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

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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.

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