

Expert Review Panel on Homelessness

Briefing for Meeting 9: Regulation, Enforcement and Homelessness

May 2023

This briefing is intended to provide background and a contextual outline for the Expert Review Panel’s discussion on regulation, enforcement and homelessness. This paper covers:

1. Introduction and context
2. Current regulation in the GB nations
 - a. Wales
 - b. Scotland
 - c. England
3. Calls for further regulation of housing in the GB nations
 - a. Wales
 - b. Scotland
 - c. England
4. Potential recommendations for discussion

1. Introduction and context

Calls for the Expert Review Panel to consider the role of a homelessness regulator

Consideration of the role regulation might play in supporting homelessness legislation has been clearly set out within the remit of the panel’s work.

An inquiry in March this year by the Senedd’s Local Government and Housing Committee concluded that the Committee is supportive of establishing a homelessness regulator.¹ The Committee is concerned by the standard of temporary accommodation that people are being placed in, noting that accommodation is not in keeping with statutory guidance. The Committee considered the suggestion of creating a new housing regulator within the report written by the former Public Services Ombudsman for Wales, *Homelessness Reviewed: an*

¹ See, Welsh Parliament Local Government and Housing Committee, [Homelessness \(senedd.wales\)](#), March 2023.

open door to positive change, and specifically recommended that “the Welsh Government should consider the opportunity to establish a homelessness regulator as part of its reform of homelessness legislation.”

In response, the Welsh Government accepted this recommendation in principle, indicating that this area should be considered by the Expert Review Panel, while highlighting its own reservations around administration costs associated with a potential regulator. The Welsh Government response states:

“Welsh Government fully recognises the need to increase the level of consistency of homelessness services across Wales. We strongly believe that working in partnership with local authorities and their representatives to understand and ameliorate the pressures that they face is the key to improving services.

Whilst we will consider mechanisms to promote consistency and improve service provision, including the role of regulation, it is also important to recognise the potential risks. Establishing an additional homelessness regulatory function would risk increasing the complexity of governance as well as administration costs and would not necessarily improve housing supply, or the causal factors of homelessness which are at the heart of the current crisis. Any such proposal would therefore need to be carefully assessed and we will give further consideration to this and other ways to promote consistency and best practice as we develop our policy and legislative proposals.

This consideration will also be informed by the work of the Expert Review Panel, who are considering regulation and enforcement as part of its work and will make recommendations to the Welsh Government in the Summer of 2023.”²

References to regulation and enforcement throughout the Expert Review Panel’s work

Throughout the panel’s work and discussions, regulation and enforcement has been a continuously emerging issue – with both stakeholders and panel members emphasising the role of regulation and applicant rights in quality assuring the system. Across the panel’s areas of consideration, these discussions have broadly fallen within three categories of regulation and quality assurance:

- 1.Areas of current misapplication of the law where a collective regulatory mechanism is required.
- 2.Enhancing individual empowerment, including rights of review; advocacy; and rights of appeal.
- 3.Improved data for monitoring purposes.

² Welsh Government (2023) Written response by the Welsh Government to the report of the Local Government and Housing Committee – Homelessness, pp.6

In particular, the panel has referenced the need to consider the role of regulation and enforcement in relation to the following:

- **Suitability standards.** The panel has identified that the lived experience of people in temporary accommodation in Wales is not in keeping with the current law. The panel noted the Public Ombudsman's report on issues around suitability and felt that this is an area where regulation and monitoring could play a key role.³
- **Allocations.** Panel members suggested that regulation could play a role within allocations. In addition, it has been highlighted that judicial review on allocation decisions do not come under legal aid, so this can be an area that is difficult for people to challenge. The panel may particularly wish to consider tighter guidance and regulation in this area as well as rights to review decisions around unacceptable behaviour.
- **Local connection.** The panel has reflected that the local connection test is not being applied consistently and is open to misinterpretation. The panel has identified that "consideration is needed as to how misapplication of the law can be avoided."
- **Failure to co-operate.** Stakeholders have highlighted that where applicants have disengaged because their communication or support needs have not been met, this has been incorrectly deemed as "failing to co-operate." Panel members reflected that if this clause remains, it should be monitored for misapplication.
- **Equalities.** An emerging theme of discussion has been consideration of whether applicant equality needs are being appropriately met and, whether this is an area requiring more monitoring and/or regulation.
- **Applicant Rights.** The panel has expressed a wish to consider whether there is a need for the legislation to be strengthened in relation to informing applicants of their right to review.
- **Advocacy.** Panel discussions have repeatedly referenced advocacy, in particular for vulnerable groups such as young people and prison leavers.
- **Data.** Panel discussions have regularly returned to a lack of availability in data across a multitude of areas and whether more data should be collated and monitored as a means of quality assurance.

2. Current regulation in the GB nations

Regulation of housing and homelessness services operates differently across all three nations of Great Britain. In Wales, under section 33A of the Housing Act 1996, the Welsh Ministers hold powers to set standards to be met by housing associations in relation to their functions, including governance and financial management. It should be noted that the standards must have regard to housing associations being free to choose how to provide services and conduct business.

