

National Assembly for Wales
Bill Summary

Housing (Wales) Bill

January 2014

Cynulliad
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Jonathan Baxter and Alys Thomas

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Housing (Wales) Bill

1. Introduction

Introduction date: 18 November 2013

Member in charge: Carl Sargeant AM, Minister for Housing and Regeneration

Assembly Committee undertaking Stage 1 scrutiny of the Bill: Communities, Equality and Local Government Committee

Stage 1 reporting deadline: 21 March 2014

The key purposes of the Bill are to:

- Introduce a compulsory registration and licensing scheme for private rented sector landlords and letting and management agents;
- Reform homelessness law, including placing a stronger duty on local authorities to prevent homelessness and allowing them to use suitable accommodation in the private sector to discharge homelessness duties;
- Place a duty on local authorities to provide sites for Gypsies and Travellers where a need has been identified;
- Introduce standards for local authorities on rents, service charges and quality of accommodation;
- Reform the Housing Revenue Account Subsidy system;
- Give local authorities the power to charge 50 per cent more than the standard rate of council tax on homes that have been empty for a year or more; and
- Assist the provision of housing by Co-operative Housing Associations.

The Bill is divided into **eight parts**, and this Bill summary follows the same structure as the Bill.

2. Part 1 - The Private Rented Sector

2.1. *Current regulation of the private rented sector*

The private rented sector (PRS) is currently regulated through a variety of legislation, much of which is the responsibility of local authorities to enforce. All local authorities will also work with landlords on a non-statutory basis through local landlords fora which can be a useful conduit when disseminating information.

Some landlords are already required to licence specific properties that they own. Many Houses in Multiple Occupation (HMOs) must already be licensed under provisions contained in the *Housing Act 2004*. Larger HMOs are subject to mandatory licensing, with smaller HMOs subject to additional licensing where the local authority has introduced such requirements. HMO licensing is property based, with the property being licensed in conjunction with a licence holder and manager (who may be the same person). The 2004 Act also allows local authorities to introduced areas of selective licensing where all properties must be licensed providing that certain criteria prescribed by Welsh Ministers are met. This can include, for example, areas where there is a significant problem with anti-social behaviour.

Other keys aspects of regulation within the sector include:

- The physical standards of housing are addressed through the Housing Health and Safety Rating System which was introduced in 2006 by the *Housing Act 2004*;
- Local authorities have discretionary powers to assist landlords in the private rented sector who are seeking to improve their properties through grants and loans, subject to adoption of a local housing renewal policy;
- Tenancy deposit protection was introduced in 2007, and all deposits paid in respect of an Assured Shorthold Tenancy must now be protected in an authorised scheme.

Proposals for reform of tenancy law in Wales are to be taken forward through the Renting Homes Bill to be introduced by the Welsh Government in 2015.

2.2. *Landlord Accreditation Wales*

The Explanatory Memorandum (EM) to the Bill refers to the training that will be required for a landlord or agent to become licensed as “accreditation”.

Accreditation Schemes are not new to Wales with a number of local authorities establishing schemes in the early 2000s. The registration and licensing proposals in Part 1 of the Bill are largely based on the voluntary Landlord Accreditation Wales¹ (LAW) scheme which currently has around 2,000 members.

Landlord Accreditation Wales was established by all 22 local authorities in March 2009 with the financial support of the Welsh Government. The focus of the scheme was on the individual, rather than the property they managed. Prior to that date there were a variety of local schemes where the primary focus was on the property. Some local schemes have continued and now run alongside the LAW scheme.

LAW landlords and agents undertake a day’s training on basic aspects of landlord and tenant law such as how to end a tenancy and how to deal with common problems that occur during tenancies. They also must adhere to a code of standards and carry out some basic continuous professional development (such as attending local landlords’ fora) and renew their accreditation periodically. There is a fee for membership which covers the cost of the training.

It is possible that there may be passporting arrangements in place for landlords that are already members of LAW.

2.3. *The Rugg Review*

An extensive review of the private rented sector in England was undertaken by Dr Julie Rugg and Dr David Rhodes in 2008.² The Rugg Review, as it became known, proposed a “light touch” licensing system for landlords that would “not stifle commercial activity or place an undue burden on statutory authorities with regard to implementation.”³ The system proposed by Rugg and Rhodes would have required landlords to register for a small fee, but there would be no “hurdle criteria” such as a fit and proper person test. This last proposal appeared to be based on problems identified with landlord registration in Scotland, discussed later in this briefing. In effect, Rugg and Rhodes were proposing a registration scheme rather than a licensing scheme. The “licence” could be revoked where there was evidence of the landlord not meeting statutory requirements in terms of their housing management or the standards of their properties.

¹ Landlord Accreditation Wales website www.welshlandlords.org.uk

² Rugg, Dr Julie and Rhodes, Dr David, *The Private Rented Sector: its potential and contribution*, 2008 [accessed 1 December 2013]

³ Ibid, pp112-113

Rugg and Rhodes made separate proposals for letting agents and suggested that they should be properly licensed and regulated.

2.4. Communities and Culture inquiry into the private rented sector

In February 2011, the Communities and Culture Committee issued its recommendations following its inquiry into *Making the Most of the Private Rented Sector*.⁴ Two recommendations of particular significance to the Bill are:

- A recommendation that the Welsh Government researches the potential effectiveness and feasibility of a mandatory licensing or registration scheme for all managers of private rented sector accommodation (including landlords) in Wales; and
- A recommendation that the Welsh Government takes appropriate legislative action to enable the introduction of statutory regulation of all letting agencies in Wales.

