



Chartered Institute of
Environmental
Health

Sefydliad Siartredig
Iechyd yr
Amgylchedd

The Private Rented Sector in Wales

Response to the Welsh Assembly Government

March 2010

Sefydliad Siartredig Iechyd yr Amgylchedd

Fel **corff proffesiynol**, rydym yn gosod safonau ac yn achredu cyrsiau a chymwysterau ar gyfer addysg ein haelodau proffesiynol ac ymarferwyr iechyd yr amgylchedd eraill.

Fel **canolfan wybodaeth**, rydym yn darparu gwybodaeth, tystiolaeth a chynghor ar bolisiau i lywodraethau lleol a chenedlaethol, ymarferwyr iechyd yr amgylchedd ac iechyd y cyhoedd, diwydiant a rhanddeiliaid eraill. Rydym yn cyhoeddi llyfrau a chylchgronau, yn cynnal digwyddiadau addysgol ac yn comisiynu ymchwil.

Fel **corff dyfarnu**, rydym yn darparu cymwysterau, digwyddiadau a deunyddiau cefnogol i hyfforddwyr ac ymgeiswyr am bynciau sy'n berthnasol i iechyd, lles a diogelwch er mwyn datblygu arfer gorau a sgiliau yn y gweithle ar gyfer gwirfoddolwyr, gweithwyr, rheolwyr busnesau a pherchnogion busnesau.

Fel **mudiad ymgyrchu**, rydym yn gweithio i wthio iechyd yr amgylchedd yn uwch ar yr agenda cyhoeddus a hyrwyddo gwelliannau mewn polisi iechyd yr amgylchedd ac iechyd y cyhoedd.

Rydym yn **elusen gofrestredig** gyda dros 10,500 o aelodau ledled Cymru, Lloegr a Gogledd Iwerddon.

The Chartered Institute of Environmental Health

As a **professional body**, we set standards and accredit courses and qualifications for the education of our professional members and other environmental health practitioners.

As a **knowledge centre**, we provide information, evidence and policy advice to local and national government, environmental and public health practitioners, industry and other stakeholders. We publish books and magazines, run educational events and commission research.

As an **awarding body**, we provide qualifications, events, and trainer and candidate support materials on topics relevant to health, wellbeing and safety to develop workplace skills and best practice in volunteers, employees, business managers and business owners.

As a **campaigning organisation**, we work to push environmental health further up the public agenda and to promote improvements in environmental and public health policy.

We are a **registered charity** with over 10,500 members across England, Wales and Northern Ireland.

Dylid cyfeirio ymholiadau am yr ymateb hwn at:

Julie Barratt

Cyfarwyddwraig yng Nghymru
Sefydliad Siartredig Iechyd yr Amgylchedd

Ffôn symudol 07919 212664

E-bost j.barratt@cieh.org

Tŷ Penfro Llwybr Tŷ Coch
Llantarnum Parkway Cwmbran NP44 3AU
Ffôn 01633 865533 **Ffacs** 01633 485193
www.cieh-cymruwales.org

Any enquiries about this response should be directed to:

Julie Barratt

Director of CIEH Wales
Chartered Institute of Environmental Health

Mobile 07919 212664

Email j.barratt@cieh.org

Pembroke House
Ty Coch Lane
Llantarnum Park Way Cwmbran NP44 3AU
Telephone 01633 865533 **Fax** 01633 485 193
www.cieh-cymruwales.org

The Chartered Institute of Environmental Health (CIEH) welcomes the opportunity to comment on this consultation document.

The CIEH has given careful consideration to the issues raised in the consultation paper and has responded in line with its charitable aims and objectives. The CIEH fully supports the government in its drive to professionalise the Private Rented Sector; the key aim must be to improve standards in the sector for the benefit of tenants and thereby to raise standards of public health generally.

