3. Under the Scottish proposals agents will be registered for three years. The three year registration period has proved problematic for the registration of landlords under the existing legislation in Scotland, as the time period is too short and causes difficulties with enforcement. In Scotland the ability of letting agents to charge fees to tenants has been restricted but in reality this has resulted in rental levels being increased.
4. Under the proposals for Wales the time period for registration will be five years. There are no such plans to impose restrictions on letting agent's fees in Wales but there will be a requirement, under the Code of Practice, for letting and management agents to provide details of the fees that they charge to all potential tenants that they engage with.
5. Enhancing local authority powers to tackle disrepair in the private sector. Chapter 4 of the Housing (Scotland) Act 2006 introduced a repairing standard which is proposed to be modified by the Housing (Scotland) Bill to enable appeals in certain cases where there are disputes to be heard by an independent tribunal. An equivalent appeals mechanism is already in place in Wales.
6. No such standard exists in Wales but quality of housing and the health and safety of people in all tenures of housing is covered by the Housing, Health and Safety Rating System (HHSRS). HHSRS was introduced by Part 1 of the Housing Act 2004, which covers England and Wales. The system does not apply to Scotland. The rating system enables local authorities to target conditions in residential property that pose a risk to the health and safety of its occupiers. In determining the risk, the local authority must have regard to the risk in relation to the most potentially vulnerable occupiers i.e. older people or the very young. The assessment of the risk is scored on a scale which is divided into two categories. Those which score high on the scale (and therefore the greatest risk) are called category 1 hazards, for example an open stair case without a banister. Those that fall lower down on the scale and pose a lesser risk are called category 2 hazards, for example a stair case with a couple of spindles missing. Where a condition of a property is classified as a category 1 hazard a local authority is under a duty to take

Annex 1 – Policy Position in Scotland

the appropriate enforcement action. If the problem poses a category 2 hazard the authority may take enforcement action. The types of enforcement action available to an authority under HHSRS include:

- service of a hazard awareness notice;
 - service of an improvement notice;
 - making a prohibition order;
 - making a demolition order; and
 - declaring a clearance area.
7. HHSRS is a comprehensive system which is specifically geared toward the health and safety of the occupants of all types of housing irrespective of tenure. As such, it goes further and is superior to the Scottish repairing standard.

Annex 2 – Private Rented Sector

Electrical Safety Standards

1. It is currently proposed that compliance with the Code of Practice will be a license condition and therefore failure to comply could lead to a licensed person losing his/her licence to let or manage rental property. For this reason it is important that the Code does not include requirements to be met that are not already set out in existing legislation as it would not be appropriate to introduce new statutory requirements through a Code rather than through the legislative process.
2. We are currently considering whether a part of the Code could be used to include some examples of best practice in relation to electrical safety but failure to meet any suggested voluntary standards would not result in the loss of a landlord's licence. It is therefore possible that information on best practice in relation to electrical safety could be included in the best practice part of the Code but the content is still to be determined. However, severe electrical hazards such as bare wiring would be covered by the Housing, Health and Safety Rating System and would be a category 1 hazard.

Note of enforcement costs

3. The intention has always been that the costs associated with enforcement would be met out of the registration fees generated by the scheme. We acknowledge that the *Hemming* case may present a difficulty with this but are confident that a solution to the problem that the case poses can be found.
4. Local authorities cannot use fees for enforcement across the board. The issue in *Hemming* was that fees could be used for enforcement against registered or licensed persons (particular where adherence to conditions / codes is a matter taken into account in considering registration or licensing) but not enforcement against people who are not registered or licensed.
5. In terms of taking action against unregistered / unlicensed persons – the most likely route for the recovery of costs of enforcement would be through costs sought in the event of successful court proceedings.

Annex 3 – Homelessness

Report by Cardiff University (which provided the evidence base for the increase in the period where an applicant is considered to be “threatened with homelessness” from 28 to 56 days).

