Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol

Lleoliad:
Ystafell Bwyllgora 2 – y Senedd

Dyddiad:
Dydd Mercher, 22 Ebrill 2015

Amser:
09.00

Cynulliad Cenedlaethol Cymru
National Assembly for Wales

I gael rhagor o wybodaeth, cysylltwch â:

Sarah Beasley
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Agenda – Dogfennau Ategol

Bil Rhentu Cartrefi (Cymru) – Ymatebion i'r Ymgynghoriad

Noder bod y dogfennau a ganlyn yn ychwanegol i'r dogfennau a gyhoeddwyd yn y prif becyn Agenda ac Adroddiadau ar gyfer y cyfarfod hwn

Y Bil Rhentu Cartrefi (Cymru): ymatebion i'r ymgynghoriad (Tudalennau 1 - 245)

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol

Bil Rhentu Cartrefi (Cymru)

Ymatebion i'r Ymgynghoriad
Ebril 2015

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Communities, Equality and Local Government Committee

Renting Homes (Wales) Bill

Consultation Responses
April 2015

* Ar gael yn Gymraeg /Available in Welsh

	Ymatebion i’r Ymgynghoriad	Consultation Responses
RH 01	Dinas a Sir Abertawe	City and County of Swansea
RH 02	George Bednar	George Bednar
RH 03	Anabledd Cymru	Disability Wales
RH 04	Nwy Prydain	British Gas
RH 05	Let Down in Wales	Let Down in Wales
RH 06	Electrical Safety First	Electrical Safety First
RH 07	Professor Martin Partington	Professor Martin Partington
RH 08*	Cymdeithas y Cyfreithwyr	The Law Society
RH 09	Linc-Cymru Cymdeithas Tai	Linc-Cymru Housing
RH 10*	Cyngor Dinas Caerdydd	City of Cardiff Counci
RH 11	Cymorth i Fenywod	Welsh Women's Aid
RH 12	Awdurdod Tân ac Achub Gogledd Cymru	North Wales Fire and Rescue Service
RH 13	Cymdeithas Asiantaethau Gosod Preswyl	Association of Residential Letting Agents
RH 14	Resolve Antisocial Behaviour	Resolve Antisocial Behaviour
RH 15	Cyngor Benthycwyr Morgeisi	Council of Mortgage Lenders
RH 16	The National Trust	The National Trust
RH 17*	Martin Hemmings	Martin Hemmings
RH 18	Shelter Cymru	Shelter Cymru
RH 19	The Dispute Service	The Dispute Service
RH 20	Cymdeithas yr Iaith	Cymdeithas yr Iaith
RH 21	Wyn Morgan Lloyd	Wyn Morgan Lloyd
RH 22	Cymorth Cymru	Cymorth Cymru
RH 23	Ffederasiwn y Busnesau Bach	Federation of Small Businesses
RH 24	CLA Cymru	CLA Cymru
RH 25	Cymdeithas Genedlaethol Landlordiaid	National Landlords Association

RH 26	Urdd y Landlordiaid Preswyl	Guild of Residential Landlords
RH 27	Llamau	Llamau
RH 28	Tai Pawb	Tai Pawb
RH 29	Cymdeithas Landlordiaid Preswyl	Residential Landlords Association
RH 30	Cymdeithas Tai Sir Fynwy	Monmouthshire Housing Association
RH 31	Cymdeithas Llywodraeth Leol Cymru	Welsh Local Government Association
RH 32	Cartrefi Cymunedol Cymru	Community Housing Cymru
RH 33	Cyngor ar Bopeth Cymru	Citizens Advice Cymru
RH 34	Sefydliad Brenhinol y Syrfewyr Siartredig	Royal Institution of Chartered Surveyors
RH 35	Ystâd Parc Pont-y-pŵl	Pontypool Park Estate
RH 36	Tenantiaid Cymru	Welsh Tenants
RH 37	Sefydliad Tai Siartredig Cymru	Chartered Institute of Housing Cymru
RH 38	Heather Douglas	Heather Douglas

RH 01
Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/
Communities, Equality and Local Government Committee
Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill
Ymateb gan: Dinas a Sir Abertawe
Response from: City and County of Swansea

Simplification of Tenancy Types

The Bill proposes introducing new types of tenancies in an attempt to simplify the current system.

Council Response *– The Council would like to receive clarification on the types of standard contract which will actually become available under the new legislation. It would appear that there will be an 'Introductory Tenancy' type (which will automatically become a secure contract), a 'Demoted Tenancy' type (which can revert to a secure contract) and a Private Rented Sector type. The proposals do not appear to simplify the current tenancy types that are available.*

Prohibited Conduct

All types of tenancy agreements for both social housing tenants and private sector tenants would include the same 'prohibited conduct' terms to ensure all tenants are treated equally in relation to anti social behaviour. These terms will allow for action to be taken more easily against a tenant if they cause or allow ASB to occur in the property**.**

Council Response – The Council agrees with this proposal especially the fact that there will now be a consistent approach to addressing anti social behaviour across all tenures.

Joint Tenancies

Joint tenants will be able to give notice to the landlord (and other tenant/s) to terminate their part of the tenancy. Landlords can also terminate the tenancy for a joint tenant who has clearly left the property, without ending the tenancy for the remaining tenant/s.

***Council Response* –** The Council agrees with this proposal as the proposal will be of benefit to both the remaining joint tenant and the Landlord/Council in terms of reducing the administrative process involved in terminating the tenancy of the person who has left the property.

Abandonment:

Landlords can legally recover possession of any abandoned property without having to go to court.

Council Response – *The Council agrees with this proposal. There will be a role for Local Authorities to play however to make sure notice periods are clear and not abused by landlords in order to regain properties whilst a tenant is on holiday, in hospital or prison etc. Guidance on what level of proof is needed by the Landlord that the property has been abandoned would be useful.*

Young People:

16 and 17 year olds will still not be able to hold a tenancy under property law, they will still hold a license. The difference will be that the contractual arrangements that will exist between the landlords and tenant will mirror those of either the standard or secure agreement.

Council Response - *The Council agrees with this proposal, however support in suitable accommodation must remain the primary focus of solving housing problems for young people.*

Succession Rights of Carers

A Carer who has lived with a tenant for over one year to provide help/support will have the right to succeed to the tenancy providing that there are no family members living in the property who would be eligible to succeed to the tenancy and that the property was the carer's only home. The proposals do allow social landlords to seek possession of the property though if the carer would be significantly under occupying the property

Council Response - *The Council agrees with this proposal. The fact that it is recognised that Authorities/RSL should be able to take possession of the property if significant under occupation was to result is welcomed given the current pressures on the housing stock.*

Consistent Succession Rights across Wales

Reserve successors (non joint tenants living in the property) can be subject to repossession if the property is under occupied. Landlords must take this action within 6-12 months of the death of the original tenant.

Council Response - *The Authority agrees with this proposal given current pressures on the housing stock.*

Removing Mandatory Eviction (ground 8) for Housing Association Tenants:

The Courts will have discretion to consider mitigating factors such as late payment of benefits to decide whether losing a home is justified. This has always been the case for LA secure tenants but it is now proposed that this should apply to Housing Association tenants also.

Council Response - *The Council agrees with this proposal as it will ensure that Local Authority tenants and Housing Association tenants are treated in the same way by the Courts.*

Fit for Human Habitation

Landlords must ensure that all properties are fit for human habitation.

Council Response - *The Council strongly supports this concept but has concerns over the use of the phrase ' fit for human habitation' as this has largely been removed from the legislation over recent years so more clarity in terms of what is acceptable and not acceptable would be useful.*

Waste

Tenants/Occupiers will not be responsible for waste at the property.

Council Response - *The Council has concerns about this as it seems to contradict other existing legislation. The Council has tried to make occupiers/tenants more responsible for their behaviour and this proposal does not help with this objective.*

RH 02
Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/
Communities, Equality and Local Government Committee
Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill
Ymateb gan: George Bednar
Response from: George Bednar

Dear Members of the Committee for the Renting Homes (Wales) Bill,

Re: The application of the "shared accommodation" provision of Schedule 2, Part 2, Paragraph 7(5).

As worded in this Bill, sub-paragraph 7(5), intended to cover trust properties, thwarts the intention of Parliament: "a beneficiary who fulfils the residence requirement [is] the resident landlord for the purposes of the exemption" (HL, Hansard, 1974).
It would be a breach of trust for a trustee – as "the landlord" – to occupy that trust's property, as I outlined in my contribution to the consultation in 2013 (Your Ref: WG0033).
The wording of Rent Act 1974, consolidated in Rent Act 1977, is as it is because of an "oversight": "But, owing to an oversight by the Government, provision is not made… for the granting of a tenancy by trustees… and the actual residence is by the beneficiaries" (*Shaw's Guide to The Rent Act 1974).*
The oversight arose in the 1974 Bill because MPs thought that the subsection under scrutiny covered a first tenancy, whereas the wording actually covered the transfer of the legal title [on the death of or following a sale] by a resident landlord to trustees, to enable the trustees to safeguard the exception for the benefit of "any one of" the incoming beneficiaries intending to occupy the building, now a trust property.
The wording in this adopted Bill is as it is also because of an "oversight", this time at the Law Commission: "It must therefore, have been an oversight on our part that the point was not covered in our instructions to Parliamentary Counsel who drafted our draft bill… in respect of which I am prepared to accept that we must have been at fault… the Welsh Assembly… if taken forward, (the Bill) should include a deeming provision such that reference to a landlord throughout should be taken to include the beneficiary" (25 October 2009).
The 'English' trust property anomaly was compounded by Parliament in Housing Act 1988, when statutory effect was given to a 1984 Court of Appeal case, a judgment based on an ill-drafted Rent Act 1977 provision.
I regret to say that the wording in this Welsh Bill simply paraphrases the 'English' 1988 provision:

“If two or more persons [ie the trustees] are the landlord in relation to a tenancy or licence,
references to the landlord are references to any one of them [ie **the trustees**].”

Which brings us to the Scottish provision, now Rent (Scotland) Act 1984, Section 6(2). In Rent Act 1974, seven of the Scottish subsections were equivalent to the seven subsections of the provisions for England and Wales. But Scotland had an additional eighth subsection, tailor-made for a Scottish trust property: “The condition… shall be deemed to be fulfilled if the tenancy was granted by trustees and… the interest of the landlord… was held on trust for a person who was entitled to the liferent… who occupied…”.
There is a section on page 13 of *Renting Homes in Wales* under the title Learning from Scotland. Amended, sub-paragraph 7(5) could paraphrase the textbook Scottish provision, and – jointly with Scotland – clarify the intention of Parliament:

“If trustees are the landlord in relation to a tenancy or licence, references to the landlord are
references to any one of the occupying beneficiaries.”

Yours sincerely,

George Bednar
10 March 2015

RH 03
Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/
Communities, Equality and Local Government Committee
Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill
Ymateb gan:Anabledd Cymru
Response from: Disability Wales

Disability Wales (DW) is an independent, not for profit organisation established in 1972. We are a membership organisation of disability groups and allies from across Wales.

As the national association of disabled people's organisations, Disability Wales strives to achieve equality, rights and independence for all disabled people, regardless of physical, sensory or neurological impairment, learning difficulty or mental health condition. We recognise that many disabled people have different identities and can face multiple-discrimination.

The Social Model of Disability is at the core of our value base, recognising that people are disabled more by poor design, inaccessible services and other people's attitudes than by their impairment. We are recognised as the lead organisation in Wales in promoting the understanding, adoption and implementation of the Social Model of disability.

Q1. We can only comment on issues in the Rented Homes (Wales) Bill (RHB) that could affect disabled people (and of course others from protected characteristic groups). However, all parts of the RHB have potential to impact on disabled people, particularly Part 8, Supported Standard Contracts – including mobility and temporary exclusion and Part 10, Miscellaneous (in regards to consultations) specifically.

Other key parts include: Provision of written contracts (in accessible formats), repairs and maintenance (disabled people have it in black and white what to do if a problem arises within the property), prohibited conduct (appropriate or inappropriate behaviour) and succession rights and transfers (carers are included with the new legislation).

Having a duty to provide a written statement of contract could aid disabled people, particularly if contractual information is to be made available in accessible formats. This would ensure disabled 'contract holders' have full

access to information enabling them to make informed choices as to where they wish to live. This links to the Framework for Action on Independent Living. Disabled people have the right to choose where they live, therefore barriers to participation should be eradicated. Having a clear written statement of contract available produced in accessible formats would aid disabled people's understanding of their rights and responsibilities and perhaps would help prevent unscrupulous landlords from taking advantage.

Having clarity and consistency in regards to repairs and maintenance across all housing providers would assist disabled people in understanding their rights and responsibilities when the property is in need of repair.

Understanding what constitutes prohibited conduct could aid disabled 'contract holders' to spot potential untrustworthy or unsavoury behaviour from their landlord or their neighbours. Also this would raise awareness of potential abuse, by carers or so called 'mates' the 'contract holder' invites into their home. Caution must be used however, especially if a person's disability affects their behaviour in relation to their tenancy or how their behaviour, due to their impairment, could affect their neighbours. Disabled people who have Autism or Tourette's, for example, may display signs of prohibited behaviours either inside or outside the home. These prohibited behaviours could be as a result of their impairment rather than the disabled person intentionally engaging in threatening behaviour.

Succession rights and transfers, with the 'reserve successor' including voluntary carers who have resided at the property for 12 months for the first time is positive. Some disabled people have carers who could find themselves out of a home if anything happens to them, this could increase their stress if undergoing an already stressful time such as illness or relocation. The new proposed ease of transfer may assist decreasing bedroom tax penalisation if there are a satisfactory number of smaller properties to downsize into. Also a disabled 'contract holder' may wish to move into a more accessible property which better meet's their access requirements. The RHB could create a smoother transfer process, bringing greater clarity to the new arrangements for secure contractual exchange, ensuring clarity.

The supported housing chapter establishing a legal framework recognising specific needs of supported housing is again positive. Some disabled people do live in supported housing therefore the bill would enhance their rights and would further enable them to live independently in the community.

65 Rented homes, from all housing providers could equally form part of Local Authority accessible housing registers, especially if more private landlords were encouraged to participate and place their properties on the register. Work is to be done to convince private landlords to allow their properties to be adapted for disabled 'contract holders' but this is something that could be
70 developed nationally and at local level.

With regards to consultations (part of the miscellaneous section); consultation and engagement events must be made accessible to all, including disabled people across the disability spectrum. Information provided should be made available in accessible formats from EasyRead, Braille, large-print, pictorial
75 information and plain English (language) usage for example. Jargon should be avoided wherever possible. Venues should be accessible and communication support for those who require British Sign Language Interpreters, Palanytypists, Note-taker, Lip-speaker or Personal Assistants should be provided. Provision of access should be based on requirements
80 and not on costs. Costs occurred by arrangement of communication support and to create accessible formats should be factored in at the initial stages.

Q2. Potential barriers to the implementation of these provisions and whether the Bill takes account of them.

85 One potential major barrier is a lack of knowledge and understanding of disability issues, access barriers and the Social Model of Disability. It is likely that disabled people in the private rented sector encounter greater barriers than non-disabled people looking for a home in this sector.

Having a duty to provide a written statement of contract is positive, however,
90 this could result in a potential barrier for some disabled people in understanding the terms and conditions, and their rights. That is if contract information is provided in inaccessible formats. Difficult to understand

contracts could put many disabled people at further disadvantage which could mean that potential disabled ‘contract holders’ would not be able to make fully informed choices and therefore restrict their housing options.

Housing operatives not fully understanding disabled people’s behaviour, such as those with Autism for example, could result in the disabled person being evicted due to a misunderstanding. Disability Equality Training is essential. Measured decision making and appropriate support should be the first option considered before any decision on snap evictions. Appropriate training could assist housing providers to respond when disabled ‘contract holders’ behaviour causes concern.

The lack of availability of smaller properties required to avoid ‘bedroom tax’ (spare room subsidiary) often pushes disabled people further into poverty. Lack of accessible properties could scupper the advantages of the new succession rights and transfers if the supply doesn’t meet demand. It is worth noting that each Local Authority decides who is eligible for discretionary payments. Provision of these discretionary payments are limited and are only meant to be a short-term measure. The temporary payments do not solve the long term problem of the affects of housing benefit cuts on disabled people.

Linked to the above, the inclusion of rented homes, especially privately rented accommodation on accessible housing registers should be seriously considered, either as part of supported housing heading or as an independent paragraph within the Bill itself. Lack of accessible properties in the rented sector as a whole is a barrier because this limits disabled people’s choice of accommodation and prevents ‘fluidity’ in the moving process. Disabled people’s freedom of choice and movement is restricted by minimal availability of accessible properties across all rented housing providers in Wales. Accessible housing registers that cover all rented sector properties (Local Authority, Social Housing and privately rented) could assist information sharing across Local Authority boundaries thus simplifying the moving process. The low number of accessible houses could still be an issue,

125 however, better coordination of information could assist both disabled people looking for a home and rented accommodation providers.

If consultation and engagement events are held at short notice and at inaccessible venues disabled people, potential 'contract holders', could be excluded from participating and prevented from having their voice heard. To
130 ensure inclusion for all, it is necessary to plan head in order for events to reach protected characteristic groups including disabled people across the disability spectrum. Considerations of communication support too is a must to ensure a fair representation of all those effected by rented housing sector barriers. Examples of support include but are not limited to: PAs, British Sign
135 Language Interpreters or Lip speakers etc.

Q3. Whether there are any unintended consequences arising from the Bill.
Any legislation change related to the rented sector must not detriment current disabled 'contract holders' and potential 'contract holders' in finding properties that match their access requirements.

140

The dire need for more accessible housing and accessible housing registers should be mentioned in the RHB. Plentiful accessible housing, communicated in accessible formats and accessible housing registers to disabled people who require such properties is vital. Many disabled people live in rented
145 accommodation rather than owner occupied residences, this is due to the high instances of poverty amongst disabled people. The subject matters absence could be seen as due to its unimportance.

The rented housing sector, if contractual information is not provided in
150 accessible formats from the outset, could unintentionally, breach the Equality Act 2010 (through lack of reasonable adjustment provision). It is good practice that information is available in accessible formats, at the very minimum, upon request if not available nor provided automatically.

155 **Q4.** The financial implications of the Bill.
We cannot comment on the financial specifics of the RHB. However, with any

options considered and decisions made, disabled people's accessible housing requirements for those with impairments across the disability spectrum should not be overlooked. Financial constraints should not negatively impact disabled people's right to independent living. Encouragement of choice and control about disabled people's living accommodation type and locality should be a priority irrespective of any financial reduction measures which may be taken in the future.

Q5. Appropriateness of powers in the Bill for Welsh Ministers to make subordinate legislation.

Welsh Ministers should use their powers to enhance disabled people's right to independent living and support provision of accessible housing registers for all rented sector accommodation types. The Welsh Government Framework for Action on Independent Living highlights housing as one of its key priorities. The Welsh Government created and are in the process of implementing and refreshing the Framework for Action and therefore should support initiatives that enhance all key priorities, including housing, Priority 3: 'improved access to adapted and accessible housing' as set out in the document.

RH 04

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/

Communities, Equality and Local Government Committee

Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill

Ymateb gan: Nwy Prydain

Response from: British Gas

Executive summary

British Gas welcomes the opportunity to contribute to the call for evidence on the Renting Homes (Wales) Bill and is supportive of the Welsh Government in bringing forward proposals for improvements to legislation for renting homes in Wales.

In particular, we welcome proposals in the Bill to require landlords to ensure the property has no serious (Category 1) health and safety hazards and see real benefits in including a landlord's repairing obligations in the occupation contract.

We were encouraged by comments during the statement on the introduction of the Bill in the Assembly, both by Assembly Members supporting improvements to safety in rented properties and the acknowledgement of these issues by the Minister for Communities and Tackling Poverty.

British Gas believes that people in the private rented sector (PRS) have a right to expect protections against basic safety hazards in their homes. The Bill presents an ideal opportunity to ensure that gas and electric safety standards in the PRS in Wales are in line with those now being introduced around Britain.

Introduction

- As Britain's largest energy supplier, British Gas supplies gas and electricity to around 375,000 homes in Wales, including those which are rented from a private or social landlord as well as owner-occupied. We employ around 400 engineers across Wales who are visiting Welsh homes on a daily basis and have first-hand experience of dealing with some of the problems which could be addressed by this Bill.

- The social housing sector is also a key partner for British Gas. Under the Energy Company Obligation, we have carried out a number of insulation schemes with local authorities and housing associations across Wales as part of our work to improve energy efficiency

- In 2012, British Gas and Shelter joined forces to help tackle the problem of poor quality private rented homes across Britain, aiming to improve the quality of one million rented homes over five years.

- Over the partnership to date, British Gas has campaigned with Shelter Cymru, as well as Shelter in England and Scotland, to help raise standards through changes to legislation.

- Working with Shelter Scotland, Scottish Gas successfully called for the Housing (Scotland) Act 2015 to introduce mandatory carbon monoxide alarms and electrical safety checks for the private rented sector in Scotland. We are pleased that both these measures will be required from later this year.

- Along with Shelter, British Gas has welcomed regulations introduced at Westminster this month which require all domestic properties in the PRS in England to have carbon monoxide alarms fitted by 1 October 2015.

- British Gas notes that the Renting Homes (Wales) Bill aims to ensure rented homes fit for human habitation, with landlords given clear responsibility to meet their obligation to keep properties in a good state of repair and maintenance. Both as a business and employer in Wales, we want to see the same protection being given to our customers and employees as are now found in other parts of Britain.

Insight into the private rented sector in Wales

- With Shelter Cymru, British Gas carried out the biggest survey of private tenants in Wales in December 2013 and January 2014 to get a better understanding of conditions in the private rented sector in Wales, questioning 602 adults who lived in the PRS at that time.[i1]

- Nearly two thirds (64 per cent) said that they had had at least one of the following problems in the last 12 months: damp, leaking roof or windows, electrical hazards, mould, animal infestations or gas leaks.

- The research revealed that just over half were aware that a gas safety check had been completed at their property in the last 12 months. Furthermore, one in six (17 per cent) said they had electrical hazards.

[1] Fit to rent? report, March 2014, based on research commissioned by Shelter and British Gas, including survey of 602 adults living in the PRS in Wales surveyed 11 December 2013 to 16 January 2014 (YouGov) http://www.sheltercymru.org.uk/fit-to-rent/

- The consequences of poor conditions were shown to be serious. One in 10 tenants told us that their health had been affected due to their landlord not dealing with repairs and poor conditions. Of those tenants with dependent children, 11 per cent said told us their children's health had been affected.

- The survey also showed smaller numbers reporting serious problems such as gas leaks, carbon monoxide poisoning and fires in the home caused by poor conditions. Four per cent said they had a gas leak in the last 12 months while, over the same period, three per cent claimed they had experienced carbon monoxide poisoning and two per cent blamed a fire at the property on poor conditions.

- Further joint research with Shelter suggests that just over four fifths (81 per cent) of landlords ensure they have some sort of electrical check carried out at their properties. Of the estimated 189,600 properties in the PRS in Wales, this means there are likely to be around 36,000 without any planned electrical checks.

Improving safety, warmth and well-being

British Gas wants to see safety and well-being in the private rented sector improved through simple steps.

- Requiring the presence of an audible carbon monoxide alarm mandatory in all private rented properties that have gas appliances.

- A five yearly electrical safety check would provide significant additional protection for tenants and is a relatively low-cost way for the Welsh Government and the rented sector in Wales to demonstrate leadership and best practice.

- Landlord to provide Energy Performance Certificate, a gas safety certificate and proof of electrical safety checks to the tenant along with the contract at the start of the tenancy and every 12 months during the life of the tenancy.

- Reducing the number of tenants in cold and damp accommodation by promoting measures to increase energy efficiency and reduce fuel poverty such as:
    - encouraging landlords to commission improvements and take advantage of funding that is currently available through the Energy Company Obligation to do so.
    - ensuring that greater numbers of landlords adhere to their statutory duty to provide Energy Performance Certificates to their tenants by requiring that copies are presented to tenants

- Requiring the inclusion of a landlords' obligations on repairs within the rental contract would be enhanced by adding a Service Level Agreement. This would require a

landlord to make any repairs within an agreed specified timetable – for example broken boilers within 24 hours of the issue being flagged to a landlord.

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RH 05
Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/
Communities, Equality and Local Government Committee
Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill
Ymateb gan: Let Down in Wales
Response from: Let Down in Wales

Let Down in Wales

Campaigning for Private Rented Sector reform

Response to the Renting Homes (Wales) Bill

We are one of many renter groups campaigning with Generation Rent (generationrent.org) and Let Down (letdown.org) to reform the poor state of private rented housing in the UK. Let Down in Wales is the only Welsh campaign group at present specifically focused on the private sector.

We welcomed the Housing (Wales) Act, particularly the move to license landlords, but we have concerns that it did not go far enough. We need to see far more concrete measures to keep track of landlords and to ensure bad landlords are effectively removed from the rental market. This Act was also predominantly for the social housing sector, rather than the private, but it is vital to remember that more and more vulnerable people are being put in the private sector so it is more important than ever to fix it to work for everyone.

The Code of Conduct for landlords has yet to be drafted, but it seems that this is where the vital voice of tenants will be heard, in making sure that landlords treat tenants - their customers and their livelihoods, essentially - with respect. The Housing Act's effectiveness very much depends on this secondary legislation and how it works with the Renting Homes Bill. We think the Renting Homes Bill could do what the Housing Act didn't, by creating a fair deal for renters and ensure we can hold letting agents and landlords to account. But unfortunately, it will not as it is currently drafted.

1. On standardising rental contracts and making them easier to understand

We very much welcome this and thought the sample documents were a good starting point. They would have to perhaps be altered for letting agents to use in some instances and it should be made clear to tenants how their contract is arranged i.e. if the landlord manages the property or if it is the letting agent they signed with. Tenants have overwhelmingly told us they prefer dealing directly with a responsible landlord as it tends to be simpler and quicker to get repairs done. An agent seems to delay things and are sometimes even less likely to sort out repairs than a landlord would. Arguably, an agent has less interest in keeping a property up to a good standard than the owner would.

Landlords have also told us they prefer to deal directly with good tenants, so the contracts seem useful in how they encourage tenants and landlords to discuss at the beginning who is responsible for what. This will also increase tenants' awareness of their own responsibilities i.e. like ensuring utility companies are informed when they move (or specified in the contract where the landlord or agent will do this instead).

Let Down in Wales began as a campaign highlighting the bad practice of letting agents in Cardiff. We very much welcome that the Bill may professionalise the sector further and make it clearer what tenants should expect. However, we very much regret that it hasn't gone any further in reducing or banning letting agent fees; encouraging longer term 3-year contracts rather than shorter, insecure contracts; or ensuring there is funding for tenant education, or a housing advisory body specifically for the private rented sector (as there are many organisations that are focused on social housing or homelessness, but do not specialise in private tenant issues).

2. Encouraging shorter contracts

Proposals on encouraging shorter term lets are very concerning, as no tenants involved in Let Down have experienced long contracts as a problem. However many have cited instances where they are kicked out of their tenancy without being asked if they would like to renew it or simply kicked out with very little notice.

Renters on rolling contracts (where only one month's notice is needed from either party to leave the property) are particularly vulnerable to being evicted at short notice. This can be because the landlord simply wants to stop renting the property, as they may wish to sell it or move in themselves or, on a worse note, may want new tenants because they don't like the amount of repairs they've been asked to do or complaints that have been made by the current tenants. The problem of 'revenge evictions' was raised by us in a letter to the Minister for Communities and Tackling Poverty; the reply said *"concerns relating to retaliatory eviction was raised in response to the Renting Homes White Paper and have been taken into account in the development of the Renting Homes Bill."* Since the Bill has been introduced, we welcome the mechanism taken when a judge can decide to take retaliatory evictions into account, but it is still slightly flawed in that it relies on the case to go to court, when most tenants with very little money are unlikely to let it get that far. They are more likely to be evicted without any justice of any kind. In fact, they are more likely to accept a lost deposit or lost rent rather than take it to court.

On shorter contracts, the department said: *"Our engagement with landlords indicates a strong preference for letting on contracts of at least six months' duration, with many preferring initial fixed terms of twelve months. Since the six-month moratorium is only relevant to periodic contracts, removing the moratorium will not affect the vast majority of tenancies. It will, however, assist those tenants looking to rent for less than six months."*

This response is hardly reassuring. We maintain that if most tenants and most landlords prefer longer contracts, that this is what the Bill should be encouraging. This in turn should lead to more stable conditions for renters and encourage landlords to seek long term lets. This Bill seems like a key opportunity to show political leadership for long term letting. We found it very concerning that the Minister described social housing as for 'longer term lets' and the rented sector as 'for shorter term lets'. This is one of the vital issues at the centre of private housing; that it is unstable and not set up for people renting long term. But with the average first-time house buyer now aged 36, many renters will have been renting for up to 18 years.

This is not a 'short term sector'. People rent for years but usually in a dozen different homes rather than one house they can take care of, settle into and look after. Most importantly, this is not out of choice; people do not want to move house every year and they definitely do not want to pay more extortionate letting fees in order to do so. Short-term contracts are the result of a badly managed sector that treats its tenants like disposable consumers. This kind of culture is exactly what this Bill should be trying to fix, not encouraging.

3. Monitoring landlord activity and encouraging tenant awareness

Our final concern is how the Code of Conduct will be enforced, alongside new provisions in the Renting Homes Bill that landlords will be required to ensure there are no Category 1 health and safety hazards. How will Councils monitor this and how will tenants know and be encouraged to report those who do not follow the Code of Conduct? We have raised this repeatedly to the Minister and AMs have raised it in the Assembly, but we are none the wiser as to how it will actually be effective. We argue that tenant awareness is vital for all of the new legislation and the Welsh Government's promised communication campaign should only be the start. We would prefer a dedicated and resourced body to provide advice, legal assistance and information for tenants, such as England's Housing Ombudsman or the Housing Tribunal in Scotland.

However a dedicated housing body may be what the Welsh Government intended to begin with. We note with interest that the White Paper originally stated the Welsh Government intends to work towards a "*nationally branded, locally delivered, housing advisory service".* We are wholly supportive of this, if it is still Welsh Government policy. We are concerned that Local Authorities will have great difficulty enacting the legislation, as house inspections will only be carried out by Housing Officers if a complaint has been made, meaning only a small amount may be surveyed and the most vulnerable are unlikely to complain. A nationally-branded service with more central support would be very welcome, as we very much doubt Local Authoritites have the resources right now.

What happened to this policy? A Welsh Government branded and operated advisory service could bring together so many schemes that get 'lost in the wilderness' of housing schemes. It could provide all the information needed for the public on Help to Buy Wales, Nest, Arbed, how housing waiting lists work, the new Renting Homes contracts and even signposting to Shelter, Welsh Tenants or Citizens Advice. We appreciate that in a time of cuts that this could not be as well resourced as we would like. But an online advisory service would be cost-effective but a real game changer for the sector. We would appreciate AMs and Ministers' thoughts on such a scheme.

Finally, whilst local authorities may be well-intentioned, we seriously question whether they have the capacity to do this. And in a time of local government reform, it is not the time to be placing new duties on them. We believe that a new Welsh Government coordinated housing body would be ideal.

What Let Down would like to see in a Renters' Bill

In the last 2 years of campaigning, Let Down has identified some key interventions that would benefit tenants the most in Wales. If not in this Bill, then in another Renters' Bill in the next Assembly.

1. Ending or capping letting agent fees - in the words of Emma Reynolds MP, the shadow Housing Minister, "*just because you know you're getting ripped off, doesn't make it any better*". Agents pretend that an 'exit inspection' or 'references' cost over £100 a time, even when these are often never carried out. The most frequent complaint we received from tenants was the extortionate and various fees that agents charge, particularly 're-signing' fees up to £250 just to renew the contract. It makes no difference that they have to invent a reason as to why they are charging that amount.

2. Longer tenancies - a Renters Bill that is written for tenants, rather than landlords, would increase the length of tenancies and ensure the rent is frozen throughout that contract, or only allowed to rise with inflation. Many renters that 'voluntarily leave' a contract is because it is now too expensive for them. Even when the rent hasn't risen, the cost of living has.

3. A fair council tax system for renters - we would welcome any kind of subsidy or reduction for renters who are living in a council tax-banded property, but do not benefit from the actual value of a property or the surrounding area. Particularly HMOs, where six flats may be crammed into one house, but they are all paying a high band of council tax. Council tax should be reformed for renters, starting by a Wales-wide survey of all private rented housing, including their conditions in terms of energy efficiency and their relative value to renters to re-evaluate Council Tax Bands for Renters.

4. Freezing rents - controlling rent is something that is far more common in Europe, where many countries seem to have forseen and acted on unfairness in the private rented sector, rather than foster conditions for a 'buy to let' market. Generation Rent proposes caps based on property values that still allow landlords to charge higher rent, but they have to pay 50% (or less) of any additional rent above the cap back into a government fund that is specifically there to improving housing conditions. So increasing rents would in turn help fund new housing, better PRS conditions and better information services.

5. Harsher sanctions on landlords who do not fulfill their contract - We do not think that simply losing a license is an effective way of discouraging bad practice. They can simply ask an agent or someone else to obtain a license and rent out the property a different way. We do not think the licensing measures have gone far enough to deter rogue landlords and think harsher sanctions may make more of an impression. There is an argument that we should wait to see how effective they are when fully introduced, but Let Down would also argue that by the time we wait and measure the performance of the Housing Act, we would have lost a generation of renters to poor, unstable and unpleasant conditions. The worst off will end up homeless with no chance of ever living in a decent private property, let alone owning a property. We need to act now.

About the campaign

We focus our work on the key issues facing tenants in Wales.

1. ***Improving conditions in the private rented sector:*** by asking that landlords maintain their properties to a high standard, by ensuring health and safety checks are rigorous and compulsory, by incentivising landlords with recommendations and further business if they are recommended or endorsed by tenants

2. ***Giving a voice to tenants:*** by improving their relationship with landlords, making sure they don't fear revenge evictions after complaints, by making them aware of their rights and responsibilities, and by enabling them to campaign on issues that still need work

3. ***Making renting a 'good option':*** making sure that policy-makers and decision-makers don't just consider home buyers but renters too, by raising awareness of tenants' needs, and campaigning for lower rents so tenants are not prevented from saving

We gather renters' views through formal and informal conversations, online letting agent and landlord reviews and social media. These views inform the campaign priorities.

Find us online at:

letdownincardif
f.wordpress.co

Let Down in
Wales

@letdowncardiff

RH 06

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/

Communities, Equality and Local Government Committee

Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill

Ymateb gan: Electrical Safety First

Response from: Electrical Safety First

Christine Chapman AM
Chair – Communities, Equality and Local Government Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

March 2015

Dear Ms Chapman

Consultation on the Renting Homes (Wales) Bill

I am writing in relation to your recent call for evidence on the Renting Homes (Wales) Bill and the terms of reference outlined in Annexe 1 of your letter to stakeholders of 12 February 2015.

Electrical Safety First's comments contained within this response are in relation to Part 4 of the Bill – 'Condition of the dwelling'.

The Committee was very supportive of our concerns during the passage of the Housing (Wales) Bill last year and I would be very grateful if you would give them further consideration during progress through its Committee Stage.

With best wishes

Yours sincerely

Phil Buckle
Director General, Electrical Safety First

Electrical Safety First
The UK's electrical safety experts

1. Introduction

- Electrical Safety First is a UK charity dedicated to reducing deaths and injuries caused by electrical accidents in the home. We have a strong commitment to Wales – having over the last four years given over £152k in grants to trading standards teams, fire services and community groups and distributed thousands of copies of our Landlords' Guide to electrical safety throughout Wales.

- We support the introduction of the Renting Homes (Wales) Bill, however we believe that the Bill should go much further in protecting the safety of Welsh tenants who live in the Private Rented Sector (PRS) in Wales with the introduction of a provision provide 5-yearly electrical safety checks. At present we do not believe the Bill is robust on protecting tenants under Part 4 'Condition of the dwelling'.

- At present, any Welsh tenant could rent a home without having proper information on when or whether the electrics within the home are safe to use. We believe this is an unacceptable situation and this Bill must seek to address this, as is already the case in Scotland.

2. Private Rented Sector in Wales

- As many of these incidents take place within the home, safety in dwellings, particularly the PRS is a core concern. Poorly maintained homes often have poorly maintained (and therefore dangerous) electrical installations, which can lead to fatal consequences.

- The Welsh Private Rented Sector (PRS) now makes up nearly a quarter of homes in Wales and is expected to outgrow the social housing sector in the next few years. there are already parts of Wales where the number of privately rented homes out number social housing properties. This is the case in Cardiff, Ceredigion, Conwy, Denbighshire, Powys and the Vale of Glamorgan.[i]

- **Fire statistics show that Welsh homes are at a high risk from fires of an electrical origin. In 2012-13, electricity-related fires accounted for over 68% of all accidental fires in Wales**.[ii] Across Great Britain, over half of all accidental fires in homes (around 20,000 annually) are caused by electricity, while each year about 70 people die and 350,000 receive an electric shock.

- We are particularly concerned with poor standards in the growing Private Rented Sector (PRS) in Wales, particularly as independent research indicates that private tenants are more likely to be at risk of electric shock or fire than owner occupiers.[iii]

3. The current situation with safety checks in Wales

- By law, landlords have a responsibility to have gas installations and appliances in the properties they let checked on an annual basis. Every year, there are approximately 40 accidental deaths from Carbon Monoxide (C0) poisoning in England and Wales[iv], whilst electrical sources account for over half of all accidental domestic fires, resulting in around 40-50 deaths every year.[v] In addition, there are around 20 electrocutions at home in Great Britain every year.[vi]

- However, despite the comparable statistics on the incidence of deaths caused by gas and electricity in the home, there are no equivalent requirements for electrical installations and appliances. Given that gas typically only supplies a boiler and cooker,

while electricity powers almost every appliance in the home and is supplied to every room, we believe this puts tenants at a particular risk.

- **We are calling for greater parity between gas and electrical safety, and believe the Welsh Government has, through the Renting Homes (Wales) Bill a vital opportunity to enhance electrical safety without adding disproportionate regulatory burdens for landlords. We are asking members of the Communities, Equality and Local Government Committee to support us on this issue.**

- Measures can and should be introduced to protect both tenants, who currently only have the Housing Health and Safety Rating System as a route to seek redress, and landlords, who will themselves benefit from the measures through the greater protection of their property against fire.

- We understand that our proposal to introduce electrical safety tests in the PRS may raise questions around devolved competence, particularly as this document will later make reference and comparisons to the Gas Regulations which are a reserved matter under the directorate of the Health and Safety Executive (HSE). **However, we understand that, as electrical safety checks contribute to a wider programme of tenant safety, the Welsh Government should seriously consider pressing ahead with aiming to protect tenants in Wales.**

- Our position on adoption of mandatory electrical safety requirements in the PRS is supported by a wide range of organisations in Wales, including: British Gas; the Chartered Institute of Environmental Health (CIEH) Wales; Citizens Advice Cymru; National Energy Action Cymru; NUS Wales; Royal Institution of Chartered Surveyors (RICS); Shelter Cymru; Cardiff Council and Welsh Tenants.

4. Bill Recommendations to the Committee

We would ask the Committee to seriously consider the following three proposals to be included under Part 4 of the Bill 'Condition of the dwelling' and recommend to the Welsh Government: -

4.1 Introducing five-yearly safety checks of electrical installations in the Welsh PRS

- **We propose mandatory five-yearly safety checks by a competent person of electrical installations, along with basic visual checks on change of tenancy.** Requirements for regular safety checks currently exist for gas installations and appliances but not electrical installations and appliances. The Gas Safety (Installation and Use) Regulations 1998 specifically deal with the installation, maintenance and use of gas appliances, fittings and flues in domestic properties. Failure to comply with the regulations carries a fine of up to £20,000. If the case is referred to the Crown Court the maximum penalty may be imprisonment, or an unlimited fine, or both.

- The Regulations require landlords to:

    - Ensure an annual safety check is carried out on each gas appliance or flue by a Gas Safe-registered engineer;
    - Ensure gas fittings and flues are maintained in a safe condition, by servicing them in accordance with the manufacturer's instructions;
    - Keep a record of each safety check for at least two years;

- Provide new tenants with a record of the most recent safety check, and existing tenants with a record within 28 days of the gas safety check record being completed;
- Take all reasonable steps to ensure work is carried out, including supplying tenants with a written note requesting access to the property if necessary.

- Just as gas safety regulations require this annual check to be carried out by a Gas Safe-registered engineer, we believe checks on electrical installations and appliances should be carried out by a member of a Part P Competent Persons Scheme. Landlords would be required to keep a record of these checks for the full five years after each check, and to provide copies to all existing and new tenants, as appropriate.

- Visual checks should also be carried out by the landlord or responsible agent on change of tenancy or at least every year, whichever occurs first (Electrical Safety First has developed a checklist to help landlords carry this out).

- **This precautionary regime would serve to significantly reduce the risks to tenant safety arising from faulty electrical equipment but without placing an undue regulatory burden on landlords (estimated costs are £100-£150 every five years and many already do this as best practice). It would also serve to benefit landlords in terms of helping protect their investments.**

- Our proposals would not necessarily need to be enforced by local authorities as we believe tenants could have the ability to legal recourse through a court of law and deal with this as a civil matter, should a landlord not comply with the requirement.

4.2 Portable Appliance Testing (PAT)

- As part of these proposals we would also recommend Portable Appliance Testing (PAT). We recommend portable electrical appliances be subject to a combined inspection and test at least every five years, with basic visual safety checks on change of tenancy.

- **Nearly half (46%)**[vii] **of Wales' electrical fires were caused by white goods – incl. dishwashers, cookers and fridge/freezers - appliances that are routinely provided by landlords along with lets.**

- In addition, research undertaken by the Electrical Safety First found that 29% of landlords and 40% of tenants did not know who was responsible for ensuring the electrical safety of any appliances supplied with a tenancy.[viii] Furthermore, the study also showed that 1.7 million private tenants have reported electrical concerns that were either ignored by their landlord or acted on too slowly, and 1.3 million renters are currently waiting for electrical issues to be resolved. We believe these issues highlight a clear imperative for landlords to have their electrical appliances checked on a regular basis, along with their installations.

4.3 Mandatory fitting of preventative life-saving devices in private rented properties

- As with the recommendation to install CO alarms, we propose the Welsh Government take the lead on the installation of preventative safety devices by recommending the installation of RCDs in all PRS properties.

- Across Great Britain, 14 people die every year from carbon monoxide poisoning caused by gas appliances and flues which have not been properly installed of maintained.[ix] To

this end, the Department for Communities and Local Government recently announced a roll out of carbon monoxide (CO) alarms for the PRS. In the event of gas leakage resulting from inadequate flueing arrangements, CO alarms alert tenants to the presence of excess carbon monoxide in the property.

- Like CO alarms, RCDs are life-saving devices. They are designed to constantly monitor the electric current flowing along a circuit and almost instantaneously switch off the circuit if an electrical fault is detected. However, despite the fact that recent UK Government data shows that each year 4,000 fires caused by electrical faults in homes (20% in total) might have been prevented if an RCD had been fitted, there are currently no equivalent recommendations for their installation.

- Electrical Safety First strongly recommends the provision of consumer unit RCDs in the PRS, which could be made a precondition of any new letting. Fitting an RCD into a consumer unit is the most effective way to protect against dangerous electric shocks and reduce the risk of electrical fires. Such safety devices are already required by law in all new-build homes in Wales. They are relatively low cost, and a requirement for them to be installed would be a cost effective way of improving electrical safety throughout the PRS. Just as we do not believe that mandatory electrical safety checks represent a significant hike in regulatory costs for landlords, we equally believe that this small cost can be absorbed.

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[i] http://www.bbc.co.uk/news/uk-wales-31171212
[ii] Data based on secondary analysis of Wales Fire Statistics 2012-13
[iii] Research conducted by Ipsos MORI. 25th June-2nd July 2010
[iv] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/260211/Carbon_Monoxide_Letter_2013_FinalforPub.pdf
[v] GB Fire Statistics 2012/13, complied by Department of Communities and Local Government (DCLG)
[vi] http://www.esc.org.uk/industry/policies-and-research/statistics/
[vii] Data based on secondary analysis of Wales Fire Statistics, 2012-13
[viii] Research undertaken between the 17th and 24th May 2013 by Populus on behalf of the Electrical Safety Council with a sample of 4,093 UK adults. The figures have been weighted and are representative of all UK adults (aged 18+).
[ix] Health and Safety Executive: http://www.hse.gov.uk/pubns/indg238.pdf

RH 07

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/

Communities, Equality and Local Government Committee

Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill

Ymateb gan: Professor Martin Partington

Response from: Professor Martin Partington

A short memorandum of evidence from Professor Martin Partington CBE QC former Law Commissioner for England and Wales

Introduction

I have been invited to submit a short note of evidence in relation to the Renting Homes (Wales) Bill 2015.

As members of the Committee will know, I was the Law Commissioner responsible for leading the work at the Law Commission which lead to our reports on the subject. In a sense, therefore, what I might wish to argue here is all set out in our published reports. This note is however a personal note. It does not represent the views of the Law Commission

I would, however, like to take this opportunity to make a small number of additional points that relate to implementation.

- ### Publicity

Although those familiar with the existing law can see how it maps on to the proposed new law, there are changes in terminology that all those involved in the rented sector will need to come to terms with. The Law Commission always thought it very important that whichever government enacted its proposals, there would need to be a significant public education programme about the changes, to remove fear of the unknown, and to help people understand the advantages of the reformed law.

1. Plain language model agreements

The model tenancy agreements - which will reflect the statutory provisions of the new law - must be written in plain language so that those most affected - landlords and tenants - understand both their rights and responsibilities under those agreements.

2. Tenancy deposits

The Law Commission's reports were written before the Tenancy Deposit Protection schemes were introduced. As I now chair the Board of one of those scheme (The Dispute Service - TDS) I am aware that

there are some issues concerning what happens when one of a number of joint tenants wants to leave the agreement. I understand that TDS is submitting more detailed evidence on this issue. This will need to be considered carefully.

3. Fixed term agreements

The Law Commission was anxious to get across the message that where more security of tenure was desirable for standard contracts - but short of the full security available under the secure contract - this should be achieved by the use of the contract, which can be applied flexibly, rather than by general statutory rules that are inevitably less flexible. I look forward to seeing the Welsh Assembly Government encouraging innovation in the provision of standard contracts of different lengths.

4. Abolition of the 6 month moratorium

I understand that there is still concern about the proposal to abolish the 6 month moratorium. I have been commissioned by Welsh Housing Quarterly to write a short article on the case *for* abolition. I attach this as an annex to this note of evidence.

5. Estate management ground for possession

I thought our recommendations relating to this ground were important. If I may make a personal and perhaps rather political point, my own view is that the spare bedroom limit under the Housing Benefit scheme - the so-called 'bedroom tax' - was, in essence a reflection of the fact that social landlords were not managing their estates as effectively as they should. It is therefore arguably unfair that the burden of this lack of active estate management should fall only on the families concerned. I accept that many social landlords, with limited availability of accommodation, may in any event find it hard to move people. However, the creation of the single social tenure should enable social landlords to work together to manage their portfolios in such a way that families affected by the bedroom tax may be helped more easily. it may also be possible for local authorities to enter agreements with private landlords that they provide accommodation in specific circumstances to people on a secure tenancy basis - putting such tenants on the same footing as others in the social rented sector. It will be necessary to stress in this context that security of tenure means that, while a secure tenancy will be provided, the address of that tenancy may have to change.

6. Investment

One of the bases on which the Law Commission undertakes all its work is that it does not engage in projects that are highly party political. The opportunity for the Commission to undertake the Renting Homes project arose from the high degree of party political consensus that would enable a new framework for renting and letting to be created without major changes to the underlying structure of the law. In the intervening years, the rented sector has become considerably more important in the delivery of housing services. The private rented sector in particular has grown significantly. One of the challenges is to encourage more investment in build-to-let. We were told that a new legal framework that appeared to offer a secure base against which long-term investment decisions could be made (as happens in other European countries - notably Germany) would be welcomed by investors.

7. The situation in England

I am certain that the Welsh Assembly Government is not thinking about the implications for England of its decision to implement the Renting Homes Bill. If, however, after the implementation period is over and the new scheme has bedded down, I hope that experience in Wales may be used to encourage the London Government to review its current decision not to implement that Law Commission's proposals. It is, in any event, likely that many landlord and agents who operate on both sides of the border will want to argue that the law should be the same in both countries.

Annex

Abolishing the six month moratorium:

the case in favour

by Martin Partington[1]

Introduction

Since I was the person who led the programme for the reform of Housing Law which the Law Commission for England and Wales carried out in the period 2001-2006.Our aim was to create a framework which - once in force - would make the rights and responsibilities of both landlords and tenants clearer.

Our approach: increasing flexibility

Under our Terms of Reference, we were asked, in effect, to recast the then existing law into a more rational framework. At the same time we were asked to increase flexibility in the market by enabling local authorities, social landlords and private landlords to work together to offer rented housing services to those who needed them in innovative ways, and bring investment into the market.

Thus, we should not seek to change the rights and obligations that existed under the current law, *unless* the existing rules created an impenetrable obstacle to achievement of the principal objectives of clarity and flexibility.

Two key issues emerged in relation to which we had to balance the retention of the status quo and the desire for clarity and flexibility. The first was abolition of Ground 8 - which gave a mandatory ground for possession to landlords where their tenants were more than two months in arrear of rent.

This proposal was resisted by housing associations. But to have retained it would have prevented housing associations from being able to let on exactly the same terms as local authorities - a key objective to promote flexibility.

The second was abolition of the 6 month moratorium, to which I now turn.

Abolition of the 6 month moratorium

The private rented sector is currently based on assured shorthold tenancies, where tenants do not have long-term security of tenure guaranteed by legislation , but they do have a minimum period of 6

[1] Former Law Commissioner for England and Wales; I write here in a purely personal capacity.

month's occupation before a court can make an order for possession against him or her (on the assumption that there was no breach of the tenancy agreement). We asked whether this vestige of statutory security of tenure should be retained under our proposed scheme.

The Commission received many submissions that the 6 month moratorium should be retained. But on the basis of the evidence we received, that there was little evidence that it retained any practical value.

On the contrary. In general landlords do not want to bring tenancies to an end after only a short period of time. It is better for business to keep tenants in occupation rather than risk period of voids when no income is coming in. The Explanatory Memorandum on the Renting Homes (Wales) Bill, offers the latest figures on this point.

It could be argued that if most tenancy contracts are for at least 6 months, then no harm is done by retaining the moratorium. We nonetheless recommended abolition for two main reasons:

- the moratorium did cause some unnecessary inflexibility in the private rented sector. There is a potential demand for one month or three month tenancies. We did not see why these should be excluded from the scheme of standard contracts we were proposing;
- more importantly, we wanted to change the way people thought about their obligations when they rent. We wanted to encourage parties to agree the period of the tenancy, and then have a clear regulatory framework that would enforce those agreements. We were not against the idea of security tenure. But we argued that security should be created by the parties' agreement, not by a rigid statutory framework to which all tenancies had to conform.

In Wales, I understand that discussions are already under way between some landlords' organisations and the Welsh Assembly Government about the creation of a 5 year tenancy. That would be completely possible under the Renting Homes scheme. This would not be the only option: you could have 2 year tenancies; or tenancies which last until the children in the household reach school leaving age.

Special contractual arrangements could be made between local authorities and private landlords for longer term tenancy contracts for housing homeless persons or housing people in need of social housing from the housing waiting list.

Some may argue that abolishing the 6 month moratorium will encourage that minority of really bad landlords to carry on evicting tenants as and when they please. Our response to that is that the 6 month moratorium is not deterring bad landlords from behaving badly. Dealing with bad landlords needs to be done by ensuring that enforcement measures are in place to prevent really bad landlords from continuing to operate in this sector of the market.

RH 08

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/
Communities, Equality and Local Government Committee
Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill
Ymateb gan: Cymdeithas y Cyfreithwyr
Response from: The Law Society

The Law Society

The Law Society of England and Wales is the independent professional body, established for solicitors in 1825, that works globally to support and represent its 159,000 members, promoting the highest professional standards and the rule of law.

This response has been prepared by the Law Society's Housing Law Committee and reflects the expertise of a broad spectrum of practitioners who represent tenants and landlords, both in the private and social sphere.

One of the Committee's objectives is to promote improvements in law and practice relating to residential letting in the public and private sectors. We supported the Law Commission's renting homes proposals published in 2006 and welcome the Welsh Government's aim to incorporate those recommendations into Welsh law.

Given the limited time available for commenting on the Renting Homes (Wales) Bill (the 'Bill'), this response predominantly focuses on the points raised in our response to the Renting Homes White Paper in August 2013[1]. We wish to highlight:-

- the difficulty in introducing new property rights for young people given the provisions of the Law of Property Act 1925;
- the practical implications of a 48 hour exclusion tool for vulnerable tenants; and
- the danger of placing landlords in circumstances where domestic violence is alleged.

Asylum Seekers

Schedule 2 of the Bill contains the exceptions to the types of tenancy agreements that fall within the scope of the Bill. Those exceptions do not include accommodation for asylum seekers which is listed in Schedule 3 of the Bill as occupation contracts which may be standard contracts[2].

Contracts with asylum seekers are standard occupation contracts. The effect of this is that they cannot be terminated unless there is a court order under s.201 of the proposed Bill. Local authorities which participate in consortia contract or sub-contract with the Home Office to ensure that the accommodation is vacated within a short period of time, usually by giving 14 days notice. There are strict financial penalties if local authorities cannot accommodate new asylum seekers because a failed asylum seeker is holding over after notice to terminate.

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[1] 'Renting Homes White Paper - Response to the Welsh government's consultation - August 2013'
[2] Currently they are also excluded from being secure by virtue of Schedule 1 to the Housing Act 1985.

All standard and secure contracts can be terminated by notice, and subsequently by court order if the occupant does not vacate or is not forcibly detained by the enforcement section of the authority responsible for immigration. In our experience the latter seldom happens as removal directions are rarely issued at the time the application for asylum fails. Recovering possession through the court is a lengthy and costly process, and the cost has to be covered by local authorities.

We recommend that contracts for accommodation of asylum seekers be excluded from Schedule 3 of the Bill on social policy grounds and added as an exception to the occupation contracts in Schedule 2 Part 3 of the Bill.

Decant properties

The Law Society welcomes the provisions in the Bill which properly balance the interests of both the contract holder and the landlord.

Paragraph 14 of Schedule 3 of the Bill refers to '*Temporary Accommodation: accommodation during works*' (ie decant properties). Schedule 3 deals with occupation contracts that may be standard contracts rather than secure provided that the notice requirements are satisfied as set out in s.11 of the Bill. The new landlord will have to serve notice before possession can be recovered through the court; however, in all likelihood the contract holder will agree to return to their original home without the need for a court order, otherwise the contract holder may become liable for court costs.

The landlord should be properly directed by the original landlord as to when notice should be served to coincide with the completion of works. Under this provision the contract holder will need to be given sufficient notice of when they will be required to leave, bearing in mind they may have been at the temporary property for a relatively long period of time.

Addressing Antisocial Behaviour

We believe that s.55 of the Bill provides the right degree of flexibly and breadth, by covering other people living in the premises, neighbours, those engaged in a lawful activity in the area and members of the landlord's staff or contractors. It extends this responsibility to not only the contract holder but also to those who live with or visit them. We agree that this term must be incorporated into the standard contracts.

Breach of s.55 would entitle the landlord to apply to court for possession of the premises. This would be a discretionary ground for possession under which the court would have to consider the reasonableness of making any order, which would include the personal circumstances of the defendant and effect that the behaviour has had on others.

In England (and currently in Wales) the position is that landlords can use an "absolute ground" for possession for anti-social behaviour in certain serious circumstances. As the aim of the Bill is to remove that ability, some landlords may argue this will make obtaining possession in anti-social behaviour cases more difficult. When the absolute ground was first proposed in England the Law Society predicted that:-

- it would be used rarely and only in circumstances in which the discretionary ground would have very likely resulted in an outright order for possession in any event; and
- the tenant could always raise proportionality and Article 8 arguments.

Consequently, we do not believe that the loss of the absolute ground for possession will pose such a fundamental problem for landlords: the important point of principle for us is that the court's discretion is maintained.

The antisocial behaviour provisions can be against a person residing in the same property which extends their reach to domestic abuse cases. The Law Society reiterates its comments from 2013: it is not the landlord's responsibility to become involved in domestic abuse situations, other than in exceptional cases.

A tenant faced with domestic violence can seek a non-molestation and occupation order in family proceedings which has the same effect. If someone is at immediate risk, landlords can provide temporary alternative accommodation for the individual and seek an injunction if they cannot do that themselves.