Local authority social housing is not regulated in the same way. The responsibility for the service lies with democratically elected members and they can be investigated by the Public

³ It should be noted that there are legal remedies for applicants to enforce breach of suitability obligations, but these avenues are rarely used, they require the applicant to be eligible for legal aid and to have access to a legal aid lawyer.

Services Ombudsman. In respect of both local authorities and housing associations, an individual can enforce their rights by judicial review (or appeals in the case of homelessness). This requires legal aid and the availability of a legal aid lawyer.

Local authorities also have responsibility around enforcement action against poor housing conditions.

a. Wales

This section of the paper outlines; i) **existing regulation for social housing**; ii) **local authority homelessness services in Wales**; and iii) **private rented housing**. Within these subsections, wider quality assurance mechanisms, such as the role of the ombudsman, are covered.

i) Regulation of Social Housing

The Housing Act 1996

The Housing Act 1996 requires that all social landlords, other than landlords who are deemed local authorities, must be registered with the Welsh Ministers. These are known as Registered Social Landlords (RSLs).

The Welsh Ministers are the regulator of RSLs. The Housing Regulation Team, part of the Housing and Regeneration Directorate within the Welsh Government, carries out the activity of regulation on behalf of the Ministers.

Housing (Wales) Measure 2011

The Housing (Wales) Measure 2011 introduced a power for the Welsh Ministers to set standards of performance in relation to RSLs. This amended the Housing Act 1996 to strengthen the Welsh Ministers' powers in relation to the performance of RSLs and introduced the Regulatory Framework for Housing Associations Registered in Wales.

Regulation of Registered Social Landlords (Wales) Act 2018

This Act amends or removes the elements of central and local government control which led to the decision by ONS to classify RSLs as Public Non-financial Corporations, in order to enable the reclassification of RSLs back to Private Non-financial Corporations.

Prior to this Act coming into force, housing associations were required to obtain the consent of the Welsh Government before they could make constitutional changes and sell property. Now, housing associations only need to notify the Welsh Government of such changes.

This Act also altered thresholds for the Welsh Minister's enforcement powers, including removing the Welsh Ministerial power to wind down an RSL. Instead, the Act enables the Welsh Ministers to appoint a person to be an officer of an RSL in place of a person whom they have removed or, where there are no officers, or where the Welsh Ministers are of the opinion that the appointment is necessary in order to ensure that the RSL complies with a requirement imposed by or under an enactment.

Enforcement powers

Welsh Ministers have various regulatory/enforcement powers provided for in the Housing Act 1996, amended by the Housing (Wales) Measure 2011 and (as outlined above) the Regulation of Registered Social Landlords (Wales) Act 2018.

The following are examples of the powers which can only be exercised following due legal process:

- Appointing an interim manager
- Commissioning additional inspections to obtain evidence
- Commissioning additional surveys
- Issuing an enforcement notice which requires action to be taken to address a problem within a specified timescale
- A financial penalty if an association fails to comply with requirements imposed on it by an enforcement notice
- Payment of compensation to individuals or groups affected by a housing association's failure to meet standards or to comply with undertakings
- Requiring management functions to be put out to tender
- Requiring transfer of management function to a specified person
- Appointing an individual to manage a housing association
- Appointing a new director of an association
- Requiring an amalgamation (merger) of a housing association with another association
- Restricting certain dealings of an association during an inquiry
- Directing an inquiry into an association's affairs.

The Regulatory Framework for Housing Associations Registered in Wales

The Regulatory Framework applies to housing associations registered and regulated by the Welsh Ministers under Part 1 of the Housing Act 1996. It was first introduced in 2017. The framework includes the regulatory standards and sets out how regulation is carried out.

Regulation largely takes the form of oversight and monitoring with intervention or regulatory action only when there is an identified material issue. The framework outlines that, given the autonomy and independence of RSLs, the model used is a co-regulatory, relationship-based approach referred to as "Regulated self-assurance." Under this model, the board of each association has absolute responsibility for the effective governance, performance and financial viability of the housing associations they lead. This includes each board:

- Obtaining assurance that its primary responsibility of ensuring the effective running of the housing association is fully and properly discharged.
- Demonstrating accountability to the housing association's tenants, to people who use its services, to those who lend it money, and to other key stakeholders such as Welsh Government and local authorities.

The role of the Welsh Government's Housing Regulation Team is to assess and report on the adequacy and effectiveness of both the process and substance of housing association self-evaluations. This is achieved through ongoing regulatory oversight and the issuing of regulatory judgements.

