

Below are areas of concern for us that we would like to particularly talk about in the hearing.

- 1 Proposal to include existing agreements.
- 2 Tilt of Bill towards the tenant and the effect on the Let sector.
- 3 Service of Notices to end Contract with 2 months arrears.
- 4 Ability of Joint tenant to relinquish interest without disturbing remaining Contract holder. The practical inconvenience of both applicants affording the property on single incomes.
- 5 Succession provisions

David

David Morgan

Policy Manager Wales

RICS Wales

I would just like to bring them to the Committee's attention and consideration as part of the evidence they will be considering the Policy positions RICS has taken in relation to the Private Rented Sector to inform their work, and if they wished to potentially meet with the Committee both in relation to them and also their inquiry.

RICS Wales is the principal body representing professionals employed in the land, property and construction sector and represents some 4000 members divided into 17 professional groups. As part of our Royal Charter we have a commitment to provide advice to the Government of the day and in doing so we have an obligation to bear in mind the public interest as well as the interest of our members.

RICS Regulation – a separate arms length department in RICS – monitors, inspects and advises Members and Regulated Firms to uphold our professional, ethical and business standards, as well as against specific schemes. RICS Regulation takes a risk-based approach to monitoring and regulation of its schemes. In line with better regulation principles, our regulatory activities are transparent, proportionate, accountable, consistent and targeted. RICS Regulation reports to a Regulatory Board which is at arms' length from RICS. The Board has a mix of independent and RICS members, with an independent Chair, all appointed by an independent selection process. The Regulatory Board is accountable to RICS Governing Council. Our specific comments below in relation to the proposed changes to the regulatory framework in the Private Rented Sector in Wales should be taken in this context.

Q1 – Are these penalties appropriate?

Yes. However:

- It maybe better that there should be a gradation of specific fine levels according to seriousness of offence that would be automatic and potentially often, lower than £20,000 but therefore more likely to be imposed regularly to persuade landlords they will actually happen.
- Rent repayment orders would be appropriate, but care would need to be taken to ensure enforcement.

Q2 – Are there any other suggestions?

RICS Wales has no additional suggestions to make.

Q3 – Are we capturing the right people?

The right people are being captured by the proposed registration arrangements, although the effectiveness of the registration arrangements and associated enforcement activity will be dependent on the quality of the available baseline data about the names and contact details of all owners of private rented accommodation in Wales, Resources for maintaining data must be regularly reviewed to ensure they are adequate for registering all landlords.

Q4 – What do you think the fees should be?

The proposed annual registration fees outlined in the consultation paper may be appropriate, but this will depend upon making the scheme self-funding; if a local authority finds the scheme to be a net drain on resources the scheme could potentially not receive sufficient resources to allow it to function efficiently.

Q5 – Should the fee be dependent on the size of a property owner's portfolio?

Provided the fee remains as low as envisaged, a fee that is the same for each individual landlord registration will ensure simplicity of administration, encourage compliance, and reduce the potential for the fees system being a deterrent to property investment. However if before implementation, the fee is markedly higher then a fresh consultation should be held to consider if some degree of proportionality should be introduced.

Q6 – Do you agree with an annual fee (which could be used to offset a larger registration/accredited training fee)?

Agree with the proposed annual fee.

Q7 – Do you think this is appropriate for a “Fit & Proper Person” test for this scheme?

We agree with the proposed approach here. RICS Wales considers, however, that the test needs to go wider to check a landlord's suitability with regards to their responsibilities under anti-money laundering legislation and the Bribery Act. Consideration should be given to widening the test further to cover other criminal offences, especially those involving violence, although clearly there will be a need to take account of statutory requirements associated with the rehabilitation of offenders as well.

Q8 – Is this a reasonable limit for a “responsible person”?

RICS Wales considers limiting a “responsible person” to managing the property portfolio of one property owner in addition to managing any property portfolio they may own in their own right is reasonable. If a responsible person wishes to manage the portfolios of more than one property owner they are clearly operating as a lettings/management agent, and need to be subject to the registration and licensing arrangements for such businesses detailed elsewhere in the consultation paper. A different approach is required, however, for properties owned by legal entities such as businesses, rather than by private individuals. In such circumstances, the legal entity should not have the option of appointing a “responsible person” to manage their property portfolio. They must be registered and licensed themselves, or delegate management of their property portfolio to a registered and licensed lettings/management agent.