What is being proposed in the Bill would involve the landlord effectively "taking sides" by exercising the power to exclude the person they believe to be the perpetrator. Domestic violence situations are rarely clear cut. At present, a tenant faced with domestic violence can seek a non-molestation and occupation order in family proceedings which has the same effect. Some landlords already have a ground for possession[3] to deal with domestic abuse situations but our experience is that, understandably, this power is rarely used as landlords do not wish to become embroiled in domestic situations.

To give an unmanageable responsibility to a landlord to deal with domestic abuse through the antisocial behaviour provisions appears unnecessary and could lead to challenges around whether a landlord is properly exercising their duties.

Abandonment of the property by a tenant

The current legislation puts requirements on landlords in terms of notice and making enquiries to satisfy themselves that the property is abandoned. The landlord should apply to court for a possession order following the service of a Notice to Quit[4]. It is widely acknowledged that landlords will often choose not to apply to court if they are satisfied that the tenant has abandoned the property, in an effort to save costs. This action is risky as a tenant may then issue unlawful eviction proceedings if indeed they have not abandoned the property but simply been away for a period of time e.g. visiting family or a hospital stay.

Section 234 of the Bill provides that notice may be given by leaving it at or posting it to the contract holder's last known residence or place of business, or any place specified by the contract holder for service of documents, and if the document is to be given to a person in their capacity as contract holder, the premises. Notice can be given electronically (including by text message), but only if the recipient has agreed. It therefore seems that the landlord can deliver notices under these provisions (ie

[3] Ground 14A of The Housing Act 1988
[4] In accordance with s.32 of the Housing Act 1988.

abandonment) to the premises, make some inquiries, end the contract after expiry of the warning period of four weeks and, if the inquiries do not result in any information, recover possession without a court order.

The Law Society supports this approach as it means that properties can be recovered and rent arrears minimised, subject to proper safeguards to prevent wrongful eviction. For example, if a contract holder goes abroad for two months with the intention of returning and still pays there rent during their absence it would not be right for the landlord to claim that the property had been abandoned. We suggest that the standard and secure contracts contain a requirement that a contract holder notifies their landlord (preferably in writing) of any absence exceeding 1 month to avoid this issue.A clear line of communication between landlord and tenant should be encouraged.

The contract holder can apply to court within six months of receipt of the second notice ending the contract on grounds the landlord failed to fulfil their duties or if the premises is not actually abandoned. If, after further consultation, the provision remains we would propose that the time limit be reduced to three months.

One consequence of these provisions is that the premises may have been re-let by the time of contract holder's application to court to overturn the eviction notice, and landlord may not have any suitable alternative accommodation. Even if alternative accommodation is provided, there would seem to be considerable injustice caused if, for example, the contract holder goes away for more than four weeks and does not receive the warning notice and loses their home as a result. The suggestion above (to give notice to the landlord of periods of absence exceeding 4 weeks) would go some way to addressing this concern.

The Bill does not provide sufficient safeguards to ensure that the system is not misused, and tenants particularly vulnerable tenants are not exploited under the proposed regime. We would advise that this proposal be examined more carefully and the potential consequences understood before a final decision is made. Guidance needs to be given as to how this proposal will align with case law, including what inquires would need to be undertaken in order for landlords to satisfy themselves that a property has been abandoned and they are not exposing themselves to a wrongful conviction claim.

Renting by young people

The Bill proposes that 16 and 17 years olds will be able to hold contracts on the same terms as adults. The intention is to ensure that 16 and 17 year olds are not disadvantaged in obtaining a tenancy. However, the proposal is contrary to well established existing law whereby a 16 and 17 year old is only capable of holding the equitable tenancy with the landlord holding the legal interest upon trust, unless the landlord has appointed someone else to act as trustee[5].

[5] s.1(6) and s.2(6) Law of Property Act 1925 and s.2(6) Trusts of Land and Appointments Act 1996

Property law is not a devolved area of law to the National Assembly for Wales, so there must be a question mark over whether s.230(5) of the Bill is effective as it appears to seek to disapply legislation that it does not have power to do so.

If this subsection is effective then further consideration needs to be given as to whether young people are being exposed to any risk holding a legal interest and having contract terms enforced against them when they are deemed as vulnerable and perhaps less likely capable of sustaining a tenancy.

Ground 8

Currently, Ground 8 allows a landlord to obtain possession of a property if they can demonstrate at the date of the notice seeking possession was served and at the date of the possession hearing that a tenant is more than eight weeks in arrears, the court has little discretion but to make a possession order. The threshold for getting an Article 8 defence beyond summary consideration is very high.

The Law Society supports the abolition of Ground 8 for secure contracts in order to provide the court with a wider discretion as to whether or not to make a possession order. However, we are in a time where welfare reform and universal credit is having a huge impact on collection of rent arrears. Local Authorities and Private Registered Providers are not-for-profit organisations and are dependant on rent collection. The courts should be issued with guidance that rent arrears should be treated seriously and not be allowed to accumulate to levels where repayment is not a viable option before seriously considering eviction.

The Law Society welcomes the fact that Ground 8 is to be retained for the standard contract so as not to deter the private rental market where there is a desperate shortage for housing. We believe that had the abolition of Ground 8 extended to the standard contract that it would have deterred landlords from renting their properties.

The Law Society therefore agrees with the proposals to retain the mandatory ground for the standard contract and abolish it for the secure contract.

48 hour exclusion tool

Schedule 2 part 5 of the Bill enables a landlord to exclude a contract holder from the premises for up to 48 hours in limited serious circumstances. As this provision applies to supported accommodation contracts, the contract holder is likely to be vulnerable, possibly disabled or have mental health problems, and, if excluded, is likely to be homeless for two days, and at serious risk of harm. They may find it very difficult to seek legal advice, access support or medication during this period.

An agent or employee officer of a landlord who may not be specifically trained in dealing with vulnerable people can exclude an individual without reference to the court. Whilst this may be an infringement of Article 8 rights, it is unlikely that a vulnerable person will seek legal advice within the period of exclusion to prevent them living on the streets. Indeed, if the individual does manage to access legal advice on enforcing their Article 8 rights is likely to be restricted given the limits of legal aid.

This power needs to be subject to further consideration about the safeguards to be put in place for vulnerable people, and specifically what alternative accommodation arrangements will be put in place if the power is exercised and who would be responsible for the accommodation arrangements. This power needs to be carefully balanced also with the impact the alleged behaviour has had on residents in the locality or staff which has resulted in the exclusion.

Retaliatory Evictions

We agree that retaliatory eviction damages the image of the private rented sector and dents tenant confidence. In England, provisions are being drafted into the Deregulation Bill to prevent possession being obtained against tenants on standard contracts in the private rented sector who make complaints about disrepair at the property.

The Bill proposes that where the court is satisfied that the landlord has not complied with their obligations, and that the landlord has issued a possession claim to avoid complying with them, it may treat the possession claim as discretionary, and therefore may refuse to make an order for possession.

The Law Society has concerns about the drafting of s.213(3)(b) of the Bill which states that the court has to be satisfied that the landlord has made the possession claim to avoid complying with those obligations. This will be a matter for judicial consideration at trial, having heard evidence from both landlord and tenant, but there can be many factors that would need to be taken into account when making the finding under s.213(3)(b) of the Bill. For example, whether the tenant has reported a repair but has then failed to give access; any mental health issues; or any unreasonable requests for repairs that do not fall within the repairing obligation of the landlord. Judicial consideration of the *intention* behind the landlord's actions would involve lengthy submissions, evidence and potentially expert evidence which may significantly delay, add cost and ultimately frustrate the landlord's claim even if validly made. It is inevitable that there will be costly appeals on the meaning of s.213(3)(b) which a private landlord is unlikely to be able to afford.

We believe that landlords, tenants and the judiciary would welcome guidance on this provision.

Tenancy Deposit Schemes

The Law Society welcomes the provision at s.45 of the Bill that requires landlords to place deposits within a protected scheme and deal with in accordance with an authorised deposit scheme. The same obligation is being incorporated into English law by way of amendment to the Deregulation Bill.

We recommend that the obligations in the Bill and the consequences for a landlord who fails to comply with those requirements should follow the drafting of the tabled amendment to the Deregulation Bill[6].

[6] http://www.publications.parliament.uk/pa/bills/lbill/2014-2015/0058/amend/su058-II-a.htm

RH 09

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/
Communities, Equality and Local Government Committee
Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill
Ymateb gan: Linc-Cymru Cymdeithas Tai
Response from: Linc-Cymru Housing Association

I write on behalf of Linc-Cymru Housing Association Ltd. with regard to some specific concerns with the way in which the Renting Homes (Wales) Bill is drafted. These include:

1. Section 55 Anti-social behaviour and other prohibited conduct
2. Withdrawal of Ground 7a (Absolute Possession)

Our greatest concern is the omission of the current position whereby the tenant (contract holder) has responsibility for others. The proposed prohibitive clause under section 55… 'not to allow, incite or encourage' suggests that responsibility is only on the part of the tenant/contract holder for the acts of behaviour of others in which they are complicit or involved. This is a fundamental change from the current position and one that diminishes the tenant of responsibility and hinders our ability to deal effectively with serious and persistent ASB issues.

The proposed wording will create issues and uncertainty in the courts whereby cases are drawn out with lengthy legal debates over wording. We already experience defences where the tenant/contract holder tries to argue they didn't 'allow' issues to happen e.g I didn't tell or allow my partner to assault the neighbour, it's nothing to do with me. We've also had experience with issues over 'incite, encourage or allow' for injunction breaches where a family member has carried out further acts of ASB towards the victim but the Police/courts will not fall in favour of the landlord due to the difficulty in evidencing that one individual 'allowed' another to do something. We therefore foresee that this issue will become a much bigger debate in possession claims where there is no specific clause in the tenancy for responsibility for others. This will increase the costs to all parties and courts in terms of both time and money. The biggest impact however will be on our communities where victims and witnesses are left to suffer. All this in an age where Government agendas are focused on putting victims first.

In reality, Linc instigates very few possession claims at court on the Grounds of ASB. It can be as little as 1 or 2 a year. As an organisation that manages approximately 3500 properties, it is a very small proportion. This is because the majority of cases are dealt with via early intervention methods e.g visits, letters, warnings, support, mediation, restorative justice etc. Part of what assists us in using early intervention techniques is the backing of our tenancy agreements and the clauses of the wording contained within. The responsibility for others is paramount and key to our success in dealing with issues at an early stage.

In terms of the withdrawal of Ground 7a, we are concerned that the Bill wishes to remove such power. As already outlined above, as an organisation we instigate very few possession claims. However, when a possession claim is issued it's because we feel we have no alternative &/or every other possibility has been exhausted. Unfortunately, possession proceedings can be a very lengthy process. Our longest case to date took approximately 18 months, that's 18 months of further suffering by the victims and witnesses. As an organisation we are supportive of keeping the Absolute Ground in the interested of our victims and communities.

As an example, we have recently issued proceedings against a tenant who lives some 4 doors away from his victims. The criminal case took just short of 12 months to finalise. The victims having given evidence in the criminal case will not give evidence at our civil proceedings as they cannot put themselves through the process again due to the trauma and impact it had on their health and well-being. We feel that the Absolute Possession Ground is vital to support individuals in these circumstances. In addition, we feel we have adequate safeguards in place to prevent inappropriate use of such power.

If you require any further information in relation to the information provided above, please do not hesitate to contact me.

RH 10

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/
Communities, Equality and Local Government Committee
Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill
Ymateb gan: Cyngor Dinas Caerdydd
Response from: City of Cardiff Council

Mae Cyngor Caerdydd yn croesawu'r cyfle hwn i roi sylwadau ar Fil Rhentu Cartrefi (Cymru). Cytunwn ag egwyddorion symleiddio a moderneiddio'r sail gyfreithiol wrth rentu tŷ a sicrhau mwy o eglurder a chysondeb o ran hawliau a chyfrifoldebau tenantiaid a landlordiaid.

Mae nifer o agweddau cadarnhaol ar y Bil, fel gwneud tenantiaethau awdurdod lleol a chymdeithas tai drwy gontractau diogel, a ddylai ategu gwaith partneriaeth ymhellach. Bydd gallu dyrannu contractau i bobl ifanc 16 a 17 oed yn diddymu'r gofyniad i gael ymddiriedolwr, a all fod yn broblem, a'i gwneud yn haws gorfodi telerau tenantiaethau. Bydd sicrhau mwy o gysondeb ynghylch tenantiaethau ar y cyd yn cynorthwyo darparwyr tai cymdeithasol wrth fynd i'r afael ag ymddygiad gwrthgymdeithasol a cham-drin domestig gan y bydd y newidiadau yn ei gwneud yn haws gwaredu un parti o gontract ar y cyd heb effeithio'n andwyol ar y llall.

Fodd bynnag, mae gan Gyngor Caerdydd rai pryderon ynghylch manylion y Bil a sut y bydd rhai elfennau'n gweithio'n ymarferol. Fe'u nodir isod.

Contractau ar y cyd

Mae Cyngor Caerdydd yn cytuno â'r newidiadau i alluogi i ddeiliaid contractau ar y cyd dynnu'n ôl o'r contract heb ddod â'r contract i ben i bawb (a111) ac i'r landlord neu ddeiliad y contract eithrio a therfynu deiliad â chontract ar y cyd (a221-226).

Bydd y newidiadau hyn yn galluogi'r contract i adlewyrchu realiti'r sefyllfa a galluogi'r tenant preswyl i fanteisio'n llawn ar ei hawliau dan y contract e.e. cyfnewid neu drosglwyddo'r denantiaeth.

Hoffem eglurhad o gyflwyno hysbysiadau o ran eithrio a therfynu deiliaid contractau ar y cyd. Yn aml, nid yw'r Cyngor yn gwybod yn lle mae cyd-denant yn byw felly'r gorau y gallwn ei wneud yw cyflwyno'r hysbysiad i gyfeiriad hysbys diwethaf deiliad y contract.

Yn ystod yr ymgynghoriadau ar y papur gwyn gwnaethom fynegi ein pryderon ynghylch deiliad y contract yn gallu gofyn i rywun gael ei ychwanegu i'r contract (a49-51) ac rydym yn falch fod y Bil yn ein galluogi i wrthod y cais yn rhesymol (Atodiad 6).

Olynu contract (a78-83)

Ar hyn o bryd, pan fydd cyd-denant yn marw, caiff y denantiaeth ei throsglwyddo i weddill y tenantiaid byw. Ar ôl i bob un o'r cyd-dentantiaid farw daw'r denantiaeth i ben ac ni all neb ei holynu. Dan reolau Deddf Tai 1985, pan fydd unig denant yn marw ni all ond un person ei olynu.

Dan y Bil hwn, pan fydd unig ddeiliad y contract yn marw, mae dau neu dri olynydd posibl:

1. Olynydd â blaenoriaeth;
2. Olynydd eilaidd os yw'r olynydd â blaenoriaeth yn penderfynu rhoi'r gorau i'w gontract ymhen 6 mis;
3. Olynydd wrth gefn, gan gynnwys gofalwyr.

Hefyd, mae'r Bil yn galluogi mwy nag un person i olynu ar y tro.

Ymddengys hefyd fod rhai newidiadau i gyd-ddeiliaid contractau a all drosglwyddo'r contract yn unol â phwy sy'n fyw, ond os yw deiliad contract wedi'i "ychwanegu" at y contract gellir ei drin fel blaenoriaeth neu'n olynydd wrth gefn.

Er mai un o nodau'r Bil yw egluro cyfraith tai, ymddengys fod y newidiadau i olyniaeth yn ei gymhlethu.

Mae gan Gaerdydd hefyd bryderon y bydd yr hawliau olynu newydd hyn yn cynyddu'n sylweddol gyfnod y contract, gan effeithio'n andwyol ar y rhai sydd ar y rhestr aros ag angen brys am dŷ.

O ran olynwyr eilaidd, mae gennym bryderon am y cyfnod byr sydd gennym i gyflwyno hysbysiad ar 'eilyddion' posibl eraill (h.y. 14 diwrnod) ac ymarferoldeb gwybod pwy yw'r olynwyr ac yn lle maen nhw'n byw. Mae hefyd risg bosibl o roi pwysau diangen ar olynydd â blaenoriaeth i ddod â'r contract i ben fel y gall olynydd wrth gefn olynu yn ei le (gallai pobl sy'n agored i niwed fod yn fater i'w ystyried yma).

Cydgyfnewid (a118)

Mae'r Memorandwm Eglurhaol yn dweud y bydd cydgyfnewid yn fwy hyblyg dan y Bil, os oes eiddo gwag ar ddau ben y gadwyn. Rydym o blaid hyn os yw'n gwneud y defnydd gorau o'n stoc dai. Ond byddai angen rhagor o eglurhad arnom o sut y byddai hyn yn gweithio'n ymarferol.

Diwedd tenantiaeth heb olynydd (a154)

Mae galluogi contract i ddod i ben yn awtomatig fis wedi marwolaeth deiliad y contract pan nad oes olynydd o gymorth. Ond hoffem ragor o ganllawiau ar:

- beth sy'n cyfrif fel "hysbysiad marwolaeth" a roddir gan gynrychiolwyr yr ymadawedig, fel ei bod yn glir pan fo'r cynrychiolwyr ond yn rhoi gwybod i ni am y farwolaeth a phan fônt am ddod â'r contract i ben mewn llai na 4 wythnos;
- pa gamau y gellir eu cymryd os oes eiddo personol wedi'i adael yn yr eiddo ar ôl i'r hysbysiad ddod i ben e.e. a allwn eu gwaredu ar unwaith neu a oes angen i ni gyflwyno hysbysiad pellach i'r cynrychiolwyr.

Ymddygiad Gwaharddedig (a55, a116, a158 ac Atodiad 5)

Cytunwn y dylai amod ymddygiad gwaharddedig fod yn ofyniad ym mhob contract meddiannaeth ac y dylai gynnwys cam-drin domestig. Byddai gallu eithrio cyd-ddeiliad contract am dorri amod ymddygiad gwaharddedig yn ddefnyddiol i'n galluogi i daflu'r sawl sy'n gyfrifol am gam-drin domestig neu ymddygiad gwrthgymdeithasol allan, heb ddod â'r contract i ben i'r rhai sy'n dioddef o hynny.

Lletywyr (a113)

Dan y Bil nid oes yn rhaid i ddeiliaid contract roi gwybod i'r landlord os oes ganddynt letywr. Fodd bynnag, hoffem i ddeiliaid contractau fod â dyletswydd i hysbysu'r Cyngor pan fydd lletywr yn symud i mewn, ac i roi manylion fel ei enw a'i ddyddiad geni. Fodd bynnag, hoffem i ddeiliaid contractau ddal i ofyn am ein caniatâd ysgrifenedig, gan ein bod o'r farn ei fod yn bwysig gwybod pwy sy'n byw yn ein heiddo i'n helpu i ddiogelu ac amddiffyn e.e. preswylwyr sy'n agored i niwed, llygad-dystion a phobl sydd wedi dioddef o droseddu neu ymddygiad gwrthgymdeithasol.

Hefyd, dan Reoliadau’r Diwydiant Dŵr (Ymgymerwyr sy’n gyfan gwbl neu’n bennaf yng Nghymru) (Gwybodaeth am feddianwyr nad ydynt yn Berchenogion) 2014 rhaid i ni roi gwybod i Ddŵr Cymru pan fydd meddiannwr, sy’n 18 oed neu’n hŷn, yn symud i mewn gyda’n tenant, gan roi ei ddyddiad geni i ni.

Tresmaswyr (a235)

Ar hyn o bryd pad fydd tenant yn symud allan a bod o hyd bobl yn byw yn yr eiddo gallwn roi “defnydd a meddiannaeth" i feddianwyr wrth wneud ymchwiliadau, a phenderfynu ar ba un ai a ddylid gweithredu gan eu bod yn dresmaswyr, neu gynnig tenantiaeth iddynt. Gallwn hefyd wneud hyn pan fydd tenant yn marw heb olynydd. Byddem yn gwerthfawrogi cael canllawiau ar yr hyn y mae’r Bil yn ei gynnig dan yr amgylchiadau hyn.

Contractau cyflwyniadol (atodiad 4)

Mae telerau contract cyflwyniadol yn debyg i’n tenantiaethau cyflwyniadol presennol. Fodd bynnag, mae’r Bil yn galluogi deiliad contract i wneud cais i’r Llys adolygu ein penderfyniad i gyflwyno hysbysiad ymestyn. Mae gweithredu yn y Llys yn cymryd amser, yn gostus ac yn gofyn am adnoddau. Ystyriwn, i’r ddwy ochr, nad oes modd cyfiawnhau’r costau, yr amser a’r llwyth gwaith sy’n rhan o weithredu o’r fath wrth ymestyn y contract am 6 mis.

Contractau Ymddygiad Gwaharddedig (atodiad 7)

Mae telerau contract ymddygiad gwaharddedig yn debyg i’n tenantiaethau israddedig presennol, ond am fod modd hefyd ymestyn y contract. Ystyriwn hefyd fod hyn yn ddefnyddiol ond mae gennym yr un pryderon ynghylch gallu deiliad y contract i fynd i’r llys, fel y nodwyd am gontractau cyflwyniadau uchod.

Trosi Contract (a236-238)

Ysgrifennir ein cytundebau tenantiaeth ar hyn o bryd mewn iaith glir, ond mae'r contractau diogel newydd yn cynnwys geiriau a gymerwyd yn unionsyth o'r Bil. Felly, yn ogystal â’r contract ei hun, bydd angen rhagor o wybodaeth ar ddeiliad y contract i egluro’r darpariaethau. Gallai rhoi’r wybodaeth hon i bob deiliad contract fod yn ddrudfawr.

Byddai o gymorth cael canllawiau ar yr hyn fydd yn rhaid i ni ei roi i’n tenantiaethau presennol ar yr adeg trosi, a chwe mis ar ôl trosi e.e. fod contract wedi’i lofnodi’n

ofyniad. Hefyd, ymddengys fod posibiliad o ddryswch ynghylch telerau'r contract rhwng y dyddiad trosi a chyflwyno contract ysgrifenedig newydd.

Contractau Safonol Tai Cymorth (Rhan 8)

Yn Adran 143 (4) (a) – wrth ddiffinio "gwasanaethau cymorth" nid ydym yn siŵr p'un ai a oes angen i nodi tai'n benodol i gynorthwyo'r rhai sy'n rheoli neu'n ceisio goresgyn bod yn gaeth i rywbeth. Dylai'r Bil naill ai restru pob math o lety â chymorth (a fyddai'n cynnwys llochesi, cynlluniau i bobl â phroblem iechyd meddwl ac ati) neu dim ond cynnwys pwyntiau (b) a (c) sydd fel rheol yn cwmpasu pob math o ddarpariaeth.

Adran 144 Symudedd – mae'r nodiadau eglurhaol yn ddefnyddiol wrth egluro'r bwriad y tu ôl i'r adran hon, fodd bynnag, fel y'i hysgrifennir ar hyn o bryd, mae'n anodd iawn dod i gasgliad ynghylch yr ystyr a fwriedir o'r geirio a geir yn y Bil ar ei ben ei hun.

Atodlen 2, Rhan 5, a14 – gallai fod rhywfaint yn anodd o'i hanfod i landlordiaid a darparwyr wybod am gontractau blaenorol pan fônt yn dilyn ei gilydd yn ddi-dor. Byddai hyn yn arbennig o wir i rywun sy'n symud i dŷ cymorth mewn un ardal awdurdod lleol wedi iddo drosglwyddo o un ardal awdurdod lleol arall. Ar hyn o bryd nid yw pob awdurdod lleol yn rheoli derbyniadau i dai cymorth yn eu hardal, ac felly ni wyddant ddyddiadau y mae trwyddedau/contractau'n dechrau na manylion unrhyw estyniadau. Os yw gofyniad newydd am gael ei gyflwyno i awdurdodau tai lleol, dylid nodi hyn yn glir yn y ddeddfwriaeth a dylid ei drafod yn y canllawiau.

RH 11

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/

Communities, Equality and Local Government Committee

Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill

Ymateb gan: Cymorth i Fenywod

Response from: Welsh Women's Aid

1 Introduction: About Welsh Women's Aid

1.1 Welsh Women's Aid is the lead national organisation in Wales, providing the voice of local services and survivors to government as well as campaigning, influencing policy and practice, and innovating to end domestic abuse and violence against women across Wales and the UK. Welsh Women's Aid is a membership organisation for 27 independent, specialist services in Wales which provide a range of support, advocacy and prevention services for women, children and families affected by domestic abuse.

1.2 We also deliver essential national and local services and projects across Wales, including the All Wales Domestic Abuse and Sexual Violence Helpline – a 24 hour helpline for victims, concerned others and professionals; the Children Matter Project – to improve support for children and young people across Wales who are affected by domestic abuse; an Accredited Training Centre – Welsh Women's Aid is an Agored Cymru centre, developing and delivering training in domestic abuse accredited qualifications for member organisations and external agencies; and delivering services for women and children in North Wales (Wrexham and Colwyn Bay) by providing refuges, outreach and community advocacy and support for women and children affected by domestic abuse.

1.3 Despite progress that has been made in Wales, research studies continue to find alarming and persistently high levels of violence against women and girls:

- In Wales in 2013/14, there were 6,325 prosecutions of violence against women and girls offences, with a conviction rate of 76.7%. Of these, 5,637 were cases of domestic abuse; 257 cases of rape, and 431 cases of sexual offences.
- Welsh Women's Aid's members supported 9,337 women in 2013/14, with 2,263 women entering refuge;
- The All Wales Domestic Abuse & Sexual Violence Helpline (managed by Welsh Women's Aid) supported 27,972 callers in 2013/14.

1.4 Our response to this consultation is informed by our 37 years' experience of responding to and preventing domestic abuse as a national membership organisation, ensuring the experiences of our direct and member services and survivors inform improvements in legislation, policy and practice

2.0 Welsh Women's Aid is concerned by the suggestion within the draft Bill, that a supported standard contract will be issued to women who are residing in refuge accommodation once they have been resident for six months - unless there is designated, safe and appropriate move-on accommodation allocated specifically for women and their children leaving refuge in each local authority.

2.1 From Welsh Women's Aid's biannual data report (first half of 2014-15) almost three quarters of women stayed in refuge for two months or less (73%) and the most common length of stay was two months with 22% followed by 17% for 1 month. 14% of women stayed in refuge for 6 days or less. Only 27% of women stayed in refuge for more than 3 months, with only 4% staying for more than 6 months.

2.2 So although the majority of women reside in refuge for tfour months or less, there is still a small group of around 4% who will exceed the Bill's six month threshold. The reasons why women may reside in refuge for longer than six months can be due to continuing and complicated support needs. This can be a result of the severe effects of domestic abuse, but the more common is a lack of suitable move-on accommodation for women in the local area.

2.3 It is therefore crucial for appropriate move-on accommodation to be allocated in order for women to leave emergency refuge and begin to rebuild their lives within the community.

2.4 The lack of safe move-on accommodation also has implications for victims who are yet to reach out to services, who may not be able access emergency refuge during their time of crisis due to bed spaces being occupied by women who are remaining in refuge awaiting appropriate move-on housing. Between April and December 2014, 104 women were turned away from Welsh Women's Aid member services due to there being no free bed spaces.

2.5 Welsh Women's Aid are concerned that under this new legislation women who are ready to leave supported accommodation, but are unable to do so, will not be granted the three month extension due to their reasons not being related to the explicit support needs the draft Bill refers to. It is felt that any transfer onto a supported standard contract can only exacerbate the issue of bed-blocking within emergency refuge accommodation.

2.6 Welsh Women's Aid believes that the only way in which this contract system would work for supported housing schemes such as refuge, is if there was guaranteed access to safe and appropriate move-on accommodation. Therefore, this Bill's amendments to tenancy reform cannot be supported by Welsh Women's Aid or its members without this assurance.

2.7 Welsh Women's Aid supports the proposals relating to addressing anti-social behaviour in households. We believe that the prohibited conduct term is a positive step forward in keeping women in the own home when it is safe to do so.

2.8 Welsh Women's Aid would appreciate clarity around 'prohibited conduct' and the support for domestic abuse and other forms of violence against women within the Bill. In certain situations the perpetrator will not reside within the home, in which case the victim as the tenant may come under scrutiny for abusive or antisocial behaviour, which could conceivably put them at risk of losing their home. There may be opportunities here to cross-reference the Violence Against Women, Domestic Abuse and Sexual Violence Bill/Act.

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2.9 A situation that may also arise is where a perpetrator of abuse may also be a victim and be in need of support from advice services through housing. It would be beneficial for this circumstance to be considered when writing guidance on applying the prohibitive conduct term. Welsh Women's Aid would advise that training would need to be provided to all staff on the context of domestic abuse and other forms of violence against women to ensure that staff are able to appropriately identify victims and perpetrators, and support both effectively, including specific guidance and pathways for the various forms of violence against women (forced marriage, sexual violence, so-called 'honour' based violence, domestic abuse, female genital mutilation etc.). This may need to be in addition to any training requirements imposed by the Violence Against Women, Domestic Abuse and Sexual Violence (Wales) Bill/Act.

2.10 Within the draft Bill, the Prohibitive Conduct tool is named as anti-social behaviour and 'other prohibitive conduct', but Welsh Women's Aid would recommend that domestic abuse needs to be stated explicitly and separately for those who will be using the guidance, in order for both these issues to be recognised as very separate issues and given equal importance for those utilising the legislation.

2.11 Welsh Women's Aid believes it would also be beneficial to discuss a potential duty on Homelessness to support the perpetrator of abuse that has been removed from a household. Recognition for the effectiveness of accredited community perpetrator programmes is an opportunity to enhance the prevention of domestic abuse. The recently published Mirabal research undertaken by the Durham and London Metropolitan Universities suggests domestic violence perpetrator programmes (DVPPs) could play an important role in the quest to end domestic violence.

2.12 The study found that before attending the programme a third of men made women do something sexual they did not want to do, but none did so after taking part in the programme (30 per cent to zero). In the same way, cases of the men using a weapon against their partner reduced from 29 per cent to zero.[1]

2.13 Far fewer women reported being physically injured after the programme, with 61 per cent before compared to 2 per cent after. Over half of the women reported feeling 'very safe' after the programme, compared to less than one in ten before the programme (51 per cent compared to 8 per cent). This approach can therefore be seen as crucial when attempting to reduce the amount and severity of domestic abuse.

2.14 Welsh Women's Aid would also advise that the Bill incorporates a duty to pay regard to the UN Convention on the Elimination of All Forms of Discrimination Against Women (known as CEDAW) and the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (known as The Istanbul Convention)[2] which was adopted by the UK Government in 2012 but is yet to be ratified. As Wales are members of the EU through the UK, Wales will also be responsible for complying with the Istanbul Convention when ratified, and as safe housing is key to supporting victims of

[1] https://www.dur.ac.uk/criva/projectmirabal/

[2] http://www.coe.int/t/dghl/standardsetting/convention-violence/about_en.asp

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domestic abuse, it is important that registered social landlords are aware of the duties that come under these conventions.

2.15 Welsh Women's Aid supports the proposals for a more flexible approach to tenancies, which supports women to remain in their homes when safe to do so, once the perpetrator has been evicted. We hope that for some women it will allow them to sustain their tenancy individually, maintaining independence and the security of a home and local support network.

2.16 We would strongly advise, that in the circumstance where an eviction takes place on the grounds of domestic abuse being perpetrated, that there is guidance for registered social landlords to signpost to local specialist services and ensure community support is arranged. We would recommend that this is explicit within the Bill.

2.17 Welsh Women's Aid feel it is also important to highlight the detrimental effect that the UK Government's welfare reform may have on the success of flexible tenancies. This may be the case when the benefit cap and the spare room subsidy have an effect on whether a victim is able to afford to live alone, and the potential pressure this may impart for them to remain in a violent or unsafe home.

2.18 This concern also relates to tenancy arrangements for 16 and 17 year olds. Welsh Women's Aid supports the proposal to treat 16 and 17 year olds in exactly the same way as those aged 18+, however, girls between the age of 16 and 19 are also the most 'at risk' group in terms of experiencing domestic abuse with the CPS 'Violence against Women and Girls Report stating that 25% of victims of violence against women were under the age of 24[3]. It is therefore vital that those aged 16-17 are also afforded the same protection in housing as those aged 18+, as well as a sensitivity to these increased levels of victimisation.

2.19 There are also relevant concerns in relation to the impact of welfare reform on these proposals, and how effectively they can be implemented. The single room rate for individuals under 25 may affect their ability to maintain their tenancy individually even with legal support through housing.

3.0 Thank you again for the opportunity to contribute to this consultation. If you require any further clarification of the information contained in this response, or any other matter relating to volence against women, please do not hesitate to get in touch.

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[3] http://www.cps.gov.uk/publications/docs/cps_vawg_report_2014.pdf

RH 12

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/

Communities, Equality and Local Government Committee

Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill

Ymateb gan: Awdurdod Tân ac Achub Gogledd Cymru

Response from: North Wales Fire and Rescue Service

Introduction

North Wales Fire and Rescue Service provide an emergency response, protection and prevention service to a population of 687,800 people, residing across 6,172 square kilometres or 29% of the total land area of Wales.

The change of focus some years ago towards the promotion of prevention, rather than intervention has proved highly successful in reducing fires of all types and by association deaths and injuries resulting from fire.

We target staff and resources towards areas of greatest need and focus on those who are considered to be at an increased risk of fire as a result of their age, disability, mental health and drug or alcohol dependency.

Our experience tells us that those persons, who are considered to be at greatest risk, often reside in rented accommodation. We continually work in collaboration with Local Authorities, Housing Associations and private landlords in order to reduce this risk and target the most vulnerable for preventative intervention. This manifests in the form of a Home Fire Safety Check (HFSC) and often the provision of risk reduction equipment, installed on a case by case basis.

The relationship that has been built with Local Authorities and Housing Associations make access to large numbers of rented accommodation easier, and the proactive preventative measures that have been developed in partnership are assisting to continue to drive down the numbers of occasions when the fire and rescue service is called to action. However we are very aware that there are a growing number of privately rented properties emerging, as investors capitalise on a gap in the market that social housing is struggling to fill.

Many of these landlords are proactive and responsible; however there are two groups of landlords that do not do all that they could to provide a safe environment for their tenants.

- Those landlords who are utilising a rental income as an investment and are not fully aware of their obligations to provide and maintain a safe home.
- Those landlords who prioritise the maximising of profit, potentially at the detriment of safety standard for their tenants.

To successfully address the problems associated with these two groups there must be a combination of educational and support, along with regulation and enforcement. The first of the two groups can often be addressed through education and support,

however, the only way to address the less responsible landlords is through regulation and enforcement.

In consideration of the '*Renting Homes (Wales) Bill'* and the need for legislation to improve arrangements for renting a home in Wales, North Wales Fire and Rescue Service supports its implementation and considers it a positive step in protecting the interests of both landlord and tenant as well as the safety of the tenant.

North Wales Fire and Rescue Service have a particular interest in Part 4 of the Bill, Condition of the Dwelling.

Condition of Dwelling

Chapter 2 Section 91 of the Renting Homes (Wales) Bill states:

Landlord's obligation: fitness for human habitation

(1) The landlord under a secure contract, a periodic standard contract or a fixed term standard contract made for a term of less than seven years must ensure that the dwelling is fit for human habitation –
    (a) On the occupation date of the contract, and
    (b) For the duration of the contract.

Section 92 describes the:

Landlord's obligation to keep dwelling in repair

(1) The landlord under a secure contract, a periodic standard contract or a fixed term standard contract made for a term of less than seven years must-
    (a) Keep in repair the structure and exterior of the dwelling (including drains, gutters and external pipes), and
    (b) Keep in repair and proper working order the service installations in the dwelling.
(2) If the dwelling forms part only of a building, the landlord must-
    (a) Keep in repair the structure and exterior of any part of the building (including drains, gutters and external pipes) in which the landlord has an estate or interest, and
    (b) Keep in repair and proper working order a service installation which directly or indirectly serves the dwelling, and which either-
        (i) Forms part of any part of the building in which the landlord has an estate or interest in, or
        (ii) Is owned by the landlord or is under the landlord's control

The Bill goes on to describe that a 'service installation' means an installation of water, gas or electricity, for sanitation, for space heating or for heating water.

An opportunity exists here to include the provision of smoke detectors and Carbon Monoxide detectors in all rented accommodation as a statutory requirement.

Smoke Alarm Installation and Maintenance

Building Regulations require the provision of smoke alarms in all new dwellings but at present landlords are not legally required to install or maintain smoke alarms in their properties (apart from Landlords of HMOs). Working smoke alarms are known to be an effective life safety device, and analysis suggests that a person is at least four times more likely to die in a fire in the home if they do not have a working smoke alarm.

In North Wales in 2007 the Chief Fire Officer commissioned a task group to examine a sharp increase of accidental fire deaths in dwellings.

The task group identified that the lack of a fitted working smoke detector contributed to 74% (28) of the accidental dwelling fire death incidents during the monitoring period.

Smoke alarm ownership has steadily increased to levels close to 90% in Wales, with figures reaching 94% in North Wales, however the percentage of addresses that suffer a fire and have a smoke alarm that operated is much lower at 64%. The level of ownership in private rented accommodation also has risen, however a non-regulatory approach will encourage responsible landlords, but will never address the problem of the rogue landlord.

North Wales Fire and Rescue Service strongly believes private sector landlords should be required to install and maintain smoke alarms in their properties, with financial civil penalties for those landlords who fail to comply. There is no evidence that an approach of encouragement would result in greater take up.

Indeed, it is suggested that the non-regulatory approach will not be successful in encouraging those landlords who cut corners, as they are likely to be less worried about doing the right thing and more concerned with maximising profit.

Although fire deaths and injuries have reduced as the direct result of the tireless community safety work undertaken by fire and rescue services across the country, a cohort of vulnerable people continue to die or be seriously injured, and their vulnerability and risk is increased if they reside in sub-standard or badly maintained property.

If an opportunity exists to improve the safety standards in rented accommodation by the installation and maintenance of smoke alarms, it can only help fire and rescue services to continue to reduce instances of death and injury for our most vulnerable communities and reduce the impact on the wider public purse.

On 3rd July 2009, six people died in a fire at a council-owned tower block in South London. The theme of the Lakanal House inquest throughout its 11-week period was of mistakes and missed opportunities to correctly manage and enforce. This level of poor management in relation to basic safety requirements exists in different levels of concentration across the country, and without tightening up statute so as to include a requirement to install and maintain basic equipment like smokes alarms, it is unlikely

that we will improve the conditions for those vulnerable tenants who are currently at the mercy of rogue landlords.

It is worthy of note that many partnership agreements already in place with the larger Registered Social Landlords include a voluntary agreement to install and maintain working smoke alarms. As a result, these larger rented housing providers in many cases already conform to the proposed requirements and there would not be any additional cost to them.

It is proven that warning provided by smoke alarms have successfully alerted many occupants to fires in their early stages and as a result saved countless lives. The benefit of requirements to install and maintain smoke alarms in rented accommodation significantly outweighs any costs associated, as most responsible landlords already provide this equipment.

A ten year smoke alarm can be obtained for less than £10 and whilst it is acknowledged that hard wired detectors would need the services of an electrical engineer, costs are low when compared to the economic cost to the wider public purse of a dwelling fire, injury or death.

Across North Wales, since 2009 there have been **502** dwelling fires where smoke alarms have not been installed or properly maintained. In addition during the same time period there have been **14** deaths and **52** injuries where these alarms have again not been installed or properly maintained. We know that a some of these fires have been in poorly maintained rented properties, occupied by tenants with a variety of complex needs.

North Wales Fire & Rescue Service would ask Welsh Government to continue to work towards improving home safety and ensure all tenants have a fire safe home. This can be achieved by including the need to install and maintain smoke alarms as part of the requirement for landlords to provide a safe and habitable home, and subsequently prevent the occurrence of future tragedy that could so easily be avoided.

Electrical Installation Upgrade and Regulation

Whilst it is widely acknowledged that smoke detection significantly reduces the impact of accidental dwelling fires as it raises the alarm in the early stages and subsequently allows for residents to make their escape or extinguish the fire, if it were possible to prevent the fire from occurring in the first place, the numbers of fire deaths or injuries would be reduced further.

Fires in the home begin for a variety of reasons that are often difficult to control or prevent, however fires of electrical origin could be prevented in rented property if better regulation was available, that paid particular attention to:

- The intake to the premises
- Installations fixed within the premises

- Appliances supplied by the landlord.

Electrical Safety First recommends that electrical installations in rented dwellings should be checked by a qualified electrician every 5 years, and that a visual inspection of electrical sockets should be undertaken at each change of tenancy. An inspection by an electrician will cost between £100 and £150

North Wales Fire and Rescue Service is convinced that there should be a statutory requirement for landlords to have electrical installations regularly checked by a competent person, so as to ensure the safety standards in more than 190,000 rented properties across Wales.

Good practice examples of accreditation schemes already exist in parts of England where those who wish to be accredited must provide an Electrical Installation Certificate. The landlords who do become accredited are happy to provide this as they consider the safety of their tenants as a priority. Rogue landlords or those who are less scrupulous will not be accredited and would not carry any out work that is not required in statute. It is suggested that the evidence to support the requirement for an Electrical Installation Certificate is in the improvements achieved in Gas installations since reforms to regulations and the requirement for a Gas Safety certificate some time ago.

North Wales Fire and Rescue Service considers the re-inspection period of 5 years to be appropriate and therefore would support this approach.

Since 2009 North Wales Fire and Rescue Service has attended **501** fires that have resulted from electrical appliances or installations, all of which are likely to have been prevented if a modern fuse board with protective RCD devices had been installed.

North Wales Fire and Rescue Service would also support the need for a visual inspection to be undertaken at each change of tenancy. It would be highly beneficial for this change of tenancy check, to incorporate a wider risk assessment that includes all areas of home safety, including a check of the provision and maintenance of smoke and CO detectors, as well as a home safety check that considers the needs and vulnerabilities of not only the property, but also of the tenant.

Carbon Monoxide (CO) Detectors

Carbon Monoxide (CO) poisoning is a silent killer that affects many tenants in Wales. The extent of CO present in people's homes is still largely unknown; however, a study conducted by John Moore's University in 2011 found 23% of homes surveyed contained CO levels at which symptoms of poisoning can occur. Although gas safety regulations offer some security, the fact remains that many tenants still suffer CO poisoning. Currently a landlord has guidance available in relation to the Housing Health and Safety Rating System and in addition must conform to the following legislation.

- The Gas Safety (Installation & Use) Regulations 1988

- The Electrical Equipment (Safety) Regulations 1994
- Smoke Detectors Act 1991
- The Furniture and Furnishing (Fire) (Safety) Regulations 1988 as amended 1993
- Energy Performance Certificates

Although landlords and letting agents have always been legally required to abide by these rules and regulations, there are alarming numbers of reports and surveys that suggest this is not happening – particularly from a safety perspective. The landlord is the owner of the property and therefore has to take ultimate responsibility for the property and for their tenant's safety, although it is more complex if the landlord discharges some or all of the responsibilities to a letting agent and someone who is classed as a 'qualified person'.

The reason that responsibility is a grey area is because the law is different depending on the type of safety. For example, with Carbon Monoxide, "the Landlord of premises has a non-delegable duty under Regulation 36 of the Gas Safety Regulations to ensure that gas fittings and flues are maintained in a safe condition and an obligation to ensure that appliances and flues are checked."

From a landlords' perspective, it is their "absolute duty to ensure a safe condition is achieved" and if it turns out the property is not safe, then the Landlord will have committed an offence. However, landlords can protect themselves by ensuring a qualified person (i.e. Gas Safe registered person) is employed to carry out the necessary work and it is done at the correct interval of time. If a landlord does this and there is a problem with Carbon Monoxide poisoning, then the fault is likely to lie with the qualified person, so it is unlikely that the landlord will be prosecuted.

Fire safety and responsibility for delivering a safe home to tenants residing in Houses in Multiple Occupation on the other hand is addressed under different rules. If there is a fire, it is not necessarily just the landlord who has a duty to ensure the tenants safety. Unlike with Carbon Monoxide poisoning, the Regulatory Reform (Fire Safety) Order 2005 says tenants should be protected from fire by a 'responsible person'. So this can be a letting or managing agent, a caretaker or the landlord and typically it will depend on who is responsible for maintenance and repairs for the property. It should not be forgotten that the Regulatory Reform (Fire Safety) Order does not apply to single private dwellings and as a result no powers or enforcement is available for much of the private rented housing stock.

The complexity of the responsibility framework also translates into a complex set of interested bodies and associations. However in the case of future tragedies in rented properties, this complexity should not mitigate against the simple fact that the vast majority of CO deaths in rented property will be prevented if all such properties had working CO alarms.

As a result North Wales Fire & Rescue Service would ask Welsh Government to continue to work towards improving home safety and ensure all tenants have a Carbon Monoxide safe home by including the need to install and maintain CO

Detectors as part of the requirement for landlords to provide a safe and habitable home, so as to prevent the occurrence of future tragedy that could so easily be avoided.

Preparations for the new powers requiring landlords to fit smoke alarms and carbon monoxide detectors in private rented homes having been completed in England, and the Energy Act legislation will now be laid before parliament before the end of this parliamentary session.

Summary

The invitation to contribute to the final drafting of the Renting Homes (Wales) Bill and particularly section 4 – Condition of the dwelling, provides us with an opportunity to consider how we can truly impact positively on the health, safety and wellbeing of many of our residents in Wales who reside in private rented accommodation.

Work undertaken previously in partnership in Welsh Government such as requirements for domestic sprinklers to be installed in new premises as well as other community safety and risk reduction work demonstrates the appetite for a collaborative approach to addressing the needs of our communities and another opportunity presents itself here.

By the introduction of a five yearly electrical safety check, that incorporates a check of the electrical intake, the electrical installation and any appliances provided, it is envisaged that the numbers of electrical fires in rented accommodation will decrease.

The additional safeguards of a change of tenancy visual inspection and the requirement for RCD protection will again assist in removing risk and preventing fires.

In the event that a fire was still to occur as the result of a variety of other reasons, the need to continuously promote smoke alarm ownership and maintenance remains. An opportunity exists to close the gaps between new dwellings that require smoke detectors to be installed and older dwellings where there was previously no such requirement.

The steps that have been taken in England to make it a requirement in legislation for the installation of smoke detectors and carbon monoxide detectors in privately rented accommodation are considered to be positive and North Wales Fire and Rescue Service would fully endorse them being included in statute in Wales.

It is acknowledged that the increase in regulation will result in an increase in an enforcement workload for the responsible authority, however it is suggested that these costs are significantly less of a burden on public spending than would result from even one fire death in Wales.

Recommendations

This response incorporates five recommendations and North Wales Fire and Rescue Service requests that consideration is given to:

1. **Introducing the requirement in the Renting Homes (Wales) Bill/Act for all privately rented accommodation to have a five yearly certified electrical check that considers the intake, the installation and any provided appliances.**

2. **For there to be a requirement for privately rented properties to be protected by suitable RCD safety devices.**
3. **For there to be a visual inspection by an electrical engineer at every change of tenancy**

4. **For there to be a mandatory requirement for the provision and maintenance of smoke alarms in the Renting Homes (Wales) Bill/Act**

5. **For there to be a mandatory requirement for the provision and maintenance of Carbon Monoxide alarms in the Renting Homes (Wales) Bill/Act**

RH 13
Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/
Communities, Equality and Local Government Committee
Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill
Ymateb gan:Cymdeithas Asiantaethau Gosod Preswyl
Response from: Association of Residential Letting Agents.

1. I am writing to you in my capacity as Managing Director of the Association of Residential Letting Agents (ARLA), to reply to the Communities, Equality and Local Government Committee's consultation of the Renting Homes (Wales) Bill.

Part 2 – OCCUPATION CONTRACTS AND LANDLORDS

2. ARLA is supportive in principle of the creation of two separate types of contracts – the secure tenancy contract for social housing and the standard contract for commercial private rental sector housing. The simplification of the tenancy regime is a positive step as it moves the sector in Wales away from the many types of complicated contacts that created confusion.

3. This separation is also important as it provides for the inclusion of bespoke measures between the landlord and tenant that is unique to the type of property in question.

4. Separately, ARLA is broadly supportive of clause 29 of the Bill on model contracts. We believe that the provision to allow Welsh Ministers to prescribe model written statements of contracts is a sensible step as it creates a standard for the industry to follow and guards against substandard and ill-thought out tenancy contracts that fail to provide adequate protection to both landlords and tenants.

5. However, ARLA believes that any model contract should allow for the inclusion of supplementary and special terms and conditions in order to give landlords the ability to add their own clauses to reflect the unique features and nuances of their individual properties.

PART 3 – PROVISIONS APPLYING TO ALL OCCUPATION CONTRACTS

6. Schedule 5 outlines measures to allow Welsh Ministers to make provisions to secure the availability of tenancy deposits schemes. ARLA would like the Welsh Government to provide further clarity on whether there will be a tendering process to win the right to administer these schemes or whether it is planning on using existing DCLG-authorised schemes that cover both England and Wales.

7. ARLA is very supportive of the clarity afforded in clause 57 of the Bill on dealing with occupation contracts, which denies tenants the opportunity to take a mortgage out on their landlords' properties. This has been a real issue for unencumbered landlords across all the nations of the UK and we are pleased the Welsh Government has taken a lead on tackling this problem.

8. We are also pleased to note that the successor provisions contained within clauses 73-82 can be excluded from standard contracts under clause 139. Succession rights are not appropriate for short tenancies, so this is a sensible step.

PART 4 - CONDITION OF DWELLING

9. ARLA believes that clause 98(4) needs strengthening in light of a landlord's liability for failing to comply with clause 91 or 92 regarding property standards. This is because it can often be difficult for landlords to gain consent to make repairs to 'common parts' of a building that the landlord does not own.

10. We believe that it is therefore important that the clause is reworded to make specific reference to both the potential refusal by the freeholder to allow the landlord to make such repairs and on the time it can take to gain permission to make repairs or improve the common parts of properties.

11. Furthermore, ARLA is concerned by the measures laid out in clause 101 of the Bill, relating to dwelling waste and acting in a tenant-like manner. This provision removes common law requirements and does not replace them with new measures in the primary legislation. The Bill's Explanatory Guidance references the plans to introduce supplementary provisions following the passing of the primary legislation, but we feel that such measures are too fundamental to the terms of a tenancy to be left until secondary legislation.

PART 9 - TERMINATION ETC. OF OCCUPATION CONTRACTS

12. We believe that clause 177(1)(b) and clause 196(1)(b) which both relate to the period in which a landlord can no longer make a repossession claim should be extended to four months, rather than two months, as is currently outlined in the Bill. This would bring the measure in line with other notice durations contained in the other provisions within the legislation.

13. The inclusion of various different timescales will only confuse landlords and lead to vexatious and frivolous claims to legitimate repossession proceedings, based on confusion over dates of service and validity periods.

14. Furthermore, clause 201 lacks the necessary consistency with the rest of the Bill. It states that the court 'may' make an order for possession in certain cases, while in clauses 176, 179, 183, 184, 188 and 196, the word 'must' is used instead. It is important that this ambiguity is corrected and ARLA would strongly urge that the word 'must' is used throughout, as it affords landlords legal certainty, whilst the use of the word 'may' makes the grounds discretionary and therefore exposes landlords to significant risk.

15. Additionally, the 'exceptional hardship' provisions contained within clauses 207(4) and 215(2) are likely to fundamentally change possession proceedings and cause unprecedented uncertainty. This is because nearly all tenants who are in rent arrears could be reasonably termed as suffering hardship, whilst the prospect of losing their home would push them into 'exceptional hardship'.

16. ARLA is keen to see this term removed from the legislation, as if a landlord is unable to evict a tenant who is not paying their rent because of this provision, the landlord could face the prospect of repossession of their property by the mortgage provider, as the landlord may not be able to make the repayments themselves.

17. This provision is therefore open to potential abuse by tenants, no-win-no-fee lawyers and local authorities, leading to a situation where landlords are unable to remove their tenants

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despite the fact that they are in serious rent arrears.

18. ARLA agrees that the issue of retaliatory evictions needs to be decided once and for all and is therefore broadly supportive of the principles behind clause 213 of the Bill, which outlines new restrictions around retaliatory repossession of a property in order to avoid an obligation to make necessary repairs.

19. However, the wording of the legislation is too weak. ARLA recommends that the Welsh Government consider adopting the measures on retaliatory eviction provisions contained within the UK Government's Deregulation Bill. We also believe that the clause should expressly exclude repair issues that affect the 'common parts' of property. We strongly believe that only repairs that are directly under the control of the landlord should be considered as part of retaliatory eviction cases.

20. Furthermore, ARLA would like to clarify an issue in relation to the plans contained within clause 214 that would allow the decisions of landlords to be judicially reviewed. Private landlords are not providing a public service and should therefore not be expected to fall under the scope of a Judicial Review.

21. However, if a tenant is renting from a private landlord and receiving Local Housing Allowance (LHA), is has recently been argued that they are providing a public service and therefore open to Judicial Review. Such an outcome would have devastating consequences on the provision of private rented properties available for people receiving LHA; as private landlords will be disinclined to let their properties to such individuals. Therefore, ARLA strongly recommends that the clause includes a provision to ensure that private landlords renting properties to tenants on LHA are operating in a private capacity and thus cannot be subject to a Judicial Review.

22. ARLA welcomes the principles behind clause 216 relating to repossession of abandoned dwellings; however the measure has an obvious flaw. It would be impossible for a landlord to serve a tenant with a notice of repossession on the basis of abandonment, by simple virtue of the fact that the tenant would not be at the property to receive it.

23. Confusingly however, clause 243(3)(c), which defines a dwelling as subject to a contract, seems to offer a solution to this, while, conversely, clause 218(2), on contact-holder remedies, provides the tenant with the grounds for defence. Therefore it is clear that further clarification is needed on this matter.

24. We believe that the provision affording tenants six months to set aside an abandonment claim, afforded via clauses 218(1) and 224(1), is too long and should be shortened to eight weeks. We believe it is reasonable to expect a tenant to reply within two months if they have not abandoned a property, while six months allows people enough time to move properties, end that subsequent property before demanding their original tenancy back.

Schedule 10 - SUITABLE ALTERNATIVE ACCOMMODATION

25. Schedule 10 makes frequent reference to the "contract-holder and his or her family". ARLA believes that this could be misinterpreted that a landlord would need to accommodate both the tenant and the tenant's family (regardless of whether the family live with the tenant). In particular, clause 4(4) indicates that a private landlord would have to provide alternative

accommodation capable of meeting social housing standards. Such a provision leaves open the possibility of a tenant demanding that the landlord replace his or her studio flat with a four bedroom house in order to accommodate his family, which is neither right nor fair.

26. We recommend that this Schedule be amended to state that only the tenants and other permitted occupiers have a right to suitable alternative accommodation.

27. Clause 4(4) should also be reworded to say that the landlord is obligated to only provide a property similar in both size and rental value to that which was abandoned.

28. Thank you for taking the time to read this submission. I would very much welcome the opportunity to discuss the issues raised above in more detail and would be delighted to provide oral evidence to the committee when it holds evidence sessions in the spring term.

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RH 14

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/
Communities, Equality and Local Government Committee
Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill
Ymateb gan: Resolve Antisocial Behaviour (Grŵp Troseddau a Niwsans Landlordiaid Cymdeithasol)
Response from: Resolve Antisocial Behaviour (Social Landlords Crime and Nuisance Group)

Introduction

I write on behalf of RESOLVE Antisocial Behaviour (formerly known as the Social Landlords Crime and Nuisance Group).

Established in 1995, RESOLVE Antisocial Behaviour is a not-for-profit organisation that exists to help those involved in the social housing sector to deal positively with antisocial behaviour (ASB) and empower communities.

Tackling ASB is core business for our 300 plus members who manage in excess of 3 million homes throughout the UK including the majority of social housing provision in Wales.

Our membership includes a large proportion of the leading practitioners at the sharp end of tackling ASB across Wales and with a proven track record of positive achievement stretching back almost two decades.

This response represents the views of RESOLVE Antisocial Behaviour and not necessarily those of individual members. However, the views of the membership in Wales have been sought in the preparation of this response.

RESOLVE Antisocial Behaviour's response

Consistent with our response to the earlier consultation on the White paper in August 2013, RESOLVE Antisocial Behaviour remains supportive of the Bill's principal objectives.

We do, however, have concerns over two specific aspects of the Bill as it is currently drafted, namely:

1. Section 55 - Anti-social behaviour and other prohibited conduct
2. Possession claims (withdrawal of Ground 7a)

Our concerns arise from the understanding that these provisions if not amended will unintentionally impede the ability of housing providers and their partners to resolve ASB in specific circumstances and, in the case of Section 55 particularly, will introduce avoidable uncertainty in the courts thereby increasing the costs to litigants and the courts in terms of time and money and extending the suffering of victims.

