Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol

Lleoliad:
Ystafell Bwyllgora 2 - y Senedd

Dyddiad:
Dydd Iau, 14 Mai 2015

Amser:
09.00

Cynulliad Cenedlaethol Cymru
National Assembly for Wales

I gael rhagor o wybodaeth, cysylltwch â:
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Agenda

Cyfarfod preifat cyn y prif gyfarfod (09.00 - 09.15)

1 Cyflwyniad, ymddiheuriadau, dirprwyon a datgan buddiannau

2 Y Bil Rhentu Cartrefi (Cymru): Sesiwn Dystiolaeth 7 - Y Gymdeithas Tir a Busnesau Cefn Gwlad, Urdd y Landlordiaid Preswyl, Cymdeithas Genedlaethol y Landlordiaid, Cymdeithas y Landlordiaid Preswyl (09.15 - 10.30) (Tudalennau 1 - 75)

Karen Anthony, Y Gymdeithas Tir a Busnesau Cefn Gwlad
Adrian Thompson, Urdd y Landlordiaid Preswyl
Lee Cecil, Cymdeithas Genedlaethol y Landlordiaid
Douglas Haig, Cymdeithas y Landlordiaid Preswyl

Egwyl (10.30 - 10.45)

3 Y Bil Rhentu Cartrefi (Cymru): Sesiwn dystiolaeth 8 – Cymdeithas Asiantaethau Gosod Preswyl a Sefydliad Brenhinol y Syrfewyr Siartredig (10.45 – 11.45) (Tudalennau 76 – 98)

David Cox, Y Gymdeithas Asiantaethau Gosod Preswyl
Tom Jones, Sefydliad Brenhinol y Syrfewyr Siartredig

4 Cynnig o dan Reol Sefydlog 17.42 i benderfynu gwahardd y cyhoedd ar gyfer eitem 5

5 Y Bil Rhentu Cartrefi (Cymru): trafodaeth ar y dystiolaeth a ddaeth i law yn sesiynau 7 a 8 (11.45 – 12.00)

Egwyl cinio (12.00 – 13.00)

6 Y Bil Rhentu Cartrefi (Cymru): Sesiwn dystiolaeth 9 – Cyngor ar Bopeth Cymru a Shelter Cymru (13.00 – 14.00) (Tudalennau 99 – 133)

Elle McNeil, Cyngor ar Bopeth Cymru
Jennie Bibbings, Shelter Cymru

7 Papurau i'w nodi (Tudalennau 134 – 137)

8 Cynnig o dan Reol Sefydlog 17.42 i benderfynu gwahardd y cyhoedd o weddill y cyfarfod

9 Y Bil Rhentu Cartrefi (Cymru): trafodaeth ar y dystiolaeth a ddaeth i law yn sesiyn 9 (14.00 – 14.10)

10 Trafod yr ymgynghoriad ar God Ymarfer ar y Sector Rhentu Preifat ar gyfer Landlordiaid ac Asiantau (14.15 – 14.35) (Tudalennau 138 – 143)

Mae cyfyngiadau ar y ddogfen hon

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?

Introduction The 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 ºin 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. ↩

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]

[1] Part 9, Chapter 13 (4)

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.

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

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 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.

Below are areas of concern for us that we would like to particularly talk about in the hearing.

1 Proposal to include existing agreements.

2 Tilt of Bill towards the tenant and the effect on the Let sector.

3 Service of Notices to end Contract with 2 months arrears.

4 Ability of Joint tenant to relinquish interest without disturbing remaining Contract holder. The practical inconvenience of both applicants affording the property on single incomes.

5 Succession provisions

David

David Morgan

Policy Manager Wales

RICS Wales

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:

Designation of Licensing Authority

The intention of the Designation Order is to appoint a single licensing authority for the whole of Wales to manage the registration and licensing scheme for landlords and letting agents. It is felt that appointing a single licensing authority will be beneficial for the following reasons:

- Cost effectiveness of operating a single database and website (as opposed to operating one in each local authority area)
- The requirement for landlords and agents to only have to register once and only pay one fee (rather than multiple times if they have properties in more than one authority area)
- Consistency in the service provided and the interpretation and application of the legislation set out in the Act
- A single central database for data collection (rather than a landlord having to have numerous registrations to reflect properties in different areas.)
- Cost benefits and marketing benefits of promoting a single "national" registration and licensing scheme.

1. **Do you agree that the Welsh Government should appoint a single licensing authority for the whole of Wales?**

Yes

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.

