

National Assembly for Wales
Communities, Equality and
Local Government Committee

Housing (Wales) Bill:
Stage 1 Committee Report

March 2014



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

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Communities, Equality and Local Government Committee

The Committee was established on 22 June 2011 with a remit to examine legislation and hold the Welsh Government to account by scrutinising expenditure, administration and policy matters encompassing: Wales's culture; languages; communities and heritage, including sport and the arts; local government in Wales, including all housing matters; and equality of opportunity for all.

Current Committee membership



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Welsh Labour
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Leighton Andrews
Welsh Labour
Rhondda



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Summary of conclusions and recommendations

The Committee's recommendations to the Minister are listed below, in the order that they appear in this report. Please refer to the relevant pages of the report to see the supporting evidence and conclusions.

Recommendation 1. We recommend that the National Assembly supports the general principles of the Housing (Wales) Bill. (Page 13)

Recommendation 2. We recommend that the Minister amends Part 1 to provide for a phased approach to registration and licensing, with agents becoming registered and licensed before landlords. (Page 22)

Recommendation 3. We recommend that the Minister develops, in conjunction with the private rented sector, a programme of Continuing Professional Development for landlords and agents as an extension of the training required under section 12. (Page 30)

Recommendation 4. We recommend that, subject to existing legislative restrictions on data sharing, the Minister amends the Bill to include provision equivalent to that in section 237 of the Housing Act 2004 in order to allow local housing authorities to share data in relation to Housing Benefit and Council Tax with a view to assisting them in identifying landlords. (Page 33)

Recommendation 5. We recommend that the Minister amends the Bill to replace Rent Stopping Orders with Rent Repayment Orders as a means of enforcing the registration and licensing scheme. (Page 34)

Recommendation 6. We recommend that the Minister amends the Bill to include provisions equivalent to those in the Housing Act 2004 to prevent an unregistered landlord or agent from serving notice under section 21 of the Housing Act 1988 to evict a tenant. (Page 34)

Recommendation 7. We recommend that the Minister amends the Bill to clarify a tenant's legal position in cases where their landlord's or agent's licence or registration has been revoked, or expires and is not renewed by the local housing authority. (Page 34)

Recommendation 8. We recommend that the Minister provides a comprehensive explanation of how the cost of enforcement action against landlords and agents who are unregistered or unlicensed will be met. This should be made available to all Members ahead of Stage 2. (Page 36)

Recommendation 9. We recommend that the code of practice under section 28 sets out the physical standards for private rented housing to which the sector should aspire, with a view to ensuring that all tenants are provided with decent quality accommodation. We believe that these standards should ultimately become statutory requirements when an appropriate legislative opportunity arises. (Page 40)

Recommendation 10. We recommend that the code of practice places an expectation on landlords to carry out periodic checks on electrical safety, install and maintain carbon monoxide detectors and ensure that correct fire precautions are in place. (Page 40)

Recommendation 11. We recommend that where a Housing Health and Safety Rating System inspection has been carried out on a property, the report of the inspection should be made available to any new or prospective tenants. (Page 41)

Recommendation 12. We recommend that the Minister amends the Bill to provide a clearly defined process for dealing with non-compliance with the code of practice, including revocation of a licence where there is repeated failure by a landlord or agent to comply with the code. (Page 41)

Recommendation 13. Given that enforcement arrangements will, in part, rely on tenants to report cases of non-compliance, we believe it is important that they have a full understanding of the standards they can expect from their landlord or agent and the mechanisms to complain or seek redress. We recommend that the Minister makes provision in the code for this. (Page 41)

Recommendation 14. We recommend that the Minister publishes the draft code of practice under section 28 before the Bill completes its passage through the Assembly in order to aid the scrutiny process. (Page 41)

Recommendation 15. We recommend that the Minister amends the Bill to make provision for the integration of homelessness reviews and strategies within each local authority area's Single Integrated Plan. (Page 47)

Recommendation 16. We recommend that guidance produced in relation to section 51 should set out clearly the factors that local housing authorities should take into account when "having regard to the need to make best use of the authorities resources" in helping to secure suitable accommodation for an applicant. We believe this will ensure greater clarity for applicants and consistency of application by authorities. (Page 50)

Recommendation 17. We recommend that the Minister amends the Bill to make provision for local authority housing officers to undergo accredited training in order to assist them in meeting the challenges of effective implementation of Part 2 of the Bill. (Page 51)

Recommendation 18. We recommend that the Minister amends section 48 to reflect his intention that local housing authorities will not be required to carry out a full assessment when an applicant first presents as homeless or is threatened with homelessness. (Page 52)

Recommendation 19. We recommend that the Minister amends the Bill to include the current test for vulnerability (the Pereira test) for the purpose of determining whether a person is “vulnerable” under section 55. (Page 55)

Recommendation 20. We recommend that the Minister amends section 55(1)(c)(i) of the Bill to include reference to physical or mental illness, and learning disability. Two members of the Committee believe that the term ‘learning disability’ should encompass learning difficulty. (Page 55)

Recommendation 21. We recommend that the Minister reports back to the Committee in due course about the feasibility of phasing out priority need status. (Page 56)

Recommendation 22. We recommend that the Minister amends the Bill to make provision for a 90-day homelessness prevention period for prisoners. (Page 60)

Recommendation 23. We recommend that the Minister amends section 59(4) to provide for any offer of an assured short-hold tenancy made by a private landlord to an applicant to be for a minimum fixed term of at least 12 months. Two members of the Committee do not support this view. (Page 64)

Recommendation 24. We recommend that the guidance under Part 2 of the Bill makes clear provision about the support that should be provided to homeless applicants entering private rented accommodation, as well as to their landlords, in order to enable both parties to understand their respective rights and responsibilities. (Page 64)

Recommendation 25. We recommend that the guidance under Part 2 of the Bill should set out an expectation of the standards of accommodation that should be met in order for a local authority to discharge its

homelessness duty into the private rented sector. We refer the Minister to recommendation 9. (Page 64)

Recommendation 26. We recommend that the Minister amends the Bill to make provision requiring a local housing authority to publish a notice of its decision not to disregard intentionality for a particular category or categories of person. Such a notice should include an explanation of the authority's decision. (Page 67)

Recommendation 27. We believe that the Minister should set a date for the removal of the intentionality test and we recommend that he makes provision for this on the face of the Bill. Two members of the Committee do not support this view. (Page 67)

Recommendation 28. We recommend that the Minister amends section 58 of the Bill to include 2019 as the commencement date for the provision to place a duty on local housing authorities to secure accommodation for intentionally homeless households with children. (Page 70)

Recommendation 29. We recommend that the Minister amends the Bill to give discretion to local housing authorities to make an offer of accommodation under section 58(3)(d)(i) on more than one occasion within a five-year period, subject to appropriate support being provided. (Page 70)

Recommendation 30. We recommend that the Minister clarifies his statement that the threshold to invoke the failure to co-operate provision in section 62 will be "high" and, in particular, explains what this will mean in practice. (Page 72)

Recommendation 31. We recommend that the Minister amends the Bill to enable the list of bodies required to co-operate with local authorities (section 78(5)) to be amended by order. We believe that such provision would contribute to the future-proofing of the Bill. (Page 76)

Recommendation 32. We recommend that the Minister amends section 84(2) to require local housing authorities to consult directly with Gypsy and Traveller communities when carrying out an assessment of accommodation needs. (Page 83)

Recommendation 33. We recommend that guidance issued under section 89 should fully address concerns about the effectiveness of the current needs assessment process in relation to accommodation for Gypsies and

Travellers and the extent to which these assessments accurately reflect site provision and unmet need. (Page 83)

Recommendation 34. We recommend that guidance under section 89 should also provide for authorities to consider working on a regional basis when carrying out assessments. (Page 83)

Recommendation 35. We recommend that the Minister amends the Bill to provide for any standards set under section 94 to be specified in regulations and subject to formal approval by the Assembly. (Page 87)

Recommendation 36. We recommend that tenants should be entitled to more than seven days' notice prior to any inspection of their home and that the Bill should be amended to make provision for this. (Page 88)

Recommendation 37. We recommend that the Minister continues to engage with the WLGA and the 11 local authorities with housing stock regarding detailed arrangements for the buy-out from the Housing Revenue Account subsidy system, and ensures that local authorities are clear about the impact of Part 5 of the Bill for them. (Page 90)

Recommendation 38. We recommend that the Minister ensures the forthcoming Renting Homes (Wales) Bill is used as an opportunity to address concerns of stakeholders, including lenders, about barriers to the development of co-operative housing. In this way, the Renting Homes (Wales) Bill could contribute towards a more coherent legislative framework for the delivery of co-operative housing. (Page 93)

Recommendation 39. We recommend that the Minister adopts an incremental approach to additional council tax charges, starting with an additional 50 per cent and increasing over time. (Page 99)

Recommendation 40. The majority of the Committee recommends that the Minister gives consideration to making provision for local authorities to be able to charge additional council tax in respect of second homes. Two members of the Committee do not agree. (Page 99)

1. Introduction

1. On 18 November 2013, the Minister for Housing and Regeneration, Carl Sargeant AM ('the Minister'), introduced the Housing (Wales) Bill¹ ('the Bill') and accompanying Explanatory Memorandum.² The Minister made a statement³ in plenary the following day.

2. At its meeting on 5 November 2013, the National Assembly's Business Committee agreed to refer the Bill to the Communities, Equality and Local Government Committee ('the Committee') for consideration of the general principles (Stage 1), in accordance with Standing Order 26.9. The Business Committee agreed that the Committee should report to the Assembly by 21 March 2014.

Terms of scrutiny

3. The Committee agreed the following framework within which to scrutinise the general principles of the Bill:

To consider:

- (i) the general principles of the Housing (Wales) Bill and the need for legislation in the following areas:
 - a compulsory registration and licensing scheme for all private rented sector landlords and letting and management agents;
 - reform of homelessness law, including placing a stronger duty on local authorities to prevent homelessness and allowing them to use suitable accommodation in the private sector;
 - a duty on local authorities to provide sites for Gypsies and Travellers where a need has been identified;
 - standards for local authorities on rents, service charges and quality of accommodation;
 - reform the Housing Revenue Account subsidy system;

¹ Housing (Wales) Bill, available at: www.assemblywales.org/bus-home/bus-business-fourth-assembly-laid-docs.htm?act=dis&id=251740&ds=11/2013

² Housing (Wales) Bill, Explanatory Memorandum, available at: www.assemblywales.org/bus-home/bus-business-fourth-assembly-laid-docs.htm?act=dis&id=251741&ds=11/2013

³ Record of Proceedings (RoP), 27 November 2012, available at: www.assemblywales.org/docs/rop_xml/131119_plenary_bilingual.xml#111007 (NB: unless otherwise stated, subsequent references in this report to RoP refer to the proceedings of the Communities, Equality and Local Government Committee)

- the power for local authorities to charge more than the standard rate of council tax on homes empty for over a year;
 - the provision of housing by Co-operative Housing Associations;
 - amendments to the Mobile Home (Wales) Act 2013.
- (ii) any potential barriers to the implementation of these provisions and whether the Bill takes account of them;
- (iii) whether there are any unintended consequences arising from the Bill;
- (iv) the financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum (the Regulatory Impact Assessment, which estimates the costs and benefits of implementation of the Bill));
- (v) the appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum, which contains a table summarising the powers for Welsh Ministers to make subordinate legislation).

The Committee's approach

4. The Committee issued a consultation and invited key stakeholders to submit written evidence to inform the Committee's work. A list of the consultation responses is attached at Annexe 1.

5. The Committee took oral evidence from a number of witnesses. The schedule of oral evidence sessions is attached at Annexe 2.

6. The following report represents the conclusions and recommendations the Committee has reached based on the evidence received during the course of its work.

7. This report does not comment on all sections of the Bill. Where no comment is offered on a particular section, it can be assumed that the Committee is content with the provisions as they stand within the Bill as currently drafted.

8. The Committee would like to thank all those who have contributed.

2. General principles and need for legislation

9. Overall, the majority of respondents broadly welcomed the policy intentions behind the Bill and recognised its potential for delivering improvements in a number of priority areas for housing, including the regulation of the private rented sector and the prevention and alleviation of homelessness.

10. To illustrate this, Shelter Cymru said it was “highly supportive of the overall aims of the Bill”. It went on:

“We feel that the Welsh Government is moving in the right direction in terms of meeting the key housing challenges of supply, quality, affordability and homelessness. Although we would like certain elements of the Bill to go further [...] our view is that the Bill as currently drafted still stands to make a positive difference, particularly to those most in need of help to find secure, affordable housing.”⁴

11. However, all those who submitted evidence raised specific concerns about individual Parts of the Bill, or provisions within those Parts. These matters are dealt with in the subsequent chapters of this report.

12. A small number of respondents, including Tai Pawb and the Older People’s Commissioner, commented on the Equality Impact Assessments (EIAs) undertaken in preparation for the introduction of the Bill, and expressed concerns that some of these assessments were not sufficiently robust and did not contain adequate data and evidence of engagement.⁵

13. In addition, others commented on matters that were not directly covered by the Bill. On this point, a number of respondents, including Persimmon Homes,⁶ noted that the Bill does not address issues relating to housing supply.

14. There was criticism from a small number of respondents, including Cymdeithas yr Iaith Gymraeg⁷, that the Bill does not adequately address the decline in the number of Welsh speaking communities by ensuring access to affordable housing for local people within those communities.

⁴ Written evidence, HB16

⁵ Written evidence, HB25, HB57

⁶ Written evidence, HB01

⁷ Written evidence, HB51

15. A number of respondents made references to both the forthcoming Planning Bill and Renting Homes Bill (expected in 2015) and called for clear links between those pieces of legislation and the Housing Bill.

Evidence from the Minister

16. Introducing the Bill, the Minister said:

“proportionate and well-thought out legislation can make a real difference to people’s lives and the Bill fits that aim.

“The proposals in it complement the broader policy action that we are taking to meet people’s housing needs and the ambitious targets that we have set for the delivery of new affordable homes and for bringing empty homes back into use, which has been backed by an investment of £20 million by this Welsh Government since 2012-13.”⁸

Our view

17. We acknowledge the broad support in evidence for the general principles of the Bill and its potential to assist the Welsh Government in achieving its strategic priorities for housing.

18. We note that the Bill does not in itself address the current lack of supply of new homes. However, we acknowledge that this was not its purpose. Notwithstanding the importance of dealing with under-supply in the longer term, we believe the Bill, if successfully implemented, could provide wider social and health related benefits.

19. We believe that the Bill should not be viewed in isolation but as one of a number of legislative and policy measures to be taken by the Welsh Government to help meet its strategic priorities for housing, and to improve access to decent and affordable homes, including the forthcoming Renting Homes and Planning Bills.

We recommend that the National Assembly supports the general principles of the Housing (Wales) Bill.

⁸ Statement by the Minister for Housing and Regeneration: Introduction of the Housing (Wales) Bill: Record of Proceedings, plenary, 19 November 2013

3. Part 1 – Regulation of private rented housing

Registration and licensing

Background

20. Part 1 of the Bill provides for the mandatory registration and licensing of landlords and agents in the private rented sector. Registration and licensing requirements will apply to landlords and agents who let or manage “rental properties” as defined in section 2.

21. Section 6 provides for local housing authorities to maintain a register in relation to rental properties. The public can have access to certain information on the register if they can provide the address of a rental property that is on the register.

Evidence from respondents

22. There was widespread support in evidence for the introduction of a mandatory registration and licensing scheme for landlords and agents in the private rented sector. The majority of respondents agreed that the proposed scheme would assist in improving standards within the sector, provide information on landlords, and raise awareness of landlords’ and tenants’ rights and responsibilities.

23. While those representing landlords supported the licensing of agents, they expressed serious reservations about the registration and licensing of landlords.⁹ The Country Land and Business Association (CLA) Wales opposed Part 1 in its entirety.¹⁰

24. A number of respondents, including the Welsh Local Government Association (WLGA), Community Housing Cymru (CHC) Group, Shelter Cymru and academics, highlighted the rapid growth of the private rented sector in Wales in recent years and the increasing importance of the sector in meeting housing need in Wales.¹¹ Respondents reported that a lack of social housing, combined with economic factors and welfare reform, has led to the sector housing types of tenants not traditionally living in private rented accommodation, including vulnerable people, families with dependent

⁹ Written evidence, HB22, HB60

¹⁰ Written evidence, HB67

¹¹ Written evidence, HB06, HB10, HB16, HB58, HB65

children and older people.¹² In view of this, it was seen as particularly important to ensure that the sector was fit for purpose.

25. It was widely accepted amongst respondents that the private rented sector has a poor public image. While the majority of landlords provide high quality accommodation and good service, evidence suggests that significant bad practice and poor quality accommodation also exist. Those who supported a mandatory scheme suggested that it would go some way towards addressing these issues.

26. To illustrate the above point, Shelter Cymru reported that problems in the sector make up a disproportionate amount of its casework with the types of problems identified including “harassment and illegal eviction; dampness and disrepair; affordability and rent increases; and disputes over tenancy terms”. It acknowledged that often problems arise for tenants “because of basic ignorance about their [landlord’s] legal responsibilities”, which the proposed mandatory scheme would help address.¹³

27. Another reason provided in support of the proposed scheme was the need to address the lack of availability of good quality data on the private rented sector. This was a particular issue for Victoria Hiscocks of Cardiff Metropolitan University, who suggested that a mandatory registration scheme will “improve our knowledge of the sector which hitherto has been significantly underdeveloped”.¹⁴ Local authorities also welcomed the opportunity to establish a robust information base on the sector.¹⁵

28. On a related point, Cardiff Council suggested that the scheme would assist local housing authorities “to plan their improvement activities” more strategically.¹⁶

29. Tenant representatives emphasised the need to address the lack of understanding of landlords’ and tenants’ rights and responsibilities. TPAS Cymru supported the proposals for a mandatory scheme “to protect the interests and well-being of tenants”.¹⁷ Similar views were expressed by the National Union of Students (NUS) Wales, Welsh Tenants and Age Cymru.¹⁸

¹² Written evidence, HB16, HB25

¹³ Written evidence, HB16

¹⁴ Written evidence, HB65

¹⁵ Written evidence, HB37 HB06, HB50

¹⁶ Written evidence, HB37

¹⁷ Written evidence, HB27

¹⁸ Written evidence, HB21, HB39, HB45

30. In dismissing a voluntary approach to registration and licensing, Shelter Cymru reported that this had been “tried extensively”, but had proved unsuccessful in reaching large numbers of landlords. It explained that the existing Landlord Accreditation Wales scheme (LAWs), administered by Cardiff Council, accounts for approximately three per cent of all landlords, which was “too low to make a substantial impact on standards”.¹⁹ Cardiff Council itself highlighted the constraints of the LAWs, namely “its size and take up”, and uncertainty over future funding of the scheme. As such, it supported the introduction of a mandatory scheme, while acknowledging “there is much work to be done to ensure...its effective implementation”.²⁰

31. In contrast, Shelter Cymru reported positive outcomes from the compulsory licensing scheme in Newham²¹, with early indications of “high levels of compliance with the scheme and better enforcement against ‘rogue’ landlords”.²²

32. Shelter Cymru acknowledged that the Newham scheme had been introduced through local housing authorities’ existing powers in respect of selective licensing. However, Shelter highlighted what it believed to be the limitations of selective licensing, including the need for an authority “to demonstrate significant issues in terms of social behaviour” and the level of resources required “to administer schemes locally”.²³

33. Several respondents believed that improving standards in, and knowledge about, the private rented sector was crucial in view of the provisions in Part 2, which will enable local housing authorities to discharge their homelessness duties to the sector. In this context, Cymorth Cymru stated:

“Without appropriate regulation of landlords, greater use of the PRS as a means of accommodating vulnerable individuals is reckless and may lead to the exploitation of some of Wales’ most vulnerable citizens and further exacerbate homelessness in Wales.”²⁴

34. Whilst the Residential Landlord Association (RLA) “fully supported” the licensing of agents, it raised serious concerns about the mandatory

¹⁹ Written evidence, HB16

²⁰ Written evidence, HB37

²¹ The London Borough of Newham introduced compulsory licensing in January 2013 with the aim of tackling poor property and tenancy management and associated anti-social behaviour.