2.5. Landlord Registration in Scotland

The origins of Landlord Registration in Scotland are contained within the *Antisocial Behaviour etc. (Scotland) Act 2004*, which requires almost all private landlords to apply for registration with their local authority. The Scottish Government has responsibility for maintaining the online registration website on behalf of all 32 local authorities, but individual local authorities have operational responsibility for the scheme within their area.

The scheme in Scotland is a registration scheme, not a licensing scheme as proposed by the Welsh Government, although there is a requirement for the applicant to pass a fit and proper person test. In addition to landlord registration, there is a national voluntary accreditation scheme⁵ in Scotland that largely mirrors the LAW scheme, and also mandatory HMO licensing.

The penalty for landlords and agents who fail to register is a fine of up to level 5 on the standard scale. The Explanatory Memorandum to the Bill highlights that fewer than 10 reports, recommending criminal proceedings, have been provided to Procurators Fiscal (who make decisions on whether to prosecute in Scotland).

Scottish local authorities can also serve a Rent Penalty Notice under section 94 of the 2004 Act which exempts the tenant from any liability for rent. The Scottish Government's own research suggests that a Rent Penalty Notice may be a more

⁴ Communities and Culture Committee, *Making the Most of the Private Rented Housing Sector in Wales*, February 2011 [accessed 1 December 2013]

⁵ Landlord Accreditation Scotland website: www.landlordaccreditationscotland.com [accessed 3 December 2013]

effective solution than prosecution where the fine may be low. An example is given of an Edinburgh landlord who was fined £65 by a court.⁶

The registration scheme in Scotland has been the subject of some criticism. A review of the scheme⁷ commissioned by the Scottish Government pointed to some achievements. However, the review also highlighted issues of concern including:

- In the main, fees do not cover local authority costs. This lack of income means that resources are focused on the administration of the scheme rather than investigation and enforcement activity;
- There have been problems with the IT system;
- Landlord registration has not removed the 'worst' landlords from the sector.

2.6. Part 1 Sections

2.6.1. Sections 3-5 (Prohibition of letting and management without registration and licence)

Section 3-5 of the Bill of the Bill provides for the mandatory registration and licensing of landlords and agents⁸ in the private rented sector.

In addition to the consultation on the White Paper in May 2012, there was a stand-alone consultation on the proposals for the private rented sector (PRS) between July and August 2012.⁹

The Explanatory Memorandum states that the intended effect of Part 1 is to:

- Improve standards in the private rented sector;
- Make more information on landlords available to both local authorities and tenants;
- Raise awareness of the rights and responsibilities of both landlords and tenants.

⁶ DTZ, *Evaluation of the Impact and Operation of Landlord Registration in Scotland*, 2011, para 2.54 [accessed 1 December 2013]

⁷ DTZ, *Evaluation of the Impact and Operation of Landlord Registration in Scotland*, 2011 [accessed 1 December 2013]

⁸ An "agent" includes individuals managing properties as well as professional letting agents.

⁹ Welsh Government, *Proposals for a better private rented sector in Wales*, July 2012 [accessed 5 December 2013]

Registration and licensing requirements will apply to landlords/agents who let/manage “rental properties” as defined in **Section 2** of the Bill. This definition includes property let, or intended to be let as an assured, assured shorthold or regulated tenancy.¹⁰ Properties managed by Registered Social Landlords (RSLs) are specifically excluded from the definition. As RSLs grant both assured and assured shorthold tenancies this prevents them from being affected by the registration and licensing requirements.

Section 4 provides for some exceptions to letting a rental property without being registered. This covers situations including where the landlord has applied but the application has not been processed and for a period where ownership of the property changes.

The Regulatory Impact Assessment (RIA) highlights potential communication costs to alert landlords and agents to their statutory obligations and what is expected of them. The RIA suggests that media coverage and existing communication channels will be used to alert all relevant stakeholders. The RIA does state that some paid for advertising may be commissioned.

2.6.2. Sections 6-20 (Registration and licensing)

Sections 6-20 cover the registration and licensing processes. Registration and becoming licensed are two separate processes. Registration means the landlord, agent or “responsible person”¹¹ has paid the required fee (£50 per applicant, and £10 per property¹²) and provided the required information to the local authority (the EM indicates that local authorities are likely to collaborate with Cardiff Council taking the lead for administration purposes).

However, a landlord or agent will not be licensed until:

- In the case of a landlord, they have successfully completed an approved training course for which a fee may be payable;
- In the case of an agent, they must be members of an approved professional body and all members of staff engaged in managing properties must have successfully completed an approved training course.

¹⁰ Also known as Rent Act or protected tenancies.

¹¹ “Responsible person” means an individual who, other than in the course of any trade or business, is appointed by a landlord of a rental property to manage a property on behalf of the landlord (and includes multiple landlords of a rental property appointing one of themselves. (Section 2(2)).

¹² Para 7.30

The EM notes that within two years of registering, landlords are expected to obtain a licence. Where a licence is issued it must be made subject to a condition that the licence holder complies with any code of practice issued by Welsh Ministers and, in both cases, the landlord or agent must also pass a fit and proper person test.¹³

A landlord who does not wish to manage their property will only have to be registered, not licensed, provided the property is managed by an agent or a “responsible person” who is licensed.¹⁴

Licences will last for a period of five years. An applicant may appeal to the Residential Property Tribunal in certain cases, including where a licence is refused.¹⁵

Section 6 of the Bill provides for local authorities to maintain a register in relation to rental properties. Part 2 of Schedule 1 to the Bill provides that the public can have access to certain information on the register where they can provide the address of a rental property which is on the register. The information that must be provided is:

- The name of the landlord and any agent; and
- Whether the landlord or agent or responsible person is licensed.