The regulatory framework was updated in 2022. Changes included:

- New judgement statuses, including grading of compliance against a colour-coded status level.
- The standards are intended to be better aligned with the Regulator's judgement statuses, to make clear the links between non-compliance with the Standard and the intervention from the Regulator.
- The Standards include specific expectations on equality, diversity and inclusion.
- Responsibility for planning and delivering improvement is placed firmly with RSLs, except where there are material concerns.
- These new 'Regulatory Standards' also include clear standards around Tenant Engagement and what is expected of Housing Associations in terms of hearing the tenants voice.⁴

The Regulatory Board and Advisory Group

The Regulatory Board for Wales (RBW) was an advisory board set up by the Welsh Government to advise ministers about the regulatory performance of the housing association sector. The Board was dissolved in 2022 following a review that concluded there was very little agreement on the fundamental questions of core purpose, role and remit.⁵ The Minister for Climate Change, Julie James, has commissioned work which is ongoing, to put in place a comprehensive support system for the regulatory function which provides independent assurance on both operational and strategic regulation.

The Regulatory Advisory Group is a forum made up of stakeholder representative bodies. It is intended as a collaborative and consultative forum to provide an opportunity for members and their networks to raise, discuss and learn from issues relating to regulation as well as discuss and test regulation policy development and thinking. Members include: Tenant Participation Advisory Service Cymru (TPAS), Welsh Local Government Association, C Shelter Cymru, Community Housing Cymru and its various groups, Tai Pawb, UK Finance, CIH Cymru.

Community Housing Cymru

Community Housing Cymru (CHC) is the representative (trade) body for Housing Associations in Wales. Whilst housing association boards differ across Wales, CHC offers

⁴ [A regulator outlook on social housing in Wales - Mazars - United Kingdom](#)

⁵ [Local Government and Housing Committee 29/09/2022 - Welsh Parliament \(senedd.wales\)](#)

a code of governance for housing associations in Wales⁶ and model rules⁷, both of which were updated in 2021. Compliance with a code is one element of the regulatory standards.

Supported accommodation

A number of housing associations that provide care and support are regulated by Care Inspectorate Wales (CIW). CIW register, inspect and take action to improve the quality and safety of the care services specifically.

Statutory guidance⁸ sets out requirements for care home services, domiciliary support services, secure accommodation services and residential family centre services, as well as on adult placement services.⁹

CIW is able to take enforcement action where services do not comply with requirements set out in this guidance. Any enforcement action taken by CIW should be proportionate and consider the impact on or risk to individuals using the regulated service. Examples of enforcement action may include: imposing conditions on a service provider's registration; cancelling a service provider's registration; issuing an improvement notice; issuing a fixed penalty notice.

In addition, those in receipt of the Welsh Government Housing Support Grant utilise the accompanying outcomes framework (newly introduced this year)¹⁰ to report against the effective use of this grant.

Not all supported accommodation is regulated, including supported living accommodation for 16-17 year olds which are deemed to provide support as opposed to care. There have been calls to change this.¹¹

Judicial review

The decisions of public bodies are subject to challenge through judicial review. Whilst local authorities are public bodies and therefore subject to judicial review, the status of RSLs is less clear.

In the case of R (on the application of Weaver) v London & Quadrant Housing Trust, the Court of Appeal considered whether the decision of an RSL to terminate a tenancy was an act of a public nature which would make the RSL a public authority that could be subject to judicial review. It was concluded that some of the functions of the landlord were public functions, and that the act of terminating the tenancy was amenable to judicial review.

Registered Social Landlord quarterly regulation summary

⁶ <https://chcymru.org.uk/our-work/policy-briefing-papers/governance-and-regulation/model-rules/community-housing-cymrus-chcs-code-of-governance>

⁷ [Community Housing Cymru \(chcymru.org.uk\)](https://chcymru.org.uk)

⁸ See [Statutory Guidance for service providers \(gov.wales\)](https://gov.wales).

⁹ See [Statutory Guidance Adult Placement Services \(gov.wales\)](https://gov.wales)

¹⁰ See [housing-support-grant-outcomes-framework_1.pdf \(gov.wales\)](https://gov.wales)

¹¹ See [Councils in Wales 'unaware' of unregulated children's homes - BBC News.](https://www.bbc.com/news/wales-57888888)

The quarterly regulation survey is used to provide regulatory assurance data to enable the early identification of potential issues and challenges through analysis of individual data and sector wide trends within the social housing sector.

Welsh Housing Quality Standards

The Welsh Housing Quality Standard (WHQS) is the Welsh Government standard of social housing quality. The WHQS was first introduced in 2002 and aims to ensure that all dwellings are of good quality and suitable for the needs of existing and future residents. The WHQS measures 41 individual elements within seven categories:

- In a good state of repair
- Safe and secure
- Adequately heated, fuel efficient and well insulated
- Contain up-to-date kitchens and bathrooms
- Well managed (for rented housing)
- Located in attractive and safe environments
- As far as possible suit the specific requirements of the household (e.g. disabilities).

In August 2022, the Welsh Government consulted on proposed updates to these standards, including an emphasis around energy efficiency standards. The responses to this consultation are being collated and considered at present.¹²

Public Services Ombudsman

The Public Services Ombudsman has legal powers to look into complaints about public services and independent care providers in Wales – this includes powers to consider complaints in respect of maladministration by local housing authorities and housing associations. The Ombudsman is independent of all government bodies and the service is impartial and free of charge.