1. This report can be accessed via the following links:

[http://www.senedd.assemblywales.org/documents/s7352/Impact analysis of existing homelessness legislation in Wales.pdf](http://www.senedd.assemblywales.org/documents/s7352/Impact%20analysis%20of%20existing%20homelessness%20legislation%20in%20Wales.pdf)

<http://wales.gov.uk/docs/desh/publications/120131improvehomelessframeen.pdf>

The meaning of “vulnerable” in section 55(1)(j) in relation to people who have served a custodial sentence

2. The issue that arose during the Committee meeting on 12 December 2013 was whether the provisions of section 55(1)(j) were saying-
 - (a) that all former prisoners are vulnerable and therefore are in priority need (subject to there being a local connection); or
 - (b) that only vulnerable former prisoners (where the vulnerability is a result of having been in custody) are in priority need (subject to there being a local connection).(see paragraphs 166 to 192 of transcript of CELG meeting on 12 December 2013).
3. The interpretation described at paragraph 2(a) above is only possible if the words “*who is vulnerable as a result of*” are treated as being merely descriptive and inoperative. The courts will assume that words in legislation are intended by the legislature to have an effect, unless there is an indication that the material is explanatory. There is no such indication in respect of those words in section 55(1)(j). Consequently, we think that the interpretation at paragraph 2(a) is not one that a court is likely to adopt.
4. People are “vulnerable” under the current law on priority need for assistance with homelessness if they have a less than normal ability to fend for themselves or such that they would suffer more harm than would ordinary homeless people (as established by case law - see *v Camden London Borough Council ex parte Pereira* [1999] 31 HLR 317 and *Osmani v London Borough of Camden* [2004] EWCA Civ 1706)). The Government’s view is that this is the test that the courts would likely to apply in the case of section 55(1)(j) of the Bill and, as explained above, the vulnerability would have to be the result of having been in custody of the kind mentioned in sub-paragraphs (i) to (iii) of that provision.
5. I have established a Prisoner Accommodation Resettlement Working Group to inform the development of Statutory Guidance on this issue and also to promote the development of pathways for assisting former prisoners to find suitable accommodation.

Annex 3 – Homelessness

The absence of specific reference to mental illness in the category for priority need in section 55(1)(c)(i)

6. The provision at section 55(1)(c) is not intended to change the current law on priority need for assistance with homelessness, but the wording has been changed from the equivalent provision in section 189(1)(c) of the Housing Act 1996. It has been changed for two reasons:
 - (a) to remove language which is now thought to be thought inappropriate; that is, the reference to "mental handicap", and
 - (b) to more clearly express the current legal meaning of section 189(1)(c) of the 1996 Act as developed by case law.

7. The meaning of section 189(1)(c) of the 1996 Act has been considered on a number of occasions by the higher courts and it cannot be fully understood without reference to that case law. That provision says:

"(1) The following have a priority need for accommodation...

 - (c) a person who is vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason....".

8. The case law shows that local housing authorities and applicants for assistance applying section 189(1)(c) in real cases have misdirected themselves on the legal meaning of the provision. One issue which is not clear from the drafting of the section 189(1)(c) is whether or not the meaning of "other special reason" is limited by the preceding words which mention old age, mental illness and handicap and physical disability. In *R v Kensington & Chelsea London Borough Council ex parte Kihara and others* [1997] 29 HLR 147 the court held the following points of law about the interpretation and application of section 59(1)(c) of the Housing Act 1985, from which section 189(1)(c) of the 1996 Act is derived:
 - (c) the *ejusdem generis* ("of the same kind") rule has no application for the purpose of construing "other special reason". Those words in section 59(1)(c) of the Housing Act 1985 constitute a free-standing category which, although to be construed in its context, is not restricted by any notion of physical or mental weakness other than that which is inherent in the word vulnerable itself; though the word "reason" is in the singular, it entitles the housing authority to look at a combination of circumstances;
 - (d) the word "special" indicates that the difficulties faced by the applicant are of an unusual degree of gravity, and are such as to differentiate the applicant from other homeless persons; financial problems by themselves are not capable of amounting to a "special reason" within the meaning of section 59(1), but the applicants in *Kihara* were Asylum seekers, had no capital, no income, were prohibited from obtaining employment, had no family or friends in the country and could not speak English; their circumstances were such that they could be considered to be vulnerable.