²² Written evidence, HB16

²³ RoP, para 39, 23 January 2014

²⁴ Written evidence, HB19

registration and licensing of landlords. According to the RLA, the proposal was “counter-intuitive” and “will prove ineffective in tackling ignorant and bad landlords”, whilst “imposing yet another regulatory burden and additional costs on reputable landlords who already abide by the law”.²⁵ Similar views were expressed by the National Landlords Association (NLA).²⁶

35. The RLA believed that local housing authorities already have the necessary powers to address problems in the private rented sector, but were reluctant to exercise these powers, possibly because of financial constraints.²⁷ As an alternative to a mandatory scheme for landlords, it proposed a system of “co-regulation”, with a voluntary industry-run accreditation scheme, including property inspections and sanctions. The RLA believed that this would enable authorities to focus efforts and resources on landlords operating outside the scheme “who are most likely to operate poor standards”.²⁸

36. According to the RLA, the Leeds Landlord Accreditation Scheme (LLAS) run by the RLA on behalf of Leeds City Council “demonstrates that a voluntary landlord accreditation scheme can work, and can work well”.²⁹ However, evidence provided by the Council stated:

“The main barrier to promoting self-regulation currently is the lack of legislation in England to support such proposals. There is not even a requirement for landlords or agents to be registered and this does not help regulate or monitor the market effectively.”³⁰

37. Other concerns raised about mandatory registration and licensing of landlords raised by respondents centred on the negative financial impact on the sector of further regulation and the subsequent effect on the supply of private rented housing.

38. On the issue of supply, the Council of Mortgage Lenders (CML) raised concern that the proposed scheme “could suppress lending and discourage landlords, who might regard the regime in Wales as less favourable to their business”, which could deter investment in the housing market.³¹ The RLA

²⁵ Written evidence, HB22

²⁶ Written evidence, HB60

²⁷ Residential Landlords Association, 23 January 2014

²⁸ *ibid.*

²⁹ Written evidence, HB22

³⁰ Briefing paper – Leeds Landlord Accreditation Scheme (LLAS), submitted by Leeds City Council

³¹ Written evidence, HB04

and the Association of Letting and Management Agents (ALMA) expressed similar views.³²

39. In opposing the mandatory registration and licensing of landlords, the CLA Wales explained that the Land Registry could be used for the purpose of establishing ownership of property and that selective licensing was “a simpler way to target criminal landlords”.³³ It reported that “Scotland has already reverted to Selective Licensing because Mandatory Landlord registration was found to be too burdensome and expensive”.³⁴

40. In relation to England, we understand that an impact assessment of a national register for landlords carried out in 2009 by the Department for Communities and Local Government found that full licensing of properties for all landlords would be “onerous, difficult to enforce and costly”.³⁵

41. Regardless of their overall stance on the proposed registration and licensing scheme, the majority of respondents raised concerns about, or sought clarification on specific provisions, implementation and the financial implications of Part 1. These are considered in more detail later in this Chapter.

Evidence from the Minister

42. The Minister explained that he had taken into account the experiences of the scheme in Scotland and other schemes across the UK when developing proposals for the scheme in Wales. He stated that assessments of other schemes had indicated that “the light touch or voluntary approach to registration just does not work”.³⁶

43. In his letter of 14 January, he outlined the differences between the registration and licensing scheme in Scotland and the proposed scheme in Wales. The Minister explained that, amongst other things, the proposed scheme in Wales will be “a national scheme thus the same rules will apply irrespective of location and local authorities will act collaboratively, sharing information”. Although the Scottish scheme includes a central register “each local authority applies their own rules”. He went on to explain that the Bill provides “greater powers of enforcement available from the start” whereas

³² Written evidence, HB22, HB13

³³ Written evidence, HB67

³⁴ *ibid.*

³⁵ Available here:

<http://webarchive.nationalarchives.gov.uk/20120919132719/www.communities.gov.uk/documents/housing/pdf/1243567.pdf>

³⁶ RoP, para 25, 12 December 2013

Scotland “have used a light-touch and increasing levels of fines post introduction as the scheme has embedded and evidence suggests this has caused confusion”. He also stated that “we will have a mandatory, national training element with a code of practice attached” whereas “in Scotland, training is voluntary and varies between local authorities”.³⁷ In light of these differences, it was clear that the Minister did not accept the experience in Scotland as an argument to oppose the proposed scheme in Wales.

44. The Minister believed that the success of the Leeds Landlord Accreditation Scheme, which had 200 landlords registered, had been limited because it was a voluntary scheme. He reported that Leeds City Council had advised him that it would prefer the scheme to be mandatory, but that funding issues had prevented this.³⁸

45. In commenting on the suggestion that the aims of Part 1 could be met through more extensive use of local housing authorities’ existing selective licensing powers, the Minister stated:

“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.”³⁹

46. He went on to suggest that the proposals in Part 1 are not comparable with selective licensing powers and emphasised the “essential training element to ensure all tenants receive good quality housing”.⁴⁰

Our view

47. With the exception of two Members, we support the introduction of a mandatory registration and licensing scheme for landlords and agents.

48. We recognise the broad support in evidence for the introduction of the proposed mandatory registration and licensing scheme. The evidence we received suggests a growing sector with an increasingly important role to play in helping meet housing needs in Wales. It is clear that there is widespread variation in standards of management and accommodation across the sector.

³⁷ Letter from the Minister for Housing and Regeneration, 14 January 2014

³⁸ RoP, para 16, 6 February 2014

³⁹ Letter from the Minister for Housing and Regeneration, 14 January 2014

⁴⁰ *ibid.*

49. On this basis, we believe that more could and should be done to ensure an acceptable standard of accommodation for all tenants, regardless from whom they rent. Wales cannot afford to allow the housing sector to shy away from its responsibilities, particularly given the likelihood that the private rented sector will be relied upon increasingly to house some of the most vulnerable people within our communities under proposals on homelessness in Part 2.

50. We acknowledge the existing powers of local housing authorities in respect of selective licensing. While these serve a specific purpose, we do not believe they will achieve the stated aims of Part 1 to improve the overall standards across the sector throughout the whole of Wales. The evidence we received suggests that, if successful, the scheme will enhance our understanding of the sector, which will, in turn, improve local housing authorities' ability to plan strategically to meet housing needs within its area, and to develop stronger partnerships with the sector to improve standards.

51. While the Landlord Accreditation Wales scheme (LAWs) has achieved some positive outcomes, we understand the limitations associated with it, and with other voluntary schemes on which we have received evidence. The proposed scheme provided in Part 1 will build on the work of LAWs with the additional advantage of a legislative mandate.

52. We recognise that the successful implementation of the scheme will not be without challenge and have identified a number of issues that we believe require further consideration and, in some cases, will require amendment to the provisions. These are covered in the remainder of this Chapter.

Approach to implementation

Background

53. The requirement on landlords to be registered and become licensed is provided in section 3. The corresponding requirement on agents is provided in section 5. The provisions will come into force following a Commencement Order made by the Welsh Ministers.

Evidence from respondents

54. Several respondents suggested a phased approach to the registration and licensing scheme, with the registration and licensing of agents being introduced in advance of landlords.

55. In supporting a phased approach, Cardiff Council, who will be administering the proposed scheme, suggested “tackling the larger proportion of landlords once the new administrative regime has been embedded”.⁴¹ Similar views were expressed by the Chartered Institute of Housing (CIH) Cymru and Victoria Hiscocks.⁴²

56. The RLA raised concern that the proposal in relation to landlords “essentially encourages good landlords to pass the management of their properties into the hands of likely poorly trained agents”. To help safeguard against this, it suggested that the requirements on agents should be introduced two years in advance of those for landlords.⁴³

57. The RLA also suggested delaying the introduction of the mandatory registration and licensing of landlords until the potential “significant impact” on landlords of the Renting Homes (Wales) Bill is fully understood.⁴⁴

58. In contrast to the above, Welsh Tenants believed that delaying the introduction of the scheme for landlords could “seriously impact on the success” of the Bill and of the Renting (Homes) Wales Bill.⁴⁵ It suggested that a phased approach would be less cost effective because of duplication in the marketing of the scheme.⁴⁶

Evidence from the Minister

59. The Minister explained that, in practice, agents will be required to register in advance of landlords and that this “will come through as a natural progression”.⁴⁷ He stated:

“Letting agents will not be able to take on any landlords until they are registered and licensed, so they will not be able to operate unless they have complied.”⁴⁸

60. The Minister agreed to consider providing a “phased approach” to implementation of the mandatory registration and licensing scheme, subject to any recommendation the Committee may wish to make to this effect.⁴⁹

⁴¹ Written evidence, HB37

⁴² Written evidence, HB05, HB65

⁴³ Written evidence, HB22

⁴⁴ *ibid.*

⁴⁵ Written evidence, HB39

⁴⁶ RoP, para 18, 29 January 2014

⁴⁷ RoP, para 129, 12 December 2013

⁴⁸ RoP, para 133, 12 December 2013

⁴⁹ RoP, para 134, 12 December 2013

Our view

61. Throughout our consideration of Part 1, much of the focus has been on addressing poor landlord practices in order to drive up standards in the sector. However, it is important to recognise that agents play an equally important role. We cannot predict with any degree of certainty the number of landlords who will be unwilling or unable to become licensed. It is possible that the demand for agents' services will increase. As such, we must be confident that they are suitably equipped to help deliver improvement.

62. While we note the Minister's assertion that, by design, agents will need to register and become licensed before landlords, we are unclear about how the Bill explicitly provides for this. It will be important to ensure that effective administrative arrangements are in place to manage the volume of applications from landlords, based on the estimates provided by the Minister.

We recommend that the Minister amends Part 1 to provide for a phased approach to registration and licensing, with agents becoming registered and licensed before landlords.

Landlord's requirement to be registered and licensed: exemptions

Background

63. Section 4 provides for exemptions from the requirement on landlords to be registered and licensed. The proposed exemptions relate to the application process and transfer of property, as opposed to exempting specific categories of landlords from the scheme.

64. Section 4(2) provides that a landlord will not be required to be licensed if he or she has appointed a licensed agent or responsible person to advertise, let or manage the property on behalf of the landlord.

Evidence from respondents

65. Cardiff Council was the only respondent to directly raise the matter of exemptions. It suggested that consideration should be given to specific exemptions to make clear that the requirements did not apply to "unintended landlords", such as educational establishments and resident landlords with lodgers.⁵⁰

⁵⁰ Written evidence, HB37

66. While the issue of exemptions was not raised more generally, we sought to identify whether it was reasonable and appropriate for the requirement to be registered and licensed to apply to all landlords, irrespective of the size of their portfolios. We also considered whether unintended or ‘accidental’ landlords who rent to family members should be subject to the requirements under Part 1.

67. There was general consensus among respondents that all landlords, irrespective of portfolio size or type, should be subject to the requirements in Part 1. Notwithstanding this, a few respondents highlighted the need for an appropriate balance to ensure that the new regulatory arrangements do not deter small-scale landlords from entering the market.

68. Several respondents referred to the significant proportion of small-scale landlords operating within the private rented sector. This appeared to be based on the findings of the Rugg Review, which was undertaken in England. It reported that over 70 per cent of properties were owned by individuals or couples, with 43 per cent of these owning just one property and 27 per cent owning two properties.⁵¹ While respondents acknowledged that no comparable data was available in Wales, there was a general assumption that the sector in Wales is not dissimilar in nature.

69. Some respondents, including the WLGA⁵² and Shelter Cymru⁵³, referred to anecdotal evidence that poorer management practices and physical standards of accommodation were often associated with properties owned by small-scale landlords. This could be attributed, in part, to a general lack of understanding of their legal responsibilities.

70. Linked to the above, the Chartered Institute of Housing Cymru and Cymorth Cymru highlighted the importance of equal rights for tenants across the sector.⁵⁴

Evidence from the Minister

71. The Minister believed strongly that the requirements to be registered and licensed should apply to all landlords. He stated:

“Our proposals are built on equity and fairness for all – we are requiring all landlords to register. In this way we ensure that all

⁵¹ Rugg, Dr Julie and Rhodes, Dr David, *The Private Rented Sector: its potential and contribution*, 2008

⁵² Written evidence, HB06

⁵³ Written evidence, HB16

⁵⁴ Written evidence HB05, HB19

tenants can expect at least the same standard of management and, at the same time.

“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.”⁵⁵

72. On the issue of unintended or accidental landlords, in particular those who rent to family members, the Minister stated:

“I find it hard to distinguish between an informal rental and a formal rental. If there is a process where an individual pays money to another individual, that is a formal relationship whether they are family members or not, so I believe that that person has landlord status...We want to be clear in the legislation that you are either a landlord or you are not a landlord, and I think that already presents itself.”⁵⁶

73. The Minister acknowledged that identifying small-scale and accidental landlords would be a “challenge”, but was committed to ensuring that the registration and licensing process “becomes the norm and people recognise that this is what you do when you become a landlord”.⁵⁷

Our view

74. We know from the evidence received that the private rented sector is dominated by small-scale landlords, some of which are ‘unintended’ or ‘accidental’ landlords. We also know that some of the poorest housing stock can be found in the sector, with anecdotal evidence suggesting poorer standards of practice and accommodation in properties owned by landlords with just one or two properties. As such, it is clear that exempting small-scale landlords from the requirements to register and become licensed would undermine the effectiveness of the scheme.

75. We note the concerns of some respondents that the requirement to become licensed may appear off-putting to small-scale and accidental landlords. However, we are satisfied that the provisions in section 4(2)

⁵⁵ Letter from the Minister for Housing and Regeneration, 14 January 2014

⁵⁶ RoP, para 9, 6 February 2014

⁵⁷ RoP, para 13, 6 February 2014

(which allow a landlord to appoint a licensed agent to manage their property where they are not licensed themselves) provide an appropriate route for these types of landlords who may be unwilling or unable to become licensed to continue to operate.

76. We believe that exempting individuals who are landlords only by virtue of renting their property to family members would lead to undesirable complexities and bureaucracy within the system.

77. In view of the above, we are content that the mandatory registration and licensing scheme will apply to all landlords irrespective of type or portfolio size.

Licensing

Background

78. Any person who has applied to the local housing authority to be registered may also apply for a licence. To become licensed, a landlord or agent must be a “fit and proper person” (section 11) and must have completed relevant training (section 12).

79. Section 14 provides for all licences to be subject to a condition that the licence holder complies with any approved code of practice (section 28). This section also provides authorities with the power to set further licence conditions as they deem appropriate.

Licence conditions

Evidence from respondents

80. The RLA raised concerns about the extent of the powers for local housing authorities to impose further conditions on a licence holder over and above the requirement to comply with the code of practice. It believed that the powers could enable authorities “to introduce requirements through a non-legislative route that could become onerous, costly and difficult for landlords to comply with”. As such, the RLA called for “very strict restraints on what could be introduced through licensing”.⁵⁸

Evidence from the Minister

81. The Minister explained that the power for local housing authorities to impose additional conditions provided them with “flexibility” to enable them

⁵⁸ Written evidence, HB22

to address localised problems, for example, increased security for properties in an area with high burglary rates.⁵⁹

82. The Minister suggested there would be an expectation on local housing authorities to engage with landlords and agents before imposing further licence conditions on them under the powers contained in section 14(2).⁶⁰

83. In addition, the Minister's official explained that the provisions in Part 1 provide landlords and agents with a right to appeal to a residential property tribunal against the imposition by an authority of additional licence conditions.

Our view

84. We note the concern raised by landlord representatives about the extent of the powers for local housing authorities provided to impose additional licence conditions. However, we accept the Minister's rationale for the power and recognise that the Bill provides landlords and agents with a right to appeal against any additional conditions, should they wish. As such, we are content with the powers for local housing authorities provided in section 14(2).

Fit and proper person requirement

Background

85. In order to become licensed, a landlord or agent must be deemed a "fit and proper person" under the terms of section 11.

86. When considering whether an applicant for a licence is a "fit and proper person", an authority must consider whether he or she has committed specific offences, practised unlawful discrimination or harassment against a person, or has contravened any provision of housing, landlord or tenancy law. An authority must also consider whether the actions of a person associated with, or formerly associated with, the applicant are relevant to whether the applicant is a fit and proper person.

Evidence from respondents

87. Few respondents commented on the "fit and proper person requirement" provided for in section 11.

⁵⁹ RoP, para 78, 6 February 2014

⁶⁰ RoP, para 80, 6 February 2014

88. While supporting the “fit and proper person requirement”, in principle, Shelter Cymru and the NUS Wales pointed out that the comparable requirement in Scotland was not applied “in any meaningful way”.⁶¹ As such, Shelter Cymru suggested including a routine Disclosure and Barring Service check as part of the requirement in Wales. It went on to suggest that the proposed registration fee could be increased in order to meet the cost of these checks.⁶²

Evidence from the Minister

89. The Minister confirmed that the “fit-and-proper-person test” would be based on self-certification and would not include a Disclosure and Barring Service check as a matter of course. However, if doubt arose as part of the certification process, an authority could request a check. The Minister explained that similar provisions exist in the *Mobile Homes (Wales) Act 2013*.⁶³

Our view

90. We believe that the “fit and proper person requirement” is an essential element of the licensing process. In the context of raising standards, the test will need to be applied rigorously in order to ensure that only suitable applicants are successful and to prevent disreputable landlords from re-entering the sector.

91. We are satisfied that the decision to administer the registration and licensing scheme centrally via Cardiff Council will minimise the risk of inconsistency in the application of the test.

92. We welcome the clarification from the Minister in respect of Disclosure and Barring Service checks and are therefore content with the “fit and proper person requirement” provided for in Part 1.

Training requirement

Background

93. In order to become licensed, a landlord and agent must have successfully completed an approved training course. In the case of an agent, it must also be a member of a professional body approved by the local

⁶¹ Written evidence, HB16, HB21

⁶² Written evidence, HB16

⁶³ RoP, para 46, 6 February 2014

housing authority and all members of staff engaged in managing properties must have completed the required training.

94. Section 12 sets out the types of matters to be addressed by the training including, statutory obligations and best practice in managing a rental property.

Evidence from respondents

95. Those respondents who commented broadly welcomed the training requirement as a means of professionalising the sector and improving standards of management. There was general consensus among respondents that the approach provided was both sensible and proportionate and that it would be of particular benefit to ‘accidental’ landlords.

