

# Report



## Cabinet Member for Licensing & Statutory Functions

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### Part 1

28 January 2015

Item No: 1

**Subject** Housing (Wales) Act 2014 – Part 1 – Regulation of Private Rented Housing

**Purpose** To advise the Cabinet Member of Part 1 of the new Housing (Wales) Act 2014 and to seek agreement to a Single Licensing Authority to be delivered by Cardiff Council. Also to seek agreement on the response to the Welsh Government's consultation on the matter.

**Author** Environmental Health Manager

**Ward** City Wide

**Summary** Part 1 of the Housing (Wales) Act 2014 seeks to introduce a requirement for all landlords and letting agents to be registered or licensed depending whether they undertake any property management activities. To be licensed they will need to demonstrate they are 'fit and proper' persons and have undertaken approved training. The Welsh Government intend to designate one local authority to be a Single Licensing Authority for Wales, but the majority of enforcement will be undertaken at a local level by local authorities. Representations have been made to the Welsh Government that additional resources will be required in order for local authorities to deliver enforcement effectively. The Welsh Government has recently issued a formal consultation on the issue of the Single Licensing Authority and training for landlords and agents.

**Proposal** To support the Welsh Government proposal to create a Single Licensing Authority for Part 1 of the Housing (Wales) Act 2014, now that the WG has consulted formally on this issue, provided sufficient additional resources are made available to Newport City Council for enforcement activity. Also to support the proposals for training landlords and letting agents. To agree the submission of the response form.

**Action by** Head of Law and Regulation

**Timetable** Forthwith

This report was prepared after consultation with:

- Head of Law and Regulation
- Public Protection Manager
- Head of Finance
- Head of People and Business Change

**Signed:**

## **1 Background**

- 1.1 The Housing (Wales) Act 2014 received Royal Assent on 17 September 2014 and Part 1 of the Act established a mechanism to regulate private rented housing by regulating private landlords, letting and managing agents.
- 1.2 Part 1 of the Act will come into effect by Commencement Order on a date set by the Welsh Ministers. It is intended that the provisions for regulating private rented housing will be introduced over the course of 2015 and 2016. The requirement for landlords and agents to register and become licensed is expected to come into force in autumn 2015.
- 1.3 The private rented sector is becoming an increasingly important part of our housing provision. In February 2011, the National Assembly for Wales' Communities and Culture Committee published a report highlighting areas where improvements in the sector were needed to deliver better housing and management standards. The report recommended that the Welsh Government explore the possibility of a national, mandatory registration and licensing scheme to regulate private landlords, letting and management agents. The purpose of such a scheme would be to improve standards in the private rented sector, provide more information to tenants and local authorities on landlords renting accommodation and help raise awareness of landlords and tenants rights and responsibilities.

## **2 The Housing (Wales) Act 2014 - Part 1**

- 2.1 The recommendation made by the Committee was agreed and actioned through the Housing (Wales) Bill's Private Rented Sector Registration and Licensing Scheme. The Scheme proposed a comprehensive online database of all private landlords and letting/management agents that operate in the private rented market be established. This would allow tenants to check whether a landlord is registered and/or licensed by the Scheme.
- 2.2 If a landlord lets through a letting agent, the landlord is required to only register with the Scheme. If the landlord wishes to manage a tenancy directly, the landlord will be required to also become licensed. To be licensed, a landlord or agent will be required to evidence they have successfully completed approved training and they are a 'fit and proper' person, that is they have no convictions for housing offences, fraud, violence, firearms, drugs, sexual offences on schedule 3 of the Sexual Offenders Act 2003 or not practiced unlawful discrimination or harassment. For agents to become licensed, they will also need to be a member of an approved body and ensure at least two-thirds of staff who are directly involved in the lettings and management of residential properties achieve the accreditation. The aim is to create a comprehensive register of the private rented sector in Wales.
- 2.3 There is some concern from landlord and letting agent representatives about the Scheme. While each group has their individual issues, collectively, the groups argue the proposals from the Welsh Government have not been well researched and the cost of implementing the scheme has been underestimated due to that lack of information. They further argue that the income raised from the registration/ licensing fees will not cover the total operating cost of the scheme and additional resources will need to be found. The argument continues that these resources would be better utilised enforcing the existing legislation and not enforcing a licensing and registration scheme. Landlord groups are also concerned the cost of the registration/licence fees will be passed on to the tenant, and that the proposals will have an adverse effect on

the private rented sector by penalising good landlords and not tackling poor landlords.