The remainder of this response elaborates on these issues more fully.

1 Section 55 Anti-social behaviour and other prohibited conduct

The prohibition on the contract holder in subsection (5) to "not allow, incite or encourage any person who is living in or visiting the dwelling" to act as mentioned in subsections (1) to (4) represents a fundamental departure from the current position whereby tenants are responsible for the behaviour of everyone residing in and/or visiting the property.

The current position effectively requires the tenant to 'take control' of their tenancy/household whereas S 55(4) as in the Bill suggests that responsibility on the part of the tenant for the acts/behaviour of such others will only apply in circumstances where s/he has express knowledge of or is complicit in the acts/behaviour involved.

When seeking the views of our members many cited cases where this wording could present difficulties. Examples of these cases include:

- Where a Parent/Guardian is away from the property and in their absence the child causes problems for the neighbours
- Where a tenant may be vulnerable and has an "open door policy", with lots of visitors causing nuisance to neighbours and the tenant refusing (or often unable) to keep them away.

We understand that the inclusion of such wording is to prevent landlords seeking possession in cases where alternative remedies may be more appropriate, however we feel that through the adoption of proportionality assessments (whether formal or informal) landlords already take this into consideration. For these types of matters, landlords will routinely try many informal methods, including support referrals – it is the cases where these are unsuccessful in changing the behaviour that the Landlord may take the decision to seek possession, often to prevent the continued suffering of entire communities. In addition to the Landlord's internal checks, given the discretionary nature of this ground, the Court provides a further test of necessity and reasonableness and therefore explicit provision in the Bill not required.

We also recognise the view that once a tenant has been warned of the behaviour and subsequently fails to curtail it, it could be argued that they are "allowing" the behaviour to occur. We are however concerned that whilst the inclusion of these words may not prevent Landlords from ultimately securing possession, they invite legal uncertainty which inevitably results in delays, additional costs and further suffering for the victims.

Further to the above, Landlords report the current wording of the ASB ground (as found in the Housing Act) assists them in reducing levels of ASB at early stages. Many have an Acceptable Behaviour Contract (ABC) process, with letters being sent to the Parents/Guardians of young people starting to exhibit ASB. Where these young people

reside in social housing property, letters sent often refer to the behaviour representing a breach of the Parents/Guardians tenancy conditions. This very cost effective intervention can often be enough to make the Parents/Guardians take responsible, given the powerful incentive of wishing to maintain their tenancy. We fear that S 55(4) weakens these low-level remedies.

Our view is that S 55(4) as currently drafted represents a significant and worrying diminution of the landlord's ability to address ASB and to protect victims adequately.

We see little or no evidence of landlords using the current ASB ground in a manner which could be deemed irresponsible and would respectfully submit that it is effective and does not need to be changed,

Accordingly, we recommend that the subsection is amended to replicate as fully as possible the current position as described.

2 Possession claims (withdrawal of Ground 7a)

One negative impact, in our opinion, of the measures set out in the Bill if enacted will be the removal of the absolute ground for possession (7a) introduced last October by Section 97 of the Anti Social Behaviour Crime and Policing Act 2014.

We remain of the opinion set out in our response to the Welsh Government's consultation on the then proposed *"New mandatory power of possession for anti-social behaviour"* in 2012:

"The SLCNG [now known as RESOLVE Antisocial Behaviour] welcomes the recognition that tackling anti-social behaviour effectively requires implementation of a holistic approach within which prevention and early intervention techniques are used effectively by social landlords to deal with the majority of issues.

As noted in the consultation document, eviction is used sparingly, but without hesitation when it is necessary, to resolve cases.

Where eviction is necessary to resolve anti-social behaviour, the experience of many of our members is that it takes far too long to secure it.

For that reason we are fully supportive of the objective that the proposals seek to deliver – i.e. that of speeding up the eviction process in the interests of victims, witnesses and justice.

It is our view that the proposals, when implemented, have the potential to speed up the eviction process in a limited number of circumstances."

We recognise that there are some concerns about the effectiveness of a mandatory ground for possession, given case law which concludes that a landlord's right to possession is never absolute, however we

highlight further case law which confirms that challenges to these powers should only succeed in “exceptional circumstances”.

We also recognise a view that the absolute ground could result in an increased amount of possession cases: however, we believe that there are a number of safeguards that prevent inappropriate use of this power, including:

- Landlords having the discretion whether to use the absolute ground, even where circumstances would allow
- Landlords completing equalities/proportionality assessments before and during the case to determine whether action is reasonable/necessary
- Landlords adopting an internal review process, allowing for an independent scrutiny of the decision and for the tenant concerned to provide supporting evidence

We also consider that the withdrawal of the absolute ground would impact significantly on victims and witnesses to their detriment. The key benefit of the absolute ground for witnesses is that they do not have to attend Court and give evidence. It is the view based on experience of very many practitioners in Wales that victims and witnesses find attending Court and giving evidence a traumatic experience, even where intense support is put in place for them, and may refuse to support a case. This is increasingly likely in matters relevant to the absolute ground, where cases would be likely to relate to serious criminal/anti social behaviour and/or issues that have been on-going for some time.

Further, in some of the matters where the circumstances for the absolute ground would otherwise be made out, the victim may already have given evidence in the original hearing (e.g. the criminal conviction or breach of injunction hearing) and may find the prospect of having to do so again in a possession hearing too difficult to consider. Indeed, whilst speaking to Welsh members they cited cases where there had been two sets of proceedings for a matter (e.g. they had applied for an injunction which had not resolved the behaviour, leading to subsequent possession proceedings) and the witness had refused to support the second hearing after their experiences of the first.

Accordingly, we recommend that the Bill be amended to incorporate the current ground 7a for possession,

Closing comments

Good and effective practice to tackle antisocial behaviour is at the heart of our purpose as an organisation. If there are any matters arising from this response, or should anything further be required, please do not hesitate to contact me.

cml
Council of Mortgage Lenders

RH 15
Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/
Communities, Equality and Local Government Committee
Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill
Ymateb gan: Cyngor Benthycwyr Morgeisi
Response from: Council of Mortgage Lenders

Renting Homes (Wales) Bill, Stage 1 scrutiny: general principles

We are grateful for the opportunity to provide a submission to the Committee's inquiry into the general principles of the Renting Homes (Wales) Bill.

In our responses to the earlier consultation and White paper proposals, we highlighted the possibility that these proposals might impact buy-to-let lending in Wales, if new burdens on private landlords businesses were so significant as to undermine their viability, or if they affected a BTL lender's ability to realise the mortgage security if this became necessary. We share similar concerns to those expressed by the Residential Landlords Association in respect of burdens on landlords.

We also highlighted, in relation to commercial lending to housing associations, that it is possible the removal of mandatory possession ground 8 could lead to a perception of increased risk in this sector if the ability of registered providers to protect their rental income streams were to be weakened. We share the view expressed by Community Housing Cyrmu that ground 8, although seldom used, is a valued last-resort option for landlords.

We expect that the Bill's associated Impact Assessment and the Committee's scrutiny of the proposals will be sufficient to allay those concerns.

In the end, it will be for the market to respond and adjust to the changes which Renting Homes will bring. We do not feel it is possible at this stage to predict or judge in an evidenced way what the market's response will be.

For these reasons, we have nothing further to contribute to the Committee's stage 1 consideration of this Bill.

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Ymddiriedolaeth Genedlaethol
National Trust

RH 16

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/

Communities, Equality and Local Government Committee

Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill

Ymateb gan: National Trust

Response from: National Trust

Introduction

The National Trust cares for beautiful and historic places in Wales. We are a business as well as a charity; in addition to our hundreds of places that are open to the public, we have a wider estate of houses, cottages and farms available for tenants to let. Many were acquired as part of larger estates and often include estate villages which had historically provided homes for estate workers. Of the 25,000 buildings that we own in Wales, England and Northern Ireland, more than 5,000 are houses and cottages.

We are a major employer and invest in parts of Wales that may otherwise be bypassed by normal market forces.

We currently act as a private landlord for 326 properties across Wales, many of which are residential properties. Renting homes is of great importance to the National Trust in Wales. Renting properties ensures that full use is made of buildings in our care.

Rental income from all our let properties in Wales constitutes around one quarter of the National Trust's annual income in Wales; aside from membership income, it is our largest income stream. The profits we generate from rental income in Wales directly support the National Trust's vision of protecting and enhancing special places forever, for everyone.

We are a self-supporting charity and our main aim in renting homes is to generate rental income to support our purposes. However, we have several subsidiary objectives:

- to safeguard the physical contribution that our houses and cottages make to the historic built environment;
- to further our work in the locality through selection of tenants with suitable skills; and
- where possible, to favour those prospective tenants who make a contribution to their community.

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Rhif elusen gofrestredig / Registered charity number 205846

1. General comments on the Principles of the Renting Homes (Wales) Bill.

Our approach

We do not propose to comment on the social housing aspects of the Renting Homes (Wales) Bill ('the Bill') but will concentrate on the proposals which affect private landlords, focussing in particular on those aspects that will affect us. For this reason we have not responded on every part of the Bill.

The National Trust and Inalienability

The National Trust has the power to declare 'inalienable' the properties entrusted to us and we have done so in relation to most of our property. This power enables us to protect our properties for the benefit of the nation in perpetuity. We cannot sell inalienable property but we are able to let it provided the letting is not so long as to amount, in effect, to a sale. Other than in exceptional circumstances, we do not grant leases unless we are confident that we will recover possession no more than 99 years from the date of the lease.

This means that we must pay particular care in situations where a tenancy is subject to rights of succession, and where a tenant has a right to renew, extend or enfranchise. We make specific comments about the interface between the Bill and inalienability below.

Part 2 of the Bill

As we mentioned in our response to the Welsh Government's previous White Paper on this topic, we support the Welsh Government's desire to simplify and bring clarity to renting a home in Wales.

The Housing Act 1988 has helped generate a vibrant and varied private rented housing sector in Wales, in which the National Trust plays a part. For this reason, we are glad to see that the 'Standard Contract' builds on the Assured Shorthold Tenancy (AST) regime with which we have been working for a while now. The AST regime introduced flexibility and certainty which has enabled us to bring many varied, and sometimes historic, properties to the private rental market. This flexibility and certainty must similarly have helped private landlords across Wales.

Part 3 of the Bill

We are supportive of the obligation on landlords to provide a written statement of certain key terms. We believe this will help provide clarity for both landlords and contract holders. However as a charity, we currently seek to recover our reasonable administration costs of issuing the agreement and it would be helpful if this could continue.

We welcome the fact that the tenancies listed in schedule 2 are excluded from the Bill. However we are confused as to how the Bill intends to deal with the situation of Assured Tenants. It is clear that Assured Shorthold Tenancies issued by private landlords will become Standard Contracts. However there is no express reference to Assured Tenancies. In the guidance issued by the Welsh Government, the only reference to Assured Tenancies relate to those issued by Housing Associations. These become Secure Contracts. The Guidance does state that 'other private tenancies & licences issued by

parhad / continued

private landlords become Standard Contracts'. We therefore presume that it is intended that Assured Tenancies issued by private landlords become Standard Contracts but believe this should be explicit in the Bill itself.

Standardising succession rights (sections 73-83 & 247)

It seems from the Bill that enhanced succession rights would apply to what are currently Assured Tenancies, particularly periodic arrangements granted to sole tenants. These enhanced succession rights could see contract holders being entitled to an extra succession, potentially tying up a property for decades more than under the existing Assured Tenancies regime. This would reduce flexibility for landlords and impede the efficient operation of the rental market.

We also refer to our comments above about inalienability. We do not think it appropriate that existing Assured Tenancies granted on certain succession rights should retrospectively be converted to contracts with an extra succession. This is a very sensitive area for us because most of our properties are inalienable (see above), and we look very closely at the expected duration of tenancies when making the decision whether or not to grant them. If contract holders are concerned about the lack of succession in their agreements then they can seek to become joint tenants with their potential successors

We are also concerned by the addition of long term carers to the category of persons entitled to succeed. Whilst tackling the social problems associated with the provision of long term care is laudable, private landlords should not find their properties encumbered in pursuit of this goal. If implemented, the proposal would reduce flexibility for landlords and impede the efficient operation of the rental market.

We also think it essential that where an Assured Tenancy has arisen on the succession of a family member (rather than a spouse) to a protected tenancy under the Rent Act 1977 (or the Rent (Agriculture) Act 1976) that there would be no further potential to succession.

Provisions Requiring Landlord's consent (sections 84-86 & Schedule 6)

We note that in responding to a request for landlord's consent, it is proposed that landlords have a period of 14 days, starting with the date of the request within which to ask for any further information. Whilst we endeavour to deal with all requests as quickly as possible, we anticipate that this timescale will prove a challenge for any large landlord where consent to such a request needs to be obtained internally via any relevant internal decision making process (necessary in our case to ensure we comply with the requirements of the Charities Act 2011). We would suggest a longer period of time is permitted to ask for additional information.

Part 4 of the Bill

Condition of the Dwelling (sections 91-101)

We are opposed to the removal of liability on a contract holder for waste and the removal of any implied duty to use the dwelling in a tenant-like manner. Many buildings entrusted to us are of architectural or historic interest, or form part of a landscape which is of exceptional beauty. To ensure that we preserve those features we need to have a level of control greater than that which most other landlords require, particularly in respect of repair

and alterations, its use and the behaviour of the occupier.

Without any obligation on a contract holder not to commit waste, we will need to ensure that we incorporate additional terms in all relevant occupational agreements to protect the property. This will add complexity to agreements when the thrust of the legislation is to simplify agreements with contract holders.

Part 7 of the Bill

Provisions Relating to Fixed Term Standard Contracts (sections 132-142)

As the provisions of Fixed Term Standard Contracts can only be varied by agreement, we are unclear how it is intended a rent review should operate under the Bill. The Bill does not include any express provision in respect of increasing rent under a Fixed Term Standard Contract. We assume this is because it is based on current assured shorthold tenancies where the overwhelming practice is for them to be granted for either six or twelve months only. In these agreements there is rarely a need to increase the rent during the fixed term. However we (and we imagine other landlords) have granted assured shorthold tenancies for much longer terms during which there is a need to increase the rent. Would a provision in an existing agreement which provided for say an open market rent review (which can ultimately be decided by an external third party) be permitted under the Bill? It would seem unfair if landlords, who entered into these tenancies in good faith, were not able to review the rent for fear of litigation.

With this uncertainty it is possible that initially many landlords will avoid granting longer term arrangements and instead grant short term contracts until such time as certainty had been clarified through the courts. This acts against the purpose of the Bill which is to help provide certainty and stability in the housing market. As such we suggest the position regarding rent reviews under Fixed Term Standard Contracts should be clarified in the draft Bill.

Part 9 of the Bill

Termination of Occupation Contracts (sections 167-197)

We are concerned that as drafted, the Bill implies that a contract holder under a Standard Contract has a defence to a possession claim based on ECHR rights. Private landlords are not currently subject to a defence based on ECHR rights, such a defence is only applicable to landlords of Secure Contracts. We therefore feel that this distinction should be incorporated into the Bill otherwise it will cause confusion for contract holders and landlords.

Retaliatory Evictions (section 213)

S213 of the Bill is intended to prevent rogue landlords who receive legitimate complaints about the condition of the property seeking to terminate the agreement. Whilst we support the spirit of this provision, we see the provisions as drafted being open to misuse by contract holders and their advisors leading to the potential to frustrate or significantly delay landlords' mandatory possession claims. It will also add considerable expense to what should be routine possession claims because it will be too easy for a contract holder to create repairing complaints in order to avoid the mandatory nature of the possession

parhad / continued

claim. We believe strongly that the drafting should impose some basic requirements for a contract holder to satisfy before a defence of retaliatory eviction can be considered, for example, evidence of written reports/complaints sent to the landlord prior to the service of the relevant landlord's notice.

Abandonment of the Property (sections 216 & 220)

As a charity which has suffered loss of income and damage to properties as a result of abandonment, we are generally very happy to see the proposals in the Bill. However we consider the period of six months within which a contract holder can apply to the court for a declaration that they have not abandoned the dwelling to be too long as it could inhibit the abilty of the landlord to relet the property and thereby put it back into use.

2. Implementation

We submit that a phased approach for the implementation of the changes could reduce what will inevitably be a considerable administrative burden for landlords across Wales.

If model contracts, and appropriately detailed guidance for their use, were published long in advance of the full introduction of the new regime, and legislation were passed which allowed the new regime to operate alongside the old regime for a while, landlords would be able to place new contract holders and renewing contract holders on the new Standard Contracts and Secure Contracts as and when the tenancies were entered into. There will obviously have to be a date on which the old regime finally falls away and the new regime takes over but, given the dynamic nature of the AST market, if this date could be set some time in the future, landlords could make significant inroads into the administrative burden that change-over will entail, almost in the normal course of business.

3. Financial Implications of the Bill

We believe that the costs set out in the Explanatory Memorandum for private landlords are a significant under estimate of the likely costs of introduction of the Bill. We believe the assumptions as to the time taken to produce new agreements and the time taken for professionals to adapt to the new regime have been under estimated[1].

For landlords letting a single property, the assumptions may well be correct. However landlords with larger property portfolios managing a diverse range of properties will need to check the applicability of the model agreements for each property.

In our case, as explained above, as many of the buildings which have been entrusted to us are of architectural or historic interest, or because many form part of a landscape which is of exceptional beauty, we need to have a level of control greater than that which most other landlords require. As many of our properties are unique, it will mean that we are unable to just rely on the model agreements and it will be necessary to consider the appropriate additional terms for us to incorporate in each of our agreements. Whilst some terms could be standard across our portfolio, this process will take longer and therefore

[1] The Explanatory Memorandum assumes that it will take one day for landlords to become familiar to the level required to comply with the new law, it assumes the time taken for landlords to administer, post and print a new contract will be 15 minutes per contract and that the introduction of model contracts will reduce the need for landlords to seek legal advice as it assumes they will be reassured in relying on a model agreement.

parhad / continued

incur a much greater cost that anticipated by the Explanatory Memorandum. We consider it would take at least one hour per contract to ensure that the contract issued on any specific property was appropriate (which in terms of staff time would be in the region of £100 per contract). Doing this for several hundred agreements will be a considerable cost and divert time from other charitable activities.

Due the number of residential leases for which we are the landlord, it will be important for us to have a higher level of knowledge of housing law than the typical landlord. The level of knowledge we require is more akin to that of a community landlord or local authority. Whilst we note that the Explanatory Memorandum has factored in the cost of such familiarisation for some community landlords and local authorities, it has not been factored in for private landlords. In any event, we believe that the level of familiarisation involved for any large landlord (private or community) will be much greater than anticipated.

We anticipate that we will need to familiarise all our legal team, our 9 Rural Surveyors (who manage our let portfolio in Wales) and, to a basic level our 11 general managers in Wales. We anticipate that this will take on average 3 days for each of our rural surveyors and lawyers to provide them with the level of knowledge they will require, (much less for our General Managers). We will need to set up some standard additional terms applicable across our particular portfolio (we anticipate 4 days of work) and we will also need to review our national policies and procedures to ensure that they are in line with the new arrangements (such as our tenancy deposit scheme, our tenants handbook etc). Across such a varied housing portfolio, we anticipate this could be a further 5 days of work. We would anticipate that any large landlord (be it a community landlord/local authority or private landlord) would incur similar costs.

As mentioned above, we believe that if model contracts, and appropriately detailed guidance for their use, were published long in advance of the full introduction of the new regime, and legislation were passed which allowed the new regime to operate alongside the old regime for a while, these costs could be significantly reduced as landlords would be able to place new contract holders and renewing contract holders on the new Standard Contracts and Secure Contracts as and when new agreements were being entered into.

ENDS

RH 17
Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/
Communities, Equality and Local Government Committee
Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill
Ymateb gan: Martin Hemming
Response from: Martin Hemming

Dear SIrs.

I am inclined to agree with your aims to clarify and simplify the letting legislation.However I am dismayed that, in order to achieve this , you have come up with a Model Contract that will result in a document which will be in excess of 30 pages in length.

This is unacceptable purely in terms of the volume of paper involved, and is not a progressive step. It may not seem too onerous for landlords who rent only one property and enjoy long periods of occupation, But I rent to students who typically have a 40 week fixed term and then leave.
I have 24 tenants in shared Licensed HMO. Since, in the interest of fairness, the tenants receive individual contracts. I will be faced with producing 24 times in duplicate, a 30 plus page document which amounts to nearly 1500 pages of printed matter at least once a year.

Furthermore this all has to be posted to guarantors for signing and return. My current tenancy contract, which is legally correct and has been tested in court, is 6 pages in total and I doubt that most of the tenant read that.
To present tenants with anything longer will achieve nothing more than inconvenience to all concerned and especially the landlord. Unnecessary paperwork does not help us in our aims to provide good accomodation for our tenants.

Ymateb gan: Shelter Cymru
Response from: Shelter Cymru

Shelter Cymru works for the prevention of homelessness and the improvement of housing conditions. Our vision is that everyone in Wales should have a decent home. We believe that a home is a fundamental right and essential to the health and well-being of people and communities.

Vision

Everyone in Wales should have a decent and affordable home: it is the foundation for the health and well-being of people and communities.

Mission

Shelter Cymru's mission is to improve people's lives through our advice and support services and through training, education and information work. Through our policy, research, campaigning and lobbying, we will help overcome the barriers that stand in the way of people in Wales having a decent affordable home.

Values

- Be independent and not compromised in any aspect of our work with people in housing need.
- Work as equals with people in housing need, respect their needs, and help them to take control of their lives.
- Constructively challenge to ensure people are properly assisted and to improve good practice.

Summary of key recommendations

- The standard periodic contract should be amended so that, following a six-month probationary period, private landlords cannot evict tenants without good reason. Unless the Bill is amended to increase security of tenure in the periodic standard contract, we strongly oppose the removal of the six-month moratorium.
- The Welsh Government should investigate the feasibility of establishing a specialist tribunal for resolving housing-related disputes.

- The Bill should require private landlords to provide carbon monoxide alarms and five-yearly electrical safety checks in all properties; and should require landlords to provide relevant safety certificates.
- The Key Matters element of the contract should include ‘fitness for human habitation’ so that the state of the dwelling is listed.
- Landlord contract breaches should be recorded against their licence, with serious or repeat breaches leading to revocation of the licence.
- The prohibited conduct clause should be amended to reinstate the requirement to evidence a criminal conviction.
- We recommend the restoration of the right of the tenant to apply to the Rent Assessment Committee, and also the restrictions on rent increases in the first year of a tenancy.
- Supported accommodation providers who choose to operate an exclusion policy should be required to assist excluded tenants to present as homeless to the local authority in order to access temporary accommodation for the 48-hour period and remove the necessity to sleep rough. Decisions to exclude should always be taken by a senior manager.
- In relation to abandonment, we recommend either extending the notice period to eight weeks, or providing detailed guidance to landlords which must include a minimum period of eight weeks with no rent being paid.
- The Bill should ensure that all pre-existing assured tenancies convert to secure contracts, not just those in the social sector
- Our Legal Team has also identified a number of other areas that could benefit from clarification – these are detailed at the end of this response.

Introduction

Shelter Cymru welcomes the opportunity to respond to this consultation. Reform of tenancy law is long overdue and we are supportive of the overarching approach of the Renting Homes Bill. Tenancy law has become so complex over the years that it has been effectively taken out of the hands of those who need to refer to it – landlords and tenants – both of whom often need to source professional legal assistance to perform transactions that should be relatively simple to do themselves in an efficient system.

Problems in the private rented sector (PRS) make up nearly a third of our casework which is greatly out of proportion to the actual size of the sector (14 per cent of all housing). Many of these problems could be resolved more easily or even avoided entirely if the legal basis for tenancies were more straightforward. Simply ascertaining which type of tenancy someone has can be the cause of lengthy litigation. Illegal evictions are all too common, partly because the law is so prescriptive about the correct process. Tenants and landlords often fail to appreciate their responsibilities and rights, while tenancy agreements are written in incomprehensible language and don’t fully describe the actual terms of the legal relationship.

Another consequence of the complexity of the current law is that certain anomalies have developed over time – such as the restrictions around joint tenancies, for example, and the relatively minor differences between local authority and housing association tenancies – and these tend to make the whole system less flexible and responsive to people's needs while serving no clear purpose.

We strongly welcome the Bill's emphasis on the consumer approach, underpinned by clarity and transparency and supported by the universal provision of written contracts. We also welcome the open and consistent way in which the Welsh Government has consulted stakeholders in developing the proposals since 2011 which we feel has already strengthened the scheme in certain areas.

Despite our broad support for the Bill, however, we are concerned about the apparent erosion of tenants' rights in several important areas, including protection from rent rises, the preservation of the rights of fully-assured private tenants, and not least the loss of the six-month moratorium.

We have strong concerns about the lack of security in the periodic standard contract and the likely impact of this on the wellbeing of private tenants as well as the development of the PRS as a whole.

'No-fault' eviction powers are often used inappropriately because landlords perceive that they are easier to use than discretionary powers. Landlords may wish to evict tenants for alleged anti-social behaviour or similar reasons, but often use no-fault powers in order to avoid the perceived uncertainty of using discretionary grounds.

This means that tenants are denied the right to defend their actions and their home, in much the same way as the current Ground 8, which the Bill proposes to remove for social housing along with mandatory possession powers for anti-social behaviour (ASB).

We believe that the spirit of the Renting Homes Bill is about ensuring that the new legal framework is fit for purpose and that grounds are used as they are intended to be used.

Within the Bill there is also a general move away from mandatory grounds, and a broad recognition that there should be judicial oversight over a matter as important as someone losing their home. However, the periodic standard contract as currently framed in the Bill enables landlords to keep tenants on periodic contracts indefinitely – within two months' notice of homelessness at any time, including during the first six months – thus making it considerably easier to use the no-fault 'landlord's notice' grounds.

This will make it even less likely that landlords use appropriate grounds, thus preventing the proper exercise of judicial discretion, as well as masking the true extent of problems in the sector that could potentially be addressed by other policy measures.

This imbalance of power is illustrated in section 126 of the Bill: when giving notice of a variation of a periodic standard contract, the landlord must inform the tenant that unless they consent to the variation, the landlord will issue notice seeking possession.

This amounts to a unilateral variation of a contract – conflicting with an important principle of common law – something that we believe undermines the whole concept of the consumer approach.

Current and former private tenants consulted as part of our response state clearly that stability and security are essential qualities of a home. If the periodic standard contract becomes the default contract for the PRS, as is currently proposed, then it will inevitably end up applying in many inappropriate situations, prejudicing the most vulnerable members of the community, as well as giving Wales the distinction of having the most insecure private rented sector in the whole of Western Europe.

We have a number of recommendations for improving this aspect of the Bill and others. We also have a number of specific comments from our Legal Team, which are detailed at the end of our response.

Security of tenure and the periodic standard contract

We know that Committee members already have a good understanding of the evidence around the changing nature of the Welsh PRS and the growing demands being placed upon it. The sector is no longer primarily housing transient workers and students but is home to an increasingly diverse range of people including households with dependent children who now make up a third of all PRS tenant households[1].

So far tenancy law has not kept pace with these changes, and in recent years the most common tenancy in the PRS (the Assured Shorthold Tenancy or AST) has become the focus of much targeted campaigning by private tenants' groups. Although in Wales we have no strong private tenant voice, elsewhere in the UK there is remarkable consistency in the policy asks of private tenants' groups: *'secure tenancies for all – for as long as you want to stay'*[2] is a key demand for the vast majority of grassroots groups.

Below are some comments from current and former private tenants who are involved in Shelter Cymru's Take Notice project:

'I wouldn't ever go back to privately rented just because of the insecurity of having someone else decide the rest of your life really and the future for you.'

'We were evicted (from privately rented accommodation), we were made homeless with a new baby and suffered extreme trauma and basically it was heart-breaking.'

'I'd never want to go back (to privately renting) unless I really was desperate and I had to. I'd never want to live that way again.'

'That's my ultimate goal at the moment is to save enough for somewhere to call mine for as long as I want to really, and not have to worry if my landlord has other plans.'

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[1] Census 2011
[2] Haringey Housing Action Group

'For me (security of tenure) is quite an important thing because I've got a daughter and that's why you need the stability because otherwise you can't plan for your future or your children's future either.'

As well as the voice from private tenants themselves there is also a growing body of statistical evidence emphasising the need for more secure tenancies. In 2014 we carried out a YouGov survey of private tenants in partnership with British Gas – the biggest private tenant survey ever carried out in Wales[3]. This survey asked respondents whether it would suit them to have a short-term tenancy of less than six months. Only 13 per cent said it would suit them to have a short-term tenancy – while 58 per cent said that it would not suit their needs.

In short, the evidence shows that tenants have varying requirements, some preferring short-term flexibility while others value long-term stability. But the two are not incompatible: security of tenure need not be at the expense of flexibility. A robust legal framework should be able to provide both, meeting the needs of different tenants equally effectively.

The current perception of insecurity among private renters plays a significant role in hampering the development of the sector. Addressing tenants' concerns about security should be a key element of proposals to reform tenancy law. However, the periodic standard contract proposed under Renting Homes not only fails to address these concerns, but actually travels in the opposite direction with the proposed removal of the moratorium.

There is a real danger that Wales will end up with the dubious distinction of having the most insecure PRS in the whole of Western Europe – not only because of the loss of the moratorium but because developments are underway elsewhere in the UK that could see the end of short-term insecure PRS tenancies in Scotland and England.

Currently, proposals for more secure private tenancies are being considered at a number of different levels in the UK:

- The Scottish Government has recently consulted[4] on a new tenancy for the private sector that includes the removal of 'no-fault' eviction powers. The consultation document states that: '*Better security of tenure may persuade more tenants to assert their existing rights, for example on the condition of their homes, without fear of eviction. Knowing they can only be asked to leave their home on certain specified grounds is likely to give them a greater feeling of security. In short tenants may feel they have more power and sense of community*.' In common with Renting Homes, the proposals include measures to simplify and streamline possession procedures so that landlords have more confidence that they can gain possession if they need to.

- In May 2014 the Labour Party in England announced proposals to introduce three-year private tenancies with regulation of rent rises: '*We will change the law to make three-*

[3] We commissioned YouGov Plc to carry out a Wales-wide survey of PRS tenants. Total sample size was 602 adults. Fieldwork was undertaken between 11th December 2013 and 16th January 2014. The survey was carried out online. Figures were weighted to be representative of all private renters in Wales (aged 18+).
[4] http://www.gov.scot/Resource/0046/00460022.pdf

year tenancies the norm instead of the six or 12-month short-term tenancies that most renters have now – so that landlords and tenants both have more stability, but with the ability to terminate contracts early with proper notice if they have to.'[5]

- Greater security of tenure has also been considered by the Conservatives: Eric Pickles MP proposed a 'tenants' charter' at the 2013 party conference that would give tenants the power to demand longer fixed terms. We understand that discussions on longer fixed terms are continuing between the Conservatives and the Residential Landlords' Association.

Within Europe, the UK's private rented market is unusual for offering such low security to tenants. Most other countries have standard lease lengths or open-ended leases: Austria's are a minimum of three years; Spain's are five years; Belgium's are nine years; Germany's, Sweden's and Switzerland's are unlimited.

In the Republic of Ireland, four-year tenancies were introduced by Part IV of the Residential Tenancies Act 2004: following a six-month probationary period, provided tenants haven't been given written notice of termination they automatically acquire the right to stay for a further three-and-a-half years. Part IV tenancies can only be ended on specific grounds and can be periodic or fixed term.

The Renting Homes Bill gives Wales an opportunity to lead the way in the UK in creating a more secure and sustainable PRS. Greater security of tenure would also demonstrate the Welsh Government's commitment to the rights of the 112,000 children living in the Welsh PRS[6], whose education and wellbeing are highly vulnerable to disruption if they have to move home frequently.

Security of tenure: our preferred solution

We have been vocal opponents of the proposal to remove the six-month moratorium that protects tenants from eviction during the first six months of their tenancy. We see the current moratorium as a bare minimum of security: if the Welsh Government intends on retaining the periodic standard contract in its current form as the default for all PRS tenancies, the removal of the moratorium is highly likely to reduce the proportion of fixed terms that are offered to private tenants, particularly those on low incomes.

In our view, this will create a two-tier PRS where the most vulnerable tenants will also have the least bargaining power with landlords due to their weak security of tenure. It will be impossible for families in these circumstances to put down roots and find stability.

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[5] http://www.labour.org.uk/issues/detail/renting

[6] According to the Census 2011 there were 66,125 households with dependent children in the Welsh PRS. Average number of children per family was 1.7

However, Shelter Cymru believes that we should be more ambitious than fighting to retain a mere six months' security. We believe that it is consistent with the principles of Renting Homes to ensure that the new framework is fit for purpose and that grounds for possession are used as they are intended to be used.

There is a broad principle within Renting Homes that there should be judicial oversight over something as important as losing a home: however, that principle has not yet quite translated to the standard contract despite the fact that more vulnerable people are living in the PRS than ever before. The current proposals simply make it too easy for landlords to evict on mandatory grounds in circumstances when they should be using discretionary grounds to give tenants the right to defend their home.

We believe that the right solution for Wales is to offer security of tenure to all PRS tenants following a six-month probationary period during which the landlord has ready access to the 'landlord's notice' ground. Following this probationary period, tenants should have the right to stay as long as they choose, unless they breach the terms of the tenancy.

An alternative solution would be to offer standard tenancy lengths of four-and-a-half years, following the probationary period, giving tenants a total of five years' security of tenure on a cyclic basis. Within the five-year period tenancies may be periodic or fixed term as required, as is the case in Ireland, to enable landlords to safeguard their income. Notice periods for tenants would remain the same as currently proposed in the Bill.

Our preferred solution would be the former. In the case of the latter, we would like to see the Bill grant powers to the Minister to remove 'landlord's notice' grounds altogether via Regulations at a future date.

Either approach would need to permit landlords to raise rents by an acceptable rate within the tenancy. Mid-tenancy rent increases should be limited to no more than one per year and they should be subject to an upper limit in line with an inflationary index.

We also believe it is reasonable for landlords to have an additional ground so that they can gain possession if they need to sell the property.

For tenants, creating more security of tenure would:

- Give renters confidence that they can stay in their home for as long as they need, while also allowing the flexibility that tenants in both social and private sectors value about renting
- Foster more cohesive neighbourhoods and communities with higher levels of engagement from PRS tenants
- Empower tenants by enabling them to use their rights effectively and exercise consumer power to raise standards in the PRS

- Ensure that landlords use appropriate grounds for eviction and would ensure that evictions are carried out justly, with judicial oversight
- Support the increasing numbers of vulnerable people living in the PRS
- Promote a tenure-neutral approach to housing policy in Wales where the PRS is a viable third tenure option alongside social renting and owner-occupation.

For landlords, this approach would:

- Increase consumer confidence in the PRS as a provider of stable and secure accommodation
- Reduce the potential for void months where no rent is paid
- Encourage tenants to see a home as 'theirs' and care for it accordingly
- Encourage a greater focus on homelessness prevention – thanks to the Housing Act 2014, local authority homelessness services will be seeking to engage private landlords at an early stage before formal possession proceedings are begun. Landlords would be more motivated to access this assistance if they lack ready access to mandatory grounds
- Provide a tenancy framework that works for landlords, alongside clearly laid out grounds for possession that are considerably easier to use than current legislation.

This is why Shelter Cymru believes that addressing the insecurity of the PRS should be front and centre of the reform of tenancy law. This would provide the foundation for growth in the sector, and support private renting as a positive, stable housing option alongside social housing and home ownership. As an increasing number of people move to the private sector, and stay for longer, it is vital that we take this opportunity to modernise the tenancy regime.

Resolving disputes

Shelter Cymru recognises that changes to the tenancy regime must be fair and need to work for landlords as well as tenants. Landlords should be confident that they'll be able to regain possession if their tenant breaches the tenancy terms. The Renting Homes Bill will make it easier and more straightforward to use discretionary grounds, which will lead to more predictable outcomes, thus helping to address landlords' concerns in this area.

However we also agree with our landlord colleagues that the county court is not always the most effective route for resolving disputes. As well as the escalating court costs

themselves, we also find that a lack of expertise in housing law among District Judges can sometimes result in delays and poor decision-making that ultimately prejudice both parties.

Many other countries have specialist housing tribunals. The Republic of Ireland has a Private Residential Tenancies Board which now has jurisdiction over private tenancy disputes rather than the courts; Scotland has a Private Rented Housing Panel and recently consulted on a Housing Panel to oversee housing-related disputes across all sectors.

We suggest that the most cost-effective solution for Wales may be to expand the role of the Residential Property Tribunal, which is currently quite under-used.

Creating a specialist tribunal for Wales would considerably increase landlords' and tenants' confidence that they can resolve disputes quickly and fairly when they need to. We recommend that ensuring access to housing justice for all should be an integral part of the Renting Homes approach. While we understand it may not be practical to include this in the Bill itself, we hope that the Welsh Government is able to commit some resource to investigating the feasibility of this approach in future.

Improving home safety

We welcome the inclusion of landlords' repairing obligations in contracts. We also welcome the inclusion of protection from retaliatory eviction, which should give tenants greater confidence to assert their rights. However we also believe that the Renting Homes Bill is an opportunity to improve home safety in further ways.

Our survey carried out jointly with British Gas revealed that nearly two-thirds (64 per cent) of private tenants said that they had had at least one of the following problems in the previous 12 months: damp, leaking roof or windows, electrical hazards, mould, animal infestations or gas leaks.

Just over half were aware that a gas safety check had been carried out in the last 12 months, and one in six (17 per cent) said they had electrical hazards.

One in 10 tenants said that their health had been affected due to the landlord not dealing with repairs and poor conditions over the last 12 months; and of those with dependent children, one in ten said their children's health had suffered.

Further research carried out by British Gas and Shelter England found that just over four-fifths of landlords ensure they have some sort of electrical check carried out at their properties. Of the estimated 189,600 properties in the Welsh PRS, this means there are likely to be around 36,000 without any planned electrical checks.

We would like to see the Renting Homes Bill:

- Require the presence of an audible carbon monoxide alarm in all PRS properties
- Require five-yearly electrical safety checks in all PRS properties

- Require landlords to provide Energy Performance Certificates, gas safety certificates and proof of electrical safety checks to tenants along with the contract at the start of the tenancy and every 12 months thereafter
- Ensure that the Key Matters element of the contract includes 'fitness for human habitation' so that the state of the dwelling is listed.

Enforcement

Cuts to Environmental Health budgets and Legal Aid have both made it considerably more difficult for tenants to enforce their rights in respect of disrepair in recent years. While there is no easy legislative solution to these problems, we believe that existing resources could be used more effectively with stronger links between the Renting Homes Bill and Part 1 of the Housing (Wales) Act. In particular, we think the Bill should ensure that landlord contract breaches are recorded against their licence, with serious or repeat breaches leading to revocation of the licence.

Prohibited conduct

The Bill is an opportunity to define a distinctly Welsh approach to dealing with anti-social behaviour, diverging where appropriate from the Anti-Social Behaviour, Crime and Policing Act. The Welsh Government has already signalled willingness to do this with the proposed removal of the mandatory ground for possession for ASB in the secure contract.

We welcome the broad approach taken by the 'prohibited conduct' clause and the reintroduction of the discretionary ground. However we still believe that the clause as currently worded is too broad. In particular, we are concerned that the Bill removes the requirement for a landlord to produce evidence of an actual conviction. This is a considerable relaxation of the current criminal activity ground for possession.

Existing law[7] states that 'The tenant or a person residing in or visiting the dwelling-house *has been convicted of* using the dwelling-house or allowing it to be used for immoral or illegal purposes, or *has been convicted of an arrestable offence* committed in, or in the locality of the dwelling-house' (emphasis added).

By contrast, section 55 of the Bill states that a breach of contract would be using, or threatening to use, the premises for criminal purposes. A landlord would not have to produce evidence of a conviction as now, and could for example rely on a caution, or lay witness evidence – a situation that would be very open to abuse. **We strongly recommend that the requirement to produce evidence of a conviction is reinstated.**

[7] Ground 2(b) of Sch 2 Housing Act 1985 (Grounds for possession let under secure tenancies)

Rent increases

We welcome the fact that the Bill has restricted rent increases to a maximum of one per year. However, the Bill excludes several other aspects of current legislation that are necessary to protect tenants from disproportionate rent rises, and we would strongly recommend their reinstatement.

Firstly, the Bill appears to remove the contract-holder's right to apply to the Rent Assessment Committee (RAC) as now under the Housing Act 1988 ss.13/14. At present, if before the beginning of the new period from which the increase is to take effect, the tenant applies to the RAC, the increase does not take effect pending the decision of the Committee.

The Bill gives the landlord a right to increase, in the first instance, at any time, and for any amount. **This is effectively a landlord's charter to increase the rent without any independent scrutiny, and constitutes a removal of protection for private tenants.** If the tenant doesn't agree with the increase, it appears their only option is to give notice and leave.

Landlords have a tendency to try and recover via a rent increase money they have had to spend on repairs (not improvements), and the Bill as drafted could not prevent this, whereas the RAC would not permit an increase on those grounds. We strongly recommend reinstating tenants' rights to apply to the RAC.

Secondly, section 123(3)(a) of the Bill allows the landlord to increase the rent as soon as two months after the beginning of the contract, unless the contract includes a term fixing the rent for a minimum period. This is considerably sooner than is permitted in current legislation[8], which does not allow an increase earlier than one year from the outset of the tenancy, unless provided for in the tenancy agreement.

We would urge that sections 13 and 14 of the Housing Act 1988 are re-enacted in the Bill.

Exclusions in the Supported Standard Contract

We support the provisions relating to the Supported Standard Contract, which will increase tenants' housing rights while also giving flexibility to providers to ensure best use of their resources. Our main concern relates to the proposal to temporarily exclude occupiers of supported accommodation.

We understand that many providers already exclude service users in some circumstances when they feel they need to protect other residents. However it is also the case that other providers operate non-exclusion policies, in recognition of the fact that excluding

[8] Housing Act 1988

vulnerable people can lead to further detrimental impacts not only for the individual but also for the wider community.

The very nature of supported accommodation is that it is occupied by the most vulnerable people of society. Such people are likely to find it very difficult to access support or health services or seek legal advice within this period of exclusion. These people would be at serious risk of being forced to live on the streets for up to 48 hours.

Tenants who have been excluded would be defined as homeless under section 55 of the Housing (Wales) Act 2014, and would be eligible for temporary accommodation for that 48-hour period due to their vulnerability.

We recommend that the Bill is amended to require those supported accommodation providers who choose to operate an exclusion policy to assist excluded tenants to present as homeless to the local authority in order to access temporary accommodation and remove the necessity to sleep rough.

The Bill should also require decisions to exclude to be made by a senior manager, following existing best practice in the sector.

Abandonment

While we understand the need to simplify current processes for dealing with abandonment, the current proposals run the risk of disadvantaging vulnerable tenants and are also open to abuse by landlords.

Case law has established that a tenant may leave premises for a long absence without being deemed to have abandoned the property, provided they retain an intention to return. For example, a tenant could leave the premises to visit family abroad for as long as two years, leaving his possessions on the premises and a caretaker person to pay rent, and can be deemed to be continuously occupying.

Under the procedure outlined in the Bill the landlord must make inquiries to satisfy himself that the contract holder has abandoned. Under the procedure it seems that the landlord can deliver notices, make some enquiries, end the contract after the expiry of the warning period of four weeks if the inquiries do not result in any information, and recover possession without a court order.

While there is a process for appealing the notice within six months we do not believe this gives sufficient protection for tenants who may, for example, have been taken into hospital for extended periods and not received the warning notice. There is an implication that there is a duty on the contract-holder to inform the landlord of his or her whereabouts, or risk losing the contract.

Even if the court overturns the notice and orders that the landlord provide suitable alternative accommodation there is no guarantee that suitable accommodation will be available, particularly if the landlord is not a social landlord. A disabled tenant, or one who

has learning difficulties, for whom no other accommodation would be suitable, would be particularly prejudiced by this procedure.

A four-week notice period is insufficient to establish whether a property has indeed been abandoned. For example, it may not be possible to ascertain whether rent is being paid within that four-week period since many rental periods are per calendar month.

We recommend either extending the notice period to eight weeks, or providing detailed guidance to landlords which must include a minimum period of eight weeks with no rent being paid.

Security for fully-assured private tenants

It is clear because of the provisions in Part 2, Chapter 1 that pre-existing tenancies with community landlords will convert to secure tenancies. However, those pre-existing fully-assured periodic tenancies with private landlords will convert into a standard contract unless the landlord gives notice that the tenancy is to be a secure contract (s.17(1)). If the landlord chooses not to, the tenancy becomes a standard contract, with the consequent significant loss of security because of exposure to a s.172 'no-fault' landlord's notice.

This tendency was legislated against in the Housing Act 1988, under which a landlord cannot grant an AST to a tenant who was immediately previously their fully-assured tenant. This prevents landlords reducing tenants' rights by issuing a new AST which in our experience they often try to do.

We strongly recommend insertion of a term to ensure that all existing fully assured tenancies convert to secure tenancies, whoever the landlord may be.

Further clarity

Finally, our Legal Team has highlighted a number of further areas in the Bill that could benefit from clarification, in order to reduce uncertainty and legal challenge post-implementation:

- Although the Bill aims to reduce distinctions between tenancies and licences, there may still be instances when a contract-holder will need to know whether she or he is a tenant or licensee, and it is hard to predict when these circumstances will arise. There is nothing in the Bill to require the contract to state whether it is a tenancy or a licence. Potentially this may lead to confusion. We suggest that the Key Matters should be required to state whether it is a tenancy or licence.

- On the provisions relating to protecting deposits, it is unclear whether the sanctions apply when the landlord complies with the requirements late. For example, if the landlord protects the deposit and/or provides the prescribed information after say 31 days, can the landlord serve a landlord's notice, or can s/he only do so after s/he

returns the deposit to the contract-holder? For the sake of clarity, we suggest that the Bill is amended to bring it into line with the existing provisions of the Housing Act 2004 as amended by the Localism Act 2011.

- There is a lack of clarity in section 66 of the Bill (on sub-occupation contracts) regarding the situation where a contract-holder (i.e. the sub landlord) abandons both the contract with the head landlord and the sub-contract holder/s. The sub-contract holder may apply to the court for an order that the contract-holder's rights and obligations are transferred to the head landlord. Subsection 10 does not allow the court to make the order if the head landlord persuades the court that a possession order against the sub-contract holder would have been made on application for possession by the contract-holder. The Bill is not clear about what then happens – the court cannot make an order to transfer rights and obligations to the head landlord, but no further provision is made as to any other order the court might make. The court cannot make a possession order unless notice has been served. Does the head landlord have to follow the procedure for serving notice to the contract-holder, and copying it to the sub contract-holder, apply for possession and extended possession? Further clarity on this point would be helpful.

- Section 172 does not require a landlord to give reasons for the decision to terminate an introductory or prohibited conduct. Under current law, a notice to terminate an introductory or demoted tenancy must give reasons – failure to do so is a defence against a possession claim. It is a matter of public law duty for the community landlord to provide the reasons in order for the contract-holder to address them in the representations to a review. We suggest adding a subsection to s.150 to state that, in the case of a s.172 notice served to terminate an introductory or prohibited conduct standard contract, the notice must inform the contract-holder of the reasons for the decision to terminate the tenancy.

- Section 152 (termination by agreement) enacts the law of express surrender where the parties agree for the tenancy to end on a certain date. At present, express surrender has to be effected by deed. While this section replaces that requirement, there is no requirement for the agreement to be in writing – we recommend that the agreement should be in writing signed by both landlord and contract-holder.

- In addition, it is unclear whether the Bill excludes the common law surrender by operation of law, where the parties each do an unequivocal act that clearly treats the tenancy as at an end. It would be very undesirable for surrender by operation of law to be abolished by the legislation – can the Bill be amended to expressly include it?

- Under the estate management grounds for possession, reasonable removal expenses must be paid by the landlord for all grounds except the redevelopment grounds (A and B in Schedule 8). Why is an exception being made for grounds A and B? We would recommend that the landlord pay reasonable removal expenses for all estate management grounds.

- Sections 186 and 191 govern break clauses in standard fixed term contracts. Usually a prudent landlord includes a break clause in a fixed term which can only operate if the tenant defaults on rent or breaches the contract. In our view it is unacceptable to give the landlord a right to bring a fixed term contract to an end early where the tenant has not defaulted – particularly with the removal of the moratorium, which will allow the landlord to grant a standard periodic contract if s/he wants to reserve the right to end the contract after less than six months. We recommend that section 191 is amended to require break clauses to operate only if the contract-holder breaches the contract.
- We welcome that the Bill (in s.203) removes the requirement for a divorced spouse to apply to court under the Family Law Act 1996 to be joined to proceedings. However, we would also recommend including any unmarried ex-partners still living in the former shared home in this section, to avoid any inequality arising here.
- Finally, section 214(9) governs the right of a contract-holder under a standard contract to apply for judicial review to the county court of a possession claim by a community landlord on a mandatory ground. The Bill proposes to remove the right of a tenant to apply for judicial review after an order has been made. This restricts the current position, whereby a tenant can apply to set aside a possession order and/or have a warrant suspended while a judicial review is made to the High Court. It would be procedurally simpler for a contract-holder if an application for review could be made in conjunction with an application to set aside a possession order.

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1. INTRODUCTION

The Dispute Service Ltd is a not for profit company limited by guarantee which operates tenancy deposit protection schemes across the United Kingdom, protecting tenancy deposits and offering a free and impartial Alternative Dispute Resolution service in the event of dispute.

Established in 2003 by the Royal Institution of Chartered Surveyors (RICS) and the National Federation of Property Professionals (NFoPP), it currently runs the Tenancy Deposit Scheme in England and Wales, the largest insurance backed scheme, under a contract with the Department of Communities and Local Government and the Welsh Government.

This Dispute Service is also the lead partner in SafeDeposits Scotland Ltd, which is one of three custodial tenancy deposit schemes operating in Scotland since 2 July 2012. Its partners in this venture are the Scottish Council for Voluntary Service, NFOPP, RICS, the Scottish Association of Landlords and the National Union of Students Scotland. SafeDeposits is the largest scheme administrator in Scotland.

The Dispute Service also owns TDS Northern Ireland Limited, which has operated both an insurance backed and custodial tenancy deposit scheme in Northern Ireland since April 2013. Again, it is the largest scheme administrator with over 70% of all deposits protected.

The Dispute Service protects almost 1.2 million deposits in the England and Wales insurance backed scheme, covering well over £1 billion of deposits. Since 2007 it has dealt with over 50,000 tenancy deposit disputes.

The Dispute Service has also established the TDS Charitable Foundation, which is a grant giving body to fund projects which advance education for tenants and landlords about their respective rights and responsibilities. Since its establishment in 2013 the Charity has issued grants of c£100,000 to a range of organisations operating across England and Wales.

The Dispute Service welcomes the opportunity to provide its view on the Renting Homes (Wales) Bill. Our comments are restricted to the narrow but important area of tenancy deposit protection and wider matters of practice in the sector that affect it.

2.THE RENTING HOMES (WALES) BILL

The Dispute Service supports the introduction of The Renting Homes (Wales) Bill, in particular the simplification of tenancy agreements which should give greater clarity to both parties about their respective rights and responsibilities.

However, the ability for a joint contract holder to give notice without bringing the tenancy to an end for the remaining contract holders, is an area which requires careful planning and safeguards to avoid further problems being created in the often contentious area of deposits and arrears.

It is unclear from the current proposals about the practical arrangements for the tenancy when one of the joint contract holders leaves and it is our strong recommendation that greater clarity be provided in the legislation to make it clear to all parties that the remaining tenants are liable for the future rent under the continuing contract, and the outgoing tenant has no further rental liability once the notice has expired (other than their share of the arrears at the time their occupancy ended). This should be an area covered also by the model contract.

Furthermore, the issue of the deposit is an important issue at this juncture, because it is highly likely that the departing tenant would have contributed to a tenancy deposit at the start of the tenancy, and would therefore be expecting a refund of their share to use on another property. This leaves the landlord in the difficult position of:

- Potentially needing to do a check out in order to assess how much of the deposit should be returned to the departing contract holder – which assuming the tenancy is joint and several will mean assessing damage around people still in occupancy, which is a difficult task;
- Requiring the remaining contract holder(s) to make good any shortfall in the deposit caused by one leaving and claiming their share, or arranging a replacement to cover both the rent and the deposit;
- Facing a shortfall of the deposit when the whole tenancy does end, because it was never replenished.
- Also, if the departing contract holder has paid 100% of the deposit, it is perfectly conceivable that the landlord is left with one or more tenants without a deposit.

Our recommendations:

Set out clearly in the legislation that liability for the ongoing rent once a joint contract holder vacates falls on those remaining, as does the responsibility to replenish the deposit to the required level when the departing contract holder's notice expires. This should constitute a fundamental term in the model contract.

There should be a requirement on the departing contract holder to issue a notice of their intention to leave on both the landlord and the joint contract holders, so they are both aware of the implications.

The model contract should ask the landlord and contract holder(s) to specify clearly the amount of deposit paid by each of them at the start of the tenancy, so that it eliminates disputes over the split of the deposit in the event of a joint contract holder leaving at the end of the tenancy.

Although the Bill is very detailed, we feel that this is the ideal opportunity to legislate to bring all existing tenancy deposits, which have not needed protecting to date, into protection (i.e make the requirement to protect all deposits retrospective).

It would make sense that at a time of introducing legislation to improve the standard of the sector, to ensure that by a specified date all tenants are afforded the advantages that tenancy deposit protection brings. Mandating landlords to protect all residential tenancies with a tenancy deposit scheme, irrespective of when the deposit was paid or tenancy renewed, would complement the Bill's aims.

It would also remove any confusion amongst tenants about whether their deposit should be safeguarded. All deposits should be protected.

RH 20
Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/
Communities, Equality and Local Government Committee
Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill
Ymateb gan: Cymdeithas yr Iaith Gymraeg
Response from: Cymdeithas yr Iaith Gymraeg

BIL RHENTU CARTREFI (CYMRU)

Ymateb Cymdeithas yr Iaith Gymraeg

1.Cyflwyniad

1.1. Mae Cymdeithas yr Iaith Gymraeg wedi bod yn ymgyrchu ers ymhell dros chwarter canrif am drefn eiddo newydd, gan ymgyrchu dros statws i'r Gymraeg yn y drefn gynllunio. Cyhoeddwyd ein llawlyfr Deddf Eiddo cyntaf ym 1992 yn seiliedig ar y 6 egwyddor canlynol:

1. Asesu'r Angen Lleol am dai
2. Sicrhau'r hawl i gartref am bris neu rent teg yn y gymuned leol;
3. Cymorth i Brynwyr Tro-Cyntaf
4. Blaenoriaeth i Bobl Leol
5. Cynllunio i'r Gymuned
6. Ailasesu Caniatâd Cynllunio

1.2. Nodwn fod yr ail egwyddor uchod yn berthnasol iawn i ddarpariaethau'r ddeddfwriaeth arfaethedig hon.

1.3. Yn fwy diweddar, cyhoeddasom Fil Eiddo a Chynllunio amgen (Mawrth 2014), ac yn dilyn hynny cynhaliwyd nifer o gyfarfodydd cyhoeddus o Ben Llŷn i Hwlffordd i Gaerdydd i drafod ein cynigion deddfwriaethol.

2.Cyd-destun y Gymraeg a'r Cysylltiad â Rhentu

2.1.Nid oes amheuaeth bod canlyniadau Cyfrifiad 2011 yn amlygu'r argyfwng sy'n wynebu'r Gymraeg. Bu gostyngiad yn nifer y siaradwyr Cymraeg ym mron pob rhan o Gymru. Bu'r gostyngiad mwyaf yn yr ardaloedd lle mae'r Gymraeg ar ei chryfaf.

2.2.Cafwyd gostyngiad yn nifer yr adrannau etholiadol lle roedd dros 70 y cant o'r boblogaeth yn gallu siarad Cymraeg, o 92 yn 1991 i 54 yn 2001 i 39 yn 2011. Erbyn 2011, roedd pob un o'r adrannau etholiadol hyn (ac eithrio un yng Nghonwy) yng Ngwynedd neu ar Ynys Môn.