96. According to the Housing Technical Panel, there was a demonstrable need to train landlords and agents. It reported that a survey of landlords undertaken by Paragon Mortgages⁶⁴ found that 78 per cent of landlords taking part had a “significant” need for advice on landlord matters.⁶⁵

97. Both the Welsh Tenants and Shelter Cymru pointed out that any landlords who were unwilling or unable to complete the training could instruct an agent to manage their property under the terms of the Bill.⁶⁶

98. The RLA highlighted the “enormous administrative task” of training the large number of landlords estimated to be operating in Wales. It also raised concerns about the practical and financial implications for individual businesses.⁶⁷

99. Linked to the above, the Housing Technical Panel emphasised the need to ensure that training was offered through a variety of means and was easily accessible.⁶⁸ On a related issue, the NLA advocated on-line learning, “particularly given the part-time status of many smaller landlords”.⁶⁹

100. Notwithstanding the RLA’s objections to the mandatory registration and licensing of landlords, it believed that approved training providers from

⁶⁴ Paragon Mortgages is a specialist provider of buy-to-let mortgages to professional landlords and residential property investors.

⁶⁵ Written evidence, HB56

⁶⁶ Written evidence, HB39, HB16

⁶⁷ Written evidence, HB22

⁶⁸ Written evidence, HB56

⁶⁹ Written evidence, HB60

within the industry should be used to deliver the training. Similar views were expressed by the NLA who also suggested that landlords who are existing members of a professional body should be exempt from the training.⁷⁰

101. Several respondents suggested additional matters to be included in the training, namely equality and diversity issues, needs of vulnerable or disadvantaged groups, electrical safety standards, animal welfare and affordability, financial inclusion and illegal money lending.

102. A number of respondents commented on the need for Continuing Professional Development (CPD). On this point, the Royal Institution of Chartered Surveyors (RICS) suggested that “at least 20 hours per annum CPD activity should be undertaken by licensed lettings/management agents, of which 10 hours should be formal learning”. RICS suggested limiting the requirement to 20 hours either formal or informal CPD activity for landlords.⁷¹

Evidence from the Minister

103. The Minister did not believe that the training requirement, which in most cases would involve a one-day training course, would be a deterrent for landlords. He explained that feedback from the existing Landlords Accreditation Wales scheme suggested “that the vast majority of landlords found the course informative and beneficial”.⁷²

104. On the issue of Continuing Professional Development, the Minister explained that enhanced support would be available to landlords and agents through the scheme. He also explained that, as part of the licensing renewal process, “there would be an expectation that [landlords] would understand fully the competency levels required”.⁷³

Our view

105. We believe that training landlords and agents to effectively manage rental properties before a licence is granted will be essential if we are to professionalise and improve standards within the private rented sector.

106. We believe that the one-day course, proposed by the Minister, is not overly burdensome and will provide all those operating in the sector with a basic level of training. However, we believe that additional benefits could be

⁷⁰ RoP, para 287, 23 January 2014

⁷¹ Written evidence, HB38

⁷² Letter from the Minister for Housing and Regeneration, 14 January 2014

⁷³ RoP, para 74, 6 February 2014

derived if an advanced training programme is developed for those who wish to further improve their knowledge and skills.

We recommend that the Minister develops, in conjunction with the private rented sector, a programme of Continuing Professional Development for landlords and agents as an extension of the training required under section 12.

Enforcement

The need for effective enforcement

Background

107. Local housing authorities will be responsible for taking enforcement action where there is a breach of the registration or licensing requirements.

108. It will be an offence for a landlord or agent not to be registered and this will be punishable by a fine of up to level 3 on the standard scale (currently £1,000). Where a landlord or agent is not licensed, they will be subject to a fine that will be set by the courts, i.e. unlimited.

109. Section 21 provides power for local housing authorities to serve Rent Stopping Orders where a landlord is not licensed. This will mean that no rent or service charge is payable by the tenant.

Evidence from respondents

110. It was clear from the evidence received that effective enforcement will be crucial to ensuring the success of the registration and licensing scheme. This view was shared by respondents from across sectors.

111. Many respondents, including those representing local housing authorities and tenants, questioned whether Rent Stopping Orders were an appropriate means of enforcement, primarily on the basis that they could have an adverse effect on tenants. In addition, the majority of respondents who commented on Part 1 raised concern about the financial implications for local housing authorities of enforcing the Bill's provisions, or sought clarification on how the cost of enforcement would be met.

112. Effective enforcement is closely linked to the ability of local housing authorities to identify private rented properties and landlords that fail to comply with the requirements of Part 1. Dr Bob Smith of Cardiff University believed that unless authorities are able to identify privately rented

properties in a “systematic manner”, there is a danger that “enforcement will be reactive and piecemeal”.⁷⁴

113. In commenting on the above, Shelter Cymru explained that, in the case of Scotland and Newham, unregistered landlords “were relatively easy to identify, using a variety of methods including cross-checking of Housing Benefit and Council Tax records”. However, it went on to report that authorities “struggled to make contact with the large numbers of identified unregistered landlords”.⁷⁵

114. A number of respondents including the WLGA⁷⁶ and Cardiff Council⁷⁷, referred to the *Evaluation of the Impact and Operation of Landlord Registration in Scotland* (July 2011) as serving to demonstrate the importance of effective enforcement. There was a general consensus that a lack of rigorous enforcement in Scotland and failure to take action against non-compliant landlords had undermined the effectiveness of the scheme.

115. Shelter Cymru reported that, in contrast, Newham had achieved much greater success, with authorities publishing performance statistics that “sent a clear message to the borough that the failure to register could lead to serious repercussions”.⁷⁸

116. Specifically on Rent Stopping Orders, while Shelter Cymru acknowledged they may be a “powerful incentive” for landlords to become registered, it raised concern that they may expose tenants to the risk of harassment, illegal eviction and even acts of violence.⁷⁹ Similar views were expressed by Cymorth Cymru, Tai Pawb and those representing local government.⁸⁰

117. On a related issue, the WLGA reported that “the difficulty of monitoring whether rent payments are being made or withheld by the tenant” was an issue for the Scottish scheme.⁸¹ Linked to this, Cardiff Council questioned how Rent Stopping Orders would work in the context of the forthcoming introduction of Universal Credit.⁸²

⁷⁴ Written evidence, HB58

⁷⁵ Written evidence, HB16

⁷⁶ Written evidence, HB06

⁷⁷ Written evidence, HB37

⁷⁸ Written evidence, HB16

⁷⁹ *ibid.*

⁸⁰ Written evidence, HB19, HB57

⁸¹ Written evidence, HB06

⁸² Written evidence, HB37

118. Several respondents, including the Law Society⁸³ and the WLGA,⁸⁴ suggested that the Bill should provide for an unlicensed landlord to be prevented from serving a “Section 21 Notice” (a no-fault eviction notice under the *Housing Act 1988*). These measures are currently used in the enforcement of tenancy deposit legislation and Houses in Multiple Occupation (HMO) licensing. In addition, the WLGA⁸⁵ and Cardiff Council⁸⁶ suggested including provision for Rent Repayment Orders, which currently enable tenants to reclaim rent on unlicensed HMOs and properties that are subject to selective licensing (as provided in the *Housing Act 2004*).

119. The Housing Technical Panel welcomed the powers in section 26 to enable local housing authorities to require documents and information to be given to assist in compliance and enforcement matters. However, it emphasised the need for authorities to have “clear investigatory powers, including Power of Entry to investigate non-compliance”.⁸⁷

Evidence from the Minister

120. In his initial evidence to the Committee, the Minister stated:

“There will always be people who will try to evade the legislation that is in place, not just in the housing sector but more broadly. We believe that we have a suite of tools that will effectively deal with people who seek not to register or act inappropriately in registering. Failure to register could ultimately lead to a stopping order being placed on rent, so a tenant would not have to pay rent to an individual who was not registered formally. The risk of not getting paid is a big incentive to register.”⁸⁸

121. Subsequently, the Minister reported that he was considering amending Part 1 to include powers for local authorities to apply for Rent Repayment Orders. He emphasised the need to ensure that authorities have “the most effective [enforcement] tools” to discharge their responsibilities.⁸⁹

122. We asked the Minister to clarify the impact on a tenant’s security of tenure in cases where a registration or a licence is revoked or where a licence expires and is not renewed. The Minister stated:

⁸³ Written evidence, HB63

⁸⁴ Written evidence, HB06

⁸⁵ *ibid.*

⁸⁶ Written evidence, HB37

⁸⁷ Written evidence, HB56

⁸⁸ RoP, para 20, 12 December 2013

⁸⁹ RoP, para 90, 6 February 2014

“We believe that what is in place is a process whereby the tenant is protected in terms of their tenancy agreement.”⁹⁰

123. Further to this, the Minister’s official confirmed:

“The fact that a landlord is not licensed or has not appointed a licensed person does not affect the tenancy agreement [...] the tenant still has the ability to occupy the property.”⁹¹

124. The Minister explained that he was considering whether Housing Benefit and Council Tax information could be shared for the purpose of the proposed registration and licensing scheme. He also explained that the sharing of information in relation to Houses in Multiple Occupation and the selective licensing scheme was permitted under section 237 of the *Housing Act 2004*.⁹²

Our view

125. We believe that robust enforcement arrangements will be crucial to the success of the registration and licensing scheme. Without effective enforcement, the aim of improving standards across the sector is unlikely to be achieved, as those who operate outside the scheme and who are most likely to be involved in poor management practices, will continue to do so without challenge or reprimand.

126. We believe that every effort should be made to assist local housing authorities in identifying landlords and agents who remain unregistered and unlicensed, and to ensure that authorities have appropriate and effective tools to enforce the Bill’s provisions.

127. We ask the Minister to report back, during the Stage 1 debate, on the outcome of his considerations of data sharing to assist local housing authorities in identifying landlords for the purpose of the scheme.

We recommend that, subject to existing legislative restrictions on data sharing, the Minister amends the Bill to include provision equivalent to that in section 237 of the Housing Act 2004 in order to allow local housing authorities to share data in relation to Housing Benefit and Council Tax with a view to assisting them in identifying landlords.

⁹⁰ RoP, para 41, 6 February 2014

⁹¹ RoP, para 25, 6 February 2014

⁹² Letter from the Minister for Housing and Regeneration, 19 February 2014

128. We note that the provision of Rent Stopping Orders for the purpose of enforcing the registration and licensing scheme replicates that used in the scheme in Scotland. While we accept that such Orders may be a suitable enforcement tool in some cases, we are concerned about their potential to impact negatively on tenants and expose them to retaliatory acts, including illegal eviction. It is not acceptable for tenants to be placed in a vulnerable position as a consequence of enforcement action and we believe that the Bill should safeguard against this. We believe that Rent Repayment Orders, which are already an established means of enforcing HMO licensing, are a more suitable enforcement tool and are less likely to impact negatively on tenants.

We recommend that the Minister amends the Bill to replace Rent Stopping Orders with Rent Repayment Orders as a means of enforcing the registration and licensing scheme.

129. Further to this, and in order to provide additional protection for tenants, we believe that an unlicensed landlord should be prevented from serving a 'no-fault eviction notice', as is currently the case for Houses in Multiple Occupation licensing and selective licensing.

We recommend that the Minister amends the Bill to include provisions equivalent to those in the Housing Act 2004 to prevent an unregistered landlord or agent from serving notice under section 21 of the Housing Act 1988 to evict a tenant.

130. In relation to the revocation or expiration of a landlord's or agent's licence or registration, we do not believe the Bill is sufficiently clear that a tenant's rights under their tenancy agreement would be unaffected.

We recommend that the Minister amends the Bill to clarify a tenant's legal position in cases where their landlord's or agent's licence or registration has been revoked, or expires and is not renewed by the local housing authority.

131. On a separate issue, we note that the powers provided to local housing authorities for compliance and enforcement matters are limited to the requisition of documents or information, and that no powers of entry are provided. We seek assurance from the Minister that these powers are sufficient to enable local housing authorities to investigate thoroughly matters relating to non-compliance.

Cost of enforcement

Background

132. The Regulatory Impact Assessment states that “the cost to local housing authorities of enforcing the legislation will be met from the revenue arising from registration fees”.⁹³

Evidence from respondents

133. The majority of respondents who commented raised concerns about the cost of enforcement for local housing authorities. Respondents emphasised the need for adequate resources to ensure effective enforcement. In addition, several respondents, including the WLGA, sought clarification on how enforcement would be funded, given the *Hemming v Westminster City Council* ruling.⁹⁴

134. Wrexham County Borough Council raised concern about the financial implications for authorities of enforcement, particularly in the context of the on-going budget reductions. It explained that, if adequate resources were not made available it would be unlikely that the scheme would “achieve the full potential to drive improvements to the private rented sector”.⁹⁵ Similar views were expressed by Cardiff Council.⁹⁶

135. Linked to the above, ALMA suggested that, in the current economic climate and faced with competing demands, authorities may find it difficult to maintain a rigorous approach to enforcement.⁹⁷

136. In questioning the likely effectiveness of the scheme, the RLA expressed “serious concern about the prospect of adequate enforcement [...] given the shrinking resources available to local housing authorities and the growing burden being thrust on fewer enforcement officers”.⁹⁸

137. The WLGA reported that the ruling on the *Hemming v Westminster City Council* case had cast doubt on whether local housing authorities could use fees from the registration scheme to take enforcement action against

⁹³ Explanatory Memorandum, page 60

⁹⁴ [2012] EWHC 1260 (Admin). After being considered at first instance by the High Court, the Court of Appeal considered the case as R (on the application of Hemming and others v Lord Mayor and Citizens of Westminster [2013] EWCA Civ 591

⁹⁵ Written evidence, HB62

⁹⁶ Written evidence, HB37

⁹⁷ Written evidence, HB13

⁹⁸ Written evidence, HB22

unregistered landlords. It reported that the Minister was looking into this issue with a view to identifying a suitable solution.⁹⁹

Evidence from the Minister

138. In the Minister's letter dated 14 January, he explained that his intention had been to meet the cost of enforcement "out of the registration fees generated by the scheme". However, he acknowledged that the *Hemming v Westminster City Council* ruling "may present a difficulty with this" but that he was "confident that a solution to the problem that the case poses can be found".¹⁰⁰

139. The Minister explained that, although registration and licensing fees could be used for enforcement against registered or licensed persons, they could not be used to take action against those who are unregistered or unlicensed. In respect of the latter, he explained that "the most likely route for the recovery of costs of enforcement would be through costs sought in the event of successful court proceedings".¹⁰¹

140. Subsequently, the Minister explained he was considering introducing powers for local housing authorities to issue fixed-penalty notices in order to deal with unlicensed landlords and agents.¹⁰² It was unclear whether any such penalties would also apply to unregistered landlords and agents.

Our view

141. We believe that, unless adequate resources are made available to local housing authorities to undertake effective enforcement, the success of the scheme will be limited. We are also concerned about the financial implications of enforcement for authorities, particularly in light of the *Hemming v Westminster City Council* ruling, which raises uncertainty about how enforcement costs will be fully met. We remain unclear about the arrangements the Minister will put in place to address this issue.

We recommend that the Minister provides a comprehensive explanation of how the cost of enforcement action against landlords and agents who are unregistered or unlicensed will be met. This should be made available to all Members ahead of Stage 2.

⁹⁹ Written evidence, HB06

¹⁰⁰ Letter from the Minister for Housing and Regeneration, 14 January 2014

¹⁰¹ *ibid.*

¹⁰² RoP, para 94, 6 February 2014

Code of practice

Background

142. Section 28 provides powers for the Welsh Ministers to issue a code of practice ('the code') relating to managing rental properties.

143. Before issuing or amending the code, the Welsh Ministers must take reasonable steps to consult specified groups. The code must be laid before, and approved by, the Assembly before it can be issued by the Welsh Ministers.

Evidence from respondents

144. While there was general support in evidence for the introduction of a code, a number of respondents commented on, or sought clarification on, the proposed content of the code and arrangements for monitoring compliance.

145. There was strong support among respondents for the code to address physical standards of accommodation, as well as management standards. A number of suggestions were received on the types of issues that the code should address in respect of physical standards. These included electrical and gas safety, energy efficiency and safeguards against carbon monoxide.

146. Cardiff Council expressed disappointment that the Bill did not address physical standards. It believed there would be an expectation among tenants that property owned by a registered and licensed landlord or agent would be of a "good standard".¹⁰³

147. It went on to acknowledge that the forthcoming Renting Homes (Wales) Bill would "begin to address the issue of standards" but called for "an approach that defines *minimum* standards to be met in all circumstances so that landlords are clear on the standards of rental accommodation that is expected in Wales".¹⁰⁴

148. Tai Ceredigion Monitoring Group went further and expressed a preference for a requirement on all landlords within the private rented sector to meet the Welsh Housing Quality Standard "within an acceptable time-

¹⁰³ Written evidence, HB37

¹⁰⁴ The Welsh Government's Renting Homes White Paper includes a proposal to require landlords to ensure there are no Category 1 hazards under the Housing Health & Safety Rating System.

frame and to maintain that standard to fulfil the requirements of any renewing of licence”.¹⁰⁵

149. In commenting on the role of local housing authorities in monitoring compliance with the code, the WLGA stated it understood that authorities would not be required to inspect properties or take action following registration, and that “there will not be any automatic consideration of standards.”¹⁰⁶

150. It went on to explain that, if authorities were expected to proactively inspect properties, this would be challenging to deliver in terms of time and resources.¹⁰⁷

151. The RLA supported the code, in principle, and stated it was “a key component of the Bill”. However, it believed that “the Bill fails to spell out the purpose of the Code and how it ties in with licensing” and called for “more clarity as to how such a code would function”.¹⁰⁸

152. Related to this, Shelter Cymru sought clarification on the link between the code and the licensing process, in particular how breaches of the code would inform an authority’s decision on the renewal and revocation of licences.¹⁰⁹

153. Linked to the above, Welsh Tenants emphasised the potential role of tenants in bringing breaches of the code to the attention of authorities. This would involve meaningful engagement with tenants and appropriate tenant education.¹¹⁰ There was general consensus about the need to develop the code in consultation with tenants.

Evidence from the Minister

154. The Minister explained that the code “will relate to standards of management, but it will contain recommendations on good practice in relation to property conditions that are linked to the Housing, Health and Safety Rating System (HHSRS)”.¹¹¹ He went on to explain:

¹⁰⁵ Written evidence, HB29

¹⁰⁶ RoP, para 235, 15 January 2014

¹⁰⁷ RoP, para 237, 15 January 2014

¹⁰⁸ Written evidence, HB22

¹⁰⁹ Written evidence, HB16

¹¹⁰ Written evidence, HB39

¹¹¹ Letter from the Minister for Housing and Regeneration, 28 January 2014

“The code will be based upon the existing Landlord Accreditation Wales (LAW) Code of Conduct and the Property Ombudsman Code of Practice for Residential Letting Agents...It is likely to contain references to other legislation that sets out requirements in these areas, where appropriate.”¹¹²

155. In commenting on whether the code would include a requirement for all private rented properties to have electrical safety certificates, he stated:

“[...] 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.”¹¹³

156. The Minister went on to explain that, although information on best practice in relation to electrical safety could be included in the code, “failure to meet any suggested voluntary standards would not result in the loss of a landlord’s licence”. He further explained that “severe electrical hazards such as bare wiring would be covered by the Housing, Health and Safety Rating System”.¹¹⁴

157. Subsequently, the Minister explained that the code “may also include advice on regular checks on gas and electrical safety and having the correct fire precautions in place.”¹¹⁵

158. He confirmed that the code would not be available until the Bill has completed its passage through the Assembly.¹¹⁶

159. The Minister confirmed that local housing authorities would not be expected to inspect every private rented property, but that inspections would be “based upon complaint or concern”.¹¹⁷

160. The Minister emphasised the importance of ensuring that tenants have the knowledge and confidence to report compliance issues to authorities. He explained that the Renting Homes (Wales) Bill “will be a part of that process,

¹¹² Letter from the Minister for Housing and Regeneration, 28 January 2014

¹¹³ Letter from the Minister for Housing and Regeneration, 14 January 2014

¹¹⁴ *ibid.*

¹¹⁵ Letter from the Minister for Housing and Regeneration, 19 February 2014

¹¹⁶ *ibid.*

¹¹⁷ RoP, para 98, 6 February 2014

where tenants will fully understand, in simple language, what their rights are".¹¹⁸

Our view

161. Insofar as the code of practice will set out standards of management for the private rented sector, we believe it is a positive step towards improving practices within the sector. The evidence we received suggests that, while improving standards of management could go some way in tackling poor housing conditions, more needs to be done to address this issue. As such, we are concerned that the Bill is a missed opportunity to address standards in the wider context.