The EM states that this information will be made available online, based on the existing Landlord Accreditation Wales online database. The RIA estimates that the additional cost of expanding the current LAW database to service the new scheme will be approximately £500,000.

2.6.3. Sections 21 – 27 (Enforcement)

Individual local authorities will remain responsible for taking enforcement action where there is a breach of the registration or licensing requirements. The EM notes that the costs of taking any enforcement action will be met by the revenue arising from registration fees.¹⁶

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.

Replicating a power that exists in Scotland, local authorities will be able 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.

¹³ Section 11

¹⁴ Section 4(2)(a)

¹⁵ Section 20

¹⁶ Para 7.40

2.6.4. Sections 28-35 (Powers of Welsh Ministers, Supplementary and General)

Section 28 provides for Welsh Ministers to issue a Code of Practice relating to managing rental properties. Although, the Bill will not replace or restate legislation that focuses on the physical standards of accommodation, the proposed Code of Practice is likely to draw reference to a landlord's statutory obligations.

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.

3. Part 2 – Homelessness

3.1. *Background*

Part 7 of the *Housing Act 1996* forms the basis of current homelessness legislation. The Bill proposes a number of changes.

The Welsh Government's approach to tackling homelessness is set out in its *Ten Year Homelessness Plan*, published in 2009, which identified a need for current legislation to be reviewed.¹⁷ The proposals in the Bill have been informed by research commissioned by the Welsh Government as part of that review.

The number of households accepted as homeless fell by 11 per cent in 2012-13 compared with the previous years, which was a reversal in the trend seen in the previous two financial years.¹⁸ However, homelessness applications have been increasing since 2009-10. This could indicate a number of things, for example, more effective prevention work by local authorities.

The RIA suggests that the proposed changes in homelessness legislation are likely to result in an increase in applications by up to 10 per cent. This will result in additional costs, including additional prevention costs. However, savings will be made by preventing and alleviating homelessness and through changes to the priority need groups which are discussed below.

The Explanatory Memorandum provides a flow-chart on page 146 that explains the decision making process that a local authority must follow under the new proposals.

3.2. *Part 2 Sections*

3.2.1. *Sections 36 to 38 (Homelessness Reviews and Strategies)*

Section 36 of the Bill proposes a duty on local 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.

The Welsh Government's research on this subject recommended some form of monitoring and inspection of homelessness service, possibly based on the Scottish Housing Regulator, which regularly inspects local authority homeless functions against homelessness performance standards. However, this proposal was not taken forward in the Bill because of the practical and resource implications.

¹⁷ Welsh Government, [Ten Year Homelessness Plan for Wales](#), 2009 [accessed 3 December 2013]

¹⁸ Welsh Government, Homelessness, [July to September 2013](#) [accessed 15 January 2014]

3.2.2. Sections 39 to 49 (Introduction , key terms, information, eligibility, assessments and duties to prevent homelessness)

Sections 39 to 45 provide an overview of Chapter 2 (Help for people who are homeless or threatened with homelessness) and definitions of key terms. **Section 41** provides the definition of homelessness and threatened homelessness. The definition includes a person who has no legal rights to occupy accommodation in the UK or elsewhere, and also persons who cannot secure entry to their accommodation (which would include, for example, a person who had been evicted unlawfully).

The change to the definition of “threatened with homelessness” is considered to be potentially significant. Currently, under Section 175 of the *Housing Act 1996* a person is threatened with homelessness if it is likely that they will become homeless within 28 days. This means that a local authority is not under a statutory duty to assist them until that requirement is met. The Bill seeks to refocus homelessness legislation on prevention, and proposes doubling the period during which a person is considered threatened with homelessness to 56 days.

Section 47 outlines eligibility for assistance and is derived from Sections 185-187 of the *Housing Act 1996*. Applicants likely to be found ineligible for assistance will normally be subject to immigration control or not habitually resident in the UK.

Sections 48 and 49 place a duty on local authorities to carry out an assessment where an applicant is homeless or threatened with homelessness, and notify the applicant in writing of the outcome of the assessment.

3.2.3. Sections 50 to 53 (Duties to prevent homelessness)

Sections 50 to 53 outline various duties to help applicants secure or maintain accommodation.

Local authorities will have a duty to help all homeless applicants to secure the availability of accommodation or to ensure that accommodation does not cease to be available. “Help to secure” is defined in **Section 51** and means that the local authority will be required to “take reasonable steps to help, having regard (among other things) to the need to make the best use of the authority’s resources”. The definition is explicit that this does not mean they are required to offer a tenancy under Part 6 of the 1996 Act (allocation of accommodation) or otherwise provide accommodation.

The duty under **Section 52** will normally end where an applicant actually becomes homeless at which point the duties under **Sections 54 to 59** will apply.

The RIA estimates that there will be an additional £5.9 million of additional costs to the Welsh Government in bringing forward their homelessness proposals. The Welsh Government has said that it will bring forward £4.9 million of additional funding in 2015-16, with the additional £1 million coming from savings associated with amending the priority need status of former prisoners. The RIA also estimates that there could be further additional costs of up to £3.7 million in 2015-16 depending on the levels of homelessness.

3.2.4. Sections 54 to 59 (Duties to homeless persons and priority need groups)

Sections 54 to 59 deal with duties to applicants who are actually homeless (rather than threatened with homelessness). Applicants in a priority need group will generally have a right to interim accommodation.