2.3.Dylid nodi mai targed strategaeth iaith Llywodraeth Cymru 2003, Iaith Pawb, oedd codi nifer y siaradwyr Cymraeg o bum pwynt canran ledled Cymru (o 20.7% yn 2001 i 25.7% yn 2011) ac atal y dirywiad yn nifer y cymunedau Cymraeg:

> "Erbyn 2011 - bod y ganran o bobl Cymru sy'n gallu siarad Cymraeg wedi cynyddu 5 pwynt canran o'r ffigwr a ddaw i'r amlwg o gyfrifiad 2001;
>
> "bod y lleihad yn nifer y cymunedau lle mae'r Gymraeg yn cael ei siarad gan dros 70% o'r boblogaeth yn cael ei atal;" [tud.11, Iaith Pawb]

2.3.Ymatebodd Comisiynydd y Gymraeg i ganlyniadau Cyfrifiad 2011 gan ddweud: *"...mae'n wir dweud bod ystadegau a gyhoeddwyd heddiw yn ysgytwad. Efallai bod yna berygl wedi bod i bawb fynd i ryw gyfforddusrwydd artiffisial 10 mlynedd yn ôl, gan gredu bod tro ar fyd, a bod twf mewn rhai ardaloedd yn gwneud yn iawn am y gostyngiad mewn ardaloedd eraill. Os mai felly oedd hi am y 10 mlynedd diwethaf, yna mae'r cloc larwm wedi canu'n uchel iawn .... ac mae yna heriau pendant i'w hateb yn y fan hyn, a hynny ar fyrder."*

2.4 Yn ystadegol, allfudiad pobl o Gymru yw un o'r ffactorau pwysicaf sy'n arwain at gostyngiad yn nifer siaradwyr. Un o'r rhesymau dros allfudiad yw'r ffaith bod y stoc tai yn anfforddiadwy i bobl leol. Credwn fod rheoli prisiau tai a phrisiau rhent yn gallu lleihau allfudo, yn ogystal â thaclo tlodi, a fydd yn ei dro yn cryfhau sefyllfa'r Gymraeg.

3.Ymateb i Gynigion

3.1Cytunwn gyda bwriad cyffredinol y Bil fel y nodir yn y memorandwm esboniadol: *"Mae Llywodraeth Cymru wedi ymrwymo i wneud cymaint ag y gall i helpu pobl gael y tai y mae eu hangen arnynt...mae'n cydnabod pa mor bwysig yw cartrefi diogel, sicr a fforddiadwy i wead bywydau pobl a gwead cymunedau cryf. Rhan y Llywodraeth yw ystyried sut mae'r system gyfan yn gweithio ac ymyrryd lle byddai hynny'n synhwyrol ac effeithiol."*

3.2. Fodd bynnag, rhaid cwestiynu sut mae'r Bil yn mynd i sicrhau bod cartrefi yn 'fforddiadwy' heb wneud ymdrech i reoli prisiau rhent.

3.Yr Hawl i Rentu

3.1. Hyd yn oed gyda chymorth gan yr awdurdodau, ni fydd prynu tŷ yn ymarferol i bawb. Er enghraifft, pan fo person yn derbyn budd-daliadau neu'n gweithio ar gytundeb tymor-byr, gall fod yn anodd iawn cael morgais. Yn wir, o ganlyniad i dlodi, cyflogau isel a phrisiau afresymol y farchnad, mae angen sylweddol am eiddo ar rent yng Nghymru.

3.2. Ar draws Prydain, mae diwylliant sydd yn rhoi pwyslais mawr ar berchentyaeth. Ymhellach, caiff hyn ei adlewyrchu mewn polisi cyhoeddus sydd ddim yn rhoi digon o ystyriaeth i ddarparu tai ac eiddo ar rent. Yn wir, dwysaodd hyn dros y blynyddoedd diwethaf oherwydd gwerthu tai cyngor heb i dai eraill gymryd eu lle yn y stoc ar rent.

3.3. Er enghraifft, yn ôl Cyngor Bro Morgannwg, os bydd nifer y tai a gollir drwy'r Hawl i Brynu yn parhau ar y gyfradd bresennol, ni fydd tai cyngor ar ôl o gwbwl gan yr awdurdod ymhen deng mlynedd. Yn ôl Cyngor Gwynedd mae'r awdurdod wedi colli, ar gyfartaledd, 120 o dai y flwyddyn ers 1996. Golyga hyn fod yr Hawl i Brynu wedi gweddnewid cydbwysedd nifer o gymunedau, gyda rhai ystadau wedi eu tynnu o'r sector tai cymdeithasol yn gyfan gwbwl. Yn ogystal, golyga'r cynnydd cyson mewn prisiau nad dim ond cael eu tynnu o'r sector rhentu mae'r tai yma, ond eu bod hefyd yn dod yn llai fforddiadwy i bobl leol. Ymhellach, ni ellir dibynnu ar y sector rhentu preifat i lenwi bylchau yn y ddarpariaeth hon.

3.4. Mewn nifer o achosion, er enghraifft pan fo diffyg tai fforddiadwy neu pan fo person ar incwm isel, ni all pobl yn brynu tŷ hyd yn oed os ydynt yn medru benthyg tua 50% o'i bris. Pwysleisiwyd hyn gan Ffederasiwn Cymdeithasau Tai Cymru a nododd yn ôl yn 2002:

"...mewn rhai ardaloedd mae'r cynnydd mewn prisiau tai yn golygu nad yw'r Cynllun Cymorth Prynu yn opsiwn i unigolion ar incwm isel."

3.5.Er mwyn mynd i'r afael â sefyllfa o'r fath, mae'n hollbwysig ein bod yn darparu eiddo ar rent rhesymol i bobl leol. Yn ogystal, mae angen sicrhau bod rhentu yn opsiwn ymarferol a dymunol. Nododd y Sefydliad Tai Siartredig yr angen i gymryd camau o'r fath:

"Tra bod mynd ar drywydd perchentyaeth i bawb yn cael y dylanwad mwyaf ar bolisiau ...... bydd y cyfle i dai ar rent gyfrannu at greu cymunedau sefydlog, cynaladwy a chytbwys yn cael ei golli."

3.6. O ganlyniad, cred Cymdeithas yr Iaith bod angen sefydlu'r 'Hawl i Rentu'.

4.Effaith Prisiau Rhent ar dlodi

4.1 Credwn fod cynnydd mewn prisiau rhent hefyd yn cael effaith andwyol ar lefelau tlodi. Nodwn fod arolwg a gynhaliwyd gan YouGov ar ran Cyngor ar Bopeth a Shelter Cymru yn 2013 ynghylch y sefyllfa yng Nghymru wedi darganfod bod "*bron hanner (49 y cant) oedolion Cymru sy'n talu rhent neu forgais yn ei chael hi'n anodd o leiaf rywfaint o'r amser i ddal i fyny â'r taliadau neu'n methu â'u talu. Mae un o bob wyth (12 y cant) yn ei chael hi'n anodd yn gyson."*

4.2 Nodwn ymhellach y daeth ymchwiliad diweddar gan Aelodau Seneddol i'r casgliad bod angen rheoli prisiau rhent. Dywedodd yr Aelodau Seneddol: *"Rydym yn cydnabod mai un o'r prif resymau dros y cynnydd diweddar yn y bil budd-daliadau tai, a'r rhagdybiaeth y bydd y cynnydd yn parhau, yw'r chwyddiant ym*

mhrisiau rhentu yn y sector breifat. Mae'n rhaid i ymdrechion i reoli'r budd-daliadau yma felly gynnwys strategaeth i reoli'r prisiau hyn sy'n cynyddu ar garlam yn y sector rhentu preifat, gan gynnwys rheoli rhent."

5.Gwelliant Arfaethedig

Wrth i ni ddiweddaru ein polisïau fe wnaethon ni lunio gwelliant deddfwriaethol er mwyn gwireddu ein polisi. Nod y gwelliant yw sicrhau bod rhentu yn fforddiadwy i bobl, gan orfodi awdurdodau lleol i bennu prisiau rhent sy'n fforddiadwy yn yr ardal, yn seiliedig ar daclo tlodi. Mae'r gwelliant yn creu'r hawl i bobl leol rentu tai am rent rhesymol, drwy osod dyletswydd ar awdurdodau lleol i ddiwallu'r hawl honno.

Sefydlu'r Hawl i Rentu ar gyfer Pobl Leol

(1) Mae gan bobl leol yr hawl i gael cartref, fferm neu eiddo busnes ar rent rhesymol ac mewn cyflwr boddhaol.

(2) Rhaid i awdurdod lleol ddiwallu'r hawl yn is-adran (1) uchod, a hynny o'r stoc dai bresennol oni bai ei bod yn anaddas.

(3) Rhaid i'r awdurdod cynllunio lleol, erbyn Ebrill 1af bob blwyddyn, bennu'r swm neu symiau o rent a ystyrir yn rhent rhesymol ar gyfer pob awdurdod lleol.

(4) Caiff awdurdod cynllunio lleol bennu amrediad o symiau rhent a ystyrir yn rhent rhesymol ar gyfer ardaloedd o fewn un awdurdod lleol.

(5) Wrth benderfynu ar y swm yn is-adran (3), mae'n rhaid i awdurdod cynllunio lleol roi sylw dyledus i'r canlynol:

(a) lefel incymau cyfartalog yn ardal yr awdurdod lleol o dan sylw;
(b) effaith prisiau rhent ar dlodi yn ardal yr awdurdod lleol o dan sylw; a
(c) yr effaith y byddai'r swm yn ei chael ar fforddiadwyedd rhenti gan ystyried canran yr incymau cyfartalog yn ardal yr awdurdod lleol o dan sylw y byddai'r swm yn ei chynrychioli

(6) Yn is-adran (1), ystyr "cyflwr boddhaol" yw "cyflwr boddhaol" fel y'i diffinnir yn Safon Ansawdd Tai Cymru.

(7) Yn is-adran (1), ystyr "pobl leol" yw:

(a) pobl sydd wedi byw neu wedi gweithio yn yr ardal am gyfnod o gyfanswm o 10 mlynedd allan o'r 20 mlynedd diwethaf;

(b) pobl sy'n gyflogedig neu sydd â chontract am wasanaethau, boed hynny mewn un neu fwy o swyddi parhaol, sy'n gyfystyr ag oriau gwaith amser llawn yn yr ardal;

(c) pobl sy'n hunangyflogedig, boed hynny mewn un neu fwy o swyddi, sy'n gyfystyr ag oriau gwaith amser llawn yn yr ardal; neu

(ch) pobl sydd wedi byw yn yr ardal am o leiaf cyfanswm o 10 mlynedd yn ystod eu hoes

(8) Caiff cyngor cymuned benderfynu beth yw ystyr 'ardal' yn is-adrannau (7)(a)-(ch) uchod, ond ni all ardal y gymuned (â'r eiddo o dan sylw) fod mwy na deng milltir o safle'r eiddo.

(9) Os nad oes cyngor cymuned yn yr ardal dan sylw, neu os nad yw'r cyngor cymuned wedi cymryd penderfyniad i ddiffinio ystyr yr 'ardal' o dan is-adran (8) uchod yn yr ardal dan sylw, ystyr 'ardal' yn is-adrannau (7)(a)-(ch) uchod yw ardal y gymuned (â'r eiddo o dan sylw) neu'r ardal o fewn deng milltir i safle'r eiddo.

(10) Er mwyn diwallu'r hawl yn is-adran (1), caiff awdurdod lleol ddefnyddio ei bwerau prynu gorfodol er mwyn prynu ail gartrefi neu unedau tai sydd heb eu meddiannu.

(11) Daw is-adrannau (1) a (2) i rym 5 mlynedd wedi i’r Ddeddf hon gael y Cydsyniad Brenhinol.

6. Casgliadau

Credwn fod angen rheoli prisiau rhent er mwyn taclo tlodi'n effeithiol yn ogystal â chryfhau'r Gymraeg, felly erfyniwn ar i'r pwyllgor ychwanegu darpariaethau o'r fath at y ddeddfwriaeth arfaethedig hon.

RH 21

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/

Communities, Equality and Local Government Committee

Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill

Ymateb gan: Wyn Morgan Lloyd

Response from: Wyn Morgan Lloyd

These comments have been compiled by Wyn Morgan Lloyd, a private Landlord with a portfolio of some 15 rented properties in Rhayader, Powys. With 30 years' experience as a private landlord.

For the last 15 years 90% of rental income has been re-invested into improving the housing stock, much of which was inherited in poor condition.

There are no new build or buy to let properties in this portfolio and tenants are mixed in type. Ranging from elderly singles to large family units, including, more latterly migrant workers from India.

A number of tenants are in receipt of Housing Allowance, and many more in past years. However, following the restriction on the payment of Housing Benefit directly to Landlords, these tenants frequently fall into arrears. Each time the tenant has been approached to establish affordable payment plans to reduce the arrears and 1 tenant has managed to repay almost £1,750.00 of arrears, once the rental payments were paid directly to the landlord. When the offer of payment plans have been beyond the tenant, or no effort made to repay, Notices to Quit have been issued with two month notice periods, but only when arrears have reached unmanageable levels, in some cases £2,000.00 or more.

In more recent years, properties have been wilfully damaged and left in appalling conditions due to neglect and unsanitary living by a growing number of outgoing tenants. This has led to unnecessary and expensive repair bills mounting into thousands of pounds. This has unfortunately meant that in some years the refurbishment programme of the other properties in need of updating, has had to be abandoned in order to cover these unexpected costs.

Tenancies are issued on a monthly periodic basis and are all Assured Shorthold Tenancies, with the exception of one Assured Tenancy. Tenants have always been very happy to have the flexibility this offers and the no-fault possession option available on periodic tenancies has never been used. Usually if the tenant pays rent and doesn't breach the tenancy agreement in any way they stay, a third of tenants have been in situ for 8 years or more.

Tenancy Agreements are always issued at the outset and part-time administration staff is employed to ensure that all statutory Landlord obligations are met and that tenant complaints and issues are responded to effectively. The team are all members of the National Landlords' Association and the lead administrator is currently undertaking the accreditation offered. The lead administrator is also a member of the Landlord Zone forum and the Residential Landlords Association Cymru.

My comments are mostly limited to the provisions of the Bill that will affect the administration of my rental properties and therefore are concentrated around the provisions that will affect the Standard Period Occupation Contract.

As a committed and experienced Landlord, I welcome reform in the sector with the caveats I have highlighted on the following pages.

Wyn Morgan Lloyd A.C.I.O.B.

The comments below have been collated in the order used in your terms of reference.

1. General Principles.

The terminology used throughout the Bill has clearly been chosen to distinguish the new regime from the existing and with reform of this type this is a necessity. However, the term "Occupation Contract" (OC) may be confused by some as having something to do with their employment, perhaps "Housing Contract" would be a preferable term. Similarly, the term "Contract Holder" (CH) implies that there is one main holder of the said contract and that the Landlord is in some way supplemental to the Agreement. Surely, both parties are holding the contract in unison and the use of an alternative term for the tenant may stop any unintended inferences.

i Part 2 – Occupation contracts and landlords.

In general the concept of a written OC is welcomed and the inclusion of the fixed Fundamental Provisions (FP's) is sensible in all the circumstances, as are the Supplemental Provisions (SP's) which are more likely to be subject to regulatory amendment.

The insistence of the inclusion of Key Matters will also provide clarity between the parties.

The fact that Additional Provisions/Terms (AT's) can be included, allows for the tailoring of the OC to suit the property and the requirements of the Landlord (e.g. no smoking, or no pets, or stairwell not to be obstructed) whilst ensuring that the tenant can easily spot the AT's within the body of the OC and decide if the property is the one for them.

ii. Part 3 – Provisions applying to all occupation contracts.

Written Statements

The obligation on Landlords to provide a written OC is welcomed, the respondent has always done so and strives to stay abreast of all statutory amendments for inclusion where necessary.

However, the interest attached to compensation appears to be excessive and as many landlords are not body corporates and neither are many residential tenants, then the use of the Late Payments of Commercial Debt rate seems excessive. Surely, interest under s.69 County Courts Act 1984 is far more suited

to this type of contract breach. Or even a standard fine for breach of this F.P. in the region of £500.00.

Also, there is an inconsistency between s.31 and s35(6) , surely the relevant date should be 14 days for both?

Deposits and Deposit Schemes

This is currently a Landlord's obligation and is welcomed in the Bill. However, it is not clear if the requirement will mean registering all existing deposits with a new Welsh body/ies. If so, the cost to those Landlords, such as the respondent, who use the insured protection option – Mydeposits, will run into hundreds of pounds, (c. £30 per property) unless, that is, each deposit insurance policy can be assigned from Mydeposits to any new Welsh scheme.

Joint CH's

This is generally welcomed because currently, when a tenant's personal circumstances change, others may come to live at the property who are not a party to the tenancy agreement. From a Landlords point of view, difficulties then ensue when trying to enforce the Agreement or gain possession, as the other person is not part of the contract. This measure may help in that respect.

The phrase 'fully liable' does not make it clear whether this is a joint and several liability, this will need to be established. Otherwise a Court interpretation may mean that liability is apportioned between the JCH's rather than each being liable for *all* the responsibilities and obligations.

Schedule 6 leaves scope for interpretation and is widely drafted and case law will determine 'reasonableness' over time.

Right to occupy without interference

Welcomed.

Anti-social behaviour and other prohibited conduct

Welcomed and is a necessary tool for the Landlord.

Rights to deal

Welcomed and is a necessary tool for the Landlord, as is the right to expressly exclude dealing.

Transfer and succession

s.s.69-71 are welcomed, provided that the right to transfer an OC can be expressly excluded in the OC.

Succession is in theory a good thing to include, with the caveat that the priority successor (especially those aged 16/17 yrs) may not be capable of fulfilling the contract if they are without the financial means to do so. It would be prudent to provide for a right for the Landlord to negate these provisions if the successor is without such means. Otherwise the effect of this provision will be to increase the

possibility that possession claims will be inevitable in the months following succession, leading to further stress on those already bereft.

Landlord's Consent

This is welcomed, mainly because the interpretation of 'reasonable' does not fall under Schedule 6, which may not allow all of the factors under consideration to be taken into account.

Compensation

Please see comments made above under *Written Statements*.

iii. Part 4 – Condition of dwelling

s.91 &92 are obligations that currently stand, although the standard of repair is currently reliant upon case law. This provision will be clearer for the tenant and the Landlord going forward.

S.96 (& s241) – along with permitted occupier the Bill should also include visitors invited to the dwelling by a permitted occupier. Damage in the past has been experienced by the respondent when guests invited by the tenant have caused damage, either wilfully or neglectfully. Permitted occupiers should have to take responsibility for the actions of those they invite into their home.

s.101 – The respondent wishes to comment in the strongest terms that should s.101 stand then the remedies for the Landlord will be greatly diminished as there is no FP stating that a CH must look after the property.

It is understood from the explanatory memorandum that regulations will be developed that provide SP's to cover 'waste' and 'tenant –like manner' within the agreement. This is not enough to safeguard properties from irresponsible tenants and therefore, the SP's should be underpinned with an FP designed to ensure that the CH adheres to such obligations.

The Bill has been developed to encourage parity within the Housing Sector, thus if the Landlord is to be held accountable regarding the condition of the dwelling then so must the CH.

Furthermore, the criteria for fitness for human habitation include such hazards as mould and damp. It is well known in the sector that, despite the best efforts of some Landlords, mould can form as a result of condensation caused by the tenants' life-style i.e. not heating or ventilating a dwelling appropriately. This issue is just one of many whereby it is the actions of the tenant that cause problems and worsen existing problems. The regulations supporting this Act will have to be robust enough to cater for these issues, otherwise unnecessary litigation will be the consequence.

Moreover, if the above point is left unaddressed and is coupled with the removal of the equitable rule governing specific performance (s.100) many Landlords will find that their chances of successfully defending a claim under s91 & 92, where the tenant is at fault due to their acts or omissions, are minimal as the s.96 (1&2) do not include 'tenant –like manner' & 'waste'.

Landlord's right to access

This provision is welcome as is good practice. Also, should you have good rapport with your tenants, most will be accommodating if the notice is given perhaps the evening before, rather than 24hrs, because you have only just heard from the plumber that he can make it tomorrow morning!

v. Part 6 – Provisions applying only to periodic standard contracts

Exclusion for specified periods

No comment – not applicable to the respondent.

Variation of contracts

s.s122 – accepted as necessary.
s.123 - annual rent variations with two months' notice– is welcomed.
s. 128 – the respondent has grave concerns over the time limits and expense that this provision will cause.

The requirement that the Landlord inform the CH of any amendments will be very onerous upon the Landlord in the manner prescribed in the Bill. Changes in regulation are frequent and statutory changes in sectors other than Housing which will affect the terms of the OC are commonplace (e.g. OFT, HSE Immigration etc).

The Model OC as put forward by the Welsh Government currently includes the Contract and 2 separate annexes and runs to some 28 pages and further prescribed information may be applicable. If the Landlord has to update the OC each time there is regulatory change, the expense will become a real burden. Each of these varied and updated OC must be signed by both parties, which may prove prohibitive for those who do not live near to their rental properties.

If in the alternative, all that is required is an updater or statement of variation, it will be incumbent upon the CH to ensure these updaters are filed with the existing OC, leading to a myriad of papers and updaters that will serve to be the OC- the chances for confusion are great and many Landlords and CH's will not be able to keep track of such changes, meaning the chances of keeping track of the original OC as varied will be impossible for many.

Furthermore the 14 day deadline is not clear. If the contract is deemed varied at the date of enactment of any regulation or legislation, then 14 days is not enough time to allow the Landlord to learn of the variation or indeed seek any advice with regard to the implications of the variation.

If the contract is deemed varied at the time that the Landlord draws up the written statement of variation, after learning of the legislative change, then any time limit is pointless, if the Landlord only learns of the change say, 6 months after it was enacted.

s.128 (and the similar provisions for the other OC types) needs to be considered in context of what the reality to landlords and CH's will be, regarding notification

of variations. Especially, as the penalties under s.129 are based around the relevant date of 14 days.

Withdrawal from a joint contract

A massive assumption is being made here: that people who live together enter in any formal arrangement at all! The respondent thinks that this provision is one of those that will be great in theory, but in everyday life most CH's won't even consider it, FP or not!

viii Part 9 – Termination etc. of occupation contracts

Termination without a possession claim

Welcomed as is similar to existing regime.

Termination of all occupation contracts.

s.156 is very much welcomed with the ability to apply for possession after one month, as well as the accelerated possession provisions regarding s55 breaches.

Termination of periodic standard contracts.

The respondent is pleased to see that the Bill has not substantially changed the possession rules from the existing regime. However, the Landlord's responsibilities regarding the restrictions in s.174 & 175 are noted. The respondent adheres to the current requirements and will have no difficulty incorporating the new.

The current difficulties with valid NTQ's have been circumvented, by what appears to be the ability of either party to give notice at any point during the periodic rental period. One assumes that in each case rent would be calculated for the notice period on a daily basis, taking into account any rent that has been paid in advance for a proportion of the notice period.

s.179 – is a welcome introduction, giving the Landlord secure grounds to gain possession in cases where rent arrears have become a problem.

Termination of fixed term standard contracts

This again appears at first sight to be in line with the existing regime for fixed term AST's and the clarity given is welcome.

Possession claims

The respondent considers that the retaliatory eviction claim may be open to abuse by some unscrupulous CH's in the future.

Take the example where the Landlord has had to approach the CH regarding damage they have caused to the property (or even perhaps noise, rent arrears or some other breach) and has warned the CH that a possession claim may result if they do not resolve the issue. At this point the CH can make a claim under s91 or 92 regarding the damage (real or invented).

The way in which these claims are made or investigated is yet to be determined, but it is safe to assume that there will be a considerable delay before the damage is assessed.

This leaves the Landlord in a position where if he issues a possession notice he will spend many months wrangling with the Courts and damage assessors attempting to prove that this was not a retaliatory eviction attempt. It appears that opinion seems stacked against the Landlord in that all possession attempts in this respect are due to the Landlord failing in this obligations rather than the fault of a troublesome tenant.

Abandonment

This is welcomed with two caveats:

s.217 – it is evident on first sight that the Landlord will end up out of pocket due to this provision, but the respondent is pleased to see that the Bill recognises that the Landlord having to dispose of the CH's belongings is often a reality.

s.218 – if the CH does return and the property has not been let to another, then the CH should only have the OC re-instated if they pay the rent for the period of abandonment.

Should the property have been re-let in the ensuing period and the private Landlord doesn't own any other properties, or indeed, has nothing suitable, how can suitable alternative accommodation be provided? This needs clarification prior to enactment.

Forfeiture and NTQ's not available

Although the respondent does include a right to forfeiture in the current tenancy agreements, the option has never been taken. This common law remedy is at odds with current legislation (e.g. Protection of Eviction Act 1977) and is of little relevance to today's residential market. Its exclusion is understandable.

NTQ's are a cumbersome and over complicated way of terminating a tenancy and the new regimes afforded by the Bill appear to make the process much simpler, with less chance of getting dates wrong and ending up with an invalid notice.

ix Part 10 – Miscellaneous

Young people

Welcomed

Trespassers

Accepted – this is not a situation that the respondent has ever encountered. It would depend upon the trespasser and the situation before comment could be made.

Existing tenancies and licences;

It is not clear, whether existing signed Tenancy Agreements will stand (and be interpreted as per the new provisions in the Act) or whether all existing tenants must be issued with new Model Contracts.

Neither is it clear what the Landlord's actual responsibilities are regarding converted tenancies. Has a Landlord complied with s.31 by having already provided a written tenancy agreement when the existing tenancy started, or will he fall foul of s.s. 36-40 by not signing new Model OC's with all existing tenants? This may have enormous implications for the Landlord and may open the door to an avalanche of unnecessary litigation if it goes ahead without further clarification.

s.234 – there appears to be provision for hand delivery of notices only in the Bill. How effective will this be and what about Landlords who live miles away from their rental properties or indeed CH's living miles away from the Landlord. Although electronic delivery has been catered for there is no provision whatsoever for delivery by the postal service. Consideration needs to be given to the eventuality that many notices arriving by mail will therefore be invalid. If 'left at that place' is the only method to serve notices then Landlord's (and occasionally CH's) will have no option, but to use process servers and incur fees of more than £80.00 plus VAT for service of each document as required.

The service requirements regarding postal service (Part 6 of the Civil Procedure Rules) could be incorporated in s.234 with little difficulty.

The respondent has included in the above comments his responses to points 2-5 of the Terms of Reference.

RH 22

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/

Communities, Equality and Local Government Committee

Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill

Ymateb gan: Cymorth Cymru

Response from: Cymorth Cymru

Introduction

Cymorth Cymru is the umbrella body for organisations working with marginalised and excluded people in Wales.

Our **vision** is that all people in Wales have the right to live safely and independently, managing their own lives in their own homes

Our **mission** is to connect, strengthen and influence service providers, policy makers and partners to:

- Prevent homelessness
- Improve the quality of life and choices for the people our members support.

Our **objectives** are to:

1. Use evidence-based research to effectively influence policy formulation and implementation
2. Strengthen the capacity of member organizations to increase their impact by connecting them with wider issues and debates within the UK, Europe and elsewhere, convening events that contextualise and share learning
3. Provide high quality and tailored membership and consultancy services, identifying risks for the membership
4. Challenge public attitudes by campaigning with others on key issues that affect the people our members support.

Our main **policy areas** are

- Homelessness, housing related support
- Social value care provision
- Emerging themes from our two core areas
- Joining up across related policy areas

Our **120+ members** support people who are marginalised, isolated or experiencing housing crisis, including:

- people who are homeless, or at risk of homelessness
- families fleeing domestic abuse
- people dealing with mental or physical health problems, or learning disabilities
- people with alcohol or substance misuse problems
- refugees and people seeking asylum
- care leavers and other vulnerable young people, and
- older people in need of support

- offenders and those at risk of offending.

This list is not exhaustive, and individuals may often face a range of challenges that make it difficult for them to find or maintain a stable home and take control of their lives.

Cymorth Cymru's members help people address these issues, supporting them to find and maintain safe accommodation, fulfil their personal potential and feel confident making choices about their future. Our members work across policy areas to assist marginalised and excluded people and to promote a shared understanding of the key role that housing plays in promoting well-being.

Consultation response

Cymorth Cymru warmly welcomes the Renting Homes Bill. The steps toward providing clarity for all tenants across Wales are a positive move. All too often the complexity of tenancy law leads to legal interventions to rectify situations. The complexity of law can also be disempowering for all people in Wales – particularly those with more chaotic lives, who might find it harder to navigate the systems and processes. Having a Bill that introduces a simpler approach and clarity is a very positive step.

We do have some concerns more broadly about the security of tenancies for those in the private rented sector (PRS), and we know that these have been picked up by Shelter Cymru as well as by Cymorth. This is of particular concern for us as, in light of the recent Housing (Wales) Act, local authorities will be able to discharge their homelessness duty through using the PRS. On the one hand this Bill will, in simplifying the system, benefit the people we represent by helping them and their landlords understand their rights and responsibilities. However, we strongly question whether ending the 6-month moratorium, for instance, will encourage more landlords to accommodate people with chaotic lives. In our view it risks increasing instability for those who need a more secure environment to flourish.

We have limited our response to key areas, particularly those that intersect with the interests of the individuals our members work with – such as domestic violence and antisocial behaviour. We have also focused particularly on the area of supported housing, as this is where the majority of our members have expressed views and comments.

There are areas throughout where we hope that the guidance that is issued later in the process will clarify several questions of concern. We have, where possible, noted these clearly.

This Bill provides an opportunity for Wales to take a lead in the UK, ending a complex, inefficient system whilst retaining the flexibility so that organisations can continue to provide services that encourage individuals with the most chaotic lives to retain their independence. For that reason, Cymorth Cymru has had to be alert to potential unintended consequences posed by this Bill. We commend the work done by the stakeholder groups and welcome the opportunity to contribute further to the Bill by working with the Committee at this stage.

We look forward to giving evidence to the Committee on the 6th May.

Welcomed areas

In particular, we are in clear agreement with the Bill, with respect to:

- The new secure tenancy based on the current secure tenancy used by local authorities, etc;
- The new standard contract based on the current assured shorthold tenancy;
- The benchmark tenancy to be used by all landlords, as this will provide clear consistency;
- We re-iterate our point in the consultation on the White Paper that there should be an easy read version of these tenancies – and that we are ready and willing to assist with this if needed;
- We absolutely support the introduction of the Prohibited Conduct term in all contracts, with a few specific additional comments to be explored further in the response;
- We absolutely support the proposals made relating to joint tenancies, again with a few specific comments to be explored further below;
- We agree with the proposals to allow 16 and 17 year olds to rent in the same way as everyone else, but would suggest additional safeguards either in the Bill itself, or in guidance afterwards;
- We establish in greater detail our response to supported housing below.

Antisocial behaviour and domestic violence

We can see how the Bill could be used to ensure swift responses to antisocial behaviour and to ensure that those experiencing domestic violence are protected (and we see that this is to be developed further in guidance). We also acknowledge that the signal sent out through the Gender-based Violence, Domestic Abuse and Sexual Violence (Wales) Bill will have a positive impact on individuals who witness or experience domestic violence.

However, we suggest that the Bill should take the opportunity to make this more explicit. Whilst of course it can be assumed that domestic abuse is part of Prohibited Conduct, and that the protections in the joint tenancy section ensure that people at risk of domestic abuse are now more protected than before, we consider that landlords in particular would benefit from this being an explicit part of the Bill.

We recommend that an explicit reference to domestic abuse be added to both prohibited conduct sections (Part 3, Chapter 7 and Part 5, Chapter 5). Whilst we understand that domestic abuse could be categorised under "nuisance" and "annoyance", there should be an additional point for "abuse", to increase clarity for landlords and tenants in this area.

Additionally, we would like to see it made clearer in the Joint Tenancy section (Part 3, Chapter 5) that there are protections in place for those at risk of domestic abuse. If this is not appropriate, it should be made clearer in the guidance to be published later.

With regards to antisocial behaviour, we believe that the particular needs and demands of individuals with chaotic lives require specific mention in the guidance when published – as well as much wider awareness training for landlords. For example, tenants with mental health problems might present behaviour that is antisocial, but they might be exhibiting a need for support rather than anti-social behaviour. We hope that a system can be put into place with training and awareness that encourages landlords to seek other options where an additional need is involved. We would be ready and willing to look at developing this further as an organisation.

Points to be explored specifically in any guidance published after

There are points noted earlier which we would like to see developed further in guidance, as we understand they are not appropriate for the legislation itself. These include:

- Guidance on Prohibited Conduct and approaches to resolving anti-social behaviour without possession. We would advocate as noted above for clear best-practice steps in the guidance as to how landlords can work best to bring in additional support by contacting relevant services. This will be even more relevant given the ability of local authorities to discharge their homelessness duty into the PRS.
- Specific guidance on 16 / 17 year olds renting is needed, so that they are made aware of the risks of joint tenancies. We would be very concerned that without adequate awareness-raising for this group, there could be an increase in homelessness due to unpaid rent, for example. Clear guidance, an easy-to-access guide to contracts, and other steps, should help to reduce this, as well as simple explanations of what is expected of tenants.
- Specific guidance on joint tenancies, particularly with regards to an individual being liable to the entire rent if another leaves, will be needed. In addition (as noted above) we believe the guidance should draw specific reference to domestic abuse and processes / best practice in this area.

Supported housing / accommodation

We welcome provision of a legal basis under which supported housing can operate in terms of tenancies. As with our response to the White Paper, we recognise that both the Law Commission and the Welsh Government have worked hard to ensure that the complex nature of supported housing is reflected in the Bill. We particularly recognise the increase from the 4-month limit to 6 months, with a potential for increasing the duration through request to the local authority. This will make a considerable difference to the provision of support in Wales (we have provided evidence for this, in terms of case studies, in Appendix 1).

There are some specific points we would want to mention with regards to this section.

Excluded licences and temporary exclusions

Our conversations as part of the stakeholder group with this Bill have made it clear that we would want to see the very short term, shared accommodation, being able to use an excluded licence for the duration of a person's stay. Our concern here was that if this type of accommodation were to use a tenancy it is likely they may be forced to turn away individuals with a more chaotic lifestyle for fear that they could not protect residents due to being unable to quickly remove a person who could be endangering others.

Whilst we would still maintain our preference for the licence approach, we do acknowledge that the proposals (Part 8) as they are have heard the concerns of providers in this matter, and go some way towards addressing the issue.

This is an area where we had to ask our members, and ourselves, some very difficult questions. Cymorth Cymru is not often in a position where we are advocating any reduction in the rights of

individuals. In this particular instance, however, we have had to take a very clear view. Given the nature of this form of accommodation, and the often chaotic lives led by individuals who reside there, the ability to temporarily exclude residents is vital for the continued safety and progress of other residents.

In order to consider our position here, we should consider the individuals who use these services. Often they might only just be starting their journey towards independence. They may be recovering from alcohol or drug addictions (or still battling them); they may be rebuilding after a mental health condition or taking the first steps back into society after being in prison. They may all be vulnerable in some way, and sometimes a shock or stress could send them spiralling back into a worse situation. For that reason it is absolutely essential for the health, well-being and eventual independence of other residents that if one resident is putting others at risk, they can be removed at least temporarily.

Please note: we can provide examples of where this could be an issue from our members, on request.

Definition of supported accommodation

We would suggest a small addition to the definition of supported accommodation. At times, the local authority might 'commission in' support services for an individual, and we would not want that element of support to be left out. Therefore, in Part 8, 143, 2(c), we would suggest that the text change to read: "the landlord or charity (or a person acting on behalf of the landlord or charity, or where the support has been commissioned by the local authority using Supporting People Programme Grant)".

Definition of "support services"

Finally, we would query the definition of support services, found in Part 8, 143, 4(c), which suggests that support services include "supporting someone who finds it difficult to live independently because of age, illness, disability or any other reason." We find this particularly problematic, as many in this group should be encouraged to live independently regardless of their support, in secure contracts. Examples of this include individuals with learning disabilities, who may require support, but who should not be given the same sort of contract held by those in short-term, shared accommodation. Either this definition should be amended, or a separate point inserted elsewhere into the Bill, which makes it clear that those in longer-term supported housing should have secure tenancies and not standard contracts (with or without the extra management provisions for supported housing).

Conclusion

Cymorth Cymru welcomes this Bill and believes it represents a significant opportunity to simplify and clarify an area that has until now been overly complex and difficult to grasp, as long as the particular needs and requirements of support providers are met so that they are able to continue supporting the most marginalised and excluded individuals in Wales. We also await the eventual Guidance around the Bill eagerly, and we hope it will address more of the details around how specific areas of the Bill would work in practice.

This is a singular opportunity to get this right for Wales, and we have been grateful for the opportunity to respond, and to be involved.

Appendix 1

These case studies serve to provide evidence as to why it is important that there is an option to extend the duration of a standard supported contract. We are pleased that this point has been recognised.

Case Study: Service User A

7 month stay in 'very short term supported accommodation'

Service User A had a disability which limited the housing options available to her. Her disability included sight problems with an assistance dog.

Service User A felt safe in refuge and understood her entire surroundings. She was supported through every element of the building initially, shown where each door/ item/ service was and how to navigate around the facility. It took her a few support sessions to take this in and had regular support from the other residents as the communal setting of a refuge lends itself to this type of support.

She was offered temporary accommodation but this was not suited to her disability and was intended as a short term measure before suitable accommodation was found.

The provider agreed with the local authority that her need was such that to make her live in a temporary accommodation unit for an undefined time, only to move to a more suitable long term property would be unsuitable and would unfairly impact upon her due to her support needs. They felt that it was a matter of upholding good practice on equality and diversity issues that she was not forced to move more times than was necessary as she would be more disadvantaged than most by this.

Service User A stayed with the provider until a suitable property was found and, having had acute awareness of her needs, they were able to support her into her new home and local services very effectively. Had she had left their service and gone into temporary accommodation, there would not have been the same level of support provided to ensure she understood her surroundings when moving into more permanent accommodation.

The service user exited the service feeling confident and well supported.

Case Study: Service User B

6 month stay in 'very short term supported accommodation'

Service User B is a young mother with young child, with a history of domestic abuse. Initially she presented as lower needs than most and was moved from a 24hr staffed unit to a self-contained unit.

Service User B began being evasive with her support worker which culminated in the provider discovering she had abandoned her child one day in the unit. They immediately informed Children's Services who accommodated the child. Service User B presented as non-concerned that this was an issue, resulting in Children's Services reluctance to return the child.

Service User B had resumed relationship with the perpetrator temporarily and had left the accommodation. After offers of support and agreement of Children's Services it was agreed that Service User B could return to the 24hr staffed unit. After continued engagement with the provider and Social Services, the child was allowed back into her care, on the understanding that she would remain within the 24hr unit and be monitored by them.

This continued for several months. Because of the seriousness of the child protection issue, the child would have not been able to remain in her care without the provider's 24hr staffed unit.

Working with Service User B, the risks to the child reduced and the provider was able to satisfy Children's Services that she was no longer a risk to her child. She was then able to access accommodation, which they had delayed due to the circumstances. She was re-housed approximately 6 months from entry into the service, and was able to keep her child.

Case study: Service User C

Service User C came to the UK in 2002 on spousal Visa. She was living at the family home with her mother-in-law, father-in-law, her husband, his brother and his wife.
During the first year of her coming to the UK the relationship between her and husband was fine, but after two years their relationship started to deteriorate due to the husband's family not accepting her. Service User C's Visa was never renewed and she was therefore living in the country illegally for 10 years, unknowingly. She also had no English language skills.

Service User C was subjected to physical, verbal, financial and emotional abuse. She was forced to live in the house as a maid and was made to do all the house chores for everyone including her brother in law and their children. Her movements were restricted; she was not allowed to go out of the house unaccompanied and was not left alone for any appointments or meetings so she had no opportunity to express her situation or anxieties to any professionals.

Service User C was not registered with a GP or Dental Surgery. On one occasion when she required dental treatment she pulled the tooth out herself to get rid of the pain. Contact with her immediate family in the UK and at home was minimal and controlled. She was not allowed to make contact with her family, when they contacted her she was not left alone at any time during the conversation. She lived in these conditions for 12 years.

Her husband's family made her life unbearable for her to live and they started to put pressure on her constantly to leave the house, knowing very well she had nowhere to go. The pressure became so much that she took courage to call her uncle in Birmingham to ask him for help when the family were out one day. She had no awareness of how to access help or how to get out of her situation.

Service User C's uncle made contact with the support provider to ask for help as he was unable to accommodate or support her.

They assessed the situation and offered her support by admitting her into the refuge. She was supported initially with food and essentials as she had no recourse to public funds. It was established that she would qualify for the DDV Concession Grant through the Home Office

and was assisted to apply. She was successful in receiving this grant on the 31st July, 2012 which enabled her to access public funds for 3 months.

During this time she was assisted to access an immigration solicitor who helped to apply for Indefinite Leave to Remain (ILR). The decision granting Service User C ILR was received from the UKBA after three more months.

It took approximately 2 months for her to be able to access other services fully after she was granted ILR in the UK. Service User C had to remain in the refuge for further 3 months whilst her benefits and housing were being processed. During her time in the refuge she accessed ESOL and numeracy classes and also engaged in other community activities.

Service User C re-built her confidence and self-esteem and was enabled to live independently out in the community. However, she was unable to access social housing and found it difficult to find accommodation in the private sector due to her limited income for deposit and bond.

RH 23
Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/
Communities, Equality and Local Government Committee
Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill
Ymateb gan: Ffederasiwn Busnesau Bach
Response from: Federation of Small Businesses

Federation of Small Businesses
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27th March 2015

Christine Chapman AM
Chair, Communities, Equality and Local Government Committee
C/O The Committee Clerk
National Assembly for Wales
Cardiff CF99 1NA

Dear Chair,

Re: Consultation on the Renting Homes (Wales) Bill

FSB Wales welcomes the opportunity to present its views to Communities, Equality and Local Government Committee on the Renting Homes (Wales) Bill. FSB Wales is the authoritative voice of businesses in Wales. With 10,000 members, a Welsh Policy Unit, two regional committees and twelve branch committees; FSB Wales is in constant contact with business at a grassroots level. It undertakes regular online surveys of its members as well as a biennial membership survey on a wide range of issues and concerns facing small business.

Following the passage of the Housing (Wales) Act 2014, and the subsequent publication of the Renting Homes (Wales) Bill 2015, we are currently undertaking a major research project with our members to assess the impact of this recent and proposed Welsh legislation on the private rental sector. Our preliminary research has found that many of our members have main or supplementary business interests in the residential private rental sector in Wales.

In 2013 the private rental sector accounted for 13.6% of all housing in Wales, whilst the social rented sector accounted for 16%. The private rental sector is therefore a significant provider of housing in Wales, and it is expected to overtake social housing in Wales within the next year.

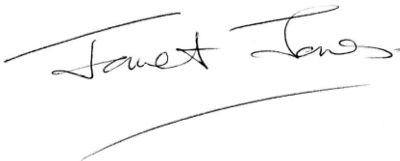
The sector remains one where most private landlords own only a small number of houses. In England, for example, 89% of landlords are private individuals, and 98% of private landlords own fewer than 10 properties and 70% of all dwellings. The pattern is likely to be similar in Wales. Therefore private landlords, with fewer than 10 properties, represent by far the largest part of the private rental market.

The research we are currently undertaking with our members, which is due to be completed within the next six to eight weeks, will provide detailed and valuable evidence on the potential impact of the Renting Homes (Wales) Bill 2015 on the private rental sector. The primary research we are undertaking is designed to gather the views and responses of private landlords on the proposed legislation, and we believe this will provide a helpful insight to the Committee's consultation.

We do not wish to prejudge the results of this research, and would therefore welcome the opportunity to provide our detailed evidence to the Committee upon the completion of this project. We would be happy to provide the Committee with a copy of our research report, as well as give oral evidence should this be helpful.

I hope you find the comments of FSB Wales of interest.

Yours sincerely



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RH 24

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/

Communities, Equality and Local Government Committee

Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill

Ymateb gan: CLA Cymru

Response from: CLA Cymru

INTRODUCTION

CLA Cymru represents the interests of over **3500** owners and managers of rural land, accounting to approximately half the land mass of Wales. Members operate a wide range of primarily rural businesses including residential tenancies, agriculture, tourism and commercial ventures – at the last count CLA Cymru represents some **250** different types of rural businesses. They also manage and/or own a quarter to a third of all heritage, including the built environment, so that CLA Cymru is by far the largest heritage-owner stakeholder group.

We have been looking after the interests of our members, as well as promoting the positive aspects of land ownership, land management and rural business activities for more than 100 years. Members have been involved in the private rented sector for generations and promote housing's critical role in the community and local economy.

CLA Cymru is pleased to have the opportunity to comment on the Renting Homes (Wales) Bill published on 9 February 2015.

THE IMPORTANCE OF THE PRIVATE RENTED SECTOR IN RURAL COMMUNITIES

The rented sector has increased tenfold in recent years to today where it houses one in three people, over 1 million in all, in Wales.

This has nothing to do with a change of mentality in the housing market toward tenure – the majority of people still want to own their own homes. But as the Explanatory Memorandum to this Bill notes, the 'financial downturn in 2008, combined with tighter lending criteria and housing supply pressures, means that the rental sector is playing an increasingly important part in our housing system.'

Given this, the CLA is a concerned about increased intervention in the private rented sector which plays a crucial, and ever increasing, role in the wider housing market. Especially in rural communities where it is often the case that relationships between landlord and tenant are co-operative and long-standing.

It is precisely the relative flexibility and freedom of the Assured Shorthold Tenancy (AST) regime that regenerated the sector. In recent years a series of interventions, introduced piecemeal, have placed a number of additional burdens on landlords. It would be a real shame for increasing regulation to drive locally engaged landlords from the sector.

The result would be a severe depletion of rural rented accommodation at a time when there is already a shortage of affordable homes. The knock on effect to rural communities and the local economy must also remain a consideration. As such, it is vital that this Bill places as few burdens as possible on landlords, and without risk of financial penalty, if we are to ensure sustainable rural communities.

GENERAL OBSERVATIONS

This Bill imposes wide-sweeping reforms on the rented housing sector in Wales with the stated intention to *'provide a clearer, more efficient and cost effective process for both landlord and contract-holder wishing to rent a home.'*

Whilst the Bill is replacing the plethora of social housing tenures contracts as part of these reforms, the reality for the private rental market is that the AST is being replaced like for like by the standard contract. The burden on the landlord, however, of this replacement is increased significantly as a current simple and relatively short AST may well have to be replaced by sixty plus pages, including fundamental, supplementary and additional terms. The administrative costs as well as the time involved with applying the new requirements to a large portfolio of properties will be considerable, and there is a risk that this could be passed on to the tenant, in the form of higher rents.

CLA Cymru believes that any additional burden placed on landlords, particularly when considering rural properties which due to their age and location are often more expensive to look after, may discourage investment in rural communities and could have the adverse effect of depleting private rented housing stock to the benefit of neither tenant nor landlord.

Furthermore, concern has been expressed by CLA members about how mortgage lenders will react to the proposed reforms and the effect this might have on the housing and buy-to-let markets.

SPECIFIC CONCERNS

1) PROVISION OF WRITTEN AGREEMENTS

Many CLA Cymru members manage mixed property portfolios of hundreds of homes, on a variety of different contracts. Given that each contract will have to be adapted from the original – sufficient time must be allocated to ensure private landlords can manage their properties. We recommend these following changes:

- The period in which a landlord is required to provide a written contract is extended to 28 days.
- The timeframe given for a landlord to issue new contracts to existing tenants in line with the legislation following the introduction of the Bill should be extended to 9 months.

The CLA does not agree that landlords should face financial penalties for failure to provide such agreements.

2) HOUSING STANDARDS

CLA does not agree with the assertion in the Explanatory Memorandum that the *'requirement of fitness for human habitation....based upon the current Housing Health and Safety Rating System (HHSRS) will not place an additional burden on those landlords already renting property that meets HHSRS requirements.'*

The creation of a new fitness for human habitation test will create duplication with the current system of HHSRS, which as the Bill notes it is largely based on, as well as creating a reliance on the courts over local authority. This will lead to further costs and potential litigation.

A possible example of this would be if a tenant went straight to the court without making a complaint to the relevant housing authority. The court would need the complaint to be assessed - no doubt this would be done by an environmental officer of the relevant housing authority who would have undertaken the HHSRS assessment in the first place. This is particularly problematic when considering disputes over such things as damp, where it is often the case that the tenant has not fulfilled their obligation to heat the property correctly causing the damp. Deterioration of the "fitness" of the property is often as a result of how it is

used rather than due to neglect by the landlord but this will not prevent landlords being embroiled in costly litigation with very little hope, in reality, of ever recovering their costs.

Furthermore, it is our experience that many complaints that trigger a HHSRS procedure can be resolved through discussions with a local housing authority without incurring any legal costs and reversion to the courts.

As such, the creation of the new system does have the possibility to place additional burdens on landlords and will create unnecessary duplication with the current HHSRS.

3) EXCLUSIONS

CLA Cymru welcomes the exclusion of lodgers from the Bill.

However, tenants currently housed under the Rent Act 1977 should NOT be excluded but brought within the ambit of the Bill if it is to realise its stated purpose of simplifying the system and bring consistency to the PRS.

The CLA does not understand the reluctance to include **private sector** Rent Act tenancies in the current overhaul. The fact that landlords can own properties that hold a decreased value by virtue of its occupant, with a disproportionately low rent, is preventing landlords making much needed investment in properties that are falling into disrepair.

This is a missed opportunity to deal with an important issue.

The CLA's view is that Rent Act tenancies should be included in the current proposed programme of reform and that these serious historical iniquities should be addressed.

Failing this, at the very least, The Rent Acts (Maximum Fair Rent) Order 1999 should be removed and there should be an ability to assess the rents based upon all improvements carried out by a landlord rather than just those since the previous review so that they become cumulative. If a landlord does some improvements, e.g. double-glazed windows, which are not sufficient in themselves to break the capping on review, and then, for instance, installs central heating at a later date, then all of those improvements should be taken into account at subsequent reviews. Landlords are being disadvantaged by doing piecemeal improvements, but often are forced to do so because of financial constraints.

4) SERVICE OCCUPIERS

CLA Cymru believes that service occupiers should be excluded from the Bill.

The provision of accommodation to employees is a term of their employment contract and, as such, the employee occupies as a licensee and for the better performance of their duties. It is not appropriate for housing legislation to redefine existing contractual employment arrangements.

The current position is that the occupation rights of service occupiers do not extend beyond the existence of the job for which they are housed. This is for good reason especially in rural employment such as game keeping and caring for livestock. If the job has not worked out then it will be essential to be able to house the replacement worker as a matter of urgency. If, for example, an employee has been dismissed for gross misconduct, it cannot be appropriate for him to then have to be given 2 months notice (as currently required under the Bill as the occupier will have a standard contract).

Landlords who are also employers are very concerned about this fundamental change in property rights of their employees. Where the employment relationship has broken down, not being able to regain possession of the accommodation that goes with the job will have a detrimental effect on this important aspect of the rural economy.

Where a house is required for an incoming farm or estate worker it is often vital that they can start immediately as livestock and environmental management require on site and uninterrupted management.

5) **JOINT TENANCIES**

CLA understands the Welsh Government's approach to creating more flexible joint tenancies. Landlords must be reassured that this approach, however, will not impact on the terms of the existing tenancy and that the liability for the contract remains with all tenants until a new contract is agreed.

OUTSTANDING QUERIES

There will be more queries arising as the detail of the Bill is analysed further but the following are of immediate concern to CLA Cymru:

1) **ASSURED AGRICULTURAL OCCUPANCIES**

The treatment of agricultural workers who were housed after 15 January 1989 requires some clarification.

Although tenancies governed by the Rent (Agriculture) Act 1976 are excluded, Assured Agricultural Occupancies **under the Housing Act 1988** are not specifically referred to and, as a type of Assured tenancy it is assumed that they will be treated as/converted to a secure contract, but confirmation is sought on this point?

Many CLA members have housed qualifying agricultural workers since 1989 who, therefore, are Assured Agricultural Occupants. If their rights/agreements are converted into the new Secure Contract, many issues arise. For example: will the ability to have an outgoing agricultural worker housed by the Local Authority still exist?

If Assured Tenancies become Secure Contracts with the potential for a 'priority successor' and a 'reserve successor' this would appear to be an extension of the existing position where there is currently the potential for only one succession. The concern here is that some of the more generous (and complex) succession provisions would have a detrimental effect on the rural economy and specifically the need to provide homes for workers in remote rural areas when workers change jobs.

The CLA believes that the best way to deal with assured agricultural occupants is to exclude them from the Bill along with Rent (Agriculture) Act 1976 tenants and other service occupiers.

2) **HOUSING OF AGRICULTURAL WORKERS UNDER ASTs**

In practice these days, many agricultural workers are housed under Assured Shorthold Tenancies (ASTs) provided they are served with the correct notice before the tenancy is entered into. CLA Cymru would like to know whether qualifying agricultural workers will still need to be served with a special notice before they are granted a Standard Contract or whether the replacement of the Housing Act 1988 in Wales will make such a step unnecessary?

Or indeed, will it be possible to house such workers under a Standard Contract without any additional security of tenure arising?

This is an area of the law that is often misunderstood and needs careful consideration.

3) SUCCESSION RIGHTS

CLA Cymru seeks specific assurance that, where an Assured Tenancy has arisen on the succession of a family member (rather than a spouse) to a protected tenancy under the Rent Act 1977 or the Rent (Agriculture) Act 1976, there would be no further potential successions if such a tenancy were to be converted to a Secure Contract.

It seems anachronistic that if one of the aims of these reforms is increased flexibility in the housing market across the sectors that this Bill seeks to encumber properties for generations. It is surely a retrograde step to be considering returning to the levels of security similar to those under the Rent Act 1977 which had such a devastating effect on the private rented sector.

The potential for two successions is something that CLA objects to in principle.

4) PROPORTIONALITY DEFENCE

The CLA is looking for reassurance that this potential to challenge repossession actions will **not** be extended to private sector tenancies?

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/

Communities, Equality and Local Government Committee

Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill

Ymateb gan: Cymdeithas Genedlaethol Landlordiaid

Response from: National Landlords Association

About Us

The National Landlords Association (NLA) exists to protect and promote the interests of private residential landlords.

With more than 23,000 individual landlords from around the United Kingdom and over 100 local authority associates, it provides a comprehensive range of benefits and services to its members and strives to raise standards in the private-rented sector.

The NLA seeks a fair legislative and regulatory environment for the private-rented sector (PRS) while aiming to ensure that landlords are aware of their statutory rights and responsibilities.

Summary

- The Renting Homes (Wales) Bill is a significant piece of legislation which completely rewrites housing law in Wales.

- Following a long and at times complicated consultation process, we have been pleasantly surprised by the comprehensive nature of the Bill produced. The NLA are thus broadly supportive of the most of the aims of the Bill.

- We have some concerns regarding its implementation and subsequently would like to see several amendments made to it through its legislative progress, plus clarification on others, however that it is only to be expected on a Bill this size.

- Our response can therefore be classified as both cautiously supportive and where critical, only constructively so.

- This evidence does not attempt to give NLA view on the Bill line by line section by section. Instead it focuses on areas the organisation has strong views on and either warmly welcomes or has reservations on, is lobbying against or seeks clarity on.

Duty to provide a written statement of contract

1. The NLA understand the reasoning Governments decision to legislate on contracts and cautiously support this attempt to make landlords and tenants legal relationship easier for both parties to understand at the outset.

2. The issuing of a written contract at the start of tenancy is best practice and something we recommend all our members do.

3. We welcome the added flexibility provided by the provision that a contract must be issued no later than two weeks from the date of occupation.

4. However when giving advice to members we will still advise they agree and issue a contract before or on the day a tenancy starts as best practice.
5. The key to this major change will be the transition and implementation as landlords move to this new system however we look forward to working with the Welsh Government to minimise disruption to landlords.

Six month moratorium

6. The NLA warmly welcome the ending of the six-month moratorium in the Bill and the Welsh Governments recognition that landlords "generally want to keep their tenants for as long as possible, and want the security of income" they provide.

7. We agree with the governments assessment that there is nothing to suggest removing the moratorium will cause landlords to alter their letting practice" for the worse and can indeed cite an examples when this increased flexibility will help the PRS in Wales.

8. For example this change will also mean that landlords will be more amendable to renting to 16-17 years olds. These types of tenants are likely to be low paid with limited or no employment history making them 'risky' propositions for landlords. However with the added flexibility resulting from this change, landlords will be more likely to 'give them a chance' to prove themselves as long

9. In conclusion this change seems logical and an example of joined up and evidence-based thinking.

Fitness for human habitation

10. This section is a significant change from those first consulted upon. Having said that however the NLA does not think this provision to be either unreasonable or overly burdensome to landlords.

Retaliatory Eviction

11. Everyone deserves a decent home and no one will argue that tenants must feel able to raise issues with their landlords without the fear of losing their home. However we have yet to see any credible evidence of a problem significant to justify the need for additional legislation

12. We believe these changes represent a politically timed reaction to fear and anecdote, rather than a confirmation of commonplace poor practice within private housing.