162. We note the Minister's intention for the code to reinforce the importance of property condition and safety linked to the Housing, Health and Safety Rating System (HHSRS) by means of including recommendations on good practice. However, we do not believe that this goes far enough.

163. We are concerned with the Minister's proposal to link best practice in relation to property conditions with the HHSRS, given that this system is used to identify health and safety hazards rather than to prescribe reasonable standards of accommodation.

We recommend that the code of practice under section 28 sets out the physical standards for private rented housing to which the sector should aspire, with a view to ensuring that all tenants are provided with decent quality accommodation. We believe that these standards should ultimately become statutory requirements when an appropriate legislative opportunity arises.

164. We note that, under current regulations, landlords and agents are obliged to carry out an annual gas safety check in rented accommodation. We believe this principle should be extended to other potential hazards in the home.

We recommend that the code of practice places an expectation on landlords to carry out periodic checks on electrical safety, install and maintain carbon monoxide detectors and ensure that correct fire precautions are in place.

¹¹⁸ RoP, para 101, 6 February 2014

We recommend that where a Housing Health and Safety Rating System inspection has been carried out on a property, the report of the inspection should be made available to any new or prospective tenants.

165. We are concerned that the Bill does not make clear the link between the code of practice and the licensing process.

We recommend that the Minister amends the Bill to provide a clearly defined process for dealing with non-compliance with the code of practice, including revocation of a licence where there is repeated failure by a landlord or agent to comply with the code.

Given that enforcement arrangements will, in part, rely on tenants to report cases of non-compliance, we believe it is important that they have a full understanding of the standards they can expect from their landlord or agent and the mechanisms to complain or seek redress. We recommend that the Minister makes provision in the code for this.

166. Given that the code is a key element in the registration and licensing system, we are disappointed that the Minister is not planning to make available the draft code in advance of the Bill being passed.

We recommend that the Minister publishes the draft code of practice under section 28 before the Bill completes its passage through the Assembly in order to aid the scrutiny process.

Fees

Background

167. Section 31 provides Welsh Ministers with regulation-making powers in respect of fees for registration and licensing. The proposed fee at present is £50 for registration, plus £10 per property. Licensing is expected to cost £100 per landlord.

Evidence from respondents

168. Those respondents who commented were content that the proposed fees for registration and licensing were reasonable. However, Shelter Cymru called for the proposed fees to be higher to provide additional resources for local housing authorities to ensure effective implementation of the scheme.¹¹⁹

¹¹⁹ Written evidence, HB16

169. The NUS Wales¹²⁰ and Welsh Tenants¹²¹ raised concern that landlords and agents would seek to recoup the cost of meeting fees by increasing rent levels. Those representing landlords and agents confirmed that this was likely to be the case.

170. The WLGA was “confident” that the proposed fees would “be sufficient to cover the cost of a single authority administering the scheme”.¹²²

Evidence from the Minister

171. The Minister believed that the proposed fee structure will “hopefully” provide “sufficient revenue to ensure and monitor compliance with the scheme”.¹²³

172. He acknowledged that the fees were likely to be passed on to tenants and, as such, it was important that they were not “onerous”. He believed that the proposed fees were “reasonable” and was not minded to increase these because of the implications for tenants of “a significant rise” in rents.¹²⁴

Our view

173. We are satisfied that the registration and licensing fees payable to a local housing authority by an applicant will be a matter for the Welsh Ministers to determine by means of regulation. We believe that the fees proposed are reasonable and, in the seemingly likely event that landlords and agents seek to pass on the cost to tenants, are unlikely to have a significant impact on the affordability of rents.

¹²⁰ Written evidence, HB21

¹²¹ Written evidence, HB39

¹²² Written evidence, HB06

¹²³ RoP, para 134, 6 February 2014

¹²⁴ RoP, para 136, 6 February 2014

4. Part 2 - Homelessness

Background

174. Part 7 of the *Housing Act 1996*, as amended, forms the basis of current homelessness legislation. The Bill proposes a number of changes to that legislation, with an increased emphasis on homelessness prevention.

175. The Welsh Government's approach to tackling homelessness is set out in its *Ten Year Homelessness Plan*,¹²⁵ published in 2009, which identified a need for current legislation to be reviewed. The proposals in the Bill have been informed by research commissioned by the Welsh Government as part of that review.

176. The proposals in the Bill differ from the original "housing solutions" approach outlined in the White Paper, which proposed a universal right to temporary/interim accommodation for all applicants with nowhere safe to stay.

General comments on Part 2

Evidence from respondents

177. There was general support from respondents for the proposed new focus on prevention of homelessness. However, a number of respondents expressed disappointment that the Bill did not go as far as the proposals outlined in the White Paper in relation to providing a "safe place to stay" for all homeless applicants.

178. In supporting the proposals in relation to homelessness, the WLGA stated that "in the long term prevention is a much more effective use of resources than crisis intervention".¹²⁶

179. In his evidence, Dr Peter Mackie said that sections 52 and 56, duties to help to prevent an applicant from becoming homeless and to help to secure suitable accommodation for a homeless applicant, marked "a significant forward step in Wales". However, he was critical of the "limitations and missed opportunities" in relation to Part 2.

180. Similarly, Dr Simon Hoffman said the Bill was "a missed opportunity to adopt an approach to housing which would promote rights. It avoids the

¹²⁵ Welsh Government, [Ten Year Homelessness Plan for Wales](#), 2009

¹²⁶ Written evidence, HB06

opportunity to establish a clear rights-based duty, i.e. recognising the fundamental right of all citizens in Wales to adequate housing, and requiring local government to promote access to the right for all citizens”.

181. A number of third sector bodies, as well as others including the Law Society and Garden Court Chambers, called for a return to the original approach outlined in the White Paper. Shelter Cymru stated that “the beauty of the original proposals [...] was the principle of equality at the point of approach”.¹²⁷ It went on to state that the proposals in the Bill will retain the priority need and local connection tests, which “represent administrative obstacles that divert resources away from the task of helping people...and have no place in a person-centred approach”. It noted that the proposal to provide a safe place to stay was abandoned following representations from local government due to concerns over resources.¹²⁸

182. In contrast, Isle of Anglesey County Council supported the change in policy and described the original policy as “unworkable” and “prohibitively expensive”.¹²⁹

Evidence from the Minister

183. We also asked the Minister why the proposal originally included in the White Paper to provide temporary accommodation for *all* homeless households with no safe place to stay had not been included in the Bill. Responding to this, the Minister stated:

“There is a financial implication of this process. If you included this at the front end, it would be about providing everybody who presents as homeless with accommodation. So, one, there is a financial cost to that, and two, we do not think that that is the right mechanism to understand this fully—if you present as homeless, you automatically get accommodation when, actually, I think that there are other routes that we should explore.

“You will all have experienced, as Members, situations where it has been perceived in the past by some, not all, that, in order to get social housing, all you have to do is present as being homeless. We do not believe that that is a constructive route into the housing and

¹²⁷ RoP, para 112, 23 January 2014

¹²⁸ Explanatory Memorandum, page 79

¹²⁹ Written evidence, HB50

secure market of getting somebody accommodation. That is why we have not included it in the upfront element of the Bill.”¹³⁰

Our view

184. The majority of the Committee are content with the proposals in the Bill in relation to help for people who are homeless or threatened with homelessness.

185. Three members of the Committee wish to express their disappointment that Part 2 of the Bill is less progressive than the proposals outlined by the Minister in the White Paper. In their view, the approach taken in the Bill largely reflects current practice and is unlikely to effect significant change in relation to homelessness in Wales.

Homelessness reviews and strategies

Background

186. Section 36 of the Bill places a duty on local housing authorities to carry out a homelessness review and formulate a homelessness strategy. That strategy must be adopted in 2018 and a new strategy adopted every four years thereafter. This will replace, and is derived from, provisions currently found in the *Homelessness Act 2002*.

Evidence from respondents

187. Respondents generally welcomed the duty on local housing authorities to undertake periodic reviews of homelessness and to develop their local homelessness strategies. However, several respondents, including the WLGA, Dr Bob Smith and Victoria Hiscocks, suggested these strategies need to be linked to wider strategic responsibilities and called for the Bill to place a duty on local housing authorities to integrate the review of need and the strategic planning of homelessness services into their Single Integrated Plans. They argued this would encourage a more corporate approach to strategic planning and ensure that links are made with other local authority strategic responsibilities.¹³¹

188. Dr Simon Hoffman expressed specific concern that the Bill did not go far enough to embed the objectives of preventing homelessness and making suitable accommodation and support available for people who are, or may

¹³⁰ RoP, para 182, 6 February 2014

¹³¹ Written evidence, HB06

become, homeless as key priorities for local government. He said there was “a risk that unless these objectives are prioritised they will be diluted in the preparation of a homelessness strategy and may be lost altogether during implementation”.¹³²

189. As such, Dr Hoffman suggested inserting a duty on local authorities to have “due regard” to these stated objectives. He noted this approach is taken in the *Equality Act 2010*, and also the *Rights of Children and Young Persons (Wales) Measure 2011*.¹³³

Evidence from the Minister

190. We asked the Minister whether he had considered including provision in the Bill for the Welsh Ministers to approve local homelessness strategies. He explained that he had decided against this because:

“[...] the duty has been in existence since 2003 and local authorities have been planning these services with increasing success since then [...] 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.”¹³⁴

191. The Minister subsequently confirmed he was looking at whether he could incorporate strategic planning for homelessness into a local authority’s Single Integrated Plan.¹³⁵

Our view

192. We note that the Bill continues the existing duty on local housing authorities to undertake periodic reviews of homelessness in their respective areas and to develop local homelessness strategies based on the result of those reviews.

193. However, we agree with respondents that these strategies need to be linked to local housing authorities’ wider strategic responsibilities in order to ensure they are adopted at a corporate level and that the necessary links are made with other local authority strategic responsibilities, including health and well-being, community safety and social care.

¹³² Written evidence, HB59

¹³³ *ibid.*

¹³⁴ Letter from the Minister for Housing and Regeneration, 14 January 2014

¹³⁵ RoP, para 146, 6 February 2014

We recommend that the Minister amends the Bill to make provision for the integration of homelessness reviews and strategies within each local authority area's Single Integrated Plan.

Preventing and alleviating homelessness

Background

194. Sections 41 to 82 of the Bill make provision both in terms of preventing homelessness and, where a person is already homeless, relieving homelessness by providing “help to secure” that accommodation is available or does not cease to be available to the applicant.

195. Section 41 sets out the meaning of “homeless” and “threatened homelessness” and extends the current period during which a person is considered threatened with homelessness from 28 days to 56 days.

196. “Help to secure” is defined in section 51 and requires local housing authorities to “take reasonable steps to help, having regard (among other things) to the need to make the best use of the authority’s resources”. Section 51 does not require the local housing authority to provide accommodation itself.

197. The duty to help to prevent an applicant from becoming homeless under section 52 will normally end either where the local housing authority is satisfied that the applicant has resolved issues in their current accommodation or found somewhere else suitable to live. It will also end where an applicant actually becomes homeless, at which point the duties under sections 54 to 59 will apply.

198. Section 56 applies to applicants who are already homeless, and places a duty on local housing authorities to help to secure suitable accommodation, for a period of at least 6 months, for those applicants. Section 58 provides for a duty to secure accommodation for applicants when the duty under section 56 ends.

Evidence from respondents

199. All respondents who commented on Part 2 broadly welcomed the provisions relating to preventing and alleviating homelessness and the change to the period of threatened homelessness to 56 days provided for in section 41. However, many raised concerns about specific issues relating to these provisions.

200. The Chartered Institute of Housing (CIH) Cymru captured the general consensus on this point that “homelessness prevention services are a better investment of scarce resources than the provision of reactive services”.¹³⁶

201. Similar views were expressed by the WLGA. However, it reported that prevention work was already being undertaken by local housing authorities across Wales, as demonstrated by recent reductions in homelessness figures. Agreeing with this, the Isle of Anglesey County Council questioned whether “the [original] proposal to establish monitoring and inspection of homelessness services [set out in the Explanatory Memorandum] might be a more effective tool for achieving service improvements” than the Bill.¹³⁷

202. The WLGA and Wrexham County Borough Council were both concerned about cross border issues and the potential for unintended consequences, given that the duty to take reasonable steps to prevent homelessness for anyone, irrespective of local connection or intentionality, does not exist in England. They argued this could lead to households on the English border at risk of homelessness seeking to access prevention services in Wales.¹³⁸

203. Tai Pawb welcomed the 56-day prevention duty, noting the particular benefits this would bring to refugees being asked to vacate asylum seeker accommodation where the notice period is only 28 days.

204. Dr Peter Mackie stated that the duty to help to prevent an applicant from becoming homeless “marks a significant forward step in Wales” and will “significantly improve the potential outcomes” for those who would get no meaningful assistance under the current arrangements.¹³⁹ However, he said he could see “no reason why the 56-day definition should not be removed. The benefit of doing so would ensure no local authorities inappropriately delay taking action to support an applicant”.¹⁴⁰

Meaning of help to secure

205. Several respondents commented specifically on the wording of section 51(a), which requires a local housing authority “to take reasonable steps to help [an applicant], having regard (among other things) to the need to make the best use of the authority’s resources”.

¹³⁶ Written evidence, HB05

¹³⁷ Written evidence, HB50

¹³⁸ Written evidence, HB06

¹³⁹ Written evidence, HB30

¹⁴⁰ *ibid.*

206. Both Shelter Cymru and the Law Society said that the drafting of section 51(a) is “vague” and that it will be difficult for applicants to challenge because “the applicant is not going to be in a position to know the resources of the local authority, thus will be unable to establish whether the authority has met its requirement”.¹⁴¹ Shelter Cymru went on to say:

“It is important that homeless applicants can be assured that local authorities will not use Section 51 as a general ‘get-out clause’ that exempts them from carrying out further prevention work.”¹⁴²

207. Dr Peter Mackie stated that the Bill does not place requirements on local housing authorities to ensure they have an improved range of interventions, “hence reasonable steps within the resources available to the authority might not achieve a great improvement”. On this basis, he called for the Bill to stipulate “a minimum set of interventions to be commissioned in each authority”, suggesting the list in section 50 would be a “good starting point”.

208. Tai Pawb had particular concerns that the reference to “among other things” did not specifically mention the duty to make reasonable adjustments for disabled people.

209. The Law Society called for the guidance that will accompany the legislation to “provide a clear picture as to what are the reasonable steps that local authorities should consider”. Conwy County Borough Council also called for the guidance to be clear on this point.

Evidence from the Minister

210. The Minister explained that the decision to extend the period within which a person is threatened with homelessness from 28 to 56 days was taken following a review by Cardiff University.¹⁴³

211. We asked the Minister what the term “help to secure” would mean in practice, and how he would ensure its consistent interpretation across local housing authorities in Wales. Responding to this, he explained that authorities would be expected to work with applicants “to identify why [they] 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”.

¹⁴¹ Written evidence, HB63

¹⁴² Written evidence, HB16

¹⁴³ Letter from the Minister for Housing and Regeneration, 14 January 2014

212. He also explained that he had established a cross-sector working group to develop statutory guidance to assist authorities in meeting their duties to help prevent and relieve homelessness.¹⁴⁴

213. We asked the Minister about the need to ensure that training was provided for staff working in the area of homelessness prevention. He confirmed he had allocated “around £20,000 or thereabouts in terms of a training fund for workshops to take place both in north Wales and in south Wales”.¹⁴⁵ He said that, although training was not provided for on the face of the Bill, it was a matter that could be included in statutory guidance.¹⁴⁶

Our view

214. Notwithstanding the views set out in paragraph 185, we welcome the Bill’s focus on preventing and alleviating homelessness. We agree with respondents that prevention is a more appropriate approach to tackling homelessness than the provision of reactive services, and represents a more effective use of resources.

215. We note the prevention work that is already being undertaken by local housing authorities and we believe this can only be strengthened and made more consistent by the making of statutory provision.

216. In relation to the meaning of “help to secure” in section 51, we note the Minister’s evidence about how he expects this duty to be interpreted by local housing authorities and his intention to issue guidance in relation to this. However, specifically in relation to the need for authorities to make the best use of their resources when helping an applicant secure suitable accommodation, we share the concerns of respondents that this provision provides insufficient clarity in terms of applicants’ rights.

We recommend that guidance produced in relation to section 51 should set out clearly the factors that local housing authorities should take into account when “having regard to the need to make best use of the authorities resources” in helping to secure suitable accommodation for an applicant. We believe this will ensure greater clarity for applicants and consistency of application by authorities.

217. Finally, we believe that effective implementation of the new duties in relation to prevention and alleviation of homelessness will be key to the long

¹⁴⁴ Letter from the Minister for Housing and Regeneration, 14 January 2014

¹⁴⁵ RoP, para 161, 6 February 2014

¹⁴⁶ RoP, paras 158, 161, 166, 6 February 2014

term success of the policy. We believe it will be necessary for all local housing authority officers to undergo a period of training to ensure they have a full understanding of the legislation and the obligations it places on them. We consider this would strengthen the effectiveness of this part of the Bill and help to ensure the application of the provisions is more consistent across Wales.

We recommend that the Minister amends the Bill to make provision for local authority housing officers to undergo accredited training in order to assist them in meeting the challenges of effective implementation of Part 2 of the Bill.

Duty to assess

Background

218. Section 48 of the Bill places a duty on local housing authorities to carry out an assessment of a person's case where that person has applied to an authority for accommodation or help in retaining or obtaining accommodation, and it appears that person is homeless or threatened with homelessness.

