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Consultation – schedule of responses

Tackling Bad Debt within the Water Industry in Wales:

The Water and Sewerage Information
(Non-owner Occupiers) Regulations

August 2014



Tackling Bad Debt within the Water Industry in Wales: The Water and Sewerage Information (Non-owner Occupiers) Regulations

Schedule of Consultation Responses

Cardiff Community Housing Association

At Cardiff Community Housing Association, we would support the new rules as, regardless of DCWW writing off Bad Debt, many of our tenants do not contact DCWW as a priority when moving in and end up with a large unpaid bill to try and manage.

Plus, we are obviously in a very advantageous position of knowing the end/start of tenancies.

However, we would like a simple e-form to complete to keep the process as quick and simple as possible.

I was personally involved in a consultation meeting back on 14th May in Future Inns hotel in Cardiff about developing such a web page. Hopefully our feedback has gone some way.

Community Housing Cymru

General points

CHC welcomes the opportunity to respond to the proposals to implement the provisions in Section 144C of the Water Industry Act 1991 and to address the issues raised. Our members provide homes and services to some of the most vulnerable members of our communities and we therefore recognise the value of the early prevention of debt, particularly in the context of UK Government welfare reforms and spiralling personal debt levels.

Housing associations in Wales provide homes to some of the most vulnerable people in our communities, many of whom are financially excluded and are consequently at risk of homelessness and social exclusion. Welsh housing associations undertake huge amounts of preventative work via their own anti-poverty and financial inclusion programmes and initiatives. They work in partnership with utility companies, local authorities, credit unions, Moneyline Cymru and Your Benefits are Changing to improve financial products and services for struggling communities. This is particularly important in the context of direct payments under new Universal Credit. We estimate that social housing tenants make up 60% of all financially excluded individuals¹ and are therefore likely to have low levels of financial capability.

The social housing sector has a wealth of experience in payment collection and many of our members are directly involved in the collection of water payments and also act as intermediaries for the Welsh Water Customer Assistance Fund (CAF). Our experience of Welsh Water customers through these schemes is that although many understand that the consequences for non-payment of arrears will have minimal impact upon them, they remain worried about the accrual of large bills and are usually keen to sign up to the CAF and eventually have their debt written off via the establishment of a good payment history.

¹ Financial Inclusion and Housing: Baseline survey, Chartered Institute of Housing.

Housing associations who are involved with the CAF and the Water Assist tariff use them to engage with tenants on other issues, such as rent arrears, welfare reform and wider debt issues.

For example, Valleys to Coast, a housing association based in Bridgend manage over 6,000 properties. Their relationship with Welsh Water was founded on data-sharing and this has enabled them to directly target households in poverty and resulted in a much more focused intervention. Valleys to Coast run the Water Collect scheme on behalf of Welsh Water, through which they employ a full-time financial inclusion adviser who assesses tenants for their suitability for CAF and Water Assist as well as looking at a range of other financial issues including budgeting and the impacts of welfare reform on individual households.

The Your Benefits are Changing² team (Community Housing Cymru) have identified over 1,100 customers who would qualify for the CAF or Water Assist and over 480 of those customers have signed up to CAF with a potential arrears write-off of over £760,000. An additional 360 people have signed up to the Water Assist tariff, saving them a total of £101,000 per annum. The opportunity to engage with people who are suffering a financial crisis, via these schemes is invaluable.

Response to consultation

Question 1: Do you agree with the estimated costs / benefits arising from the implementation of these Regulations or wish to comment on any other area of the Regulatory Impact Assessment?

Members were generally supportive of the provisions in S144C of the Water Industry Act 1991 and felt that whilst the duty on landlords will increase the administrative burden on organisations, the long term gains for the customer will supersede this, especially since it will lead to less avoidance of paying water rates and a fairer deal for Welsh Water's other customers.

The determination of water liability from the outset of their tenancy should enable Welsh Water to take a preventative approach towards water debt as those who qualify for reduced tariffs, such as Water Assist will be identified at an early stage thus preventing unnecessary water debt from accruing. Further to this, vulnerable tenants will be identified leading to support plans and mechanisms being put into place. Welsh Water is particularly good at working in partnership to achieve this.

Some members have expressed concern that should they as landlords be held liable for water debt due to the implementation of the Welsh Government's proposals, the cost will eventually be passed onto tenants. We address this in questions 5 and 6.

Question 2: Do you have any comments upon any of the provisions in Regulation 3 concerning the personal details being requested about occupiers?

There is some concern within the sector about landlords becoming agents for other organisations. However, in practice, since the expectation is that the information which would be requested is already provided to the council tax section of the local authority, it

² www.yourbenefitsarechanging.co.uk

would therefore not be too cumbersome to provide this information to water companies also, although there are some subtle differences in the information required, which we cover in question 8.

Clearly resource implications for landlords will arise at the start of a tenancy, when information will be amended and provided to the water company. The Valleys to Coast partnership is an example of how data collection and analysis can work well for both partners and households. The scheme has enabled the landlord to target those suffering from financial exclusion very accurately and find solutions for those households.

While many housing associations are collecting water rates as part of their core business, and therefore already pass the required information onto the water companies, this is not the case for everyone. The landlords who collect the water rates receive a level of commission and reimbursement for their time and this would not be available to those who do not directly manage water accounts. Some are concerned that there will be an increase in queries from water companies regarding the information provided and that this would have a direct impact on resources and their time.

Some members have suggested that as they already provide similar data to the local authority and the exchange of information systems are already in place, it would be simpler and beneficial for all, if the water companies gather the info required directly from council tax and/or electoral register.

Question 3: Do you have any comments upon the provisions in Regulation 3 about communicating with occupiers or the provision of an owner's address?

Housing associations regularly communicate with their tenants in a variety of ways, including letter, face-to-face and social networking. Their contact details are publicly available on all literature and websites.

Question 4: Do you have any comments upon any of the provisions in Regulation 4 concerning the timing of when the duty takes effect or the period when compliance is required?

In practice the 21 day or 3 week reporting requirement would be too onerous for housing associations, since checks would need to run on a weekly basis. A reporting period of 6 weeks or 42 days would enable the landlord to run a monthly report which would bring it in line with other types of reporting, for example, to the local authority.

Question 5: Do you have any comments about the requirement for an owner to inform an undertaker of any doubts concerning the information they are providing about occupiers?

We wish to seek clarification around the issue of liability. Assuming that landlords will make every effort to comply with requirements, we would like assurances that evidence of a dialogue between the landlord and water company will mean that they will not be held liable for the minimal number of cases where this issue might arise.

Additionally, some members have expressed concern that if discrepancies in information

should arise, they could be held liable. In these cases and should the landlord be able to provide documentation to evidence that they provided information they believed to be correct, there should be a right to appeal. .

Question 6: Do you have any comments upon the exemption from liability for charges accrued after the compliance date, where information has been supplied within 21 days of the date when the duty first applies?

Although the sector generally supports the fuel / water poverty agenda, it must be acknowledged that these regulations have the potential to have an impact on our members' revenue stream and business plans. At a time of unprecedented financial pressure for housing providers in relation to welfare reform, making landlords jointly liable for the water debt should the information not be passed on within 21 days would have a direct impact. This approach of regulated consequence is a harsh stance and one that needs to be avoided.

Question 7: Do you have any comments upon the exemption from liability, where the owner has provided the undertaker with the information required after the 21 day period when the duty first applied?

None

Question 8: Do you have any comments upon any of the provisions in Regulation 6 concerning how an owner should provide occupiers' details to the undertaker?

We have also received reports from members that the details required by water companies is subtly different to anything else they are required to provide to other third parties and therefore costs for upgrading IT systems should be a consideration.

Question 9: Do you have any comments upon the provisions in Regulation 7 concerning change of ownership at an occupied property?

This question has been addressed in previous sections.

Recommendations

- We recommend that a full consultation is undertaken with landlords to establish the impact of the implementation of the proposals on their businesses and associated costs.
- We recommend that a better understanding is gained around necessary adjustments to IT systems and the associated costs.
- Appropriate and detailed guidance must be issued to landlords.

Consumer Council for Water

In this response the term landlord has been used to encompass landlords, owners, letting agents and estate agents except where there is a clear legal reason for not doing so. Similarly the term tenant encompasses all non-owner occupiers.

Question 1: Do you agree with the estimated costs/benefits arising from the implementation of these Regulations or otherwise wish to comment upon any area of the Regulatory Impact Assessment?

Comments:

We welcome this consultation to develop regulations to implement the provisions of Section 144C of the Water Industry Act 1991 (as amended by the Floods and Water Management Act 2010) in Wales. This provides for regulations to make landlords jointly and severally liable for water and sewerage bills on failure to provide specified tenant details within a timeframe.

We agree that the impact of the implementation of this policy is unknown as it is as yet untried. However, we know from data recently collected for our tracking research 2012 that tenants are less likely to agree that their charges are affordable and that there is currently an information gap which exists when a tenant takes up occupancy of a property. This gap results in water companies being unable to identify the person liable for charges and to then take appropriate action in collecting revenue from them. Debt accumulates and the on-going cost of this uncollected revenue is spread across bills for all customers.

This gap also means that those tenants who may be in financial difficulty do not get the support that they need when they need it as they are not known to the water company. It is important that these tenants with affordability problems get appropriate help in a timely manner. They need timely bills with no opportunity to build up unexpected debt, and early opportunities to implement efficiencies (eg meter installation or water saving strategies) to minimise bills. Water companies need to be able to identify these tenants, to ensure that any schemes which they may offer to reduce arrears are available to them if required and to provide this help proactively. The implementation of regulations to fill this information gap will help them to achieve this.

Although mention is made in the document that 'only unidentified debtors and customers will be affected by the proposed regulations' it is worth noting that landlords will be required to collect the information from all tenants, some of whom will have already been identified as debtors, so this will in fact affect all tenants.

Water companies will need to ensure that they have systems in place to update their records as soon as the information is supplied and to obtain meter readings if necessary to support a timely accurate bill for the tenant.

There is also a potential benefit to landlords in having tenants who are in a position of managing their affairs or getting help early and thereby reducing any potential impact on their future ability to pay their rent.

Question 2: Do you have any comments upon any of the provisions in Regulation 3 concerning the personal details being requested about occupiers?

Comments:

Water companies will be best placed to respond to this but the provision of name, address and date of birth would seem to provide water companies with sufficient information to ensure that the Information Commissioner's Office requirements for data quality are met. It will enable water companies to accurately identify the tenant at a rented property, advise them of the amount due in a timely manner and follow up any non payment appropriately.

Responsible landlords may already require these details if only to protect their own interests. In that case there would not be any difficulty in obtaining them. However, landlords will wish to be confident that they are not contravening Data Protection legislation in providing date of birth information in addition to the name and address of the tenant to the water companies. Date of birth is essential for accurate credit checks but we recognise that some prospective tenants may be unwilling to provide appropriate documentation to prove their date of birth unless this requirement is endorsed by legislation.

Question 3: Do you have any comments upon the provisions in Regulation 3 about communicating with occupiers or the provision of an owner's address?

Comments:

It is essential that the tenant is made aware of the landlord's intention to share his tenant's information with the water company(ies) as provided for by Regulation 3. This will ensure compliance with Good Practice as identified by the Information Commissioner's Office and also make sure that tenants are kept fully informed.

Water companies themselves will again be best placed as to the need for landlords to provide their own address in addition to the address of the tenanted property.

We are aware that the water companies in both England and Wales, through Water UK, are in the process of developing a web portal to minimise the impact on landlords of the provision of the tenant information details described in this consultation. In some cases this facility may actually reduce the information burden for any landlords who already provide details to water companies on a voluntary basis.

However, if the regulations in Wales provide for the collection of the landlord's address it is essential that the web portal can accommodate this and maintain clarity as to what is required by legislation in Wales and what is being provided on a voluntary basis for water companies operating in England.

