



Response to the Welsh Government's Consultation

Information, periods and fees required for an application for registration and an application for a license under Part 1 of the Housing (Wales) Act 2014 – Regulation of Private Rented Housing

From the Association of Residential Letting Agents (ARLA)

April 2015

Background:

1. The Association of Residential Lettings Agents (ARLA) was formed in 1981 as the professional and regulatory body for letting agents in the UK. Today ARLA is recognised by government, local authorities, consumer interest groups and the media as the leading professional body in the private rented sector.
2. In May 2009 ARLA became the first body in the letting and property management industry to introduce a licensing scheme for all members to promote the highest standards of practice in this important and growing sector of the property market.
3. ARLA members are governed by a Code of Practice providing a framework of ethical and professional standards, at a level far higher than the law demands. The Association has its own complaints and disciplinary procedures so that any dispute is dealt with efficiently and fairly. Members are also required to have Client Money Protection and belong to an independent redress scheme which can award financial redress for consumers where a member has failed to provide a service to the level required.

Period for Registration:

Question 1: Do you agree that 4 weeks is an appropriate timescale for processing an application for registration?

4. Yes.
5. ARLA agrees that four weeks is an appropriate and proportionate timescale for processing an application for registration.
6. However, s.19(5) Provision of Services Regulations 2009 states that “in the event of failure to process the application within the period set ... authorisation is deemed to have been granted by a competent authority, unless different arrangements are in place”. The consultation does not make clear whether, in the event an application for registration is not processed within the



prescribed period, the application will be granted automatically or whether "different arrangements" will be put in place. We therefore ask the Welsh Government to clarify this issue.

7. We also ask what provisions the Welsh Government will put in place to monitor and evaluate the efficiency of Cardiff Council in processing applications for registration and what measures will be taken should the average length of time exceed the prescribed period.

Information to be included in an application for Registration:

Question 2: Do you consider that the proposed information that will be required is adequate?

8. Yes.
9. In principle we do consider the proposed information that will be required is adequate. However, we do believe there will be some practical issues in relation to maintaining and enforcing such a comprehensive database.

Changes to be notified to the Licensing Authority:

Question 3: Do you consider that the changes proposed in the regulations which have to be notified to the Licensing Authority are adequate?

10. No.
11. The four proposed additions outlined at page eight of the consultation seem sensible in principle. However, how will such additions be enforced in practice? Maintaining an accurate, up-to-date, database which only includes the information prescribed under s.16(1) will be impossible without huge resources being set aside for enforcement and monitoring activities. The consultation does not mention enforcement at any point. How will the Welsh Government / Cardiff Council enforce these proposals? Therefore, ARLA cannot support the inclusion of these additional requirements when we have no details of how these or the prescribed requirements of s.16 will be enforced.

Period for determination of a licensing application:

Question 4: Do you think that 8 weeks is a reasonable timescale for determining a licensing application?

12. Yes.
13. ARLA agrees that eight weeks is an appropriate and proportionate timescale for processing an application for licensing.
14. However, as mentioned in response to Question One above, s.19(5) Provision of Services Regulations 2009 states that "in the event of failure to process the application within the period set ... authorisation is deemed to have been granted by a competent authority, unless different arrangements are in place". The consultation does not make clear whether, in the event an



application for licensing is not processed within the prescribed period, the application will be granted automatically or whether “different arrangements” will be put in place. We therefore ask the Welsh Government to clarify this issue.

15. We also ask what provisions the Welsh Government will put in place to monitor and evaluate the efficiency of Cardiff Council in processing applications for licensing and what measures will be taken should the average length of time exceed the prescribed period.

Information for an application for a licence:

Question 5: Do you consider that the information that will be required is adequate?