9. This is the underlying reason for the focus of section 55(1)(d) of the Bill being the "special reason" rather than particular examples of "special reason" like old age and mental illness as in section 189(1)(c) of the 1996 Act. The policy (and the current law) is that the special reasons for the person's vulnerability are not to be limited to physical or mental weakness. This is why the provision starts with "special reason" and follows that with examples rather than a list intended to limit the generality of "special reason".

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10. The word "mental" does not appear in relation to "illness" because it is intended to indicate that "illness" of any kind is capable of being a "special reason", not just mental illness. The reference to "mental handicap" has been removed altogether and both physical and mental disabilities are covered by the simple reference to "disability".

Clarification on the use of the words “for example” in section 55(1)(c)(i).

11. The use of examples (and the expression "for example") in legislation is quite common (see, for example, Charities Act 2011 section 246, Child Support Act 1991 section 33, Children Leaving Care Act 2000, section 2, Scotland Act 1998 Schedule 5 Part II specific reservations Section A1). There are well over 100 Acts currently in force that use the expression "for example". Examples have also been used in recent Assembly legislation (see Public Audit (Wales) Act 2013 Schedule 1 paragraph 28 and section 27 of the Social Services and Well-Being (Wales) Bill (as amended at Stage 2)).

12. The use of "for example" in legislation is a helpful use of plain words to indicate that what follows are examples of things included within the ambit of a general category that are not intended to limit the ambit of that general category.

The existing regulation and inspection regime for homeless hostels

13. The Housing (Wales) Bill will link with existing legislation which requires the local authority to satisfy itself that the accommodation it offers under its homelessness duties must be suitable for the applicant and their household. Hostels are covered by this legislation, including the Homelessness (Suitability of Accommodation) (Wales) Order 2006 which sets specific standards for all shared accommodation secured by local authorities under their homelessness duties. These provisions require the authority to consider the suitability of the accommodation in regard to their health, social services, family and other needs, and also whether the accommodation is affordable given the applicant's financial resources.

14. The Code of Guidance on Homelessness and Allocations expects local authorities to inspect all properties used in the discharge of their homelessness duties.

<http://wales.gov.uk/docs/desh/publications/120813allocateaccommodationen.pdf>

15. Rents in hostels are usually made up of a core rent and other charges. The local authority would need to decide whether rents were eligible for housing benefit.

16. Hostels are also subject to the Housing Health and Safety Rating System (provided for by Part 1 of the Housing Act 2004) which can be used by Environmental Health Officers to assess suitability. In most cases, hostels will also be classed as 'houses in multiple occupation' and many will be required to be licensed under Part 2 of the Housing Act 2004

17. The Fire Service also has a role in inspecting the fire safety of hostels.

Annex 3 – Homelessness

A note on reciprocal arrangements between local authorities for housing homeless people.

18. There are no formal reciprocal arrangements in place for the resettlement of homeless persons; the current legislation allows Local Authorities to seek assistance in discharging their homelessness duties through other bodies such as Housing Associations or other Local Authorities. (Section 213 Part VII Housing Act 1996)
19. This provision is included in the Housing (Wales) Bill 2013 under section 78.
20. The request for assistance in discharging homelessness duties normally arises where an applicant does not have a local connection to the area being referred to, or has connection in 2 or more areas and is owed a duty by the Authority they have presented to, but wishes to be transferred to the other Local Authority area.
21. Each case is considered on a case by case basis and the current code of guidance sets out a process for referral and response from the Authority receiving the referral.
22. The example given at the Communities, Equality and Local Government Committee 12 December 2013 was specific to former offenders who may not want to return to their home area as this may put them at risk of re-offending. This example, if supported by other agencies or departments, should be considered by the referring and receiving Authority.
23. The current statutory Code of Guidance states:

“18.38 Other local authorities experiencing less demand for housing may be able to assist a local authority by providing temporary or settled accommodation for homeless and other ‘reasonable preference’ applicants. This could be particularly appropriate in the case of applicants who would be at risk of violence or serious harassment in the district of the local authority to whom they have applied for assistance. Other local authorities may also be able to provide accommodation in cases where the applicant has special housing needs and the other local authority has accommodation available which is appropriate to those needs. Under s.213(1) of the 1996 Act, where one local authority requests another to help them discharge a function under Part 7, the other local authority must co-operate in providing such assistance as is reasonable in the circumstances. Local authorities are encouraged to consider entering into reciprocal and co-operative arrangements under these provisions.”
24. Cases that are subject to Multi-Agency Public Protection Arrangements are dealt with separately. Former prisoners who pose a high risk to the public are managed through a multi agency approach with membership from Police, Social Services, Local Authority Housing Departments, The National Probation Service and other relevant bodies.
25. There will be circumstances where a former offender will not be able to return to their local area either due to victim issues or for their own safety. Once these risks have been identified it may be appropriate to refer the individual to another Local Authority

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area even though they do not have a connection to the Local Authority. These arrangements are normally agreed on a reciprocal agreement and the receiving authority may “swap” a case they are having difficulty resettling with the referring LA. These cases are referred on a case by case basis and the main driver is the management of the former offender and the management of risk.

Annex 4 - Housing Revenue Account Subsidy - Local Authority Borrowing

A breakdown of the housing-related borrowing limit to include the existing borrowing and the new debt fund the buy-out.

1. As part of the agreement, which will enable local authorities to exit the Housing Revenue Account Subsidy (HRAS) system, HM Treasury required a limit to be set for future housing related borrowing. The £1.85 billion borrowing cap that has been agreed at the all Wales level will provide for local authorities to bring their homes up to the Welsh Housing Quality Standard and broadly meet the borrowing requirements as set out in their existing business plans. The table below provides a breakdown of the estimated borrowing cap at the All Wales level, based on the latest information available. These figures will be subject to change.

	£m
LHA's existing borrowing for housing at April 2013	459.41
Estimated new debt that LHAs will be required to take on to fund the HRAS settlement value which will require annual interest payments totalling £40m	919.50
Estimated borrowing headroom	471.09
Borrowing Limit that has been agreed with HM Treasury	1,850.00

2. The distribution of both the HRAS settlement value and the borrowing cap will be developed by an HRAS Reform Project Board and then be subject to detailed consultation with the Welsh Local Government Association and the eleven stock retaining authorities.

Additional Questions Post-Committee

Annex 5 – Private Rented Sector

What consideration was given to making more use of existing selective licensing powers before introducing further legislation in this area?

1. It is my view that the existing powers in the Housing Act 2004 are not sufficient to protect tenants; as selective licensing powers can only be used in certain areas and I want to introduce a fair scheme for the whole private rented sector in Wales.
2. It is not possible to compare the proposal for a registration and licensing scheme in the Housing (Wales) Bill with the selective licensing powers that are in the 2004 Act, as the latter are property based rather than person based.
3. The Housing (Wales) Bill is proposing a light-touch approach to regulating the whole of the private rented sector with an essential training element to ensure all tenants receive good quality housing.

Will the code of practice provided for in section 28 include requirements in relation to Carbon Monoxide detectors and, if so, what will these be?

4. Our approach on carbon monoxide remains based on voluntary action, raising awareness and improving incident reporting.
5. It is possible that information on best practice in relation to carbon monoxide detectors could be included in the best practice part of the code of conduct but the content is still to be determined. However, failure to meet any suggested voluntary standards would not result in the loss of a landlord's licence

Additional points to note:

Registration –

6. 'A further important consideration is that our proposals on landlord registration are intended to provide a light touch approach with no barriers to registration.'. We wanted to ensure there is nothing to stop any landlord registering the properties they own. However that registration will not constitute any status other than being registered and complying with the legislation.
7. Once registered, the owner/landlord can decide whether they wish to manage the properties themselves or to appoint an agent to manage on their behalf. If the decision is to self-manage then the licensing process begins with a Fit and Proper Person test and the requirement to undertake training – which in most cases will involve attending a one day training course. For the sake of clarification, landlords who choose not to manage the properties themselves will not need to be licensed as the obligation will be on the letting or management agent.