With regards to housing allocations, the Ombudsman can look at:

- Whether a housing application has been dealt with properly;
- Whether the local authority or housing association has properly applied its policy to a housing application e.g. correct band;
- Whether the organisation has told an applicant how it has dealt with the housing application;
- Whether the organisation has delayed dealing with changes in situation;
- Why an application may have been suspended.¹³

With regard to housing repairs, the Ombudsman can look at:

- Failure to carry out repairs;

¹² See <https://gov.wales/welsh-housing-quality-standard-2023-html#section-97171>.

¹³ [Housing & your home – Housing Allocation \(ombudsman.wales\)](https://ombudsman.wales/housing-your-home-housing-allocation)

- Delayed dealing with requests for repair(s);
- Missed appointments;
- Failure to sort out a repair problem reported within a reasonable time.¹⁴

With regards to homelessness applications, the Ombudsman can look at whether a local authority has:

- Prevented a person from making a homelessness application or has failed to recognise that an individual could be homeless.
- Failed to offer a person temporary accommodation if they are entitled to it.
- Failed to properly consider an individual's homelessness situation.
- Taken too long to reach a decision on a case.
- Failed to give an individual a written decision.
- Looked after your furniture and belongings.
- Failed to deal (or unreasonably delayed dealing) with a case properly.¹⁵

The Ombudsman can also publish thematic and own-initiative reports to shine a light on particular issues. Indeed, the Ombudsman in Wales has published reports on homelessness services.

Tenant participation

TPAS Cymru supports social housing tenants and landlords across Wales to develop effective participation in housing and has also made efforts to improve engagement in the private rented sector.

The Regulatory Framework places clear expectations on housing associations to demonstrate that:

- tenants are enabled and supported to influence strategic decision-making.
- tenants are enabled and supported to influence and shape the delivery of services.
- high quality services are delivered to tenants.

Earlier this year, the Welsh Government set up a Tenant Participation task and finish group to improve its understanding and advise on how Welsh Government might go about assessing:

- How tenants communicate with landlords, Welsh Government and public authorities and whether the channels of communication available are sufficient
- Whether tenants consider their voices are heard by government, public authorities and landlords.

¹⁴ [Housing & your home – Housing Repairs \(ombudsman.wales\)](https://www.ombudsman.wales/en/housing-repairs)

¹⁵ See [Housing & your home – Homelessness \(ombudsman.wales\)](https://www.ombudsman.wales/en/homelessness)

- The current communication and engagement methods used and whether they are sufficiently inclusive of the full diversity of tenants to ensure all views are represented.
- How engagement and involvement with tenants should be improved.

ii) local authority homelessness services

The Welsh Government does **not** hold a similar role in overseeing regulation of local authority homelessness services, as it does with housing associations. However, this section of the paper outlines the rights to review key decisions held by applicants, which is part of the wider context.

Right to request a review

Section 85 of the Housing Wales Act 2014 provides that an applicant has the right to request a review of the following decisions:

- a decision of a local housing authority as to the applicant's eligibility for help;
- a decision of a local housing authority that a duty is not owed to the applicant under section 66, 68, 73, or 75 (duties to applicants who are homeless or threatened with homelessness);
- a decision of a local housing authority that a duty owed to the applicant under section 66, 68, 73, or 75 has come to an end (including where the authority has referred the applicant's case to another authority or decided that the conditions for referral are met).

Where the duty owed to an applicant under section 73 (duty to help secure accommodation for homeless applicants) has come to an end, an applicant has the right to request a review of whether or not reasonable steps were taken during the period in which the duty under section 73 was owed to help to secure that suitable accommodation would be available for his or her occupation.

An applicant who is offered accommodation in, or in connection with, the discharge of any duty may request a review of the suitability of the accommodation offered to the applicant, regardless of whether they have accepted the offer or not.

A request for review must be made before the end of the period of 21 days beginning with the day on which the applicant is notified of the authority's decision.

On a request being made to them, the authority or authorities concerned must review their decision.

Please note: ERP has already agreed some recommendations around enhancing abilities for review, which are outlined at the end of this paper.

Homelessness (Review Procedure) (Wales) Regulations 2015

These Regulations set out the procedure to be followed under section 85 of the Housing Act 2014 in connection with a review by a local housing authority of specific decisions relating to homelessness.¹⁶

The regulations provide that requests for review must be made to the local housing authority which made the decision whose review under section 85 has been requested. Applicants must be notified of the procedure to be followed on review.

Where a decision was originally made by an officer of the authority and is to be reviewed by an officer of the authority, then the reviewing officer must not have been involved in the original decision.

If the reviewer is minded to make a decision against the interests of the applicant notwithstanding some deficiency or irregularity in the original decision or its making, the reviewer must inform the applicant of its reasons and invite representations. These representations can be made by the applicant or a representative, either in writing or orally, or both.