- 2.4 Currently a scheme known as Landlord Accreditation Wales (LAWS) is successfully operated by Cardiff City Council on behalf of all 22 local authorities in Wales. This is a voluntary accreditation scheme for private rented sector landlords designed to improve standards of management. The scheme has built its membership to around 2,000 landlords across Wales. It was proposed by the Bill that the new Scheme would replace LAWS.
- 2.5 At the time of the Bill, it was understood that one local authority could provide a national system to deliver all the administrative functions of the Scheme, should this be agreed by local authorities. This would be advantageous as many landlords operate in more than one local authority area and therefore a centralised system would allow landlords to register or license once. What was unclear at that stage was what would happen if some local authorities declined to allow another to act on their behalf and who would undertake enforcement of breaches of the requirements of the legislation.
- 2.6 Concerns were raised that if one local authority was enabled to deliver the administrative aspects of the Scheme, and the cost of doing so was met by application fees charged to landlords and agents, the other local authorities would then be required to deliver the enforcement functions with no additional funding.
- 2.7 There is now a section in the Act setting out that Welsh Ministers will designate by order, one local authority in Wales as the licensing authority for the whole of Wales or else, multiple licensing authorities. It has been made clear that the preference is for one licensing authority.

### **3 Benefits of the New Part 1 Provisions**

- 3.1 It is hoped that the registration system will allow local authorities in Wales to have an overview of where rented accommodation is located, which will benefit them and landlords by allowing them to disseminate information and, if necessary, strategically intervene. Local authorities already have regulatory powers in the private rented sector. In future, if a complaint is received about a landlord or property, then it is hoped that the register will help the councils contact the landlord or agent more quickly, meaning the issue can be resolved more promptly. Currently, in some cases it can take a long time to track down contact details for landlords and agents, leading to unnecessary delays.
- 3.2 The licensing system should ensure that landlords and agents who undertake letting and management activities will be better informed of their obligations. This will be achieved by the requirement to undertake an approved training course and adhere to a Code of Practice. Currently, local authorities often need to intervene and enforce standards in rented accommodation because of a lack of understanding from landlords and agents of their obligations. Ensuring landlords and agents who deal day-to-day with letting and management duties are 'fit and proper', well trained and abide by a Code of Practice, should help to deliver better managed properties in the private sector which, in turn, will improve standards.

### **4 The current situation and issues arising from the Act's implementation**

- 4.1 Much detail has still to be finalised as to how Part 1 of the Act will be implemented. As mentioned previously, fees will be charged for both registration and licensing applications. It is clear to local authorities that the enforcement aspects of the legislation (enforcement on unregistered or unlicensed persons) must be funded by

the Welsh Government, as this work cannot be funded by the application fees. The Welsh Government has now acknowledged this and has asked the all-Wales local authority Implementation Group to submit a business case detailing how much the new service would cost and what additional funding is required.

- 4.2 It is unclear at this stage exactly how enforcement actions will be split across a centralised licensing authority and individual local authorities. However, the Welsh Government has recently indicated that the majority of enforcement is likely to be done at a local level by the local authority for that area. In the current financial climate, it will be extremely difficult for Newport City Council officers to take enforcement action under this new legislation without new resources being provided, unless enforcement action for offences under existing legislation is already being taken and any new offence/s under the new Act can simply be added to the case.
- 4.3 Enforcement of breaches of the requirements of the Act can take the form of prosecutions or through the use of Fixed Penalty Notices (FPNs). If a local authority issued FPNs, it is currently unclear whether the local authority would receive the receipts from those FPNs.
- 4.4 On the 19 December 2014, the Welsh Government opened a formal consultation on the designation of a Single Licensing Authority, with this being delivered by Cardiff Council. The consultation also covered proposals for training landlords and agents. It is possible that the Single Licensing Authority may be delivered by the Vale of Glamorgan Council, as the regulatory services of Cardiff, the Vale of Glamorgan and Bridgend Councils are in the process of being merged. The draft response form is included at Appendix 1 to this report.