Additional Questions Post-Committee

Annex 5 – Private Rented Sector

Number of landlords –

8. In the draft transcript published on the National Assembly for Wales' website, the figure quoted for the number of landlords is incorrect. I understand that this is being corrected, but for clarity I wish to confirm that we estimate that there are between 70,000 and 130,000. This estimate is based on our knowledge of the number of properties in the private rented sector (approx. 183,000) which is then divided by the average number of properties owned by landlords which varies from 1.4 to 3 depending on which organisation you speak to. Interestingly, the Residential Landlords Association recently suggested there were 80,000 landlords in Wales.

Single property landlords –

9. Several Committee members questioned why our proposals will require landlords with only one property to register. I was also asked whether I had any evidence to suggest that these were the worst landlords. I have never suggested that landlords with one property are any worse, or any better, than landlords with multiple properties. Our proposals are built on equity and fairness for all – we are requiring all landlords to register. In this way we ensure that all tenants can expect at least the same standard of management and, at the same time, avoid the situation where less scrupulous landlords with two or three properties try to avoid registration and licensing by “transferring” ownership to family members etc.
10. Any proposal to treat landlords with one property (and, more particularly, the tenants of those landlords) differently from those with larger portfolios (and their tenants) would need to be considered very carefully in the light of Human Rights legislation. At the moment there is no rational argument or strong evidence base to support such a move.
11. I would repeat that I do not think our proposals will prove to be too onerous. The costs will not be high and, once registered, the potential ‘burden’ of attending a one day training course every five years should not be deterrent. Feedback from the existing Landlords Accreditation Wales scheme, which has around 3,000 accredited members, suggest that the vast majority of landlords found the course informative and beneficial.

Additional Questions Post-Committee

Annex 6 – Homelessness

Why have you not included provision in the Bill for the Welsh Ministers to approve homelessness strategies (similar to that provided elsewhere in legislation, e.g. Welsh in Education Strategic Plans required under the School Standards and Organisation (Wales) Act 2013)?

1. We have not included provision in the Housing (Wales) Bill for Welsh Ministers to approve local homelessness strategies. This is because this duty has been in existence since 2003 and local authorities have been planning these services with increasing success since then. This is quite distinct from the position with Gypsy Traveller arrangements.
2. My officials are in regular contact with local authorities, each of whom has prepared an action plan in preparation for the new homelessness legislation, and we will continue to monitor their progress in planning for delivery of homelessness services.

What the term “help to secure” provided in section 56 will mean in practice and how you will ensure that this term is interpreted consistently in each local authority area?

3. The duties to help to secure accommodation lie at the heart of our proposals. We intend it to be a local authority duty to engage on an individual casework basis with the applicant who seeks assistance. Local authorities will need to identify why applicants are at risk of homelessness and how these risks can be addressed. They will also need to work with the applicant to identify options for resolving their housing problem and do everything they reasonably can to help them retain or find accommodation. Examples of the activities that are expected to be involved in this are included in section 50 of the Housing (Wales) Bill.
4. I have established a cross-sector working group to develop statutory guidance on our proposed legislation. This group is currently examining these duties to help and relieve homelessness and will set out clear and detailed guidance on how we expect these duties to be delivered.

Additional Questions Post-Committee

Annex 7 – Standards and Social Housing

Why there is a need to reform local authority rents and how this relates to the abolition of the Housing Revenue Account Subsidy?

1. Currently local housing authorities set their rents in accordance with the local authority guideline rent system, which is an integral part of the Housing Revenue Account Subsidy system.
2. Once the HRAS system is abolished this will mean that the existing local authority guideline rent system will also end and there will be no legislative framework in place to control local housing authority rents.
3. It is necessary to control local housing authority rents as they impact directly on the level of housing benefit claimed. There is potential for Welsh Government budgets to be reduced where the UK Government's welfare costs increase as a consequence of rising local authority rent levels in Wales that are considered disproportionate to that in England.

