

# Housing (Wales) Bill

## Evidence to the Communities, Equality and Local Government Committee National Assembly for Wales

January 2014

Dr Bob Smith

School of Planning and Geography

Cardiff University

Email: [SmithR2@cf.ac.uk](mailto:SmithR2@cf.ac.uk)

Tel: 02920 876086

## **1. Introduction**

1.1 Thank you for the invitation to present evidence to the Communities, Equality and Local Government Committee of the National Assembly for Wales for the stage one scrutiny of the Housing (Wales) Bill.

1.2 I am a Senior Lecturer in Housing in the School of Planning and Geography at Cardiff University where I have worked for more than 25 years (initially in the Department of Town Planning at University of Wales Institute of Science and Technology). In total I have more than 30 years' experience of teaching and researching housing policy and practice within the UK, working within a framework of higher education. In addition, I am a corporate member of the Chartered Institute of Housing.

1.3 In preparing this evidence I have had opportunity of consulting appropriate colleagues with regard to specific parts of the Bill. However, whilst acknowledging the valuable inputs of others, the views expressed in this paper (and any errors and misinterpretation) are personal ones and should not be assumed to reflect the views of either Cardiff University or the School of Planning and Geography or any other individual staff.

1.4 The Bill is wide ranging and there is considerable detail across the different parts. In a submission of this nature it is not possible to present a comprehensive critique. Instead, I have elected to highlight those issues which are of personal concern.

## **2. General Comments**

2.1 In general, I am very supportive of the main proposals set out in the Housing (Wales) Bill, and the broad principles which underlie the proposed legislation. Wales' first ever Housing Bill is to be welcomed, as a further opportunity to tailor housing policy in Wales to the requirements and priorities of Wales, although it should not be seen in isolation, but as one part of a programme (or series of programmes) to address many of the housing challenges which the country faces (inadequate housing supply, poor housing conditions, affordability, the needs of particular and often vulnerable groups etc.).

2.2 It will also be of critical importance in seeking to meet the most pressing housing issues that legislative change is accompanied by making every effort to maximise and make best use of the resources available to the housing sector. In the current economic climate many housing organisations (as well as many households in Wales) are facing serious financial challenges.

2.3 Since political devolution in 1999 I believe there has been a strong commitment in Wales to collaborative working, across different sectors and traditional administrative, political, professional and geographic boundaries. This has been strongly evidenced in relation to housing, and there will be an ongoing need for continuing effective joint working, not just in relation to implementing legislative changes but in a broadly shared approach to housing in Wales more generally.

2.4 I would also wish to highlight with respect to housing in Wales the need for good quality information, effective monitoring and independent research to evaluate the impacts and consequences not only of legislative change but also housing policies and housing system interventions more generally, as well as the often changing context in which they take place. There are areas where significant progress has been made in tackling housing problems, but there remain significant gaps in our housing knowledge in Wales (the private rented sector is a good example) and there will be an ongoing need for good quality data and information to ensure not only a good understanding of the key housing issues, but also to judge whether proposed solutions and interventions are working and how best to identify and promote good practice in housing in Wales.

2.5 It will also be important to ensure that the provisions of proposed Housing legislation in Wales are consistent with any proposals for change in other intended related legislation.

2.6 This paper now goes on to consider a number of issues in relation to the main parts of the Bill.

### **3. The Private Rented Sector**

3.1 Over recent decades the long-term decline of the private rented sector has been halted and a degree of political consensus has evolved as to the potential role that the sector might play in meeting housing needs and demands. The available evidence suggests not only a significant growth in the number of households accommodated within the private rented sector (particularly in the last 10 years) but also a growing diversity in terms of the nature of the housing stock within this sector and of the characteristics of the households living in private rented accommodation. However, at a UK level, despite attempts through Government policy to attract increased levels of institutional investment, the indications are of a sector which, although encompassing a variety of different types of landlord (with different investment strategies, economic rationales and managerial attitudes and experiences) is still dominated by individual, often small-scale and in some instances, temporary landlords.

3.2 At one end of the spectrum the private rented sector provides very high quality rented housing, aimed at relatively high income, often highly mobile professional households, for whom the tenure is entirely appropriate at a particular stage in their housing careers. If the sector only provided such accommodation and served just those households with significant economic power in the housing market then the requirement for regulation might be fairly minimal. However, the sector (or at least sub sectors of private renting) provides a wide range of different types and quality of housing (some of it very poor) and serves a variety of housing needs, including in some localities significant numbers of low income and often extremely vulnerable households with relatively little power or choice within the housing system, which suggests a higher level of regulation is required. The key is to achieve an appropriate balance which protects consumers without deterring investment by decent private landlords.