Environmental health officers working in local housing authorities (LHAs) are responsible for maintaining standards in the private rented sector. The Human Rights Act requires a proper balance of support and enforcement. The CIEH welcomes the Rugg review supported by government of a housing sector that is rapidly growing as a consequence of the inability of many UK residents to buy their own homes and the low level of affordable social housing.

Summary

The CIEH:

- supports the establishment of a national landlords register
- believes that the criteria for establishing selective licensing schemes should be widened and the scheme made more flexible
- supports the establishment of written tenancy agreements
- believes the threshold level for assured shorthold tenancies should be raised to £100,000
- supports the regulation of letting and management agents
- recommends the production of statutory guidance on the duty of local housing authorities under Section 3 of the Housing Act 2004
- firmly believes that LHAs should take a strategic rather than a reactive approach to raising standards in the PRS
- proposes that a national model for landlord accreditation should be produced by government

We will address the specific questions in the consultation document in the order of raising.

1. Do you agree that a National Register of private landlords should be introduced on an England /Wales basis on the lines of the proposals above?

- 1.1. The CIEH recognises the government's intention to introduce a register but has concerns as to how effective such a register will prove to be in raising standards. It is crucial that admission to the register should contain sufficient information of value but without deterring participation by landlords.

- 1.2. The purpose of the register should be clearly set out which should be complementary to the activity of local housing authorities (LHAs) to professionalise the PRS. This also requires action on the part of LHAs to establish properly developed strategies for dealing with the PRS which are based on sound evidence. As identified in the Rugg Review it is too often the case that LHAs do not have the right information nor have they taken account of market segmentation. There is a need for CLG guidance to ensure the establishment of a sound evidence base.
- 1.3. Clearly the register of landlords will not in itself identify all landlords, but it will assist in screening and will help to identify responsible landlords. If the registration is accompanied by sufficient information then it will raise awareness of landlords' obligations. In such circumstances the CIEH does not see any value in creating a new criminal offence of "non registration" as the registering body/regulator is unlikely to have the resources to take the necessary enforcement action.
- 1.4. LHAs will need clear guidance as to appropriate action to take in respect of landlords who do not register. In particular, tenants who rely on benefits to support rental payments should not be penalised if they need a unique landlord reference number before payments are made. It is important that scarce resources are not unduly diverted away from essential work to raise standards.
- 1.5. It is likely that landlords who do not register will have committed other offences, or will own properties which require enforcement action by an LHA. Failure to register should render tenancy terms unenforceable e.g. rent could not be demanded nor possession obtained. This demonstrates the need for LHAs to be rigorous in enforcement, using effective regulatory strategies and to work more closely with advice agencies in developing and implementing these strategies. LHAs will need to be proactively identifying those landlords who are not registered; it is doubtful if the registration authority will have the resources to undertake this work. The CIEH's own research has shown that many LHAs carry out inadequate enforcement and have poor quality private sector strategies.
- 1.6. The CIEH urges the CLG to produce clearer guidance on the duties of LHAs under Section 3 of the Housing Act 2004. In addition it is appropriate that the Enforcement Code under Part 1 of the Act and ODPM Circular 5/2003 (Housing Renewal) be reviewed.
- 1.7. As a minimum the register should include the landlord's name, address and contact details together with the addresses of properties owned by the landlord and a method of unique identification (such as date of birth or a national insurance number.) The CIEH believes that a register that does not include addresses of properties owned by a landlord would constitute an unjustifiable waste of scarce resources.
- 1.8. Careful consideration will need to be given to how the proposed register dovetails with HMO licensing so as to ensure that the register is not unduly onerous for landlords. In particular it is not clear what the implications for the proposed register would be in the event of an LHA refusing an application for an HMO licence on the ground that the landlord was not considered to be a fit and proper person.
- 1.9. It is noted that the Building Research Establishment will be reporting to CLG on its research into the operation of the licensing provisions in the Housing Act 2004.