Section 54 places a duty on local authorities to provide applicants in a priority group with interim accommodation in advance of any decision being made on their application.

There will be no duty to provide interim accommodation for applicants not in a priority need group. The original intention for the Bill, as outlined in the White Paper¹⁹, was to adopt what has become known as a “housing solutions” approach. This would have required local authorities to provide **all** homeless households with interim accommodation if they had nowhere safe to stay.

Section 55 outlines the categories of applicant that have a priority need for accommodation.

The Bill proposes changes to the priority need status of former prisoners. The National Assembly, then exercising its executive powers, approved the *Homeless Persons (Priority Need) (Wales) Order 2001* which extended the categories of applicant classed as being in priority need to include (amongst a number of other categories) former prisoners homeless after being released from custody.

The Bill proposes that former prisoners will no longer automatically be considered to be in priority need, but will need to demonstrate that they are vulnerable as a result of their detention and that they have a local connection. This proposal was subject to a brief consultation shortly before the Bill was laid before the Assembly.²⁰ A summary of responses has also been published.²¹ The consultation found the majority of respondents broadly supportive of the Welsh Government’s proposals, including all 18 local authorities that responded and the WLGA.

¹⁹ Welsh Government, *A White Paper for better lives and communities*, May 2012, paras 8.42- [accessed 3 December 2013]

²⁰ Welsh Government, *Consultation on the proposal to amend the duty of a local authority to accommodate a former prisoner as a result of their priority need status*, September 2013 [accessed 3 December 2013]

²¹ *Ibid*, *Summary of responses*, November 2013 [accessed 3 December 2013]

In 2008 the Welsh Government funded research into the housing needs of ex-offenders. *Necessary but not sufficient: housing and the reduction of re-offending*²², noted that:

There is a clear and evidenced link between accommodation and offending – stable and appropriate accommodation being a necessary, but not sufficient condition, for the reduction of re-offending.²³

The RIA for the Bill estimates that the changes to the priority need status of prisoners will save over £1 million per annum.

Local authorities will be subject to a duty under **Section 56** to “help to secure” accommodation for most homeless applicants. The duty under Section 56 broadly replicates the duty under Section 52 to prevent homelessness and will last for 56 days. Applicants who have not been able to find a home by the end of that period who are in a priority need group and unintentionally homeless (where that test is being applied) will be owed a duty under **Section 58** when the duty under **Section 56** ends. The duty under Section 56 ends when any of the circumstances outlined in Section 57 are met. The duty will end at the end of the 56 day period where the authority has taken reasonable steps to help the applicant find accommodation, or the applicant is no longer homeless and there is a reasonable prospect that the accommodation will remain available to the applicant for 6 months.

Section 58 provides that local authorities will have a duty to secure accommodation for applicants in priority need who are unintentionally homeless when the duty in Section 56 ends. The local authority will be able to disregard intentionality in accordance with Section 61 (see below). From 2019 onwards local authorities will be expected to provide accommodation for all homeless families with children even where there is a finding of intentional homelessness, providing that it is the first time they have been found intentionally homeless in the past 5 years. The EM notes that Welsh Ministers do not intend to commence this provision until 2019 to “allow time for appropriate support arrangements to be put in place”.

Section 59 outlines circumstances where the Section 58 duty ends. This includes where the applicant accepts an offer of a secure, assured or an assured shorthold tenancy (which would generally be in the private rented sector).

Under current legislation, an applicant who is accepted as unintentionally homeless and is within a priority need group is owed the “main” homelessness duty under section 193(2) of the *Housing Act 1996*. This means that the local

²² Humphreys, C., and Stirling, T., *Necessary but not sufficient: housing and the reduction of re-offending*, June 2008. Para 5.1.1

²³ Ibid.

authority has to make sure accommodation is available to the applicant. They can do this by granting a secure local authority tenancy or an assured tenancy with a housing association. They can also offer a tenancy in the private rented sector, **but only where the applicant consents**. The Bill proposes giving local authorities a power to discharge their homelessness duty to applicants within priority need groups by securing private rented accommodation – without the need for the applicant to consent.

Any private tenancy offered to an applicant must be for a minimum fixed term of at least 6 months.²⁴ The Welsh Government's research had suggested a period of 12 months would be appropriate.²⁵

3.2.5. Sections 60 to 62 (Intentionality and further circumstance in which duties to help applicants end)

Sections 60 and 61 outline the meaning of intentionally homeless, and also make provision for local authorities to disregard intentionality.

Local authorities will be able to disregard intentionality for the purposes of determining whether it has a duty to secure accommodation for the applicant. However, the local authority will only be able to disregard that test in respect of a category or categories of person prescribed by Welsh Ministers for this purpose. It will not be open to the local authority to disregard intentionality on a case by case basis. For example, Welsh Ministers may choose to identify young people aged 16 or 17 as a specific type of applicant to whom the test may be disapplied. Under current legislation the local authority must determine whether a person has become homeless intentionally and, if they are, this will severely limit the assistance that they are entitled to.

3.2.6. Sections 63 to 83 (Referral to another local housing authority, notice that duties have ended and right to review and appeal, supplementary and general provisions)

Section 63 replicates sections 198 and 199 of the *Housing Act 1996* and allows local authorities to refer applicants who have a priority need for accommodation and who are not intentionally homeless to another local authority in England or Wales. There are conditions that apply to any referral and the applicant should have a local connection with the area they are being referred to.

²⁴ Section 59(4)c

²⁵ Welsh Government, [Options for an improved homelessness legislation framework in Wales](#), March 2012, p16 [accessed 3 December 2013]

Section 64 defines when an applicant has a local connection with the area of a local housing authority. A local connection can be established by current or previous residence, through employment, family or other special circumstances.