If legislation to provide similar information is introduced anytime in the future in England confusion could arise, resulting in inconvenience to landlords, if there are differences in the information being collected through the same portal.

Question 4: Do you have any comments upon any of the provisions in Regulation 4 concerning the timing of when the duty takes effect or the period when compliance is required?

Comments:

It is important that water companies receive details of an occupier as soon as possible to avoid a debt building and becoming problematic for the customer. 21 days, coupled with the time the water company then takes to set up billing arrangements and despatch a bill, means that at least a month (possibly a sixth of a short term tenancy) will have passed without the tenant perhaps being aware of the cost of water and sewerage services and the need to budget for them.

However, we recognise that landlords too need time to process the information so

perhaps 21 days seems like a reasonable balance between the two interests. It may be that landlords will be able to co-ordinate provision of the information through existing processes that they have in place to comply, within 30 days, with the Regulated Tenancy Deposit Scheme.

Question 5: Do you have any comments about the requirement for an owner to inform an undertaker of any doubts concerning the information they are providing about occupiers?

Comments:

It is difficult to envisage circumstances in which a landlord will have doubts about the quality of the information he is providing about a new tenant. A landlord will no doubt endeavour to ascertain that the information they collect and hold on tenants for their own purposes is accurate and this will be similar to that being collected for water companies.

Presumably if the landlord has doubt about the validity of information collected when developing a tenancy agreement he will investigate this and act accordingly in deciding whether to take forward the tenancy agreement or not and so minimise the risk of loss to himself.

There may be exceptional circumstances where a landlord has doubts about the information available for an existing tenant but we would not expect these to be regular occurrences. Care needs to be exercised in developing this regulation to ensure that the facility for landlords to inform companies of doubts about the information they are providing is not exploited by any landlords looking to escape the consequences of not providing information as required by the regulations.

Question 6: Do you have any comments upon the exemption from liability for charges accrued after the compliance date, where information has been supplied within 21 days of the date when the duty first applies?

Comments:

If a landlord can demonstrate that all feasible steps have been taken to provide the information within the required timescale it seems reasonable that the landlord should not be liable for any charges accrued after the compliance date. This will also provide an incentive for landlords to provide the information in a timely manner.

Question 7: Do you have any comments upon the exemption from liability, where the owner has provided the undertaker with the information required after the 21 day period when the duty first applied?

Comments:

If the landlord fails to provide the information required within the 21 day period but subsequently takes steps to provide the information, liability for charges should remain with the landlord, as provided for in the regulations, up until the date that evidence has been given of the steps taken to obtain the information.

Question 8: Do you have any comments upon any of the provisions in Regulation 6 concerning how an owner should provide occupiers' details to the undertaker?

Comments:

Care will need to be taken to ensure that this Regulation does not preclude landlords from using the facility to enter information about their tenants through a web portal that is being developed by the water industry to minimise the impact on landlords of providing this information. (see response to Q3 above)

Question 9: Do you have any comments upon any of the provisions in Regulation 7 concerning change of ownership at an occupied property?

Comments:

Details of change of ownership should be required to be notified to the water company by the existing landlord before liability under Section 144c (3) of the Water Industry Act 1991 can be discharged.

Consideration should also be given to ensuring that details of the new owner are provided to the water company to ensure that responsibility under these regulations is notified and if it is the intention to continue to rent the property, or alternatively to provide an accurate bill for liability and charges if the new owner is to become the occupier. This would ensure continuity in acceptance of responsibility for provision of information on tenants and minimise the risk of tenants changing and information not being updated.

Question 10: We welcome your views and comments on any aspect of the Regulations or the Regulatory Impact Assessment, including anything you feel we may not have addressed.

Comments:

We are aware that similar regulations are not currently being progressed in England so it is important that cross border differences in the information required does not lead to confusion for both landlords and customers. It should be noted that all three water companies operating in Wales also operate in England, while landlords resident in either England or Wales may have property in either country.

Once introduced the regulations will require targeted promotion across both England and Wales through the various landlords, letting and estate agents and solicitors associations, and their respective representative organisations and newsletters. Articles in trade journals and more widely communicated to all customers as part of annual billing information to ensure landlords, even those with casual or informal arrangements perhaps for one property, are aware of it will increase awareness too. Local Authorities may also be able to promote this message when dealing with landlords of furnished properties who advise them of tenancy renewal.

We consider it would be good practice for Welsh Government to review, no later than five years after their introduction, how the regulations are working. This review would involve water companies, landlords (and their representative bodies) as well as statutory and non-statutory consumer groups.

Dr David Harwood (Private Landlord)

I am a landlord of buy-to-let property in Wales. I have no objection to informing the supplier of who occupies the property in regard to my let properties. I would readily supply the tenancy agreement demonstrating that the tenant is responsible for the utility bills. In fact I normally inform the utility supplier of the change of occupation. The tenancy agreement is a legal contract signed and witnessed. This should, in my opinion, be enough to use the court system to recover debt from a tenant who fails to pay a debt.

Perhaps an addition piece of information which can be collected is a tenants national insurance number as this is a unique identifier that can be traced especially if on benefits or in the tax system.

However on the BBC Wales news programme the representative indicated that it would be a requirement for a landlord to provide a forwarding address or be liable for the charges. There is NO requirement in law for a tenant to supply a forwarding address and may supply an address which is not one at which they can be contacted. This element if brought in I feel is unfair and certainly cannot be the fault of the landlord.

Dee Valley Water

We agree that the current situation regarding bad debt is unsustainable and welcome any plans to address the issue. We work hard to tackle bad debt but in many cases lack the timely and accurate information needed, particularly with regards to landlords and tenants.

The consultation document states that bills are relatively high in Wales compared to the rest of the UK. This is not the case for customers of Dee Valley Water who currently have the fourth lowest charges in the industry for the water element and have, since privatisation, see bills increase at a rate lower than the rate of inflation.

The consultation document seems to suggest that void metered properties are not an issue, implying that companies know when water is being used and should therefore be able to raise appropriate bills. This is not correct. We may well know that water is being used (by detecting changes in meter readings, for example), but we do not always know who is responsible for paying the bill. Metered billing exacerbates the billing issue further, more so than unmeasured billing and we expand on the reasons below. It is important to address all the issues surrounding metered billing in future Regulations to ensure maximum effectiveness.

Costs/benefits arising from the implementation of these Regulations

Currently 41% of debt over 12 months can be attributed to local council-owned properties. Since Wrexham County Borough Council ceased collecting water charges on our behalf in April 2005 we have customers who, despite considerable effort on our part, have not made a single payment in respect of their water charges. This is despite the fact that we pay Wrexham County Borough Council to receive monthly updates on occupier status including bill payer name details.

Whilst we welcome the assistance of the Welsh Government in respect of tackling bad debt, we remain concerned that even if legislation means we can obtain occupier/bill payer information from landlords and they comply, the issue of actually collecting payments will remain. However, we do recognise that an element of customers will have

every intention of paying, but experience makes us cautious in respect of agreeing any estimates.

Provision of personal details

Contact telephone numbers for landlord/owners and occupiers would be very useful in order to improve communication with customers in the event of queries or any future contact requirements. For metered properties, in order to ensure accurate billing for both the new tenant and the old tenant, it is important that the specified information requirement includes meter reading information. This will help disputes if meter readings have to be obtained after a tenancy change caused by disagreement over the amount of water being billed. It would be helpful if consideration can be given to multi-tenanted premises where no single tenant has sole control of the water supply. For example, where a single property has been converted into flats with communal kitchen and bathroom facilities and no provision for separate water services has been installed. It is our view that landlords should remain liable for charges in such circumstances as it seems unfair to force a single tenant to be the named bill payer. It would also be impractical to raise a single bill in all tenants' names as each may have a different tenancy term making apportioning bills virtually impossible. In such circumstances we try to make landlords responsible, with varying degrees of success as there is no legislative underpinning. Therefore, we would be supportive of the inclusion of an obligation for landlords to remain liable for charges in respect of multi-tenanted premises. Named occupiers should be person(s) named on the tenancy agreement otherwise disputes over liabilities may arise.

Timing of the requirement to provide information

The proposed Regulations will have different impacts depending on whether a property is metered and unmetered. Metered properties present a greater challenge than unmetered when dealing with occupier/owner changes. Currently 53% of our domestic properties are metered.

It should be noted that the number of metered properties will continue to increase in the future. We consider that 21 days for the landlord/owner to advise us of changes in tenancy is too long. Landlords/owners know the details of the tenant in advance of the commencement of any term of tenancy. For unmetered properties there is less of an issue in apportioning bills accurately for both outgoing and incoming tenants as bills are fixed based on the Rateable Value of the property and the date of the tenancy. However, for metered properties if for example Tenant A moves out on the 1st of the month and the landlord notifies us on day 21 that Tenant B moved in on the 2nd of the month, how will we be able to close the metered bill, as we would not have been given the opportunity to read the meter on the day of change of occupancy? Closing a bill on an estimated reading is highly likely to generate complaints about inaccurate billing (particularly when there is disparity between consumption of the old and new occupants). This would increase the number of disputes, potential bad debt situations and also expose us to possible unnecessary bill write offs as we will have no power to make the landlord/owner liable for these charges. Making the landlord/owner responsible for providing the relevant meter readings in the Welsh Statutory Instruments would be beneficial from both a company and customer point of view.

Having been served notice of a change of occupier/ownership for a metered property

(without a meter reading having been provided) we would have to make someone liable for the charges up to the date we were able to obtain a meter reading (this can be a lengthy process if a meter is located internally and we are not provided with access to the meter). Upon change of ownership, provisions of the existing Water Industry Act (WIA) permit companies to levy charges up to the date of first notification. This is very helpful to us as many customers/landlords fail to advise us of a change of ownership for many months and the existing powers allow us to recover charges and reduce debt in such circumstances. Again, if a property is metered we would query how we would be able to close the bill without a valid meter reading being taken on the date of change of ownership. We regularly rely on the existing WIA for this purpose. We support any change to ensure all landlords are liable for charges in the event of any failure to notify companies of changes in tenancies. The legislation should also ensure that councils are included as part of this requirement.

Requirement for an owner to inform an undertaker of any doubts concerning the information they are providing about occupiers

Landlords are best placed to advise companies of any doubts concerning information they provide about their tenants. It is in their own interests to ensure the information is correct as in most cases they will have used the same information to draw up and agree legally binding tenancy agreements with their tenants. We feel that landlords should be required to verify information to avoid erroneous bills being issued on the basis of incorrect information.

Exemption from liability for charges accrued after the compliance date, where information has been supplied within 21 days of the date when the duty first applies

The definition of reasonable efforts needs to be clearly established. In most cases landlords will have the relevant information (bar the meter reading) available from their tenancy arrangements. It is our view that landlords should notify us within 3 working days of a change in occupancy to ensure that metered accounts can be closed to the most up to date meter reading possible. However, where meters are located inside a property, consideration to how a meter reading can be obtained quickly needs to be considered especially if 21 days are allowed to elapse. It is very difficult to gain access for the purposes of reading meters in order to close/open bills to respective tenants, so up to date meter reading provided by the landlord or their agent would result in timely and accurate billing for tenants.

Change of ownership at an occupied property

The most important change that any new Regulations can make to address the bad debt problem is to improve communication. Undertakers need to be notified of change of ownership as soon as possible otherwise there will continue to be disputes and ultimately bad debt will continue to increase.

Don Higgs (Private Landlord)

Sent: 20 August 2013 06:56

To: WaterEPC

Cc: Williams, Kirsty (AM)

Subject: Consultation on tackling bad debt within the water industry in Wales

Sir's,

Whilst I understand the need to address the problem of bad debt, once again we find that those who are attempting to address this problem are failing to address the problem creators.

I have been a Landlord for approximately 20 years with several properties I have, on occasions, experienced several different "problems" with regard to tenants and their "attitude" towards debt.