An applicant has a right to bring an appeal to the County Court against a review decision which he or she disagrees with. An appeal can only be brought on a point of law and must be issued within 21 days of notification of the review decision: s.88 Housing Wales Act 2014.¹⁷

Public Services Ombudsman

The Public Services Ombudsman has legal powers to look into complaints about public services and independent care providers in Wales – this includes powers to consider complaints in respect of maladministration within local authorities' homelessness service provision and housing associations.

The Ombudsman can look at whether the local authority has:

- Prevented a person from making a homelessness application or has failed to recognise that they could be homeless
- Failed to offer a person temporary accommodation if they are in priority need
- Looked at a person's homelessness situation properly
- Taken too long to reach a decision on a case;
- Failed to give a written decision
- Looked after a person's furniture and belongings
- Failed to deal with a case properly.¹⁸

The Ombudsman is also empowered to conduct 'own initiative' investigations into public services without having received a complaint, provided that they can evidence:

¹⁶ [SI/SR Template \(legislation.gov.uk\)](https://www.legislation.gov.uk)

¹⁷ There are no reported cases ie cases that have been considered by the High Court, Administrative Court of Court of Appeal concerning the homelessness provisions in Housing Wales Act 2014.

¹⁸ [Housing & your home – Homelessness \(ombudsman.wales\)](https://www.homelessness.gov.uk)

- whether the matter is in the public interest
- whether there is reasonable suspicion of systemic maladministration that may cause any person to sustain injustice or hardship
- whether the concerns are such that they would impact upon a wide group of citizens or individuals, particularly if they may be vulnerable or disadvantaged (for example, a person or group of individuals who would have difficulty in making a complaint), and appear likely to sustain injustice or hardship in consequence of the matter being considered for investigation
- the weight of the evidence
- the persuasiveness of the evidence.¹⁹

The Ombudsman in Wales has utilised this power to produce own initiative reports previously to consider local authority homelessness support services.²⁰

iii) Private rented sector

As above, there is also no current formal role for the Welsh Government in regulating the private rented sector. Local authorities, of course, have a role to play in enforcing health and safety issues within the sector.

This section of the paper outlines other aspects of wider quality assurance in relation to the private rented sector.

Rent Smart Wales

Rent Smart Wales assists those who let or manage rental properties in Wales to comply with their Housing Act 2014 (Part 1) obligations and provides advice on renting out safe and healthy homes. They also process landlord registrations, grant licences and deliver training for those involved in the rental market.

It is important to note that Rent Smart Wales is a regulatory and licensing body, not an enforcement body. However, Rent Smart Wales does have an enforcement team that works with local authority partners (who are responsible for enforcement). This team implements 'seek and find' projects to identify landlords and agents who are not complying with the legislation and investigates reports received by tenants, neighbours and organisations that report non-compliance.

Consequences of non-compliance include:

- Fixed Penalty Notices (of either £150/£250)
- Rent Repayment Orders
- Rent Stopping Orders
- Criminal Prosecutions and Fines

¹⁹ [Document-1-OI-Criteria.pdf \(ombudsman.wales\)](#)

²⁰ See [here](#).

Residential Property Tribunal Wales

The Residential Property Tribunal Wales is an independent statutory organisation handling property disputes from tenants and landlords.

The regulations governing the tribunal are:

- Rent Assessment Committees (England and Wales) Regulations 1971.
- Leasehold Valuation Tribunals (Procedure) (Wales) Regulations 2004.
- Residential Property Tribunal Procedures and Fees (Wales) Regulations 2016.

b. Scotland

Scottish Housing Regulator

The Scottish Housing Regulator (SHR) is the independent regulator of social landlords and local authorities housing and homelessness services in Scotland. Social landlords here refers to both housing associations (RSLs) and local authorities in their role as landlords.

The SHR is established by Part 1 of the Housing (Scotland) Act 2010. It is not part of the Scottish Government and for administrative purposes it is classified as a Non-Ministerial Department (NMD).

The 2010 Act provides for the Regulator to perform its functions independently of Ministers by specifying that Ministers must not give directions relating to, or otherwise seek to control, the performance of the Regulator's functions.

The SHR is led by a board of non-executive members, appointed by Scottish Ministers following an open public appointments process.

The SHR holds the remit "to protect the interests of tenants, people who are homeless, and others who use social landlords' services."

The SHR works on a principle of risk-based regulation. It continually assesses landlords to understand their performance and risk to tenants, people who are homeless and other service users. It seeks to give landlords opportunities to improve, and to take action to safeguard the interests of tenants and other service users when a landlord does not have the capacity or willingness to improve.

Every year, the SHR publishes:

- a report for each landlord with key information from its Annual Return on the Social Housing Charter
- online, interactive tools to allow users to compare landlords' performance and find out more

- an annual report summarising all landlords' progress against the outcomes and standards in the Charter
- reports and analysis on the Charter related thematic work that it does, including on homelessness.