Section 68 sets out circumstances where an applicant has a right to request a review of a decision on their homelessness application. This includes a right to request a review of whether the steps taken to prevent or relieve homelessness have been reasonable.

Under **section 76** (protection of property) of the Bill, where a local authority is under a duty specified in the section in relation to homelessness, “it must take reasonable steps to prevent the loss of the personal property of the applicant or prevent or mitigate damage to it” under section 76(1). However, subsection (4) would permit the authority to impose conditions as to the disposal of the property by the authority. The Bill does not include a requirement to give notice to the applicant of the authority’s intention to dispose of the property. This continues a provision of the 1996 Act, but there is no requirement to make reasonable efforts to notify the owner of the property, so that both local authorities and relevant owners are left in no doubt as to what is expected.

Section 78 of the Bill requires a local authority to ensure co-operation between its social services and housing officials and also between the local authority and other bodies, including Registered Social Landlords. **Section 79** requires local housing authorities to refer cases to their social services department where a person under the age of 18 lives with the applicant and there is a finding of intentionality or the applicant is ineligible for assistance under homelessness legislation.

4. Part 3 - Gypsies and Travellers

4.1. Background

Part 3 of the Bill addresses the lack of authorised sites for Gypsies and Travellers. The Welsh Government's strategy for the Gypsy and Traveller community is set out in *Travelling to a Better Future*, which was updated in November 2013.²⁶

The Welsh Government's own research estimates a **shortfall of between 209 and 243 permanent residential pitches**. The EM notes that the last new local authority owned sites were built in Carmarthenshire, Flintshire and Pembrokeshire in 1997. The EM also notes that there are no transit sites in Wales.²⁷

Although many of the difficulties in providing new sites relate to planning matters, the Bill does not alter any aspect of the planning system.

Local authorities already have a duty to carry out an assessment of the needs of Gypsies and Travellers under Section 225 of the *Housing Act 2004*. However, there is no longer a statutory duty to provide a site. The *Caravans Site Act 1968* did require local authorities to provide sites, but this provision was repealed in 1994.

4.2. Part 3 Sections

4.2.1. Sections 84-93

The Bill proposes a requirement on local authorities to carry out an assessment of the needs of Gypsies and Travellers every five years. **Section 84** of the Bill requires local authorities to consult with "such persons as it considers appropriate", but does not specifically require consultation with the Gypsy or Traveller community.

The Welsh Ministers must approve the authority's assessment. If the assessment is rejected by Welsh Ministers the authority must revise and resubmit the assessment or undertake another assessment. The approved assessment must be published. Statutory guidance may be issued by Welsh Ministers that local authorities must have regard to when exercising their functions under this part of the Bill.

Where the approved assessment has identified a need for sites, the local authority must exercise its powers under Section 56 of the *Mobile Homes (Wales) Act 2013* to provide a site. Where the local authority does not exercise this power, Welsh Ministers may direct the authority to exercise its powers under Section 56 of the 2013 Act.

²⁶ Welsh Government, [Travelling to a better future](#), November 2013 update [accessed 6 December 2013]

²⁷ Para 3.54

The RIA notes that consideration was given to encouraging Registered Social Landlords to build and manage sites. This option was largely discounted because RSL owned sites would not benefit from safeguards put in place to protect pitches on local authority sites from being traded on the open market.

The Welsh Government currently has £1.5 million per financial year available for the funding of new Gypsy and Traveller sites. The RIA estimates that the cost of a new site is £1.5 million, so current funding arrangements will fund one new site per year. The RIA states that a business case is currently being prepared within the Welsh Government to increase the Sites Capital Grant.

5. Part 4 - Standards for Social Housing

5.1. *Sections 94 to 110 (standards for social housing provided by local housing authorities)*

Part 4 of the Bill allows Welsh Ministers to set standards for local housing authorities in connection with:

- The quality of accommodation;
- Rent;
- Service charges.

There are currently 11 local authorities that have housing stock, with the remaining 11 having transferred their housing to RSLs following Large Scale Voluntary Transfers. The Standards are not on the face of the Bill but may be set by Welsh Ministers, who must publish any standards. Welsh Ministers may also give guidance relating to the standards, which must also be published.

Standards of accommodation

This Part of the Bill will allow Welsh Ministers to ensure the Welsh Housing Quality Standard (WHQS) is placed on a statutory footing for local authorities. WHQS applies to all existing social housing homes (both local authority owned, and RSL owned). Higher standards apply to new-build dwellings. WHQS covers not just the physical standard of homes, but also integrates social, environmental and economic concerns.

The original target date for achieving WHQS was 2012. Most local authorities did not achieve this target date. The EM proposes that 2020 will be set as a statutory date for local authorities to be WHQS compliant.

The latest data on WHQS achievement was published in November 2013²⁸ and shows that at 31 March 2013, 60 per cent of social housing dwellings were compliant with the standard. However, the compliance rate varied widely between local authorities and RSLs. The RSL compliance rate was 75 per cent, while the local authority compliance rate was 39 per cent.

Welsh Ministers do not have the same regulatory powers for local authority landlords as for RSLs. The EM states that RSLs must demonstrate progress towards achieving and maintaining WHQS as part of the regulatory process. Local authority housing functions are not regulated by the Welsh Government, but receipt of Major Repairs Allowance which is a capital grant that must be spent on housing stock is conditional on meeting WHQS within agreed timescales.