- 1.10. To maximise the effectiveness of the register, it would be ideal if a clear link could be established between the register and current local authority databases. The provision of additional information to landlords is attractive on the surface, but the CIEH is concerned that extending the register too far beyond the collation of essential basic information would endanger its effectiveness and acceptance. Efforts should be concentrated on the basics, with added value considerations deferred until it is in effective operation.
- 1.11. Notwithstanding this concern, information that might be provided includes:
- A code of practice on good management (as a model, the CIEH commends the draft code prepared some years ago for the (then) ODPM by the University of Warwick for HMOs, covering and including how landlords should deal with problems such as non-payment of rent, anti-social behaviour etc and the correct way to seek possession.
 - Published guidance on the Housing Health and Safety Rating System (HHSRS) and guide to the law including repairing obligations gas safety, electrical safety and energy performance certificates.
 - Model tenancy agreements.
 - Guidance on what justifies removal from the register and the implications thereof.
- 1.12. There is no doubt that the energy performance of the private rented sector is generally poor and efforts to mitigate the worst effects of climate change must include measures to address this. However inclusion of such information on the register will be of limited value as not all properties require a certificate (and for those that do, landlords already have to provide the information to tenants) and it is considered unlikely that tenants would use the register to find accommodation.
- 1.13. The key information in the register will need to be kept up to date. The CIEH endorses the suggestion for aligning this with the current requirements for road vehicle licensing with the onus placed clearly on the landlord to update the information whenever necessary.
- 1.14. A key question that needs to be addressed is the management of properties owned by a landlord who has been removed from the register. Many LHAs have experienced considerable difficulties in identifying partners able and willing to take responsibility for managing properties which have been subject to management orders. The CIEH recommends that the possibility of the Tenant Service Authority developing a service with registered social landlords should be investigated.
- 1.15. The CIEH believes it would be better if the provisions relating to management orders could be revised so that the removal of a landlord from the register would require the LHA to make an interim management order. Removal from the register can be appealed so there should not be any need for the Residential Property Tribunal (RPT) to be further involved.
- 1.16. The CIEH supports the suggestion for the introduction of a points system for landlords found guilty of offences under legislation identified in Section 66 (2) of the Housing Act 2004. It is important that responsibility for any enforcement activity in respect of the register should not place undue burdens on LHAs, the majority of which experience difficulties in fulfilling their current duties and responsibilities in respect of the private rented sector.

- 1.17. Appeals against decisions of the registering body should be to the RPT in the first instance; before removal, except in the worst cases, prior notice (e.g. 14 days) should be given of removal and appeals heard by the Lands Tribunal. The register should record that this action is being taken until the appeal is determined.
- 1.18. If the register/regulator has the power to remove landlords from the register on the basis of performance this will require LHAs to record and submit information on enforcement action to the register, not least because landlords may have properties in a number of local authority areas and this will have resources implications for LHAs. There needs to be a clear indication of how removal from the register can be achieved.
- 1.19. It will be important to ensure that tenants who rely on benefits to support rental payments are not penalised if they need a unique landlord reference number before payments are made.
- 1.20. Universal access to the public part of the register should be granted; access to private information on the register should be restricted to landlords and their agents and to duly authorised LHA staff including those working in regulation, housing benefit and tenancy relations. Access to the private part of the register should be password protected to those who have a legitimate interest i.e.
 - Owners or managers of specific properties
 - LHA regulators (in respect of specific properties located in the authority's area)
- 1.21. Tenants access could be through evidenced representations to the LHA possibly channelled through a landlord and tenant forum or scheme of arbitration as part of local accreditation.
- 1.22. The CIEH is willing to offer its services to the Welsh Assembly Government to operate the register as an independent professional national body.