The Social Housing Charter has seven sections, covering: equalities; the customer/landlord relationship; housing quality and maintenance; neighbourhood and community; access to housing and support; getting good value from rents and service charges; and other customers. The 16 standards include:

10: Access to Social Housing

Social landlords ensure that:

people looking for housing find it easy to apply for the widest choice of social housing available and get the information they need on how the landlord allocates homes and on their prospects of being housed.

11: Tenancy Sustainment

Social landlords ensure that:

tenants get the information they need on how to obtain support to remain in their home; and ensure suitable support is available, including services provided directly by the landlord and by other organisations.

12: Homeless People

Councils perform their duties on homelessness so that:

People who are homeless or at risk of homelessness get prompt and easy access to help, advice and information; are provided with suitable, good-quality temporary or emergency accommodation when this is needed; and are offered continuing support to help them get and keep the home they are entitled to.

There are around 60 staff at the SHR, covering 173 landlords including 32 local authorities.

The Care Inspectorate

The Care Inspectorate²¹ regulates all accommodation which provides care or support, including addictions or housing support, such as homeless hostels. This is done on an inspection basis, based on Scottish health and social care standards. Powers include closing down provision if it doesn't meet standards. The Care Inspectorate also requires annual returns of information.

Audit Scotland

Audit Scotland²² works with other scrutiny bodies including the Housing Regulator and Care Inspectorate, to make sure the scrutiny of public sector bodies is better targeted and more

²¹ <https://www.careinspectorate.com/index.php/about-us>

²² <https://www.audit-scotland.gov.uk/our-work/scrutiny-improvement>

proportionate in relation to identified risks. The main focus of their development work is on local government, on behalf of the Accounts Commission.

Audit Scotland will soon be undertaking an audit focussed on homelessness, looking at how well councils and the Scottish Government are spending public money to reduce homelessness, including the building and delivery of more affordable homes and the strategies in place to prevent people from becoming homeless.

c. In England

Regulator of Social housing

The Regulator of Social Housing (RSH) oversees the social housing sector and sets standards to enable the delivery and maintenance of homes of appropriate quality that meet a range of needs. The RSH has set both economic and consumer standards that registered providers of social housing must comply with.

Economic standards

The three economic standards apply to all registered providers except for local authorities and are as follows:

- Governance and Financial Viability Standard – this considers how the organisation run and whether it is financially viable.
- Value for Money Standard – this considers whether the provider makes the best use of the resources.
- Rent Standard – this considers whether rents set in accordance with Government policy for social housing rents.

Consumer standards

The five consumer standards are:

- Home Standard – quality of accommodation and repairs and maintenance.
- Tenancy Standard – how properties are allocated/exchanged and terms around tenure.
- Neighbourhood and Community Standard – issues around neighbourhood and communal areas and anti-social behaviour.
- Tenant Involvement and Empowerment Standard – customer service and complaints, tenant rights and involvement.
- Tenant Satisfaction Measures Standard – reporting against the TSMs, which cover information on areas such as repairs, safety checks and complaints.

The Social Housing Regulation Bill, which has yet to gain Royal Assent, would add to the RSH's power and ability to set standards. More information is outlined on page 13 of this paper.

Regulation of private rented homes

There are statutory provisions governing private landlords' repairing and maintenance obligations in addition to other specific requirements, for example, in relation to gas and electrical safety. Enforcement of standards in private rented housing is primarily through the Housing health and safety rating system (HHSRS) a risk-assessment based regulatory model used by local authority environmental health officers.

The Homes (Fitness for Human Habitation) Act 2018 requires private sector landlords in England to ensure their properties are fit for human habitation at the beginning of the tenancy and throughout. The Act provides tenants with the means to take legal action against their landlord.

3) Research and calls for housing regulation within the GB nations

a. Wales

Establish a Housing/Homelessness Regulator

The Public Services Ombudsman for Wales investigated local authority homelessness services in 2020, focussing on three local authorities. The report concluded that despite 'beacons of good practice', too many people at risk of homelessness are victims of 'injustice' due to unacceptable delays, inadequate processes, poor communication and placement in unsuitable accommodation. Its main concerns were:

- Human Rights and Equality Act 2010 duties were not explicitly taken into account in assessments and reviews.
- Delays throughout the Assessment and Review Process.
- Significant matters being missed during the assessment process.
- Unclear and insufficient communication that was not always understood by clients.
- Failures to appropriately consider suitability of accommodation.
- Failures to provide support to vulnerable clients and those with complex needs.

The report made several recommendations for local authorities and the Welsh Government. A key recommendation for the Welsh Government was to:

*Improve and standardise the homelessness service across Wales by considering the creation of a Housing/Homelessness Regulator role to support and provide information and guidance to local authorities.*²³

²³ [Complaints Step 4: 01 HOME - S21 Draft Investigation Report \(ombudsman.wales\)](#)

In late 2022, contributors to the Senedd Local Government and Housing Committee’s inquiry on homelessness also advocated for a homelessness regulator, citing inconsistencies in temporary accommodation standards across Wales. The Committee was persuaded by the evidence received and concluded that it sees merit in establishing a homelessness regulator for greater oversight of homelessness services including temporary accommodation standards. In its report, the Committee recommended that:

“The Welsh Government should urgently explore what can be done to monitor and improve standards in temporary accommodation and report back to the Committee. As part of this work, the Welsh Government should consider the opportunity to establish a homelessness regulator as part of its reform of homelessness legislation.”