13. The government has been distracted from the business of ensuring that existing legislation, intended to protect tenants and landlords from genuine criminals, is enforced properly.

14. At best this is will be a burdensome nuisance for the majority of good landlords. At worst it will further mask the actions of criminals who abuse their tenants, while regulators struggle to differentiate between those in genuine need and vexatious troublemakers.

15. The Government says that the majority of good landlords will have nothing to fear but the truth is it will give unscrupulous tenants and ambulance-chasing legal firms more power to resist genuine and necessary attempts on behalf of landlords to regain lawful possession on a property.

16. The NLA begrudgingly accept however that given that this argument has made and failed in Westminster, and so is unlikely to hold sway in Cardiff.

Joint contracts

17. Whilst we both understand and commend its intention, to make each tenant a join contract holder is a significant change to housing law.

18. Our members may in time come to prefer this new arrangement however would prefer to have the choice rather than be forced to comply with the new arrangement.

19. This 'choice' would provide clarity as to who was responsible for paying the rent in the event of rent arrears in a household of 4 people for instance, (e.g. a landlord may have 3 paying tenants however one refuses / is unable to pay).

20. Just as this new approach to joint contracts is meant to bring flexibility we would like to see if the government could as flexible to the issue of rent arrears within such a contract.

Abandonment

21. The NLA welcomes the Welsh Government's recognition that abandonment is a major concern for landlords and their intention to clarify the procedure for landlords where they occur.

22. Greater clarity is needed as to what the government mean by "During the warning period the landlord must make such inquiries as are necessary to satisfy the landlord that the contract-holder has abandoned the dwelling."[1]

23. However this Bill represents an opportunity to legislate for best practice, providing legal clarity for landlords, tenants and judges alike. This could then be a legislative template to governments across the UK to follow.

Miscellaneous

24. Section 9 of the Explanatory Memorandum details plans for an evaluation project. It is important in any project to understand its objectives and targets and the measurements by which you are judging its success.

25. The NLA believe that the details of this evaluation should be finalised as soon as possible and consulted upon in parallel to the Bill's progress through the Assembly and before it becomes an Act.

26. It is also important that this evaluation is carried out by a team or company independent of government and civil servants, and we welcome this undertaking in the document.

[1] Part 9, Chapter 13 (4)

RH 26
Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/
Communities, Equality and Local Government Committee
Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill
Ymateb gan: Urdd y Landlordiaid Preswyl
Response from: Guild of Residential Landlords

IntroductionThe Renting Homes (Wales) Bill was introduced by the Welsh Government in February 2015. It contains a number of changes to tenancies and the way they operate where a residential rented property is located within Wales.

In outline, the following is being proposed:

creation of new *occupation contracts* all occupation contracts to be in writing removal of the 6 month moratorium abandonment adding to and ending joint contracts fitness for human habitation prohibition of retaliatory eviction Contracts for 16 and 17 year olds

Occupation contracts

Being proposed are two new forms of tenancy agreement - secure contracts and standard contracts. Combined they are known as "occupation contracts" because according to the Bill, they don't always apply solely to tenancies but can also apply in a license situation. The idea is that most tenancies (including assured shorthold tenancies) will be replaced by these occupation contracts.

According to the explanatory notes for the Bill (my emphasis):

> At the heart of the Bill are the new "occupation contracts". With a limited number of exceptions, ***the Bill replaces all current tenancies and licences with just two types of occupation contract***.

That's quite a bold statement and I feel a table might be useful here.

Tenancy or licence available currently	Tenancy or licence under proposals	More info
Assured shorthold tenancy	Standard contract	AST's would be replaced by a standard contract
Assured tenancy	Secure contract	Assured tenancy would be replaced by a secure contract (as would most current local authority tenancies)
Contractual tenancy	Contractual tenancy	If the letting is solely to a company, a contractual tenancy will still be required.
Lodger agreement (licence)	Lodger agreement (licence)	Excluded by schedule 2 of Bill
Holiday let agreements	Holiday let agreement	Excluded by schedule 2 of Bill
Rent Act 1977 (protected or statutory)	Rent Act 1977 (protected or statutory)	Excluded by schedule 2 of Bill
Long tenancy (over 21 years)	Long tenancy	Excluded by schedule 2 of Bill
Agricultural tenancies	Agricultural tenancy	Excluded by schedule 2 of Bill
A business tenancy under 1954 Act	A business tenancy under 1954 Act	Excluded by schedule 2 of Bill

As can be seen from the table, for private landlords, the bill does not replace *all current tenancies* even with a limited number of exceptions. Not a single tenancy that is currently available would be removed as a result of the Bill. In fact I have always called this Bill a £10m name change from assured shorthold tenancy to standard contract [1] because in essence that's all it does.

Under the proposals, just like an assured shorthold tenancy, the standard contract would be able to be a fixed term or periodic and will continue periodic after any fixed term has ended.

There will be a "model contract" and certain terms that cannot be altered would be called "key matters". There will also be terms called "fundamental terms" which are suggested terms within the contract but they may be altered or removed only if both parties agree AND the effect of the alteration or removal is that the position of the contract holder is *improved*.

This is a troublesome part of the Bill in our view because it leaves open so many arguments as to whether the position of the contract holder was *improved* or not. For a Bill that is claiming to be simplifying things this is not a great start. Showing an example of the problem is easy. The very first term in the sample model agreement is that the rent is payable in *arrears*. It does not make provision for the rent to be payable °in advance which all well drafted tenancy agreements currently provide for. As this is a fundamental term which can be changed, not a problem right? If we now change that term to payable in advance have we *improved* the position of the contract-holder? No is the answer and so according to the Bill and model contract in current form, all rents payable will be in arrears and not in advance!

We have no doubt this fundamental term will get resolved before everything gets completed but the point about improving the contract-holders position remains. In our view there is no need for it. Why not simply have a set of key terms that cannot be changed which is mutually agreed by all stakeholders such as repairs, anti-social behaviour, notice periods etc. These key terms are in essence repeating what the legislation is providing for anyway so shouldn't be too difficult to get agreement by all parties. Then, a model agreement could be provided as is already being suggested and say that if the model agreement is used as is, all terms are treated as fair for the Unfair Terms Regulations (or whatever is in place at the time). If the landlord decides to change a sample term they run the risk of it being an unfair term. The key terms could be forced to be in the model without change but all other terms could be free to change or not.

In the proposals there are further terms known as "supplemental terms". These work exactly as we are suggesting above and can be removed or altered freely as long as they are fair and don't affect any fundamental or key terms.

To us, changing the name to a standard contract seems an enormous amount of work for what appears to be zero gain for the customer who is ultimately the tenant. If assured shorthold tenancies were to be changed, it would be easy to introduce a model contract for use by all landlords and if there is some major problem with the exclusions contained within the Housing Act 1988 then just amend schedule 1 and remove some of them (some that would be removed are tenancies greater than 100k per year and tenancies within licensed premises for example - hardly a major impact).

Job done! By those two simple changes, we would have an almost identical outcome except the changing of the name. All the other proposals discussed below could still be done with ease from within the Bill.

In addition, we are very concerned that the key terms should be part of any Act produced from the Bill. It would be much safer to put these in regulations. It is very hard to predict unintentional consequences of new legislation and the problems with deposit legislation proves that changing Acts is a slow process. All proposed terms of a tenancy should be put into regulations in our view so they can easily be changed in the event of some unforeseen problem which could seriously affect landlords or tenants after commencement. (Of course this could work against landlords in that a new required term could me more easily added by ministers.)

Possession notices

The standard contracts will still require 2 months notice just as currently under a section 21 notice. However, like the provisions being introduced by the Deregulation Bill in England, the notice will need to be used within six months.

Similar provisions to the current section 8 notice will also exist for breach of a contract including 2 months arrears. It is proposed that the length of notice will vary depending on the alleged breach. For example serious rent arrears (2 months or more arrears like now) remains at 14 days but for other breaches the notice will have to be at least one month in length. Further, a claim must be made within six months (currently a section 8 notice lasts 12 months).

Currently under the section 21 possession procedure, the court cannot make a possession order take effect until at least six months from first occupation. This is a very strange and outdated piece of legislation in particular when the requirement to give a minimum term of six months was abolished in 1997.

Under the proposals, this six month rule will be removed which will allow greater flexibility for those who truly want to create and enforce shorter occupation contracts for whatever reason (people between house moves for example).

There are also provisions for allowing a break clause in a fixed term standard contract and possession proceedings that might follow.

Contracts in writing

All occupation contracts will need to be in writing under the proposals. A failure to do so will result in the tenant being able to claim back up to two months rent based on a daily rate for every day the written statement has not been provided - plus interest.

It is proposed that no fee will be allowed to be charged for "*providing*" a written statement but if a further statement is asked for by the occupier, a fee can be charged.

Contracts for 16 or 17 year olds

Currently it is not possible to grant a tenancy to a person aged under 18. The Bill contains a sensible proposal to allow occupation contracts to be given to 16 or 17 years olds.

Joint contract-holders

It will be possible under the proposals to add a new joint contract-holder to the agreement by a document signed or executed by each of the parties to the transaction and can only be done with the landlords consent (which must not be unreasonably withheld).

Whether consent would be reasonable or not is further defined in the Bill and includes things like the size of the dwelling, the age and general characteristics of the person and other things. The financial interests of the contract-holder can be taken into account but it would appear not to be the case to take into account the financial s interests of the proposed joint occupier. Although, that being said, further when defining what is reasonable, it can be taken into account *whether the proposed join contract-holder is a suitable contract-holder.*

A joint contract-holder will be able to give notice and once expired, the liabilities of the contract are passed to the remaining occupiers and the occupation contract continues. This is a reversal of the current position where the tenancy is brought to an end by one tenant giving notice.

We aren't particularly concerned whether the tenancy continues or ends after a single contract-holder gives notice but this does seem potentially unfair on the consumer (contract-holder). Those remaining would be entirely bound by the contract on their own. Take an example of 3 tenants sharing a property and two decide to give notice and leave. The one remaining under these proposals is now entirely liable for the full rent for the entire property and yet the others could just walk away without any consideration for the poor remaining occupier. What's more, because this sole occupier has not just a liability but also a perfectly valid occupation contract, if he or she attempts to seek assistance as being homeless, there will be no help available because he or she has suitable accommodation available (at least whilst the landlord seeks possession).

Death of a tenant

Currently, where there is a tenancy with a sole tenant and that tenant dies, the tenancy will nevertheless continue until properly ended. Under the proposals, this would change and the death of a sole contract holder would end the contract after one month. There are further provisions relating to succession to limited occupiers which we require further time to consider.

Abandonment

The problems surrounding abandonment are addressed in the Bill and will allow landlords to go through a much simpler process rather than currently where a court order is normally required. A four weeks notice will be able to be given and if there is no response, a landlord will be able to lawfully recover the premises. There are also provisions allowing regulations to be made to deal with items left at the premises and disposal of those items.

Fitness for human habitation

Similar provisions to those currently contained in section 11 Landlord and Tenant Act o 1985 will apply to all occupation contracts and there is further power to make regulations as to what is fit for human habitation and what isn't. These regulations may make reference to hazards as found under the Housing Health and Safety Rating System (HHSRS) under the Housing Act 2004.

These regulations if brought in must be very carefully thought out and shouldn't use terms such as "reasonable". They need to be precise in what is and what isn't fit for habitation because the question is very much down to the opinion of individual people. If not done properly, there will be lots of arguments over this point for years to come.

Retaliatory eviction

Retaliatory evictions are very loosely worded currently and need clarifying. Under the proposals, service of a possession notice may be deemed in retaliation if the landlord is simply in breach of repairing obligations. Furthermore, it can be a defence to a notice simply if the property is not fit for habitation which may include HHSRS hazards. As there are 29 hazards, that could potentially lead to a lot of defences and subsequent court time. Again, clarity is needed in any Act produced from the Bill to ensure arguments remain few.

In our view, there needs to be further provisions like what is going through in England where written notice must first be given to the landlord, then a formal notice served on the landlord by the local authority. Otherwise, the courts will simply be clogged with

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spurious repairs defences.

1. I really have no idea how much it's all going to cost - I'm just messing. ↩

RH 27

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/

Communities, Equality and Local Government Committee

Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill

Ymateb gan: Llamau

Response from: Llamau

About Llamau

Llamau is Wales' leading homelessness charity and has built a reputation for engaging with the most challenging and socially excluded individuals, supporting them to move from vulnerability to independence.

Our principle activity is to promote the wellbeing and welfare of people in need in Wales by assisting them to meet their holistic needs in the areas of accommodation, safety from abuse, advocacy, education, training, counselling and the reduction and prevention of offending.

We have 28 years' experience supporting vulnerable young people, children and women with a range of complex needs including offending issues, mental health issues, substance misuse and a variety of abuse issues. We offer mediation services, supported accommodation, advice, floating tenancy support and emergency tenancy support. Our EMPHASIS project provides intensive, holistic support to young people and their families in relation to homelessness, family relationship breakdown, education and employment as well as physical and emotional health and isolation.

Llamau is Wales' largest single provider of refuge space for individuals experiencing domestic violence, and our women-only supported Our range of services includes gender specific supported accommodation, refuge provision; outreach services; specialist homelessness prevention services, Freedom Programme, Recovery Toolkit provision; specialist parenting support as well as delivering from a number of Multi Agency Centres in Wales.

Our youth homelessness, gender specific and domestic abuse services are focused in South Wales, but we deliver other support services to homeless young people and vulnerable women across Wales. Our pan-Wales project, Symud Ymlaen / Moving Forward works with young care leavers and youth offenders to develop their employability skills and to take part in a six-month paid work placement.

Last year we worked with 4,782 individuals, providing support to enable 94% positive outcomes.

Our support is flexible and tailored to individual need; underlined through the philosophies of empowerment and choice. L**lamau is a values-led organisation which puts service users first and at the heart of the organisation.**

Our response:

In general, Llamau warmly supports the process that the Welsh Government has embarked upon to simplify the process of renting a home in Wales. The reduction in the number and types of contracts will make it easier for tenants to understand their contract and will make it easier for organisations such as us to advise and support our service users. In addition, as a provider of accommodation that will be governed by this legislation, we welcome many of the changes from the White Paper that we felt were necessary for the bill to be improved.

Part 2 & 3 – Occupation contracts and landlords and Fundamental Provisions

In general, the creation of three types of contracts for renting simplifies an important part of many people's lives. We recognise the Welsh Government's approach to using the Renting Homes Bill to achieve its aims within the Housing (Wales) Act 2014 to use private landlords. We believe that the simplicity and transparency of the new types of contracts will reduce the complexity of renting and consequently reduce the number of disputes, tenancy failures and will help people to manage their tenancies in a more independent way.

We welcome the concept of unmodifiable fundamental provisions of occupation contracts, which will not be negotiable and will form a secure and equitable basis to all accommodation contracts, while remaining reasonable for the landlord's interests.

We especially welcome the provision that requires landlords to provide a written contract to a contract holder. We feel that this simple duty for landlords to follow will make a significant difference to clarify situations where contractual obligations are not clear.

However, the process for claiming compensation through the courts is potentially off putting to contract holders who may have a realistic claim against their landlord. This process may be better enforced through an ombudsman or arbitration process, and will also reduce the impact on the capacity of civil courts. The sum of money in any one action for most will total no more than £1,000 - £1,500 given current rental markets, therefore is an appropriate sum to be decided in this way.

Given the complexity of the current legislative framework which governs renting homes in Wales, it is likely that there are a number of rogue landlords, who current abuse the system through the ignorance of many renters, there is no reason to believe that this will change simply with new legislation, there will need to be clear and unambiguous enforcement of it. Therefore, it will be important that legal

remedies are available and easily accessible by all, especially the most vulnerable and it is a valid policy aim for the Welsh Government to try and address this through legislation.

Part 4: Condition of dwelling

We think that this part of the bill is appropriate and clearly sets out the landlord's responsibility to keep the dwelling in a reasonable condition.

We would suggest that access to dwelling (Section 98, subsection 2) involves some element of reciprocation with the contract-holder to confirm that the landlord, or someone acting on his/her behalf can enter the property at an agreed time. We would suggest that the landlord must give 24 hours' notice and also have a mutually-agreed time with the contract holder, and maybe for 48 hours to elapse if no answer is given by the contract holder before entry is permissible.

As far as we can tell, the legislation only gives the right for a landlord to enter a dwelling to inspect its condition and state of repair, or to carry out works or repairs. Without being an expert on the law of trespass, these appear to be the only lawful grounds for a landlord to enter a dwelling that is being rented. Many landlords, especially those who will offer periodic or standard contracts will also want access to a dwelling to show prospective tenants around a dwelling, for example, or to ensure that no unlawful activity is going on. Although Section 98 is modifiable, this may need to be expanded on the face of the legislation to avoid any ambiguity.

Parts 5, 6 & 7 – Provisions that apply to secure contracts, periodic standard and fixed-term standard contracts

Llamau believes that these provisions are distinct enough to warrant different types of contracts, and that the provisions are appropriate and reasonable when forming accommodation contracts.

Part 8: Supported Standard Contracts

Llamau had particular concerns at the White Paper stage at the lack of distinction of supported accommodation, a type of accommodation that Llamau offers to many of its service users, within the types of contracts, and we welcome the recognition in legislation of the types of accommodation contract and support that we offer.

We also had concerns at the proposal to convert supported standard occupation contracts into secure contracts after two years. While the majority of our tenants are not supported by us for a length of two years, usually moving on from our support

within 12 months, we have some people who require longer term support. We would not want to feel that the amount of support we felt able to give would be legislatively constrained, but instead to encourage a person to move on into an independently

managed tenancy, with minimal support from Llamau, at a time when the individual would feel ready.

We do not want a situation where the new periodic contracts would be used as the norm for private landlords when dealing with medium to long-term tenancies. Llamau suggests that the committee look at options to discourage long-term periodic use of standard contracts and when a secure contract is the fairest option for a periodic contract-holder in privately rented accommodation that they have a legal remedy to have this considered.

At this point, we would ask for ministerial or committee clarification on when supported standard occupation contracts would need to be issued to someone who is supported by Llamau. We operate a system where we constantly review with a young person how much support they require to identify a point where. A young person may require support for just a few more weeks further on after the six-month point, for example.

We would ask:

As the legislation stands, is there provision for a supported standard periodic contract, i.e., which would be suitable for renewing on a weekly, fortnightly or monthly basis after a six-month period of supported accommodation from Llamau, or a similar organisation?

Temporary exclusion.

Llamau has questions around how temporary exclusion may be used in practice. We have had situations where our intensive support with young people who have severe behavioural problems may require exclusion longer than 48 hours because of poor behaviour, and/or more often than three times in a period of six months. Llamau's ethos is never to give up on a young person, no matter how challenging their behaviour may be. It is tricky to get this right in legislation to ensure that standard supported contracts offer as much stability as possible, but also ensure the safety of all of those who access it. As the legislation stands, it may be the correct approach, but we would ask the committee to revisit this provision and seek further advice.

We would also suggest that the committee recommend and addition in Section 145.2 an additional act of "a credible threat of using violence against any person in the dwelling."

Section 9, 10 and 11 – Termination, Miscellaneous and Final Provisions.

We believe that these provisions are appropriate and necessary for the bill's principles and aims to be achieved.

2. Llamau does not believe that there are any potential barriers to the implementation of the provisions of the bill.

3. Llamau does not believe that there are any unintended consequences arising from the bill.

4. Llamau does not have a view on the financial implications of the bill.

5. Llamau believes that the powers set out in the Bill for the Welsh ministers to create subordinate legislation are proportionate and correct.

RH 28

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/

Communities, Equality and Local Government Committee

Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill

Ymateb gan: Tai Pawb

Response from: Tai Pawb

Who we are

Tai Pawb (housing for all) is a registered charity and a company limited by guarantee. The organisation's mission is, "To promote equality and social justice in housing in Wales". It operates a membership system which is open to local authorities, registered social landlords, third (voluntary) sector organisations, other housing interests and individuals.

What we do

Tai Pawb works closely with the Welsh Assembly Government and other key partners on national housing strategies and key working groups, to ensure that equality is an inherent consideration in national strategic development and implementation. The organisation also provides practical advice and assistance to its members on a range of equality and diversity issues in housing and related services.

Tai Pawb's vision is to be:

The primary driver in the promotion of equality and diversity in housing, leading to the reduction of prejudice and disadvantage, as well as changing lives for the better.

A valued partner who supports housing providers and services to recognise, respect and respond appropriately to the diversity of housing needs and characteristics of people living in Wales, including those who are vulnerable and marginalised.

For further information visit: www.taipawb.org

Charity registration no. 1110078
Company No. 5282554

Introduction

Tai Pawb welcomes the opportunity to respond to this consultation and the invitation to provide oral evidence to the Local Government and Equality Committee's enquiry.

Due to natural development and diversification of the sector and wider societal changes the issue of tenancy and tenancy law has become a very complex area. Therefore, like many of our colleagues across the housing and third sectors, we

welcome of the creation of a new rental system for rented homes in Wales. We hope that this new approach will ensure that it is easier for both tenants and landlords to understand and execute their rights and responsibilities in relation to renting their homes. This is particularly important as the current, overly complex system, could be significantly disadvantaging people from a variety of backgrounds. For example, people from non-White British backgrounds who compared to White British people are more likely to use the PRS[1]. These groups can face considerable language and cultural barriers in accessing accommodation, while people from other protected groups such as disability, age, sexual orientation, gender reassignment, and religion or belief can face other types of barriers when accessing accomodation. We hope that by simplifying the rental system the current unintentional discrimination could be removed for this these groups as well as others.

Occupation Contracts and Landlords

The adoption of two forms of contracts and the subsequent ability to provide model contracts will make it clearer for tenants and landlords. However we have some concerns that the Supported Secure Contract is not seen as a third form of occupational contract. Those people who are likely to be provided with this type of contract are often some of the most marginalised within our society. Part of the rehabilitation process for this group of people is to move them on from this level of intensive supported accommodation into a position where they are able to maintain their own tenancy (potentially with less support). The suggested approach in relation to occupation contract classification, albeit unintentionally, further underlines the distinction between this group of people and anybody else and could further marginalise them.

ASB and Prohibited Conduct

While we welcome the work which has been undertaken to ensure a wide variety of undesirable behaviours fall within the remit of the definition used currently in the Bill we still have a number of concerns. As we mentioned in our official response to 'Renting Homes – A better way for Wales' the term we feel it is key that abuse such as economic, psychological, emotional and other coercive behaviours are also covered by the terms 'ASB and Prohibited Conduct'.

The proposed wording: "conduct capable of causing nuisance or annoyance[2]" is very vague. There is potential that the test applied to decide if conduct falls within this category could be open to abuse and unintentional bias for example in relation to domestic abuse where somebody subjecting a victim to psychological abuse the notion of 'nuisance or annoyance' seems to fall far short of the reality. In complete contradiction to this the notion of 'nuisance or annoyance' could mean that repeat low-level annoyances such as parking space issues could result in being defined as ASB.

The wording for the definition for ASB and prohibited conduct is of particular importance when we consider that tenants of a community landlord (RSL) could have their tenancy demoted to periodic standard contract as a result of breech of

[1] Census 2011, *DC4201EW - Tenure by ethnic group by age - Household Reference Persons*, Wales stats only

[2] Renting Homes Bill, Section 3 Chapter 7

tenancy, in other cases they may be evicted. While we recognise the importance of, and support the ability for, landlords to use this tool we are concerned about the potential for bias and unfair treatment for some people from certain groups. In order to protect people we would recommend that an amendment is made to reflect 'harm caused to another person' because of said nuisance or annoyance. This approach would remove any potential for powers to be used irresponsibly by landlords for relatively minor nuisances or annoyances. We would also recommend that you looknto reflect the wording for domestic abuse in other legislation to ensure that the letter of the law reflects the spirit it intends (and which we fully support). We would also encourage you to consider issues concerning burden of proof – strong statutory guidance is needed in this area.

Deposits

We welcome the direction of travel with relation to deposits for joint contract holders. However colleagues in the PRS have raised concerns relating to the ability for the existing infrastructure to handle these potential changes. We would highly recommend that this is investigated further to ensure that the current deposits schemes will not fall foul of the new legislation due to the technical restrictions of the systems they are using. We feel this should be addressed through consultation to ensure the implementation timeframe takes account of any changes which might be needed.

In relation to the deposits paid where there are joint tenancy holders consideration should be given to instances where a joint contractor removes their proportion of the deposit upon ending their contract, in particular instances where there is proven domestic abuse. There needs to be clearer legislation regarding the position of the tenant and security of tenure relating to this.

Variation to rent – periodic standard contract

While we welcome that the face the Bill has restricted rent increases to one per annum we have significant concerns that the Bill, as it stands, appears to erode the current rights of tenants in Wales in other areas in connection to rent. It is our understanding that the new Bill proposes that rent increases for periodic standard contractor-holders can be issued from two months after the contract was signed. It also appears that this, initial rent increase, could be for any amount and the only option the tenant has is to accept this or to give notice and leave their home. This significantly worsens the current rights of tenants in two ways:

1. Currently tenants cannot have their rents increased within the first year of their tenancy
2. Tenants have the right to apply to the Rent Assessment Committee which has the effect of delaying any rent increase until the matter has been decided.

As we have indicated previously the PRS has a significant number of people who are from non-White British backgrounds within it, the Bill also provides for younger people to be contract holders, and the Housing (Wales) Act 2014 has enabled the PRS to be used more often for more vulnerable people. We are particularly concerned that unscrupulous landlords may entice vulnerable people into contracts with low rents only to raise rents significantly after the first two months. Tai Pawb is concerned with the potential for vulnerable tenants to be extorted under the new

provision. Under the conditions of the Bill, as it now stands, landlords could attempt to recoup money spent on repairs or choose increase rents once a property has been adapted (with no financial contribution from the landlord) for a disabled person knowing they are unlikely to be able to secure other suitable accommodation. The current Bill would not prevent this and with no recourse to the Rent Assessment Committee there appears to be no protection for tenants from such unscrupulous behaviour.

Supported Standard Contracts

Please also see the section above on 'Occupation Contracts and Landlords'.

We are, broadly, in support of the inclusion of the Supported Standard Contract. We recognise, in many respects, this serves to codify existing practices within the sector to which this applies. However, we have two main areas of concern in relation to the Supported Standard Contract.

1. We recognise and understand the importance for some types of provision to be able to issue temporary exclusion notices. While we support this ability, in principle, we would like to see the Bill strengthened to protect those people who may be excluded. As we interpret the Housing (Wales) Act 2014 section 55 these people would be classified as homeless. Given the nature and vulnerability of these people we would like to see the Bill amended to place a duty of care on the support providers to help assist these people find alternative accommodation for the period of exclusion.

2. Reading the definitions within the Bill for Supported Accommodation which states support can be "supporting someone who finds it difficult to live independently because of age, illness, disability or any other reason." We have concerns that supported living could potentially fall within this. Supported living currently, tends, to refer to a small group of people living together in a property each with their own tenancy but there is support provided. Our concern is this group of people they could have their current tenancy rights eroded. We strongly feel in these instances these people should have their tenancies converted to a secure or standard contract in line with provision the standard provision. We are also concerned that new people who would benefit from this type of accommodation are not automatically given a Supported Standard Contract where they should be provided a secure or standard contract when they enter.

Abandonment

We feel the proposed approach to abandonment could place vulnerable tenants at significant risk. Within the proposal the landlord is required to make enquiries to ensure the properly has been abandoned and also to issue a notice to the tenant. If the landlord is satisfied, after 4 weeks, the property has been abandoned they can take actions needed to secure and dispose of the property as they wish. The implications of this proposal is that tenants are expected to inform their landlord of any extended periods of absence from the property for some people, such as those who may be admitted to hospital, this is not practical or reasonable. Even with the ability for the court to overturn a decision and instruct a landlord to provide suitable

alternative accommodation for many people, either due to their needs for accessible / adapted housing or due to the limited housing a landlord may have, there is a significant risk that alternative suitable accommodation will not be available.

In specific regard to the notice issued by the landlord, there is no obligation in the legislation for this to be in a format requested by the tenant or to be issued to a support worker. It would also be beneficial for the contract issued to specifically state the need to inform the landlord of any expected absences (over a certain length) and an obligation for the landlord to provide indication of receiving this to avoid the potential for unscrupulous behaviour on both parts. If such provisions were included within statutory guidance then this would help. Overall clearer guidance on the burden of proof might also be useful for the appeals procedure; however our fundamental concern is that the 4 week period may not be long enough and the judicial oversight through the appeals process may come too late.

Variation of Contract – Periodic Standard Contract

The Bill proposes at section 126 that a landlord may vary a contract on agreement with the contract-holder. If contract-holders does not agree to this variation they must provide notice of termination to their landlord, if they fail to do so within the notice period applicable to contract variation (2 months) the landlord may seek possession.

We feel the process proposed within in the Bill is an improvement on the current situation where variations of contract are only possible through issuing an eviction notice then a new tenancy. The new process allows for the potential negotiation of terms between the tenant and landlord. However we recognise that some people would not be able to enter into such negotiations without support and this may put additional pressure on services such as Shelter Cymru and the Citizen's Advice Bureau. We also recognise that some unscrupulous landlords might use intimidation to ensure tenants agree variation of terms by threatening eviction if they do not, or may choose to frequently vary terms amounting to harassment of the tenant (as landlords may vary terms other than rent as frequently as they choose to)..

Improving Home Safety

We welcome the inclusion of a landlord's obligation to repair within the contracts, along with protection from retaliatory eviction. However we have a number of concerns with regard to the current proposals within the Bill:

1. Equality Considerations – currently if a landlord cannot gain access to a property in certain circumstances it is possible for a landlord to issue eviction notices. We are concerned that there is no protection for vulnerable tenants or those from diverse backgrounds. As the Bill stands currently there is no obligation for the landlord to ensure that the attempts to enter the property are reasonable and take account of the needs of the tenant, for example to have a carer, support worker, or chaperone present. While this could be addressed either in the Bill or in statutory guidance we feel this must be addressed before implication.
2. With the current variation to contract provisions (as discussed earlier) there is no protection to ensure that rent rises are not to cover the cost of repairs nor

they are so high as to be, in effect, simply retaliatory eviction by another mean.

Security of Tenure – Periodic Standard Contract

It is currently posited that the standard default position for the PRS in Wales will be the issuing of a Periodic Standard Contract. This contract option has also removed the six-month moratorium. We feel it is likely that the most vulnerable tenants will be issued this contract as default with only those perceived to be 'less risky' tenants offered the more secure fixed term standard contract. Our concern is as more vulnerable tenants, including younger tenants, those from diverse cultural and national backgrounds, and disabled people, need to use the PRS due to low availability within the social rented sector this could create a two tier PRS. We are concerned that the periodic standard contract is seen as a, potential, way of encouraging private landlords to rent to people they might not previously have considered. In effect this could be seen to suggest to landlords that 'if it doesn't work out' it is easy to remove these people from the property in a relatively short timeframe. We feel strongly this sends the wrong message to the PRS and places vulnerable people from diverse backgrounds in particular jeopardy of a revolving door of short term tenancies resulting in them being unable to put down roots, and having significant impact on community cohesion.

This approach seems to be a contradiction to the spirit of the rest of the legislation which is strongly based on a consumer approach. The current proposals in relation to Periodic Standard Contracts means that tenants can be kept on these indefinitely meaning they are never more than two months notice away from homelessness (including within the first 6 months of their tenancy) this makes it very easy for a landlord to, in effect, use a 'no-fault' eviction route instead of a fully transparent discretionary ground which could have judicial oversight.

Security of Tenure – removal of 'Ground 8'

As noted in our consultation response 'Renting Homes – A better way for Wales' this power is not widely used currently, despite the increase in rent arrears due to changes in welfare benefits.

The removal of 'ground 8' in relation to the Secure Contract and community landlords (RSLs) is welcomed by Tai Pawb as it levels the playing field between Local Authority Housing and Registered Social Landlords where inequity has existed in relation to rent arrears. We feel that the approach outlined in the Bill strikes the correct balance as we recognise that there may be times where eviction is the only course of action, in the face of serious rent arrears, and this can still be achieved through the discretionary powers of judicial oversight. We strongly support the notion that decisions to remove somebody's home should never be taken lightly or arbitrarily. Therefore the use of judicial oversight to take into consideration the individual circumstances we feel is the correct approach. We feel this protects vulnerable people who may accrue significant rent arrears through no fault of their own. In particular removal of ground 8 could be seen as proactively meeting the general duty within the Equality Act 2010 for example; in relation to those with significant mental health problems, those with language difficulties, disabled people who may not have accessible ways to pay their rent, younger people who may be

entering their first tenancy, older people, and trans* people who may not have been corresponded with in the correct name.

Equality Considerations

We are significantly concerned that throughout the Bill there is no mention of the Equality Act 2010 or the requirements therein. We are particularly concerned there is no reference to this neither in relation to Anti-Social Behaviour and Prohibited Conduct nor within the notion of 'reasonable refusals' by the landlord. Specifically we are concerned that there is no mention of the protection afforded to Lesbian, Bi-sexual and Gay people when requesting joint tenancies.

Dispute Resolution

Like many of our colleagues, within the housing and third sector, Tai Pawb feels that recourse to the county court is not the most beneficial way to enter into dispute resolution. The costs are high and often the detailed knowledge of housing within the system is lacking. We feel that alternative dispute resolution provision should be explored to include mediation and the use of a specialised tribunal. In our opinion this could potentially save money, free up court time, ensure that judgements are fair and backed by expert knowledge, and could make access to housing justice open to many more people.

Appropriate powers in the Bill for Welsh Ministers to make subordinate legislation

It appears that there are appropriate powers for Welsh Ministers to make subordinate legislation. However we would like to, respectfully, remind the committee the importance of ensuring that all subordinate legislation is fully equality impact assessed and within this process there has been due consideration and active engagement with the people of Wales.

Consultation on the Renting Homes (Wales) Bill

I am writing on behalf of the Residential Landlords Association (RLA), to make representations in response to the consultation on the Renting Homes (Wales) Bill. The RLA represents over 18,000 small and medium-sized landlords in the private rented sector (PRS) who manage over 250,000 across the UK. We seek to promote and maintain standards in the sector, provide training for members, promote the implementation of local landlord accreditation schemes and help drive out those landlords who bring the sector into disrepute. Members also include letting and managing agents.
The RLA aims to ensure that private rented housing can be seen as a first option as opposed to being second best to the owner occupied sector or social renting.

The Renting Homes (Wales) Bill introduces radical changes to the way we rent homes in Wales. Some of these changes the RLA supports, such as increased tenant education and awareness. Although the RLA has some reservations in other areas, many of the principles behind the Bill are well intentioned and with merit. In our response to the questions raised we look at the various concepts and principles underpinning the Bill. We consider what we believe to be the key issues; and we also comment on various provisions within the Bill, some of which are of a technical nature.

1.The general principles of the Renting Homes (Wales) Bill and the need for legislation to improve the arrangements for renting homes in Wales.

1.1 Introduction

We agree that the process of renting a home in Wales has for too long been complicated by variances in contract types and process, with both landlords and tenants often not being fully aware of the key details and rights as well as their responsibilities. The RLA supports the calls to make renting a home simpler and creating what should become a “default contract” for establishing the majority of tenancies in the PRS. Assimilating contracts into two types with as many common characteristics as possible is welcome. We do however have concerns about the upheaval involved, as well as costs associated with implementation. We had originally called for an across the board adoption of the assured tenancy regime, with the addition of various provisions recommended by the Law Commission, which we believe would have mitigated the impact of change. Achieving simplicity is not a straight forward process. Whilst we agree with many of the principles behind the Bill we do have reservations about the particular matters within the Bill.

1.2 The Agreement

Written contracts for particular transactions are a Holy Grail, but repeatedly, history has demonstrated that it is not achievable in practice. We therefore agree with the underlying purpose of the Bill to introduce what is in effect a “default contract”. The hallmark of the private rented sector (PRS), unlike the social sector, is flexibility. Whilst we strongly encourage the use of written tenancy agreements, nevertheless, things are often dealt with orally or with minimum formality. The concepts of fundamental terms and supplemental terms, along with the key particulars, operate as a default contract regime both prescribing minimum requirements and setting out certain basic terms, but, in our view, this replaces informality with a complex approach which is not readily understandable to the non lawyer. We accept that the model contract will in reality set these provisions out, but a model contract is of limited use if it does not replicate tenancy terms which are in common currency. There is also an accompanying need to address all the varied types of property in the private rented sector, both singly and multiply occupied. One size does not fit all.

1.3 A Default Contract

Although the RLA would strongly recommend that landlords create a full written contract, a small minority of landlords may attempt to continue to issue contracts informally, orally or missing out fundamental terms. Where this happens we recommend that the landlord must still issue the Key Terms, of no more than 2 sides of A4 (or face penalty), but otherwise the contract should automatically revert to a ‘Default Contract’ set forth by the Welsh Government. This ‘Default Contract’ would include any provisions that the Welsh Government see fit to include within a tenancy agreement (which should be subject to consultation).

By establishing such a mechanism, the Welsh Government would essentially force landlords to issue contracts correctly inline with the new guidance, or face having the contract written for them by the Welsh Government

1.4 The relationships between various terms

We support the notion to make it clear, by the way of “Fundamental Terms”, exactly what clauses must be included within the contract. This being said the relationship between fundamental terms, fundamental terms which can be changed, supplementary terms and additional terms must be clear. At present it is possible in certain instances to change a “Fundamental Term” if the landlord and tenant agree, and if that change offers greater protection to the contract holder. Many of these “Fundamental Terms” already offer the greatest form of protection to the contract holder, that is likely to be offered in reality and including the conditional ability to alter the term could lead to unnecessary confusion. Instead “Fundamental Terms” should be ‘fixed’ (without the ability to be altered) where appropriate, and where not they could be reclassified as supplementary.

1.5 The need for additional terms

At present the relationship between "Fundamental Terms" and "Supplementary Terms" on the one hand and "Additional Terms" on the other is also something that will need to be the subject of training and education when it comes to landlords putting contracts together. As we identified in the last paragraph, based on what we had seen in the Model Contract, this is somewhat limited. The usual comprehensive tenancy agreement contains many more terms. We perceive this to be a considerable disadvantage in the proposed regime. A Model Contract could not have maximum utility unless it is comprehensive. There is an additional danger here that if terms which are normal in the market place are not incorporated then you end up with the many variations of the tenancy agreements which you encounter today, which undermines any simplification. There is also the danger of terms introduced as additional terms which conflict with Supplemental Terms and the difficulties which can then ensue. We acknowledge the need in any Model Contract for the basic requirement for fairness, having regard to the special status that the Model Contract will enjoy under the Unfair Contract Terms Legislation. We believe that a balance can still be maintained if a rather more comprehensive approach were adopted as to what will be supplementary terms. By reasonably increasing the number of supplementary terms included, landlords and agents are likely to have a few additional terms which they wish to see included. This also means that it reduces the opportunity for terms which "clash" with the prescribed supplemental terms or worst still fundamental terms.

At present it is unclear as to exactly how landlords and tennats will use the power to vary terms in practice. Section 32(3) contains a requirement to 'identify' non incorporated terms. Does this mean that for example there could be a list of excluded terms, e.g. "Terms 7, 8 and 9 shall not apply". Alternatively, would it be acceptable that the supplementary term which would otherwise apply should be crossed out and the crossings out initialled? Clarity is needed. Presumably, however, if another term is incorporated into the contract which by implication would exclude a prescribed supplementary term this is not sufficient?

Much of the additional documentation (such as key matters document) is aimed at explaining the contract to tenants. Because we see the use of these terms as a potential source for confusion, it would be beneficial to see a "how to" guide for landlords putting a contract together. This would also address the issue which we phrased in the previous paragraph around the addition of "additional terms" in the tenancy agreements.

In order to ease the introduction of Additional Terms, the Bill should, in secondary legislation, set out as many Additional Terms as feasibly possible. This will help to increase the clarity of Additional Terms for later use; however this process should also be subject to further consultation due to the inherent nature of Additional Terms as they currently stand.

1.6 The extent of documentation to be handed over

The RLA supports the emphasis placed on improving tenant awareness of their rights and responsibilities. The RLA has long campaigned for more informed tenants to better hold landlords to account and vice versa, because the majority of disputes arise

due to a lack of information and understanding on all sides. Keeping this in mind, the RLA feels that the amount of additional documentation that the landlord is required to give the tenant is somewhat excessive. Specifically we are referring to the Key Matters, Easy Read Guide, Model Contract and Model Contract Summary as well as the additional documentation such as deposit protection already required. While we support the need for information to be clear to tenants, this amount of documentation is excessive.

Furthermore increasing the number of documents required to fully establish a tenancy will likely result in more unnecessary errors, as landlords simply forget about one of the less important documents, or where documents get lost and tenants do not sign receipts for documents. The amount of paperwork that a landlord is now expected to complete or hand over during the establishment of a tenancy is becoming an onerous task, especially when considering the amount of 'accidental landlords' in the PRS. Overwhelming tenants at the outset with such a volume of paperwork is likely to prove counter productive. It also undermines the concept of simplicity.

If the Welsh Government insisted on having a large volume of documentation to be handed to the tenant, we could expect the Government to meet its commitment to sustainability. This would mean allowing information to be given electronically to minimise the physical impact of reams of paperwork that would otherwise be created. See section 2.1 for further details of 'Digital by Default'.

1.7 Problems with new concepts and terms yet to be scrutinised by the Courts

The RLA is cautious that with any new Bill, especially one which rewrites tenancy agreements, new terms and concepts can often cause difficulty when it comes to legal interpretation. Many of the new terms and concepts are yet to be tested by legal scrutiny, thus increasing the potential for problems once the Bill is implemented. One of the core principles of the Bill is simplicity. This should mean simplicity for the tenant and landlord so that their respective legal positions are clear.

It is important, in our view, that the Bill itself avoids uncertainties and that issues raised as it passes through the Assembly are clearly addressed. It has taken many years and various cases to interpret the assured and secured tenancy regimes. Case law now provides a considerable element of certainty but the reality is that there will be a significant number of test cases because of the novel concepts introduced in the Bill. Indeed, these will take up much of the cost involved in implementation. We hope that as the Bill is scrutinised and questions are raised that answers will be incorporated in the Bill as necessary by appropriate amendments to deal with these. These terms (or for this matter, the Bill) should not be defined by a number of legal battles, which are ultimately costly, and may undermine the Bill.

1.8 Inter relationship with common law and existing legislation

The Bill cannot and should not operate in isolation from the common law. It is an impossible task for any Bill such as this to incorporate all common law or existing legislation. It has to be recognised, that the foundations on which the Bill sit are common law concepts such as tenancy and licence, which in turn are underpinned by

the law of contract. There is nothing wrong in our view in relying on common law where this is appropriate.

This relationship with the common law can be viewed in two stages up to the formation of the contract and then thereafter during the course of the tenancy. In reality, the involvement of the common law in particular cannot be excluded from either. After all it is a precondition of the existence of an occupational contract that there should be a licence or tenancy, both of which involve contractual common law concepts (see Section 7 of the Bill). It is perhaps legitimate to criticise the assured tenancy regime because, when it comes to termination, it is heavily dependent on common law provisions, but we feel that the provisions of this Bill, as it currently stands, fails to take account of the realities of the PRS, especially in relation to tenancy termination. Section 147 purports to provide an all embracing code, subject to limited exceptions in relation to rescission and frustration. This, coupled with the absence of a provision requiring occupation under occupation contract as being in respect of an only or main home, gives rise to potential difficulties, as it overlooks both implied surrenders and mergers (when the tenant acquires the freehold for example). In particular this fails to address the important issue of implied surrenders – see below.

It is disappointing that, contrary to usual practice, the Bill does not contain a list of relevant repeals or amendments to existing legislation. For example, the inter relationship with the provisions of the Bill and the Protection from Eviction Act 1977 are important.

Likewise, the inter relationship between the Bill and the Law of Property Act 1925, especially when it comes to formalities is significant. We question the need for there to be a deed where a tenancy exceeds three years or is not granted in possession. This could be amended to 7 years so as to tie in with the requirement of HML and Registry as to registration. Most tenancies are not actually granted in possession because there is often a delay before a tenant moves in. This strips the tenant of certain protections, e.g. if the property is sold by the landlord in the meantime. It can also mean that the provisions of Section 62 of the 1925 Act, implying certain easements do not apply. The opportunity should be taken to address technicalities of this nature.

1.9 Basic Concepts

1.9. Dwelling”

This is barely defined; for example the traditional reference to “building or part of a building” is not even included. The issue of tenants sharing with others (beside the landlord) is not addressed. Therefore protections which work well in relation to shared accommodation as contained in the assured tenancy regime are omitted. In case law the Ultratemps case settles the issue that if the key amenity is omitted where the tenant does not have the use of other accommodation, it is still a dwelling. However, case law has not determined whether a property is still a dwelling even though the tenant has shared use of the amenities such as a kitchen. Do the premises actually let still comprise a dwelling as a key facility is outside them? Whilst dealing with a different concept of “separate dwelling” the assured tenancy regime addresses

this issue. This is an example where clarity at the outset would be helpful to avoid subsequent litigation.

The Bill provides an opportunity to address the issue of "home working". Whilst business tenancies within the scope of the Landlord & Tenant Act 1954 are excluded from the definition of "dwellings" this key issue is not addressed. The volume of business tenancies and those "home working" is increasing, we would expect to see this recognised within the Bill. The UK Government have raised the issue of the necessity to amend the 1954 Act legislation so that unintentionally what started out as a residential letting cannot be brought into the scope of the 1954 Act. Another issue which the Bill does not address is whether the list of exceptions for Section 7 set out in Schedule 2 is intended to be exhaustive or whether the residential lettings fall outside the scope of a "dwelling" even though that particular type of occupation does not fall within the exceptions listed in Schedule 2 (see R (CZ) v London Borough of Newham where the Supreme Court held that the provision in the Housing Act 1988 was not exhaustive).

1.9.2"The Tenancy"

Again, the definition of "tenancy" is skimpy. One assumes that it includes a tenancy be estoppel. Again why cannot this be spelt out to avoid uncertainty? In practice, properties are often let out by a letting agent or a father may manage and let family properties in his own name when in fact they belong to other family members. It is important to address these casual relationships; avoiding uncertainty.

1.9.3 The "Principal Home"

The requirement of "principal home" is no longer a key element for the existence of an occupational contract. Nevertheless, the requirement for a property to be a person's only or main home is important when it comes to certain aspects of the Bill, e.g. possession of abandoned dwellings (See Section 216) and exclusion of joint contract holders (Section 221). We have already commented adversely on the problems around drafting contracts from a landlord's perspective and omitting such a requirement is therefore yet another trap for the unwary, especially if no provision is incorporated in the Model Contract (as is presently the case with the Law Commission's version). This brings us back to the point we have made about what is in termination because under the assured tenancy regime if the tenant moves out for good (e.g. into long term care) the landlord can take action at common law to terminate the contract, e.g. by serving notice to quit.

1.10 The upheaval and cost to landlords

As mentioned previously, the Renting Homes (Wales) Bill creates wide scale changes to the way we rent homes in Wales, which inevitably will incur a significant cost. The cost of this Bill falls in three main areas, landlords, markets and government expenditure. Inevitably, some of the costs payable by landlords will be passed onto tenants through increases in rents.

This Bill is expected to increase costs for landlords when renting out a property under the new system. This includes the obvious such as further training, extra printing costs

and re-issuing tenancies. It also includes some less obvious costs, for example with such big changes being introduced, inevitably more landlords are likely to make mistakes, especially early on. This could mean increased court visits, reissuing of documents and changes of business practice. Some of these costs can be mitigated against, for example by distribution of a 'how to' guide for landlords, greater training and the inclusion of 'Digital by Default'. There is the likelihood of significant litigation costs as the provisions for the Bill are tested in the Courts. The ever present ingenuity of lawyers should never be underestimated.

The Renting Homes (Wales) Bill also poses a threat to further investment in the market, due to increased levels of financial risk. Where the Bill has made it more difficult for landlords to recover assets, or where the Bill increases the length for a potential return of investment (see retaliatory eviction below), the Bill also impacts the market viability of further investment in the PRS. This is potentially dangerous considering the increasing demand on the PRS and the new discharge of homeless duties, landlords should not be discouraged from investing further in their property (which benefits the tenant) or expanding their portfolio (which helps increase supply for tenants and social tenants).

1.11 Implementation/training

The huge upheaval to which we referred above makes it essential that there is both sufficient awareness and training, particularly for landlords and agents. We are concerned that as yet no thought has been given for how the new regime under the Housing (Wales) Act regarding mandatory training as part of licensing process will be used or tailored so as to meet the requirements of this Bill. We estimate that there are at least 70,000 private landlords in Wales. The Welsh Government have a figure of 80,000. A significant number of these will be accidental landlords or landlords with one or two properties. We need to get a message across to them regarding the terms of this Bill, once it is implemented, and this will be a huge endeavour. It is important, that the Welsh Government explores ways of using the registration and licensing scheme to put across a message regarding the requirements of the Bill. Likewise, it is important that tenants are alerted to the provisions of the legislation.
To achieve this need, we would expect to see a full communications plan, including costing, as to how the minister expects to inform and educate all effected by this Bill.

Turning now to the key issues in the Bill

1.12 Removal of the 6 month moratorium

The removal of the 'six-month moratorium' has a number of benefits for both landlords and tenants, adding a degree of flexibility to the system. Contrary to some views, landlords do not (nor does it make good business sense) consistently look for ways and means to evict good tenants. Landlords do however risk assess tenants in order to establish whether that tenant would be a 'good tenant'. This includes processes such as referencing. At present a lack of availability of accommodation for high risk tenants such as those previously homelessness, are exacerbated by the fact that the tenancy is at minimum six months. By removing the 'six-month moratorium' landlords can effectively reduce the risk profile, as should the tenant not prove to be a

‘good tenant’ action can be taken to either address the situation or recover possession. This could mean more landlords introducing probationary tenancies, which could be used to house those who have a poor renting history, setting them up in the future for much longer term tenancies (See 1.13).

There is demand for genuine short term tenancies. At the properties may be empty for say a month or two, e.g. if the landlord is proposing to sell the property or if tenants are between properties. Some one might come along and want a short term tenancy but at the moment with the moratorium the landlord has no guarantee of gaining possession at the end. The tenant can choose to stay there longer and there is nothing the landlord can then do about it. Instead the landlord has to wait until the initial six months has run out. We believe, based on our experience, that this is a real disincentive to the supply of a required market for short term lets.

Many landlords already let for an initial fixed term of at least six months, as this guarantees a rental income for at least the first six months. Where a landlord considers the tenant to be a low risk tenancy, i.e. not previously homeless or poor renting history, landlords will want to guarantee the tenancy for a fixed period. This means that in practice, good tenants and landlords are likely to include some type of mutually acceptable fixed term, such as six months or one year. There is therefore very little evidence to suggest that the removal of the ‘six-month moratorium’ would alter the vast majority of tenancies. It would however greatly increase the flexibility of short term housing, such as those moving between homes or for study, and greatly increase the chances of landlords letting to tenants they may not have otherwise been willing to consider.

1.13 Long Term Tenancies

To somewhat alleviate the concerns expressed by those who oppose the removal of the six month moratorium, the RLA is currently consulting on a Long Term Tenancy Agreement, which will be submitted shortly, upon completion. Although the details are still being finalised and consulted with stakeholders, this agreement would allow tenants an option to extend their tenancy for 6/12 month periods for up to a total tenancy term of 5 years.

We kindly request that the Committee allow for this submission as evidence when completed, as we feel it may add extra security to tenancies and mitigate the concerns of others.

1.14 Rent controls

The RLA is pleased to see that the Welsh Government has resisted calls from some to include rent controls in the Renting Homes (Wales) Bill. The RLA is strongly opposed to rent controls, as any such policy would have a catastrophic impact on investment in the PRS, ultimately resulting in poor standard accommodation for tenants.

Such a policy would also see an immediate spike in rents in anticipation , as currently tenants in Wales have seen some of the smallest increases in rent. Office for National Statistics shows that in Wales rent increased by 0.2% in the 12 months to December

2014. During this time, inflation measured by the RPI was 1.6% and 0.5% as measured by the CPI. So not only is the call for rent controls bad policy, it is also unjustified given the relative decline in rent prices.

Rent controls would have a catastrophic impact on investment in Wales as many landlords would begin to withdraw assets in Wales for re-investment elsewhere in the UK or perhaps out of the PRS altogether. Those who call for Rent Controls and improved standards should think very carefully as to how the two policies can realistically work together.

1.15 Retaliatory Eviction

The RLA entirely supports the principle behind addressing the issues of retaliatory evictions in this Bill, as no tenant should fear eviction for simply holding a landlord to account. We very much endorse the targeted approach of dealing with this situation on a case by case basis allowing the Courts to consider on the facts of the case whether the eviction is retaliatory; rather than the general moratorium on use of the no fault notice as introduced in England which adversely impacts on responsible landlords, as well as non compliant landlords. We do however have concerns as to how this principle has been executed and what the potential impact may be going forwards.

Firstly it is not unreasonable to ask that any additional clause effecting eviction procedure should not adversely affect the time it takes for a landlord to recover possession. Our concern is that as the clause currently stands, it could potentially unduly delay possession orders. This is because tenants could be deliberately damaging property, making routine complaints to avoid eviction or withholding months worth of rent. This increases the scope for tenants to run into large arrears, and by placing number of well timed complaints, can avoid eviction proceedings.

Secondly we are concerned by section 213(3) (B) “the court is satisfied that the landlord has made the possession claim to avoid complying with those obligations”. Our concern is that we have little guidance as to what would satisfy the court in this context.

To help avoid such issues we would like to see the introduction of a standard complaints procedure around repairs that can generally be followed to ensure that both landlord and tenant know what is expected of them. This would clarify the complaint process for landlord and tenant, but also help the courts to determine retaliatory eviction cases. It should also not be possible to claim RE in cases of proven ASB, rent arrears or, notably in repair cases, damage caused by tenants. The RLA would like to work with the Committee to produce an acceptable procedure that could be introduced into the Bill.

1.16 Property Condition

Tenants and Landlords should be equally aware of their rights and obligations when entering a tenancy agreement. The condition of the dwelling can often be a source for disagreement between tenants and landlords when situations such as questionable

repair, services and deposits arise. These issues often arise due to a lack of awareness of the rights and obligations of the tenant or landlord.

Attempts to increase awareness and clarity of the rights and obligations of landlords and tenants in relation to property condition are welcomed.
We endorse the approach of retaining and repeating the provisions of the current Section 11 of the Landlord & Tenant Act 1985. Any change in approach would lead to uncertainties in an important area especially as the landlord is under existing comprehensive obligations in relation to ongoing repair.

The RLA has welcomed the decision of the Welsh Government to abandon its original proposal to incorporate a fundamental term to prevent dwellings being rented with Category 1 hazards. The Housing Health and Safety Rating System (HHSRS) is a local authority enforcement tool with subjective elements giving discretion to the assessor so that it simply did not provide the necessary certainty for landlords and tenants to determine whether the contractual standard was met. Undoubtedly there were also resource issues if local authorities were to become involved in "overseeing" the operation of this term. In principle, we support the alternative approach, but with considerable reservations around key issues. We support the Welsh Government's intent to improve the standard of residential accommodation in Wales; but this gives rise to considerable challenges; not least the costs involved, which will ultimately either fall on tenants through increased rents or will lead to an increase in empty properties, particularly in areas of deprivation, because they are not worth letting out due to the work required.

Regrettably, there are no up to date Welsh Government statistics to assist in assessing the impact of what is proposed. The last Welsh Housing Conditions Survey was published in 1998. At that time there were some 80,900 dwellings in the PRS and disrepair was the major problem for the sector, which today that figure is around 210,000 PRS properties. The estimated cost per dwelling of effecting repairs at that time was £1,883 on average per PRS property, but, importantly, this included the cost of bringing the properties up to fitness standard where necessary.
The contractual requirement for a property to be reasonably fit for human habitation was all but abandoned from 1957 onwards (see the history set out in the Law Commission Report – Landlord and Tenant: Responsibility for state and condition of property published in 1996). In other words it applied in the days before double glazing, when outside toilets were still quite common and the main source of heating was coal fires. As does the Welsh Government we want to see the general standard of housing in the PRS improved over time but there is a very real danger if the bar is set too high from the outset. Furthermore, when the Law Commission considered matters, recommending this term, mandatory repair grants for landlords were still available but this public financial assistance has, to all intents and purposes, disappeared completely, except for the disabled.

We are deeply concerned that not only is there an attempt to resurrect this concept of unfitness for human habitation which has fallen into disuse, without careful consideration of the implications, but that this has been done without any proper research or even available reliable up to date statistics for Wales on current housing stock conditions, especially in the PRS. It will, of course, have implications for community landlords but it is well recognised for example that housing association

stock is significantly more modern. The social sector has had the benefit of a major upgrade of its stock via the Decent Homes Programme at a cost approaching £40 billion spent in England and Wales.