Q9 – Is this fine acceptable? Are there other penalties that could be applied?

We consider the level of fine proposed here to be acceptable. Revenue generated from such fines should be used to help fund the registration and licensing scheme.

RICS Wales suggests all licensing breaches should be publicised to raise consumer awareness about the registration and licensing scheme, and to deter landlords and management agents from being identified as examples of bad practice.

Q10– Are the proposed accredited training fees reasonable?

We consider the proposed accredited training fees to be reasonable. RICS will wish to have the opportunity to be considered as a potential accredited training provider.

Q11 – Is this period acceptable before review?

RICS Wales agrees that a three year lifespan for a manager/landlord licence is reasonable, but it will be important to have good communications on the associated annual registration fee when communicating with managers/landlords about the licence fee. In addition, it will be essential to have robust enforcement arrangements for non-compliance with payment of either the annual registration fee or the licence fee to ensure a level playing field amongst managers/landlords, including the potential sanction of withdrawal of a licence within the three year lifespan for non-compliance.

Q12 – How would this work in practice? What are the implications?

Paragraph 34 of the consultation paper as currently drafted is rather ambiguous on what happens in circumstances where a landlord loses licensed status under the proposed Scheme, in particular as that may well happen in the middle of the life of one or more tenancies associated with their property portfolio. The Code of Practice will need to include clear rules about how the interests of existing tenants will be safeguarded while alternative management arrangements are put in place.

See also response to Q27 below about the Code of Practice referenced in paragraphs 32–34 and 64–65 of the consultation paper.

Q13 – What other forms of CPD may be appropriate?

Paragraph 35 of the consultation paper implies that CPD will be ‘encouraged’. RICS considers that CPD should be mandatory and on an annual basis.

RICS Wales considers that any learning activity undertaken by licensed landlords/managers that has written evidence of pre-planned learning outcomes associated with new legislation and developments in property management that affect the private rented sector in Wales should be considered appropriate CPD.

Q14 – How much CPD activities should be undertaken per year and what should it entail?

RICS Wales considers at least 20 hours per annum CPD activity should be undertaken by licensed lettings/management agents, of which 10 hours should be formal learning. This is consistent with the CPD policy for RICS members effective from 1 January 2013. For licensed individual private landlords, a more proportionate approach might be to limit the requirement to 20 hours per annum CPD activity, whether formal or informal, and for the licensing and registration scheme administrators to offer some free on-line training materials as a way of encouraging compliance.

Q15 – Should CPD be used as an alternative to refresher training? Or should refresher training and evidence of CPD be needed to maintain the licence?

RICS Wales considers CPD can be used as an alternative to refresher training provided the manager/landlord has robust written evidence of CPD activity has maintained up to date knowledge and understanding of new legislation and developments in property management that affect the private rented sector in Wales (see also answer to Q13 above).

Q16 – Should other establishments/landlords be exempt from the mandatory register and licensing requirements?

Other than “houses that are let for holiday purposes” and possibly ;“houses that are managed or controlled by a Registered Social Landlord” RICS Wales sees no reason to make exemptions from the mandatory register and licensing requirements

Q17 – Does this go far enough?

RICS Wales considers the proposed approach in paragraph 42 of the consultation paper for two thirds of all staff involved with the letting and management of private rented sector property at each lettings/management agency branch to pass accredited training is targeted and proportionate. Such an approach will, of course, require effective enforcement to ensure a level playing field amongst all lettings/management agencies in Wales. Otherwise there is the potential unintended consequence of compliant businesses incurring greater costs than non-compliant businesses and the

latter able to offer more competitive rates to consumers than the former and thereby take greater market share.

Q18 – Is this penalty appropriate?

RICS Wales considers the proposed maximum level of fine in paragraph 44 of the consultation paper of £50,000 for those lettings or management agencies that fail to register seems high compared with the level of fines proposed for individual landlords. RICS suggests a maximum fine of £25,000 would be more proportionate.

Q19 – Are there any other suggestions for penalties?