On the other hand, the Minister for Housing Julie James told the Committee that a regulator would not result in changes to the quality of accommodation. Rather, a regulator would act as ‘another stick to beat them with’ when what local authorities really need is support to provide the rapid rehousing approach.²⁴

The Welsh Government’s official response to this recommendation was to ‘accept in principle’:

Whilst we will consider mechanisms to promote consistency and improve service provision, including the role of regulation, it is also important to recognise the potential risks. Establishing an additional homelessness regulatory function would risk increasing the complexity of governance as well as administration costs and would not necessarily improve housing supply, or the causal factors of homelessness which are at the heart of the current crisis. Any such proposal would therefore need to be carefully assessed and we will give further consideration to this and other ways to promote consistency and best practice as we develop our policy and legislative proposals.²⁵

Improve/extend the functions of Rent Smart Wales

Both the National Residential Landlords Association (NRLA) and the tenant union, Acorn, have called for Rent Smart Wales to be given ‘real enforcement powers’.²⁶

Acorn suggests that Welsh landlords and letting agents frequently breach the regulations Rent Smart Wales is supposed to uphold and, as a result, Acorn Cardiff says it is flooded with requests for help from private tenants. The union says that the vast majority of these cases, the landlords, agents and properties in question have not been registered with Rent Smart Wales – and where they have been registered, they have not provided safe housing to basic regulatory standards.

In the NRLA’s 2021 report *Rent Smart Wales: the accountability gap*,²⁷ it is reported that the limited number of prosecutions Rent Smart Wales has completed were for failing to register

²⁴ [Homelessness \(senedd.wales\)](https://www.senedd.wales)

²⁵ [Paper 8 - Written response from the Welsh Government to the Local Government Housing Committee repo.pdf \(senedd.wales\)](#)

²⁶ [Rent Smart Wales: A Watchdog in Need of Sharper Teeth - Institute of Welsh Affairs \(iwa.wales\)](#)

²⁷ [Rent Smart Wales fails accountability and transparency tests | NRLA](#)

or obtain a licence, rather than addressing poor management or property standards. The NRLA believes Rent Smart Wales should focus its enforcement powers on criminal activity that has a detrimental effect on tenants' lives, sharing intelligence with local authorities.

The NRLA also criticises the governance structure of Rent Smart Wales, which it says leaves an 'accountability gap'. The Association calls for Rent Smart Wales to become an independent agency accountable to the Welsh Government with a board-led governance structure and suggests the body should be subject to direct scrutiny in the Senedd every year.

The Welsh Government is commissioning an independent evaluation of Rent Smart Wales this year.²⁸ The Minister for Housing Julie James said of the review: *"One of the things we will be looking at is whether we want them to do more things for us, and whether the data we currently get from them enables us to do a number of other things with it."*²⁹ The panel may wish to consider whether this review should include any consideration of extending the role of Rent Smart Wales in relation to assisting with homelessness prevention, for example, in monitoring compliance with eviction laws.

b. Scotland

The Scotland Homelessness Prevention Review Group (PRG) was tasked with identifying legal duties needed for local authorities and other public bodies to prevent homelessness in Scotland.

The group recommended that the Scottish Housing Regulator report annually on the experiences of households facing homelessness and the threat of homelessness, as it does currently for social tenants.

The group also called for consideration of how regulators including the Scottish Housing Regulator, Care Inspectorate, Scottish Prisons Inspectorate and Audit Scotland may work together more closely to support homelessness prevention.³⁰

a. England

Social Housing Regulation Bill

In June 2022, the Social Housing Regulation Bill³¹ was laid in parliament to deliver the reforms outlined in the Social Housing White Paper³² and address the concerns raised following the fire at Grenfell Tower in 2017. The Bill seeks to bring forward a stronger and more proactive regulatory regime to drive up standards in the sector and hold landlords to account. The Bill would enable the regulator to set standards in relation to information and transparency, energy efficiency and safety. It would also give the regulator the power to act in wider range of cases where it finds a breach of standards.

²⁸ [Plenary 11/01/2023 - Welsh Parliament \(senedd.wales\)](#)

²⁹ [Local Government and Housing Committee 19/01/2023 - Welsh Parliament \(senedd.wales\)](#)

³⁰ [preventing-homelessness-in-scotland.pdf \(crisis.org.uk\)](#) (p112)

³¹ <https://bills.parliament.uk/bills/3177>

³² <https://www.gov.uk/government/publications/the-charter-for-social-housing-residents-social-housing-white-paper>

The Social Housing Bill has commenced its Report Stage at the House of Commons, with several amendments put forward for consideration at the Bills final stage.