3.3 Given the growth of the private rented sector, the different roles which it plays in local housing markets, the range of households which it accommodates (including significant numbers of vulnerable households) and concerns about some of the challenges evident in the sector (poor conditions in parts of the stock, a small minority of poor landlords etc.) then, in my view, there is a strong argument in favour of introducing a compulsory registration and licensing scheme for all private rented sector landlords and managing agents in Wales. Thus far, councils in Wales have had limited options in terms of ensuring decent standards in the private rented sector and although voluntary licensing and accreditation has been used, available evidence suggests such approaches only capture a small proportion of landlords (and often not those who might be regarded as problematic). Although the make-up of the sector may change, it is likely to remain an important element of the housing market in Wales, not only for those for whom the sector provides a flexible housing option but also for those individuals and families who are unable to access either affordable home ownership or social rented housing. However, it should be

acknowledged that for many households the private rented sector may be either a temporary stop in their housing career and/or a sub-optimal housing choice.

3.4 It seems to me that the proposed scheme strikes an appropriate balance between regulating standards across the sector without placing undue burdens or costs on private landlords. The suggested costs to landlords and managing agents seem modest and the obligations on them (for example, in terms of training) do not seem particularly onerous. Discretionary, selective licensing is unlikely to attract a high proportion of private landlords and is less likely to identify those poor landlords who may be least interested in improving their properties and the services which they provide to tenants. In the absence of a compulsory registration and licensing scheme I believe most private landlords (and their tenants) would remain outside of any regulatory framework, with limited protection for many consumers.

3.5 The Housing (Wales) Bill proposes that individual local authorities should have a duty to maintain an up-to-date register of privately rented properties, private landlords and managing agents, with a single local authority administering the scheme on behalf of all Welsh authorities. This seems a broadly sensible approach, but of course there will be significant local variations across Wales in terms of the nature and extent of private renting. Individual Welsh local authorities will face a variety of challenges, relating to the number, type and nature of private landlords in different geographical locations, levels of demand for private renting (and levels of income, affluence and poverty amongst private tenants), the nature and quality of the private rented stock in their area and in developing relationships and working with landlords and managing agents. Whilst I do not take the view that licensing is likely to damage working relationships, or that identifying and dealing with non-compliant landlords undermines the idea of a mandatory licencing scheme, I do have concerns as to whether there will be sufficient resources across local government in Wales to ensure effective registration and licencing. Whilst the proposed fees may cover the costs of administering the scheme (through a single local authority), it will be vital that there are adequate resources to take enforcement action and that resources are not diverted away from dealing with poor quality privately rented housing.

3.6 At the present time there is a lack of good quality data with regard to the private rented sector in Wales. The proposed registration and licensing scheme has the potential to provide a rich source of information regarding private rented housing in Wales which will enable local authorities to work more effectively with the private rented sector. However, it will be important that there is close working between Welsh Government and individual local authorities (and others) to ensure that the collection of reliable and up-to-date information is undertaken in ways which are as efficient and effective as possible. As I have indicated above, I have some concerns as to the adequacy of resources which will need to be allocated to this work, and it will be important to avoid any unnecessary duplication of effort and to ensure that innovative approaches to identifying privately rented accommodation are shared.

3.7 The introduction of a mandatory licensing scheme is highly likely to identify properties in the private rented sector which are in poor quality and/or poorly managed. Whilst good landlords are those most likely to respond most positively to a licensing and registration scheme (and are probably more likely to belong to professional landlord bodies), the major challenge facing local authorities will be to deal with those who do not comply with the legal requirements, either through ignorance or deliberate avoidance. If local authorities do not have the means of identifying privately rented properties in a systematic manner then enforcement will be reactive and piecemeal.

3.8 Evidence from elsewhere in the UK suggests that effective enforcement of registration is critical if schemes are to enjoy public confidence and that action will need to be taken in relation to unregistered landlords. The Bill outlines a number of approaches which might be taken to encourage compliance (licence number on individual property listings, “rent stopping orders” etc.) which is encouraging. There is also reference in the Bill to a “fit and proper person requirement” (Section 11). It will be important that this is more than just an automatic approval and it might be useful if this could include a Disclosure and Barring Service (DBS) check.

3.9 It is noted that Welsh Ministers may issue a code of practice setting appropriate standards for the management of private rented housing. In doing so, it will be important for the Welsh Government not only to work with representative bodies in Wales (and private sector tenants) but also to draw on positive practice elsewhere in the UK. There has been substantial research undertaken in relation to the private rented sector in relation to England and Scotland and also valuable examples of licensing schemes which have been in operation for a number of years.