The age of the stock in the PRS is a major challenge. It should go without saying that it is much harder to keep older stock in repair, improve its energy efficiency when it lacks cavity walls, and retro fit to bring properties up to modern 21st Century standards. This should not become a blame game. The reality is that as owner/occupiers move on significant elements of this older stock have fallen into the PRS. EHS statistics confirm that in terms of tenure proportionately the PRS has the highest proportion of pre-1919 stock.

You also have to set against this the likely rental income for many of these older properties in the PRS, as the rental yield is typically very low. No financial assistance such as the Decent Homes Programme has been provided for the PRS. We regret to say that we have seen no evidence so far of careful consideration of the likely consequences of incorporating what, as it stands according to Section 90 of the Bill, as being an absolute requirement, subject to the caveat of only requiring reasonable expenditure. Nevertheless, as currently set out in the Bill this is such a vague qualification and indeed could actually prove counter productive, as the Law Commission identified in its report.

Turning to Section 90 as currently drafted we consider that the following amendments are needed –

- The provision should only apply to completely new lettings once the Bill is implemented. A "big bang" conversion of existing tenancies would mean an across the board requirement at the outset which is simply impracticable. The requirement needs to be phased over time.
- The requirement should be drafted purely in terms of health and safety; not personal comfort or enjoyment of the property. This would be in line with HHSRS concepts, especially if the deficiencies which could give rise to liability are framed in terms of HHSRS hazards. This was generally considered to be the interpretation of the current moribund provisions in the 1985 Act.
- The scope of the requirement should not extend across all 29 hazards. This provides a far too expansive list.
- Age, character and locality needs to be taken into account.
- Energy efficiency improvements should be excluded from the scope of this obligation. They will be addressed from 2018 by minimum energy performance standards and can also be the subject of HHSRS powers

It is vital in our view that the costs of carrying out work be capped at what is reasonable, although this needs clarification. This has always been an accepted proviso for provision of this kind. However, it is worth noting, as the Law Commission pointed out in their report that this can be counter intuitive, because it can lead to a situation where a landlord allows a property to deteriorate to such an extent that he/she can then hide behind the reasonable expenditure defence. Ironically, this could exacerbate the problem. To deal with this, there needs to be an obligation to expend up to a reasonable sum where this is required even if some only

of the issues in the property can be property addressed and not all of them. This is on the supposition that the yardstick of reasonable expense is defined with greater exactitude and set at an affordable level. Again this was where the issue of whether expenditure on different hazards is judge cumulatively becomes important. After all, under HHSRS, the cumulative approach is not adopted.

We acknowledge that there are gaps in the statutory repairing covenant which is modelled on Section 11 of the 1985 Act. We agree that it makes sense to impose requirements over and above this repairing obligation but, as drafted, Section 90 sets the bar too high and, as yet, the implications have not been consulted upon or debated. Section 90 as drafted imposes a stringent and too all embracing standard which is not realistically achievable. It is a step in the right direction but the economics of what is proposed need more careful consideration.

1.16.2 Electrical Safety

The RLA recognises the various calls for improved electrical safety standards to be introduces within this Bill. At present, it is a legal requirement for electrical safety checks to be carried out in Houses of Multiple Occupation (HMO) every five years. The RLA supports this as HMOs tend to have higher turnover of tenants. We believe however, for owner-occupied properties, non-HMO properties should have checks of the installed wiring within them every five to ten years, on the recommendation of a registered electrician. We would also support the introduction of Residual Current Devices in domestic properties. The RLA does not feel that it is necessary to make annual Portable Appliance Testing (PAT) mandatory as this goes beyond what is required of even the largest employers. We feel that considering even the largest employers are not required to uphold this measure, it would not be necessary for landlord to do so.

1.17 Joint contracts

The current law regarding joint contracts is such that the landlord is effectively entitled to treat the tenants as one; rather than as individuals with separate rights. Broadly on a day to day basis, there are two scenarios from the landlord's perspective so far as joint tenants are concerned. Firstly, there are couples where some relationship is involved, whether or not they are married and, secondly, there are groups of tenants such as groups of students or young professionals. Often these groups can be quite large in number.

Under a joint tenancy the landlord expects to receive a single sum by way of rent, although in many cases (especially where one is concerned with a group of tenants) individuals will contribute towards this. Significantly, from a landlord's perspective if one of the joint contracts holders is allowed to leave that his/her source of income is put at risk. In the case of an ordinary couple if one works and the other does not or if one has a significantly higher income that the other then should the higher earner depart, this clearly puts the contract in jeopardy and the landlord faces the prospect of arrears. If one of the contract holders leaves, the result can negatively impact the others.

In its desire to "individualise" joint contracts the Welsh Government is clearly motivated by a wish to protect those who are vulnerable when a relationship breaks down. This does not really arise however in the case of groups. In promoting this laudable aim, it is, however, important that the interests of the landlord are recognised and protected. In particular, regrettably, as a result of the one contract holder leaving the others cannot pay the full rent and they would have to leave. At the same time, it is important to ensure that, subject to landlord's approval new contract holders can be introduced and that this can be accommodated. For example, in the case of lettings of student groups, this is a not unknown problem. Normally, the landlord is happy to allow a new party to be introduced but this, of course, requires not only the landlord's consent but the consent of the continuing occupants. We do have some issues of detail around these proposals and also around the introduction of the concept of only or principal home as a relevant criterion in certain related situations – as already explained.

At present the current law regarding what happens to a joint contract if one of the tenants leave can negatively impact the other tenants and in some cases lead to a re-drawing of the tenancy agreement. In principle, where a tenancy breaks down by one person leaving the other tenants should have the opportunity to continue the tenancy, provided this does not adversely affect the landlord.

This Bill allows for one tenant to be removed from the tenancy without it ending the whole contract. This provides security for tenants as it means that if one tenant is acting irresponsibly or is arrested, it will not result in the other tenants becoming automatically homeless. This would effectively allow for the responsibilities of the tenancy agreement to be simply transferred should one tenant leave.

Our concern however is that while this acts well in principle it does not do so in practice. What were to happen if for example 3 out of 4 tenants moved out, leaving the remaining tenant to cover the whole tenancy agreement? This has the potential to leave tenants stranded, building up arrears, while the landlord must only look towards eviction proceedings to resolve the issue.

To avoid this we would suggest extending the length of time an individual has to give notice is set at two months. This would give time for the landlord to receive notice, write to the other tenants as the landlord is required and a conversation beginning between the remaining tenants and landlord. Possibly then by the one month mark, the remaining tenants and landlord must decide whether either side wishes to continue. No notice from either side means the tenancy continues but without the original tenant that gave notice. If the other tenants decide to leave, then this procedure effectively backdates their notice, should the tenants wish. Ultimately this encourages dialogue and responsibility from both sides as to the affordability and practicality.

1.17.2 Practicalities, Deposits and Cost

Although we agree with the increased flexibility in the area proposed by the Bill, it does raise a technical issue surrounding deposits and inventories. If one tenant were to move out, leaving other tenants in the property, a check-out would need to be carried out, a partial deposit released and a new inventory prepared and signed by all

remaining tenants. The problem here is that the tenants will continue to live in the property and for an inventory to be done correctly, the tenants would have to move out of the property and back in after the inventory. Obviously impractical. The solution to this is that any new tenants coming into the property must accept the original inventory and highlight any damage that they find within a property to the landlord and get it recorded by the landlord. Whilst not ideal, alternatives will mean that such changes in tenancy will be very expensive.

The costs associated with inventories and deposits can be surprising, with the average 1 bedroom flat inventory costing £110 for its preparation and around a further £50 for an end of tenancy check-out. Professor Ball of Reading University, in the report on the impact of regulation in the PRS, concluded that deposit protection has a cost to tenant of approximately £2 per week on the rent. Without careful consideration into the practicality and implementation of this policy, costs to tenants could rise further. We would also express concern with the Deposit Protection Schemes technical capacity to adapt to such a change and deliver a practical system to deal with the joint contract scenario.

1.18 Implied surrenders

The Law Commission are seeking to provide a comprehensive code for occupation contracts, at least once the contract has been formed. However, there are already exceptions in respect of repudiation and frustration. As we have already pointed out above, there is significant omission in terms of the doctrine of implied surrender. We believe that its omission from the Bill is a serious practical defect in the scope of the termination provisions contained in the Bill, as it presently stands. The Bill (Section 152) refers to an agreement for surrender but it does not include deemed surrenders which are implied by operation of law, for example where the tenant returns the keys to the landlord and the landlord accepts these. We have already pointed out that a hallmark of the PRS is informality. The keys for example may not be returned direct but instead left with a neighbour for the landlord to collect. Provided that there is an unequivocal intention on the part of the tenant to give up the tenancy which is accepted by the landlord then this puts an end to the tenancy. Many tenancies are currently brought to an end in this way. Indeed, in many instances, this overcomes any issues around abandonment because where there is a clear intention to end a tenancy that puts an end to the tenancy anyway. Rather than have any arguments about whether the scope of section 152 extends to a deemed agreement, it would be far better in our view to set out this principle within the Bill itself to put the matter beyond any doubt.

1.19 Abandonment

We very much welcome the intent to provide for cases where tenancies are abandoned and try to put and end to the uncertainty that surrounds this. From the landlord's perspective this is a very difficult situation because if the landlord gets it wrong he/she is at risk of a claim by the tenant or even prosecution. Regrettably, however, we do not feel that the current provisions of the Bill go far enough because they still leave a lingering uncertainty. Chapter 13 (Section 216 onwards) for a start only applies if there is a requirement for the contract holder to occupy the dwelling as his/her only or principal home. We have already raised this issue elsewhere. The

problems lie with Section 218(2)(b) in particular in that the contract holder can claim that he/she has not abandoned the dwelling and there has been good reason for his/her failure to respond or respond adequately. This is beyond the control of the landlord and these circumstances will be unknown to the landlord at the time.

Further whilst the requirements of paragraph (c) are in a sense within the control of the landlord, with hindsight, the Court may well take a different view to the landlord as to what constituted "reasonable grounds". It is always difficult to judge these issues. We are also concerned that even though it is discretionary it is open to the Court to order the landlord to provide suitable alternative accommodation which makes it impractical for a small landlord who has no alternative property available to do this. There is also the risk of a reinstatement order and the question then arises as to what happens if the landlord has re-let the property to someone else. Again this is perhaps a section that would warrant further guidance and discussion as to how this section might be implemented pratically.

We consider that at the very least paragraph (b) ought to be removed and that the question as to the reasonable grounds on the part of the landlord should explicitly be judged at the time and in the light of the information reasonably available to the landlord. The power to reinstate should be subject to availability of accommodation.

2. Any potential barriers to the implementation of these provisions whether the Bill takes account of them.

2.1 Volume of paperwork and 'Digital by Default'

As mentioned throughout this consultation, one of the biggest areas for concern is the amount of paperwork involved in establishing a tenancy. Often this requirement may mean large printing costs, misplacement of documents or corners being cut because the process is 'too difficult'. Although the Bill takes account of issues such as cutting corners, it does not fully account for the extra work and cost this may cause the landlord. This is where 'Digital by Default' comes in.

At present notices and documents under the Renting Homes (Wales) Bill may be issued electronically if the tenant has given express consent to receiving them by this method. Rather than gaining express consent from a tenant, tenancy agreements and included documentation should be issued electronically where the tenant has given an appropriate email address. This would remove a large part of the burden for landlords and cut down significantly on the amount of physical paperwork. Issuing a tenancy agreement could be as simple as a few electronic signatures and the emailing of a folder containing all the relevant and required information. It would also mean that tenants are more likely to read and file the information for future use.
We acknowledge however, that some people are not IT literate, especially those of the older generation, and the answer may be as a compromise to allow an express opt out

of electronic communications; rather than an opt in. Landlords could be required to, upon request, issue one written version of the contract, per tenant, at no charge.

2.2 The need for training and publicity

The key barrier in our view for the uptake in the PRS is the need to communicate these changes. Importantly, as the Welsh Government has adopted a scheme for registration and licensing, there must be a tie in with this system for it to be used to disseminate information. We would however, express caution that training and licensing can achieve this. The take up in Scotland for example has been slow and no one suggests that there there is comprehensive coverage. After all, a change always takes much longer to implement than anyone expects.

2.3 The need for education and publication of literature

The Law Society Gazette recently reported on the reluctance of publishers to publish books explaining separate laws as they emerge in Wales. This is due to the relatively small number of lawyers in Wales and the small size of the jurisdiction. This Bill will be one of the first major pieces of legislation which introduces wholly novel concepts of wide application. Clearly, a reluctance to publish literature will inhibit the dissemination of information which will adversely impact on lawyers as well as other advisers. Economies of scale will be lost to the relatively small market. Likewise, for those trained and educated in England there will be problems in learning including mastering a new set of laws.

3. Whether there are any unintended consequences arising from the Bill

The Renting Homes (Wales) Bill proposes wide ranging changes to the rental market. It is not reasonable to expect the bill to foresee every eventuality and consequence; however a through assessment of any potential consequences should be undertaken. The Welsh Government should consider costing for financial support and/or secondary legislation to avoid slow response and solution to unintended consequences created by this Bill. We would not want the nightmare scenario of a repeat of a case such as Superstrike, which could take the government far too long to respond to.

3.1 Increased pressure on legal services

With new legislation and regulation coming into force there will inevitably be some mistakes made and new legal process to be implemented. This 'teething' period may result in increased pressure on legal services, which could result in an increase of legal costs.

What the Renting Homes (Wales) Bill must avoid is adding further complication to any aspect of the renting process. This would undermine the basic principle behind the Bill; to make renting a home in Wales simpler. The Bill must avoid increasing pressure on legal services, as it could result in lengthening processes and costs for both the tenant and landlord. This is why, where appropriate, any legal change such as retaliatory eviction should not lengthen the legal process by any more than absolutely

necessary. To reiterate, the RLA supports the principle behind the retaliatory eviction clause, however we feel it is in the Bill's own interest to minimise any added delay this may add to legal proceedings.

3.2 The risk of increasing paperwork resulting in corners being cut

If a landlord is faced with a plethora of paperwork, key documents and certificates, they may be more likely to find an alternative solution, rather than working through the process. This means that a landlord may informally arrange additional terms with the tenant, rather than exploring how to write them into the contract. It could also mean that landlords do not talk the tenant through the contract, as they lean on the additional documentation to do the explaining for them. More emphasis needs to be placed on tenant acknowledgment of having understood their rental contracts rather than devising duplicate methods of telling them the same thing over and over. It is the current practice of many landlords and letting agents to walk a prospective tenant through the various sections and pages of their rental agreements and to answer any questions that may arise.

Again one possible solution to this issue, as mentioned above is 'Digital by Default'.

3.3 Unwillingness to rent

It has to be recognised that this Bill in conjunction with the Housing (Wales) Act destroys the traditional informalities surrounding the PRS, especially ease of access to renting. Unlike the conveyancing process surrounding owner/occupation or even formalities applicable in the case of social housing, private renting has been a relatively informal process. The market is heavily dependent on small landlords. Institutional investment has not taken off and is unlikely to do so to any large extent. If you make things too complicated for the small landlord then properties will start to disappear from the rental market to the detriment of tenants. Landlords will get fed up with the complex processes surrounding letting and managing properties and will disinvest. Perversely, this could well lead to something of an influx of unsavoury characters that cut corners anyway. Private landlords are facing huge upheaval in terms of introduction of Universal Credit, requirements for immigration checks and increasing regulatory requirements. This ever increasing complexity and plethora of regulation could in the medium term impact adversely on capital values. For a sector where, like it or not, returns are heavily dependent on capital growth, not just rental income, this could again adversely impact on much needed investment.

3.4 Increase in rents

Another likely unintended consequence will be increased rents. As more and more formalities apply this involves extra cost which will then be priced into rental levels, again coupled with the extra requirements imposed by Housing (Wales) Act. Consumer protection always comes at a cost and it is always the consumer who bears this cost.

3.5 External investment

Another significant danger for the Welsh PRS is an increasing reluctance on the part of external investors, especially from nearby parts of England to invest in the sector because of increased regulation and formality, not least the extra requirements which will be introduced by this Bill, especially when taken in conjunction with Housing (Wales) Act requirements. Having to learn a new set of laws and practices is an immediate "put off" for external investment. It could even prove deterrent for institutional investors considering investment in Wales. We also have concerns about the willingness of buy to let lenders to invest in this market; again because it involves learning a new set of rules and training staff etc.

3.6 Joint tenancies

We would expect that because of the complexity surrounding joint tenancies some landlords would insist on having a single tenant. The "lead tenant" concept has proved popular in terms of dealing with tenancy deposits as it simplifies administration of the deposit. The landlord can just deal with one tenant. The next logical step following the introduction of complex provisions around joint tenancies is that landlords may simply refuse to let to joint tenants and rely on a contract with the head tenant who then informally will bring in other occupiers. This has been done in the past for example to avoid tenancies being treated as multiple lets so we would imagine that this practice would assert itself, going forward.

4. The financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum)

As is already known, we have published our own impact assessment on the effects of this Bill, some time ago, and estimated the total likely cost in the region of £45 million; this excludes any cost involved with the upgrading of properties in the PRS . Our approach has been different from the standard impact assessment approach and brought into its scope a greater range of costs, especially costs resulting in litigation surrounding the legislation as test cases are brought out to clarify the new concepts. Having now seen a text of the Bill we see nothing to lead us to depart from our original view. Our assessment of the cost appears as an Appendix to this evidence. We stand by our original calculations. We believe that the Welsh Government's own impact assessment greatly underestimates the financial impacts because it underestimates the total cost to the PRS and the wide range of stakeholders involved in the Sector who will be affected by these provisions.

We have addressed separately above the question of costs which would be involved in implementing the fitness for habitation provisions, coupled with the cost of bringing the condition of the properties in the sector up to standard. As a broad brush approach we would estimate the total cost to be of the order of £0.5billion to £0.75billion much of which will fall on tenants.

5. The appropriateness of the powers in the Bill for Welsh Ministers

to make subordinate legislation (as set out in Chapter 5 of Part 2 of the Explanatory Memorandum)

The amount of subordinate legislation that this Bill would allow Welsh Ministers to make is both excessive and without any real check or balance. It is concerning that Welsh Ministers would have the ability to change many of the fundamental terms and supplementary provisions, by only using the negative procedure. This means at least theoretically, once the Bill has passed, the nature of the model contract could easily change before the Act's implementation. The powers also allow ministers to radically alter the amount of additional explanatory information that must be given (specifically powers relating to sections 29(1), 32(4) and 45(3)). Given previous comments made regarding the volume of additional information required to be given upon the start of the tenancy, and any additional issues surrounding this, it is concerning to see how easily the Welsh Ministers could escalate this burden resting upon the landlord.

The RLA does however support the power enabling Welsh Ministers to amend section 55. This would allow for the definition of prohibited conduct to be updated rapidly, so that any form of anti-social behaviour or domestic abuse is quickly dealt with. This power is however considered 'Affirmative' citing the reason that this power enables the amendment of primary legislation. This is surprising when many other powers which have a direct impact on the primary legislation are given negative procedure citing that they 'prescribe technical matters of detail which may change from time to time'.

As we have already pointed out above, we do have concerns around the omission of lending/repealing legislation to deal with the impact of the Bill on the existing legislation. Whilst we accept that things are overlooked and the use of regulation making powers may be helpful it is important to deal with this. The main body of repeals should, in our view, be included in the Bill.

We are also concerned at the absence of a draft model contract because it is very difficult to understand the terms of the Bill without this. Currently, we only have the Law Commission proposal to rely upon.

Conclusion

We will be publishing our own technical memorandum which we will submit to the Welsh Government to put forward suggestions for detailed amendments to improve the Bill to benefit both landlords and tenants.

We are grateful for the opportunity to make representations in relation to this Bill. We do have a number of significant concerns around various provisions mainly that the Bill can be improved upon to the benefit of the PRS. The recommendations made by the Law Commission incorporated in the Bill are in many respects helpful improvement. However, the introduction of a radically different code for renting in both the PRS and the social sector will lead to major upheaval and cost. We believe that the Welsh Government has under estimated the total costs involved.

Summary of key issues

The RLA is in broad agreement with most aspects of the Bill, including many of the principles. Where we have expressed concern, it is typically not for the principle itself, but rather how this particular principle has been executed. Although we have made some comments with regards to definitions, amounts of paperwork and the confusion surrounding key terms, we believe these are largely technical issues that can be resolved as the Bill progresses. Our main areas of interest are:

The Removal of the 6 month moratorium:
We believe that this will add increased flexibility to the PRS and greatly enhance the practicality for Local Authorities to discharge homelessness duty into the PRS. Those who oppose the removal of the 6 month moratorium, we would say that many landlords will issue contracts with a fixed term of at least 6 months. The RLA is also going to propose a Long Term Tenancy Agreement, which would allow tenants to extend security for 6/12 months up to a total of 5 years. With these two factors combined, plus the added flexibility regarding vulnerable households in the PRS, the removal of the 6 month moratorium could be said to increase security for thousands, not diminish it.

Retaliatory Evictions (1.15):
The RLA entirely supports the principle behind the retaliatory eviction clause, as no tenant should fear eviction for holding a landlord to account. However our concerns are not regarding the principle, but how the courts may interpret the clause and any additional length this may add to proceedings. Retaliatory Evictions clause should be written as to not warrant abuse of the system, or add any undue delay to proceedings.

Property conditions (see 1.16):
The RLA endorses the approach of retaining and repeating the provisions of the current Section 11 of the Landlord & Tenant Act 1985. Any change in approach would lead to uncertainties in an important area especially as the landlord is under existing comprehensive obligations in relation to ongoing repair. We would however express deep concern against any attempt to resurrect Fitness for Human Habitation standards. We believe this would be setting the bar "too high, too quickly" without the benefit of any reliable statistical data to support such a movement (see paragraph 4, 1.16). The RLA would however support movements on increased electrical safety standards (section 1.16.2).

Joint Tenancies (1.17 and 1.17.2):
White the RLA understands the reasoning and principle behind this idea, our concerns are focused on implementation and practicality. We would reiterate our notion of the 2 month tenant notice period and its potential to improve dialogue between tenants and landlord, when one tenant decides to end a tenancy. It is important however to recognise the practical issues surrounding inventories, check-out procedure and individualising (see 1.17.2) as well as the technical issue with regard to mirroring this with Deposit Protection Services.

Appendix 1

We have carried out our own calculation of cost and we estimate that across the board the proposals could cost as much as £45million. These calculations are based on a number of factors, including the costs associated with establishing the new models, legal disputes which may arise, extra legal letting agent's fees, the cost of training and other associated factors. These are calculated based on our suggested methodology for the impact assessment. We have arrived at this figure of £45million using the following calculation –

- The RLA has reached the £45 million cost using the following calculations:

  - The total number of tenancies in Wales is **414,000** (Local Authority – 88,500, Housing Associations 135,000 and Private Rented tenancies 190,500)

  - Initial publicity start-up costs - **£250,000**

  - Cost of preparing new tenancies agreements, and the new documentation needed costed in the region of £100 per tenancies which comes to **£41,400,000**.

  - Based on experience, it is likely that possibly ten court cases will be involved in the transition at £60,000 each; this comes to **£600,000**.

  - Extra legal costs and other advice needed for landlords and tenants - **£1,000,000**.

  - One Off Costs for training local authorities - 22 authorities x ten members of staff = 220 x £100 - **£22,000**

  - Training courses for Housing Association staff and, private landlords, - **£275,000**

    Housing professionals, agents etc, training courses - **£1,250,000.00**

  - Mortgage lenders costs for adapting to new systems **£100,000**

TOTAL: £44,897,000.00 - rounded up to £45 million pounds

RH 30

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/

Communities, Equality and Local Government Committee

Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill

Ymateb gan: Cymdeithas Tai Sir Fynwy

Response from: Monmouthshire Housing Association

Section 1, 'occupation contract' and 'contract holder'

We do not believe the term 'occupation contract' and 'contract holder' should be used to replace 'tenancy agreement' and 'tenant'. This is seen as an unnecessary complication and we do not believe it will simplify terminology - licences will still exist in law anyway. There seems no real benefit in trying to create new terms.

Section 2, 'sub-section 2 'kinds of landlords'

Where it says, "In general (a) occupation contracts made with or adopted by community landlords are secure contracts", it could also be made clear that community landlords (Local Authorities and RSLs) will use standard tenancy agreements for new tenants.

Section 13 and 14, 'notice of standard contract and review of notice'

Part 2, subsection 1, 'kinds of landlords' seems to imply that all RSLs are Community Landlords. Although the Bill then seems to indicate in Section 9, subsection 1(b) that fully mutual housing associations and cooperative housing associations are not community landlords. With the latter, the Bill should make clearer that sections 13 and 14 do not apply to fully mutual housing associations and cooperative housing associations.

We do not agree with the requirement of a community landlord having to issue a notice to also issue a standard contract. Nor why a review similar to judicial review may be necessary, if a tenant disputes this type of tenancy agreement. It is unclear why a court would quash the decision of a community landlord to issue a standard contract.

Section 52, Sub-section 1 'Joint contract-holder ceasing to be a party to the occupation contract'

"If a joint contract-holder under an occupation contract dies, or ceases to be a party to the contract for some other reason, from the time he or she ceases to be a party the remaining joint contract-holders are—(a) fully entitled to all the rights under the contract, and (b) liable to perform fully every obligation owed to the landlord under the contract"

It should be confirmed whether or not this affects succession rights i.e. counts as a priority succession, where the joint contract-holder ceases to be a party to the contract.

Section 55, Sub-section 5 ‘Anti-social behaviour and other prohibited conduct’

Where it says, “The contract-holder must not—allow, incite or encourage any person who is living in or visiting the dwelling”, this represents a fundamental change to the current position, where tenants are responsible for the behaviour of everyone residing in and/or visiting the property. This may reduce a landlord’s ability to address ASB and we support the amendment of this section to reflect the current position where tenants are responsible for the behaviour of everyone residing in and/or visiting the property.

Section 59 ‘Sub-occupation contracts: interpretation’

The Act may benefit from also mentioning licences in relation to lodgers here.

Section 64 ‘Possession claim against contract-holder where there is a sub-holder’

The requirement for the landlord to issue a notice to a sub-contract holder (sub-tenant) regarding possession proceedings, may not be possible if the landlord has no knowledge of the sub-tenancy or does not know the identity of the sub-tenant. Can it be added, that notifying the sub-tenant is necessary only where the landlord is aware of the sub-tenancy and it has been agreed in accordance with the occupation contract?

Section 76, Sub-section 3 ‘Reserve successor: family member’

Where it says, “(3) A person meets the basic residence condition if throughout the period of 12 months ending with the contract-holder’s death— (a) he or she occupied the dwelling, or (b) he or she lived with the contract-holder” it should also be made clear they will have needed to have occupied the dwelling as their principal home.

Section 77, Sub-section 3 ‘Reserve successor: carer’

Where it says a successor can qualify where they provide a ‘substantial amount of care’ – the Act could benefit from defining this sentence, to promote consistency in interpretation.

Section 79 ‘Effect of succession’

Under this section make clear the successor takes on the benefits and burdens of the tenancy.

Section 83 ‘Succession: Interpretation

It may also be appropriate to highlight that a successor may be expected to move to a smaller property.

Section 84, Sub-section 4 ‘landlord’s consent: reasonableness’

Where it says, “The landlord may ask for information to enable the landlord to deal with a request; but the landlord may not do so after the end of the period of 14 days starting with the day on which the request is made” it may be clearer to state, when the request is received in writing by the landlord, rather than when the request is made.

Section 84, Sub-section 10 ‘landlord’s consent: reasonableness’

Where it says, “if the landlord does not give a written statement of reasons before the end of the period of two months starting with the day on which the statement is asked for, the landlord is to be treated as having consented without conditions”, should additional caveats be included here? e.g. consent should not be assumed where an action is likely to endanger property or persons.

Section 98, ‘landlord’s right to access dwelling’

The Bill may benefit from including a provision regarding what happens in an emergency and immediate access is required and there is no time to serve a notice under this section e.g. if there’s a water leak damaging property and neighbouring properties and a tenant cannot be contacted or if it is thought a person’s life may be in danger.

Section 103-108 ‘variation’

We support a landlord being able to give a notice of variation to the contract-holder, to vary the secure contract (as long as fundamental requirements are not altered), without joint agreement between the landlord and contract-holder being a requirement. We request that this provision is altered to make it uniform with the section that deals with the variation of standard contracts.

Section 111, Sub-section 5 ‘withdrawal’

Where it states, "the joint contract-holder ceases to be a party to the contract on the withdrawal date", it should be made clear if they remain responsible for historic tenancy breaches e.g. rent arrears.

Section 113, 'lodgers'

It could be made clear that the occupation contract the lodger has is a licence under this section.

Section 114, 'Transfer to potential successor'

Make clear if transfer counts as a succession.

Section 151, 'early termination by contract holder'

Make it clearer that early termination cannot occur before a fixed occupation contract ends here. This section may benefit from including provisions on implied surrender of the tenancy.

Section 209/14, 'Review of claim made on absolute ground'

Altering this ground to make it dependent on a county court's discretion *could significantly harm victims and witnesses in serious ASB cases. We recommend that the Bill be amended to incorporate the ASB Crime and Policing Act's current ground 7a for possession.*

Section 216, 'possession of abandoned dwellings'

The Bill could potentially add here that, should a tenant have breached their tenancy agreement and the landlord has followed legislation and guidance, the landlord cannot be prosecuted for illegal eviction.

Section 217, 'disposal of property'

The Bill could add a section around what happens if there are surplus funds, following potential sale of a tenant's possession, especially if the tenant cannot be located.

Section 221, 'non-occupation: exclusion by landlord'

Under this section it could be considered how the landlord would serve notice to end a non-occupant's joint tenancy (with at least one tenant left, continuing the tenancy) if the former cannot be located.

Section 227, ‘termination of occupation contract with joint contract-holders’

Under this section it states, “if there are joint contract-holders under an occupation contract, the contract cannot be ended by the act of one or more of the joint contract-holders acting without the other joint contract-holder or joint contract-holders.” However, the Bill should consider that this may be an issue in serious cases of domestic abuse. In some situations a joint tenancy may currently be ended and re-granted as a sole tenancy (based on management grounds) by social landlords. It appears that this will no longer be possible. We request the Bill is altered to retain the ability for landlords to operate discretion to do this.

Section 235, ‘Implied tenancies and licences’

Under this section, it needs to be defined what actions a landlord needs to take to treat a person not subject to an occupation contract as a trespasser (thereby not enabling a tenancy agreement by default).

RH 31

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/

Communities, Equality and Local Government Committee

Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill

Ymateb gan: Cymdeithas Llywodraeth Leol Cymru

Response from: Welsh Local Government Association

Introduction

1. The Welsh Local Government Association (WLGA) represents the 22 local authorities in Wales. The three national park authorities and three fire and rescue authorities are associate members. It seeks to provide representation for local authorities within an emerging policy framework that satisfies the key priorities of our members and delivers a broad range of services that add value to Welsh Local Government and the communities they serve.

General principles of the Renting Homes (Wales) Bill and the need for legislation

2. The WLGA broadly welcomes the Welsh Government's Renting Homes (Wales) Bill, and has welcomed the opportunity to contribute to the development of the proposals which underpin the Bill along with other stakeholders.

3. The social and private rented sectors are playing an increasingly important role in the housing market. Rented homes play a particularly important part in addressing housing in Wales and we are very pleased that Welsh Government has decided to review and simplify the legal framework for rented accommodation, and the WLGA supports the need for legislation in this area.
4. An important aspect of improving the quality of the private rented sector, and making it a tenure of choice in Wales, is the clarification of the rights and responsibilities of landlords and tenants. We feel that the provisions set out in the Bill will largely achieve this.

5. In particular, the WLGA welcomes and supports:-

   - The simplification of the legal framework which will benefit landlords and tenants;
   - The development of model contracts which will bring together and clarify the rights and responsibilities of tenants and landlords;
   - The requirement for written contracts clearly setting out Key Matters, Fundamental Terms, Supplementary Terms and, where agreed, any appropriate Additional Terms;
   - The opportunity the legislation provides to address some of the complexities and unintended consequences of the current legislative framework; and

- The removal of "Ground 8" giving mandatory possession in cases where tenants of Registered Social Landlords have 2 months rent arrears.

6. We fully support the proposal to introduce a single secure contract for all social housing tenants. This will reduce complexity and the scope for misunderstanding, and will improve equity between tenants of the two social housing sectors. This is consistent with other Welsh Government policies (e.g. rent policy) to better align the two sectors. In basing the secure contract on the current local authority secure tenancy, this ensures that the rights of social housing tenants are "levelled up" and not down, and the rights of existing local authority tenants are protected.

7. It is entirely appropriate that this equalising of the arrangements between landlords and tenants in the two social housing sectors, including the standardising of possession and eviction arrangements in cases of serious rent arrears

8. The WLGA welcomes the establishment, for the first time, of a legal framework for supported housing, and takes the view that the provisions within the Bill in this area strike an appropriate balance between ensuring sufficient flexibility, given the particular challenges of the many models of, and settings for, supported housing and the need to ensure adequate security of tenure for some of the most vulnerable tenants. The arrangements in relation to temporary exclusions from supported accommodation and mobility are also welcomed.

9. However, the WLGA has significant concerns that the provisions in **Part 9 Chapter 5** effectively remove the current moratorium on private sector landlords seeking possession using the "no-fault" grounds during the first 6 months of a tenancy, and this will diminish opportunities for local authorities to use the power to discharge their duties to homeless households by securing accommodation for them in the private rented sector, given the requirement in the Housing (Wales) Act 2014 for the local authority to be satisfied that "the accommodation is likely to be available for occupation by the applicant for a period of at least 6 months."

10. Removal of the moratorium effectively reduces the rights of tenants in the private rented sector in Wales and undermines efforts to improve the quality of the private rented sector, and to promote it as a tenure of choice.

11. The main reason for households becoming homeless is loss of accommodation from the private rented sector. This approach will do nothing to reduce or prevent homelessness, and will have resource implications for local authorities and partner agencies as the time taken to achieve positive outcomes for households will be longer, and some households will be required to spend more time in temporary accommodation.

12. We welcome the provisions to simplify and reduce the time taken to deal with the abandonment of a property by the tenant. However, given that there are many legitimate reasons for a tenant to be absent for a period of time – e.g. admission to hospital or visiting/caring for relatives, etc. – it is appropriate to place a clear duty on the landlord to make such enquiries as are necessary to be satisfied that the contract-holder has, in reality, abandoned the property and is not absent for some legitimate reason.

13. The WLGA supports the provisions which will enable 16 and 17 year olds to become contract-holders. There are many instances where it is necessary for a young person to live independently, and we welcome a legal framework which removes any barrier to a young person establishing a home in the rented sector.

Potential barriers to the implementation of these provisions and whether the Bill takes account of them;

14. We have not identified any barriers to implementation which have not been taken into account within the Bill.

Any unintended consequences arising from the Bill?

15. As described above, it is the view of the WLGA that the removal of the 6 month moratorium effectively reduces the rights of tenants in the private rented sector in Wales and undermines efforts made through the Housing (Wales) Act 2014, and elsewhere within the Renting Homes Bill, to improve the quality of the private rented sector, and to promote it as a tenure of choice. This runs counter to the approach adopted within the Bill to "levelling up" the rights of tenants in the social rented sector.

16. Removing the moratorium does not support efforts to reduce and prevent homelessness, and is likely to hamper the efforts of local authorities and their partners to do so in seeking to fulfil their duties and responsibilities in relation to Part 2 of the Housing (Wales) Act 2014.

17. The Housing (Wales) Act 2014 requires local authorities to be satisfied, when using private sector accommodation to discharge their duties to a household that is either homeless or is threatened with homelessness, that "the accommodation is likely to be available for occupation by the applicant for a period of at least 6 months."

18. By reducing the supply of private rented sector accommodation where the local authority can be satisfied that this is likely to be the case, efforts to prevent homelessness from occurring, or ending a household's homelessness, are likely to take longer, and be more difficult, than would otherwise be the case. Such a scenario will inevitably have resource implications for local

authorities resulting from greater staff input to achieve successful outcomes, and households spending longer periods in temporary accommodation.

19. The main reason for homelessness is loss of accommodation from the private rented sector. By reducing tenants' security in this tenure, we expect that removal of the moratorium could lead to an increase in homelessness.

20. Ending the moratorium runs the risk of sending a clear message that private sector tenants have less security in Wales than is the case in England. This could have the unintended consequence of attracting investment from less desirable private landlords into Wales.

21. Similarly, the clear message to tenants, and prospective tenants, given by removing the moratorium is that that there is reduced security in the private rented sector. This is likely to lead to a lack of confidence that other rights will be adequately enforced within the private rented sector, and will work against legislative and non-legislative efforts to make this a popular tenure of choice in the future.

Financial implications of the Bill

22. In addition to the costs for Community Landlords set out in the Regulatory Impact Assessment, there will also be further costs for all local authorities (whether landlords or not) in meeting the training requirements for staff involved with housing advice, housing options and housing enforcement, in order to ensure that the changes to the legal framework are fully understood and that anyone approaching a local authority for advice or support in relation to their housing circumstances receives the most appropriate help or advice. Additional costs associated with longer periods in temporary accommodation, as described above, for homeless households are also not identified within the Regulatory Impact Assessment.

RH 32
Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/
Communities, Equality and Local Government Committee
Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill
Ymateb gan: Cartrefi Cymunedol Cymru
Response from: Community Housing Cymru

1. About Us

The Community Housing Cymru Group (CHC Group) is the representative body for housing associations and community mutuals in Wales, which are all not-for profit organisations. Our members provide over 153,000 homes and related housing services across Wales. In 2011/12, our members directly employed 7,500 people and spent over £850m in the Welsh economy.[1] Our members work closely with local government, third sector organisations and the Welsh Government to provide a range of services in communities across Wales.

Our objectives are to:

Be the leading voice of the social housing sector.

- Promote the social housing sector in Wales.
- Promote the relief of financial hardship through the sector's provision of low cost social housing.
- Provide services, education, training, information, advice and support to members.
- Encourage and facilitate the provision, construction, improvement and management of low cost social housing by housing associations in Wales.

In 2010, CHC formed a group structure with Care & Repair Cymru and CREW Regeneration Wales in order to jointly champion not-for-profit housing, care and regeneration.

Introduction

This paper is a response to the Communities, Equality and Local Government Committee request for evidence on the general principles of the Renting Homes (Wales) Bill. It looks at the need for legislation to improve the arrangements for renting a home in Wales and has been structured to cover general points and specific issues raised in the terms of reference.

General Points

Overall we very much welcome the proposals outlined in the rented homes bill and are supportive of the suggested legislative change. Simplifying the legal framework for tenancy agreements and providing additional rights and security for tenants is a positive step. We agree that the proposals create a more flexible approach to joint tenancies and provide

[1] Measuring the Economic Impact of Welsh Housing Associations, November 2012

additional help the victims of domestic abuse from a housing perspective. CHC also believes that the Bill will bring improvements for landlords and occupiers and favours Option 3 as outlined in the Explanatory Memorandum.

Specific Issues

Occupation contracts

The benefits of the occupation contracts are that:

- they replace the many existing tenancy and license types which are complex and confusing
- they allow for identical contracts for council and housing association tenants.
- they are model contracts approved by the Government which will make private renting easier, cheaper and more flexible.

However, in supported housing we feel strongly that:

accommodation categorised as shared or very temporary accommodation should retain the ability to use excluded licences for the duration of an individual's occupancy, due to the difficulties in managing risk to other occupants and staff.

long term supported housing (mainly for people with learning difficulties or living in accommodation designed for older people) should have secure tenancies and not standard contracts (with or without the extra management provisions for supported housing). This is important to prevent people in supported living schemes being moved around at the convenience of social care commissioners.

To avoid confusion the definition of supported accommodation should also be extended to include broadly "where the support has been commissioned by the local authority using Supporting People Programme Grant"

Succession Planning

CHC agrees that a fair and consistent approach to succession rights is important and will assist with homelessness prevention. However, the proposal to allow a carer to receive possession if they have given up their home is of much concern as experience suggests that there could be false claims which will be difficult to porve. If this is the case, then turnover of tenancies will be lower, adding to the pressures on an already limited supply of social

housing. This also runs contrary to Welsh Government aims and objectives around increasing housing supply and improving services for tenants.

Abandonment

The proposals on abandonment are very helpful, in particular, the proposals for joint tenancies whereby tenants can be removed from a tenancy without a new one having to be granted e.g. in the case of a relationship breakdown.   Abandonment frequently leads to the landlord having to seek approval of the court to repossess the property which takes times, is costly and adds to supply pressures.

Six Month Moratorium

We believe that ending the six month moratorium will encourage more private landlords to rent to social housing tenants particularly those seen as high risk.   Many landlords let for an initial period of six or twelve months and most want to sign tenants for longer than this. It does not make financial or business sense for private landlords to evict in the first six months – exceptions to this may include circumstances where there is anti-social behavior (ASB) or rent arrears.   Therefore it is unlikely that many tenants would be evicted before six months but removing the moratorium gives more flexibility to landlords dealing with ASB.   To counter any malpractice we have argued for a licensing scheme in the PRS which will help with rogue landlords.

Prohibitive Conduct (ASB)

RSLs need to be able to take action against individuals who endanger other tenants through their conduct, so the proposals on anti-social behaviour are very much welcomed. .

Unintended Consequences

Barriers and financial implications

While CHC welcomes the simplification of the legal framework, we are concerned that:

- These changes are ill-timed and will create more anxiety for tenants who are already grappling with welfare reform changes. It is unlikely that issues around welfare reform will be resolved by 2017 so we would urge Welsh Government to postpone implementation of these proposals until the roll-out of UC is completed.

- The resource burden on landlords implementing the changes will be significant at a time when capital and revenue budgets are being cut. We also anticipate that the costs for Housing Associations will be far in excess of the estimated £660,356 included in Table 10 of the explanatory memorandum. While we appreciate that the intention is that implementation will happen in "one big bang" and that tenants won't have to individually sign their new agreement - it simply comes into effect - the introduction of two contracts to existing contracts will require a significant amount of resource from landlords who will need to re-draft tenancy agreements and ensure all tenants are clear about their new rights and responsibilities. Landlords will be using face-to-face meeting to do this as part of best practice.

- While CHC will support the provision of good quality information and provide briefings for the sector this will not be a substitute for legal advice. Therefore we are cautious of Welsh Government's assertion that legal costs will be significantly less on this basis.

- **Removal of mandatory grounds for possession (Ground 8)**
  CHC acknowledges the reasons why it is proposed that Ground 8 is removed and we agree:
  - Ground 8 was only ever intended be used as a last resort. Therefore its use to date has been limited.
  - The mandatory nature of Ground 8 means courts are not able to take into consideration factors that may have contributed to any rent arrears. Non-payment of housing benefit due to an error or lengthy processing times is something Housing Associations will be aware of and would not use Ground 8 in these circumstances.
  - There have developments in human rights and equality law and these should be considered when landlords are considering using Ground 8. Where District Judges are unwilling generally to accept the mandatory nature of Ground 8 this is an issue with the District Judge not the mandatory ground.

  There is a body of evidence which illustrates that welfare reforms are leading to rises in arrears despite the 8 week trigger.. Of particular concern are tenants affected by the bedroom tax, who are unwilling to move and are likely to very quickly accrue high levels of

arrears. Increases in rent arrears and continued increases in court costs pose a real challenge for RSLs with large numbers of tenants on benefits. Excessive court costs combined with serious cases of arrears is a real concern and a business risk. While Ground 8 has only ever been used as a last resort, more RSLs have said that they will look to use Ground 8 and lenders have been clear that if rent arrears continue to rise then they may increase borrowing costs to reflect higher levels of risk. Increased borrowing costs and higher levels of arrears will be unsustainable for some RSLs long-term, which puts all tenants at risk of facing homelessness. The proposal to remove Ground 8 is therefore of much concern to CHC and we strongly propose Ground 8 should be retained as an option for serious cases of arrears.

Ground 8 also serves as an important reminder for tenants about the importance of paying rent.

CHC strongly disagrees that :

- abolishing Ground 8 is the only viable option for establishing a single secure contract. Local Authorities are not subject to the same lending constraints as RSLs therefore it is reasonable to argue for its retention for RSLs.

Conclusions

In summary, CHC welcomes the spirit and intention of the legislation, however, we have strong concerns about some of the proposals which we feel run counter to Welsh Government aims and objectives around increasing housing supply and improving services for tenants.

RH 33
Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/
Communities, Equality and Local Government Committee
Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill
Ymateb gan: Cyngor ar Bopeth Cymru
Response from: Citizens Advice Cymru

1. Citizens Advice Cymru welcomes the Renting Homes (Wales) Bill which we believe will help improve the legal framework for renting homes in Wales. We support the proposed replacement of the current complex legal framework for renting homes with one that is much clearer, logical and more easily understood by landlords and tenants. The Bill offers the opportunity for Wales to lead the UK in reforming tenancy law by simplifying, clarifying and improving the legal framework and providing greater equity of rights across tenures, while retaining the balance of power between landlords and tenants.

1.1. We support the proposed replacement of the current array of contracts with the requirement for a written occupation contract which includes explicit rights and responsibilities of the landlord and tenant. However, we believe the model contract would benefit from further direct work with tenants to ensure the meaning is clear and easily understandable to reflect ranges in reading ability, and that the length of the document does not stop people from knowing and exercising their rights. Please see 7.5 – 7.7, page 20 for further details.

1.2. We believe care must be taken to ensure that the Bill is internally consistent and links clearly with the Housing (Wales) Act 2014[1], in particular Part 1 and 2 and their surrounding regulatory framework. We call on Welsh Government to improve the linkages with the Housing Act, and to ensure the new landlord and letting agent licensing, registration and enforcement regime is used to enable this Bill to achieve its aims.

1.3. It will be essential that effective enforcement mechanisms are put in place to ensure that the legislation achieves its key objectives. We feel that improvements should be made in this area and have suggested additional enforcement options, to sit alongside the option of court action. Please see section 6, pages 18 and 19 for further details.

1.4. We are pleased to see retaliatory eviction on the face of the Bill, however we believe this should be further strengthened to ensure that rogue landlords stop this practice and tenants are unable to manipulate it to the landlord's detriment. Further, we want to see the 6 month restricted period on issuing notices for landlords found in breach of an information requirement (s174) extended to cover all fundamental breaches of the occupation contract, strengthening the current protection offered to tenants to against retaliatory eviction. Please see 5.9 – 5.19 pages 15 and 16 for further details.

1.5. We, alongside other information and advice providers across the third sector, have concerns regarding the removal of the 6 month moratorium on 'no fault' evictions, as we believe will decrease tenants' rights and security of tenure. We wish to see the Bill strengthen security of tenure for all and in particular, those within the Private Rented Sector (PRS). We consider this proposal to be inconsistent with the broader aim of making the PRS a sustainable and high quality sector of the housing market in Wales. In our view, the benefits of retaining the moratorium far outweigh any concerns that this

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1 Referred to as the Housing Act throughout

will undermine the simplicity of the proposed legal framework. Please see section 4 pages 12 and 13 for fu

1.6. rther details.

1.7. We feel the increased clarity of the legal framework for renting homes in Wales could go further through simplifying the language used throughout to ensure its accessibility and give clear meaning. For example, we would like greater clarity on the face of the Bill regarding the extent to which the Minister will be able to use regulatory guidance to achieve the aims of the Bill. We are concerned that the *'Welsh Ministers may by regulations'* is applicable to the fundamental and supplementary terms, anti-social behaviour and prohibited conduct, abandonment, and the schedules.

1.8. We believe further work is needed in the Explanatory Memorandum (EM) that supports this Bill to outline how people in Wales will be informed about these changes and able to apply them in their lives. We therefore call on Welsh Government to clarify how tenants and landlords will be made aware of their rights and be enabled to use them following the Bill, with regards to public information, advice and guidance. Please see section 7 pages 19 – 21.

1.9. In a similar manner we believe the Regulatory Impact Assessment (RIA) underestimates the cost to Local Government and the third sector to understand the implications of the Bill. Familiarisation costs are included for legal professionals, private and community landlords but not for Local Government and third sector staff. Please see 7.2 page 20

1.10. Citizens Advice Cymru believes free appropriate and impartial advice makes society better and that organisations must be supported to continue to offer free advice, through a range of channels[2], so it is available to everyone who needs it, when they need it to help them make complex decisions about the problems they face and have the confidence and opportunity to act on the issues that concern them. We would welcome the opportunity to support the work we believe is still needed to make sure the tenants and landlords are clear in what this Bill means for them and how it will impact on their everyday lives. We want to ensure that people accessing our services can access clear information and make informed housing choices.

Citizens Advice Cymru calls on Welsh Government to

- Enhance tenant security by:
  - Reinstating the 6 month moratorium
  - Changing the default position at the end of a fixed term contract to another fixed term, NOT the periodic contract
  - Stopping periodic contracts being used for indefinite periods and requiring landlords to offer fixed term contracts
  - Making all possession orders for serious rent arrears discretionary
  - Providing greater clarity on addressing retaliatory eviction (section 213) through:
    - Giving clear timescales
    - Eviction guidance for other grounds

[2] Channels refer to the method of delivering advice, e.g. face to face, telephone and online

- Applying the 6 month restricted period on a landlord serving a possession notice to breaches of ALL fundamental elements of the occupation contract
- Altering the Key Matters document to include:
    - 'Fitness for human habitation' so that the state of the dwelling is listed
    - Notice to quit information for both parties
- Providing clear guidance on the use of exclusions within supported contracts to promote the safety of all parties

► Ensure the Renting Homes Bill links to the Housing (Wales) Act 2014 by:

- Creating a range of enforcement and support options to enable effective implementation including:
    - Fixed penalty fines
    - Independent mediation services for landlord and tenants
- Ensuring landlord contract breaches are recorded against their licence, with serious or repeat offences leading to revocation of their licence

► Provide greater clarity on:

- How and where changes or additional terms are recorded within the contract
- Charging for the written statement and its reissue
- How the third sector will be informed and supported to ensure they are able to support tenants and landlords wanting to exercise their rights and understand their responsibilities
- How the model contract will be developed with tenants and landlords to ensure it is an accessible document
- The process and timescales for establishing abandonment
- The process for establishing proof of prohibited conduct

► Change the definition of a Carer to bring this in line with the Social Services and Well-Being Act

Housing in Wales

2. The pressures on our housing market are well documented, with community landlord dwelling numbers estimated to have dropped by 8 per cent since 2000/01 and owner occupier numbers have been falling since 2006/07[3] resulting in the PRS being the only realistic housing option for increasing numbers of people. PRS renters are a diverse group, with growing numbers of families with children, young people and older people living in this sector[4]. We believe it is therefore paramount that this sector of the housing market is better regulated to ensure adequate consumer protections are in place.

2.1. The PRS is the largest growing housing option for people in Wales[5], having increased from 7 – 14 per cent of the housing stock between 1996 – 2012/13. This sector contains some of the worst housing stock in Wales, including some of the most energy inefficient properties[6] and 40 per cent of properties contain at least one Category 1 hazard[7] under the Housing Health and Safety Rating System (HHSRS)[8]. Previous research by Consumer Focus Wales also shows that while consumers generally felt well protected by regulation, this was with the exception of those living in PRS[9].

2.2. Many individuals and families chose to live in PRS, as do increasing numbers of vulnerable people and homeless households. Shelter Cymru's recent Fit to Rent? report noted, tenants living in PRS because they had no choice outnumbered through wanting to be there by 4 to 1[10]. This issue of the sector not being the first choice for people as a viable long term solution to meet their housing needs and aspirations was echoed in our recent online survey where 71 per cent of respondents aspired to own their own home in the future, compared to only 8 per cent aspiring to live in the PRS.

2.3. The Housing Act recognises the value of a good quality PRS and the important role it can play in meeting housing need and preventing homelessness and this Bill will further support this aim. Consistency and alignment of this Bill with the Housing Act is very important and we include suggestions for improvements in alignment in relation to enforcement and the role of the PRS in homelessness prevention throughout.

2.4. The Housing Act recognises that the PRS can play a vital role in addressing homelessness, and requires Local Authorities to ensure that any rented property used to prevent or alleviate homelessness is 'Available for at least 6 months'. We are very concerned that the proposed removal of the 6 month Moratorium on 'no fault evictions' will limit the role the PRS can play in homelessness prevention and the ability of Local Authorities to prevent homelessness. There is the danger that this change directly and indirectly lead to an increase in homelessness.

2.5. The proposed Renting Homes Bill is a welcome move which will help clarify relationships between landlords and tenants; promote understanding and ensure consistency of practice. Consumer Focus Wales (from whom we have inherited responsibilities to represent consumers in Wales) called for and supported this within

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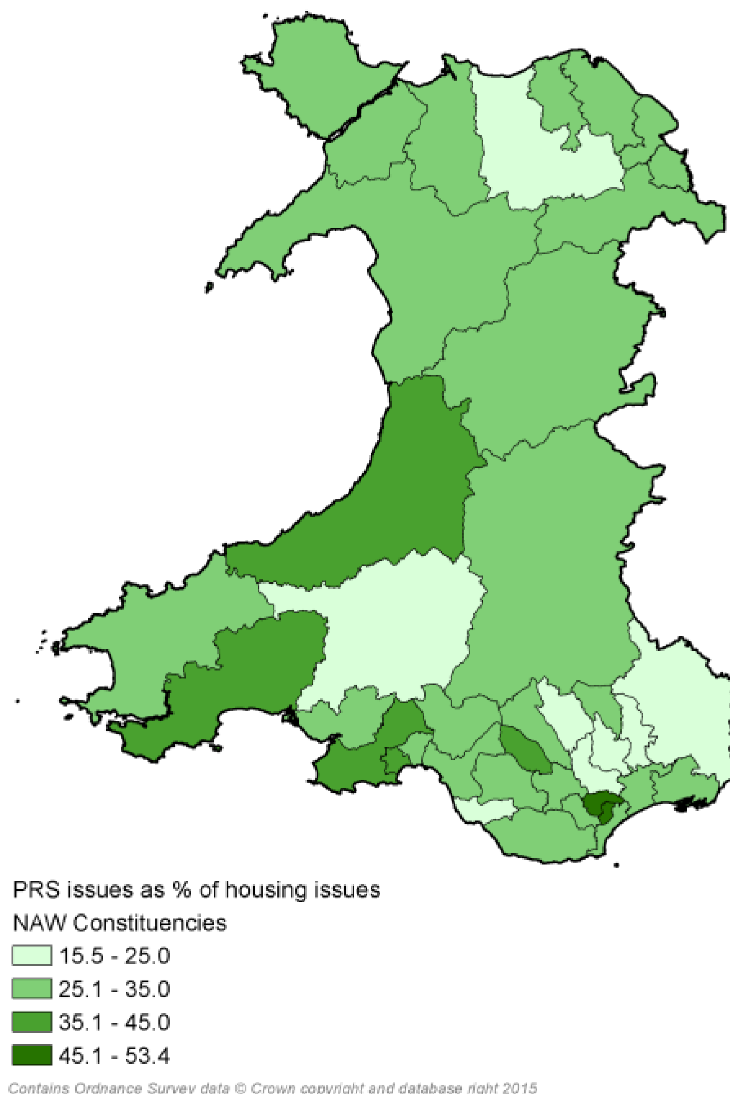
[3] Welsh Government, *Dwelling Stock Estimates* show that the Private Rented Sector doubled from 7 per cent in 1996 to 14 per cent in 2012/13 (April 2014)
[4] Shelter Cymru, *Fit to rent?*, March 2014
[5] Welsh Government, *Dwelling Stock Estimates* show that the Private Rented Sector doubled from 7 per cent in 1996 to 14 per cent in 2012/13 (April 2014)
[6] Shelter Cymru
[7] BRE and Shelter Cymru, *The Cost of Poor Housing in Wales* (April 2012)
[8] The Housing Health and Safety Rating System is a risk assessment tool used to determine whether residential premises are safe to live in, with Category 1 being the most serious type of hazard
[9] Consumer Focus Wales research (2011) unpublished
[10] Citizens Advice Cymru research (2015) unpublished

'Their house, your home' whilst calling for additional work on the model contract to make it more accessible to tenants.

2.6. Housing issues make up on average 5 per cent of all enquiries made to Citizens Advice Bureaux in Wales every year. Over the past 12 months, this means of the 166,550 people we saw who reported 600,000 issues, nearly 19,000 people were experiencing housing problems with a reported 27,000 issues. The difference between the number of people and problems shows that one person is likely to have more than one issue with their housing that they are seeking help and advice with.