This includes:

- An amendment introducing Awaab’s Law which requires social landlords to investigate and fix reported hazards in their homes within a specified time frame or rehouse tenants where a home cannot be made safe.
- An amendment providing new powers for the Housing Ombudsman to help social landlords improve performance by instructing them to self-assess against guidance during a complaint investigation.
- An amendment enabling the Social Housing Regulator to set standards relating to information and transparency, requiring social landlords to provide residents with information on how they can make a complaint against them.
- An amendment that will require all social housing managers to have a professional qualification. The aim of this change is to help to protect residents and raise standards, ensuring residents receive a high level of service and are treated with respect at all times.

The Supported Housing (Regulatory Oversight) Bill

This Bill, which is currently at committee stage in its consideration, seeks to improve the regulation and oversight of ‘supported exempt’ housing (that is supported housing which is exempt from the benefit cap and housing benefit limits in welfare regulations). The bill would:

- require local authorities in England to review supported housing and develop strategies.
- provide for the establishment of a national expert advisory panel on supported housing.
- provide the secretary of state power to introduce national supported housing standards.
- provide local authorities power to create local licensing schemes for exempt accommodation.

4.Potential Recommendations on Regulation, Enforcement and Monitoring for discussion

1. **To recommend that a Homelessness Regulator is introduced.** The panel may wish to consider:
 - Whether to recommend a standalone homelessness regulator, or a specific function within a wider regulatory body (as with the Scottish Housing Regulator in Scotland).

- Would such a regulator be an independent organisation or part of an existing organisation?
 - Would such a regulator cover both RSLs and local authorities?
 - What areas of homelessness services and housing provision should be monitored? For example:
 - Delivery of statutory homelessness services and compliance with legal duties and guidance
 - Social housing allocations law and guidance
 - Temporary accommodation standards and processes
 - Supported accommodation
 - Commissioned homelessness services
 - Social landlord support for people at risk of homelessness
 - What functions would the regulator perform? Would it review services routinely and proactively as a rolling programme of inspections, or only reactively based on investigating risk where material issues are raised?
 - What reports would a regulator produce? Would it provide services with examples of good practice? Would it routinely collate and review data? Would it produce thematic reports similar to the Scottish Housing Regulator?
 - Similar to the panel's recommendation around allocations, the panel may wish to emphasise that it is crucial that changes to regulatory functions to trigger a reclassification of housing associations and that Welsh Government should ensure that this is not the case when working on its White Paper.
2. **Whether or not the panel is minded to recommend that a new Regulator is established, the panel may wish to also consider other means of building upon existing regulatory practices.** Examples might include:
- That annual reports are expected from various existing bodies, such as the Regulatory Advisory Group (RSLs), Public Services Ombudsman and Rent Smart Wales (PRS). Such reports, alongside data on the number and nature of homelessness presentations, could be overseen by a newly appointed Regulatory Advisory Board with responsibility for identifying trends and highlighting areas where central policy improvement or guidance is needed.
 - That consideration be given as to how existing bodies with an interest in quality assurance, such as Rent Smart Wales and the Care Inspectorate might work together more closely to support homelessness prevention.

3. Whether or not the panel is minded to recommend that a new Regulator is established, the panel may wish to also consider other means of building upon existing individual-level rights of redress via enhancement of:
 - rights to review (potentially with regard to both homelessness and allocation decisions); *See below current recommendations agreed by the panel in this regard.*
 - rights of appeal to the County Court;
 - rights to make a complaint to the Public Services Ombudsman.
4. That applicants are able to access advocacy services to support them in making a homelessness application or making an associated complaint or review or appeal. Such services could be:

- Universal to all applicants;

Or

- Available only to applicants from named groups, known to be at greater risk – such as prison leavers.

To note: this recommendation would require resourcing.

5. That the Welsh Government looks to improve data collation across the housing and homelessness sector, utilising the data to assist in monitoring compliance with statutory requirements as well as to identify gaps within the system.

To note: the narrative of the panel report could highlight a number of the specific areas where there have been calls for improved data collation, for example, around prison leavers and care leavers.

Please note: The Panel has already agreed the below recommendations in relation to strengthening an applicants rights to review and appeal:

Reasonable steps

1. Strengthening “reasonable steps” by:

d) There could be rights to request a review of:

i) The reasonable steps that are to be taken;

ii) Potentially any steps that the applicant is advised to take;

iii) Whether the steps are being taken during the performance of the prevention or relief duty.

2) Improving enforcement of reasonable steps by:

a) Requiring local authorities to notify applicants in writing of the reasonable steps.

and

b) Requiring local authorities to inform applicants of their right to appeal.

and

c) Providing for the right to appeal reasonable steps during the duty and subsequent to the end of the duty.

and

d) Allowing for an appeal if no reasonable steps are given at all.

and

e) Allowing for the opportunity to request a review on the grounds that the reasonable steps are not being taken.