RICS Wales suggests all licensing breaches should be publicised to raise consumer awareness about the registration and licensing scheme, and to deter lettings and management agents from being identified as examples of bad practice

Q20 – Is this too onerous? Would it be better to make it a “duty” for the information to be made available if requested under the Scheme?

We regard the proposed information requirements on individual lettings and management agents as outlined in paragraphs 47 and 48 of the consultation paper to be reasonable. RICS suggests, however, that to avoid the information requirements proposed in paragraph 48 becoming unnecessarily burdensome on both lettings/management agents and the Scheme administrators, that lettings/management agents should supply an updated list of each individual landlord’s name and correspondence address for whom they manage/let properties on an annual basis, and at other times on request by the Scheme administrators.

Q21 – Should the fee be dependent on number of offices or, alternatively, portfolio size?

RICS Wales suggests the fee should be dependent on the property portfolio size of the particular lettings/management agent.

Q22 – Is this the right person/persons to undertake the suitability test? If not, who should undertake the test?

Yes.

Q23 – Is this a reasonable period of time?

Yes.

Q24 – Should agents have a minimum recognised professional qualification? If so, what should that be?

Yes. A relevant NVQ level 3 equivalent should be the minimum professional qualification for lettings and management agents operating in the private rented sector in Wales.

Q25 – Do you agree that new letting/management agents should be licensed before commencing business?

Yes.

Q26 – Is this a reasonable time period? Should it be renewed every three years as proposed for landlords? If so, why?

RICS Wales considers the proposed licensing period for lettings and management agents should be three years to ensure consistency with the proposed licensing period for landlords. Such an approach would also reduce the potential for confusion and misunderstanding about these different elements of the registration and licensing scheme. It will be important to have good communications on the associated annual registration administration fee when communicating with lettings and management agents about the licence fee. In addition, it will be essential to have robust enforcement arrangements for non-compliance with payment of either the annual registration administration fee or the licence fee to ensure a level playing field amongst agents, including the potential sanction of withdrawal of a licence within the three year lifespan for non-compliance.

Q27 – Do you have any other comments on the proposals?

With regard to paragraph 59 of the consultation paper, RICS confirms we will be considering whether to apply to become an approved professional body under the Scheme.

Turning to paragraph 70 of the consultation paper, RICS would welcome clarification that the proposed fine detailed here will be imposed on a



letting/management agent not a landlord. This paragraph as currently drafted is somewhat ambiguous on this point.

RICS Wales suggests that the Welsh Government will need to publicise the registration and licensing scheme proposals beyond Wales, in particular to those lettings and management agents who are based on the England/Wales border and who conduct business in both, and to ensure the scheme applies equally to those agents and landlords resident outside Wales.

Promoting the highest professional and ethical standards and acting in the public interest are core values of the RICS. The RICS UK Residential Property Standards (commonly referred to as the 'Blue Book') outlines the duties and responsibilities that those practicing as estate, lettings and managing agency practitioners owe to their clients and consumers. It is a useful source of reference not only for RICS members, but also others practicing in this field, and clients and customers as well.

RICS Wales notes that paragraphs 32–34 of the consultation paper introduce the concept of a proposed Code of Practice, and that there are further references to this Code in paragraphs 65 & 66. However, there is no clear statement of who will own this Code, and how the Code will be enforced. RICS Wales considers that such a statement is vital as part of the ongoing communications work by the Welsh Government about these proposals, and suggests there is a need for a read across from the Code to the Blue Book as well. RICS Wales is prepared to help on the latter. In any case, we will ensure that if the proposals contained in this consultation paper are introduced, the annual review of the Blue Book will reflect that development, including suitable cross references to the proposed new Code of Practice.

Many agency businesses operate in both sales and lettings, and RICS Wales considers the regulatory arrangements in Wales should reflect that fact. Such an approach would both ensure minimum levels of consumer protection, and provide businesses operating in sales and lettings with a clear, simple and consistent approach that is lacking in the current unnecessarily complex regulatory arrangements. In summary, there is potential here to enhance consumer protection and minimise burdens on business. RICS Wales recognises that we have a role to play, in particular in the development of

industry-wide standards that are recognised by property professionals, businesses and consumers alike, including common minimum standards of entry and practice. RICS Wales argues there is wider legislative reform that is required. We stand ready to work with Welsh Government and other stakeholders to reduce regulatory complexity and deliver the one touch regulatory framework outlined above that the residential property market so desperately needs to aid business growth, improve informed consumer decision making, and strengthen consumer protection.