²⁸ Welsh Government, [Welsh Housing Quality Standard](#), November 2013 [accessed 4 December 2013]

Section 98 would enable Welsh Ministers to inspect premises if it appeared to it “that a local housing authority may be failing to maintain or repair any premises in accordance with standards set under section 94 or guidance given under section 95.” The Ministers would be required to give at least 28 days’ notice to the authority which would, in turn, be required to give at least 7 days’ notice to the occupier.

The Regulatory Impact Assessment assumes there will be full compliance with WHQS and that there will be no need to intervene, and therefore no additional costs to the Welsh Government in terms of carrying out inspections.

Rents

The proposals on rents and service charges for local authority tenants aim to increase transparency and address anomalies that currently exist between different social landlords.

The Welsh Government has long had a policy of rent convergence, which should result in social housing tenants of similar types of housing in the same area paying similar rents. At present, RSL rents tend to be higher. Rents for each sector are currently set in different ways:

- Local authority rents are set within the context of the Housing Revenue Account Subsidy system with the Welsh Government providing guideline weekly rents;
- For RSLs, the Welsh Government sets maximum rents for six key property types which when averaged should be at or below a benchmark level.

The Essex Review of affordable housing policy recommended a full review of the arrangements for setting social housing rents and this took place in 2011.²⁹

For local authority rents, one consequence of abolishing the Housing Revenue Account Subsidy System is that the existing guideline rent system will end. The proposals in the Bill will enable Welsh Ministers to continue to influence the level of rents in local authority accommodation.

²⁹ Welsh Government, [A new policy for social housing rents](#), March 2011 [accessed 4 December 2013]

Service charges

In some, though not all, local authority areas there is pooling of service charges. This means that some tenants are paying for services they do not receive because the costs are spread between all of the landlord's tenants. The Bill will end this practice with service charges in future being disaggregated and clearly identified.

The changes may result in increased service charges for tenants who do receive eligible services. The EM notes that tenants unhappy with a service charge would be able to raise the matter with the Leasehold Valuation Tribunal.

6. Part 5 - Housing Finance

6.1. *Sections 114 to 119 (Housing Revenue Account subsidy, payments and general provisions)*

The 11 local authorities in Wales with housing stock each maintain a Housing Revenue Account which contains items of income and expenditure relating to their housing stock. These accounts operate within the framework of the Housing Revenue Account Subsidy system (HRAS).

The EM provides an explanation of how the HRAS operates on pages 23 to 25. HRAS was established before devolution and originally operated on an England and Wales basis. The HRAS system allowed the UK Government to determine what local authorities needed to spend on their housing, and whether they needed any subsidy to support it. The HRAS should have redistributed revenue around England and Wales from local authorities with a surplus on their HRA to those with a deficit with HM Treasury making up any overall deficit on the national HRAS.

The HRAS system operates on the basis of notional figures for income and expenditure, although the EM notes that these figures are based on actual data such as stock numbers, interest rates and rent levels. Where a local authority is assumed to have a deficit on its Housing Revenue Account it receives a subsidy to make up the deficit. Any assumed surplus, which is effectively rent receipts from tenants, has to be paid to HM Treasury. Currently, no Welsh local authority is assumed to have a deficit on their HRA and the total assumed surplus from Welsh local authorities is over £70 million per annum.

When the system was introduced, any HRA surplus subsidised the costs of Housing Benefit (HB) for local authority tenants with any shortfall met by HM Treasury. However, since April 2004 HB costs have been met in full by the Department for Work and Pensions, with the overall HRA surplus being collected by the Welsh Government and then given to HM Treasury. This ensures that the exchequer still, in effect, receives some compensation for the cost of funding HB for local authority tenants

Under current legislation, it is possible for certain properties or local authorities to be excluded from the HRAS providing an agreement is reached with Welsh Ministers. However, the EM notes that if that were to happen HM Treasury would reduce resources provided to Wales by an amount equivalent to the negative subsidy.³⁰

³⁰ Para 7.272

Section 114 of the Bill will abolish the HRAS system in Wales following the agreement that was reached with HM Treasury in June 2013.

Settlement

The agreement reached with HM Treasury requires local authorities to take on new debt (from the Public Works Loans Board) to buy themselves out of the current system. The RIA provides further details:

As part of the negotiations, HM Treasury required that any agreement to exit from the existing system must be fiscally neutral upon the exchequer. The UK Debt Management Office is an Executive Agency of HM Treasury. The Public Works Loans Board is a statutory body operating within the Debt Management Office. Consequently, the agreed settlement payments to HM Treasury and the loans and annual interest payments from, and to, the Public Works Loans Board represent inter-governmental transfers. This means that the impact upon the UK economy is neutral; that is, the settlement payment is a cost to the local housing authorities but this is cancelled out by an equivalent benefit to HM Treasury.³¹

A similar process was followed in England when local authorities there left HRAS in April 2012. The Bill would allow Welsh Ministers to set the settlement figure enabling a local authority to buy itself out of the HRAS, and also to amend that figure should there be an error or change in a matter that was taken into account in the settlement value.

There is no precise timescale for exiting the HRAS, but it may be possible for a voluntary agreement to be reached prior to UK legislation being brought forward. This could only happen if all 11 local authorities agree.³²

The total annual interest payments to fund the settlement will be £40 million, which is £33 million less per annum that they currently pay to HM Treasury under the HRAS system. Interest rates will be determined at the time of the settlement.