Evidence from respondents

219. The WLGA and some local authorities, including Cardiff and Gwynedd, had specific concerns about the drafting of section 48. The WLGA interpreted this section as placing a requirement on authorities to undertake the equivalent of a statutory homeless application when they first had contact with an applicant.¹⁴⁷ Cardiff Council made a similar point, and suggested this would be “overly burdensome” and would prevent a local housing authority from focusing on homelessness prevention.¹⁴⁸

Evidence from the Minister

220. The Minister confirmed that it was not his intention for a full assessment to take place at the beginning of the process. Instead, an initial assessment would be undertaken before moving to the “stage 2 proposals in terms of the full homeless duty”. He did, however, concede that some modifications may be needed to the drafting of the Bill to make this clear.¹⁴⁹

¹⁴⁷ Written evidence, HB06

¹⁴⁸ Written evidence, HB37

¹⁴⁹ RoP, para 154, 6 February 2014

Our view

221. We note that it is not the Minister's intention for a full homelessness assessment to be undertaken when a person first applies for accommodation or presents as homeless. We further note his statement that it may be necessary to make some amendments to the Bill in order to clarify this.

We recommend that the Minister amends section 48 to reflect his intention that local housing authorities will not be required to carry out a full assessment when an applicant first presents as homeless or is threatened with homelessness.

Priority need for accommodation

Background

222. Section 55 makes provision for the persons who have a priority need for accommodation. Only those in a priority need group will be entitled to temporary interim accommodation where they are homeless until the full homelessness duty is discharged.

223. Amongst the other criteria in section 55(1), a person will be considered to be in priority need if they are "vulnerable as a result of some special reason (for example: old age, illness or disability)". The current test for vulnerability has been established through case law, in particular the *Pereira* case.¹⁵⁰

Evidence from respondents

224. A number of respondents commented on the eventual abolition of priority need status, and made reference to the abolition of priority need groups in Scotland.

225. Garden Court Chambers, Cymorth Cymru, Dr Bob Smith and Shelter Cymru were all of the view that the Welsh Government could have removed the priority need test. Shelter Cymru said it was optimistic that the Government would abolish the priority need test "in the long run", as originally proposed in the White Paper, "given that it is a pernicious and unfair way of rationing housing that leaves many people's needs unmet".¹⁵¹

226. In addition to the more general points about priority need status, a number of respondents commented specifically on the test used to

¹⁵⁰ R v Camden London Borough Council ex parte Pereira [1999] 31 HLR 317

¹⁵¹ Written evidence, HB16

determine vulnerability. Shelter Cymru said that the Pereira test “confers a large level of discretion on local authorities, which can lead to considerable inconsistencies in the way homeless people are treated in different parts of Wales”. Shelter Cymru called for the Bill to “include a much more robust and specific definition of vulnerability to replace the Pereira Test that would ensure greater consistency and fairness”.¹⁵²

227. The Law Society argued that the Bill “is an opportunity to define in legislation ‘vulnerability’ so that the test is applied more consistently and to avoid blanket policies being adopted”.¹⁵³

228. A number of respondents commented on the omission of ‘mental illness’ or ‘mental health’ from the examples in section 55(1) of why a person may be vulnerable for “some special reason”. Tai Pawb said that such a reference should be included, along with “learning difficulty or disability”.¹⁵⁴

229. Gofal were similarly concerned about the exclusion of a specific reference to ‘mental illness’, arguing that “it is essential that this seemingly small amendment to current homelessness legislation does not result in the unintended consequence of people with mental health problems being disregarded during the priority need process”.¹⁵⁵

230. Gofal called for the Bill to include “a specific reference to mental health problems or mental illness to ensure that people with mental health problems get the support and help that they are entitled to”.¹⁵⁶ The Law Society agreed there should be reference to ‘mental health’ on the face of the Bill.¹⁵⁷

Evidence from the Minister

231. In relation to the meaning of ‘vulnerable’, the Minister confirmed that he would amend the Bill to make provision for the Pereira test to be applied.¹⁵⁸ He noted this was “not without risk”:

“By putting it on the face of the Bill, the ability to change the issue regarding what Pereira may or may not be in the future becomes more restricted...I am comfortable with the current position of the

¹⁵² Written evidence, HB16

¹⁵³ Written evidence, HB63

¹⁵⁴ Written evidence, HB57

¹⁵⁵ Written evidence, HB44

¹⁵⁶ *ibid.*

¹⁵⁷ Written evidence, HB63

¹⁵⁸ RoP, para 200, 6 February 2014

Pereira test and vulnerability, but should that be changed in the future [...] it is more difficult to change.”¹⁵⁹

232. We asked the Minister whether the Bill presented an opportunity to define “vulnerability”, and so remove some of the inconsistencies in interpretation. He said he was “reluctant to open what ‘vulnerability’ is”, although accepted that the application of the Pereira test is important and “I will do what I can through the guidance to ensure that local authorities apply that appropriately.”¹⁶⁰

233. In relation to the categories of people in priority need for accommodation under section 55(1)(c), and specifically the exclusion of a reference to “mental illness”, the Minister confirmed that this provision:

“[...] 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.”¹⁶¹

234. He went on:

“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” [in the equivalent provision in the Housing Act 1996] has been removed altogether and both physical and mental disabilities are covered in the simple reference to disability.”¹⁶²

235. The Minister subsequently confirmed he would amend the Bill to include reference to both mental and physical illness in order to “give confidence to committee members and to the general public at large”.¹⁶³

236. In relation to providing temporary accommodation for applicants with nowhere safe to stay who are not in priority need, the Explanatory Memorandum stated that this “would place a severe strain on reducing public resources”. It goes on:

“There is also a substantial concern that a duty to provide temporary accommodation to all would encourage people to declare themselves

¹⁵⁹ RoP, para 200, 6 February 2014

¹⁶⁰ RoP, para 209, 6 February 2014

¹⁶¹ Letter from the Minister for Housing and Regeneration, 14 January 2014

¹⁶² *ibid.*

¹⁶³ RoP, paras 192, 194, 208, 6 February 2014

to be homeless even where they had somewhere safe to stay, such as with family. In particular, it is likely this proposal would incentivise people to move across borders, including from England to Wales, creating additional pressure in areas which are attractive to live in for various reasons.”¹⁶⁴

Our view

237. While we acknowledge the Minister’s reasons for not defining ‘vulnerability’ on the face of the Bill, we have some concerns that the application of the test of vulnerability may not be applied consistently without stronger direction. Accepting that the Pereira test is the current test for vulnerability, we believe the Bill would be strengthened by the inclusion of a reference to this test. We welcome the Minister’s commitment to do this.

We recommend that the Minister amends the Bill to include the current test for vulnerability (the Pereira test) for the purpose of determining whether a person is “vulnerable” under section 55.

238. We note it was the Minister’s intention that the reference in section 55(1)(c)(i) to “illness” should encompass physical and mental illness. We accept the need to modernise terminology in legislation, but are concerned that the removal of the specific reference to ‘mental’ health might be interpreted as diminishing its importance when assessing vulnerability. We believe section 55 would be strengthened by the insertion of a reference to ‘physical or mental illness’ and we welcome the Minister’s commitment to do this. Further to this, we believe section 55 would also be strengthened by the insertion of a reference to ‘learning disability’.

We recommend that the Minister amends section 55(1)(c)(i) of the Bill to include reference to physical or mental illness, and learning disability. Two members of the Committee believe that the term ‘learning disability’ should encompass learning difficulty.

239. Linked to the above, we would like the Minister to clarify whether the term ‘physical disability’ includes sensory impairment.

240. We note the White Paper proposed the phasing out of priority need status as the Welsh Government’s preferred option. This has not been pursued in the Bill. While we understand the Minister’s reasons for retaining priority need in the Bill at this time, we believe the Minister should continue

¹⁶⁴ Explanatory Memorandum, page 80

to consider the feasibility of this proposal having regard to the impact of the new focus on prevention in the Bill.

We recommend that the Minister reports back to the Committee in due course about the feasibility of phasing out priority need status.

Priority need for accommodation: former prisoners (section 55)

Background

241. Section 55(j) of the Bill proposes that former prisoners will no longer automatically be considered to be in priority need, but will have to demonstrate that they are vulnerable as a result of having served a custodial sentence and that they have a local connection with the area in which they make a homelessness application.

Evidence from respondents

242. Evidence from respondents showed a clear divergence in views about the proposed change in priority need status of prisoners between the third sector and academics on the one hand, and the WLGA, local authorities and housing associations on the other.

243. Local authorities, including Flintshire County Council, Isle of Anglesey County Council and Rhondda Cynon Taf, as well as the WLGA, welcomed the change in priority need status of former prisoners. On this point, the WLGA said that the current automatic priority need status of prisoners “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”.¹⁶⁵

244. However, the WLGA did acknowledge that there was evidence of relatively high levels of mental ill health, substance misuse and other vulnerabilities amongst the prison population and, as such, it was “likely that a relatively high proportion of former prisoners will have priority need status because of their vulnerability”.¹⁶⁶ Cymorth Cymru also suggested this would be the case, estimating that more than 90 per cent of prisoners have mental health problems of some kind.

¹⁶⁵ Written evidence, HB06

¹⁶⁶ *ibid.*

245. Welsh Tenants noted that its members had cautiously welcomed the proposed changes to the priority need status of prisoners, but that there was a need for more research in the area of prioritisation.

246. In contrast, there were significant concerns about the change in status amongst the third sector and academics. Many respondents, including CIH Cymru, Shelter Cymru, Cymorth Cymru and Tai Pawb, highlighted the potential costs to society of dealing with the effects of repeat offending, and the contribution that stable housing can make to reducing the likelihood of re-offending.

247. On this point, Shelter Cymru argued that allowing housing and support needs to remain unmet because of “ideas about ‘deserving’ and ‘undeserving’ people in poverty [...] has consequences for wider society and those consequences carry a cost to the public purse”.¹⁶⁷

248. It also highlighted the lack of any robust evaluation of the effectiveness of the Homeless Persons (Priority Need) (Wales) Order 2001 in reducing recidivism which, it said, weakened the argument that many prisoners still re-offend despite having priority need status. Shelter argued that “the appropriateness of the service package as a whole is a key factor affecting the likelihood of someone re-offending”.¹⁶⁸ CIH Cymru and Llamau both suggested there was a need for further research, while Cymorth Cymru called for the changes to be tested with a pilot scheme initially.

249. Several respondents, including Tai Pawb, Cymorth Cymru and the Older People’s Commissioner, commented on the potential equality impacts of this part of the Bill on people with mental health problems, as well as BME and older people.¹⁶⁹

250. Tai Pawb argued that the lack of a women’s prison in Wales meant the Bill would have a disproportionate effect on women, as “it is already harder for homeless female ex-offenders to find accommodation due to the need to re-locate”.¹⁷⁰ Tai Pawb called for additional support to be put in place to mitigate this.

251. Several respondents also referred to the importance of prison leavers’ timely access to homelessness prevention services. On this point, Dr Bob Smith said that the Bill was not clear about whether prisoners would have the

¹⁶⁷ Written evidence, HB16

¹⁶⁸ *ibid.*

¹⁶⁹ Written evidence, HB57

¹⁷⁰ *ibid.*

right to access prevention services whilst in prison, and that the removal of priority need status for prisoners would make it “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”.¹⁷¹ Shelter Cymru¹⁷² echoed this view, citing the issues facing prisoners who are trying to maintain accommodation whilst incarcerated, as did Gofal.¹⁷³

252. The WLGA highlighted the importance of co-operation between local authorities, prison authorities, LHBs, Housing Associations and other agencies during the 56-day prevention period.

Evidence from the Minister

253. In relation to changing the status of former prisoners, the Minister was clear about his position:

“I believe that we should be giving priority based on need to vulnerable individuals—not based on the fact that you have been incarcerated, but on the fact that you are in a vulnerable position.”¹⁷⁴

254. He went on:

“The vulnerability of an individual, whether an ex-offender or not, should be dealt with appropriately by the local authority that is dealing with homeless provision.”¹⁷⁵

255. The Minister said he had established a Prisoner Accommodation Resettlement Working Group, which included representatives of the third sector, the WLGA, other representative housing bodies, as well as the policy and criminal justice agencies, to inform the development of statutory guidance and to promote the development of pathways for assisting former prisoners to find suitable accommodation.¹⁷⁶ He confirmed that the working group was not due to conclude its work until April 2015, but would produce a note for the Committee on its interim findings.¹⁷⁷

¹⁷¹ Written evidence, HB58

¹⁷² Written evidence, HB16

¹⁷³ Written evidence, HB44

¹⁷⁴ RoP, para 161, 12 December 2013

¹⁷⁵ RoP, para 157, 12 December 2013

¹⁷⁶ Letter from the Minister for Housing and Regeneration, 14 January 2014

¹⁷⁷ *ibid.*

256. We asked the Minister to clarify the meaning of “vulnerable” in section 55(1)(j) in relation to former prisoners. We suggested to him that, following the Pereira case, the courts had subsequently approved a more narrow interpretation of vulnerability in the Court of Appeal case, Johnson v Solihull MBC in June 2013¹⁷⁸.

257. Responding to this, the Minister said:

“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) [the Pereira test]. The Government’s view is that this is the test that the courts would [be] likely to apply in the case of section 55(1)(j) of the Bill and [...] 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.”¹⁷⁹

258. We asked the Minister whether prisoners should be able to access support services earlier than 56 days prior to release. Responding to this, he told us that the working group was looking at the application of the rule, “but we have not been presented with any evidence as to why that should be increased at any stage because [...] we think that the 56 days, if applied appropriately, is probably the right number”.¹⁸⁰

259. However, he explained that, subject to the conclusions of the working group he may wish to make recommendations for both Welsh and UK Ministers about pre-release support services.¹⁸¹

260. Further to this, the Minister highlighted section 46 of the Bill, which places a duty on local housing authorities to provide information, advice and assistance in accessing help. He said, “I think we could strengthen that in terms of the process.”¹⁸²

261. Specifically in relation to the needs of women prisoners, the Minister told us:

“We know that [...] women’s prisons are outside of Wales, and that causes an issue in itself. The working group has identified that this

¹⁷⁸ Johnson v Solihull Metropolitan Borough Council [2013] EWCA Civ 752

¹⁷⁹ Letter from the Minister for Housing and Regeneration, 14 January 2014

¹⁸⁰ RoP, para 227, 6 February 2014

¹⁸¹ RoP, para 260, 6 February 2014

¹⁸² RoP, paras 264-266, 6 February 2014

does not work well in practice, and that is why the policy agenda is one thing, but practicality of operation is another. That is what I have asked the working group to take a look at: how we can better support the transfer of services from what is defined in legislation in Wales to ex-offenders and offenders that are based in English prisons.”¹⁸³

262. Further to this, the official supporting the Minister confirmed that work was being undertaken with officials in the Ministry of Justice and the National Offender Management Service in preparation for the launch of a revised reducing re-offending strategy for Wales, which will include a specific pathway for women prisoners.¹⁸⁴

Our view

263. The majority of the Committee are concerned that the Minister has not yet established the case for changing the priority need status of former prisoners. We are concerned that much work has yet to be done to put in place adequate arrangements to meet the accommodation and support needs of prison leavers and, in particular, to address re-offending rates.

264. Four members of the Committee support the change in priority need status of former prisoners.

265. We note that it is the Minister’s intention that prisoners should be able to access the homelessness prevention services provided for in the Bill in advance of their release. We note that the success of this approach will be dependent on multi-agency working.

266. However, we believe the 56-day period should be extended in relation to prisoners in order to provide them with an additional time to address their specific accommodation and support needs, particularly in view of the proposed change to their priority need status.

We recommend that the Minister amends the Bill to make provision for a 90-day homelessness prevention period for prisoners.

267. We note that work is already underway between the Minister’s officials and officials in the Ministry of Justice on a revised reducing re-offending strategy, and that this will include a specific pathway for women prisoners. We believe it is important that this document, as well as any additional guidance, makes clear provision in relation to the support available for

¹⁸³ RoP, para 241, 6 February 2014

¹⁸⁴ RoP, para 245, 6 February 2014

prisoners and that it should address, amongst other things, arrangements for individuals in English prisons who were resident in Wales prior to their imprisonment.

268. Further to this, and specifically in relation to arrangements for women prisoners, we note this is a matter that the Minister has asked the Prisoner Accommodation Resettlement Working Group to consider and we await their findings with interest.

Discharge of homelessness duty into the private rented sector

Background

269. Section 59 of the Bill enables local housing authorities to discharge their homelessness duty by securing private rented accommodation for an applicant.

270. Under section 59(4), any private tenancy offered to an applicant must be for a minimum fixed term of at least 6 months.

Evidence from respondents

271. Respondents including the WLGA, local authorities and CIH Cymru supported the proposed power for local housing authorities to discharge their homelessness duty to priority need applicants to the private rented sector. However, specific concerns were expressed, even by those in favour of the proposal, such as by CIH Cymru,¹⁸⁵ about the standards of accommodation available in the sector and its suitability for housing the most vulnerable.

272. The WLGA generally welcomed the proposal, noting that, for some, presenting to a local housing authority as homeless was seen as a way into social housing, and that having the ability to utilise the private rented sector would help to address this perception and also deal with the lack of social housing.

273. However, the WLGA also pointed out that the registration and licensing scheme provided for in Part 1 of the Bill “does not regulate [property] standards in any way”. As such, it said that authorities should not discharge their homelessness duty into the private rented sector just because a landlord is registered.¹⁸⁶ Cardiff and Rhondda Cynon Taf Councils both

¹⁸⁵ Written evidence, HB05

¹⁸⁶ RoP, para 229, 15 January 2014

suggested that some sort of checks would need to be made on accommodation being used to accommodate homeless households. Bridgend County Borough Council highlighted the lack of available private rented sector accommodation in some areas, and reluctance by landlords to take referrals from local housing authorities.

274. This point was made by a number of other respondents, who expressed concerns about the suitability of the sector for the most vulnerable, and suggested that it may be necessary for additional standards to be met by landlords providing this accommodation to ensure it was sustainable.¹⁸⁷ Gofal suggested that consideration should be given to the introduction of “gold standards” in addition to the basic registration and licensing requirements, which could include additional training or other requirements.¹⁸⁸

275. Echoing calls for a “gold standard”, the Residential Landlords Association suggested there could be a role for accreditation schemes under the proposal outlined in the Bill, particularly when considering the homelessness provisions. They said this would mark out the properties that are of a higher standard, as well as providing landlords with additional prospective tenants.

276. Shelter Cymru were equally concerned about poor quality accommodation being used to house homeless people and called for the new guidance on homelessness to address this issue in order to ensure that local housing authorities had a “clear and consistent understanding of when it is appropriate to discharge into the PRS [private rented sector]”.

277. Along with a number of other respondents, including Cymorth Cymru and Welsh Tenants, Victoria Hiscocks identified a role for social lettings agencies to offer a specific package of support in implementing the duties under this section of the Bill, through longer term leasing arrangements, intensive housing management and support etc.¹⁸⁹

278. Related to this, Shelter Cymru described the security of tenure provided for in section 59 (which will be a minimum six-month tenancy) as “inadequate”, suggesting that it could lead to repeat presentations.