3.10 In itself a registration and licensing scheme will not be sufficient to achieve appropriate standards within the private rented sector. There will be an ongoing need for individual local authorities to work with responsible private landlords and their agents and to demonstrate that they are prepared to enforce standards. There will be a need for Government and local authorities to work with “good” landlords and the appropriate representative bodies for the sector to promote positive practice, to identify what might be termed “rogue” landlords and raise overall standards across the sector

3.11 There will also be a need for appropriate publicity to highlight the responsibilities on landlords and agents to register and meet their obligations under the proposed scheme and for tenants to be made aware not only of the duties imposed under the legislation but also action taken against poor landlords and those who do not register.

3.12 I would also suggest that in due course (perhaps after three years) there will need to be an independent evaluation of the scheme to consider whether it is meeting its objectives, to examine its operation and impacts, to consider the views of

local authorities, private landlords and tenants as to its effectiveness (or otherwise) and to reflect on how the scheme might need to be modified.

#### **4. Homelessness**

4.1 The broad framework set out in the Housing (Wales) Bill in relation to proposed changes in homelessness legislation is to be welcomed. The increased emphasis on prevention, the expectation of increased collaborative working and the widening of the safety net beyond those traditionally seen as in priority housing need are all positives. The commitment to end family homelessness in Wales by 2019 is to be commended, as are the proposals to provide greater protection for households with children even where found to be intentionally homeless.

4.2 The continuation of a duty on individual local authorities to undertake periodic reviews of homelessness and to develop their local homelessness strategies is important. However, these need to be linked to wider local strategic responsibilities, not only in relation to meeting housing needs (and the role that different sectors might play) but also in terms of social service provision, health and well-being and community development.

4.3 The Housing (Wales) Bill acknowledges the role which the private rented sector will be expected to play in both preventing and addressing homelessness, with local authorities using the private rented sector to discharge some of their statutory homelessness duties. Given the limited availability of social rented sector lettings in many parts of Wales this is almost inevitable. It also reinforces the importance of raising standards across the private rented sector in Wales and the vital roles which a national licensing scheme, effective regulation and positive working relationships between local authorities and private landlords all might play in this respect (see above).

4.4 The increased emphasis on prevention within the legislation is welcome. An analysis of recent Welsh Government homelessness statistics shows that homelessness presentations have been increasing but the proportion of applicants accepted as homeless and in priority need under the current legislation has declined, particularly over the last 12 months. There may be a number of explanations underpinning this trend, but in part it may reflect local authorities in Wales already placing an increasing emphasis on homelessness prevention, no doubt partly in recognition of the growing pressures on housing providers. In the long term for many households prevention may be a more appropriate response and represent a more effective approach to dealing with homelessness and the legislative proposals are likely to reinforce the emphasis which local authorities will place upon preventative work.

4.5 My understanding is that, under the proposed legislation, if homelessness prevention is unsuccessful (or the applicant is already homeless), then local authorities in Wales will have a duty for up to 56 days to take reasonable steps to relieve that homelessness. For those in priority need and deemed unintentionally homeless there will be a duty to secure accommodation (though not necessarily social housing). Thus, despite indications in the earlier White Paper of the intention to dispense with priority need the Welsh Government is retaining this concept, presumably due to resource concerns. It is a little disappointing that the Welsh Government doesn't at this stage feel confident enough to follow the example of Scotland and move towards a more rights based model of homelessness legislation which would enable the concepts of priority need and intentionality to be removed.

4.6 Under the current proposals it is intended to remove the priority need for former prisoners and this gives me cause for concern. Many such people will have significant housing and support needs and very limited housing options, and the proposal to remove them from the priority need category seems a retrograde step. I would be concerned that this could have negative consequences in terms of rough sleeping and also potential impacts on reoffending. It is also not clear to me from reading the Bill whether prisoners will have the right to access prevention services. If the Welsh Government's proposals to remove priority status for prisoners are enacted (and I understand, though do not support, the arguments in favour of removing priority need status) then it will be even more critical that they are able to access prevention services at an early stage, to maximise the prospects of an appropriate package of accommodation and support services being in place when they are released.

4.7 The proposals also allow local authorities the option of applying the intentionality test in relation to priority need applicants. Again, I appreciate the need to prevent abuses of the legislation, and that the Bill does not intend that such a test be applied to families with dependent children, but I would have concerns how such powers might be used to deny access to some of those in the greatest housing need. Whilst striking a balance between needs, rights and responsibilities is a difficult one, the ways in which intentionality is taken into account by different local authorities would need to be closely monitored.

4.8 The Bill also proposes improved co-operation between local authorities and housing associations (Registered Social landlords), strengthening the duties on the latter. In many parts of Wales there are excellent working relationships between councils and housing associations which are helping to address the needs of the homeless, but it will be important to ensure that such collaborative working is effective across all parts of Wales.