If you have any queries in respect of this response please do not hesitate to contact me.

### **Renting Homes White Paper**

Thank you for the opportunity to respond to the consultation dated 20 May 2013.

RICS Wales is the principal body representing professionals employed in the land, property and construction sector and represents some 4000 members divided into 17 professional groups. As part of our Royal Charter we have a commitment to provide advice to the Government of the day and in doing so we have an obligation to bear in mind the public interest as well as the interest of our members

Our detailed response to the Consultation is as follows:

#### **Question 1**

**Do you support our proposals for changing the legal framework for renting a home?**

Yes. It will simplify things greatly without altering the current balance between landlords and tenants. Any steps which clarify the rights and obligations of both parties will be helpful if they are expressed in a clear contract which consolidates the range of different documents that currently exists. Differences in the terms and conditions discourage moves between the sectors and reduces flexibility and mobility.

#### **Question 2**

**Do you agree that the secure contract should be based on the current local authority secure tenancy (paragraph 6.11)?**

Yes. Differences between different types of tenancy add to the confusion and make tenants reluctant to move between sectors.

### **Question 3**

**Do you agree that the standard contract should be based on the current assured shorthold tenancy (paragraph 6.13)?**

Yes. Both are tried and tested in their respective fields.

### **Question 4**

**Do you support the proposals in relation to each of the following issues:**

**a) Addressing the anti-social behaviour of some households (paragraph 6.17)**

Yes. Eviction for anti-social behaviour can be difficult. It is a serious step, but as things currently are, protection of other tenants appears hardly to feature. A simple clause, consistent across the board, is to be welcomed if it can be enforced. The insertion of a prohibited conduct term would mean a consistent approach to the problem but there is a need to ensure that the wording encompasses the wide range of antisocial behaviour to ensure its meaning is clear to landlords and tenants. The wording should make it clear what will happen in the event of a breach so the tenant is in no doubt as to the consequences of breaches of the contract.

**b) Dealing with domestic abuse (paragraph 6.25)**

Yes. There needs to be care that the standard contract terms protect the victims of domestic abuse and awareness that the terms supplement the law on legal and improper behaviour rather than seeking to replace it and that the terms protect the victims of abuse and impact on the perpetrator.

**c) A more flexible approach to joint tenancies (paragraph 6.27)**

Yes, in principle. However, what is proposed in the consultation paper may alter the "jointly and severally liable" status of tenants, so making things far

more complex and expensive: deposits would need to be taken from and held against individuals, credit and affordability checks could not cater for the possibility of a joint tenant being able to manage if another left. The end result might be that landlords would not want to let to anyone other than single people or families. The wording should also be clear and link with antisocial behaviour and domestic abuse perpetrators.

**d) Abandonment of the property by a tenant (paragraph 6.31)**

Yes. At present, the law is vague, and a landlord cannot be certain that steps taken will not later be found unenforceable in court. This is an area that needs far greater certainty and simplification for both landlords and tenants. Currently if a tenant takes on a property there is the potential for them to be required to leave if a former tenant who absconded subsequently returns.

The landlord should be able to recover possession with minimum effort in those cases where abandonment is evidenced.

**e) Renting by young people (paragraph 6.33)**

No. A responsible landlord would understandably resist letting to a minor for legal and financial reasons, and possibly on safeguarding grounds as well. RICS Wales would be keen to meet with Welsh Government to discuss this point.

**f) Standardising succession rights (paragraph 6.36)**

Yes. This appears to simplify matters. There is no sound reason why succession rights should not be the same with provision for carers where occupancy criteria have been fulfilled.

**g) Standardising eviction for rent arrears (paragraph 6.42)**

No. This could negatively affect housing associations, and also those private landlords who let to housing associations. The prospect of a tenant being able to rack up unlimited arrears will harm the sector as renting will become a far more risky proposition. The distinction between local authority and housing association rent arrears is also noted along with the limited use made of mandatory evictions. There are grounds for consistency of approach. Whilst understanding the benefits of supporting the tenant

through arrears situation the paper does not make clear how it will work in practice so that the housing association/landlord is not disadvantaged.