279. Disability Wales was concerned that people seeking adapted or accessible accommodation may be pressurised into accepting an offer of

¹⁸⁷ Written evidence, HB65

¹⁸⁸ Written evidence, HB44

¹⁸⁹ Written evidence, HB65

accommodation in the private rented sector because of the lack of adapted social housing. On this basis, Disability Wales called for clarity on the term “suitable accommodation in the private sector”.¹⁹⁰

Evidence from the Minister

280. We questioned the Minister about the adequacy of this part of the Bill in terms of standards of accommodation in the private rented sector and the support available in that sector for the most vulnerable. He told us:

“I think that what will help is not just the homeless element of this and the discharge of duty element, but the PRS element. That will be really helpful to understanding landlords and who you will be discharging your duty to.”¹⁹¹

281. He went on to say:

“Within that process, there may be something within the PRS that we would be able to consider so that the local authority would understand what standards were available with that accommodation through the PRS licensing system, so there would be a better understanding of the pathway, rather than just a discharge to any property. The licensing scheme may give the ability to understand better what the accommodation quality is like. It might be only for a certain amount of accommodation that the local authority might have an understanding with individual landlords through that process.”¹⁹²

Our view

282. Overall, we are content with the Minister’s proposal to enable local housing authorities to discharge their homelessness duty into the private rented sector. We believe this is a sensible and proportionate response to the lack of social housing currently available in Wales.

283. However, we feel strongly that private rented sector accommodation used for this purpose should be of a reasonable standard, more closely aligned to that required in the local authority housing sector, and takes account of individuals’ support needs. We recognise that section 45 makes provision for authorities to determine whether accommodation is “suitable”

¹⁹⁰ Written evidence, HB61

¹⁹¹ RoP, para 292, 6 February 2014

¹⁹² *ibid.*

for a person who is homeless, and we refer the Minister to our previous recommendation [page 38] on the code of practice under Part 1 of the Bill.

284. In relation to the length of the fixed term tenancy, we note that section 59(4) currently provides for any private tenancy offered to an applicant to be for a period of at least 6 months. We feel this does not give the applicant sufficient security of tenure, and may increase the likelihood of repeat homeless presentations. We note that research undertaken by the Welsh Government in 2012 in relation to assured short-hold tenancies suggested a period of 12 months would be appropriate¹⁹³, and we agree with this.

We recommend that the Minister amends section 59(4) to provide for any offer of an assured short-hold tenancy made by a private landlord to an applicant to be for a minimum fixed term of at least 12 months. Two members of the Committee do not support this view.

We recommend that the guidance under Part 2 of the Bill makes clear provision about the support that should be provided to homeless applicants entering private rented accommodation, as well as to their landlords, in order to enable both parties to understand their respective rights and responsibilities.

We recommend that the guidance under Part 2 of the Bill should set out an expectation of the standards of accommodation that should be met in order for a local authority to discharge its homelessness duty into the private rented sector. We refer the Minister to recommendation 9.

Intentionality

Background

285. Sections 60 and 61 set out the meaning of intentionally homeless, and make provision for local housing authorities to disregard intentionality in certain cases.

286. Under the Bill, a local housing authority will be able to disregard intentionality for the purposes of determining whether it has a duty to secure accommodation for the applicant. However, the authority will only be able to disregard that test in respect of a category or categories of person prescribed by Welsh Ministers. Local housing authorities will not be able to disregard intentionality on a case by case basis.

¹⁹³ Welsh Government, [Options for an improved homelessness legislation framework in Wales](#), March 2012

287. Intentionality in relation to homeless households with children is discussed separately.

Evidence from respondents

288. There were mixed views amongst respondents about the principle of local housing authorities having discretion to disregard intentionality.

289. The WLGA was supportive of retaining a test of intentionality in order that resources could be focused on other households. Individual local housing authorities made similar comments. The Isle of Anglesey County Council said the proposal was “eminently sensible, as authorities will only be required to consider intentionality in cases where it is deemed necessary”.¹⁹⁴

290. In contrast, a number of respondents, including Cymorth Cymru, Dr Peter Mackie and Dr Simon Hoffman, called for the intentionality test to be withdrawn entirely, or for a timeframe within which it would be abolished. Dr Peter Mackie stated that the test had initially been introduced in order to stop people getting housing for life, but that the test was no longer applicable as the private rented sector could now be used by local housing authorities to discharge their homelessness duties. This point was also made by Garden Court Chambers.

291. In Dr Hoffman’s opinion, the power to disregard intentionality “amounts to no more than retention of the intentionality test” and “there is no reason to suppose [local housing authorities] will elect to use their power to disregard intentionality. The power to disregard intentionality is in effect a power to continue to take it into account”.¹⁹⁵

292. He proposed an alternative approach whereby the Bill could provide for intentionality to be disregarded across all priority need groups, unless local housing authorities expressly chose to apply it.

293. The Wales Audit Office highlighted the potential for inconsistencies between local housing authorities in exercising discretion about when to disregard intentionality.¹⁹⁶ Dr Bob Smith made a similar point about possible inconsistencies and expressed concerns that discretion to disregard intentionality could be used to “deny access to some of those in the greatest

¹⁹⁴ Written evidence, HB50

¹⁹⁵ Written evidence, HB58

¹⁹⁶ Written evidence, HB66

housing need". He said "the ways in which intentionality is taken into account by different local authorities would need to be closely monitored".¹⁹⁷

294. More generally, Dr Smith was also disappointed that the concepts of priority need and intentionality were being retained:

"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."¹⁹⁸

295. Tai Pawb called for the guidance that will accompany the legislation to "strengthen the focus on equality and its importance when making decisions, particularly when considering intentionality".¹⁹⁹

Evidence from the Minister

296. In relation to the intentionality test generally, the Minister stated:

"It is intended that local authorities will be allowed to apply the intentionality test for all applicants or none or for certain priority need categories. This will allow the gradual reduction in the application of intentionality to vulnerable groups."²⁰⁰

297. In relation to consistency of the application of the test across local housing authorities, the Minister confirmed:

"The guidance around intentionality will be strong, as will the way in which that will be given to local authorities to enact. Variability between local authorities has always been an issue [...] and it is something that we just have to keep going on with to make sure that we continue to strive to get some consistency.

"[...] there is a huge benefit in terms of this provision, we believe, not only in the moral aspect of the way that we deal with prevention around homelessness, but in the longer term, where there is a financial benefit to it, too."²⁰¹

¹⁹⁷ Written evidence, HB58

¹⁹⁸ *ibid.*

¹⁹⁹ Written evidence, HB57

²⁰⁰ Explanatory Memorandum, page 162

²⁰¹ RoP, para 257, 12 December 2013

298. We asked the Minister about the use of introductory or probationary tenancies where people are re-housed after being deemed intentionally homeless. He confirmed that there was already a provision in place but that he would “look at how we strengthen that in the guidance”.²⁰²

Our view

299. Overall, we welcome the replacement of the existing intentionality duty with a power that enables local housing authorities to choose whether to disregard intentionality.

300. Further to this, we are content with the approach taken by the Minister in sections 60 and 61 whereby local housing authorities are only able to disregard intentionality in respect of a category or categories of person, rather than on a case by case basis. We welcome the Minister’s intention to issue “strong” guidance on this matter.

301. In relation to section 61(2), we note that a local housing authority may decide to disregard intentionality if it publishes a notice of its decision which identifies the category or categories of person under which intentionality is being disregarded. We believe the Bill would be strengthened by requiring the authority to publish a notice and give reasons for not disregarding intentionality.

We recommend that the Minister amends the Bill to make provision requiring a local housing authority to publish a notice of its decision not to disregard intentionality for a particular category or categories of person. Such a notice should include an explanation of the authority’s decision.

302. More broadly, while we understand the Minister’s reasons for including provision in the Bill for a test of intentionality, we do not support the retention of the test in the long term. We believe that the Minister should commit to its removal. We leave the timing of this matter to the Minister.

We believe that the Minister should set a date for the removal of the intentionality test and we recommend that he makes provision for this on the face of the Bill. Two members of the Committee do not support this view.

²⁰² RoP, para 288, 6 February 2014

Family homelessness

Background

303. In relation to households where an applicant is intentionally homeless and the household contains a child, section 58 provides that local housing authorities must secure accommodation for the members of that household, providing they have not received help under this section within the previous five years. This provision will also apply to pregnant women, as well as 16 and 17 year olds.

304. The Explanatory Memorandum notes that Welsh Ministers do not intend to commence this provision until 2019 in order to “allow time for appropriate support arrangements to be put in place”.

Evidence from respondents

305. Dr Simon Hoffman welcomed the move towards abolishing the test of intentionality for homeless families by 2019, but was concerned that intentionality would only be disregarded once in a five-year period. He said this was “unrealistic and contrary to children’s rights”. He went on:

“It is unrealistic as households that have difficulty maintaining accommodation may become homeless several times in a short period. The difficulties which give rise to homelessness may not be immediately resolved once a family is housed, and homelessness may be a reoccurring problem in the short term.”²⁰³

306. He illustrated this point by saying:

“Those aged 16 or 17 years who live independently may require several attempts at independent living before being able to maintain themselves in accommodation.”

307. Dr Peter Mackie echoed the criticism that intentionality could only be disregarded once in a five-year period, saying this appeared to “entirely undermine the principles of this part of the legislation. If the aim is to ensure intentionally homeless households with children are still assisted then it will fail”.²⁰⁴ He recommended removal of this section, or allowing applicants to be permitted to be intentionally homeless on more than one occasion within five years.

²⁰³ Written evidence, HB59

²⁰⁴ Written evidence, HB30

308. A number of the respondents, including CIH Cymru and Wrexham County Borough Council, referred to the need for support to be provided to families at risk of homelessness. On this point, CIH Cymru called for the proposals to be “linked to the development of appropriate housing-related services, providing intensive family support, to ensure that those households experiencing difficulty in sustaining tenancies (often due to multiple and complex issues) are supported in a multi-agency context”.²⁰⁵

309. The WLGA and a number of local authorities all expressed concerns that the proposal could have the unintended consequence of increasing homelessness presentations and removing any incentive for families to address the issues causing their homelessness. Rhondda Cynon Taf suggested it could “exacerbate the perception of a dependency culture and may see families with children following the homeless route as a way of securing social housing”.²⁰⁶ Wrexham County Borough Council referred to this group being “potentially rewarded for bad behaviour” and given “some priority over and above families who have not even had an initial opportunity to be re-housed”.²⁰⁷

Evidence from the Minister

310. We asked the Minister whether the provisions in the Bill fully met the requirements of the United Nations Convention on the Rights of the Child. Responding to this, he stated:

“The UN Convention on the Rights of the Child is a general commitment to principles which should underlie a state’s approach to children in their legislation. The Bill includes households with children in the categories who have priority need for homelessness assistance (section 55(1)(b)). Children aged 16 and 17 are also specifically included (section 55(1)(f)). In addition, additional protection has been given to households with children, where the applicant is ‘intentionally homeless’ (section 58(3)).

“If a household with children cannot be helped under the provisions relating to homelessness, then the combination of the Children Act 1989, other housing legislation, and the Social Services and Wellbeing Bill will ensure these rights are well protected in legislation in Wales. Section 79 of the Bill makes specific provision for co-operation

²⁰⁵ Written evidence, HB05

²⁰⁶ Written evidence, HB43

²⁰⁷ Written evidence, HB62

between housing and social services departments if a household contains a child, but might not be helped under the homeless provisions.”²⁰⁸

311. The Minister confirmed that his team had been in talks with the Social Services and Well-being Bill team and the Deputy Minister for Social Services “on the basis that this is a cross-cutting theme”.²⁰⁹

Our view

312. We support the Minister’s intention to abolish the intentionality test for homeless households with children. We note his reasons for delaying the commencement of this provision until 2019, but we believe the Minister should include this deadline within the Bill in order to demonstrate his commitment.

We recommend that the Minister amends section 58 of the Bill to include 2019 as the commencement date for the provision to place a duty on local housing authorities to secure accommodation for intentionally homeless households with children.

We recommend that the Minister amends the Bill to give discretion to local housing authorities to make an offer of accommodation under section 58(3)(d)(i) on more than one occasion within a five-year period, subject to appropriate support being provided.

Failure by applicant to co-operate (section 62)

Background

313. Section 62 makes provision in relation to further circumstances in which the duties to help applicants come to an end, including when an applicant is “unreasonably failing to co-operate with the authority”.

Evidence from respondents

314. Few respondents commented specifically on section 62. Of those, Garden Court Chambers argued that section 62(4) was not necessary for operation of the scheme as it had the potential to deny homelessness assistance to people who may be vulnerable because their behaviour is interpreted as being un-cooperative. Garden Court Chambers argued that an applicant’s behaviour may not necessarily stand in the way of a local housing

²⁰⁸ Letter from the Minister for Housing and Regeneration, 19 February 2014

²⁰⁹ RoP, para 305, 6 February 2014

authority performing its duties or discharging them under other provisions in the Bill.²¹⁰ Dr Peter Mackie raised similar concerns about this section.²¹¹

315. However, the Isle of Anglesey County Council cited examples of its Housing Options Team having to deal with “applicants who are repeatedly threatened with homelessness due to their own actions, and who do not act upon advice and assistance offered to them”. On this basis, it welcomed the provision in section 62(4) that the authority may treat the “duty to help” as having ended where it is satisfied that an applicant is unreasonably failing to co-operate.²¹²

Evidence from the Minister

316. We asked the Minister whether it was reasonable to enable a local housing authority to end its homelessness duties for applicants who are likely to be vulnerable on the ground that they are “unreasonably failing to co-operate”. Responding to this, he said his “intention is that the threshold for invoking the unreasonably failing to co-operate” provision is high, and that it will only be used where there is clear evidence that the applicant’s failure to co-operate was not due to their vulnerability.²¹³

317. He went on to say:

“This provision would only be applicable where the failure to co-operate had some substantive impact on the ability of the local authority to meet its duties under Part 2, i.e. prevent or relieve homelessness. The legislation will be supported by a statutory Code of Guidance which will make this very clear.”²¹⁴

318. He said that an applicant would be able to make a “fresh application” where his or her circumstances changed, and that “we are consulting our lawyers to ensure this intention is provided for in the Bill”.²¹⁵

Our view

319. We note the Minister’s comments that the threshold to invoke the failure to co-operate provision in section 62 will be “high”, but we are unclear about what this will mean in practice.

²¹⁰ Written evidence, HB35

²¹¹ Written evidence, HB30

²¹² Written evidence, HB50

²¹³ Letter from the Minister for Housing and Regeneration, 19 February 2014

²¹⁴ *ibid.*

²¹⁵ *ibid.*

We recommend that the Minister clarifies his statement that the threshold to invoke the failure to co-operate provision in section 62 will be “high” and, in particular, explains what this will mean in practice.

Local connection

Background

320. Section 64 sets out the circumstances in which a person has a local connection with the area of a local housing authority. A local connection can be established by current or previous residence, or through employment, family or other special circumstances.

321. Section 64 relates to section 63 in that applicants who have a priority need for accommodation and who are not intentionally homeless may be referred to another local housing authority in Wales or England depending on their local connection with an area.

Evidence from respondents

322. We received a small number of specific comments in relation to the local connection provisions in the Bill.

323. The WGLA had specific concerns that the duty to take reasonable steps to prevent homelessness extended to all eligible applicants, including those with no local connection. The WLGA suggested that this could lead to more applications from people ordinarily resident in England:

“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.”²¹⁶

324. Welsh Women’s Aid said that re-housing victims of domestic abuse within the same local housing authority because of a local connection may

²¹⁶ Written evidence, HB06

not be a safe option. Welsh Women’s Aid wanted to “explore the option of victims of domestic abuse to be exempt from this process to ensure their safety is kept as an absolute priority.”²¹⁷

Evidence from the Minister

325. In relation to local connection, the Explanatory Memorandum states “there is an existing agreement between the local housing authority representative organisations in Wales, England and Scotland covering the procedures and circumstances for referral. Welsh Government statutory guidance in this area will be strengthened by clarifying the scope of local authorities to refer people to other authorities when they have only lived in that area for a short time”.²¹⁸

326. We asked the Minister about the potential for increased cross-border applications as a result of the local connection provisions in the Bill.

Responding to this, he stated:

“I refer [...] back to the principle of this legislation being in two parts. There are two elements: the initial assessment [...] and then, moving on, a secondary duty around the homelessness element and the full duty to comply. On the removal of the local connection element, it has not gone away, in terms of the second part of dealing with the element of the full homelessness duty. It is still one of the tests that are applied to dealing with the homeless individual [...]

“We have removed it at the front end because we are trying to give local authorities flexibility in how they deal with an individual who is potentially becoming homeless. One of the options may be around, when a person presents from another authority, giving the authority flexibility to say, ‘Actually, the local connection isn’t here; your local connection is London’, or wherever that may be.”²¹⁹

Our view

327. We note that the Minister intends to strengthen the existing statutory guidance in relation to local connection to clarify the extent to which local housing authorities will be able to refer people to other authorities in which they had only previously lived for a short time.

²¹⁷ Written evidence, HB54

²¹⁸ Explanatory Memorandum, page 163

²¹⁹ RoP, para 180, 6 February 2014

328. We note that section 63 makes provision in relation to referring cases to another local housing authority. We further note that, under that section, the relevant conditions for referral to another authority will not be met where the applicant “will run the risk of domestic abuse in that other area”. The same provisions apply to cases where the applicant may be at risk of abuse other than domestic abuse.

329. We believe that the guidance to accompany Part 2 should emphasise the usefulness of reciprocal arrangements between local authorities, and between housing associations, so that referrals may be made in cases where an applicant wishes to be housed in a local authority area where they do not have a local connection.

Co-operation within local authorities and with other bodies (section 78)

Background

330. Section 78 makes provision in relation to co-operation within local authorities and with other bodies. It provides for bodies, including Registered Social Landlords (RSLs), to co-operate with local authorities when dealing with homelessness.

Evidence from respondents

331. Of those who commented on section 78, most were supportive of the duty to co-operate, although felt that the section could be strengthened further. On this point, the WLGA said they did not feel that the new duty went far enough, and suggested the legislation could still allow RSLs to avoid co-operation where they could demonstrate that such co-operation was incompatible with their duties or would have an adverse effect on their functions.²²⁰

332. The Wales Audit Office, as well as Cardiff Council and Bridgend County Borough Council, had similar concerns. The WAO recommended that the wording be strengthened to limit the circumstances where RSLs could decline to co-operate.²²¹

333. Conwy County Borough Council generally welcomed the provisions in section 78 regarding co-operation, but felt that “the omission of Health, Prison and Probation services in any requirement to cooperate or share

²²⁰ Written evidence, HB06

²²¹ Written evidence, HB66

information [...] in our view weakens the scope of joined up working envisaged...”.²²² Gofal and Dr Peter Mackie made similar points.

334. In contrast, CHC Group had some concerns about the section 78 duty to co-operate:

“We are not in favour of increasing the duty upon the sector at a time where both a lack of housing supply and welfare reform [...] present considerable barriers to both allocating and finding suitable accommodation [...]”²²³

Evidence from the Minister

335. The Minister did not accept CHC Group’s view that section 78 was unnecessary. He said that, although “the principle of co-operation is already in place and works well”, the new, stronger duty in the Bill would “ensure that all people involved in the registered social landlord organisations will take note and take action on that”.²²⁴

336. Specifically in relation to section 78(5), we asked the Minister whether the list of bodies could be amended as necessary in the future to include, for example, arms-length management companies. The Minister confirmed that, if such an amending provision did not exist already, he would insert one into the Bill.²²⁵

Our view

337. Although we note the concerns of witnesses that lack of housing supply and the impact of welfare reforms are both barriers to finding suitable accommodation, we are satisfied that the Minister is making statutory provision for co-operation within local authorities and between other bodies.

