

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 in advance which all well drafted tenancy agreements currently provide for. As this is a fundamental term which can be changed, not a problem right? If we now change that term to payable in advance have we *improved* the position of the contract-holder? No is the answer and so according to the Bill and model contract in current form, all rents payable will be in arrears and not in advance!

We have no doubt this fundamental term will get resolved before everything gets completed but the point about improving the contract-holders position remains. In our view there is no need for it. Why not simply have a set of key terms that cannot be changed which is mutually agreed by all stakeholders such as repairs, anti-social behaviour, notice periods etc. These key terms are in essence repeating what the legislation is providing for anyway so shouldn't be too difficult to get agreement by all parties. Then, a model agreement could be provided as is already being suggested and say that if the model agreement is used as is, all terms are treated as fair for the Unfair Terms Regulations (or whatever is in place at the time). If the landlord decides to change a sample term they run the risk of it being an unfair term. The key terms could be forced to be in the model without change but all other terms could be free to change or not.

In the proposals there are further terms known as “supplemental terms”. These work exactly as we are suggesting above and can be removed or altered freely as long as they are fair and don't affect any fundamental or key terms.

To us, changing the name to a standard contract seems an enormous amount of work for what appears to be zero gain for the customer who is ultimately the tenant. If assured shorthold tenancies were to be changed, it would be easy to introduce a model contract for use by all landlords and if there is some major problem with the exclusions contained within the Housing Act 1988 then just amend schedule 1 and remove some of them (some that would be removed are tenancies greater than 100k per year and tenancies within licensed premises for example - hardly a major impact).

Job done! By those two simple changes, we would have an almost identical outcome except the changing of the name. All the other proposals discussed below could still be done with ease from within the Bill.

In addition, we are very concerned that the key terms should be part of any Act produced from the Bill. It would be much safer to put these in regulations. It is very hard to predict unintentional consequences of new legislation and the problems with deposit legislation proves that changing Acts is a slow process. All proposed terms of a tenancy should be put into regulations in our view so they can easily be changed in the event of some unforeseen problem which could seriously affect landlords or tenants after commencement. (Of course this could work against landlords in that a new required term could be 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 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 joint 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

spurious repairs defences.

1. I really have no idea how much it's all going to cost - I'm just messing. ←