For the record, at present when I have a changeover of tenancy, I provide the new occupiers name/s and date on which the tenancy commenced to the water authority and other utilities, which I consider to be correct and sufficient. Unfortunately the proposals – as they stand – are not addressing the fundamental aspect associated with bad debt, which, whilst entailing legislation to be put in place, would also make those persons who do "run up debt" accountable for their actions. Below I provide suggestions for such facets, as well as a little background for same - based on my personal experiences during my time as a Landlord.

Although rare, I have occasionally had tenants who have vacated a property without any notification to me – the first notification being when a neighbour has contacted me or – in the case of DSS (which is the "principal problem area" for this behaviour in my experience) – when the Council inform me that the HB has ceased. In such cases, as a norm, letters, which are obviously from debt collection agencies and "others" start to arrive (I have also found letters whether in bags or generally round the property from such organisations when I have entered the properties.

Similarly, it can be that the tenant departs owing rent (another debt).

When one considers renting a property, it has been stated - by those who put in place the legislation etc, that one of the principal reasons for paying HB monies direct to the tenant – is to make them "responsible" for their finances. Yet there is no stated comeback on those same tenants to be accountable should they fail to pay their rent. (with regard to rental payments I am fully aware of the 8 week rule etc however that can lead the landlord to still lose 4 or more weeks rent before the 8 week rule commences). Should those same tenants depart from the property without due notice etc they can easily "hide behind the data protection act" without any fear of consequence at all, accordingly leaving the Landlord with a debt which, without further expenditure in attempting to trace the tenant, is normally "written off".

Likewise, when a tenant arranges the purchase of an item via a regular payment method – or when one considers debts accrued with utility companies – and then departs from a property, they can readily hide behind the data protection act.

Even when – say – the Council have been aware of the new address for the "ex tenant" they cite the data protection act as a reason for not providing such information on to a landlord. (ironically I have had similar experience when I have contacted the Police to check or verify allegations made against a tenant by a neighbour!). Whilst debt collection companies and the like will "have their methods" it is likely that this is at the added expense of the "provider" of the goods or materials, or utility companies

Fundamentally – although unlikely to happen because of the idiocies adopted by the legal system and those responsible for such matters – the system should be amended to ensure that, should anyone default on a debt, whether to a Utility company, a provider of goods, or a Landlord, measures should be in place to allow the provision of new addresses and also amendments to the benefits system and/or wages legislation (for those employed) such that an application can be made to the benefits system – or employer – to claw back monies owed.

Government state that they want people to be responsible for handling their own money issues, isn't it time to also make people accountable for their actions with regard to money issues.

Or is it just too easy, as with the proposals for the water charges, to make someone who is a "normal law abiding individual" responsible for others debts. I THINK SO.

Unfortunately, I somehow doubt whether such anecdotal information as presented above will be taken into consideration because – as intimated – it is just too easy to pursue the law-biding than it is to pursue the perpetrators.

Sent: 21 August 2013 08:15

To: WaterEPC; Williams, Kirsty (AM)

Subject: Consultation on tackling bad debt within the water industry in Wales

Dear Sir's and Kirsty,

Further to my Email yesterday regarding the stated consultation I note that a representative of Welsh Water was being interviewed on the Welsh BBC news on the debts left unpaid by tenants departing from properties.

It was stated that "Landlords should be responsible for providing the forwarding addresses of tenants when they move and, that it was only fair that Landlords should pay the water bill should no forwarding address be provided".

The naivety of the statement made is hard to comprehend because of the facets I referred to in my Email yesterday, in particular;

Tenants who are intent on not paying their bills including those who depart without any notice are certainly – in my personal experience – unlikely to provide a Landlord with any forwarding address. Even when one has the opportunity of asking for this information on the premise of forwarding mail, it is not unusual for such a tenant to state that he/she will pop in to pick up any mail etc. Which of course they very rarely do. Leaving the Landlords totally in the dark as to where they are moving to, furthermore, it is not unusual for the, now, ex-tenant to change their mobile number making it impossible to trace or contact. Again I state that one is stonewalled by statements from Councils etc that "Sorry we can't provide that information due to the data protection act"!!!.

I have to – again – state the obvious. We, Landlords can only pass on information if we have been provided with it, those intent on not paying bills will continue to do so unless there is some form of accountability being imposed on them. The information relating to

the new addresses etc of many such people will be readily available on Council records – new HB claims and/or Job Centre files.

The publicity being given to this topic at present and in the future are likely to create proliferation of such incidents. Additionally, what happens when a tenant provides the Landlord with incorrect or false new addresses, will the Landlord still be liable.

The prospective correct forwarding information will normally be readily available on the various "official" databases therefore why is there a need to make Landlords – who are generally law bidding individuals – liable for the water bills associated with these individuals who will continue to flaunt their responsibilities – to say nothing of the law. I again restate the final short paragraphs of my previous Email

Government state that they want people to be responsible for handling their own money issues, isn't it time to also make people accountable for their actions with regard to money issues.

Or is it just too easy, as with the proposals for the water charges, to make someone who is a "normal law abiding individual" responsible for others debts. I THINK SO.

Unfortunately, I somehow doubt whether such anecdotal information as presented above will be taken into consideration because – as intimated – it is just too easy to pursue the law-biding than it is to pursue the perpetrators.

Sent: 21 August 2013 08:32

To: WaterEPC; Williams, Kirsty (AM)

Subject: Consultation on tackling bad debt within the water industry in Wales

Dear Sir's and Kirsty,

Apologies but I stated previously that the interviewee was a representative of Welsh Water, this may have been incorrect, I now believe the interviewee was a representative of the Welsh Government.

Dŵr Cymru Welsh Water

Generally, we very much welcome and support the proposals outlined in the consultation and believe that the requirements outlined have the potential to help tackle the question of bad debt which will in turn lead help lower customer bills and play a part in tackling poverty.

Attached are our responses to the specific questions raised. We have identified some practical issues which we think should be addressed as the regulations are finalised and would be very happy to expand on the points made and help consider with you some of the possible solutions, either through further correspondence or if you think it appropriate a meeting.

Question 1: Do you agree with the estimated costs/benefits arising from the implementation of these Regulations or otherwise wish to comment upon any area of the Regulatory Impact Assessment?

We agree with the analysis underlying the consultation, that the current situation

regarding bad debt in the water industry is neither sustainable nor acceptable.

As the consultation notes, outstanding revenue in the water industry has increased significantly since the ban on disconnection in 1999, and it continues to rise. Bad debt already adds about £20 to the bills of all customers in Wales who do pay, including those who are financially vulnerable and can least afford to pay more than they need to. Without change, the situation will only get worse.

We think the costs/benefits analysis fairly reflects costs and benefits to both the companies and customers of Wales. We believe that the higher level benefits are more likely to be achieved without an undue burden being placed on landlords by slightly increasing the scope of the data provision.

Question 2: Do you have any comments upon any of the provisions in Regulation 3 concerning the personal details being requested about occupiers?

Water companies work hard to manage bad debt, but currently simply do not have sufficient information to do this more effectively. This is particularly the case for rented properties, where often water companies do not have timely information on who is occupying the property.

To change this situation, and reduce the burden on customers who do pay their bills, water companies need better information about who is occupying rented household properties. This information needs to be available routinely, for all rented properties – not just for some properties for some of the time as is the case currently with provision of information on a voluntary basis.

This will allow the right person to be billed at the right time, avoiding debt being built up unnecessarily and bringing additional properties into charge, reducing costs and bills for all customers.

We therefore strongly support option 2 in the Regulatory Impact Assessment accompanying the consultation, requiring the provision of information on tenants from landlords to water companies. We support the proposed approach of this requirement being limited to basic information, that many landlords will have as a matter of course, as this will provide water companies with the essential information they need, while removing or reducing the need for landlords to collect any additional information.

There are a number of areas we would like to see additional data being provided which we believe can be done without applying a burden on the landlord because landlords will have this data as a matter of course, namely:

- To ensure accurate billing the landlord to provide a meter reading, where it is safe to read the meter, when the tenant takes over the property.
- To maximise the water undertakers opportunity to collect charges, a second occupier's details should be provided when resident;
- To ensure timely closure of accounts and accurate billing, the landlord should inform the water company within 21 days of termination of a tenancy.
- To maximise the water undertakers opportunity to collect charges, the landlord should inform the water undertaker within 21 days of termination of tenancy the forwarding address where known.

None of the above data will add any burden to the landlord because they will be

collecting that data as part of the tenancy agreement and will be informing the water undertaker of new tenancy agreements within 21 days.

Question 3: Do you have any comments upon the provisions in Regulation 3 about communicating with occupiers or the provisions of an owner's address?

No comments

Question 4: Do you have any comments upon any of the provisions in Regulation 4 concerning the timing of when the duty takes effect or the period when compliance is required?

The timings and rewards specified in Regulation 4 are appropriate.

Question 5: Do you have any comments about the requirement for an owner to inform an undertaker of any doubts concerning the information they are providing about occupiers?

It is right that the owner should inform the undertaker of doubts concerning the information they are providing about the occupiers.

Question 6: Do you have any comments upon exemption from liability for charges accrued after the compliance date, where information has been supplied within 21 days of the date when the duty first applies?

Although the owner/landlord should be able to instruct a third party to inform the water undertaker and the water undertaker must accept information from delegated parties, the responsibility for charges should remain with the landlord.

Question 7: Do you have any comments upon the exemption from liability, where the owner has provided the undertaker with the information required after the 21 day period when the duty first applied?

No comment.

Question 8: Do you have any comments upon any of the provisions in Regulation 6 concerning how an owner should provide occupiers' details to the undertaker?

No comment

Question 9: Do you have any comments upon any of the provisions in Regulation 7 concerning change of ownership at an occupied property?

Regulation 7 clearly defines when an owner/landlord's responsibility ends and commences once a property has been sold. However, in order for the new obligations to be passed from one landlord to another it is necessary that the undertaker has served a notice under article 3 of the Flood and Water Management Act 2010. It is not clear if this notice:

- Can be a general notice in the newspapers, through letting agents and national bodies
- Requires the landlord to be specified

- Requires the property to be specified

Question 10: We welcome your views and comments on any aspect of the Regulations or the Regulatory Impact Assessment, including anything you feel we may not have addressed.

No additional comments.

Ian Williams (Private Landlord)

I refer to your proposals to compel landlords to provide information in respect of their tenants who fall into arrears on their water bills and if they fail to do so, to make us liable. I strongly object to being made liable for a debt I did not incur. I already provide details of tenancy periods when tenants vacate but do not require tenants to provide their date of birth. Furthermore I suspect that I cannot compel a tenant to provide this information and would be prevented by Data protection legislation from passing this on to a private third party-in the same way that Council's housing benefit officers refuse to provide me with the new address of tenants who I would wish to pursue for non-payment of rent and damage and theft from my property which frequently only becomes apparent when they have left.

I fail to see justification for Welsh Water being given a special status in the recovery of debt when landlords, utilities, catalogue firms and banks all have to pursue our debtors independently. As usual it appears that England can continue to act in a pragmatic manner while Wales continues to act in a bureaucratic manner to the detriment of small private landlords. Given that most of these rogue tenants are in receipt of Housing Benefit, why not compel Councils and the DWP to provide this information under threat of financial penalty.

This measure if implemented will give tenants carte blanche to continue running up debt safe in the knowledge that they will not be pursued – surely this flies in the face of the efforts of government and their agencies to generate empowerment of benefit claimants.

Information Commissioner's Office

The Information Commissioner's Office (ICO) is the UK's independent public body set up to promote access to official information and the protection of personal information. We have responsibility for promoting and enforcing the Data Protection Act 1998 (DPA) and the Freedom of Information Act 2000. We do this by providing guidance to individuals and organisations, solving problems wherever possible, and taking appropriate action when the law is broken. The ICO will only provide responses to questions relevant to the scope of this office, and from the perspective of the Data Protection Act. Responses have therefore been provided to questions 2, 3 and 4.