16. Yes.

17. In principle, ARLA agrees that the proposed information which will be required is adequate. However, we would like to raise three queries in relation to the proposal:

- I. There is no mention of applicants having to provide the details of rental properties in applications for licensing. We would be grateful if the Welsh Government will clarify that lists of property details will only be required on applications for registration. If letting agents applying for licensing need to register every property they manage, the administrative burden will be excessive; dramatically impacting businesses.
- II. The consultation states “if the applicant is carrying out lettings work and property management work on behalf of a landlord in the course of business, the address of any premises in the area of the Licensing Authority used for that purpose”. We take this to mean that each letting agency (rather than each individual letting agent) needs to be licensed and the application must state the address of each branch. Assuming this to be the case, does such a list of premises need to include admin-only offices? Some agencies have a separate 'hub' where they undertake back-office/administrative/Head Office functions with no direct client-interaction (i.e. somewhere that neither landlords nor tenants will ever go). We would argue that where agencies have both client facing offices (branches) and admin-only offices, only client-facing offices should be included so as to avoid consumers (landlords or tenants) attending an admin-only office.
- III. We are concerned about the definition of "Connected person" used in page 9 of the consultation document. The definition used in footnote 2 is very wide and could include the back-office staff mentioned in the point above, referencing agencies, inventory clerks and solicitors. Further, it appears to contradict the exclusions to "Lettings work" outlined in s.10 Housing (Wales) Act 2014. We would be grateful if the Welsh Government would clarify this



issue and clearly state what class of person needs to be identified in an application for licensing (for example, all staff, all client-facing staff, all fee-earning staff).

Changes to be notified to the Licensing Authority:

Question 6: Do you agree the changes proposed in the regulations which will have to be notified to the Licensing Authority are reasonable?

18. No.

19. As with the previous question, in principle, ARLA agrees the changes proposed in the regulations which will have to be notified to the Licensing Authority are reasonable. Again, as with our response to Question Three above, we would question how such additional require to will be enforced.

20. We would also like to raise concern about the requirement to notify the Licensing Authority of “any changes in identity of any connected person”. Depending on the final definition of “Connected person”, this could involve every letting agency in the country having to notify the Licensing Authority every time a member of staff either joins or leaves their business. The administrative burden of this exercise for both letting agents and the Welsh Government will be colossal. For example, under the current proposal, should a member of staff leave one firm and move to another, the Licensing Authority would need to be notified by the original firm that the member of staff has left (and probably that they have recruited a new member of staff) and by the new firm that they have taken on a new member of staff (possibly after another member of staff have left). The result will be that for one person moving firms, four notifications may have to be put in to the Licensing Authority. What provisions have the Welsh Government put in place to handle this volume of correspondence?

21. We would argue these proposals generate such a significant administrative burden for both agents and the Licensing Authority as well as a massive potential for inadvertent non-compliance that they are not practically implementable. Instead, we would recommend that agents provide an annual compliance declaration.

Fees for registration and licensing:

Question 7: Do you agree that the Licensing Authority should set and publish a fees policy for registration and licensing?

22. We agree that the Licensing Authority should publish a fees policy for registration and licensing. However, we feel the current proposal provides the Licensing Authority with too much authority over the setting of these fees and therefore, cannot support the proposal as laid out in the consultation document.



23. As currently outlined in the consultation document, the proposal appears as though the Welsh Government is giving Cardiff Council complete autonomy and authority to do as they wish. The consultation document does not provide for any oversight on what calculations must be used in setting the fee structure; whether by the Welsh Government or any other body. ARLA would strongly recommend that an oversight panel is established, consisting of Welsh Government, local authority, industry and tenant representatives to oversee the administration (including the fee structure) and enforcement of the scheme.
24. The consultation document does not establish what the license fee should cover. We would argue the fees should only cover the administration of the scheme. The fee should not cover enforcement as it would be unethical and highly unfair for the fees paid by legitimate law-abiding agents and landlords to be used to cover enforcement against those who bring our sector into disrepute.

Declaration to be included in applications for registration or a licence:

Question 8: Do you consider the proposed declaration is adequate?

25. Yes.

26. We consider the proposed declaration is adequate and the wording appropriate.

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ARLA has no objection to this response being made public by the Welsh Government.