2. Do you agree that private sector letting and managing agents should be regulated on the lines suggested?

- 2.1 The case for regulation of letting and management agents is well made in the Rugg Review and the CIEH supports the proposal for compulsory regulation by an independent body. The CIEH believes that the regime should encompass agents operating in all tenures so as to ensure the comprehensive coverage of the scheme; some agents may extend their sphere of operations and thereby escape appropriate regulation.
- 2.2 The CIEH believes that all landlords and letting agents should be compelled to be members of an approved scheme(s).
- 2.3 It is important that the regulation incorporates a robust complaints and redress system which has a clear independent focus.
- 2.4 Greater clarity is needed as to the ways in which this regulation will integrate with the proposed landlords register.

3. Which of the alternative arrangements for written tenancy agreements suggested above do you think would be most effective?

3.1 The CIEH supports the establishment of written tenancy agreements using a model agreement set out in government guidance (which can be added to as appropriate). The scope of any such requirement will need to be clear – e.g. the application or otherwise to lodgers.

4. Do you agree that the threshold for Assured Shorthold Tenancies should be increased to £ 100,000?

4.1 The threshold level for assured shorthold tenancies should be raised to £100,000. This figure should be index-linked and reviewed regularly.

5. What information do you consider needs to be collected on the private rented sector in Wales?

5.1 There are two strands to the CIEH response to this question. There is a need to have information about the quantity of PRS stock in Wales as well as about the quality of that part of the PRS stock with which LHA have an interface.

5.2 The CIEH also believes that too few LHAs use the HHSRS strategically. Considerable improvements in the standards and quality of local PRS stock can be achieved by such an approach which will, by definition, be targeted at the worst properties containing the most serious hazards to the health and safety of tenants. Information about the quality of the existing PRS stock should be collated as should information regarding improvements made to the stock in order that meaningful conclusions about the impact of interventions on the health and the safety on tenants, improvements in quality of life and reduction in health inequalities can be made.

5.3 Whilst it is the case that most local authorities will have details of the properties falling within the private rented sector in their own areas it would be helpful to have an overview of the complete picture in Wales. This would identify where there is a surplus of property over need and where the converse is the case. Information to be collected includes type of property and size, location, type of tenure, name of landlord, letting or managing agent, restrictions on the nature of the letting (e.g. student accommodation,) availability of the let (short or long term). This list is neither exhaustive nor exclusive.

5.4 More difficult to identify but of considerable value to the LHAs is the number of vacant properties that could be brought back into the PRS, such as empty properties, flats over shops etc. The potential availability of such properties to meet local housing need is useful intelligence and can be used to guide resource targeting.

6. Comments and views would also be welcomed on how the following arrangements that have already been introduced in Wales could be improved and further developed:

➤ **the All Wales Landlord and Letting Agent Accreditation Scheme; and** the CIEH, whilst supporting the All Wales Landlord and Letting Agent Accreditation Scheme does not actively participate in delivery of the scheme and is therefore not in a position to make any comment on this point.

➤ **improving links between local authorities and landlords, including local landlord fora;**

One of the most effective ways of helping LHAs to engage constructively with the PRS is through the identification and dissemination of good practice of which there are numerous examples nationwide. All organisations and individuals respond positively to practical examples from their peers. Financial incentives to LHAs are meaningless (and unlikely in the foreseeable future) but specific awards to authorities that demonstrate such good practice would recognise effort and encourage emulation. A good model and example is the Peer Challenge Excellence Framework supported by the Local Better Regulation Office (of the Department of Business, Innovation and Skills), the CIEH and the Trading Standards Institute.

The CIEH does not believe that engaging with landlords in the first instance through small businesses unit (SBU), rather than through the environmental health department is appropriate. SBUs can provide very useful information for landlords on issues such as business start-up and planning, taxation, company law etc but are not in a position to provide detailed advice on housing law nor are they in a position for example, to organise landlord forums.

Environmental health services cover a wide range of business regulation including food safety, occupation health and safety and licensing.

Any initiative which risks weakening the current link between landlords and environmental health services would have an adverse effect on the strategic understanding of local housing markets.