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 will undermine the simplicity of the proposed legal framework. Please see section 4 pages 12 and 13 for fu

1.6. rther details.

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1 Referred to as the Housing Act throughout

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
  - 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:

[2] Channels refer to the method of delivering advice, e.g. face to face, telephone and online

    - ‘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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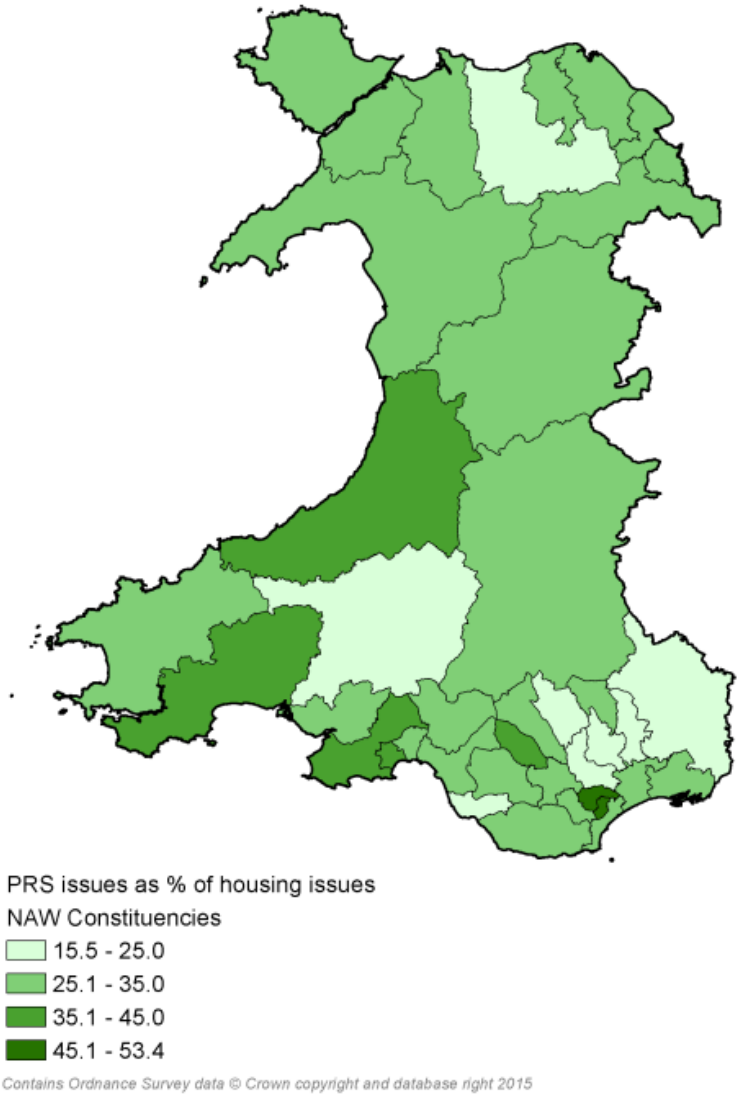
[3] Welsh Government, *Dwelling Stock Estimates* show that the Private Rented Sector doubled from 7 per cent in 1996 to 14 per cent in 2012/13 (April 2014)
[4] Shelter Cymru, *Fit to rent?*, March 2014
[5] Welsh Government, *Dwelling Stock Estimates* show that the Private Rented Sector doubled from 7 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

[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

[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

[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

[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.

[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.

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.'

'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

[1] Census 2011
[2] Haringey Housing Action Group
[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+).

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-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.

[4] http://www.gov.scot/Resource/0046/00460022.pdf
[5] http://www.labour.org.uk/issues/detail/renting

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.

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.

[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

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.**

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.

[7] Ground 2(b) of Sch 2 Housing Act 1985 (Grounds for possession let under secure tenancies)
[8] Housing Act 1988

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 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.

Eitem 7

14 Mai 2015 – Papurau i'w nodi

Rhif papur:	Mater	Oddi wrth	Cam gweithredu
Papurau cyhoeddus i'w nodi			
9	Bil Rhentu Cartrefi (Cymru)	Y Gweinidog Cymunedau a Threchu Tlodi	Gwybodaeth ychwanegol yn dilyn y cyfarfod ar 22 Ebril 2015

Lesley Griffiths AC / AM
Y Gweinidog Cymunedau a Threchu Tlodi
Minister for Communities and Tackling Poverty

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: LF/LG/0475/15

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Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol
Communities, Equality and Local Government Committee
CELG(4)-13-15 Papur 9 / Paper 9

7 May 2015

Dear Christine,

During the Communities, Equality and Local Government Committee meeting of the 22 April, I agreed to provide you with further information on two points. Firstly, clarification on the differences between the definitions of carer within the Renting Homes (Wales) Bill and the Social Services and Well-being Act 2014 and secondly, evidence relating to the number of retaliatory eviction claims in Wales.