**h) Requiring landlords to ensure there are no Category 1 hazards under the Housing Health & Safety Rating System (paragraph 5.5(g))**

Yes, as long as it is recognised that these hazards are sometimes caused by tenants (e.g. damp and mould due to lack of heating or ventilation), so the remedy may need to involve the removal of the tenant. In addition any requirements should be proportional. Landlords will therefore need to be able to have the power evict a tenant causing such hazards, provided landlords have evidence to justify such an approach. Properties should be let as fit, safe and reasonably energy-efficient.

**i) Abolishing the six-month moratorium on 'no fault' evictions (paragraph 6.48)**

Yes. It is better for tenancies to be underpinned by a clear, written contractual agreement at the outset.

**j) Establishing a legal framework for supported housing (paragraph 6.55)**

Yes, support the establishment of a legal framework for supported housing. However, 48 hours appear to be a very short period of exclusion and could be impractical in some circumstances. In addition, there need to be safeguards in terms of local social services being responsible for finding suitable alternative accommodation for those occupiers of supported housing who are subject to such exclusions.

**k) Bringing housing association Rent Act tenancies within the Renting Homes framework (paragraph (6.62)**

Yes.

**Question 5**

What do you consider to be the most significant elements listed in Question 4 for people who rent their home?

Conduct that is capable of causing nuisance or annoyance to others. This is by far the most common problem between tenants, but under current rules it is hard for landlords to tackle effectively and proportionately. Also the following:

- 1) Clarification and written contracts which are simpler and easy to understand with transparency on fees.
- 2) Reduced complexity
- 3) Greater awareness of the rights and obligations of both landlords and tenants
- 4) Condition of property. A strong move to ensure that houses let are free from hazards and disrepair and maintained as such and those tenants are clear of their obligations to look after the homes they occupy.

#### **Additional comments**

RICS is concerned to note that no impact assessment has been published alongside these consultation proposals. RICS encourages the Welsh Government to prepare and publish such an assessment, not least to demonstrate the business case for the proposed change, and to help identify any potential unintended consequences arising from the proposals. Without such an impact assessment questions will remain unanswered about the potential cost-benefits to the private rented sector in Wales arising from these proposals.

If you have any queries in respect of this response please do not hesitate to contact me.

#### **Designation of Licensing authority under Part 1 of the Housing (Wales) Act 2014 and the intention of the training regulations which will govern the training requirements of landlords and agents**

Thank you for the opportunity to respond to the consultation

RICS Wales is the principal body representing professionals employed in the land, property and construction sector and represents some 4000 members

divided into 17 professional groups. As part of our Royal Charter we have a commitment to provide advice to the Government of the day and in doing so we have an obligation to bear in mind the public interest as well as the interest of our members

In response to the Consultation we would like to make the following replies:

### **Designation of Licensing Authority**

The intention of the Designation Order is to appoint a single licensing authority for the whole of Wales to manage the registration and licensing scheme for landlords and letting agents. It is felt that appointing a single licensing authority will be beneficial for the following reasons:

- Cost effectiveness of operating a single database and website (as opposed to operating one in each local authority area)
- The requirement for landlords and agents to only have to register once and only pay one fee (rather than multiple times if they have properties in more than one authority area)
- Consistency in the service provided and the interpretation and application of the legislation set out in the Act
- A single central database for data collection (rather than a landlord having to have numerous registrations to reflect properties in different areas.)
- Cost benefits and marketing benefits of promoting a single “national” registration and licensing scheme.

#### **1. Do you agree that the Welsh Government should appoint a single licensing authority for the whole of Wales?**

Yes

It is the intention for the single licensing authority to be Cardiff Council. During the development of the Housing (Wales) Bill, Cardiff Council confirmed its offer to manage the registration and licensing scheme for landlords and letting agents. Due to Cardiff Council’s experience of administering the current voluntary Landlord Accreditation Scheme for all 22 local authorities in Wales it is felt they have the knowledge and experience necessary to implement the new legal regime.

**2. Do you agree that the single licensing authority appointed should be Cardiff Council?**

Yes

**Training Requirements**

Before granting a licence the licensing authority must be satisfied that the relevant training requirements are met, or will be met.