It is hoped that this response provides a clear statement of the ICO's position on this matter. We would of course be pleased to discuss or expand further upon any of the points.

Question 2: Do you have any comments upon any of the provisions in Regulation 3 concerning the personal details being requested about occupiers?

We have no concerns with regard to the DPA in respect of the personal details that will be requested about occupiers. The information does not constitute 'sensitive' personal

data as defined by the Act, and as you have pointed out, there is already a provision within the Water Industry Act 1991 (section 144C) which Date 16/10/13, V1. 1 2 allows the information to be made available, thereby providing a lawful basis for passing on the information.

Question 3: Do you have any comments upon the provisions in Regulation 3 about communicating with occupiers or the provision of an owner's address?

The draft regulation 3(5)(a)(i) raises two issues with regard to the fairness provisions of the DPA. For any kind of data processing to be fair, the individual concerned must be provided with information such as why the data is held and to whom it might be passed on (unless it is patently obvious). The individual should be told this as soon as possible, and preferably before the particular data processing takes place.

1. Your draft requires owners to "take reasonable steps" to inform the occupier about sharing their personal data. The DPA requires the data controller to "ensure so far as is practicable" that the data subject is informed (DPA 1998, Schedule 1, Part II, 2(1)(a)). We suspect that your draft wording may not be quite as strong as the DPA wording on the level of effort expected from data controllers – it may be worth reconsidering the wording to ensure it does not mislead owners by implying a lower threshold of effort. In investigating complaints on this type of fair processing matter, the ICO expects that every effort will have been made by organisations to inform individuals, and if the individual has not been informed, there should be robust reasons why not.

2. The second issue relates to when the owner informs the occupier that their information has been shared with the water company. Your draft refers to informing the occupier that their personal data "has been" provided. We would expect the individual to be informed prior to the disclosure of their information or at very least at the same time as the disclosure, rather than after the event, unless it is impossible to do so, in which case it should be as soon as possible thereafter.

Question 4: Do you have any comments upon any of the provisions in Regulation 4 concerning the timing of when the duty takes effect or the period when compliance is required?

Our second comment above is also relevant here – occupiers should preferably be informed before their information is shared, unless it Date 16/10/13, V1. 1 3 is impossible to do so, in which case it should be as soon as possible thereafter.

I attach a hot link to the ICO Guidance for Landlords and Tenants.

Good practice is that landlords should make clear to tenants when they sign the tenancy when and how their information will be given out.

Marc Isaacs (Private Individual)

Just two quick thoughts about the problem of 'bad debt' with water bills.

Firstly – make the owner of a property liable. They have access to the tenants and can pass on costs as well as being easy to find. Some implications for housing benefits but then charging poor people for water is pretty beyond the pale anyway.

Secondly – switch to a program of universal metering with heavy costs for water use which is over a reasonable amount for each occupant. ie; a sufficient quantity for drinking, washing, cleaning is permitted free of charge but people with swimming pools, hosepipes, etc have to pay through the nose. These things are luxuries after all and such a program would meet universal human needs and make luxury items cost.

Marilyn Morgan OBE

How can this be legal when the landlord has no contract with the water company?

This is a disgraceful attempt to make landlords responsible for the bad behaviour of others.

Where will this end? Will the landlord be made liable for his / her tenants' gas bill, electricity bill, phone bill, HMRC tax bill, road tax, car insurance, credit cards, etc? This proposal seeks to make responsible members of society pay for irresponsible members of society. Although this currently happens indirectly through the writing off of bad debt, the new proposal merely says to life's scroungers, "It is okay to default on your obligations, because someone else, and not you, will be made accountable."

The sensible way forward would be to place on landlords a requirement to provide to the Water Company the contact details of all tenants. This would be reasonable. Policing this could involve removal of the landlord's accreditation or licence. (A fully licensed Letting Sector is still desirable.)

Northumbrian Water Limited

Consultation Response Form Your name: Ian Donald

Organisation (if applicable): Northumbrian Water

Email / telephone number: ian.donald@nwl.co.uk / 0191 3016802

Your address: Northumbrian Water Limited, Boldon House, Wheatlands Way, Pity Me, Durham, DH1 5FA

Question 1: Do you agree with the estimated costs/benefits arising from the implementation of these Regulations or otherwise wish to comment upon any area of the Regulatory Impact Assessment?

I agree with the logic used in building the impact assessment

Question 2: Do you have any comments upon any of the provisions in Regulation 3 concerning the personal details being requested about occupiers?

It would be useful to have a contact telephone number for the occupier

This would enable the water company to contact their customer regarding either a billing matter or an operational matter; reduced pressure, local burst etc. Today, most companies us text messages to inform customers of water supply incidents.

Question 3: Do you have any comments upon the provisions in Regulation 3 about communicating with occupiers or the provision of an owner's address?

No, I think the Regulation is fair and reasonable

Question 4: Do you have any comments upon any of the provisions in Regulation 4 concerning the timing of when the duty takes effect or the period when compliance is required?

No, I think the Regulation is fair and reasonable

Question 5: Do you have any comments about the requirement for an owner to inform an undertaker of any doubts concerning the information they are providing about occupiers?

No, I think the Regulation is fair and reasonable

Question 6: Do you have any comments upon the exemption from liability for charges accrued after the compliance date, where information has been supplied within 21 days of the date when the duty first applies?

No, I think the Regulation is fair and reasonable

Question 7: Do you have any comments upon the exemption from liability, where the owner has provided the undertaker with the information required after the 21 day period when the duty first applied?

No, I think the Regulation is fair and reasonable

Question 8: Do you have any comments upon any of the provisions in Regulation 6 concerning how an owner should provide occupiers' details to the undertaker?

No, I think the Regulation is fair and reasonable

Question 9: Do you have any comments upon any of the provisions in Regulation 7 concerning change of ownership at an occupied property?

No, I think the Regulation is fair and reasonable

Question 10: We welcome your views and comments on any aspect of the Regulations or the Regulatory Impact Assessment, including anything you feel we may not have addressed.

We strongly support the introduction of regulations requiring the provision of information on tenants from landlords to water companies.

At Northumbrian Water we introduced a landlord web portal in 2010 in preparation for the introduction of the landlord legislation, and whilst at the moment its use is still voluntary, to date only 2,500 landlords have registered 25,000 properties and have used the system to notify us of 45,000 tenancy changes. We attend local meetings of Landlord associations to promote the site and show landlords how to use it. Those who use the site tend to be landlords who have always informed us of tenancy changes; they use the site as they find it easier and cheaper than writing to us. Without legislation there is little incentive for landlords to provide details of their tenants. We estimate we have 363,893 tenanted properties. After two and a half years of a voluntary approach less than 7% of tenanted properties are registered within our notification system.

Pembrokeshire Housing

Dear Sir/Madam,

Thank you for the opportunity to take part in this consultation.

Pembrokeshire Housing provides quality affordable homes and landlord services to over 2200 households in Pembrokeshire.

In summary:

The Association suggests an alternative approach, to achieve a better and fairer outcome for the people of Wales.

A flawed analysis of the problem?

Households in Wales will pay on average £434 to Welsh Water in 2013/14, one of the highest water bills in the UK.

OFWAT say that household water bills have increased in real terms, exceeding inflation, and wages, for many years.

When many household incomes in Wales are static or falling in real terms, when people are struggling to heat their homes or put food on the table, it is regrettably no surprise that people are also struggling to pay an ever more expensive water bill.

Will this proposed new Welsh Law mean that people, who cannot afford to pay their water bill now, suddenly have the money to pay it?
Of course not.

The proposed new Welsh Law is designed to let the water companies know the names of all tenants.

Is this a problem?

Looking at the regulatory impact assessment it appears this is not a problem.

Your figures show that there are 1,378,723 household customers served by Welsh Water and Dee Valley Water, of these 353,920 are tenanted households, and of these tenanted households you estimate that in 6,000 the names of the tenants are unknown.

Is the proposed new Welsh Law proportionate or even necessary, when the water companies already know the names of 98.3% of all tenanted households (or 99.6% of all customers)?

Uncollected income from these 6,000 households is less than 0.3% of the turnover of these water companies, and around 2% of debt. If these 6000 names were known how much additional income would be collected?

The vast majority of bad debt is from known customers.

Although there are no figures supplied it is reasonable to assume that income loss to the water industry; from business customers as a result of reduced economic activity in Wales, income loss from empty business premises, and bad debt from business customers who have ceased trading, will exceed the losses from these 6000 unknown tenanted households.

The real costs for landlords?

The regulatory impact assessment states that total transition costs for all landlords are estimated at £15,000.

It is suggested that this is significantly under estimated.

Larger landlords will face significant IT set up costs associated with extracting the required data (e.g. it is not common for tenants' dates of birth to be needed on information to third parties) IT companies typically charge around £1,000 a day.

Most landlords will face the costs of completing datasets, as mentioned within the regulatory impact assessment this could be substantial.

For smaller landlords, the transition costs will mainly be falling from the new regulations because they just don't know they exist, or they end up having to pay tenants' water debts.

Delaying any change until after the Welsh Government implements the landlord registration scheme and there are good records of each landlord would allow targeted information to every landlord and reduce these "unintended" additional costs falling onto landlords.

The on-going costs are substantial, and here the regulations could be framed differently to save on unnecessary administration. The 21 (3 week) period to notify means that in practice this becomes a weekly task for landlords as tenancies change. Changing the regulation to say 6 weeks to notify, would permit the task to become monthly (administrative cycles a year instead of 52)

Landlords are not always notified of a change of occupier, for example upon relationship breakdown when one partner leaves and the other partner remains in the family home. The regulations suggest that the landlord becomes liable even if they don't know that the change in occupation has occurred.

Landlords will occasionally have unauthorised occupants in their homes. Again the regulations suggest that landlords become liable even if these cases they do not have any contractual relationship with the occupants, and are very unlikely to get the information required by the regulations from these occupants.

Equality Impact Assessment?

There is no equality impact assessment provided as part of the consultation.

A higher proportion of people with protected characteristics live in tenanted property than the general population across all tenures

If it is accepted that the real costs to landlords has been underestimated within the regulatory impact assessment, and that these additional costs are inevitably passed down to tenants, this new Welsh Law will have an unequal and adverse impact on the most vulnerable in our society, and will fail to meet the Welsh Government's policies and aspirations for a fairer society.

Is there a better way?

Welsh Water has never sought this information from Pembrokeshire Housing as a landlord on a voluntary and commercial basis.

It is suggested that Welsh Water (and other water companies operating in Wales) be encouraged to engage positively with landlords to supply this information on the basis that landlords are fairly compensated for the administrative costs they incur.

This proposal eliminates the additional costs that would otherwise fall on the poorest section of the Welsh community, and creates an environment where the water supply companies and landlords can work together.

The impact of this approach is then monitored, and any regulations deferred until:

- It is proven that the voluntary and commercial approach has failed, and
- There is a register of all landlords in Wales in place.

It has to be accepted that water bills in Wales are simply too expensive for the poorest in our society to pay.

It is suggested that the Welsh Government makes representation to OFWAT for decreases in real terms in water bills in Wales going forward as part of the 2014 price review.

It is suggested that the Welsh Government seeks additional powers to regulate the private water industry in Wales, and that longer term there is a lower water tariff or a water benefit scheme for all poorer customers in Wales.

The Association hopes that you find these ideas helpful as you consider these proposed regulations further.

Residential Landlords Association

Re: Tackling bad debt within the water industry in Wales: The Water and Sewerage Information (Non – owner Occupiers) Regulations - Residential Landlords Association Consultation Response

We attach our Consultation Response. This raises a number of important issues and concerns around the current drafting of the proposed Regulations.

