

RH 02

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/
Communities, Equality and Local Government Committee

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

Ymateb gan: George Bednar

Response from: George Bednar

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

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

As worded in this Bill, sub-paragraph 7(5), intended to cover trust properties, thwarts the intention of Parliament: “a beneficiary who fulfils the residence requirement [is] the resident landlord for the purposes of the exemption” (HL, Hansard, 1974).

It would be a breach of trust for a trustee – as “the landlord” – to occupy that trust’s property, as I outlined in my contribution to the consultation in 2013 (Your Ref: WG0033).

The wording of Rent Act 1974, consolidated in Rent Act 1977, is as it is because of an “oversight”: “But, owing to an oversight by the Government, provision is not made... for the granting of a tenancy by trustees... and the actual residence is by the beneficiaries” (*Shaw’s Guide to The Rent Act 1974*).

The oversight arose in the 1974 Bill because MPs thought that the subsection under scrutiny covered a first tenancy, whereas the wording actually covered the transfer of the legal title [on the death of or following a sale] by a resident landlord to trustees, to enable the trustees to safeguard the exception for the benefit of “any one of” the incoming beneficiaries intending to occupy the building, now a trust property.

The wording in this adopted Bill is as it is also because of an “oversight”, this time at the Law Commission: “It must therefore, have been an oversight on our part that the point was not covered in our instructions to Parliamentary Counsel who drafted our draft bill... in respect of which I am prepared to accept that we must have been at fault... the Welsh Assembly... if taken forward, (the Bill) should include a deeming provision such that reference to a landlord throughout should be taken to include the beneficiary” (25 October 2009).

The ‘English’ trust property anomaly was compounded by Parliament in Housing Act 1988, when statutory effect was given to a 1984 Court of Appeal case, a judgment based on an ill-drafted Rent Act 1977 provision.

I regret to say that the wording in this Welsh Bill simply paraphrases the ‘English’ 1988 provision:

“If two or more persons [ie the trustees] are the landlord in relation to a tenancy or licence,

references to the landlord are references to any one of them [ie **the trustees**].”

Which brings us to the Scottish provision, now Rent (Scotland) Act 1984, Section 6(2). In Rent Act 1974, seven of the Scottish subsections were equivalent to the seven subsections of the provisions for England and Wales. But Scotland had an additional eighth subsection, tailor-made for a Scottish trust property: “The condition... shall be deemed to be fulfilled if the tenancy was granted by trustees and... the interest of the landlord... was held on trust for a person who was entitled to the liferent... who occupied...”.

There is a section on page 13 of *Renting Homes in Wales* under the title Learning from Scotland. Amended, sub-paragraph 7(5) could paraphrase the textbook Scottish provision, and – jointly with Scotland – clarify the intention of Parliament:

“If trustees are the landlord in relation to a tenancy or licence, references to the landlord are

references to any one of the occupying beneficiaries.”

Yours sincerely,

George Bednar

10 March 2015