The definition of carer under the Renting Homes (Wales) Bill differs from that provided under the Social Services and Well-being Act 2014 out of a necessity. In terms of succession under the Bill, there is provision for both priority successors and reserve successors. Priority successors are spouses or civil partners of the contract holder, or persons living as such. People qualify as reserve successors, either by virtue of being a family member (section 76) or as a result of meeting the carer condition (section 77). Therefore, any person who happens to care for the contract-holder, but who is a family member, will qualify as a successor in any event (either as a priority or reserve successor). The purpose of the definition of carer in section 77 is to extend the right to succeed to a wider category of people who are carers, but who are not family members of the contract-holder.

This should be contrasted with the position in the Social Services and Well-being (Wales) Act 2014. Under that Act, 'carer' is defined as any person who provides or intends to provide care for an adult or disabled child. That Act makes provision requiring assessment of carers' needs in order to determine what services and support a carer may need. This will apply both to family members who are carers and other people who may be caring for a person but not related to that person. The Social Services and Well-being Act does not draw a distinction between family members and other carers, unlike the Bill, it simply focuses on those who are providing care, whatever there relationship with the cared for person.

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Under the Renting Homes Bill, there must be a connection between the carer and either the contract-holder, or a member of the contract-holder's family living at the time with the contract-holder, because the Bill confers rights to succeed to the occupation contract formerly held by the contract holder. In addition, given section 77 of the Bill applies other to people who are not related to the contract-holder, it is important not to discount those who care on a voluntary basis, as is the case in the definition in the Social Services and Well-being Act.

Whilst accepting the benefits of ensuring consistent definitions within Welsh legislation, we consider that in this context, there is a clear need for separate definitions.

With regard to the provision of numbers of retaliatory eviction claims in Wales it is difficult, as I said in Committee on the 22 April, to provide such numbers.

There is little doubt the majority of landlords are responsible and maintain their properties in line with their obligations. This means any instances of retaliatory eviction happen in a minority of tenancies where landlords do not take their obligations as seriously.

Shelter has produced a number of reports in recent years evidencing and highlighting the practice of retaliatory eviction. 'Making Rights Real' addresses directly retaliatory eviction in Wales. Presently, it is standard practice for Shelter Cymru to advise their clients they may be making themselves vulnerable to a retaliatory eviction if they choose to challenge their landlord to address disrepair, either through the local authority or through a civil claim.

Providing this advice to tenants may reduce the instances or likelihood of a retaliatory eviction but does not address any underlying disrepair issues for a tenant. Shelter Cymru within their 2014 report 'Fit to Rent' stated the following:

- *More than one in 10 tenants said that in the last year they had not complained about conditions or challenged a rent increase because of fear of eviction. This was higher among households with dependent children, households receiving housing benefits, and households who were in financial difficulties and constantly struggling to pay the rent.*

- *Two per cent – equivalent to nearly 9,000 tenants – said they had actually been evicted or served notice in the last year because they complained to the council or asked for a problem to be dealt with that was not their responsibility.*

- *In total, four per cent said they had either been threatened with eviction, or actually evicted in retaliation for raising problems. We estimate that more than 17,800 tenants were victims of retaliatory acts that were either threatened or actually carried out in the last year.*

Furthermore, during the Parliamentary debates on retaliatory eviction legislation last year the Minister for Housing, Brandon Lewis, in a Written Answer dated 11 November 2014, confirmed there were no official statistics on retaliatory eviction. Shelter estimated that 213,000 private renters in England were evicted or served with an eviction notice on a retaliatory basis.

Therefore, it remains difficult to provide exact figures for retaliatory eviction. No possession hearings or court data acknowledge the existence of this practice. Notwithstanding the absence of such figures, I wish to emphasise, as I stated at Committee, one instance of retaliatory eviction is one too many.

Yours sincerely,

Lesley Griffiths AC / AM
Y Gweinidog Cymunedau a Threchu Tlodi
Minister for Communities and Tackling Poverty

Mae cyfyngiadau ar y ddogfen hon