## **5. Gypsies and Travellers**

5.1 The proposal to introduce a new statutory duty on Welsh local authorities to provide sites to meet the accommodation needs of Gypsies and Travellers is a positive one.

5.2 The evidence is of a need for additional sites, but in the past it has often been difficult (sometimes in the face of local opposition to such developments) to secure planned development. I would hope that the new duty, combined with strategic and collaborative approaches to the planning and development of authorised sites, will help to address these needs and improve the levels and quality of provision for gypsy and traveller communities.

## **6. Standards for Social Housing**

6.1 The commitment in the Housing (Wales) Bill to consistent standards across different parts of the social housing sector in Wales, for example in relation to standards of accommodation and rents and service charges, is highly desirable.

6.2 As a member of the recent (2012-13) Ministerial Task Group in relation to Welsh Housing Quality Standard (WHQS) I particularly welcome the requirement on all social landlords in Wales to ensure that all their properties meet the standard by 2020, and that it is maintained beyond this date. It will, of course, be important to ensure that there is continued progress by both Welsh Government and individual social landlords (and their representative bodies) to ensure that there are appropriate systems in place to monitor progress and verify achievement. I am aware that research is currently underway in this area.

6.3 The proposal to require social landlords in Wales to comply with a rents and service charges standard (and for compliance to be monitored) is also to be welcomed. There is considerable value in having consistent standards across the social housing sector in Wales (and greater transparency as to how services are costed and paid for). However, it will be important also to draw lessons from looking at service standards across the social housing sector and to encourage the identification and dissemination of positive practice.

## **7. Housing Finance**

7.1 The settlement reached in 2013 between the Welsh Government and the UK Treasury was very important in giving those local authorities in Wales which retain a landlord function the opportunity to ensure that their council housing service will become self-financing. This will give these authorities the opportunity to ensure further progress towards the attainment of Welsh Housing Quality Standard (where

not yet achieved) in relation to their own council stock, and sustaining the standard over the longer term.

7.2 The reform of the Housing Revenue Account Subsidy System (HRASS) will also provide an opportunity for local authorities, if they so choose, to provide new affordable council owned homes, although individual authorities will need to consider whether this will represent the best and most effective use of their resources. For some here will be hard choices to be made between investing in achieving and maintaining WHQS in relation to the existing stock and building new affordable homes. It will be important that the latter does not squeeze out the former.

## **8. Allowing fully mutual housing associations to grant assured tenancies**

8.1 My understanding is that the proposals in this part of the Bill will strengthen the opportunity for fully mutual housing co-operatives to contribute to the provision of additional affordable housing in Wales, encouraging the provision of private loan finance to such organisations.

8.2 The scale of co-operative housing in England and Scotland is significantly greater than in Wales, and the recent research from the Wales Co-operative Centre and Chartered Institute of Housing Cymru has highlighted the potential for an increased contribution from this sector of the housing system, although I do not believe this should be overstated. Nevertheless, the proposals help to remove barriers and offer a potential boost to the development of this form of housing.

## **9. Council Tax on Empty Dwellings**

9.1 In recent times there has been a growing concern with the problem of unnecessarily empty dwellings, which clearly represent a waste of often scarce housing resources. Whilst it is inevitable that there will be a number of dwellings vacant at any given time (a necessary prerequisite if the housing system is to function efficiently, facilitating both residential mobility and the improvement and on occasion redevelopment of existing housing stock), if housing remains unoccupied for no good reason then the existing stock is not being used as effectively as it might be. Official statistics have consistently pointed to a higher level of vacancy (both in terms of numbers of empty dwellings and rates of vacancy) in the private as opposed to social housing sector.

9.2 The Welsh Government's "Houses Into Homes" programme (developed in conjunction with the Welsh Local Government Association and others) appears to be making a valuable contribution to bringing longer-term vacant properties back in to use and it is very much welcomed that this programme is subject to ongoing independent research which will evaluate its impact and effectiveness and identify

the opportunities and constraints in returning long term empty housing to beneficial occupation. Many local authorities in Wales are also taking steps as part of their strategic housing function to identify and encourage the reuse of long-term vacancies.

9.3 However, local authorities also need a range of powers to deal with long-term empty dwellings and the proposal in the Bill to give local authorities in Wales the discretion to increase council tax levies to 150% on residential properties unoccupied and substantially unfurnished for at least 12 months might be a valuable additional tool to tackle the issue of long-term vacant housing. It would be important to monitor the use and impact of such powers and the extent to which their use acts as a disincentive to owners leaving property empty long term, as well as the amount of revenue raised through setting a higher council tax levy. There may then be a case for giving further discretion to allow local authorities to increase the levy on the owners of long-term vacant housing still further over time, where individual dwellings remain empty for several years.

**Bob Smith**

**School of Planning and Geography**

**Cardiff University**

**January 2014**