## **5 Financial implications of the new Act**

- 5.1 There will be financial implications associated with the implementation of this legislation but these are difficult to quantify at this time as the operating model splitting functions and enforcement between the Single Licensing Authority and local authorities is still being developed. As mentioned previously, the business case is being developed to inform the Welsh Government what additional resources will be required for local authorities to deliver the new work under this new duty.
- 5.2 Potential work arising from the Act, which will have financial implications (because of the need for adequate resources) include:
  - Formal enforcement action for breaches of the legislation resulting in prosecutions being taken to court.
  - Service of Fixed Penalty Notices requiring subsequent enforcement action in cases of non-payment and management of receipts in cases where payment is made.
  - Complaints being made to Newport City Council about unregistered or unlicensed landlords.
  - Such complaints leading to increased numbers of complaints about poor property conditions, which will require investigation and resolution by Environmental Health.
  - Responding to requests for information from the Licensing Authority.
  - Inputting data onto a central database for use by the Licensing Authority.
- 5.3 Currently funding has been allocated by the Welsh Government to Newport City Council for Part 2 of the Act (Part 2 relates to Homelessness), but not for Part 1.
- 5.4 Should adequate additional funding for Part 1 of the Act not be made available to Newport City Council, Environmental Health will not be able to deliver the new

statutory functions. In particular, we cannot envisage how appropriate enforcement and follow-up action, expected by the Welsh Government and the single Licensing Authority, could be undertaken. Newport City Council has made it clear from the outset that these functions will not be delivered in this scenario.

## 6 Implementation timetable

- November 2014 – Informal consultation of all Welsh local authority Chief Executives by the Welsh Government on the proposal of a Single Licensing Authority.
- December 2014 – Formal consultation associated with the designation of the Single Licensing Authority by the Welsh Government.
- April 2015 – Designation of the Single Licensing Authority to take effect.
- Autumn 2015 – Requirement for landlords and agents to register and become licensed comes into force, thereby initiating new duties for local authorities.
- Autumn 2016 – Local authorities will start to enforce the new legislation.

## 7 Risks

Risk	Impact of Risk if it occurs(H/M/L)	Probability of risk occurring (H/M/L)	What is the Council doing or what has it done to avoid the risk or reduce its effect	Who is responsible for dealing with the risk?
Not being able to enforce those aspects of the new legislation that WG expect NCC to enforce.	H (reputational) L (impact on tenants)	M L	Robust representations have been made to the WG asking for additional resources to undertake enforcement action and meet the new statutory duties.  The representations have indicated NCC's intention to not implement Part 1 of the Act should resources not be forthcoming, thereby limiting the reputational risk.	Environmental Health Manager

## 8 Links to Council Policies and Priorities

- 8.1 Part 1 of the Housing (Wales) Act 2014 will support the following Council Policies and Strategies:
- 8.2 Newport City Council's Corporate Plan "Standing Up for Newport" 2012-2017 (Relevant priorities: "A Greener & Healthier City"; "A Safer City").
- 8.3 Newport's Single Integrated Plan 2010-2020 "Feeling Good About Newport" (Relevant themes: "To be a prosperous and thriving city"; "To have a better quality of life"; "To have vibrant and safe communities").

## 9 Options Considered/Available

### 9.1.1 Option1

To support the Welsh Government proposal to create a Single Licensing Authority for Part 1 of the Housing (Wales) Act 2014, now that the WG has consulted formally on this issue, provided sufficient additional resources are made available to Newport City Council for enforcement activity. Also to support the proposals for training

landlords and letting agents. To agree the submission of the response form (Appendix one).

#### 9.1.2 **Option 2**

To object to the Welsh Government proposal to create a Single Licensing Authority for Part 1 of the Housing (Wales) Act 2014 and to object to the proposals for training landlords and letting agents. To object to the submission of the response form as currently drafted (Appendix one).

### **10 Preferred choice and reasons**

#### 10.1 **Option 1 above.**

To support the Welsh Government proposal to create a Single Licensing Authority for Part 1 of the Housing (Wales) Act 2014, now that the WG has consulted formally on this issue, provided sufficient additional resources are made available to Newport City Council for enforcement activity. Also to support the proposals for training landlords and letting agents. To agree the submission of the response form.

### **11. Comments of the Head of People and Business Change**

- 11.1 Potential staff implications arising from implementation of Part 1 of the Housing (Wales) Act 2014 have been highlighted within the report as a risk. Without additional resources being forthcoming from Welsh Government the capacity to undertake such actions as may be required will not exist within Newport City Council. The proposed response to Welsh Government clearly states this.