Importantly, if the Welsh Government proceeds, we are strongly opposed to the implementation date proposed for April 2014. This is too early in view of the current state of development of the proposed Water Industry National Portal. We have been closely in touch with Northumbrian Water and the Water Industry Association over the development of this portal, having had the benefit of seeing the pilot which was introduced by Northumbrian Water. The start date has been brought forward to accommodate the proposed implementation date but this is a highly risky strategy, in our view. It allows no time for any overruns (the previous intended start date of August 2013 has already overrun). Furthermore, very importantly, it allows no time to iron out any glitches which may appear and which may only become apparent once there is wide scale use. It is vital that this system is fully tested and tried, giving landlords the opportunity on a voluntary basis to get used to operating it. It was always part of the “deal” between ourselves and the Water Industry over these provisions that there would be a simple to use national portal and, therefore, it would be wholly wrong to introduce compulsory notification in Wales until we were sure that the portal is fully operational with the opportunity for it to be tried and tested “on the ground” by landlords using it. It will be a disaster in our view for the compulsion to be introduced and then to have the system introduced later. After all, we are only concerned about some 6,000 properties so why all the rush?

We have particular concerns around the issue of landlords in effect “warranting” information. There are also a number of detailed issues around the actual drafting of the regulations. We therefore request a full detailed discussion with the Welsh Government and its lawyers over these various issues as set out in our consultation document and we look forward to hearing from you as a matter of urgency bearing in mind the proposed present timescale for introduction.

Additionally, we have concerns around how the requirement would actually be triggered and how information will be given to landlords to notify them of their obligations.

2. Our concerns in responding to this Consultation are –

- The Welsh Government should adopt a voluntary approach before considering resorting to compulsion.
- In any case, if compulsion does go ahead, it is vital that it is deferred until October 2014 at the earliest to allow for the introduction of the Water Industry National Portal (“the Portal”), which is likely to be in March 2014. A period of time is required for landlords to get to know about this portal and to use it on a trial/voluntary basis. The portal is being provided through an England and Wales

wide scheme and it is therefore very important that proper time is allowed to overcome any problems which may arise regarding the introduction of the portal. Everything is being rushed at the moment. The portal needs to be fully functional and proven before compulsion is introduced.

- Getting the message out to landlords effectively about this new requirement.
- Cumulatively the addition of yet another burden on landlords who are very much in a small way a business in any event.
- Disproportionate burden as details of tenants are only estimated not to be known in around 1.7% of cases.
- The confusion which is likely to arise because the requirement is not being introduced in the Severn Trent area of Wales.
- The uncertainty as to whether in the Dee Valley water area one notification or two notifications will be required for implementation. If there is a need for different notifications then this does not tie in with the functionality of the portal which will automatically provide for information to be passed on in any event, although clearly this would not address other means of communication.
- In effect landlords are having to “warrant” the accuracy of information supplied.
- A fundamental issue of the likelihood that water companies may try to argue that notifications are ineffective because some detail is missing or incorrect. As a result of technicalities landlords could therefore remain liable jointly for bills.
- The complexity of provisions around false/incomplete information.
- Water companies may not use the information effectively to pursue debt.
- The application of data protection requirements.
- Lack of clarity around what is the landlords address for these purposes.
- Importantly, it is far from clear how the initial trigger will operate by way of a notice from the water company to the landlord. How will this operate in practice? How will the water company know who is the landlord and importantly how and where will they contact the landlord for these purposes (as they may only have the address of the property itself in some instances). What happens where there is a dual supplier? Do both have to be noticed to trigger the landlord notification requirements?
- A reluctance by landlords to supply dates of birth.
- Difficulties over obtaining information from existing tenants especially around dates of birth.
- Concerns around the drafting of certain of the requirements.
- In particular, problems around the landlord’s responsibility to correctly identify the date of occupation which may be unknown to the landlord; the landlord may only be aware of the date on which the tenant is first entitled to occupy which may not be the same thing.
- Uncertainties around the date occupation by tenants commences. What is meant by “occupation”?
- Difficulties over establishing peoples “full name”.
- A need for landlords to notify tenants that they have shared information with the

water company.

NB: Unless otherwise specifically stated we use the expression “water company” to apply to both water and sewage undertakers.

Background – RLA involvement

3. The RLA has been heavily involved in the lead up to the enactment of the relevant provisions in the Flood and Water Management Act 2010. We responded to and had meetings with the Walker Review. We have also been closely involved with Northumbrian Water who have led on the introduction of the Portal for the water industry. Our representatives have been to a demonstration of the pilot project which led to the national plan for the Portal. We have liaised with the Water Industries Association and Northumbrian Water in particular so we have a good working knowledge of the processes involved. This is why we are particularly concerned about the rush to introduce compulsion which in turn is pushing the development of the Portal itself beyond what was originally intended as the schedule for its introduction.

The Portal/Major concerns over timescales

4. Based on up to date information supplied to the Association by Ian Donald of Northumbrian Water we understand that the water industry is confident that the Portal will be in place on Monday 3rd March 2014, less than one month before the intended commencement date. Originally, however, we were told that the Portal should be live by August 2013 so clearly there have been some delays. As always experience shows that, with the best will in the world, intentions do not always come to fruition. In any event, only through large scale public testing will any “glitches” come to light. It takes time to address and deal with them. Having worked with Mr. Donald we have the utmost respect for him and his team but we are aware that things can go wrong. This is a significant project and importantly it is not just about Wales but the whole of England and Wales linking together all the main regional water companies, as well as a number of individual water suppliers (such as Dee Water). A lot could therefore go wrong. Mr. Donald tells us that when the consultation was announced they had to re-schedule the development programme. They are having to run some parts of the project parallel to try to make sure that they will be ready in March. This is very worrying. In our view it would be wholly wrong to rush the technology just because of some arbitrary date set by the Welsh Government in their area. It is essential in our opinion that implementation of compulsion is deferred until October 2014 at the earliest. This will give time for any problems to be identified and ironed out. Importantly, also, it will allow landlords to familiarise themselves with the new system.

5. The Welsh Government needs to seriously consider what happens if the Portal is not fully operational by April (because of the tight schedule). It makes absolutely no sense to require landlords to notify on a compulsory basis at that point without the main system for making these notifications being up and running as well as tried and tested. Landlords would then have to change their practices at a later date. Fundamentally, the whole scheme will be brought into complete disrepute if the new portal is not operating effectively when compulsion starts. In our discussions with the Walker Review landlords always made it clear that in return for having to take on this obligation there should be a simple system for notifications to be made. This was accepted by the Water Industry. This is the reason why the Portal has been developed so we are astounded at any

suggestion of a last minute rushed implementation of a key element of the scheme of notification.

6. In Appendix 1 to this Response we have set out the information regarding the Portal as provided to us on behalf of the Water Industry Association.

Warranting Accuracy of information

7. One of the major themes comes through from individual responses to our member's survey is that in effect landlords are being required to "warrant" the accuracy of information supplied; otherwise they do not discharge their duty thereby becoming jointly liable. This is unacceptable without there being safeguards. There is a clear inference in the legislation that to discharge the duty the specified information must be complete and accurate. This is another very good reason therefore to limit the scope of the information which needs to be supplied. It is of particular concern also in relation to existing tenants – see below.

8. This was an issue which was raised by us and discussed in detail as part of the Walker Review. We consider that the draft Regulation has failed to adequately address this issue and leave a landlord vulnerable, even if he/she has acted in good faith. We therefore propose that any obligation should be qualified by a requirement only to give information "to the best of the landlord's knowledge". This is a perfectly usual proviso e.g. in relation to witness statements made in Court so why should it not apply in this instance?

9. Secondly, a proviso should be introduced so that if the landlord takes reasonable steps to verify the information, e.g. checking identity documents to ascertain name and date of birth then that should suffice, even if it transpires later on that the information is false or otherwise incomplete. Landlords can be duped by tenants.

10. This issue reinforces our concerns ventilated below in relation to the start date for occupation. As currently worded, if it transpires that the start date is given inaccurately (simply because the landlord does not know about it) then, again, the duty would not be discharged. We go into this inconsiderable detail below and it is a likely fruitful source of many disputes to try to throw liability onto the landlord and the water company which serves no one any good.

11. Thirdly, there should be an excuse where any information is inadvertently given incorrectly, e.g. to cover problems over transposed dates of birth which we highlight or omitted middle names, which is another major concern to which we refer in detail below. This is a common legislative provision.

Dates of Birth

12. Our member's survey reveals very considerable opposition to the idea of disclosing dates of birth and individual comments make the point that often currently landlords do not obtain dates of birth. This is clearly a significant concern, particularly in relation to existing tenants. This is therefore an area which could well cause difficulties through ignorance on the part of the landlord about the need for them to obtain dates of birth in the future. In the case of existing tenants any information should, in our view, only be required in relation to dates of birth insofar as these are already known to the

landlord. In other words for existing tenants in particular there should be no explicit duty which would require landlords to go back to tenants to obtain this information if they do not already have it in their possession.

13. Answers to questions.

Question 1: Do you agree with the estimated cost/benefits arising from the implementation of these Regulations or otherwise wish to comment upon any area of the Regulatory Impact Assessment?

The fact that a significant number of those reporting themselves as being in water debt are customers living in the private rented sector has huge implications for private landlords, who, under these proposals, could become liable to pay for the water debt at their property if they fail to provide the relevant information to water companies about their tenants.

The RLA acknowledges the reasons why the Welsh Government are proposing that it is necessary to tackle the level of bad water debt in Wales, as elsewhere in the UK to 'generate a net benefit to society' by reducing the cost of water bills. However, we do have concerns about how these proposals could have cost and regulatory implications for private landlords in Wales.

The RLA see that tackling water debt using option 1, 'To do nothing' may not have as much impact as compulsory sharing of tenant's information between the landlord and water company through 'Regulation' (option 2). However, we do not see why there could not be a trial period of voluntary notification as seen in England at the moment. The RLA recently conducted a survey of members with rented properties in Wales and 80.2% responded that they would like to see a voluntary system of notification introduced as opposed to compulsion. We are disappointed that the Consultation does not include this option.

We feel strongly that the impact assessment fails to acknowledge at all the cumulative effect that this additional regulation will have on landlords. As well as tenancy deposits, landlords are also facing imminent tenant checks on immigration; therefore we feel that compulsory requests for tenant's details cannot be assessed in isolation.

The RLA feels that it is essential that any proposal for new regulation should be subject to a rigorous cost benefit analysis looking at costs, both direct and importantly, indirect costs, compared to the value of the benefits which are realistically likely to be achieved. The cumulative impact should not be ignored. Individual requirements may appear straight forward in isolation, but viewed with other regulatory requirements they can impose a significant burden.

The impact assessment states that the number of tenanted properties for which tenant details are unknown to water companies in Wales is estimated to be in the region of 6,000. The number of households that are in the rented sector, either private or rented is around 350, 000. We have worked this out to be a 1.7% non-compliance rate. We would question whether this justifies the level of cost and extra regulatory burden to landlords that is set out in the impact assessment.

We would urge the Welsh Government to recognise what an adverse consequence

inadequately thought out regulation can have on the private rented sector. Unnecessary regulation can inhibit much needed investment in the private rented sector; both to grow the sector and also to invest in properties e.g. good standards of maintenance and repairs.

Under option 2, 'Regulation' there is a cost implication whereby the landlord will become liable for their tenants water bill if they do not supply the relevant information about their tenants to the water company. Given the proposed timeframe of implementation (March 2014) we feel that many Landlords in Wales could quickly become liable if they are not well informed about how and when these changes will affect them.

To say that these checks can simply be a normal part of tenant referencing may not be entirely straightforward and it will take Landlords a period of time to get accustomed to this additional requirement. If they don't realise that they are liable after failing to supply the information after 21 days they will then be paying their tenants bills for water usage unfairly. The Impact Assessment rightly acknowledges that there will be a transition cost in sending Landlords a letter / advice leaflet but this may not be the most effective approach. There could be a greater cost to Landlords than acknowledged in this period of transition; as a result.