What are the implications of the provisions on service charges for social housing on the level of service charges for tenants, in particular will this mean an increase in charges for some tenants?

4. The Housing (Wales) Bill will allow Welsh Ministers to set standards for rents and service charges. This will ensure that rents and service charges are charged separately and clearly identified. This will increase transparency for tenants.
5. Currently, both rents and service charges are subject to annual increase. This will continue under the new standard with each local housing authority being responsible for separating rents from service charges, implementing annual increases and considering the impact upon tenants.
6. The Welsh Government has recently announced that it is setting up a task and finish group to develop a framework and guidance for services charges to ensure consistency across both local authority and housing association sectors.

Additional Questions Post-Committee

Annex 8 – Housing Finance & Housing Revenue Account Subsidy

Over what period will local authorities be required to continue to make interest payments on the Housing Revenue Account Subsidy settlement debt?

1. Local authorities are required by HM Treasury to buy themselves out of the HRAS via a lump sum payment and will take on new debt to fund this. The agreement that has been secured with HM Treasury is based on the amount of annual interest payments local authorities will pay in total each year i.e. £40 million. The distribution of the payment will be subject to consultation.
2. The basis of this agreement provides certainty to local authorities as their share of the annual interest will remain constant. The buy-out figure will be determined a short period before the settlement date and will be dependant upon the interest rate applicable at that time. This provides local authorities with the flexibility to fund the settlement value according to their local treasury management requirements and to determine the type and length of loans. We can not pre-judge the loan period as this will be a local decision.
3. The key outcome from this agreement is that all local authorities will be better off in revenue terms than they would have been if the existing Housing Revenue Account Subsidy system remained in place. This is because the amount of interest they will pay each year i.e. £40 million will be lower than the amount of HRAS that is returned to HM Treasury each year under the existing system i.e. £73 million.

Additional information to note:

4. The Housing (Wales) Bill includes the legislative provisions for Welsh Ministers to determine the calculation of the HRAS settlement value for each local authority.
5. The UK Government recently published a draft Wales Bill which includes provisions for limits to be set for housing debt in Wales. Part 3 of the Wales Bill provides for HM Treasury to determine the maximum amount of debt that can be held, in aggregate, by local housing authorities in Wales. The Wales Bill also provides for Welsh Ministers to determine the calculation of housing debt that is to be treated as held by local housing authorities and the maximum amount of debt each local housing authority may hold.

Annex 9 – Additional Information

Part 6 - Co-operative Housing

1. During the Committee meeting I was asked about considering co-operative housing as affordable housing via S106 agreements.
2. I have given this some consideration and on the basis of existing Planning Policy a co-operative housing association is already able to deliver affordable housing on a social rented or intermediate basis. Alongside this co-operative housing associations are also able to, and some have, become RSLs. Therefore S106 agreements would already apply to co-operative housing.
3. Planning Policy Wales (PPW) states that:

"Affordable housing for the purposes of the land use planning system is housing where there are secure mechanisms in place to ensure that it is accessible to those who cannot afford market housing, both on first occupation and for subsequent occupiers."

PPW goes on to add that for schemes that: *"provide for stair-casing to full ownership ... there must be secure arrangements in place to ensure the recycling of capital receipts to provide replacement affordable housing. Affordable Housing includes social rented housing and intermediate housing."*

It also says: *"Affordable housing includes social rented housing owned by local authorities and registered social landlords and intermediate housing where prices or rents are above those of social rent but below market housing prices or rents."*

4. Technical Advice Note 2 - Planning and Affordable Housing (TAN 2), provides more detailed guidance to local planning authorities on the provision of affordable housing. It discusses ways of keeping housing affordable in the future. TAN 2 states:

"An effective way of achieving control over occupancy is to involve a registered social landlord (RSL). An RSL's continuing interest in the property will ensure control over subsequent changes of ownership and occupation."