2.7. Between October and December 2014 nearly every area of advice saw increases when compared to the equivalent quarter of the previous year. Housing issues were no exception, up 18 per cent compared to last year with more than 2,700 seeking help, nearly a third of those with problems in the PRS. This follows the ongoing trend of the past three years where PRS tenants account for nearly a third of all housing issues. We consistently see double the amount of clients renting in PRS compared to those renting from community landlords, despite both now housing similar numbers in Wales[11].



[11] Stats Wales estimates Local Authority and Registered Social Landlord housing stock for 2012-13 is 16% of the market. The Private Rented Sector is estimated at 14%.

Figure 1: Map of Wales showing Private Rented Sector as a percentage of all housing issues seen across National Assembly of Wales constituencies for the previous 12 month period

2.8. In a similar manner, those accessing our online advice and information resources disproportionately look for advice relating to renting from a private landlord when compared to community landlords. Over the past 3 years the top five housing related pages viewed on AdviceGuide across England and Wales have been: help with rent (housing benefit); common problems with renting; tenancy agreements; buying a home and renting from a private landlord. Unique page views relating to renting from a private landlord were 377,178 where as over the same 3 year period for community landlords were just 24,826 showing the marked difference in the level of problems people are likely to be experiencing and seeking information, guidance and advice on.

2.9. Wales only data[12] shows the top 5 housing information pages have been: help with rent (housing benefit); buying a home; neighbour disputes; common problems with renting; and renting from a private landlord. Again, those seeking information about private renting (9,146) greatly outnumbered those in social housing (4,791).

2.10. In the last three quarters of this financial year we have seen over 3,500 clients seeking assistance with their PRS issues, compared to just under 2,000 from the social rental sector. The top 3 issues[13] PRS tenants sought help with were: repairs and maintenance; rent and other charges and tenancy deposit protection.

2.11. For the same period 1,900 clients living in community landlord accommodation have sought information and advice across Wales with the top 3 issues[14] being: the quality of service received; repairs and maintenance; and the suitability of accommodation.

2.12. Citizens Advice Cymru are particularly concerned about the additional cost of moving as our client records show that people are now increasingly struggling to manage their daily costs of living. With the decrease in security of tenure put forward by the Bill, tenants could be subject to the cost and disruption of more frequent moves as an unintended consequence of the Bill.

2.13. The face of debt is changing with increasing numbers of clients coming to us regarding arrears on household bills, as they struggle to make ends meet. Consistently over the past couple of years the most common debt problems in Wales have related to consumer debt such as credit/store cards and personal loans. During the last six months this has been overtaken by people seeking help with Council Tax debt, which now makes up 12% of all debt-related enquiries. Similarly, we are seeing increasing numbers of people seeking help with rent arrears across the social rental sector and PRS, accounting for 5% of all debt enquiries in Wales. Comparing the third quarter of this year (Oct – Dec 2014) to the equivalent quarter the previous year, rent arrears problems have risen by 23 per cent.

2.14. People are now increasingly struggling to cover their everyday costs, therefore any additional costs such as moving, paying for a new bond (while waiting for the return of the existing one), letting agent's fees and so forth, could push people into, or further into debt. Having a financial safety net, such as savings or insurance protection products, can help people cope with such unforeseen expenses, but during such difficult economic times it can be especially hard for people to save for something which may or may not happen. From previous research[15] we know that people are ill equipped to do

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[12] These numbers can be collated separately where Google has been able to identify that the pageviews below came from a Welsh IP ISP or Address, or was routed through Wales
[13] Excluding those without categorisation or classed as 'other'
[14] Excluding those without categorisation or classed as 'other'
[15] Citizens Advice Cymru and Shelter Cymru, *Meeting Housing Costs in Wales*, 2014

this, with nearly half (49 per cent) of Welsh adults who pay for their housing struggle at least some of the time to keep up with payments and 12 per cent struggle constantly.

2.15. Similarly, our research found 28 per cent of working adults in Wales do not have sufficient savings or insurance protection products to enable them to continue to make housing payments for more than **1 month** if they were to lose their source of income. One in six (17 per cent) would not be able to afford their rent or mortgage at all. These findings echo with the Legal and General report[16] which found across the UK 37 per cent of all households have no savings. The report also showed that people in Wales have the lowest level of savings across the regions with a median of only £520, and are on average only 15 days away from the breadline.

2.16. In order to understand the impact of moving on PRS tenants better, we conducted both in-depth interviews[17] as well as an online snapshot survey[18]. This is considered throughout the following evidence.

Occupation Contracts

3. We support the requirement for a written occupation contract which includes explicit rights and responsibilities of the landlord and tenant. We are pleased to see on the face of the Bill the proposals for the contracts, including:

- The explicit inclusion of domestic abuse as a ground for possession, enabling the removal of one party from a joint tenancy and Welsh Government's ongoing commitment to tackling gender violence and abuse.
- The introduction and principle of the Secure Contract, equalising the rights for those living in housing provided by community landlords. The opportunity for Private Rented Sector (PRS) landlords to take-on these contracts under 17(2) is also a welcomed addition.
- The positive assumption of consent where landlords' fail to provide written consent for changes requested in line with a tenants' contract.
- The 6 month limitations on the use landlords can make of possession notices and believe this will help eradicate bad practice by some landlords of issuing notices alongside contracts as a means of shortening the court process for eviction if required later in a tenancy.
- The extension of the right to hold an occupation contract to 16 – 17 year olds and the improvements to the arrangements for joint tenants.
- The strengthening and clarity of succession rights and in particular, the inclusion of Carers within this. We believe this is a progressive step and supportive of the wider Welsh Government agenda to support Carers, however in order to bring this in line with the Social Services and Wellbeing (Wales) Act 2014 definition of a Carer, we wish to see the following on the face of the bill:

[16] http://www.legalandgeneral.com/library/protection/sales-aid/W13612.pdf
[17] Citizens Advice Cymru research (2015) unpublished
[18] We ran a short online survey for 4 weeks with questions focused on the PRS. This was publicised by our bureaux network and partners from across the third sector. 304 responses were received in English and Welsh. Citizens Advice Cymru research (2015) unpublished

> *A 'carer' means a person who provides or intends to provide care for an adult or disabled child which is not provided under or by virtue of a contract, nor is voluntary work.*[19]

This would remove the requirement that carers must be providing "*a substantial amount of care on a regular basis*", matching the Housing Act and ensuring the same approach to identifying and supporting carers is used throughout Welsh Government policy and legislation.

3.2. We would welcome greater clarity on the face of the Bill on the following sections:

- Chapter 5, how and where changes or additional terms are recorded within the contract. This is to ensure that both parties are clear on any deviation from the fundamental or supplementary provisions for a given contract. Please see section 7 on pages 19 – 21 for further comment.
- Charging for the written contract (s31). To ensure that neither letting agents nor landlords can charge for providing the written statement, we wish to see letting agents included within 31(2). Similarly, we seek clarity on charging for reissuing contracts at the end of a fixed term contract, or when moving from one contract type to another, such as from a periodic or introductory contract to a fixed term or secure contract. Our advisers report current practice of charging for reissuing contracts can vary from £35 - £150[20], sometimes a cost many low income households can ill afford to meet, therefore we seek clarity on the face of the Bill to ensure costs are minimised and reflect the cost off issuing and processing.
- Prohibited conduct (s183) and the landlord's responsibilities for establishing breaches. We believe the current wording enables landlords to use witness testament or cautions that a breach is, or may occur, as opposed to current practice which requires a higher degree of proof (convictions)[21]. We want to see the requirement to produce evidence of a conviction on the face of the Bill.
- Abandonment (s66).Current proposals enable landlords to provide a written notice they believe a property has been abandoned and make inquiries over a 4 week notice period before taking possession without a Court order. We believe the timescales are too short to establish abandonment, particularly for those paying by calendar month rather than weekly. We seek greater clarity on the steps to be taken by landlords and an extension to a 8 week period

3.3. Consumer Focus Wales[22] research on contracts found that some tenants struggle to understand them and do not feel that they have enough time to read them before being asked to sign agreeing to the terms and conditions. Similarly, the research noted tenants often are not aware of their rights or what to do when there was a problem. We therefore welcome the Bill and indications of the guidance to be issued as a result of it by the Minister's officials with regards to ensuring tenants have sight of the contract prior to being asked to sign it, as well as the contract to include clearer rights, responsibilities and information on the state of the property, its fixtures and fittings.

Standard Model Contract

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[19] This combines the relevant wording of the Act's definition of a carer.
[20] Letting agent fees as reported during consultation with advisers. English bureaux participated in *Still let down*, research into letting agents this year which found renewal fees in England varying from £15 - £300
[21] Ground 2(b) of Schedule 2 Housing Act 1985 (Grounds for possession let under secure tenancies) requires evidence of a conviction
[22] Consumer Focus Wales, Their house, your home, 2012

3.4. We want to see the Bill strengthen security of tenure for all tenants and in particular those within PRS. The standard model contract offers this opportunity. Our online survey found that 80 per cent of respondents wanted tenancies for 6 months or more. 31 per cent wanted contracts for a year or more, showing that many people want longer term security of tenure. Issues on the length of contracts available were a common theme in the comments given within the survey, such as:

"You can't call a house your home looking at a life through a 6 month window (contract). Our last home was sold TWICE whilst we were tenants"

"I think the biggest drawback is the lack of long-term private rentals available. Often landlords will say it is a long-term let to secure what they consider a 'decent' tenant. Security is important with regards to schools, Drs etc."

"I hope to never live in the private sector again. We need to increase the minimum tenancy period."

3.5. This echoes our interview findings from research conducted by Pembrokeshire and Conwy bureaux where people interviewed identified a minimum tenancy of 6 months was not long enough, and they would be happier to have the security of a tenancy for two or three years[23]. This was particularly the case for clients approaching retirement and those with young families.

3.6. We want to see that the default position at the end of a fixed term contract is for another fixed term to be offered, not the periodic which brings the possibility of a 2 month no fault eviction notice applicable at any time. We want the Bill to increase security of tenure, not decrease it, or reaffirm current practice. Promoting fixed terms as the default will change practice overtime to offer the best security of tenure available, reaffirming the need for both parties to discuss changing contract types and what this means for them. This has been discussed within the housing sector and has some landlord support[24] as a means of reflecting the change in PRS tenants and their aspirations.

3.7. We propose that the opportunity would always remain for tenants to give notice, extending this to a 2 month notice period once into the first renewal of the fixed term. Landlords would only be able to give 'no fault' eviction notices when at an agreed break clause or end of a renewal period. This reflects the proposed model put forward by the Scottish government on reforming private sector rental contracts[25], where the period of notice by both parties is dependent on the length of time the contract has been in place.

3.8. Both parties would also be able to move to a periodic contract at the end of a given fixed-term period (or at agreed break clauses) to ensure that any unintended consequences of making private renting less flexible are avoided. Flexibility is a key component of this market and has been cited as a key reason why some tenants live in the sector, such as seasonal and migrant workers. Flexibility for both parties should remain, while still providing the most secure tenancy available to the individuals' circumstances.

Periodic Model Contracts

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[23] Flintshire and Pembrokeshire bureaux conducted small scale research into renting within their Local Authorities. Their work included a telephone survey with 49 current and previous clients with housing issues, as well as 18 in-depth interviews regarding people's experience of renting.
[24] http://www.rla.org.uk/landlord/lobbying/docs/Longer_Tenancies_Consultation.pdf
[25] Please see the Scottish Government's recent consultation document which proposes a model contract http://www.gov.scot/Publications/2014/10/9702

3.9. We advocate that no fixed term should run indefinitely as is contained within the proposed Bill. Periodic contracts offer the least secure form of tenancy, yet are advocated within the Bill as the default following a fixed term, as well as an option open from the beginning for the life time of the contractual relationship.

3.10. In order to offer the greatest security of tenure to tenants, we would like to see the Bill restrict periodic contracts by only allowing their use in the following circumstances:

- As an introductory contract for PRS landlords, reflecting their use by community landlords for the initial 6 month period
- For up to a 12 month period, followed by the requirement to discuss moving to a fixed term contract and/or agree whether a periodic contract remains the best contract for the tenant.

Or

- When used after a fixed term contract, the time a tenant can remain on a periodic contract should not exceed the length of their initial fixed term contract

3.11. Limiting the time tenants can remain on a periodic contract limits their vulnerability to short eviction notice timescales. As noted in 3.8 to ensure that any unintended consequences of making private renting less flexible are avoided, tenants and landlords should be able to retain their right to opt-out of moving to a fixed term contract through negotiation and agreement. Removing the default of periodic contracts continuing indefinitely without discussion would help maximise the security of tenure available.

3.12. We strongly believe tenants should have a right to request fixed term contracts in order to maximise the security of tenure and want to see this on the face of the Bill. Landlords should only be able to refuse this providing there had been logged issues with tenancy, such as or minor breaches of their contract.

Supported Model Contracts

3.13. We have concerns that the 48 hour exclusion could result in putting very vulnerable people into the street, making them temporarily homelessness. As exclusions would only be used in extreme cases, we are also concerned that the risk from within the supported accommodation would be moved out into the local community. We would like to see further work by Welsh Government to ensure that those excluded are not made street homeless, but are supported appropriately in alternative accommodation.

3.14. We are also very concerned that the current proposal enables up to 3 exclusions to be run concurrently within a 6 month period, which if used, could leave very vulnerable people without support, as well as without access to their belongings, accommodation, the ability to store and cook food for 6 days. While this may be necessary in very rare and extreme cases, without further guidance to support the excluded individual, this could currently result in leaving vulnerable people who have been assessed as needing support as street homeless.

3.15. We believe excluded tenants meet the definition of homeless eligible for temporary accommodation under section 55 of the Housing Act and therefore call on Welsh Government to amend the Bill to require providers to assist their excluded tenants in presenting as homeless and accessing temporary accommodation.

Key Matters

3.16. We are pleased to see on the face of the Bill the Key Matters document which we believe will be central to improving tenant and landlord understanding of their contractual relationship and should clearly outline the expected behaviours of both parties. We welcome the inclusion of the rental amount and periods but call for the following to also be included the on the face of the Bill:

- Notice period and procedure to be followed by the landlord and tenant
- Condition of the dwelling with regards to fitness for human habitation

3.17. We want to see the specific inclusion of details on how both parties can terminate the rental agreement within the key matters document to ensure that tenants are clearly informed of the change to the previous six month moratorium, should this remain on the face of the Bill. This will make clear to tenants that should the landlord want them to leave at any time, they can do so by giving the appropriate notice. We believe that tenants must be made aware of this change to avoid confusion regarding the change in practice and to empower tenants to request and negotiate terms which provide them with greater security of tenure, should they wish to do so.

3.18. With our proposals outlined above, tenants will also need to be aware of their rights and responsibilities with regards to giving notice. Should a tenant be in an extended fixed term contract, they would have to give 2 month notice and therefore would need to have this information up-front to ensure compliance.

3.19. Previous consultation with advisers and our online survey has told us that people want to have clear details upfront about the condition of the property. 62 per cent of our survey respondents indicated they wanted clear details about the condition of the property, fixtures, fittings and garden. The issues we see, particularly for PRS renters, are most commonly connected to repairs and maintenance. We believe ensuring clarity at the outset of a let on the condition of the property and that the landlord and tenant agree it is fit for human habitation would help provide greater clarity should disputes on repairs later arise. Please see 5.14 – 5.19 for further detail regarding strengthening the fitness for human habitation clauses within the Bill.

3.20. In line with our comments with regards to ensuring the Bill ties clearly to the Housing Act we would also advocate that the landlords licensing and registration details should be provided in a prominent position within the contract. We would suggest consideration is given to it being placed within the key matters document.

▶ We call on Welsh Government to:

- Enhance tenant security by:
  - Changing the default position at the end of a fixed term contract to another fixed term, NOT the periodic contract
  - Stopping periodic contracts being used for indefinite periods and requiring landlords to offer fixed term contracts
- Change the key matters document to include:
  - Notice period and procedure
  - Condition of the dwelling with regards to fitness to human habitation
- Provide greater clarity within the contracts on:
  - How and where changes or additional terms are recorded within the contract
  - Charging for the written statement and its reissue
  - The process and timescales for establishing abandonment
  - The process for establishing proof of prohibited conduct

- Amend the definition of Carer in line with the Social Services and Well-Being Act
- Provide clear guidance regarding the use and practice of exclusions that promotes the safety of all parties
    - Consider placing duties on support providers to assist excluded tenants in presenting as homeless in order to access temporary accommodation

Security of Tenure – *Removing the 6 month moratorium*

4. Citizens Advice Cymru alongside many other information and advice providers in Wales[26] have deep concerns about the proposal to remove the 6 month moratorium on 'no fault' eviction and the initial security this provides tenants. We consider this proposal undermines the key principles of the Bill and Housing Act.

4.1. The lack of long term security in the private rented sector is one of the key concerns of households, particularly those with children. Households currently have reassurance that they will not be required to leave for the first six months on a standard assured short-hold contract, but the Bill is seeking to remove this very minimal level of security. We strongly believe that removing the moratorium will lead to a two-tier PRS and fundamentally decrease tenants' rights and security of tenure.

4.2. While better-off renters will be able to negotiate fixed-term tenancies the change will leave tenants on low incomes with little choice but to accept monthly periodic contracts, leaving them liable to eviction within two months at any time. Landlords already hold the balance of power due to the shortage of properties within the sector, and this change puts renters in an even weaker bargaining position regarding the security of their tenure and meeting their housing aspirations, exposing them to the continual risk of homelessness. The weak position of low income tenants where there is limited PRS stock is clearly illustrated in our client's story below:

Client's Story: Feeling Trapped

Clara (not her real name) is 44 years old, single and living in Llandudno. She works part-time, earning an estimated £495 a month, but pays monthly rent of £620, leaving her in ever increasing debt, even before considering essentials such as food. She struggles with asthma that is being made worse by her current stone home as it has large amounts of damp and she is unable to afford to heat it. She is desperate to move to a home she can afford to heat as well as pay for, but says she cannot even afford the cost of looking for a new home as this means paying for internet access and every local newspaper available. She told us she cannot afford essentials such as food and clothes, and that she '***has to take left-over food from work***' and how this is '***just what you have to do to survive***'.

In order to move into her current home, she paid a £700 security deposit and 6 months' rent in advance on top of administration fees, making the total cost of securing her home over £4,000. Clara could only afford this as she had sold her previous home after going through a divorce. To move out she needs to give a months' notice, pay for the new home's security deposit and rent in advance, plus any additional costs associated with setting up her new home. This means paying for two homes simultaneously which she said means it is impossible for her to move. She described her situation as ***'being held hostage'*** in a home that negatively affects her mental and physical wellbeing.

[26] Please see the Renting Homes Bill and the Private Rented Sector: Myths and Facts for the full list of signatories.

4.3. Outlined in the Explanatory Memorandum (EM) are the Welsh Governments' arguments for removing the moratorium, inclusive of whether *'what real security is provided solely through imposing an initial six month 'ban' on "no-fault" evictions, since evictions on other grounds can still proceed'*. While it is certainly true that six months does not represent a great deal of security for tenants, it does offer a minimal level of security, whereas the proposed changes would eradicate that completely.

4.4. Similarly, the EM says that landlords state the moratorium creates *'an inflexible barrier to some types of renting'*. The Bill, like the Housing Act 1996 already allows fixed term contracts to be for any length, including less than 6 months. The standard contract enables tenants and landlords to mutually agree a length of tenancy, meeting their needs and circumstances as required. In this manner, we believe the Bill refutes this argument and provides flexibility of renting options.

4.5. We have serious concerns that ending the moratorium will also undermine the Welsh Government's efforts to improve the quality and perceptions of the PRS, and expand the role the sector plays in preventing homelessness. The Housing Act encourages Local Authorities to use PRS to prevent and alleviate homelessness, but only if there is a reasonable expectation that the property is available for at least 6 months. Removing the moratorium will remove most PRS properties from the market to help prevent homelessness without specific negotiation with landlords to issue fixed term contracts.

► We call on Welsh Government to:

- Reinstate the 6 month moratorium

Notice and Eviction Practices

5. We broadly welcome the clarity around the notice and eviction processes outlined within the Bill. However, should the 6 month moratorium be removed, we call for extension to the 6 month restricted period to provide greater tenant security.

5.1. We suggest that the proposed penalty of a 6 month restricted period on a landlord serving a possession notice is applied to ALL breaches of the fundamental elements of the occupation contract, e.g. providing a written contract, providing information on deposit schemes and ensuring the property is fit for human habitation. This would extend (s174) *Restrictions on landlords 172*: *breach of information requirements* to offer some protection to tenants who identify a landlord breach of contract, thereby enhancing the commitment to end retaliatory eviction.

Serious Rent Arrears

5.2. We welcome the removal of ground 8 which brings parity for tenants living in properties provided by community landlords. However, we are concerned that this is effectively being reinstated by the mandatory ground for rent arrears within the periodic and standard model contract. This could result in tenants becoming victims of consequence outside of their control and finding themselves evicted without the opportunity for mitigating circumstance being taken into account. For example, a delay in a welfare

benefit as a result of a DWP processing issue could cause a tenant to fall into rent arrears which would count as a breach of tenancy, liable for mandatory eviction.

Client Story: Serious rent arrears caused by Universal Credit

John (not his real name) lives in a housing association property in a Universal Credit (UC) roll-out area. He applied for UC in September 2014 and received a Short Term Advance payment of £157. Due to ill-health, John had to then make a claim for Employment Support Allowance (ESA) in December 2014, which he was told to make over the phone as his UC claim had ended. With his local bureau supporting him to make the phone application he then sent off his fit notes to ESA as instructed. By late January 2015 he had heard nothing and received no money. By now John was falling into serious rent arrears.

Returning to his local bureau for support, the DWP department running ESA initially informed them no such application had been made, followed by the fact that John shouldn't have made a phone application as his UC was still open. The bureau worked to support John through the new processes associated with UC and the ongoing issues with its administration. John was repeatedly told that his UC payments had been made, but they were not. No housing payments were made from October 2014 onwards.

John was issued with an eviction notice by the Housing Association, with the Court date for possession on 13 February. With bureau support this date was postponed until 25 February. After 11 phone calls from the bureau, local Job Centre manager and Local Authority housing benefit manager, John was finally awarded back payment on 20 February 2015 £1,100 and his landlord £1,675 avoiding his eviction by a narrow margin.

5.3. We call on Welsh Government to make all possession orders for serious rent arrears discretionary, so that there is always some discretion used when granting possession.

5.4. We would also like to see that rent arrears practice includes early warning identification and offers of support across all tenures. Rent arrears arising through a missed monthly payment, series of weekly payments or continual underpayment should be identifiable by the landlord. We advocate that all landlords should take steps to engage tenants in dialogue about why they are falling into arrears and to offer information and signposting.

5.5. Current pre-court action protocols used by Community Landlords ensure communication with tenants, and the provision of information and signposting as a preventative approach to help mitigate against eviction due to serious rent arrears. We suggest that the supporting framework to the Bill obligates landlords to signpost their tenants to their Housing Options service as they are likely to be within the 56 day period of being at risk of homelessness if they do not address their rent arrears.

5.6. We would also advocate that tenants are signposted to appropriate money management and debt support information and advice agencies to help ensure any underlying money related issues are identified and plans are put in place to address them. This should be written in to the Code of Practice and training requirements created under Part 1 of the Housing Act.

5.7. This would reflect the Code of Guidance for Local Authorities on Homelessness recently consulted on by Welsh Government which advocates working with landlords to maintain tenancies where appropriate, including advocating with PRS landlords to consider affordability and creating rent debt schedules.

5.8. Where tenants fail to engage with the landlord or do not pursue available support from Housing Options or information and advice agencies, this should be noted and considered within the Court process. Similarly, where the landlord fails to engage in the process or offer signposting, this should also be considered within the Court process.

Retaliatory eviction

5.9. Our Tenant's Dilemma report exposed the scandal of retaliatory evictions in 2007. In 2013 in Making Rights Real we called with Shelter Cymru for Welsh Government to include protection from retaliatory eviction in the Renting Homes Bill. We strongly support the proposed introduction of legislation to address this poor and aggressive practice. We believe this will provide better protection for tenants, help address poor practice by rogue landlords and help to improve property standards in the PRS. It is essential that it remains on the face of the Bill.

5.10. It is difficult to identify the number of retaliatory evictions undertaken across Wales, as much of this practice may never come to light and it is not recorded via the courts system. From looking at our statistics, we have seen a marked increase in PRS tenants with non-arrears related eviction issues over the past year. Non-arrears related eviction issues for 2012-14 represented only 1 per cent of the total housing issues seen across Wales, however for the first 3 quarters of 2014/15 this rose to 4 per cent, with 146 people seeking advice on this issue.

5.11. With the UK government recently passing laws to stop retaliatory eviction under the Deregulation Bill, we believe that to improve the proposals and ensure they are effective, the Bill must provide clarity on:

- The timescales of when an eviction notice is to be considered retaliatory for requesting repairs, e.g. within a 6 month period
- Where the court is satisfied that the landlord has made the possession claim to avoid complying with s 91 and 92, the landlord is referred to the licensing authority
- Retaliatory eviction guidance for other grounds to provide protection for tenants who seek to enforce their contract, for example by enacting their right to a written contract, or changing energy suppliers

5.12. Clear timescales will help ensure tenants do not misuse the legislation to avoid eviction by requesting repairs maliciously. While we do not believe that this practice is likely to occur, it may be raised by other organisations presenting evidence to the Committee. We advocate that a 6 month timescale is applied between when an issue is notified and when an eviction notice is being sort.

5.13. We believe that for s213 to be effective it must clearly tie to the Housing Act requirements surrounding licensing and the 'fit and proper' person test. We want to see landlords who are found to be applying for possession as a retaliatory eviction identified and their actions recorded against their registration and licensing details. The licensing authority must be notified of this practice, and where it is repeated, due consideration given to whether the landlord can be considered 'fit and proper'. Revocation of their license should be considered where appropriate, which would mean rent repayment and rent rebate orders would apply to any properties owned by the landlord in question.

Client Story: Retaliatory Eviction

Delyth (not her real name) sought help from Caerphilly bureau after being served with an eviction notice by her PRS landlord. Delyth had complained to her landlord about damp in the property which was affecting her young baby's breathing. The landlord refused to address the damp, and instead chose to serve Delyth with her eviction notice. When she came into bureau she was living on her Mother's sofa and seeking help to apply for homelessness support with the local Council.

Mary (not her real name), a single mother living in Barry chose to look for new accommodation rather than stay in substandard accommodation or face eviction. Mary believed the property was unsafe as there was no flooring in the utility room, and unsafe electrical wiring which repeatedly blew a number of appliances.

Despite repeatedly reporting the issue to the landlord and letting agent no action was taken. Similarly, after contacting her local authority Environmental Health inspected the property and ordered improvements to be made but no action was taken to make good the state of the property. Instead, the letting agent verbally threatened her with eviction if she continued to make complaints. After her initial 6 month fixed term contract ended with no repairs being made and a poor relationship with the letting agent, Mary chose to move out.

Fitness for human habitation

5.14. As identified in *Their house, your home* research by Consumer Focus Wales found tenants wanted to see minimum standards introduced to improve the quality of homes that are available to them. The fitness for human habitation sections are therefore a welcomed means of addressing this. We believe in order for this to be effective enforcement will be required (please see section 6 for further details) alongside increasing the support available to PRS landlords through mechanisms such as recyclable loans.

5.15. To ensure the subsidiary regulations specify clear standards that would help address some of the more common issues of repair and maintenance we see, we believe the following should be included in addition to the proposed content:

- Periodic electricity safety checks
- Energy efficiency rating of E or above on their property

5.16. To further support fitness for human habitation (s91 and s92) and retaliatory eviction (s213) we ask Welsh Government to include on the face of the Bill that the Key Matters (s26) includes the state of the dwelling and directly references fitness for human habitation. We advocate the key matters includes the current state of repair of the property at the beginning of the tenancy. By ensuring this is issued by the landlords and counter-signed as correct by the tenants at the start of the tenancy we suggest that this will make identifying any subsequent repair issues and determining whether the tenants bear any liability (s96) easier. This approach would be consistent with the policy objectives of promoting clarity for both parties, reinforce existing duties and support Local Authorities ability to ensure suitability of properties when discharging their duty to the PRS under the Housing Act.

5.17. The top issue we see clients living in PRS is repairs and maintenance. Over the last three quarters we have already seen nearly 500 issues representing 15 per cent of all

PRS issues. This continues the steady increase of these issues of 3% year on year since 2012. Our online survey results reflect similar problems with 11 per cent of respondents[27] rating their current or last privately rented home as being as bad (6 per cent) or very bad (5 per cent), with 25 per cent saying they needed improvement. We believe the fitness for human habitation test and its links to retaliatory eviction are therefore key to addressing the issues we help our clients with regarding the state of repair within the PRS.

5.18. We believe that for the fitness for human habitation to be effective it must clearly tie to the Housing Act requirements surrounding licensing and the 'fit and proper' person test. As in 5.13 we want to see recorded against the landlords licence failures to maintain a fit property, e.g. by linking Local Authority identification of Cat gory 1 and 2 hazards. Revocation of licenses should also be considered where appropriate.

5.19. Similarly, to support these sections, greater clarity is needed with regards to landlords' responsibility to make repairs where they are necessary due to the action, inaction or lack if care of the tenant (s96). In our view it is essential that the landlord has a fundamental obligation to ensure the property meets the fitness standard, excepting where the cost is considered to be unreasonable. We believe this proposal is inconsistent with other legislation regarding the duty of a landlord to undertake repairs and carry out maintenance and could cause confusion about landlords' responsibilities. Currently where repairs are necessary because of tenants in/action, landlords can seek deductions from the tenants' deposit. Landlords are not excused from their duty to make repairs as is proposed in the current wording.

Other Estate Management Reasons

5.20. We would like to see the wording of Schedule 8, Ground I (other estate management reasons) further clarified as we have concerns that it is currently too open to interpretation. Further guidance and regulations is required to make explicit what 'desirable for some other substantial estate management reason' exists beyond those already outlined within the schedule.

► We call on Welsh Government to:

- Make all possession orders for serious rent arrears discretionary
- Apply the 6 month restricted period on landlords to stop them serving possession notices where they have breached ANY of the fundamental elements of the occupation contract
- Enhance s213 retaliatory eviction by including:
    - clear timescales
    - links to enforcement of the Housing Act Part 1 regulations of PRS (adherence to the Code of Practice and fit and proper person test)
    - eviction guidance for other grounds
- Enhance s91 and s92 fitness for human habitation by including:
    - It as a Key Matter (s26)
    - links to enforcement of the Housing Act Part 1 regulations of PRS (adherence to the Code of Practice and fit and proper person test)
    - Ensuring electrical safety checks and energy efficiency rating is included within the subsidiary regulations

[27] Of the 304 total respondents, 270 answered questions asking them to rate the state of repair of their current or last privately rented home.

Enforcement

6. We believe that clarity of the Bill will be enhanced if the framework for Renting Homes is internally consistent and clearly linked to the Housing Act and its subordinate regulation. Clear, effective, accessible and deliverable enforcement of the proposed legislation is fundamental to achieving the Bill's aim of improving the quality and sustainability of the rented sector in Wales.

6.1. Currently redress for tenant disputes regarding the breaches of contract are proposed within the Bill via the Courts. The EM confirms that landlords and tenants are widely dissatisfied with the court process as a way of resolving disputes due to the delays, inconsistency, cost and worry. Therefore it is important the Bill includes other options for resolving disputes and for enforcing the legislation.

6.2. As outlined in 5.13 and 5.18 we want to see issues of non-compliance being lodged with the licensing authority and this information being shared with the authority administering the individual's fit and proper person test. Repeat offenders or those found guilty of serious breaches such as a series of Category 1 HHSRS hazards not being addressed should have their licenses revoked. This would then make them liable to rent rebate and rent repayment orders until they were deemed fit and proper once more.

6.3. The Housing Act uses fixed penalty fines for landlords who fail to register. We suggest this approach is used to enforce the Renting Homes legislation where a landlord fails to:

- provide a written occupation contract,
- provide information on deposit schemes
- ensure the property's fitness for human habitation.

6.4. Fixed penalty fines could be the responsibility of the Landlord Licencing Authority, (which is responsible for fixed penalty fines for the licencing scheme) and/or Local Authorities, with the income used to offset enforcement costs. This link with the licencing scheme and/or Local Authorities can also help Local Authorities to target support for landlords, for example where they require information and advice on their responsibilities, or access to financial support to undertake repairs or improvements.

6.5. We believe enforcement, particularly of fitness for human habitation, would help support the policy intent behind the Housing Act and Renting Homes Bill of improving the rented sector. It would complement the new duties on Local Authorities to ensure they discharge their homelessness duties into suitable PRS housing, helping Housing Options fulfil their expanded remit of working with landlords to ensure the suitability of properties.

6.6. To further support Local Authorities achieve their new duties to prevent homelessness, we believe that Housing Options services could consider the role of mediation to resolve tenant and landlord issues. Mediation services are listed in the Code of Practice as a means of helping prevent homelessness arising from family breakdown, however we would like to see consideration given to expanding mediation to include landlord and tenant dispute. Access to a free, impartial and independent service that can help identify solutions suitable to both parties quickly could prevent problems from escalating. This could prevent Court or enforcement action, as well as homelessness, reducing costs to all parties involved (including the public purse) by intervening earlier.

6.7. To further support the Bill's effectiveness, we believe consideration should also be given by Welsh Government to the role of the property tribunal as a means of resolving

disputes. This could be an alternative to the above proposed mediation service run by the Local Authority.

- We call on Welsh Government to:
  - Creating a range of enforcement and support options to enable effective implementation including:
    - Fixed penalty fines
    - Independent mediation services for landlord and tenants
  - Ensure that breaches of the contract by landlords are recorded against their licence, with serious or repeat offences leading to revocation of their licence

Information and Awareness Raising

Resource Implications

7 In order for tenants and landlords to be able to make informed decisions, we believe further additional funding will be required on top of the allocated to communication £160,000 over the four year period outlined in the Regulatory Impact Assessment (RIA).

7.1 For both parties to be able to have informed discussion and negotiate terms that can be removed, replaced or amended will require considerable knowledge and understanding of the full rights and responsibilities detailed within the model contract. Knowledge and experience will be needed to understand how supplementary terms can be altered to the benefit of one or more party, as well as understand if changing them impacts on a fundamental term. While many people may be able to access the model contract online and any supporting guidance to their circumstances in order to make informed decisions about their rental agreement, some will require support to do this.

7.2 As previously noted, the RIA does not quantify the cost of familiarisation to local authorities staff or third sector information and advice provider. Using the WCVA's Third sector statistical resource it can be estimated that there are approximately[28] 2,100 paid staff working in advice, advocacy and housing third sector organisations. Additionally many thousands of volunteers also provide information, advice and guidance who will need to give up their time to familiarise themselves with the substantial changes. We would like Welsh Government to acknowledge the costs to the third sector reflecting the regulatory impact's assessment of the costs to PRS landlords, applying the £103 (Office for National Statistics national earning average daily rate[29] to relevant employees and frontline volunteers. We believe it will be necessary for frontline information and advice staff to attend 2 days training to fully understand the implications of the Bill and be able to offer appropriate advice and guidance, and a separate half day course for a lower level of familiarisation to ensure accurate information and signposting.

7.3 This is in addition to the £23,000 allocated to the training and development costs listed in the regulatory impact assessment, which we provided as an estimate for our service

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[28] This calculation represents the percentage of third sector organisations listed activity area as *'Advice and Advocacy'* (3.25) or *'Housing'* (3.03) as a percentage of the total estimated number of people employed in the sector of 33,496 in 2013.
[29] Office for National Statistics, *Annual Survey of Hours and Earnings, 2014 provisional results*, Nov 2014

only and therefore does not provide a costing for the sector as a whole. To ensure third sector organisations are:

- informed about the changes
- supported to cascade this information to the frontline
- able to work with tenants and landlords to better enact their rights and responsibilities

And therefore able to support tenants and landlords understand and apply their rights and responsibilities, we call on Welsh Government to allocate appropriate resources.

7.4 While not part of this Bill, we welcome the Welsh Government's Housing (Wales) Act FAQ which outlines the intention for a Tenant Information Pack to be produced. We seek reassurance from Welsh Government that this will be tied effectively to the Bill through the secondary legislation and supporting guidance around issuing contracts and good practice. We call on Welsh Government to ensure that the proposed pack is made with the active participation of tenants, their representative organisations and information and advice providers to ensure it is effective, and user friendly. We would welcome the opportunity to support Welsh Government in achieving this work.

Consultation

7.5 To further support this, going forwards we would like to see effective engagement with tenants to ensure the model contract is written in accessible language while meeting legal requirements. The example of an easy read contract which formed part of the consultation by Welsh Government on the model contract shows how a contract can be modified to suit a specific readership. We would like to see a similar approach applied to the model contract, ensuring tenants and landlords are truly involved in creating an accessible model contract.

7.6 We call for further work to be carried out on the model contract to enable a codesign approach to be taken that enables knowledgeable participation and takes account of the literacy rate of Wales. As previously reported[30], we want Welsh Government to take into account the issue raised by tenants about the length of the model contract, echoing concerns raised by our advisers through in-house consultation. We believe consumer engagement and testing is vital to ensure the majority of readers will not only be able to understand their rights and responsibilities as outlined within the contract, but also read the contract and not find its length a barrier.

7.7 Within the Bill, we want to see that it is not a requirement placed on tenants to request information about their community landlords' consultation arrangements as is proposed in s232, but a requirement on landlords to provide them. This ensures that the information is made readily available, thus enabling tenants to be informed and engaged in relevant processes that may affect their tenancy.

[30] Consumer Focus Wales, Their house, your home, 2012

About Citizens Advice Cymru

Citizens Advice is an independent charity covering England and Wales operating as Citizens Advice Cymru in Wales with offices in Cardiff and Rhyl. There are 20 Citizen Advice Bureaux in Wales who are members of Citizens Advice Cymru, delivering services from over 375 locations.

The twin aims of the Citizens Advice service are:

- to provide the advice people need for the problems they face
- to improve the policies and practices that affect people's lives.

The advice provided by the Citizens Advice service is free, independent, confidential and impartial, and available to everyone.

The majority of Citizens Advice bureuax staff are trained volunteers. All advice staff, whether paid or volunteer, are trained in advice giving skills and have regular updates on topic-specific training and access to topic-based specialist support.

Local bureaux, under the terms of membership of Citizens Advice provide core advice based on a certificate of quality standards on welfare benefits/tax credits, debt, housing, financial products and services, consumer issues, employment, health, immigration and asylum, legal issues, and relationships and family matters.

The Citizens Advice service now has responsibilities for consumer representation in Wales as a result of the UK Government's changes to the consumer landscape[31]. From 1 April 2014 this includes statutory functions and responsibilities to represent post and energy consumers.

We are happy for our evidence to be made available to the public.

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[31] On 1st April 2013 responsibility for consumer representation was transferred from Consumer Focus to the Citizens Advice Service (including Citizens Advice Cymru) following the UK Government's review of the consumer landscape.

RH 34
Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/
Communities, Equality and Local Government Committee
Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill
Ymateb gan: Sefydliad Brenhinol y Syrfewyr Siartredig Cymru
Response from: Royal Institution of Chartered Surveyors

I would just like to bring them to the Committee's attention and consideration as part of the evidence they will be considering the Policy positions RICS has taken in relation to the Private Rented Sector to inform their work, and if they wished to potentially meet with the Committee both in relation to them and also their inquiry.

RICS Wales is the principal body representing professionals employed in the land, property and construction sector and represents some 4000 members divided into 17 professional groups. As part of our Royal Charter we have a commitment to provide advice to the Government of the day and in doing so we have an obligation to bear in mind the public interest as well as the interest of our members.

RICS Regulation – a separate arms length department in RICS – monitors, inspects and advises Members and Regulated Firms to uphold our professional, ethical and business standards, as well as against specific schemes. RICS Regulation takes a risk-based approach to monitoring and regulation of its schemes. In line with better regulation principles, our regulatory activities are transparent, proportionate, accountable, consistent and targeted. RICS Regulation reports to a Regulatory Board which is at arms' length from RICS. The Board has a mix of independent and RICS members, with an independent Chair, all appointed by an independent selection process. The Regulatory Board is accountable to RICS Governing Council.
Our specific comments below in relation to the proposed changes to the regulatory framework in the Private Rented Sector in Wales should be taken in this context.

Q1 – Are these penalties appropriate?

Yes. However:

- It maybe better that there should be a gradation of specific fine levels according to seriousness of offence that would be automatic and potentially

often, lower than £20,000 but therefore more likely to be imposed regularly to persuade landlords they will actually happen.

- Rent repayment orders would be appropriate, but care would need to be taken to ensure enforcement.

Q2 - Are there any other suggestions?

RICS Wales has no additional suggestions to make.

Q3 – Are we capturing the right people?

The right people are being captured by the proposed registration arrangements, although the effectiveness of the registration arrangements and associated enforcement activity will be dependent on the quality of the available baseline data about the names and contact details of all owners of private rented accommodation in Wales, Resources for maintaining data must be regularly reviewed to ensure they are adequate for registering all landlords.

Q4 – What do you think the fees should be?

The proposed annual registration fees outlined in the consultation paper may be appropriate, but this will depend upon making the scheme self-funding; if a local authority finds the scheme to be a net drain on resources the scheme could potentially not receive sufficient resources to allow it to function efficiently.

Q5 - Should the fee be dependent on the size of a property owner's portfolio?

Provided the fee remains as low as envisaged, a fee that is the same for each individual landlord registration will ensure simplicity of administration, encourage compliance, and reduce the potential for the fees system being a deterrent to property investment. However if before implementation, the fee is markedly higher then a fresh consultation should be held to consider if some degree of proportionality should be introduced.

Q6 – Do you agree with an annual fee (which could be used to offset a larger registration/accredited training fee)?

Agree with the proposed annual fee.

Q7 – Do you think this is appropriate for a “Fit & Proper Person” test for this scheme?

We agree with the proposed approach here. RICS Wales considers, however, that the test needs to go wider to check a landlord’s suitability with regards to their responsibilities under anti-money laundering legislation and the Bribery Act. Consideration should be given to widening the test further to cover other criminal offences, especially those involving violence, although clearly there will be a need to take account of statutory requirements associated with the rehabilitation of offenders as well.

Q8 – Is this a reasonable limit for a “responsible person”?

RICS Wales considers limiting a “responsible person” to managing the property portfolio of one property owner in addition to managing any property portfolio they may own in their own right is reasonable. If a responsible person wishes to manage the portfolios of more than one property owner they are clearly operating as a lettings/management agent, and need to be subject to the registration and licensing arrangements for such businesses detailed elsewhere in the consultation paper. A different approach is required, however, for properties owned by legal entities such as businesses, rather than by private individuals. In such circumstances, the legal entity should not have the option of appointing a “responsible person” to manage their property portfolio. They must be registered and licensed themselves, or delegate management of their property portfolio to a registered and licensed lettings/management agent.

Q9 – Is this fine acceptable? Are there other penalties that could be applied?

We consider the level of fine proposed here to be acceptable. Revenue generated from such fines should be used to help fund the registration and licensing scheme.

RICS Wales suggests all licensing breaches should be publicised to raise consumer awareness about the registration and licensing scheme, and to deter landlords and management agents from being identified as examples of bad practice.

Q10– Are the proposed accredited training fees reasonable?

We consider the proposed accredited training fees to be reasonable. RICS will wish to have the opportunity to be considered as a potential accredited training provider.

Q11– Is this period acceptable before review?

RICS Wales agrees that a three year lifespan for a manager/landlord licence is reasonable, but it will be important to have good communications on the associated annual registration fee when communicating with managers/landlords about the licence fee. In addition, it will be essential to have robust enforcement arrangements for non-compliance with payment of either the annual registration fee or the licence fee to ensure a level playing field amongst managers/landlords, including the potential sanction of withdrawal of a licence within the three year lifespan for non-compliance.

Q12 – How would this work in practice? What are the implications?

Paragraph 34 of the consultation paper as currently drafted is rather ambiguous on what happens in circumstances where a landlord loses licensed status under the proposed Scheme, in particular as that may well happen in the middle of the life of one or more tenancies associated with their property portfolio. The Code of Practice will need to include clear rules about how the interests of existing tenants will be safeguarded while alternative management arrangements are put in place.

See also response to Q27 below about the Code of Practice referenced in paragraphs 32-34 and 64-65 of the consultation paper.

Q13 – What other forms of CPD may be appropriate?

Paragraph 35 of the consultation paper implies that CPD will be 'encouraged'. RICS considers that CPD should be mandatory and on an annual basis.

RICS Wales considers that any learning activity undertaken by licensed landlords/managers that has written evidence of pre-planned learning outcomes associated with new legislation and developments in property

management that affect the private rented sector in Wales should be considered appropriate CPD.

Q14 – How much CPD activities should be undertaken per year and what should it entail?

RICS Wales considers at least 20 hours per annum CPD activity should be undertaken by licensed lettings/management agents, of which 10 hours should be formal learning. This is consistent with the CPD policy for RICS members effective from 1 January 2013. For licensed individual private landlords, a more proportionate approach might be to limit the requirement to 20 hours per annum CPD activity, whether formal or informal, and for the licensing and registration scheme administrators to offer some free on-line training materials as a way of encouraging compliance.

Q15 – Should CPD be used as an alternative to refresher training? Or should refresher training and evidence of CPD be needed to maintain the licence?

RICS Wales considers CPD can be used as an alternative to refresher training provided the manager/landlord has robust written evidence of CPD activity has maintained up to date knowledge and understanding of new legislation and developments in property management that affect the private rented sector in Wales (see also answer to Q13 above).

Q16 – Should other establishments/landlords be exempt from the mandatory register and licensing requirements?

Other than "houses that are let for holiday purposes" and possibly ;"houses that are managed or controlled by a Registered Social Landlord" RICS Wales sees no reason to make exemptions from the mandatory register and licensing requirements

Q17 – Does this go far enough?

RICS Wales considers the proposed approach in paragraph 42 of the consultation paper for two thirds of all staff involved with the letting and management of private rented sector property at each lettings/management agency branch to pass accredited training is targeted and proportionate. Such an approach will, of course, require effective enforcement to ensure a

level playing field amongst all lettings/management agencies in Wales. Otherwise there is the potential unintended consequence of compliant businesses incurring greater costs than non-compliant businesses and the latter able to offer more competitive rates to consumers than the former and thereby take greater market share.

Q18 – Is this penalty appropriate?

RICS Wales considers the proposed maximum level of fine in paragraph 44 of the consultation paper of £50,000 for those lettings or management agencies that fail to register seems high compared with the level of fines proposed for individual landlords. RICS suggests a maximum fine of £25,000 would be more proportionate.

Q19 – Are there any other suggestions for penalties?

RICS Wales suggests all licensing breaches should be publicised to raise consumer awareness about the registration and licensing scheme, and to deter lettings and management agents from being identified as examples of bad practice

Q20 – Is this too onerous? Would it be better to make it a "duty" for the information to be made available if requested under the Scheme?

We regard the proposed information requirements on individual lettings and management agents as outlined in paragraphs 47 and 48 of the consultation paper to be reasonable. RICS suggests, however, that to avoid the information requirements proposed in paragraph 48 becoming unnecessarily burdensome on both lettings/management agents and the Scheme administrators, that lettings/management agents should supply an updated list of each individual landlord's name and correspondence address for whom they manage/let properties on an annual basis, and at other times on request by the Scheme administrators.

Q21 – Should the fee be dependent on number of offices or, alternatively, portfolio size?

RICS Wales suggests the fee should be dependent on the property portfolio size of the particular lettings/management agent.

Q22 – Is this the right person/persons to undertake the suitability test? If not, who should undertake the test?

Yes.

Q23 – Is this a reasonable period of time?

Yes.

Q24 – Should agents have a minimum recognised professional qualification? If so, what should that be?

Yes. A relevant NVQ level 3 equivalent should be the minimum professional qualification for lettings and management agents operating in the private rented sector in Wales.

Q25 – Do you agree that new letting/management agents should be licensed before commencing business?

Yes.

Q26 – Is this a reasonable time period? Should it be renewed every three years as proposed for landlords? If so, why?

RICS Wales considers the proposed licensing period for lettings and management agents should be three years to ensure consistency with the proposed licensing period for landlords. Such an approach would also reduce the potential for confusion and misunderstanding about these different elements of the registration and licensing scheme. It will be important to have good communications on the associated annual registration administration fee when communicating with lettings and management agents about the licence fee. In addition, it will be essential to have robust enforcement arrangements for non-compliance with payment of either the annual registration administration fee or the licence fee to ensure a level playing field amongst agents, including the potential sanction of withdrawal of a licence within the three year lifespan for non-compliance.

Q27 – Do you have any other comments on the proposals?

With regard to paragraph 59 of the consultation paper, RICS confirms we will be considering whether to apply to become an approved professional body under the Scheme.

Turning to paragraph 70 of the consultation paper, RICS would welcome clarification that the proposed fine detailed here will be imposed on a letting/management agent not a landlord. This paragraph as currently drafted is somewhat ambiguous on this point.

RICS Wales suggests that the Welsh Government will need to publicise the registration and licensing scheme proposals beyond Wales, in particular to those lettings and management agents who are based on the England/Wales border and who conduct business in both, and to ensure the scheme applies equally to those agents and landlords resident outside Wales.

Promoting the highest professional and ethical standards and acting in the public interest are core values of the RICS. The RICS UK Residential Property Standards (commonly referred to as the 'Blue Book') outlines the duties and responsibilities that those practicing as estate, lettings and managing agency practitioners owe to their clients and consumers. It is a useful source of reference not only for RICS members, but also others practicing in this field, and clients and customers as well.

RICS Wales notes that paragraphs 32-34 of the consultation paper introduce the concept of a proposed Code of Practice, and that there are further references to this Code in paragraphs 65 & 66. However, there is no clear statement of who will own this Code, and how the Code will be enforced. RICS Wales considers that such a statement is vital as part of the ongoing communications work by the Welsh Government about these proposals, and suggests there is a need for a read across from the Code to the Blue Book as well. RICS Wales is prepared to help on the latter. In any case, we will ensure that if the proposals contained in this consultation paper are introduced, the annual review of the Blue Book will reflect that development, including suitable cross references to the proposed new Code of Practice.

Many agency businesses operate in both sales and lettings, and RICS Wales considers the regulatory arrangements in Wales should reflect that fact. Such an approach would both ensure minimum levels of consumer protection, and

provide businesses operating in sales and lettings with a clear, simple and consistent approach that is lacking in the current unnecessarily complex regulatory arrangements. In summary, there is potential here to enhance consumer protection and minimise burdens on business. RICS Wales recognises that we have a role to play, in particular in the development of industry-wide standards that are recognised by property professionals, businesses and consumers alike, including common minimum standards of entry and practice. RICS Wales argues there is wider legislative reform that is required. We stand ready to work with Welsh Government and other stakeholders to reduce regulatory complexity and deliver the one touch regulatory framework outlined above that the residential property market so desperately needs to aid business growth, improve informed consumer decision making, and strengthen consumer protection.

If you have any queries in respect of this response please do not hesitate to contact me.

Renting Homes White Paper

Thank you for the opportunity to respond to the consultation dated 20 May 2013.

RICS Wales is the principal body representing professionals employed in the land, property and construction sector and represents some 4000 members divided into 17 professional groups. As part of our Royal Charter we have a commitment to provide advice to the Government of the day and in doing so we have an obligation to bear in mind the public interest as well as the interest of our members

Our detailed response to the Consultation is as follows:

Question 1

Do you support our proposals for changing the legal framework for

renting a home?

Yes. It will simplify things greatly without altering the current balance between landlords and tenants. Any steps which clarify the rights and obligations of both parties will be helpful if they are expressed in a clear

contract which consolidates the range of different documents that currently exists. Differences in the terms and conditions discourage moves between the sectors and reduces flexibility and mobility.

Question 2

Do you agree that the secure contract should be based on the current local authority secure tenancy (paragraph 6.11)?

Yes. Differences between different types of tenancy add to the confusion and make tenants reluctant to move between sectors.

Question 3

Do you agree that the standard contract should be based on the current assured shorthold tenancy (paragraph 6.13)?

Yes. Both are tried and tested in their respective fields.

Question 4

Do you support the proposals in relation to each of the following issues:

a) **Addressing the anti-social behaviour of some households (paragraph 6.17)**

Yes. Eviction for anti-social behaviour can be difficult. It is a serious step, but as things currently are, protection of other tenants appears hardly to feature. A simple clause, consistent across the board, is to be welcomed if it can be enforced. The insertion of a prohibited conduct term would mean a consistent approach to the problem but there is a need to ensure that the wording encompasses the wide range of antisocial behaviour to ensure its meaning is clear to landlords and tenants. The wording should make it clear what will happen in the event of a breach so the tenant is in no doubt as to the consequences of breaches of the contract.

b) **Dealing with domestic abuse (paragraph 6.25)**

Yes. There needs to be care that the standard contract terms protect the victims of domestic abuse and awareness that the terms supplement the law on legal and improper behaviour rather than seeking to replace it and that the terms protect the victims of abuse and impact on the perpetrator.

c) A more flexible approach to joint tenancies (paragraph 6.27)

Yes, in principle. However, what is proposed in the consultation paper may alter the "jointly and severally liable" status of tenants, so making things far more complex and expensive: deposits would need to be taken from and held against individuals, credit and affordability checks could not cater for the possibility of a joint tenant being able to manage if another left. The end result might be that landlords would not want to let to anyone other than single people or families. The wording should also be clear and link with antisocial behaviour and domestic abuse perpetrators.

d) Abandonment of the property by a tenant (paragraph 6.31)

Yes. At present, the law is vague, and a landlord cannot be certain that steps taken will not later be found unenforceable in court. This is an area that needs far greater certainty and simplification for both landlords and tenants. Currently if a tenant takes on a property there is the potential for them to be required to leave if a former tenant who absconded subsequently returns.

The landlord should be able to recover possession with minimum effort in those cases where abandonment is evidenced.

e) Renting by young people (paragraph 6.33)

No. A responsible landlord would understandably resist letting to a minor for legal and financial reasons, and possibly on safeguarding grounds as well. RICS Wales would be keen to meet with Welsh Government to discuss this point.

f) Standardising succession rights (paragraph 6.36)

Yes. This appears to simplify matters. There is no sound reason why succession rights should not be the same with provision for carers where occupancy criteria have been fulfilled.

g) Standardising eviction for rent arrears (paragraph 6.42)

No. This could negatively affect housing associations, and also those private landlords who let to housing associations. The prospect of a tenant being

able to rack up unlimited arrears will harm the sector as renting will become a far more risky proposition. The distinction between local authority and housing association rent arrears is also noted along with the limited use made of mandatory evictions. There are grounds for consistency of approach. Whilst understanding the benefits of supporting the tenant through arrears situation the paper does not make clear how it will work in practice so that the housing association/landlord is not disadvantaged.

h) Requiring landlords to ensure there are no Category 1 hazards under the Housing Health & Safety Rating System (paragraph 5.5(g))

Yes, as long as it is recognised that these hazards are sometimes caused by tenants (e.g. damp and mould due to lack of heating or ventilation), so the remedy may need to involve the removal of the tenant. In addition any requirements should be proportional. Landlords will therefore need to be able to have the power evict a tenant causing such hazards, provided landlords have evidence to justify such an approach. Properties should be let as fit, safe and reasonably energy-efficient.

i) Abolishing the six-month moratorium on 'no fault' evictions (paragraph 6.48)

Yes. It is better for tenancies to be underpinned by a clear, written contractual agreement at the outset.

j) Establishing a legal framework for supported housing (paragraph 6.55)

Yes, support the establishment of a legal framework for supported housing. However, 48 hours appear to be a very short period of exclusion and could be impractical in some circumstances. In addition, there need to be safeguards in terms of local social services being responsible for finding suitable alternative accommodation for those occupiers of supported housing who are subject to such exclusions.

k) Bringing housing association Rent Act tenancies within the Renting Homes framework (paragraph (6.62)

Yes.

Question 5

What do you consider to be the most significant elements listed in Question 4 for people who rent their home?

Conduct that is capable of causing nuisance or annoyance to others. This is by far the most common problem between tenants, but under current rules it is hard for landlords to tackle effectively and proportionately. Also the following:

1) Clarification and written contracts which are simpler and easy to understand with transparency on fees.

2) Reduced complexity

3) Greater awareness of the rights and obligations of both landlords and tenants

4) Condition of property. A strong move to ensure that houses let are free from hazards and disrepair and maintained as such and those tenants are clear of their obligations to look after the homes they occupy.