It is highlighted in the impact assessment that identifying and obtaining details for landlords in the private rented sector could be difficult. We feel that it could be even harder to identify smaller, independent Landlords. Given that the proposed date for implementation is March 2014 we are concerned that there will not be enough time for private landlords in Wales to be aware of how these changes will affect them and they will lose out financially in this period of transition. This is not properly accounted for in the impact assessment under costs in option 2.

The assessment rightly sets out that having access to the information about tenants does not mean that outstanding bills will necessarily be collected but having this information will go some way to ensuring that the right person is billed. An important issue for us is to ensure that the information given by landlords is followed up in order to collect bills; otherwise it will be an unnecessary imposition. Our concern is the timeframe in which a system of regulation will take to go through a period of transition and how many private landlords will unknowingly become liable for the cost of their tenants water bills.

Under the 'Transition Costs – Landlords' section set out under costs under option 2 the total amount estimated for costs to landlords is £15,000. This is far too low a figure. We feel that there is too much presumption put on the Landlord to search out that the proposed changes. The RLA feels that to simply say that 'All landlords will incur minimal transition costs through making themselves aware of the new obligations and informing relevant individuals' is short sighted and simply presumes that all private landlords are actively engaged in the wider context of the private rented sector. The number of landlords is understated. We work on a figure of around 70,000; not 10,000.

We would ask that consideration is given to those landlords that have simply become a landlord 'by accident' through inheritance for example, or are buy to let landlords on a very small scale who may not be aware of these regulations. The impact assessment also fails to acknowledge those landlords that may live elsewhere in the UK but have property in Wales. These Landlords would be even harder to identify and obtain details

for. If you take this cost into account under transition costs for landlords, £15,000 is a significant under estimate.

The £15,000 figure is attributed to the actual cost for Landlords to provide water companies with the information through the Water UK website. This is presuming that the website and database is fit for purpose by March 2014. We feel that this is a very ambitious timescale and would urge the Welsh Government not to push through this proposed model of regulation until practical measures like this are properly implemented. We have addressed this in more detail already under Paragraph 3 above and refer to it again in reply to question 10.

As already indicated, landlords will be keen to see that water companies are actually using this information to chase those tenants owing money, otherwise resentment amongst landlords is inevitable as they will wonder what the point is. It will be vital for the Welsh Government to monitor and keep landlords informed of how effective the new regulations are proving to be.

Question 2: Do you have any comments upon any of the provisions in Regulation 3 concerning the personal details being requested about occupiers?

For us a key issue is ensuring that water companies do not try to argue that a notification by a landlord of tenant's details is invalid due to a "technicality" so that the landlord continues to be liable for the water charges on a joint basis. The whole approach to incomplete information in particular needs to be looked at again. In effect landlords are being required to warrant the accuracy of information. We deal with this in more detail in Paragraphs 7 to 11 above.

We recognise the consideration taken in Regulation 3 concerning personal details being requested about occupiers becoming a burden on landlords. We feel that this is a realistic view to take as many landlords could otherwise be immediately put off by over complicated bureaucracy and regulation in providing their tenant's details. However, there are some technical issues that need further clarification.

Many landlords are already likely to have access to most of the information requested such as the occupier's name (but not necessarily the full name) and the approximate date the occupier began to occupy the premises. Some landlords already request the tenant's date of birth as a part of referencing. However, date of birth is not a necessary requirement at the moment and some tenants may be reluctant to offer this information. For existing tenants it is unfair to put the burden of retrieving this information, if the tenant is reluctant to offer this to the landlord, who may become liable if the process is dragged out. It needs to be considered that tenants are often aware of their rights and may deliberately withhold their date of birth as they know that this is a legal requirement in court to be sued for outstanding debts.

The impact assessment does not make it clear what defines 'reasonable'. We need further clarity on this. Landlords must be clear that they will not be liable if all reasonable attempts have been made to obtain this information. We would also suggest that there needs to be a question on the website or online portal that asks specifically 'Do you believe this information to be complete and correct? Otherwise, a landlord should not be penalised.

We have concerns around the accuracy of the information that landlords believe that they are passing to water companies. The impact assessment does not make a technical differentiation between false information and incomplete information. This is important when considering personal information such as the occupier's full name. People often change their name informally or shorten it. They may detest a particular name so they avoid using it. This is then reflected in documentation which they sign such as a tenancy agreement. For instance, somebody may tell the landlord that their name is what they are commonly known by, yet their birth name may be different. We would like clarity on whether the name that is on the tenancy agreement is acceptable information in that to the landlords knowledge this is correct at the time the information is shared. Regulation 3 should be amended, in our view, so that the words "(so far as it is known to the landlord)" should qualify the reference to "full name". At the end of the day what is someone's full name. Is it their birth name or not or is it the name they subsequently use?

We feel that landlords of properties with joint tenants will be pleased to see that 'if the premises are occupied by more than one person, it is sufficient if information is given in relation to only one of the occupiers' as set out in Regulation 3. This will save lots of time and hassle for landlords who may have students who have very transient tenancies. As long there is always one occupier that is up to date we feel that this should suffice for the water company and be as far as accountability for the landlord should go. It could become a costly and time consuming task for landlords with a large portfolio of HMO properties otherwise.

However, we believe that this provision, as drafted, could give rise to difficulties on occasion with bedsits if tenants are liable to pay for water/sewage charges direct to the water company. This could arise if the landlord owns the whole property and rents out individual rooms or bedsits to tenants that share facilities. There is no joint liability for water bills in this situation.

More thought needs to be given to what would constitute an ineffective notification so that, as a result, a landlord remains jointly liable. Having said this we consider that the notification should still be effective unless the landlord knowingly provides false information. Furthermore, it should still be effective even if the landlord provides incomplete information so far as the landlord has made reasonable efforts to gather the information required. This is a very important issue which needs to be properly considered, in our view. Bona fide errors should not be penalised.

Question 3: Do you have any comments upon any of the provisions in Regulation 3 about communicating with occupiers or the provision of the owners address?

We acknowledge the impact assessment's suggestion for possible benefits to Landlords and Tenants under option 2 if the information requirements of the proposed regulations indirectly encourage them to enter into tenancy agreements more often. The RLA works with landlords to ensure that high standards are maintained in the private rented sector. Protecting themselves and tenants with a formal tenancy agreement is actively encouraged by the RLA and we agree that it could be beneficial to landlords for this information to be obtained to safeguard the rights of both parties to avoid potential disputes down the line. Having said this we feel that any increased likelihood of tenancy agreements being entered into by landlords as a result of compulsory notification of tenant's details is at best marginal if not illusory.

Our key concern here is in reality how aware landlords are about data protection and whether they would be aware of their obligation to let a tenant know if their information has been shared with a third party such as a water company. We question the necessity of landlords having to notify their tenants that they have supplied information to the water company. Surely, where information is provided pursuant to a statutory requirement, this is exempt from the effect of data protection legislation. In our view there should, therefore, be no requirement to do this. What is the effect under the proposed regulations of failing to do so? So far as we can see it only becomes relevant in the event of false/incomplete information being involved. Otherwise, we cannot see that the regulations provide any sanctions; nor should they. This is a particular issue in relation to existing tenants.

One assumes that the underlying purpose of this requirement is to let tenants know that the water company could be “on their case” so as provide an additional incentive for landlords to pay. However, bearing in mind the small number of unknown properties, this seems to be an unnecessary and significant additional burden to place on landlords and should be dispensed with for reasons we have given.

Landlords with larger portfolios may not want to spend large amounts of time sending correspondence to notify tenants.

When it comes to a landlord’s address what is meant by this? It is well established that it means different things in different context. Does it have to be the landlord’s own home/residential address or business address? In our view this is not necessary.

A recent County Court case has raised this issue in relation to prescribed information in connection with tenancy deposits. It was held that the use of the agent’s address was insufficient. Again, we are worried about water companies relying on a technicality of this kind to invalidate a landlords notification so that they continue to be held jointly liable. An agent’s address or other “declared” address should suffice for this purpose. The regulations should make clear what is meant by address in this context so that everybody knows what is required. In any case there should be no need for this address to be given to tenants.

There may be a degree of wariness and scepticism of landlords on supplying their own address through worry of being liable for bills. Some Landlords may also be wary to share their address for fear of conflict with aggrieved tenants who may come to a landlord’s home unannounced. This must also be taken into account.

Overall, we feel that compliant landlords will be willing to do this, but the Welsh Government must consider that not all landlords will be willing to offer their own address or be accountable for their tenant’s water debt.

The date when occupation commences is a further concern. The landlord may simply not know it. What is actually meant by “occupation” in this context? Significantly, the tenant may well dispute it. This heightens the risk of the water company then trying to invalidate the notification so as to retain joint landlord liability. Experience shows that authorities accept what tenants tell them in this situation. The tenant may well be trying to minimise their period of occupation to reduce their liability. Landlords have frequently experienced problems in the past with local authorities regarding this issue and in

relation to periods of occupation for Council Tax purposes and also arising out of housing benefit claims.

Often a landlord may simply not know when the tenant actually moves in. The keys may be handed over. The tenant may stay on at their old address for a short time until their old tenancy runs out. The problem is particularly acute with student lets where the tenancy starts often on the 1st July but the students do not take up occupation until September/October when term time starts. We consider that giving the date from which the tenant is entitled to take up occupation i.e. the start date under the tenancy agreement or the date the tenant is given the keys should suffice for these purposes. It then becomes a matter between the water company and the tenant as to when the tenant actually takes up occupation. The landlord is out of it because he/she has done their best. We have already said one of the problems is around what is meant by "occupation" in this context, which adds to the uncertainty and therefore could lead to disputes around the accuracy of the information provided by the landlord in the first place. Landlords should not be penalised for trying to do their best.

There needs to be a general provision in the regulations, in our opinion, which states that giving whatever information the landlord has in his possession is sufficient to discharge the landlord's notification obligation so long as the landlord does not knowingly give false information to the water company.

We are bemused by the requirement to give the owner's name and to a lesser extent the requirement to give an address "unless the undertaker already has this information". Surely at least the owner's name must be given; otherwise, how does the water company know who is to be absolved from joint liability if they do not have the name of an owner to link to that of an occupier?

Another concern in relation to landlords and their addresses is does the address of all the landlords/their addresses have to be given where there are joint landlords. Surely, as with tenants, giving the name of one only landlord should suffice for these purposes.

As already indicated we also feel the regulation fails to adequately cover not so unusual circumstances such as how far the landlord is responsible if the tenancy is signed in advance of when the tenant officially takes up tenancy, as is often the case for students for example. We feel that the landlord should only be required to give the names of the occupiers and the date in which they are entitled to move in. Any issue after that should be between the occupier and the water company.

On the face of it a landlord is obliged to give a notification even if he is responsible for the changes, e.g. in the case of bedsits. This has been raised with us by a member.

Question 4: Do you have any comments upon any of the provisions in Regulation 4 concerning the timing of when the duty takes effect or the period when compliance is required?

The effect of this regulation is far from clear. The Act itself refers to a trigger notice being given by the water company. This lack of clarity is compounded because commencement regulations have not yet been made. There is an ambiguity in drafting of the definition of "compliance date" in Regulation 2 which directly impacts on the operation of Regulation 4. This arises from the wording of paragraph (a) in the definition

which states “the duty first applies as a result of a (SIC) service of a notice...”.

The opening words of the definition are “...the date when –“. To explain the potential ambiguity take the example of an existing tenant being in place on the commencement date. That tenant moves out. No notice has been served under paragraph (a) but paragraph (e) may be engaged. Does paragraph (e) operate to impose the notification requirement without service of any notice under paragraph (a) or not? Something like this should be made much clearer in the drafting as it is our view that under the Act the duty can only arise at all if the requisite notice is given to the landlord to “trigger” reporting responsibilities.

Another ambiguity which arises is what is meant by “the duty” – see further below.

The duty appears only to relate to giving information about tenants; not any obligation to give notice as to who is the landlord. This is clear from the section inserted in the Water Industries Act.