Borrowing limit

As part of the agreement reached between the Welsh Government and UK Government, HM Treasury require a housing-related borrowing limit to be set for local authorities within a relevant UK Bill. The draft Wales Bill contains the necessary UK provisions as the Assembly does not have the competence to introduce an overall cap on borrowing by Welsh local authorities. This will allow HM Treasury to ensure that there is no excessive borrowing in Wales and therefore an increase in the national debt.³³

The total borrowing limit agreed for Wales overall is £1.85 billion. This includes existing borrowing and the new debt to fund the buy-out.³⁴

³¹ Para 7.314

³² Para 7.275

³³ HM Government, [Draft Wales Bill](#), December 2013 [accessed 10 January 2014]

³⁴ Para 7.312

7. Part 6 - Co-operative housing

7.1. Sections 120 to 121

Wales has relatively little co-operative housing. The Community Housing Mutuals established following stock transfer share some co-operative principles, but are not fully mutual housing associations. Some of the obstacles to the development of co-operative housing are addressed by this Bill. The Welsh Government is currently funding three pilot co-operative housing projects in partnership with housing associations and local authorities.³⁵ The Welsh Government has also funded research into the potential demand for co-operative housing in Wales which found substantial interest in and appetite for a co-operative based housing model by the participants in the study.³⁶

Sections 120 and 121 of the Bill propose making two changes that will facilitate the development of co-operative housing. The Bill will:

- Allow fully mutual housing associations to grant assured and assured shorthold tenancies; and
- Insert an additional ground for possession into Schedule 2 of the Housing Act 1988 that can be used by lenders to fully mutual housing associations to seek possession of an assured tenancy to allow repossession on vacant possession value. This is intended to increase confidence from lenders.

The Welsh Government has worked with stakeholders to identify three main types of co-operative housing:

- Rental cooperatives where members pay a weekly or monthly rent for the right to occupy the co-operative, but the member has no interest in the value of the property they occupy;
- Market value co-operatives where the co-operative owns the freehold or leasehold of the properties, but members are free to buy or sell the right to occupy the property at market value. The co-operative acts as a building manager;
- Limited equity co-operatives where members have a right to occupy a particular property and share in the overall value of the property. The share is proportionate to the equity value that a member builds up through regular contributions. They can sell or assign their occupancy rights along with their limited equity share (either at a regulated or open market price).

³⁵ Welsh Government website, [Welsh Government working with partners to deliver more co-operative housing in Wales](#), 18 November 2013 [accessed 6 December 2013]

³⁶ Wales Co-operative Centre, [Research into the potential demand for co-operative housing in Wales](#), May 2013, p30 [accessed 6 December 2013]

8. Part 7 - Empty homes

8.1. Section 122 (Council Tax for Empty Dwellings)

Section 122 of the Bill amends the *Local Government Finance Act 1992* by inserting a new section 12A.

Wales has a substantial number of empty private sector homes. At 1 April 2012, there were 21,551 homes that had been empty for six months or more. The Welsh Government's Houses into Homes scheme provides grants to bring empty homes back into occupation.³⁷

The proposal in the Bill is for a new discretionary power that would enable local authorities to be able to levy Council Tax at a rate of 150 per cent of the applicable charge for the property. While current legislation allows for discounts in certain circumstances, there is no provision for additional Council Tax to be levied. The proposal in the Bill would apply to properties that have been empty for more than **12 months** and are substantially unfurnished.

There is no requirement that the additional revenue raised should be used for a particular purpose, for example the provision of affordable housing. The EM States that:

It is hoped that local authorities would use additional revenue to help meet local housing needs by providing more homes and/or by improving existing homes. The Welsh Government cannot require local authorities to do this, although the Welsh Ministers can encourage it.³⁸

This proposal was included in the Housing White Paper, with a specific consultation being held between July and October 2012.³⁹ Nine respondents to the consultation felt that the proposals should be extended to second homes, with a further eight raising practical issues such as differentiating between empty properties and second homes. As a result of responses to the proposals in the consultation, a separate consultation on second homes was held between September and October 2013.⁴⁰

Welsh Ministers will be able to make regulations prescribing categories of dwelling in relation to which additional Council Tax cannot be charged.

The furnishing of a dwelling for a period of up to 6 weeks will not affect its status as a long-term empty dwelling. Welsh Ministers may change this period by Regulation.

³⁷ Welsh Government website, [Houses into Homes](#) [accessed 6 December 2013]

³⁸ EM para 3.116

³⁹ Welsh Government, [Council Tax and long-term empty homes in Wales](#), July 2012 [accessed 5 December 2013]

⁴⁰ Welsh Government, [Consultation on discretionary powers for local authorities to increase council tax on second homes](#), September 2013 [accessed 5 December 2013]

9. Part 8 – Miscellaneous and general

9.1. Sections 123 - 128

Section 123 and Part 5 of Schedule 3 rectify a few minor defects in the *Mobile Homes (Wales) Act 2013*, which came to light as the Act was being prepared for publication. They include, for example, the removal of definitions no longer required as a result of changes made during the Bill's passage.

10. Response to the Bill

10.1. *The Plenary Statement*

The Minister made statement to Plenary on 19 November 2013. He said:

Yesterday, I laid the Housing (Wales) Bill, together with the explanatory memorandum, before the National Assembly for Wales. This is a significant piece of legislation and, if passed, it will become Wales's first ever housing Act. The proposals are the result of a considerable body of work by many people and will contribute to further progress against this Government's strategic housing priorities of more homes, better homes and better services. [...]

[...] The benefit of having an affordable home in good condition is more than about just having a roof over one's head. As well as contributing to the wellbeing of individuals and their families, a suitable, safe and secure home is key to the health, education and self-esteem of an individual. It is a vital component in a child's upbringing, as well as providing the foundation for strong, safe and fair communities and contributing to the Government's poverty reduction and promotion of equality agendas.