338. In relation to section 78(5) and the list of bodies required to co-operate with local authorities, we can find no specific power in section 78 or Part 2 of the Bill which enables this list to be amended. Although section 126 contains a broad regulation-making power which might be relied upon to update the existing references in section 78(5), we believe it would be more difficult for the Minister to rely on this power to add new bodies to the list. We further believe that it is preferable to rely on a specific power, rather than seek to use a more general power of the type found in section 126.

²²² Written evidence, HB28

²²³ Written evidence, HB10

²²⁴ RoP, para 316, 6 February 2014

²²⁵ RoP, para 329, 6 February 2014

We recommend that the Minister amends the Bill to enable the list of bodies required to co-operate with local authorities (section 78(5)) to be amended by order. We believe that such provision would contribute to the future-proofing of the Bill.

5. Part 3 - Gypsies and Travellers

Background

339. Part 3 places a requirement on local housing authorities to provide new Gypsy and Traveller sites where need has been identified. Local authorities already have a duty to carry out an assessment of accommodation needs of Gypsies and Travellers under section 225 of the *Housing Act 2004*. However, there is no corresponding duty to provide a site.

340. The Welsh Government's approach to ensuring equality of opportunity for Gypsies and Travellers is set out in its *'Travelling to a better future'*²²⁶ framework for action and delivery plan. The Explanatory Memorandum states:

"[...] under the new duty more Gypsies and Travellers will be able to access accommodation appropriate to meet their cultural need.

"The new duty will be of particular benefit to children and young people, disabled people and older people who may have greater need to access community services."²²⁷

Evidence from respondents

341. There was broad support in evidence for the provisions in relation to Gypsies and Travellers to address the "significant undersupply of permanent and transient sites".²²⁸

342. Save the Children welcomed a statutory duty being placed on local housing authorities to provide new sites. They believed "legislating to this effect is crucial".²²⁹

343. In supporting the proposals, the Building and Social Housing Foundation highlighted the potential economic benefits of adequate site provision:

"Undersupply to suitable Gypsy and Traveller accommodation is counter-productive and will result in significant additional expense to the state and to Gypsies and Travellers, not to mention the social

²²⁶ Available here <http://wales.gov.uk/topics/people-and-communities/communitycohesion/publications/travellingtoabetterfuture/?lang=en>

²²⁷ Explanatory Memorandum, page 19

²²⁸ Written evidence, HB06

²²⁹ Written evidence, HB55

impacts felt both by travelling communities and the wider population.”²³⁰

344. It went on to say that studies into the cost of undersupply of Gypsy and Traveller accommodation have shown that local housing authorities incur significant expenditure for every pitch that is undersupplied in their area.²³¹

345. Community Law Partnership (CLP) commented on the costs associated with dealing with unauthorised encampments. CLP suggested that many of the existing sites were only developed as a result of the previous duty to provide sites (under the *Caravan Sites Act 1968*), which has since been repealed.²³²

346. We heard from a number of respondents about specific inequalities facing Gypsy and Traveller communities. Chwarae Teg highlighted the inequalities facing Gypsy and Traveller women because of “inappropriate accommodation”, arguing that placing families in housing can lead to women becoming isolated from the support networks and communities on site. It also referred to the impact of lack of appropriate accommodation on Gypsy and Traveller women’s ability to access antenatal care, education and training.²³³

347. Save the Children commented on the impact the lack of “culturally specific accommodation” can have on children in particular, arguing that living on unauthorised encampments can “perpetuate social exclusion”.²³⁴ Play Wales referred to the negative effect of not having a safe place to play on Gypsy and Traveller children.²³⁵

348. The Country Land and Business Association (CLA) Wales supported the principle of local housing authorities being required to upgrade existing Gypsy and Traveller sites, but was concerned that “the proposed new duty to deliver new Gypsy Traveller sites will be implemented unreasonably”. It also had particular concerns about “the proposal to lift the restriction on the number of caravans on a new site and is opposed to this element of the Bill”.²³⁶

²³⁰ Written evidence, HB08

²³¹ *ibid.*

²³² Written evidence, HB15

²³³ Written evidence, HB46

²³⁴ Written evidence, HB55

²³⁵ Written evidence, HB48

²³⁶ Written evidence, HB67

349. Notwithstanding the general support for Part 3, some respondents suggested that the Bill would not be effective in bringing about change unless other barriers were addressed. In addition, specific comments were made in relation to the provision for assessment and, in some cases, there was a call for amendments to be made to strengthen this part of the Bill. These matters are discussed separately below.

Assessment of accommodation needs

Background

350. Section 84 requires local housing authorities to carry out assessments of accommodation needs of Gypsies and Travellers living in, or visiting, their area. Assessments are to be undertaken every five years. In doing so, authorities must “consult such persons as [the authority] considers appropriate”.

Evidence from respondents

351. Tai Pawb emphasised the importance of undertaking robust needs assessments using clear standards. They stated:

“[...] there should be quite clear provisions in terms of what is suitable accommodation for Gypsies and Travellers and an understanding of why some of those groups need specific accommodation and of the fact that they do not have to live in bricks and mortar. Private sites or unauthorised encampments should never be treated as proof that there is enough accommodation in a given area.”²³⁷

352. It also highlighted the need for transit sites and permanent sites to be assessed differently, which “needs to be understood by the people who carry out those assessments”.²³⁸

353. Cardiff Gypsy Traveller Project (CGTP) welcomed the duty to assess accommodation needs of Gypsies and Travellers. However, it sought clarification on how this would link with Gypsy Traveller Accommodation Needs Assessment and Local Development Plans (LDPs) that have already been completed, in particular, whether there was an expectation on local authorities to revise existing LDPs to take account of any identified need for sites. CGTP criticised the quality of some existing attempts at assessing the

²³⁷ RoP, para 214, 29 January 2014

²³⁸ RoP, para 216, 29 January 2014

needs of this population and suggested there should be a prescriptive framework to standardise Gypsy Traveller Accommodation Needs Assessments.²³⁹

354. Rhondda Cynon Taf Council suggested that there could be practical difficulties in carrying out the initial assessment within 12 months of commencement of this provision, as many authorities will rely on specialist organisations to undertake this work. However, it welcomed “the fact that statutory guidance on assessing the need for sites will be issued”.²⁴⁰

355. Many respondents felt it was crucial for local housing authorities to consult Gypsies and Travellers when carrying out an assessment of accommodation needs under section 84, and called for a specific requirement to be included on the face of the Bill to this effect.

356. Tai Pawb emphasised the need for “meaningful” engagement with Gypsy and Traveller communities using suitably trained officers and relevant organisations. It also felt that an express duty should be placed on local housing authorities in this regard. Other respondents agreed there was a training need for local authority staff.

Barriers to implementation

357. Many respondents, including the WLGA, felt that the main factors affecting the ability of local housing authorities to provide new sites was the lack of political will and extent of local opposition.

358. Dr Bob Smith and Victoria Hiscocks both referred to problems with local opposition, with Victoria Hiscocks stating:

“[...] the biggest barrier to the delivery of sites is public opposition to those sites [...] There is a limit to what legislation can do. The Bill will give some political cover to local authorities in that where, for example, local authority members might acknowledge the need for sites and recognise the evidence that sites are needed, but the electorate may be less convinced of that need, or less willing to support it, having statutory duties gives some political cover to local authority members.”²⁴¹

²³⁹ Written evidence, HB49

²⁴⁰ Written evidence, HB52

²⁴¹ RoP, para 346, 29 January 2014

359. Other factors that respondents raised concerns about included planning difficulties and working at a regional level. On the planning point, the WLGA stated:

“Gypsy and Traveller communities 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.”²⁴²

360. CGTP sought clarification about whether “in cases where there is no local authority or publicly owned land available, will there be an expectation that Welsh Government will make land available for Gypsy Traveller sites or will local authorities have to rely on provisions for the compulsory purchase of private land.”²⁴³

361. In relation to regional working, the WLGA said “authorities in some regions, such as North Wales, are working together to take a strategic approach to meeting need across the region”.²⁴⁴

362. Tai Pawb also highlighted the need for “regional co-operation [...] but without trying to shift responsibility onto another local authority”.²⁴⁵

363. CGTP said that “whilst there is a need for regional partnership on the issue of providing sites and services for Gypsies and Travellers, the solutions are in the main to be found locally”. It continued:

“In our experience it is not appropriate or feasible to share the allocation of residential and transit sites over geographical areas, and [we] recommend that Councils look at local solutions for local needs.”²⁴⁶

Evidence from the Minister

364. In relation to Part 3, the Minister explained:

“We are seeing very few new Gypsy/Traveller community sites being built in Wales, because it is too risky, politically, for individuals. This [the Bill] will place a duty on authorities to test that system, to come back to, and report to, Ministers about what the needs base is, and I

²⁴² Written evidence, HB06

²⁴³ Written evidence, HB49

²⁴⁴ Written evidence, HB06

²⁴⁵ RoP, para 218, 29 January 2014

²⁴⁶ Written evidence, HB49

expect them then to act in the planning system that they have, in which they can already work and function to do that. If, at some point, through that process, the system fails, where an authority fails to provide either an adequate assessment or an adequate site, it will be the responsibility of a Minister to direct, and that is in the Bill.”²⁴⁷

365. The Minister explained that approval of a local housing authority report on assessment of accommodation needs would be given subject to an authority being able to demonstrate that it had consulted with Gypsies and Travellers:

“[...] the assessment comes to the Minister for testing, and there will be an evidence base, so it would be very difficult for any Minister to agree a process where we are supposed to be consulting with Gypsy and Traveller communities but we have not asked Gypsy and Traveller communities what they think and what their need base is.”²⁴⁸

366. The Minister’s official went on to clarify that guidance accompanying the Bill would set out clearly the expectation that local housing authorities will consult directly with Gypsy and Traveller communities.²⁴⁹

367. We asked the Minister how the Bill addressed regional and cross-border issues. He explained that all local housing authorities would be subject to the duty to assess accommodation needs but that there would be nothing to prevent an authority discharging its duty to meet identified need to another authority, or to an external body, by agreement.²⁵⁰

Our view

368. We welcome Part 3 of the Bill and believe it should contribute towards better meeting the accommodation needs of Gypsies and Travellers. While we are hopeful that these changes will result in the delivery of new sites, we recognise that there are other barriers to be addressed, many of which do not have legislative solutions.

369. We believe that robust assessments will be key to ensuring that the accommodation needs of Gypsies and Travellers are clearly identified. We have some concerns about the effectiveness of the current needs assessment

²⁴⁷ RoP, para 289, 12 December 2013

²⁴⁸ RoP, para 270, 12 December 2013

²⁴⁹ RoP, para 268, 12 December 2013

²⁵⁰ RoP, para 276, 12 December 2013

process and the extent to which assessments accurately reflect site provision and unmet need.

We recommend that the Minister amends section 84(2) to require local housing authorities to consult directly with Gypsy and Traveller communities when carrying out an assessment of accommodation needs.

We recommend that guidance issued under section 89 should fully address concerns about the effectiveness of the current needs assessment process in relation to accommodation for Gypsies and Travellers and the extent to which these assessments accurately reflect site provision and unmet need.

We recommend that guidance under section 89 should also provide for authorities to consider working on a regional basis when carrying out assessments.

6. Part 4 - Standards for social housing

Background

370. Part 4 of the Bill makes provision for standards for social housing. This includes both the physical standards of accommodation and also standards for rents and service charges. The standards will be set by the Welsh Ministers and are not subject to any Assembly procedure.

371. The Welsh Housing Quality Standard (WHQS), introduced in 2002, requires all social landlords to improve their housing stock to this standard. The original deadline for WHQS was 2012, which has now been extended to 2020.

Welsh Housing Quality Standard (WHQS)

Evidence from respondents

372. As noted by the Wales Audit Office (WAO), WHQS is not applicable to the private rented sector. This is in contrast to the Decent Homes Standard that applies in England.

373. We heard evidence that some local housing authorities have met WHQS, but others have yet to achieve it. The Bill will allow Welsh Ministers to set a statutory deadline, proposed to be 2020, for the standard to be met. Although there was broad support for this proposal in the evidence, the WLGA questioned the need for any statutory target given that “according to the evidence, the 11 [local housing authorities] will reach the standard by 2020”.²⁵¹

374. The WAO highlighted the Minister’s claim in the Regulatory Impact Assessment that monitoring WHQS compliance, should the Bill become law, will cost no more than at present, and suggested there may be “a need to strengthen further the current monitoring regime in light of any emerging evidence about the robustness of landlords’ own arrangements for self-reporting”.²⁵²

375. In referring to Part 5 of the Bill (Housing finance), the WLGA noted that the borrowing limit imposed as a result of the agreement with HM Treasury to exit the Housing Revenue Account subsidy (HRAS) system could impact upon the ability of local housing authorities to meet WHQS.

²⁵¹ RoP, para 305, 15 January 2014

²⁵² Written evidence, HB66

376. There was little support for providing for the Welsh Housing Quality Standard to be included on the face of the Bill, although the Chartered Institute of Housing (CIH) Cymru called for some form of Assembly scrutiny of those standards. Victoria Hiscocks highlighted that, by 2020, the standard would be nearly 20 years old. She commented that there were benefits in not having a prescriptive standard on the face of the Bill, given that “we might be thinking about what else we need to be doing around social housing at that point”.

Powers of entry

377. Section 98 of the Bill makes provision for persons authorised by the Welsh Ministers to inspect premises where it appears the authority may be failing to maintain or repair any premises in accordance with standards set under section 94. The Welsh Ministers must give the local housing authority not less than 28 days’ notice of the intended inspection, but the authority is only required to give not less than seven days’ notice to the occupier.

378. While the issue of powers of entry was not raised by respondents, we sought to identify whether the period of notice for tenants provided for in the Bill was reasonable. On this issue, Welsh Tenants suggested that seven days’ notice may not be sufficient. It suggested that factors such as tenants’ availability needed to be taken into account.

Rents

379. The Bill will allow Welsh Ministers to set standards for rents and service charges. This will mean that rents and service charges will be charged separately and will be clearly identified.

380. Respondents broadly welcomed the proposal to charge rents and service charges separately, suggesting this would improve transparency. However, the WLGA noted that “disaggregating service charges is going to be quite a challenge for authorities, so it will take some time. Therefore, it is important that we do not have an unrealistic target date to achieve that”.²⁵³

381. Respondents noted the need for changes to be underpinned by legislation. There was also broad support for the attempt to achieve consistent standards and harmonisation of rents across social housing.

²⁵³ RoP, para 310, 15 January 2014

Powers to intervene

382. Section 102 of the Bill gives Welsh Ministers powers to intervene where a local housing authority has failed, or is likely to fail, to meet any standard set under Part 4.

383. While supporting the powers of intervention powers for the Welsh Ministers, CIH Cymru suggested that enforcement should not be the Welsh Government's objective:

“[...] it is not about enforcement, it is about engaging and working with those authorities to make sure that they can achieve the standard.”²⁵⁴

Evidence from the Minister

384. The Minister explained that placing standards of accommodation for social housing on a statutory footing “is a fall back position” in the event that authorities fail to meet WHQS by 2020.

385. He confirmed that the Bill provided “a stepped range of sanctions” in the form of intervention powers for the Welsh Ministers, should an authority fail to meet or maintain standards.

386. At present, Major Repairs Allowance is provided to local authorities on condition that WHQS is achieved within timescales agreed with the Welsh Government. The Minister could not confirm whether that sanction had ever been used.²⁵⁵ He said that existing powers under the *Local Government (Wales) Measure 2009* could potentially be used in terms of local authority improvement, but obtaining the evidence required under the Measure could be onerous. The Minister saw the power of direction within the Bill as more specific in terms of WHQS and therefore more appropriate.²⁵⁶

387. The Welsh Government is implementing a new rent policy for social landlords that will apply to housing associations from April 2014 and, subject to the passing of the Bill, to local housing authorities from April 2015. In his letter of 14 January 2014, the Minister noted that “once the HRAS system is abolished the existing local authority guideline rent system will end and there will be no legislative framework in place to control local authority rents”.

²⁵⁴ RoP, para 59, 15 January 2014

²⁵⁵ RoP, paras 300-301, 12 December 2013

²⁵⁶ RoP, paras 302-303, 12 December 2013

388. He went on to state:

“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.”²⁵⁷

389. The Minister also confirmed that he was setting up a Task and Finish Group to look at developing a framework and guidance for service charges to ensure consistency across the social housing sector.

390. In comments to the Assembly’s Finance Committee, the Minister said the changes to rents and service charges were for the purpose of transparency, but that they were also needed to satisfy Department for Work and Pensions (DWP) requirements. The official accompanying the Minister expanded on this:

“Under universal credit, it is going to be an online application form and tenants will need to justify and have evidence for any claims for their eligible service charges. So, we feel that it is really important that landlords do correctly separate rents and service charges to provide tenants with the appropriate information. There will still be some service charges that will be eligible for benefits and others that will not be eligible for benefit, but that will make things much clearer.”²⁵⁸

Our view

391. We recognise that, although the original target date for compliance with Welsh Housing Quality Standard (WHQS) was 2012, this has not yet been achieved by all local housing authorities. We therefore support placing WHQS on a statutory footing for authorities. We accept that including the specific WHQS requirements on the face of the Bill would not be appropriate as they are likely to change in the future. However, we believe there should be a role for the Assembly in approving any standards set under section 94.

We recommend that the Minister amends the Bill to provide for any standards set under section 94 to be specified in regulations and subject to formal approval by the Assembly.

²⁵⁷ Letter from the Minister for Housing and Regeneration, 14 January 2014

²⁵⁸ RoP, para 198, 6 February 2014

392. We accept that it may be necessary for tenants' homes to be inspected to ensure their landlord is complying with WHQS. However, we are concerned that while a local housing authority is entitled to not less than 28 days' notice of any inspection, the tenant is only entitled to not less than seven days' notice.

We recommend that tenants should be entitled to more than seven days' notice prior to any inspection of their home and that the Bill should be amended to make provision for this.

393. We support the proposals for the disaggregation of rents and service charges. We believe this will bring transparency, consistency and fairness to rents and service charges, as well as addressing practical issues in relation to the Department of Work and Pensions' requirements and exiting the Housing Revenue Account subsidy system.

394. We recognise that the Welsh Ministers must have clear powers to intervene where a local housing authority has failed, or is likely to fail to meet the standards specified under section 94 and where engagement with the authority has failed to deliver improvements. We therefore support the powers to intervene proposed in the Bill.

7. Part 5 - Housing finance

Background

395. The proposals in Part 5 of the Bill form part of an agreement negotiated between the Welsh Government and HM Treasury that will allow Welsh local authorities to exit the Housing Revenue Account subsidy (HRAS) system. This will bring Welsh local authorities into line with those in England which are already self-financing. This proposal only affects those local authorities that still have housing stock.

Evidence from respondents

396. Some concerns were expressed by the WLGA that local authorities' borrowing would be capped and this could impact upon authorities' ability to meet WHQS. However, it acknowledged that the same arrangements applied to local authorities in England when they exited the HRAS system, so Welsh local authorities were not being treated any differently in that respect.