We feel that rather than the proposed 21 days ‘grace’, the period should be extended to 30 days in line with the time given for landlords to place the tenants deposit into a protection scheme. Consistency in time limits around things which have to be done at the start of the tenancy should be encouraged. A longer lead in/grace period is needed for existing tenants. It is a big job for some landlords to collate the information if you have to respond within 21 days of a trigger notice. At least 2 months should be allowed at the outset.

The idea of having the Portal where Landlords can easily submit this information online is a positive move to make the process more efficient for Landlords.

The impact assessment does recognise that there will be a need for a campaign to make landlords aware of these changes. We feel however that the assigned £6,000 is simply too small a budget to reach out to landlords effectively. This heightens our worry that Landlords will not be adequately prepared for these significant changes by March 2014.

We can see that some effort is being made to work with landlords whilst these proposed changes take effect, with the ‘reward’ for owners set out in regulation 4.

We feel that Landlord’s will respond to the government working alongside them as extra regulation is put in place rather than the perception that this is going to be another bureaucratic process for them. This will make landlords more likely to engage with these proposals.

We feel that further clarity is needed around the technicalities of how the compulsory notification system is going to work in practice; we feel that the impact assessment does not address all of these issues. It is not clear how or when the compliance date is triggered by the notice given by the water company and the impact assessment does not go into enough detail around existing tenants, instead focussing on the obligations of landlords in relation to future/prospective tenants.

How is the trigger notice process intended to operate? For instance there is no provision about how such notices need to be served by the water company. Regulation 6 (service) is silent. Where there is both a water company and a sewage undertaking do

both have to give this notice? After all, if the water company does not know if the property is tenanted how are they going to locate the landlord and serve the trigger notice on the landlord? We believe that based on past experience that this could well become a very contentious area between landlords and the water companies. Landlords will dispute receipt of these notices. Will the water company in any case have a contact address for landlords? All of this needs much greater clarity because it is an important aspect of the process.

When issuing a trigger notice there is no consideration for what happens if the trigger notice is sent by the water company to the property address itself, i.e. to the current occupier and the landlord does not find out if the existing tenant fails to pass on the notification. It is well known that tenants do not pass this kind of communication on to their landlords.

Question 5: Do you have any comments about the requirement for an owner to inform an undertaker of any doubts concerning the information they are providing about occupiers?

We feel that requiring the landlord to express an opinion of whether the information that has been given to them from the tenant is accurate is inappropriate unless a landlord knows that the information is false or incomplete. We feel that it risks making what should be a simple system unnecessarily complex.

In particular, we have concerns around the concept of “belief” governing the operation of Regulation 3(5)(a)(ii). What does it actually mean in this context? Clearly it is meant to be more than suspicion, presumably. Surely the concept of “knowledge” is preferable as a clearer test. A landlord obviously should not pass on information without warning if he/she knows it to be false. “Belief” however in this context is a far more woolly concept both in relation to false information and incomplete information, in our view.

However, landlords need to be made aware that they must say if they are unsure. The success of this proposal will again depend on how well informed landlord are about these changes. Having a ‘tick box’ type question for landlords to state whether they feel the information is correct and complete will help this. We do feel however that this whole requirement is perhaps a top heavy and unnecessary if it is just 6,000 properties out of 350,000 that are without accurate information about tenants who occupy them.

Question 6: Do you have any comments upon the exemption from liability for charges accrued after the compliance date, where information has been supplied within 21 days of the date when the duty first applies?

We assume that this question refers to Regulation 4(1).

We strongly support this exemption from liability subject to the period being increased to 30 days as proposed above. We feel that this is a fair approach and will encourage landlords to continue to share this information within the given timescale as they will feel that they have protected themselves from having to pay the bill themselves if they have done all that is required of them.

Question 7: Do you have any comments upon the exemption from liability, where the owner has provided the undertaker with the information required after the 21 day period when the duty first applied?

We strongly support that the idea landlords should be exempt from liability for charges accrued after the compliance date and where the owner has provided the undertaker with the information required after the 21 day period (or 30 days as we propose) when the duty first applied.

We consider that Regulation 4(3) needs reconsideration. There is reference to “the duty”. We have already raised this point above. What is the duty exactly especially as the clear inference for Regulation 4(5)(b) is that giving the owner’s name and address is not part of “the duty”. This is in line with the enabling section. We are also unclear about the link in Regulation 4(3) with Regulation 3(5). Surely if the landlord has no reason to believe that the information is false or incomplete then he/s he has no obligation under Regulation 3(5)(a)(ii). For the reasons already explained we do not consider that paragraph (i) in Regulation 3(5)(a) should apply at all. In Regulation 4(5)(b) who has to give the information about the owner’s name and address in order to dis-apply joint liability? Does it have to be given by the landlord himself/herself or is it sufficient if someone else such as the tenant gives it? This is not clear and needs to be re-drafted, in our view.

Some landlords may be ignorant of the requirement and others may find it more difficult to obtain the information due to difficulties with open communication with their tenants. These landlords should not be penalised if their efforts are unfruitful and instead should have the support of the water company. This could be a particular problem in the case of existing tenants when the regulations first become effective.

We feel in these circumstances if the landlord is attempting to work with the water company then they should be supported in getting the information rather than be penalised by having liability for charges if they have not been able to deliver the information within the given timeframe. The landlord may be dealing with circumstances beyond their control if they cannot get the information. However, if the intent is there and they do get the information then it would be unfair for them to continue to be liable for the water debt. We feel that the Regulations should go further. There needs to be a provision for the time limit to be extended for good reason particularly if the landlord cannot obtain some of the information. In this event clock should be stopped if the landlord contacts the water company (whether before or after the end of the initial notification period). Joint liability should not then operate so long as the landlord takes reasonable steps to obtain the information and he/she should be excused if they are not able to do so. For instance a landlord may not have a date of birth or may have been given a transposed date of birth in error, e.g. the USA custom of 9/11 rather than 11/9 as in the UK. By then the tenant may have gone and be out of contact. If the landlord using reasonable efforts cannot obtain the information for this kind of reason then liability should not arise.

Another issue is around the drafting of Regulation 5(2)(b) which is linked with the present point. There is reference to “reasonable efforts to give the undertaker accurate and complete information...”. The focus here is on the giving of the information not as it should be on attempts by the landlord to obtain information in the first place.

Question 8: Do you have any comments upon any of the provisions in Regulation 6 concerning how an owner should provide occupiers’ details to the undertaker?

We believe that it is crucial that landlords feel that the process of sharing tenants' details with water companies is as simple as possible. Often when proposals like this are introduced there is a feeling amongst landlords that it is more regulation and bureaucracy for them to contend with. If this process is made simple then the more likely landlords will be to cooperate.

There is a need to limit regulatory requirements. If you add to regulation unnecessarily, especially if the regulation is not effective anyway, you weaken the desired market forces which you want to direct into bringing about these desired outcomes. It is important to target regulation but only if it is effective and the desired outcomes are proportionate to the true cost of implementing the regulation.

For most Landlords an online system will be the most efficient way to submit the information. Most landlords are likely to have access to the internet and will prefer to submit the information on one of the dedicated web pages suggested. We are therefore most concerned at the possibility of the Portal not being up and running by the proposed start date – see above. However, there may be a number of landlords that wish to submit their details by post or over the telephone.

We would suggest that there may be a period where extra support is needed whilst Landlords familiarise themselves with this system, which is addressed in the impact assessment. We presume that this will take some time to set up and we feel that to do this effectively March 2014 is too ambitious. The new Portal needs to be tested and proven before being implemented.

Regulation 6 should be amended so that the Portal is a mandatory permissible way of conveying the information should be provided for at the outset as this has always intended to be a key component of how the scheme should operate.

Question 9: Do you have any comments upon any of the provisions in Regulation 7 concerning change of ownership at an occupied property?

We feel that the provisions offered in Regulation 7 concerning change of ownership of an occupied property are appropriate subject to our suggested changes. If the landlord has done all they can to ensure that the information the water company has is correct before the change in ownership then this should not have any negative effect on the landlord once they 'dispose' of the property as they are no longer liable after that date either. What concerns us is the effective notification or no notification at all by the landlord having been given by the outgoing owner before the sale is completed.

If notice has not been given by the previous owner, the new owner should be given a period of grace before they are liable. They should not be liable from the outset. This may only be picked up at the last minute and the new owner may need to obtain information. We would also suggest that it is important that a standard search question is available for a water company to answer that can tell you if the prospective property that you are buying is subject to an existing notification and the details of that notification. This will go some way to ensuring that the right person is notified and chased for the monies owed.

If the water companies confirm that there is a notification in place they should not be able to go back on this if it turns out subsequently to be incorrect. The new owner

should not be prejudiced potentially in this way.

Question 10: We welcome your views and comments on any aspect of the Regulations or the Regulatory Impact Assessment, including anything you feel we may not have addressed.

The RLA cannot dissent from the general objective that bad water debt in Wales does need to be tackled, as it does elsewhere in the UK to prevent water bills further increasing and paying customers having to pay for those who do not. We agree that the current system does not do enough to ensure that tenants pay their bills when the water company legally cannot cut debtors off, however much is owing on the bill, or insist on a contract with the occupier before providing a service.

Our first key concern in reply to this question is that we feel that the Welsh Government have not addressed the proposed timescales for implementation realistically. We have already outlined our concerns in detail above in Paragraphs 7 to 11 and would refer back to them. Given that it is intended that the regulations will come into force in March 2014 we feel there is a great deal to get into place before this can successfully be implemented. Unlike in England, the Welsh Government are proposing compulsory notification of tenants details by landlords as opposed to voluntary and this is to be successfully implemented in much of Wales. It is very ambitious to think that all the necessary technology will be in place to enable the regulations to take effect in March 2014. The national notification portal referred to in the Impact Assessment is still a work in progress at this moment in time. While a date of early March 2014 is being given for this to be up and running this allows for no margin of error which is extremely dangerous, in our view, when it comes to the implementation of significant IT projects such as this.

Our next key concern is that the Welsh Government is proposing to implement a compulsory system of regulation without trying a voluntary system first.

We would reiterate that it is vital that implementation is deferred until October 2014 at the very earliest. We would also urge the Welsh Government to re-consider a period of voluntary notification to see how this works out, bearing in mind the dis-proportionate regulatory burden due to the small number of tenanted properties which the water companies appear not to know about already.

Conclusion

14. Throughout, we have serious concerns about some of the drafting aspects of the proposed regulations. We must avoid a situation where water companies try to rely on “technicalities” to continue to hold landlords jointly liable for debt. This will breed huge resentment. Information given must be used effectively; otherwise it is a waste of time to give it. Cumulatively these regulations yet again increase the burdens being placed on landlords in the private rented sector. In our view, as in England, a voluntary system should be tried first. Having had a voluntary system in England having a compulsory system in part only of Wales will cause a lot of confusion. Of fundamental importance, however, is the necessity to ensure that technology (which of itself was intended to be a key component) through the Portal is properly up and running, tried and tested with landlords having the opportunity of trying it out on a voluntary basis, before compulsion starts, if the Welsh Government choose to go down this route.