Additional comments

RICS is concerned to note that no impact assessment has been published alongside these consultation proposals. RICS encourages the Welsh Government to prepare and publish such an assessment, not least to demonstrate the business case for the proposed change, and to help identify any potential unintended consequences arising from the proposals. Without such an impact assessment questions will remain unanswered about the potential cost-benefits to the private rented sector in Wales arising from these proposals.

If you have any queries in respect of this response please do not hesitate to contact me.

Designation of Licensing authority under Part 1 of the Housing (Wales) Act 2014 and the intention of the training regulations which will govern the training requirements of landlords and agents

Thank you for the opportunity to respond to the consultation

RICS Wales is the principal body representing professionals employed in the land, property and construction sector and represents some 4000 members divided into 17 professional groups. As part of our Royal Charter we have a commitment to provide advice to the Government of the day and in doing so we have an obligation to bear in mind the public interest as well as the interest of our members

In response to the Consultation we would like to make the following replies:

<u>Designation of Licensing Authority</u>

The intention of the Designation Order is to appoint a single licensing authority for the whole of Wales to manage the registration and licensing scheme for landlords and letting agents. It is felt that appointing a single licensing authority will be beneficial for the following reasons:

- Cost effectiveness of operating a single database and website (as opposed to operating one in each local authority area)
- The requirement for landlords and agents to only have to register once and only pay one fee (rather than multiple times if they have properties in more than one authority area)
- Consistency in the service provided and the interpretation and application of the legislation set out in the Act
- A single central database for data collection (rather than a landlord having to have numerous registrations to reflect properties in different areas.)
- Cost benefits and marketing benefits of promoting a single "national" registration and licensing scheme.

1. **Do you agree that the Welsh Government should appoint a single licensing authority for the whole of Wales?**

Yes

It is the intention for the single licensing authority to be Cardiff Council. During the development of the Housing (Wales) Bill, Cardiff Council confirmed its offer to manage the registration and licensing scheme for landlords and letting agents. Due to Cardiff Council's experience of administering the current voluntary Landlord Accreditation Scheme for all 22 local authorities in Wales it is felt they have the knowledge and experience necessary to implement the new legal regime.

2. **Do you agree that the single licensing authority appointed should be Cardiff Council?**

Yes

<u>Training Requirements</u>

Before granting a licence the licensing authority must be satisfied that the relevant training requirements are met, or will be met.

It is the intention that the designated Licensing Authority will determine and publish the specific core syllabuses for training courses so that course content can be updated when necessary to reflect changes in legislation and best practice.

Training regulations will though, stipulate that the content of the specific course syllabuses must relate to one of the following:

1. The statutory obligations of a landlord and tenant
2. The contractual relationship between a landlord and a tenant
3. The role of an agent who carries out letting work or property management work
4. Best practice in letting and management dwellings, subject to, marketed, or offered for let, under a domestic tenancy
5. Roles and responsibilities in respect to letting work or property management work.

3. **Do you agree that all 5 broad subject areas noted above should be specified in the training regulations?**

Yes. However it must be made clear that different local authorities cannot set different training requirements from their neighbours. Were this to be allowed it would greatly add to the cost of implementing this policy and be a subsequent burden on business, disproportionately against rural areas with smaller numbers over which to amortise costs.

Leaving the specification to local authorities will also create uncertainty, especially as the licence lasts for just 5 years, whereupon the requirements may have changed.

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

Approved training courses will primarily cover the roles and responsibilities of a landlord or agent in relation to the tenant and their legal obligations. The policy intention is for these regulations to require different courses for different persons to reflect the differing requirements of their roles. The intention is that it will be for the designated Licensing Authority to determine and publish the required core syllabuses for each of the required courses and make clear who the course is appropriate for. As there are differences in these between landlords and agents it is intended that the regulations will require the licensing authority to develop different core requirements for the courses to reflect the differing requirements of the role of landlord and agent.

5.Do you agree that the licensing authority should stipulate the core training content of courses for landlord and agent should be different?

Yes

It is also the intention that in order to receive approval/authorisation, training providers must apply, submitting the required details of their training courses, to the licensing authority for approval. An application to the licensing authority for authorisation to deliver training courses must be made in line with licensing authority guidelines.

For example, a training provider creates a one day landlord course and a one day agent course. For approval to deliver the landlord course they would approach the Licensing Authority and submit an application for approval

(and pay one fee). For approval to deliver the agent course they would be required to submit a separate application for approval (and fee). It would not be appropriate to approve only a training course or only a person to run a course in isolation; it will be necessary to consider and approve them both as a whole.

This formal approval requirement will ensure that landlords and agents who wish to become licensed can readily identify suitable training courses that will be recognised by the Licensing Authority as being of the required standard.

6.Do you agree that the licensing authority should approve/authorise training courses and training providers to deliver training?

Yes
Authorisation may be refused if the applicant fails to meet the requirements set by the local authority, or if the application is not made in the appropriate form. Where a licensing authority decides to refuse an application the decision should be given in writing and the applicant will have the right to make written representations to the Licensing Authority if they wish.

7.Do you agree that the Licensing Authority should provide reasons for their decision and that applicants should have the right to make written representations if they so wish?

Yes

It is the intention that the licensing authority will have the power to withdraw authorisation of a training provider for the following reasons:

- If the provider has failed to observe a condition imposed on their authorisation by the licensing authority
- Ceased to be an appropriate provider

The licensing authority will have to provide, in writing, the reason for the withdrawal of authorisation and the training provider will have the right to make written representations to the Licensing Authority against such a decision.

8. Do you agree that the licensing authority should have the power to withdraw the authorisation of a provider to deliver a training course in these circumstances?

Yes

9. Do you agree that the Licensing Authority should provide reasons for such a decision and that the training provider should be able to make written representations against such a decision?

Yes

Fees

It is the intention that the licensing authority will be able to set a fees policy for approval of training courses and training providers. The intention is that before charging any fee, the licensing authority must prepare and publish a fees policy and will only be able to charge such fees in line with their fee policy. The licensing authority may fix different fees for different cases or descriptions of cases but these must be clearly shown in their policy.

10. Should the licensing authority be required to prepare and publish a fees policy before being able to charge a fee to approve a training course and a course provider?

Yes

Additional Comment

We would like to add given the extremely high regulatory standards to which RICS Members are held, that we believe they should be automatically recognised as having been trained to the standards required by the proposed scheme of registration.

If you have any queries in respect of this response please do not hesitate to contact me.

RH 35
Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/
Communities, Equality and Local Government Committee
Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill
Ymateb gan: Ystâd Parc Pont-y-pŵl
Response from: Pontypool Park Estate

Renting Homes (Wales) Bill, plus Statement of Policy Intent and Explanatory Memorandum

I cannot see a reference on the WAG consultations website to a request for comments on the published draft; but I assume it is there somewhere, and that you will again tolerate my comments nonetheless. I have some 400 pages to digest in a few weeks, and I regret that I have not had time to assess everything. WAG assures me that this is "a clearer, simpler and more straightforward legal framework" (WAG update 16 February 2015), so perhaps I should be grateful it is only 400 pages. Given the short timetable, may I limit myself to comments on the Explanatory Memorandum?

WAG states that there are 440,000 rented homes in Wales, accommodating some one million people. Therefore major change to the statutory arrangements has major implications, and I am not sure that the costs outlined in section 7 are realistic. I am also surprised by the consultations in section 4: seemingly there were only some 100 responses, of which 85%-95% were generally favourable. Is this really true? Could it be that, given the complexity of the matter and the length of the process, the landlord responses were largely made through organisations (CLA, RICS, RLA etc) each representing thousands of members? Has WAG been entirely correct in its portrayal of consent to its proposals?

I do not recognise the apologia for the Bill (paras 12-31; 188-311etc; Policy Intent passim) nor WAG's case studies. These may be true; but do they affect so many of the 440,000 households that new legislation is required? They seems of specialist application, perhaps to housing associations. The bill seems strangely concerned with domestic abuse (paras 301, 318, 324, 332 etc), an important matter which is nonetheless completely outside my experience. I cannot see the wider relevance of the other supposed advantages: tenants who are minors, joint tenancies etc; and the aspiration that "a prohibited conduct term…will help to reduce anti-social behaviour" (para 147) is bewildering.

I am not clear that the Bill will create "a clearer, simpler and more straightforward legal framework". The Bill will not bring all tenancy forms into one of two options, since it allows *inter alia* the continuation of Rent Act tenancies (para 47). The new periodic contract is supposedly modelled on the current Assured Shorthold (para 34) and I believe that new private residential leases since 1997 have been Assured Shortholds. So the Bill will in fact largely address Assured Tenancies, of which the small number would lapse with time anyway. WAG is effectively bringing in the new legislation, with the massive cost, confusion and disruption it entails, in order to replace the Assured Shorthold with something which WAG claims is similar. Is this really sensible or proportionate?

It is difficult to be convinced by WAG's intellectual arguments. WAG quotes Lord Woolf in 1996 (para 18; ie before the implementation of the Housing Act 1996) and an article from a circuit judge in 2000 (para 15). Is this the best it can do? Assured Shortholds were introduced to tackle the perceived inefficiencies of *inter alia* the Rent Act 1977; since 1997 Assured Shortholds have been the tenancy of default; the Bill's Standard Contract is supposedly (and for now) "based on a current assured shorthold tenancy" (para 34). So why change? Will the Bill really ameliorate domestic abuse?

There are issues with housing, particularly at the bottom end, and these problems may continue in any event, such arrangements continuing to operate below the legal radar. The Bill retains the barriers on eviction for housing association tenants, and this will continue to prejudice the domestic enjoyment of other tenants who have to suffer from anti-social behaviour. Richer tenants will be able to move;

poorer tenants will be locked in to bad neighbours. How does the Bill help them? There are also issues *inter alia* with homelessness, and semi-sheltered, transient, and student accommodation. How will the Bill resolve these concerns? The Bill avoids real problems, which will continue. But the Bill will penalise landlords (and their agents) who already operate properly and provide a valuable service.

Para 6: "the Bill contains considerable detail and some elements are technical and complex" but (para 247) private landlords only need one day @ £96 to "become familiar to the level required". Now £96 may exaggerate the value of my daily contribution to the Wales economy; but I fear that, dim as I am, I may not be able to grasp all the details in one day. Yet the Bill creates financial and legal penalties for faults, and the new Housing Act requires licencing, breach of which may remove my right to trade.

Para 9: it would be helpful to see the results of the consultation.

Para 12: "there are many different forms of tenancy" is not helpful. Are not private residential leases since 1997 Assured Shortholds by default, whether there is an agreement to that effect or not (para 33)? Now the Bill will create two new tenancies, with a burdensome model agreement currently running to sixty two pages of text, with opt-in and opt-out clauses, and penalties to the landlord (but of course not the tenant) if it is wrong. Any landlord with properties in England will continue to have to use Assured Shortholds. And any tenant recently from England (perhaps 15-20% of our client list) will have to digest a new Wales-only contract, as will any tenant with her own properties to let (perhaps 10-15% of our client list) if she has properties in both England and Wales.

Para 13: "joint tenancies can present difficulties" but not if the tenancies are periodic Assured Shortholds, when both joint tenants would be on the same short notice. Rent Act tenants are protected anyway, nor does the Bill cover them. So this concerns seems largely related to housing associations and their tenants, whom the Bill continues to penalise by retaining effective security of tenure.

Para 13: "renting [is] a last resort as a housing option, or the only alternative for those who are unable to buy a home". I do not understand the relevance of this statement, or the latent concerns. Most people live in a home; that home can be rented or bought. How many other alternatives are there? People choose to rent or buy for many different reasons. I live in a rented home; many of my clients are also property owners themselves. There is no right or wrong. There was a period some ten years ago when many people in Britain felt they had to buy; but surely WAG does not wish to reignite that speculative bubble? It is expensive to buy a house, and it is not necessarily helpful for people to tie up large sums of capital in a semi-liquid asset. Outside central London and other areas of restricted supply, and in the absence of material capital gains, it is may be better value for people to rent. And renting gives people flexibility, and more free cash to spend or invest, and thereby help the economy. It is a surprising insight that WAG believes a million people in Wales are living in a "last resort".

Para 14: "the law for renting a home…is complex and not easily understood", and WAG's Bill will ensure that this remains the case. Even WAG agrees the Bill is complex (para 6).

Para 18: this is not a rigorous argument.

Para 29: "clearer arrangements…should translate into fewer disputes"; so why will WAG force me and my clients to swap a three-page Assured Shorthold for sixty two pages of WAG's new text?

Para 33: "some landlords will purport to issue a licence; whereas in law a tenancy will have been created"; so how do the sixty two pages protect materially beyond what already exists?

Para 28: on what basis does WAG claim that the Bill will provide "simpler and more flexible arrangements for renting a home"? What could be simpler than three pages?

Para 38: “most existing agreements will convert to the appropriate type of occupation contract”; but, if the norm for private properties is an Assured Shorthold already, what will have changed?

Para 42: “some of the fundamental terms can be left out or changed by agreement, but only where this benefits the contract-holder”. How can I be sure what “benefits the contract-holder”, given that I will be penalised for getting it wrong? The answer seems to be in WAG’s draft Periodic Standard Contract which explains “only if it gives [the tenant] greater protection than under the Rented Homes Act 2006”. So my client now has to read another Act before she signs WAG’s “simple” agreement?

Para 47: so the Bill really only applies to Assured Tenancies; are they worth all this trouble?

Para 53: “a clear, understandable, contract is essential”; but WAG will deny one to my clients.

Para 56: most landlords would surely prefer a written contract. But if the law will infer a contract anyway, why further penalise a landlord for not providing a written contract? The people now responsible for tenancies without written contracts are likely to be 1) unsophisticated accidental or occasional landlords, who may now have to change or be penalised, and 2) landlords who now knowingly operate below the legal radar, and are likely to continue to do so, whatever the law.

Para 57: it seems unfair that landlords should be fined, but not tenants.

Para 62: am I correct that WAG is changing the tenant notice period to four weeks, from the current one month from the term date? Have I read it correctly that executors may be able to end a tenancy even earlier? These sort of changes may increase the rent that must be paid by other tenants.

Para 63: I am unclear of the relevance of WAG’s reference to 5,122 possession claims and 4,393 possession orders in 2012/2013. Is this good or bad? How many of these relate to housing associations? And how will the Bill make it easier for housing associations to meet their obligations to their decent tenants by being able to evict their anti-social or non-paying tenants?

Para 74: the landlord’s notice will be two months from when? And why four weeks for tenants? If a departing tenant must now pay less, the remaining tenants may now have to pay more. Is this fair?

Paras 83-124: the procedures for abandonment and the removal of the six months moratorium seem sensible, if likely to be limited in their relevance.

Paras 113-124: I assume the procedures for succession are easier to understand, if you say so.

Paras 125-128: I believe that the Housing Act 2004 deposit rules only apply to tenancies after April 2007. Does WAG now intend to make all tenancies retrospectively liable to deposit protection rules?

Para 130: WAG seems to define and extend the landlord’s repairing obligations in ways that may not be appropriate for all houses. I note for example that septic tanks may now be a landlord item. But with rural properties, where such tanks may be used by one property only and where the landlord has effectively no control over what is put into the tank, it can be pragmatic to make emptying the tank a tenant item. Equally, cleaning of gutters and drains seem obviously best done by the person on site: the tenant. If not, then the prudent landlord may be forced to increase rent to cover call-out charges for such periodic cleaning, and the costs of damage caused by inadvertent blockages. Reasonable landlords would want to repair any defects not caused by the tenant; but the Bill may not say that.

Paras 134 – 140: the fitness for human habitation requirements are likely to give lawyers plenty to argue about for years to come. And many lawyers may not trouble with legislation applicable only to Wales, so less competition means the remaining lawyers will be able to charge higher fees.

Paras 141- 145: the retaliatory eviction rules are also likely to be a good source of legal fees. It seems adviseable, under the Bill proposals, for any tenant who is in arrears of rent, and knowing she is likely to be served notice, to submit a pre-emptive "request by a contract holder for repairs or a complaint regarding fitness for human habitation". This should effectively limit no-fault evictions to decent tenants, who will already have had to pay more rent to protect the landlord against increased litigation.

The best way to avoid eviction litigation is for WAG to be unequivocal in its support of no-fault evictions after service of the appropriate notice. But it seems WAG wants to have an effective rental market, plus security of tenure, plus rent controls. We tried that in the 1970s: it did not work.

Para 146 – 155: "setting out a prohibited conduct term clearly within every contract will help to reduce anti-social behaviour and so result in fewer evictions" (para 147 etc) is touching in its naivety. A key protection for a landlord, and therefore for a tenant, is the ability to regain possession of the property quickly, without cost or litigation, in the event that the tenancy is no longer appropriate. WAG is right to be concerned about tenant response to poor-quality landlords. But the best protection is competition: the more choice, the more power to the tenant. So WAG should focus on trying to increase supply, and encourage more people to let their properties. WAG accepts the free market for its own politics and elections; why does it think that regulation will solve the problems in housing?

Para 166: "The Bill provides for all existing residential tenancies to convert to the appropriate form of occupation contract on a specific date…Terms in any existing tenancy which do not conflict with the relevant fundamental terms will continue to have effect under the occupation contract to which the tenancy will have converted". I do not share WAG's optimism that this will be so easy. We have many tenancy agreements, some going back many years and written on half a sheet of paper. They are nonetheless covered by statute, and clients (and their legal advisers) know the rules. WAG now requires all relevant leases to change within six months and, while I hope I will know what to do, WAG will fine and penalise me if I get it wrong. And my clients will be required to read, understand, take advice on, and sign a new contract of extraordinary length and complexity, the worry and time of which seems to be dismissed by WAG as inconsequential (para 282). It is difficult to be enthusiastic.

Para 168: please explain the "legal requirement is for the landlord to issue the written statement" and its relation with the appropriate contract. Remember, WAG will fine me if I get it wrong.

Para 174: I question WAG's claim that there is overwhelming support for the new arrangements.

Para 178: I question WAG's claim that there is massive support for the model contracts.

Para 183-184: the powers to make subordinate legislation imply that WAG accepts this is not the end of the matter. I fear that WAG will find it is not possible to cover every eventuality with prescriptive legislation, but will continue to prescribe (and to blame all parties other than itself).

Para 195: how will the current Bill, with its sixty two pages of bewildering pictograms and opt-in and opt-out clauses, provide "a better understanding of rights and obligations [which] can help to prevent…the reality of losing a home". How many will read such "complex" contracts before signing? How many read (before ticking they have read) the terms and conditions of an airline ticket purchase? The contract itself may not be the best protection for landlord or tenant; for a landlord it may be the ability to regain possession and, for the tenant, the choice of other properties to rent.

Para 196: I question WAG's claim that "there is an overwhelming call for a reform of the rented sector".

Paras 183- 311 Section 7: I question the rigour and value of WAG's analysis and predictions.

Para 282: I question whether it is insulting to our clients to suggest that the costs to tenants of WAG's proposals are immaterial since "the time they would devote to reading information" is not considered "actual costs". I respect my clients and their time, and am disappointed, for their sake as well as mine, that we shall all be subject under law to these new, burdensome and complex requirements.

Para 296: "It is not considered that the Bill places significant additional burdens on landlords". I disagree. I have already spent some forty hours on this Bill, and I am not yet working under the threat of fines and legal penalties which will tax me once the Bill becomes law. May I have my £96 now?

But I am also disappointed how this Bill may reflect on WAG's view of government and governed. I do not doubt WAG's sincerity; but there seems a detachment from the reality of those affected by WAG's decisions. The economy of Wales is not solely the fault of history, or Westminster, or an unequal distribution of English or EU subsidy; WAG also has a responsibility. WAG's massive spend of taxpayers' money on trophy projects such as Cardiff Airport, the Circuit of Wales (sic), or Pinewood may be far-sighted investment. But it also runs the risk of being perceived as statist intervention, or vanity. The health of the economy of Wales, and the quality of life for people who live and work in Wales, also relies on a multitude of inter-related triggers, balances and checks which together mould a tolerable environment. This Bill seems more political than pragmatic.

Landlords like this estate, with a commitment to an area over centuries, are hardly typical. Most private landlords are accidental or commercial investors, who assess the risks and returns of private rental property in relation to the risks and returns on other investments. If the costs of holding residential property in Wales increase, investors will have to charge more rent in order to retain the same return on capital. If the private rental market is unattractive, investors will sell their rented property portfolio, and invest in property in England, or chose another asset class. If WAG seeks to social engineer through further legislative burdens, it may make matters worse. Assembly Members themselves no doubt would insist on the right of electors to choose them over other candidates; why does WAG hesitate if my clients likewise may choose between me and my competitors?

RH 36
Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/
Communities, Equality and Local Government Committee
Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill
Ymateb gan: Tenantiaid Cymru
Response from: Welsh Tenants

About Us

The Welsh Tenants is the representative body for tenants in Wales. Formed in 1988 we have over 350 member groups consisting of federations, representative tenant & resident associations and panels.

Our membership and support covers the full range of mixed communities. Over the past ten years this has included a developing private rented sector. We believe that Wales can lead the way in developing a new less restrictive more vibrant form of renting that extends opportunity while providing adequate protection or renters.

Our mission

To enhance and promote the rights, representations and housing standards of tenants in Wales.

"Our mission is to enhance and promote the rights, representations and housing standards of tenants across Wales"

Our values

- Every tenant has a right to a decent quality affordable home, as a right not a privilege
- We actively support the principles of the UN Universal declaration of Human Rights and the right to an adequate standard of living as expressed in article 11.1. of the International Covenant on Economic, Social and Cultural as enlivened by the Right to Adequate Housing.
- We believe that everyone has the right to express themselves in accordance with their cultural values and beliefs providing this doesn't discriminate unlawfully against others
- We believe that everyone must have the freedom to make informed choices about their home, welfare and community and that every tenant has a right to influence decisions about the services they receive

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Summary

- While we support the principles behind the bill there are considerations for consumer protection, education and support that need to be considered to ensure the principles of joint rights and obligations are enlivened and realised. We believe that this should be provided through better provisions for consumer representation, protection and support for renters that is open to all and better. We would recommend consideration of a Property Services Ombudsman for PRS that is open to all, and not just those whose landlord subscribe to the PSO scheme and thus excluding the majority of private renters.
- We also believe that Wales requires better strategic oversight due to the significant changes in approach between other countries of the UK on the PRS and would recommend setting up a Welsh Private Residential Tenancies Board as in the Republic of Ireland to provide strategic oversight of the sector.
- We strongly oppose the withdrawal of 26 weeks protection in the standard periodic contract without the removal of the no fault eviction through the serving of a Section 21 notice to quit. This could lead to unchallenged bias by landlords or letting agents. We also believe that reduction in security runs contrary to Article 11.1 of the Convention on Economic, Social and cultural rights and the Right to Adequate housing as expressed by treaty within the framework of the Human Rights Convention.
- We accept that efforts that have been made to address 'retaliatory eviction' in Wales as distinct from that proposed in the Deregulation bill is a necessary inclusion but only addresses disrepair obligations. Better remedies to address harassment and other practices needs also to be considered to support the consumer protection approaches.
- We support the general provisions to ensure better protection under the fitness for human habitation utilising the 29 hazards of the Housing Health And Safety Rating System. However, we would wish to see better safety on the face of the bill to ensure sufficient protection from hazards. We would wish to see Schedule 14 of the 2004 amended to ensure that social landlords have to comply with HMO standards. We would also wish to see the Minister introduce regulations that ensure mandatory protection from carbon monoxide poisoning and 5 year mandatory electrical safety checks to reduce death and serious injury by fire or poisoning.
- We would also wish to see to a mandatory requirement publishing any prohibition notices in force or registered against the property in the past 5 years for the property being proposed for rent and to make it an offence not to provide such information to prospective renters.
- The 'prohibitive conduct' clause should be amended to reinstate the requirement to evidence criminal conviction.

1. Introduction

1.1. The Welsh Tenants response to the bill focuses on the general provisions and policy implications for renters. We have largely left the specific technical legal matters regarding housing law to others more competent to evaluate the specific legal definitions and interpretations of law.

1.2. As a principle, we accept that the private rented sector has a significant role to play in the provision of housing for a very broad section of the community. Indeed 1 in 3 people now rent their home. Today's renters increasingly consist of people and families who have less choice, limited financial freedoms or the capacity to take advantage of the exercise of their rights. Policy's that could force tenants to move more frequently, pay a higher cost to mitigate the landlords risk, increase the need for access to legal advice, prevent access to justice, or where policy consequences may impact on their ability to receive timely welfare to supplement income or enable access to market rent properties, are all considerations that we have in mind when consulting tenants and compiling responses. We are mindful, that when new laws, policy's and delivery programmes are developed, renters are not disadvantaged in furtherance of common accessible standards that simplify and make more accessible fairness in renting.

2. General provisions

2.1. Welsh Tenants is a long-time supporter of the principles that underpin the Renting Homes (Wales) bill since its development in 2003 and its successor reports[1]. We fully endorse the universal provision of written contracts and that these should be made available in non-electronic as well as electronic formats and that failure to issue contracts in line with the model contract provision would default to the Welsh Government model.

2.2. We support the approach to develop model contracts, for both secure[2] and assured[3] tenancy's underpinned by statute that will set out "*the basis upon which accommodation is rented, providing clear and accurate statements of the rights and responsibilities of the parties, including the circumstances in which rights to occupy may be brought to an en*d"[4].

2.3. Framing legislation utilising principles contained in the International Convention on Human Rights, UK equalities legislation and consumer protection principles is a mature reflective approach and one which many tenants, landlords, agents

[1] Renting Homes: the Final Report (1) (2006) Law Com No 297, http://lawcommission.justice.gov.uk/docs/lc297_Renting_Homes_Final_Report_Vol1.pdf (last visited 6 February 2013).
[2] Secure tenancy as defined in the Housing Act 1985
[3] The Assured tenancy regime in the Housing Act 1988 & Housing Act 1996
[4] http://lawcommission.justice.gov.uk/docs/lc337_renting_homes_in_wales_english-language-version.pdf

and advisors in Wales will benefit from once enshrined in statute. We particularly welcome the general aim behind the bill to make housing law less exclusive and thereby more accessible and more readily understood by renters, providers and advisors.

3. Consumer protection and redress

3.1. Placing renting a home in this context ensures that consumers have basic rights that include, the satisfaction of basic needs, a right to safety, to be informed, the right to choose, to be heard, and the right to redress. However, support to enliven these basic provisions should not be ignored when initiating this important change.

3.2. While secure contract holders will have access to redress through the Public Ombudsman Service Wales (POSW) currently the Property Ombudsman Services (POS) is only available to letting agents and landlords who enrol in the scheme, thereby excluding tens of thousands of private renters whose landlord do not subscribe.

3.3. We would wish to see adequate provisions in place for private renters to ensure that consumers have access to these dispute resolution services avoiding potential costly court action. We would also suggest greater use of Her Majesties Court Tribunal Service as a pre-court mechanism. This will require access to support to consider individual complaints. There is of cause options to utilise existing services such as the Residential Property Tribunal or developing a Private Residential Tenancies Board with statutory powers as in Republic of Ireland, the latter could have powers to address super complaints or thematic consumer redress issues.

3.4. Provisions will of cause need to be made to ensure that any schemes developed for private tenants in Wales meets the requirements of the Consumers, Estate Agents and Redress Act, 2007 which is overseen by the Office of Fair Trading.

3.5. Information and education concerning the change will be a significant challenge, but nevertheless is absolutely necessary to ensure fair and equitable treatment for both landlords and tenants. For example, we are concerned that 'additional terms' will be added by landlords only, because of market exclusivity, with few landlords accepting additional terms by tenants – will this lead to bias? We see wide spread exclusion of people in receipt of welfare from accessing private accommodation, or refusing to improve the property before let for disabled tenants, where the requirement to make reasonable adjustments are flouted.

3.6. It is our view that collective oversight of the market will need tight monitoring to consider the extensive changes that are occurring in the private rented sector to oversee; registration and licensing[5], periodic and fixed term contracts;

[5] Housing (Wales) Act 2014

tenancy deposits; charging; PSO scheme; and standards and unfair practices. We would therefore recommend a single regulator board with extensive powers to oversee the development of the PRS in Wales.

3.7. The provision of collective representation in Wales for private renters is something that also needs government support and needs to be considered most urgently by government to ensure consumers have a strong voice from which the sector can benefit in similar ways as the social housing sector.

4. Registered Social Landlords (RSLs)

4.1. Of the provisions for RSLs, it makes absolute sense to level up provisions for security and standardisation of rights and obligations in the social housing sector. We welcome the ability of government to add terms in order to achieve policy objectives provided there are adequate means of consultation and representation (see other matters). Equally, for registered social landlords this will require oversight by the Regulatory Board Wales and the Welsh Government as regulator who monitors compliance with the regulatory framework in the social housing sector.

5. Removing 26 week protection from eviction

5.1. We are extremely concerned at the removal of the 26 week moratorium that currently prevents landlords from evicting renters and their families within 26 weeks of taking up their tenancy. The provision exists to ensure families can place their children in schooling, register with a doctor, dentist and have time to come to know the community they have chosen to settle. This may even complicate claims for universal credit due to time lapses as a result of potentially more frequent changes in address But importantly, they have basic protection against potential bias of an unprofessional landlord.

5.2. In recent history, the market has demonstrated that the absence of restraints to seek charges from the renter are maximised to their fullest extent to the advantage of the landlord or agent. We predict that removing the moratorium will mean the default starter agreement will be substantially reduced to some 16-20 weeks as opposed to the current 26 weeks with the nuclear option of section 21 notice built in, 1 day after the tenancy agreement begins as currently occurs in some fixed term contracts.

5.3. One of the key arguments from landlords bodies is that shorter term tenancies will meet the demands of floating tenants (those who travel around with work, due to micro jobbing or traveling zero hour contracts). There are already provisions under 'fixed term contracts' to terminate early for both the tenant and landlord provided, a) *that both agree, b) that there is a break clause term in the tenancy agreement, and c) the tenant has followed any requirements for giving notice*. The onus is on the landlord or letting agent to provide for such in their range of model tenancy agreements to better suit the needs of the renter. Under these arrangements, if the property is handed back the landlord has a

duty to mitigate the tenant's loss of future rent by re-letting while charging reasonable re-letting fees and avoiding double charging. They do not do so because they will want to contractually bind for the duration of the 6 months and tenants are not generally aware that this clause can be added to better meet their accommodation requirements.

5.4. In our view there is no justification for changing the 26 weeks security protection, for ALL renters for the benefit of a few that can already be served through better market awareness. These arrangements can be made, but as a whole do not, because landlords will want to maximise income for least effort and as such the market works more in favour of the landlord as opposed to the renter in terms of tenancy length.

5.5. We feel that longer term tenancies exist in the PRS more by accident or lack of competence than design, this is demonstrated by the response received as part of the impact assessment conducted by government and a failure to renew fixed terms so that it defaults to a statutory periodic tenancy.

6. Security of tenure

6.1. For Welsh Tenants the principles of the Universal Declaration of Human Rights are more important than ever. Since its adoption in 1948, the convention has helped set a benchmark for a range of other treaties, rights and obligations of which progressive countries have rightly subscribed, including the UK and Wales. The right to an "adequate standard of living for himself and family" contained under Article 11.1[6] of the Convention on Economic, Social and Cultural Rights (1966) includes a provision that enlivens this treaty obligation. Central to the adequacy of this right is the provision of fair and reasonable security of tenure within the 'Right to Adequate housing'[7].

6.2. Quite righty the HRC has important principles at its heart, more notably non-discrimination and equality. However, there is also the principle in human rights law of 'non-retrogression', which commits member states to the progressive realisation of these rights. The principle of non-retrogression means that signatories to the convention are not allowed under any circumstances to introduce, laws, policy's or programmes that are regressive to the convention rights – "*even in a situation of global economic crisis or austerity measures*"[8]. The principle ensures that all of us can enjoy the progressive realization of a right to adequate housing, and a home, with fair and proportionate security of tenure and protection from eviction.

6.3. It is our view, the removal of the 26 week protection from eviction for All tenants while retaining the ability to serve a no fault eviction notice under

[6] International Covenant on Economic, Social and Cultural Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976, in accordance with article 27

[7] http://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf

[8] Lelani Farhar UN Special Rapporteur on the Right to Adequate Housing in a video message to the Welsh Tenants conference in 2014. Click here to view Ms Farhars video

Section 21[9] would put tenants in a worse position regarding their 'security of tenure' and would be a breach of an entitlement under the convention rights. We would therefore urge the committee to consider the advice we received on the convention rights from the UN Special Rapporteur for the right to adequate housing concerning retrogression.

6.4. Our understanding is the principle of non-retrogression is measured by specific criteria (see appendix 1). It is our view that to remove protection from eviction as currently provided and as proposed in the bill would place Wales in the unenviable position of having a worse private sector tenure security scheme than any other country in western Europe and runs contrary to the commitments given under the convention rights.

6.5. While removing the moratorium may be beneficial for a small percentage of 'floating renters', this is not the case for the vast majority of the estimated 14,500 annual market gap in housing who seek more stable accommodation. We would therefore recommend that tenancy agreements be extended to a minimum of 12 months as opposed to potentially reducing security to potentially 16 weeks as a consequence of the removal of the moratorium.

6.6. Cost implications for renters - It is our concern that tenants will require a greater amount of money in in order to secure a tenancy as a consequence of removing the 26 week moratorium.

1) The ability to write into agreements 2 month notice at the start of the agreement will mean they will have the ability to increase rents every time a contract is terminated, rents could increase more rapidly as an average because of the landlords ability to reset rents on shorter re-lets.

2) Turnover increases - Landlord or letting agents subsequent recharges for inspection of the property, revised credit checks, guarantors, recharges and other rechecks on credit worthiness will be more frequent increasing the turnover costs for tenants over a five year period due to less security.

Either way, tenants will require more of their income to be spent on housing costs, this adding to an already increasing high proportion of their income to be set aside for securing a home. Without a commitment to offer longer term tenancy the market would take advantage of the increased revenue being made available to them.

6.7. It is our view that removing the moratorium would provide no stable foundation for occupants and their children and increase costs for the renter. With no regulatory oversight there are no controls over letting agent and landlord behaviour regarding this. This could mean an inevitable call for rent controls.

[9] Section 21 Housing Act 1988 gives a landlord an automatic right of possession without having to give any grounds (reasons) once the fixed term has expired

6.8. In our view the proposal also enables the landlord to summarily evict rather than use the uncertainty of discretionary grounds through due process of law and lead to further challenges. It would also force tenants to be on the defensive with regard to repair notifications and 'look for faults' in order to secure protection under the 'retaliatory eviction defence'. This is not conducive of good landlord, tenant relations.

6.9. In recent years, we have seen sections of the private rented market in Wales and elsewhere adopt an increasing bias against individuals and families because of their perceived current or past economic status or indeed their lifestyle choices. This has added to the pressure on government intervention. In parts of the housing market, many tenants agree that it has returned to the practice of the style and substance of Rachmanism of the 60's. It is a strongly held view among our members and from consultations that removal of the 26 week moratorium would encourage the non-professional landlord sector (estimated to be 80% of the PRS market in Wales) to have the 'power to evict' on the basis of 'bias or discrimination' without recourse to a defence in court.

7. Other matters considered

7.1. The Welsh Tenants welcomes the efforts made in dealing more effectively with domestic abuse and the anti-social behaviour of some households through having a 'prohibited conduct' term in every contract. We also welcome the more victim centred approach that ensures the home remains with the victim.

7.2. We support the removal of ground 8 mandatory eviction, to reflect human rights thinking on issues of proportionality and removing differences on grounds for eviction for those renting from housing associations by bringing them into line with those for local councils.

8. Part 3 Succession rights and transfer - Chapter 8, section 73-86

8.1. Welsh Tenants supports amendments to the law that makes it easier for people to join or leave joint rental contracts and standardising the right to take over a housing association or council tenancy when the current tenant dies, and giving a new right to a long-term resident carer.

8.2. We welcome the modification of 91(3) of the Housing Act 1985 making it a fundamental term for who can and cannot succeed a tenancy on death that allows a secure tenant to assign their secure tenancy before entering residential care. We also welcome the provision for joint transfer and succession and the retention of section 92 of the 1985 Act that enables tenants to exchange their tenancies allowing a chain of moves to take place.

8.3. Chapter 9, Landlords consent - We recommend that guidance is prepared in relation to the meaning of '*reasonableness'* and '*conditions'* under which an assessment is made. Currently successions are often not granted to the family home but to a 'tenancy' on the basis that the successor will not fully occupy the

home. Quite often this a 'single offer is made, to meet legislative requirements on succession. However, all such successions could for example be 'reasonably refused' on the basis of demand for 'x' size properties. This would not then be a 'right to succeed' but a 'right to be suitably housed'. If this is the intention - the bill should state so or clarify the position upon which succession of the home should not be granted to the home being succeeded.

8.4. Chapter 10, (87) – Compensation – We feel the compensation payable to the tenant is derisory considering the impact this will have on the potential successor including the threat of actual homelessness through a failure to agree to 'variations' and hence challenge the 'statement of variation' (on average less than £12.40 per day on an @ £87 per wk rent) and hence the 100% cap placed upon the courts.

8.5. **We would also recommend to include a 'protection from eviction clause' while the 'statement of variation' is being challenged in the courts**.

9. Part 4 – Chapter 2 Condition of dwelling

9.1. Too often, people are forced to rent properties that are simply not fit for renting, because they have no option but to take what's on offer because of poor credit history, their inability to secure a guarantor, market rents, because they are housing benefit claimants, disabled, have a mental health illness, elderly, or vulnerable.

9.2. People should have the confidence that the property they rent is 'safe and free from serious hazard' or as a minimum, know the risk and have support to secure additional terms to rectify or address them within the contract, this could be for example sharing costs in return for longer terms.

9.3. We are disappointed not to see a total ban on renting properties that have serious category 1 hazards in addition to the broad based approach as proposed in the bill. We would recommend therefore 'a duty to inform' renters of hazards prior to renting as a minimum standard.

9.4. We are concerned that (91,3) will provide too much of a leeway given the nature of rented housing stock, age and condition, in some parts of Wales and needs further illustration. This is often an excuse for not modernising to make it fit for renting and contributes towards ill health of the occupants and a consequential public purse burden. We are also concerned at (95,1) Limits on sections (91 and 92: general). Surely, if the property is not fit for human habitation it should not be let! regardless of the liability of the landlord in relation to their repair obligation at reasonable cost. This also provides an unacceptable and unfair defence intention of retaliatory eviction protection.

9.5. With the inclusion of the above we support the compromise developed to ensure better protection under the 'fitness for human habitation' utilising the 29 hazards of the Housing Health And Safety Rating System[10] and other

provisions. However we would wish to see better requirements on the face of the bill to ensure sufficient protection from hazards in relation to serious damp, electrical safety, poisoning and serious disrepair;

- We recommend a mandatory requirement to publish any ‘prohibition notices in force’ or ‘registered against the property in the past five years’ for the accommodation being proposed for rent and to make it an offence not to provide such information to prospective renters.
- We recommend amending Schedule 14 of the Housing Act 2004 to ensure that social landlords have a duty to comply with HMO regulations to address the growth of shared accommodation and to ensure where family accommodation is converted to shared accommodation, renters are adequately protected and communities are consulted on change of use from category C (family accommodation) to category D, shared accommodation and that bedroom size criteria is adhered too.
- We recommend the Minister introduces regulations that ensure mandatory protection from carbon monoxide poisoning (in particular solid fuels and to address developments in non-traditional or alternative fuels) to seek to reduce incidents of death and serious injury by poisoning and 5 year mandatory electrical safety checks to help reduce incidents of death and serious injury by fire.

9.6. We would recommend (98,2) increased to 48 hour notice to accommodate night shift workers, arranging for carers or time to secure time-off or for someone to be present. We would also wish to include provisions of weekends rather than simply ‘workdays’ that disadvantage the employed.

9.7. We would also wish to see provisions within this section for securing ‘alternative accommodation’ for all contracts at the expense of the landlord, where it is demonstrated that it is the landlord’s failure to properly maintain the property and where putting right the disrepair may present a hazard to the family.

9.8. Private Rented Sector Tenants Charter – The health of occupants is of grave concern in some parts of the PRS as is the cost to the public purse. We would recommend Ministerial guidance published as to reasonable timescale for repairs so that tenants are aware of the landlords timeliness of response and that these from part of a Private Sector Tenants Charter that outlines the commitments registered private landlords should undertake to meet their responsibilities. This should also include our recommendations above.

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[10] Introduced under the Housing Act 2004 and supplementary guidance 2006

10. Part 5 –Chapter 2- variation of contracts / 'fundamental terms'

10.1. While we support the general principle of a landlord and secure contract holder being able to vary a fundamental terms in (106), subject to the exclusions in (108) we fear that without safeguards this could be abused. The Welsh Tenants have examples where tenancy terms have been amended, with promises made to compensate for the change that have failed to materialise, resulting in tenants feeling duped and in some cases vulnerable.

10.2. Adequate safeguards in the form of guidance needs to be in place to ensure that secure tenants with dementia, the elderly and independent living schemes, people with undiagnosed mental health, the disabled, have protection against agreeing terms they don't understand, or are misrepresented and as such result in withdrawal of services.

10.3. To protect consumers, we recommend that where fundamental terms are being presented for change, that access to 'independent support' should always be made available and that tenants should be consulted about who should provide that support. In addition, where it is proven that this has not been independently provided, then the terms are to be seen as being approved under duress and invalid.

11. Part 5 – Provisions applying to contracts

11.1. We generally support attempts to address ASB through 'prohibitive conduct terms' for neighbours who should not have to put up with serious and consistent noise or ASB. Recent developments in anti social behaviour legislation[11] provides for notice in relation to proceedings on ASB. By contrast, we are concerned that section (55) of the Bill which allows for widespread discretion on the part of the landlord to bring proceedings to end the contract for using or 'threatening' to use, the premises for criminal purposes as too broad. The landlord would not have to produce evidence of a conviction as now, and could for example rely on a caution, or lay witness evidence to advance proceedings. This would be open for abuse and may further introduce bias in renting. We recommend that the requirement to produce evidence of a conviction is reinstated

11.2. We welcome the approach within the bill to domestic abuse compliments provisions around Violence against Women, Domestic Abuse and Sexual Violence (Wales) Bill.

[11] Anti Social Behaviour Police and Crime Act 2014, Part 1 Exclusion from Home, Sect 13, Part 4 Chap 3 closure of premises; Part 5 Recovery of possession of dwelling houses on ASB grounds(94) see http://www.legislation.gov.uk/ukpga/2014/12/part/5/enacted

12. Part 5, Chapter 4. Lodgers

12.1. The Bill allows a secure contract holder to take in lodger(s), without requiring consent. Lodger agreement will be with the contract holder and the lodger under a model lodging agreement. The process of allowing a "supplementary" term to be included in contract is to be welcomed. However we are concerned at the new proposals that require tenants to test the immigration status of a lodger. These developments are worrying concerning the potential penalties that could accrue for not doing so.

12.2. As with other provisions, access to independent information and advice at least cost to the tenant should be encouraged and indeed we would recommend that guidance documents should be made available to the renter and there is a an obligation to sign post tenants to appropriate support.

13. Part 8 – Supported standard contracts

13.1. Part 8 - Chap 6 – and schedule 2, part 5. We welcome the inclusion of a legal framework for supported housing. The exclusion from requiring to give an occupation contract where intended for less than 6 months will alleviate some concerns of supported housing providers. We welcome the approach and the compromise that after 6 months persons become entitled to a "*supported housing contract*" with two new powers for the landlord/provider. Temporary exclusion for up to 48 hours and the ability to move the occupier within the scheme to an alternative room within the building to mitigate any potential harm or risk.

13.2. We welcome the provision that should landlords want to extend the initial 6 months, that the landlord will have to apply to a local authority for a 3 month extension, 4 weeks before end of contract period. We would wish to see that the occupier has adequate independent representation during this process.

13.3. In relation to exclusions we would wish to seek assurances that people who are subject to 'an exclusion order' from the scheme have access to shelter as a statutory provision as a rough sleeper and are not left wandering the streets.

13.4. We are also pleased to see night shelters excluded from the bill.

14. Part 9 – Termination of occupational contracts

14.1. We are pleased to see an acceptance that section 21 no fault eviction has been abused by a section of landlords who would rather evict than deal with repairs or the legitimate concerns of renters. However, it also needs to be acknowledged that retaliatory eviction is not wholly confined to repairs and can also include, objections to accessing the property without consent, unreasonable terms being imposed post tenancy and general complaints regarding harassment or simply making enquires.

14.2. However we do welcome new fairer rules around use of section 21, where the court is satisfied that the landlord hasn't complied with their obligations

regarding fitness of habitation and provisions for the court may treat the claim as discretionary not mandatory.

14.3. We also support measures to substitute demoted tenancies within the Bill that allows landlords to seek an order from the court to demote the tenancy from a secure tenancy to a standard contract for a period of 12 up to 18 months, where there is evidence of serious anti social behaviour.

14.4. Estate management grounds – compulsory purchase – Welsh Tenants and TPAS Cymru have had a great deal of experience with the extremely traumatic process of homeloss through demolition and compulsory purchase[12], this can be extremely debilitating for the elderly with decades of investment in the home and community gone.

14.5. The loss of a home should not be taken lightly. We are concerned that Part 9 chapter 3 Section (4), eviction on estate management grounds, where the "*landlord must pay to the contract-holder (*regarding all occupational contracts, and section (2) *a sum equal to the reasonable expenses likely to be incurred by the contract holder in moving from the dwelling"* as insufficient. The section does not mention 'homeloss' payment[13] on displacement to which the contract holder (as tenant) will be entitled - in addition to reasonable disturbance payments.

14.6. **We recommend that homeloss payments for secure tenants are reinstated in line with the Welsh Government scheme[14] currently in force**.

15. Running a business from your home

15.1. Today in an increasing service economy it is no longer acceptable to have a blanket moratorium on the ability to run a business from your home. Self-employment has widened dramatically, particularly in areas of information technology and online hobby businesses to supplement income. Such a practice if not in the contract would be an enforceable technical breach of contract.

15.2. We would wish to see this included as a general principle providing clarity regarding this important issue to reflect changes in home working. We would wish to see the ability to operate a 'business' from the home a key right within the contract subject to permission from the landlord, however with the principle that this could not be unreasonably withheld or monopolised upon through increased rent.

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[12] Involving Residents in Improvements - A Major Works Agreement Compendium, CIH Cymru, S.Clarke, 2002
[13] Land Compensation Act 1973 Part III Homeloss payments & subsequent amendments http://www.legislation.gov.uk/ukpga/1973/26/part/III/crossheading/home-loss-payments
[14] The Home Loss Payments (Prescribed Amounts) (Wales) Regulations 2007 & The Home Loss Payments (Prescribed Amounts) (Wales) Regulations 2008

16. Right to manage

16.1. Members have commented there is no provisions regarding the Right to Manage regulations 1994 (and amendments thereafter), for secure tenants in the bill. For many tenants this right has been preserved on ballot of tenants in stock transfer. Evidence suggests that where RTM has resulted in self-management this has created jobs, internships, apprenticeships, and improved services at reduced cost to the tenant. Self-management as defined in the right to manage regulations is a positive progression for tenants to take responsibilities for their communities and to involve and engage tenants in the management of their home. Although central funding to realise this aspiration has been suspended for tenants wanting to utilise this route towards local empowerment, and co-operative approaches to management, the preservation of this right was important to retain in stock transfer ballots.

16.2. We are disappointed to see this co-operative principle in Wales as an extension to involvement and participation by tenants in their communities being eroded. We would wish to see the right to manage for secure tenants actively encouraged and supported among secure tenants via the insertion of a key term for secure tenants.

17. Statutory procedures to consult

17.1. For decades secure and assured tenants have had the active support of successive governments to reinforce the value of individual and collective engagement to improve policy and practice relating to services, support and decision making. This has been critical to develop, and seek support for improvements in policy and practice in the housing sector as a whole.

17.2. The provision of a statutory duty to inform and consult on rent increases in secure and assured tenancy agreements or on changes to housing management for example are important principles that are considered fair, reasonable and progressive. We are mindful of the need to ensure that the means of collective involvement and representation is considered regarding the development of guidance and policy in relation to the bill and any subsequent amendments thereafter, particularly where there are matters under consideration that are not on the face of the bill which are to be developed, consulted and approved by Ministers (22).

17.3. In relation to the process of decision making, the supreme court accepted what has become to be known as the ‘Gunning[15]’, or ‘Sedley[16]’ principles in which the process for developing and taking decisions[17] should be adopted[18]. The

[15] https://www.supremecourt.uk/decided-cases/docs/UKSC_2013_0116_Judgment.pdf

[16] The principles of consultation advocated by Stephen Sedley QC in the Gunning case (later Lord Justice Sedley)

[17] http://www.adminlaw.org.uk/docs/18%20January%202012%20Sheldon.pdf

[18] Mr. Stephen Sedley QC and adopted by Mr. Justice Hodgson in R v. Brent London Borough Council, ex parte Gunning (1985) 84 LGR 168 at 169. They were subsequently approved by Simon Brown LJ in R v. Devon County Council, ex parte Baker [1995] 1 All.E.R. 73 at 91g-j; and by the Court of Appeal in R v. North and East Devon Health Authority, ex parte Coughlan [2001] QB 213 at[108].

supreme court concluded it was hard to see how any of these principles could be rejected or indeed improved upon, saying the time had come for the Supreme Court to endorse the Sedley criteria Gunning principles' or 'requirements'. We would also wish to see the principles for consultation on the face of the bill.

17.4. In several areas of the bill there is recourse to give powers to the Minister to develop such policy and guidance (Part 2 Chap 3, 22 Chap 4,23 Chap 6, 29 etc). We would wish to see statutory principles that the ministers should follow as suggested in the Gunning principles;

(i) consultation must take place when the proposal is still at a formative stage;

(ii) sufficient reasons must be put forward for the proposal to allow for intelligent consideration and response;

(iii) adequate time must be given for consideration and response; and

(iv) the product of consultation must be conscientiously taken into account.

17.5. In such important matters as are being considered such as; structured discretion for eviction; prohibitive conduct; disrepair definitions; that are not on the face of the bill, we recommend strengthening the process by which these matters are considered and decisions reached by the insertion of the Gunning / Sedley principles to ensure that the principles have statutory force within the bill.

Appendix 1.

Criteria upon which non retrogression has been measured includes:

- Is the measure "*justified*"
- Is the change "necessary"
- Is the change in law "*potentially discriminatory*"
- Has the people impacted had "*meaningful participation*" and "*involvement*" in its development
- Have "*accountable*" mechanisms been put in place
- Has the change been subject to "*independent*" review at national levels
- Are there "*remedies*" for violation of rights
- Is the law change "*permanent of temporary*"

Source:

United Nations- General Assembly A/HRC/24/44, July 2013 (Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque),

The principle of non-retrogression and austerity measures page 5 paragraphs 13-17 are explored here.

http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/Documents/A-HRC-24-44_en.pdf

RH 37

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/

Communities, Equality and Local Government Committee

Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill

Ymateb gan: Sefydliad Tai Siartredig Cymru

Response from: Chartered Institute of Housing

The Chartered Institute of Housing (CIH) is the independent voice for housing and the home of professional standards. Our goal is simple – to provide housing professionals with the advice, support and knowledge they need to be brilliant. CIH is a registered charity and not-for-profit organisation. This means that the money we make is put back into the organisation and funds the activities we carry out to support the housing sector. We have a diverse membership of people who work in both the public and private sectors, in 20 countries on five continents across the world. Further information is available at: www.cih.org

In Wales, we aim to provide a professional and impartial voice for housing across all sectors to emphasise the particular context of housing in Wales and to work with organisations to identify housing solutions.

Introduction

CIH welcomes the opportunity to present evidence to the Communities, Equality and Local Government Committee for stage 1 scrutiny of the Renting Homes (Wales) Bill.

CIH is the professional body for people working in housing and communities, with over 22,000 members across the UK, Ireland, Canada and Asia Pacific. Our mission is to maximise the contribution that our members make to the well being of communities.

We have provided written submissions to previous consultations on issues relating to the Bill and this paper draws heavily from these. In relation to the Bill itself, our response is informed by feedback from our members, our knowledge of the sector and expertise from our policy and practice teams.

General Comments

CIH Cymru supports the development of Welsh policies, practices and legislation that aim to addressing the key housing challenges we face. We promote a *one housing system* approach that:

- places the delivery of affordable housing at the top of national, regional and local strategies and secures investment to ensure good and sustainable quality of all homes.
- promotes the concept of housing led regeneration to capture the added value that housing brings in terms of economic, social and environmental outcomes.

- recognises the central role of Welsh Government as the housing 'system steward' to deliver an integrated housing system that encompasses all sectors and tenure options.

- recognises that meeting the housing needs of our communities is a key aspect of tackling inequality and poverty.

- ensures that that there are properly resourced support services in place to prevent homelessness and protect the most vulnerable and supports the key role of local authorities as strategic housing enablers.
- utilises the existing housing stock including initiatives to bring the wasted resource of empty homes back into use.
- uses current and potential financial powers to intervene in housing markets and provide more homes and supports the development of innovative funding models.
- supports the development of new models of ownership and control including co-operative housing.
- recognises the critical role that housing professionals play in delivering good quality housing-related services, including fair access, safe communities and sustainable tenancies.

General Principles of the bill

1. CIH Cymru broadly welcomes the content and the aim of the Renting Homes (Wales) bill. We support the intention to complete tenancy reform and provide a consistent, clear rental framework in Wales, as we supported the previous Law Commission proposals and have been advocating a single tenancy for social housing since 1997.

2. We believe that a new statutory framework bringing together the multiple laws and legislative requirements on occupancy arrangements in Wales will benefit all stakeholders; tenants, landlords and statutory organisations responsible for regulation and enforcement, and will support Welsh Government's one-system approach to the national industry.

3. We endorse the Bill's aims to work in the interests of both tenants and landlords by reflecting the changing legal environment, simplifying and levelling social housing tenancies in Wales, and providing a model contract for private sector landlords and tenants, to standardise rights and encourage transparency as far as possible across the industry.

4. We believe that the proposals for changes to social housing tenancy arrangements will strengthen tenant security, increase equity and protect consumer rights. This includes the principle of 'levelling up' with regards to the bringing together of the two current types of social housing tenancies and their inherent properties (including the intention to remove Ground 8) to ensure that social housing tenants will have a right to judicial review when at risk of losing their home.

5. We commend the inclusion of supported housing in the Bill, and support the proposals to strengthen the housing access rights of young people by allowing 16 and 17 year

olds to rent. This will be of particular benefit to young people leaving care and for those young people for whom remaining in the parental home is not a safe option.

6. We also welcome the introduction of prohibited conduct terms, which will help to protect the occupancy rights of victims and hold the perpetrator to account by increasing legal remedies available to landlords that help to deliver a victim-centred approach to tackling anti-social behaviour and domestic abuse.

7. We applaud the intention to make positive change in the Private Rented Sector (PRS), a growing and increasingly important market in Wales through: the introduction of standard contracts; the inclusion of repairing obligations in contracts; protection from retaliatory eviction; and changes to shared tenancies that should give greater flexibility to occupants and consumer rights.

8. We especially commend the collaborative approach taken by Welsh Government and the Bill team to involve all stakeholders in the process of developing the content of the Bill. This has included CIH Cymru, tenant representatives, landlord representatives and other experts who have been consulted on and involved in, the process. We are grateful for this further opportunity to influence and participate in the scrutiny of the Bill.

Potential barriers to the implementation of these provisions and unintended consequences

9. We suggest that appropriate resources should be made available to support the necessary public awareness raising campaign to implement the new legislation, for the benefit of all tenants, landlords and other stakeholders.

10. We understand that there has been some concern regarding the proposed removal of the current moratorium on PRS landlords seeking possession during the first six months of a tenancy. This will have an impact on tenant security and an impact on local authorities who wish to discharge their statutory duty for homeless households into the PRS. CIH Cymru believes that in order to manage anxiety regarding this proposal, there needs to be a commitment to developing tenant and landlord relationships as well as a commitment to develop a national tenant voice for those living in the PRS in Wales.

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Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/
Communities, Equality and Local Government Committee
Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill
Ymateb gan: Heather Douglas
Response from: Heather Douglas

When I was renting privately my address changed every six months. I rented each property on a Shorthold Tenancy, and always after four months I started to wonder if I should be looking for somewhere else, or if I was allowed to extend the tenancy for another six months, would the rent go up? Therefore I was constantly on the move, which is fine for a young person but not for a middle aged woman.

A six month tenancy is too short for anyone to get comfortable in a home and Shorthold Tenancies should be scrapped. A new tenant should provide references and rent statements. Then on completion of a satisfactory six month probation period, the tenant should be offered an Assured Tenancy so they can settle into a new home without the threat of having to look elsewhere every six months.