It is the intention that the designated Licensing Authority will determine and publish the specific core syllabuses for training courses so that course content can be updated when necessary to reflect changes in legislation and best practice.

Training regulations will though, stipulate that the content of the specific course syllabuses must relate to one of the following:

1. The statutory obligations of a landlord and tenant
2. The contractual relationship between a landlord and a tenant
3. The role of an agent who carries out letting work or property management work
4. Best practice in letting and management dwellings, subject to, marketed, or offered for let, under a domestic tenancy
5. Roles and responsibilities in respect to letting work or property management work.

**3. Do you agree that all 5 broad subject areas noted above should be specified in the training regulations?**

Yes. However it must be made clear that different local authorities cannot set different training requirements from their neighbours. Were this to be allowed it would greatly add to the cost of implementing this policy and be a subsequent burden on business, disproportionately against rural areas with smaller numbers over which to amortise costs.

Leaving the specification to local authorities will also create uncertainty, especially as the licence lasts for just 5 years, whereupon the requirements may have changed.



**4. Do you consider any other broad subject areas should be included in the training regulations as statutory requirements in a training course**

Approved training courses will primarily cover the roles and responsibilities of a landlord or agent in relation to the tenant and their legal obligations. The policy intention is for these regulations to require different courses for different persons to reflect the differing requirements of their roles. The intention is that it will be for the designated Licensing Authority to determine and publish the required core syllabuses for each of the required courses and make clear who the course is appropriate for. As there are differences in these between landlords and agents it is intended that the regulations will require the licensing authority to develop different core requirements for the courses to reflect the differing requirements of the role of landlord and agent.

**5. Do you agree that the licensing authority should stipulate the core training content of courses for landlord and agent should be different?**

Yes

It is also the intention that in order to receive approval/authorisation, training providers must apply, submitting the required details of their training courses, to the licensing authority for approval. An application to the licensing authority for authorisation to deliver training courses must be made in line with licensing authority guidelines.

For example, a training provider creates a one day landlord course and a one day agent course. For approval to deliver the landlord course they would approach the Licensing Authority and submit an application for approval (and pay one fee). For approval to deliver the agent course they would be required to submit a separate application for approval (and fee). It would not be appropriate to approve only a training course or only a person to run a course in isolation; it will be necessary to consider and approve them both as a whole.

This formal approval requirement will ensure that landlords and agents who wish to become licensed can readily identify suitable training courses that

will be recognised by the Licensing Authority as being of the required standard.

**6. Do you agree that the licensing authority should approve/authorise training courses and training providers to deliver training?**

Yes

Authorisation may be refused if the applicant fails to meet the requirements set by the local authority, or if the application is not made in the appropriate form. Where a licensing authority decides to refuse an application the decision should be given in writing and the applicant will have the right to make written representations to the Licensing Authority if they wish.

**7. Do you agree that the Licensing Authority should provide reasons for their decision and that applicants should have the right to make written representations if they so wish?**

Yes

It is the intention that the licensing authority will have the power to withdraw authorisation of a training provider for the following reasons:

- If the provider has failed to observe a condition imposed on their authorisation by the licensing authority
- Ceased to be an appropriate provider

The licensing authority will have to provide, in writing, the reason for the withdrawal of authorisation and the training provider will have the right to make written representations to the Licensing Authority against such a decision.

**8. Do you agree that the licensing authority should have the power to withdraw the authorisation of a provider to deliver a training course in these circumstances?**

Yes

**9. Do you agree that the Licensing Authority should provide reasons for such a decision and that the training provider should be able to make written representations against such a decision?**

Yes

## **Fees**

It is the intention that the licensing authority will be able to set a fees policy for approval of training courses and training providers. The intention is that before charging any fee, the licensing authority must prepare and publish a fees policy and will only be able to charge such fees in line with their fee policy. The licensing authority may fix different fees for different cases or descriptions of cases but these must be clearly shown in their policy.

**10. Should the licensing authority be required to prepare and publish a fees policy before being able to charge a fee to approve a training course and a course provider?**

Yes

### **Additional Comment**

We would like to add given the extremely high regulatory standards to which RICS Members are held, that we believe they should be automatically recognised as having been trained to the standards required by the proposed scheme of registration.

If you have any queries in respect of this response please do not hesitate to contact me.