APPENDIX 1

HIGH LEVEL FEATURES OF THE WATER INDUSTRY NATIONAL PORTAL

The main features of the system:

- Single portal for landlords to provide information, covering all regions of England and Wales
- Fully secure with access via login
- Available 24/7, with back up
- Front end common to all – branded Water Industry National Portal
- Change of tenancy data captured on user friendly forms
- Transfer of data to the appropriate companies (water and sewerage, water only, sewerage only and any 3rd parties who bill on their behalf)
- All data receipted to provide landlords with evidence of compliance with legislation

Functions available for Landlords:

- Register to use the portal (via login)
- Add rental properties to portal (via online form or batch upload)
- View list of added properties and details for each property, including tenant/ meter details and property update history
- Inform of changes of tenancy, empty properties and properties no longer owned/ managed via online forms
- Update registration, owner and tenant details
- Send queries and issues to the associated Water Company(s) or central landlord portal admin service
- Download reports on added properties and associated property updates
- Optionally use a web service to send property updates to the portal

Landlord assistance

- Helpdesk service
- Operating between 8am – 6pm Mon to Fri (excluding bank holidays)
- Dedicated telephone number and email address available to Landlords
- Queries can be raised and tracked via the Portal
- Service Desk has full technical support to assist in the resolution of any queries
- Assistance for Landlords to upload large numbers of properties

Appendix 2

Residential Landlords Association

Survey Results – Tackling Bad Debt within the Water Industry in Wales

Summary

The Residential Landlords Association (RLA) recently conducted a survey of members who currently let properties in Wales, to gather opinion on the proposals in the consultation 'Tackling 'bad debt' within the water industry in Wales'.

Under these proposals Welsh Landlords could see it compulsory to obtain and share

their tenant's information with water companies in an effort to reduce bad water debt in Wales. There is currently a voluntary system of notification between Landlords and Water Companies in England but this is not compulsory.

Findings

The results showed the following,

- 63% of the landlords who responded currently supply information about their tenants on a voluntary basis to the water company already.
- On the whole the majority of respondents agreed in principle to submitting their tenants' full name and date the tenant began to occupy the premises however, 60.9% were not happy to provide their tenants' date of birth.
- 58.4% of respondents disagreed with having to let the water company know if they have any doubts as to whether the information they are providing is accurate or complete.
- 55.2% of Landlords disagreed that the 21 days from the start date was sufficient time to provide the required information for their existing tenants to the water companies.
- 80.2% of respondents answered that they would prefer a voluntary scheme for landlords to notify water companies of their tenants' information as opposed to compulsory.

Richard Thomas (Private Landlord)

Sent: 21 August 2013 09:44

To: WaterEPC

Cc: info@propertyportfoliosoftware.co.uk; info@rla.org.uk; paulflynmp@talk21.com

Subject: Consultation on water bill liability for Landlords

From

Richard James Thomas

42 Llangorse Drive

Newport

NP10 9HJ

07747025553

Welsh Assembly Consultation

Welsh Water and Landlord Liability Consultation

I am a landlord and totally oppose the plans to make a property owner for the debts of the tenant in any circumstances.

Points I would make are as follows:-

Welsh Water are a private company and the Government have no business to intervene ensure that they collect all their debts.

1. This actually is 100% contrary to what you have done with Housing Benefit when you now pay the tenant direct as you believe the all people should be responsible for their own affairs. As an aside this policy has caused major problems for Landlords and affected may of the people who are in poverty. To bring in another potential liability on Landlords – even if only when they cannot prove that they have advised WWA then this

is likely to result in less of the people in poverty being able to find property. It will make the bottom end of the Housing Market very unattractive to the private landlord.

2. Welsh Water are often failing to collect the bills as they are not taking action for very long periods. We bought a new house and the agent rented it with the contract making the tenant liable for services and contacting the suppliers. This was not done and it turned out that for 12 months they had been sending bills to the address but never sent anyone to check the status of the property. When bills are not paid it should be standard practice to visit as this is much cheaper than a bill that goes unpaid for 12 months.

3. Then there is technology – they need to find solutions that enable them to control the flow of water and turn off remotely if they have no one person liable.

4. The computer systems are very poor in that most utility companies are failing to send the bills to the correct address for a landlord when the property is empty (despite being told) and then this makes it difficult for the Landlord to be able to keep a track on the situation. If you are going to change anything it should not be trying to make a landlord liable for services that a tenant uses. This is not equitable. However if you pass a law to enable utility companies to send an email to a landlord everytime they send out a bill with the name of the tenants/landlord on it but no amount details this will be much more effective and will involve very little work as once the landlord details are on file they will then be there long term. Unless an email changes but this can be overcome by sending out a letter to a landlord if a bill is unpaid to confirm the details and that the tenant is still at the property.

The answer has to lie with either the company or you as a Government making it easy for the utility company to collect the debts without more red tape on business. I can only confirm that Welsh Water are lacking in many ways in effective debt management. If you really want to get involved as a Government (I do question this on principle) then focus on things like a date of birth and National Insurance number being collected as a mandatory requirement but do not try to make other people liable for the debts because that is an easy way out for you and Welsh Water.

Should you decide to go ahead anyway then I assume it will apply to the Housing Associations as well – otherwise you may as well come right out and say you have decided to tax the private landlord.

We run a few businesses and I have a background in credit management so I do understand many of the issues. Welsh Water need to look for their own solutions and I would suggest that they start with the IT systems and get Landlords to work with them if they say this is the problem area.

Let me give you one instance. They will not allow you to email them direct or at least try to avoid giving out email addresses when I have tried. You can call them and spend 20 mins on the phone (not going to happen). You have to complete their web form – no record of sending on the Landlords PC (not going to happen).

Set up a national email address to advise them of new/leaving tenants. Work with the software providers to build this in and then get advised automatically of all movements of tenants. The Residential Landlords Association recommend some software which we

use and this works well but does not link to send the emails at present. There are others but not that many. If Welsh Water are losing millions – how much have they spent on trying to solve the problem themselves.

Sent: 27 August 2013 11:03

To: WaterEPC

Subject: FW: Consultation on water bill liability for Landlords

Further thought for consideration

Hi following my email below I did also think that there may be another solution that would not involve any more admin for Landlords, will probably work in most cases.

Most private landlords take a bond and have to register with a limited number of schemes. They have to release the bond when they have a tenant move out so you have both elements of the transaction. If you are able to pass the privacy laws (which you would be making a Landlord give information anyway) you could have this information available to the utility companies automatically.

Where people do not put down a bond then I suspect this will be people in receipt of Housing Benefit. In which case you will be processing the claim for Council Tax and this could also be tied into the Welsh Water information system. I realise that this last comment is probably a lot easier said than done!

However if you look at the Deposit providers this should be an easy way and solve a lot of problems with Welsh water then knowing what is happening with changes. It would also avoid the need to consider a landlord liable unless outside of a number of protections first.

I still think this is a sledgehammer to crack a nut and that if Welsh Water improved their systems they would find no problem with collecting the majority of the debt.

Suzy Davies AM

I am unhappy about this section of the 1991 Act and would ask that the Welsh Government does not ask the Assembly to implement it in Wales. The position is already covered by privity of contract

1. If the supply contract is between the landlord and water company, with the responsibility for payment by the tenant or licensee arising merely by means of the lease/licence, then the landlord remains liable to the supplier anyway. In these circumstances, it's the landlord who loses out, not the water company, if the tenant disappears.
2. If the supply contract is between the tenant and the water company, then the landlord is not a party to the contract, and no liability attaches. The water company should take the details in question itself. Sensible tenants inform utility companies when they move out in order to terminate the contract and stop liability arising even though they no longer occupy.
3. If the landlord has the information, the Data Protection Act does not protect the tenant's information where a crime has been committed. Not all non-payment is a crime, but this gives the police some power in these circumstances.

4. It is not for landlords to police other parties' arrangements. Similar objections were presented when solicitors acquired new obligations in respect of the prevention of money laundering.

Confidential Response (Local Authority)

Question 1: Do you agree with the estimated costs/benefits arising from the implementation of these Regulations or otherwise wish to comment upon any area of the Regulatory Impact Assessment?

Yes, the estimated costs seem reasonable and have taken account of a variety of scenarios to attempt to put a figure on the cost of recovering debt.

Question 2: Do you have any comments upon any of the provisions in Regulation 3 concerning the personal details being requested about occupiers?

***** already provide information to Welsh Water about current occupants if this is requested and it would not be too onerous to provide this information as a matter of course.

Question 3: Do you have any comments upon the provisions in Regulation 3 about communicating with occupiers or the provision of an owner's address?

***** lease properties from the owner to use for temporary accommodation. In this instance it would not be appropriate for Welsh Water to have the owners detailed, but instead to have the details of the person leasing the property. Would there be provision in the regulations for instances such as this, where the owner is not the landlord?

Question 4: Do you have any comments upon any of the provisions in Regulation 4 concerning the timing of when the duty takes effect or the period when compliance is required?

There appears to be sufficient time for owners to provide the relevant information to the Water company.

Question 5: Do you have any comments about the requirement for an owner to inform an undertaker of any doubts concerning the information they are providing about occupiers?

This is not likely to be an issue in *****, where detailed information is collected prior to an occupier moving into to a property. However, providing information may pose a problem for other landlords, especially those in the private rented sector, who may not gather this information as a matter of course.

Question 6: Do you have any comments upon the exemption from liability for charges accrued after the compliance date, where information has been supplied within 21 days of the date when the duty first applies?

This exemption is welcome, provided that some reference or confirmation is provided once information has been provided, to ensure that landlords have a record of when they submitted information.

Question 7: Do you have any comments upon the exemption from liability, where the owner has provided the undertaker with the information required after the 21 day period when the duty first applied?

Would welcome more clarification as to what an owner's liability would be if they had submitted data after the specified 21 days when the duty first applied. This exemption is not particularly clear.

Question 8: Do you have any comments upon any of the provisions in Regulation 6 concerning how an owner should provide occupiers' details to the undertaker?

We welcome the proposals for a website based system for submitting information, and that other contact options are also likely to include email, telephone or letter if necessary. This will help to make the process cheaper and less onerous for owners.

Question 9: Do you have any comments upon any of the provisions in Regulation 7 concerning change of ownership at an occupied property?

These provisions seem fair and reasonable to property owners.

Question 10: We welcome your views and comments on any aspect of the Regulations or the Regulatory Impact Assessment, including anything you feel we may not have addressed.

These regulations are welcomed and will complement existing practices.

Water UK

Tackling bad debt within the water industry in Wales

Thank you for the opportunity to respond to this consultation on behalf of our members, all the major water and water and sewerage service providers in the United Kingdom.

We agree with the analysis underlying the consultation, that the current situation regarding bad debt in the water industry is neither sustainable nor acceptable.

As the consultation notes, outstanding revenue in the water industry has increased significantly since the ban on disconnection in 1999, and it continues to rise. Bad debt already adds about £20 to the bills of all customers in Wales who do pay, including those who are financially vulnerable and can least afford to pay more than they need to. Without change, the situation will only get worse.

Water companies work hard to manage bad debt, but currently simply do not have sufficient information to do this more effectively. This is particularly the case for rented properties, where often water companies do not have timely information on who is occupying the property.

To change this situation, and reduce the burden on customers who do pay their bills, water companies need better information about who is occupying rented household properties. This information needs to be available routinely, for all rented properties – not just for some properties for some of the time as is the case currently with provision of information on a voluntary basis.

This will allow the right person to be billed at the right time, avoiding debt being built up unnecessarily and bringing additional properties into charge, reducing costs and bills for all customers.

We therefore strongly support option 2 in the consultation, requiring the provision of information on tenants from landlords to water companies. We support the proposed approach of this information being limited to basic information, that many landlords will have as a matter of course, as this will provide water companies with the essential information they need, while removing or reducing the need for landlords to collect any additional information.

We are also pleased to confirm that the development Water UK national website for landlords to provide information, referred to in the consultation, is well underway.

This website, which the water industry has developed with the support of landlord representatives, will make it easy and convenient for landlords to provide information about their tenants to water companies, wherever their properties are. As noted in the consultation, this website will make providing information more straightforward and less time consuming than providing information by post or phone. The website will be free to use for landlords, as developing and operating the website is being entirely funded by the water industry.

The website will be launched in the first quarter of 2014, in advance of the planned implementation of the regulations. We will be developing a comprehensive communications strategy to ensure that landlords and other key stakeholders are aware of the website, and we would be happy to provide further details in due course.

While the full impact of the measure being consulted on is inevitably uncertain, we support the conclusion of the Regulatory Impact Assessment that the benefits to consumers in Wales will significantly outweigh the limited costs of this measure.