With the obvious importance of decent homes, the new law-making powers granted to us in 2011 provide us with an excellent chance to improve what can be done to help meet people's housing needs. Of course, more legislation is not always the solution to the problem. However, 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 2012-13.⁴¹

Mark Isherwood AM, for the Welsh Conservatives said that the group “want to work constructively with you on the aspects that this Bill covers and seek agreement wherever possible, and oppose or scrutinise constructively where agreement cannot necessarily be found.” He asked the Minister:

You refer to the ‘ambitious targets’—your words—for new affordable homes and bringing homes back into use [...] how will this Bill help increase the supply of new affordable homes through the measures it takes, or, as it appears, are its objectives more socially based, which is admirable but not a supply-based matter?⁴²

⁴¹ [RoP, 19 November 2013 \[accessed 10 January 2014\]](#)

⁴² [RoP, 19 November 2013 \[accessed 10 January 2014\]](#)

Jocelyn Davies AM, for Plaid Cymru, welcomed some parts of the Bill but was critical of others. She said that “if the Bill is enacted as it is, I think that it would be a missed opportunity for this important sector”. With regard to the proposed register of landlords she said:

having 22 bodies responsible for maintaining and enforcing the register could be a nightmare scenario. Perhaps he would tell us what could be achieved by this measure, and how local authorities, some with no stock, and no housing department, as it turns out, will be able to maintain and implement this legislation.⁴³

Peter Black AM, for the Welsh Liberal Democrats said:

I, too, welcome this very substantial Bill and the fact that we have the first housing legislation since we had the new powers. I particularly welcome a number of aspects of the Bill: the extra council tax being charged on empty homes, on which I will ask a question later on, and the reform of the housing revenue account subsidy. I very much welcome the enforcement of standards for social housing in law; I think that that is overdue. I also welcome the registration and licensing of letting agents and the preventative model on homelessness. I think that all of those things are very welcome developments. I also welcome the fact that you are taking the opportunity, Minister, to consolidate existing legislation in this Bill, which I think is very helpful to everybody in terms of understanding housing law in Wales.⁴⁴

10.2. Reaction from the housing sector.

The Chartered Institute of Housing Cymru (CIH Cymru)

The bill contains diverse, Welsh-crafted solutions, to improve consumer protection, raise standards across all sectors and protect our most vulnerable and disadvantaged citizens by prioritising homelessness reduction. The bill introduces legislation that will improve consumer protection in the private rented sector, raise the standards in affordable housing, increase the supply of new homes and bringing empty properties back into use.⁴⁵

The Director of CIH Cymru stated:

This bill clearly evidences the progress of devolution in Wales, this is grown-up government fashioning Welsh answers to Welsh problems. It provides a narrative that is distinct from Westminster policy, and makes it clear that housing is a priority for Welsh Government.

Cllr Dyfed Edwards, WLGA spokesperson for housing, said:

The WLGA supports the ambition set out within this new legislation, which is wide in scope and focuses on a number of fundamental issues affecting people’s lives in Wales.

Local government is now committed to working with Welsh Government and other partners to deliver the changes outlined in the new legislation, many of which will reinforce and support the work which is on-going within local councils across Wales. Councils specifically

⁴³ [RoP, 19 November 2013 \[accessed 10 January 2014\]](#)

⁴⁴ [RoP, 19 November 2013 \[accessed 10 January 2014\]](#)

⁴⁵ [CIH Cymru, *Wales’ first housing bill is government for grown-ups, says CIH Cymru*, Press Release, 19 November 2013 \[accessed 10 January 2014\]](#)

welcome the increased emphasis on preventing homelessness which is at the heart of this new bill, as well as the reform of the Housing Revenue Account Subsidy System which offers councils a clear opportunity to increase the financial resources that they have available to improve housing stock and potentially build new homes.

While some of the changes proposed by the new legislation can clearly be introduced without requiring additional resources, some aspects of the legislation will undoubtedly be challenging for local authorities to deliver within the current financial climate. The WLGA will now test 'deliverability' of the new legislation with local authorities, and continue to work closely with Welsh Government to increase access to good quality housing in Wales.⁴⁶

However, the Bill has been described as a "bureaucratic mess" by the National Landlords Association.

While it comes as no surprise that the Welsh Government wishes to register all private landlords, it is deeply disappointing that the plans appear mired in burdensome bureaucracy. The requirements outlined in the Housing (Wales) Bill requires landlords to not only register, but to subsequently obtain a licence from what could be numerous local authorities – each of which may stipulate its own conditions and fees. Duplication is inevitable.

It is unnecessary, and unhelpful, to require private landlords to submit details of their investments to a public register in the name of driving improvements and rooting out criminals. Far from combatting criminality within the private-rented sector and offering solutions to the undersupply of residential property, these measures look certain to increase the cost of providing homes by forcing landlords to comply with yet more red-tape.

The NLA shares the Welsh Government's desire to raise standards in the private-rented sector but we remain unconvinced that a national register of landlords is the right approach. It will only serve to increase the cost of living for many hard working families as the fee for registering and subsequently obtaining a license will inevitably be passed on to tenants.⁴⁷

⁴⁶ [WLGA, New bill will improve access to housing in Wales, Press Release, 18 November 2013 \[accessed 10 January 2014\]](#)

⁴⁷ [NLA, Welsh housing Bill a 'bureaucratic mess', says NLA, Press Release, 21 November 2013 \[accessed 10 January 2014\]](#)