### **12 Comments of the Monitoring Officer**

- 12.1 The Housing Wales Act 2014 Part 1 introduced a statutory registration and licensing system for regulating private sector rented housing in Wales. Under Section 3 of the Act, the Welsh Ministers have the power to make an Order designating the licensing authority responsible for administering the registration and licensing regime. They are required to consult with the relevant authority and other interested parties before making such a designation order. The consultation document proposes that Cardiff Council should be designated as the single licensing authority for the whole of Wales, with responsibility for the administration of the system, the setting of fees and charges and the implementation of training. This has the advantage of a single, unified licensing scheme and there is no objection, in principle, to Cardiff undertaking this role. However, the Act also provides for enforcement action to be taken by individual local housing authorities but there is no provision for additional resources or funding to be made available to cover the extra enforcement work that this would generate. In responding to the consultation document, it is proposed that the agreement to a single designated licensing authority should be conditional upon resources being made available to meet the cost of the additional enforcement undertaken by individual authorities at a local level.

### **13 Comments of Chief Financial Officer**

- 13.1 There are likely to be financial implications associated with the implementation of this legislation, however, these have not yet been quantified as the operating model splitting functions and enforcement between the Single Licensing Authority/ local authorities is still being developed.

- 13.2 Although fees will be charged for both registration and licensing applications, it is clear that the enforcement aspects of the legislation cannot be funded by the application fees alone. Furthermore, it is currently unclear whether individual authorities would benefit through fees payable in respect of enforcement of breaches (through the form of Fixed Penalty Notices).
- 13.4 Clarification from Welsh Government needs to be sought on a number of aspects and given the worsening financial position that local authorities find themselves in the agreement to a single designated licensing authority should be conditional upon resources being made available to meet the costs of the additional enforcement undertaken by authorities at a local level.

#### **14 Comments of Non Executive Members**

##### **Councillor Atwell**

I agree with the statement as ref Para2.3, ref lack of research and consultation also,

My understanding was that this subject and report was being prepared to place before Scrutiny for comment and further discussion and in therefore this proposal of a Decision is premature.

Therefore on these grounds, I would like the report and process to be deferred.

##### **Response from Environmental Health Manager**

This consultation by the Welsh Government ends on 6 February 2015 and an important part of this Cabinet Member report is to agree the formal response to the consultation. Newport City Council should respond to this consultation by the deadline otherwise the opportunity to formally make it clear that additional resources are required for the enforcement aspects resulting from the new duties will be missed.

The pending Report and presentation to the Community Planning and Development Scrutiny Committee regarding Private Sector Rented accommodation is intended to cover all aspects of the Council's strategic housing role. Although the Report will include a reference to this new regulatory licensing scheme, this will simply be for information, as the Council has no discretion regarding its adoption and enforcement. Therefore, there is no reason to defer the response to this consultation pending further consideration of the wider Strategy by Scrutiny

#### **14 Background Papers**

Housing (Wales) Act 2014 – Part 1 – Regulation of Private Rented Housing

<http://www.legislation.gov.uk/anaw/2014/7/part/1>

#### **Appendix 1 –**

Draft Response Form - Welsh Government Consultation – “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”.





**Appendix 1 – Draft Response Form - Welsh Government Consultation – “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”.**

**Response Form**

Name:	Jonathan Keen, Environmental Health Manager
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Telephone:	01633 851696
Address:	Public Protection Newport City Council Civic Centre Newport
Postcode:	NP20 4UR
Organisation (if applicable)	Newport City Council

**Returning this form**

The closing date for replies is **6 February 2015**

Please send this completed form to us by email to:

**[Privatesectorhousingmailbox@wales.gsi.gov.uk](mailto:Privatesectorhousingmailbox@wales.gsi.gov.uk)**

If you are sending your response by email, please mark the subject of your e-mail **Designation Order and Training Regulations Consultation**

**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

No

**If not, why not?**

***The agreement of Newport City Council is conditional upon resources being made available to meet the cost of the additional enforcement undertaken by individual authorities at a local level.***

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

No

**If not, why not?**

**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

No

**If not, which of the 5 should not be included in the training and why not?**

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

Yes

No

**If not, what also needs to be included and why?**

**Information regarding how to legally evict a tenant from a property, including best practice, to avoid allegations of illegal evictions and harassment and also how to avoid failed attempts to legally evict a tenant. Advice and training to discourage retaliatory evictions**

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

No

**If not, why not?**

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

No

**If not, why not?**

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

No

**If not, why not?**

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

No

If not, why not?

**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

No

If not, why not?

### **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

No

If not, why not?