397. A number of detailed technical comments on the proposals, including from Capita Asset Services,²⁵⁹ were received. Capita called upon the Welsh Government "to provide a transparent approach and explain how the 'Settlement Payment' has been calculated". The Wales Audit Office (WAO) noted that some local authorities in England are anticipating financial affordability issues arising from the impact of depreciation and impairment charges.²⁶⁰

398. Section 115 of the Bill allows Welsh Ministers to make a determination that provides for a settlement payment for each local authority. Section 116 allows for adjustments of settlement payments at a later date where there was an error, or a change, in any matter that was taken into consideration when calculating a settlement payment. Cardiff Council expressed some concern about this power to "revisit" the settlement figure and assumed that it did not mean funding could be "clawed back" in future years.²⁶¹

Evidence from the Minister

399. The Explanatory Memorandum outlines that the purpose of Part 5 is to abolish the HRAS system in Wales:

²⁵⁹ Written evidence, HB11

²⁶⁰ Written evidence, HB66

²⁶¹ Written evidence, HB37

“It will be replaced with a new self-financing system that allows each authority to retain all of its rental income locally to support its housing services. The agreement with [the] Treasury requires local authorities to “buy-out” of the system at a settlement figure that is fiscally neutral to the UK Government. Part of the agreement will require local authorities to fund the settlement by borrowing from the Public Works Loans Board.”²⁶²

400. In evidence to the Finance Committee, the Minister stated that discussions had taken place with HM Treasury and local authorities regarding the buy-out and the cost to individual local authorities. He confirmed:

“We went to the Treasury and got agreement on a number. We have come back since then and had further discussions with local authorities that are exiting. We asked them to reassess the first funding indicator they gave to us. That has come back pretty much the same. Now, we understand better what they intend to do in terms of the WHQS element of that and the new-build element as well.”²⁶³

401. The Minister’s official clarified that discussions on the precise savings that each local authority would make were on-going, and that there were outstanding “technical accounting matters” that need to be the subject of further consideration.²⁶⁴

402. The Minister also provided further detail on the housing related borrowing limit, including the existing borrowing and the new debt to fund the buy-out from the HRAS. He noted that the period of the loan would be a matter for local authorities.

Our view

403. We support the proposal that Welsh local authorities should no longer be part of the Housing Revenue Account subsidy system, and agree that this Bill provides the most appropriate vehicle for the necessary legislative changes.

We recommend that the Minister continues to engage with the WLGA and the 11 local authorities with housing stock regarding detailed arrangements for the buy-out from the Housing Revenue Account

²⁶² Explanatory Memorandum, page 25

²⁶³ RoP, para 210, 5 February 2014, Finance Committee

²⁶⁴ RoP, para 216, 5 February 2014, Finance Committee

subsidy system, and ensures that local authorities are clear about the impact of Part 5 of the Bill for them.

8. Part 6 - Co-operative housing

Background

404. Part 6 of the Bill makes technical amendments to existing legislation that are intended to facilitate the delivery of co-operative housing.

Evidence from respondents

405. The Wales Co-operative Centre said that it viewed the Bill as the beginning of a process, and there would be an opportunity for future legislation, specifically the Renting Homes Bill, to consolidate and strengthen the provisions relating to co-operative housing. In welcoming Part 6, it provided the most detailed response on the specific provisions in the Bill:

“Clause 120 will permit fully mutual associations to issue assured tenancies thus enabling them to provide stronger and more standard security of tenure for their tenants.

“Clause 121 [...] opens the door to exploring different ways of developing co-operative housing and the Wales Co-operative Centre welcomes its inclusion as it will give ‘Surety of Finance’ which will be recognised by and familiar to funders.”²⁶⁵

406. However, not all of the evidence supported the development of more co-operative housing. The Council of Mortgage Lenders (CML) viewed co-operative housing as a “niche” market and suggested that it should not result in resources being directed away from “established models and approaches” that can deliver volume home building.²⁶⁶ The CML also called for the standardisation of legal structures underpinning co-operatives to ensure they gained the support of lenders.

407. The Country Land and Business Association Wales described the proposals in Part 6 as “an obscure proposal designed to conform to cultural ideals as opposed to providing new homes”.²⁶⁷

Evidence from the Minister

408. The Minister’s official clarified why the provisions in Part 6 of the Bill are needed:

²⁶⁵ Written evidence, HB34

²⁶⁶ Written evidence, HB04

²⁶⁷ Written evidence, HB67

“Previously, co-operatives, if they qualified, were exempt from the requirement to comply with assured and assured short-hold tenancies in the Housing Act 1998. It was not very satisfactory, because they then had to draft their own tenancy agreements [...]

“This [Part 6] simply allows them to opt into the system; that is all it does. It is a fix, pending the Renting Homes Bill, when, hopefully, this will be looked at in some detail. It was done on an opt-in basis because, although we had clear lobbying and evidence of the problem, we did not know the extent of the number of co-ops out there that are not using the system and were reliant on not using the system; there simply is not the evidence.”²⁶⁸

Our view

409. We support measures that will encourage the development of co-operative housing. We note the Minister’s acknowledgement that the provisions in this Bill are a “temporary fix” to a specific technical issue and support their inclusion in the Bill on that basis.

We recommend that the Minister ensures the forthcoming Renting Homes (Wales) Bill is used as an opportunity to address concerns of stakeholders, including lenders, about barriers to the development of co-operative housing. In this way, the Renting Homes (Wales) Bill could contribute towards a more coherent legislative framework for the delivery of co-operative housing.

²⁶⁸ RoP, para 352, 12 December 2013

9. Part 7 - Council tax for empty dwellings

Background

410. The Explanatory Memorandum accompanying the Bill, states that:

“Approximately 22,000 privately-owned homes have been empty for more than six months. All local authority areas have empty homes. At a time when the demand for homes far exceeds supply, they are a wasted resource. In addition, as a result of falling into disrepair and in some cases, vandalism, they can become not only unsightly but unsafe too.”²⁶⁹

411. Part 7 of the Bill will allow local authorities to charge a flat 150 per cent of the standard council tax charge on properties that are empty for twelve months or longer.

412. The overall purpose of this Part is to help make the best possible use of existing homes by bringing empty properties back into use.

Evidence from respondents

413. There was general support from respondents for the proposal to allow additional council tax to be levied on long-term empty homes.

414. Shelter Cymru supported the proposal, saying:

“We think that the principle of being able to do that is an important one. We have long been advocates of strategies around addressing empty homes [...]. Anything that can bring empty homes back into use for people in housing need at a time of desperate housing shortage has to be good.”²⁷⁰

415. In welcoming the proposal, the WLGA suggested an increase to the proposed additional amount payable, saying:

“The power to increase council tax—by the way, we are asking to charge up to 200% on empty homes—will be an additional power and, hopefully, an incentive for people not to leave their houses empty or, if they do, it will be an income source for local authorities to use to invest in the scheme to bring empty houses back into use. So, we

²⁶⁹ Explanatory Memorandum, page 28

²⁷⁰ RoP, para 171, 23 January 2014

welcome extra powers, but we are eager to have the freedom to set that at a maximum of 200%.”²⁷¹

416. Chartered Institute of Housing Cymru supported the discretionary power for local authorities to determine the case for any additional charge:

“We think that there is an argument for saying that it could be higher. We quite like the idea that it is up to the discretion of the local authority. That does not necessarily mean that it has to be any higher, but we think that there might be specific local reasons why you would want to intervene if there was a particular problem.”²⁷²

417. However, some respondents, including Victoria Hiscocks, were content with the fixed rate of 150 per cent.²⁷³

418. A number of respondents told us that a twelve-month period for determining a property as ‘long-term empty’ was a sufficient timescale before an additional charge could apply. On this point, Victoria Hiscocks commented:

“A year is probably an appropriate figure. I say that with the caveat that this needs guidance underpinning it that might set out some of the circumstances under which it might be acceptable for properties to be empty for more than a year. In our evidence, we highlighted the example of an older person who may be in hospital or who has a long-term care arrangement but might hope, at some point, to return to their home. There might be certain circumstances that we would want to see as exceptions. That should be set out in guidance.”²⁷⁴

419. There was also support for the principle of an incremental approach (i.e. increasing the amount that can be charged the longer the property lies empty). The WLGA said:

“I think that I would welcome that. We are all aware of unintended consequences, where somebody inherits a house and intends to do something with it but cannot do it at once, but they have more long-term plans. I would welcome that to address that exact problem. I think that that is an important point to note.”²⁷⁵

²⁷¹ RoP, para 33, 15 January 2014

²⁷² RoP, para 172, 15 January 2014

²⁷³ RoP, para, 375, 29 January 2014

²⁷⁴ RoP, para 374, 29 January 2014

²⁷⁵ RoP, para 339, 15 January 2014

420. A number of respondents also called for clear guidance on when the powers to increase the level of council tax should be used. Cases such as long-term hospital stays, or owners who have inherited a property or who are unable to sell it were all mentioned as legitimate reasons for a property being empty.

421. Bridgend County Borough Council highlighted some of the practical difficulties in contacting owners of empty homes. It also noted that some empty properties have been removed from the valuation list because they are uninhabitable and are therefore not subject to council tax.²⁷⁶

422. In addition to empty properties, a few respondents, including Shelter Cymru, also commented on the issue of second homes. Most acknowledged that consideration could be given to the additional charge being applied to second homes.

423. On this point, the WLGA stated:

“[...] we have an opportunity, if we want to be innovative and radical, to use the taxation system where people can afford more than one home—often two or three—to redistribute that wealth and invest in affordable housing schemes for people in need [...] we are eager for the Minister to include those elements and yet give local authorities the freedom to charge up to 200% [...] if the evidence shows that that additional tax would support the creation of sustainable communities, in line with the aspirations of Welsh Government.”²⁷⁷

424. Victoria Hiscocks agreed that “there is probably a case for it applying to second homes” because of the “significant impact” these have on certain communities in certain parts of Wales. She said “the onus should potentially be on local authorities to demonstrate the impact on the market and the acute housing need that is arising as a result of those second homes in a particular locality. It will not necessarily be local authority-wide, but in a specific area”.²⁷⁸

425. Community Housing Cymru (CHC) Group felt that “it should be applied to second homes and that the revenue generated should be ring-fenced and spent on housing”.²⁷⁹

²⁷⁶ Written evidence, HB31

²⁷⁷ RoP, para 336, 15 January 2014

²⁷⁸ RoP, para 382, 29 January 2014

²⁷⁹ RoP, para 446, 23 January 2014

426. Cymdeithas yr Iaith Gymraeg were concerned about the impact second homes have on the Welsh language, and agreed there would be advantages to charging additional council tax on second homes, saying:

“[...] it would improve the supply of affordable housing for local people, thereby reducing out-migration from Welsh-speaking areas.”²⁸⁰

427. Similar views were expressed by Gwynedd Council.²⁸¹

428. However, other respondents were not convinced that the provision should apply to second homes. Dr Bob Smith said:

“[...] it is partly an issue of definition and it is partly about the question of whether a second home, if it is used occasionally, is a long-term empty property. It is an issue that needs probably a lot more investigation before I would be committed to going down that route.”²⁸²

Evidence from the Minister

429. The Minister confirmed that additional revenue generated by local authorities as a result of the proposals could not be ring-fenced for the purpose of improving housing. His official went on to explain:

“It is unhypothecated; therefore, we have to encourage local authorities to utilise the money for housing purposes, and we know that a lot of them are thinking that way. We cannot actually force them to do that.”²⁸³

430. In commenting on the suggestion that exemptions should be included in the Bill, in particular, to take account of personal or exceptional circumstances, the Minister explained:

“It is always difficult in terms of listings, once again, in terms of what is an exemption and what is not. That is why we start with the principle that this is a basis of an enabling power for local authorities to make a decision; it will be up to local authorities. We will issue guidance regarding what exemptions there should be, and we will

²⁸⁰ Written evidence, HB51

²⁸¹ Written evidence, HB41

²⁸² RoP, para 381, 29 January 2014

²⁸³ RoP, para 375, 12 December 2013

make that very clear[...] I do not think that it is something that we would want to prescribe too hard on the face of the Bill.”²⁸⁴

431. In giving evidence to the Finance Committee, the Minister said he intended to table amendments to allow local authorities to charge additional council tax up to a limit, as opposed to the fixed level proposed in the Bill. The Minister also agreed to consider an incremental approach to increases in council tax for empty homes. He said:

“I think that what I am prepared to do, through guidance, is to give a top limit of what I would expect council tax to be based upon and then give local authorities the ability to have a staircasing process, should they so wish. We will give them guidance around that in terms of timeline and quantum, but I think that, ultimately, that will be a message for local authorities to discharge in their duty.”²⁸⁵

Our view

432. We recognise that empty properties are a wasted resource and welcome efforts to bring them back into occupation. We believe this will address not only the shortage of affordable housing, but also the many other issues that blight communities where there are empty properties, such as anti-social behaviour. We therefore support the objectives of Part 7 of the Bill.

433. We recognise that not all owners of long-term empty homes wilfully neglect their properties; many empty properties will have belonged to a deceased person or belong to people receiving care elsewhere. In some cases, the owner may simply be unable to sell the property. We would not support owners with legitimate reasons for keeping their property empty being financially penalised.

434. We are content with the proposals to increase council tax on empty homes in principle, but want to see these powers used as part of a flexible suite of measures, based on best practice and identified in a local authority’s empty homes strategy, rather than as an opportunity to raise extra revenue.

435. We believe that an incremental approach to additional council tax charges will be more effective than a flat rate charge.

²⁸⁴ RoP, para 382, 12 December 2013

²⁸⁵ RoP, para 244, 5 February 2014, Finance Committee

We recommend that the Minister adopts an incremental approach to additional council tax charges, starting with an additional 50 per cent and increasing over time.

436. We do not believe that home owners with legitimate reasons for keeping their property empty should be subject to any additional council tax charges. We believe that local authorities should reflect this in any local scheme to charge additional council tax on empty homes. Further to this, we believe that any local scheme to charge additional council tax on empty homes should be subject to approval by Welsh Ministers.

The majority of the Committee recommends that the Minister gives consideration to making provision for local authorities to be able to charge additional council tax in respect of second homes. Two members of the Committee do not agree.

437. We believe that there should be an expectation on local authorities to publish figures on revenue raised as a result of increased council tax payments on empty properties, and to set out how this has been spent.

10. Part 8 - Miscellaneous and general

Minor amendments to the Mobile Homes (Wales) Act 2013

Evidence from respondents

438. Those who commented were content with Part 8 of the Bill, including the proposed amendments to the *Mobile Homes (Wales) Act 2013*.

Evidence from the Minister

439. The Minister explained that the amendments to the *Mobile Homes (Wales) Act 2013* relate to “tidying up of clauses” and “grammatical issues”.

Our view

440. We are content with the proposed amendments to the *Mobile Homes (Wales) Act 2013* provided in Part 8.

Annexe 1

List of written evidence

The following people and organisations provided written evidence to the Committee. All written evidence can be viewed in full at:

www.senedd.assemblywales.org/mglIssueHistoryHome.aspx?Ild=8828

Organisation	Reference
Persimmon Homes	HB 01
Abergele Town Council	HB 02
Shared Lives Plus	HB 03
Council of Mortgage Lenders	HB 04
Chartered Institute of Housing Cymru	HB 05
Welsh Local Government Association	HB 06
Josie Henley-Einion	HB 07
Building and Social Housing Foundation	HB 08
Association of Residential Lettings Agents	HB 09
Community Housing Cymru Group	HB 10
Capita Asset Services	HB 11
Wales Governance Centre	HB 12
Association of Letting and Management Agents	HB 13
Welsh Language Commissioner	HB 14
Community Law Partnership	HB 15
Shelter Cymru	HB 16
Royston Jones	HB 17
Royal Town Planning Institute	HB 18
Cymorth Cymru	HB 19
British Gas	HB 20
National Union of Students	HB 21
Residential Landlords Association	HB 22
Federation of Private Residents Association	HB 23

Llamau	HB 24
Older People's Commissioner for Wales	HB 25
Electrical Safety Council	HB 26
Tenant Participation Advisory Service Cymru	HB 27
Conwy County Borough Council	HB 28
Conwy County Borough Council – additional information	HB 28a
Tai Ceredigion Monitoring Group	HB 29
Dr Peter Mackie, Cardiff University	HB 30
Bridgend County Borough Council	HB 31
The Unity Project	HB 32
South West Law	HB 33
Wales Co-operative Centre	HB 34
Garden Court Chambers Housing Team	HB 35
Garden Court Chambers (Romani Gypsy and Travellers)	HB 36
Cardiff Council	HB 37
Royal Institute of Chartered Surveyors Wales	HB 38
Welsh Tenants	HB 39
EEESafe	HB 40
Gwynedd Council	HB 41
Design Commission for Wales	HB 42
Flintshire County Council	HB 43
Gofal	HB 44
Age Cymru	HB 45
Chwarae Teg	HB 46
Friends of the Earth Cymru	HB 47
Play Wales	HB 48
Cardiff Gypsy and Traveller Project	HB 49
Isle of Anglesey County Council	HB 50
Cymdeithas yr Iaith Gymraeg	HB 51
Rhondda Cynon Taf County Borough Council	HB 52

RSPCA Cymru	HB 53
Welsh Women's Aid	HB 54
Save the Children	HB 55
Wales Heads of Environmental Health Group - Housing Technical Panel	HB 56
Tai Pawb	HB 57
Dr Bob Smith, Cardiff University	HB 58
Dr Simon Hoffman, Swansea University	HB 59
National Landlords Association	HB 60
Disability Wales	HB 61
Wrexham County Borough Council	HB 62
The Law Society	HB 63
Gruffydd Meredith	HB 64
Victoria Hiscocks, Cardiff Metropolitan University	HB 65
Wales Audit Office	HB 66
Country Land and Business Association	HB 67
City and County of Swansea	HB 68

Annexe 2

Witnesses

The following witnesses provided oral evidence to the Committee on the dates noted below. Transcripts of all oral evidence sessions can be viewed in full at:

www.senedd.assemblywales.org/mgIssueHistoryHome.aspx?Ild=1306

12 December 2013

Carl Sargeant, Minister for Housing and Regeneration	Welsh Government
Welsh Government Officials	

15 January 2014

Keith Edwards, Director	Chartered Institute of Housing
Anne Delaney, Board Member Policy Leader	Chartered Institute of Housing
Councillor Dyfed Edwards, WLGA Housing spokesman and Leader of Gwynedd Council	Welsh Local Government Association
Naomi Alleyne, Director of Social Services and Housing	Welsh Local Government Association
Sue Finch, Housing Policy Officer	Welsh Local Government Association

23 January 2014

Auriol Miller, Director,	Cymorth Cymru
Nicola Evans, Policy and Information Manager	Cymorth Cymru
John Puzey, Director	Shelter Cymru
Douglas Haig, Director of Wales	Residential Landlords Association
Lee Cecil, National Representative for Wales	National Landlords Association
Ian Potter, Managing Director	Association of Residential Letting Agents
Martine Harris, Senior Manager	Association of Letting and Management Agents
Nick Bennett, Chief Executive	Community Housing Cymru

Aaron Hill, Policy Officer
Chris O'Meara, Chief Executive

Community Housing Cymru
Cadwyn Housing Association

29 January 2014

Steve Clarke, Managing Director
Hannah Smith, Private Sector Development
Officer
Alicja Zalesinska, Director
Victoria Hiscocks
Dr Simon Hoffman
Dr Bob Smith

Welsh Tenants
Welsh Tenants
Tai Pawb
Cardiff Metropolitan University
Swansea University
Cardiff University

6 February 2014

Carl Sargeant, Minister for Housing and
Regeneration
Welsh Government Officials

Welsh Government