



Ein cyf/Our ref: LF/LG/0792/15

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

27th August 2015

Dear Christine

Renting Homes (Wales) Bill

Thank you for your letter of 14 July seeking a response to each of the recommendations contained in the Committee's Stage 1 report. Please find below responses to each recommendation in the order of the report.

Recommendation 1

I welcome both the Committee's recommendation and the agreement by the Assembly of the general principles of the Bill.

Recommendation 2

The approach adopted in the Bill, enabling consequential amendments and repeals to be made by way of subordinate legislation, as part of Bill implementation, follows the common practice with other Assembly Bills. I would also have some concerns around the danger of amendments being missed or not fully considered were they to be produced at this late stage.

Recommendation 3

I am content the Explanatory Memorandum accurately reflects the costs for training resulting from the Bill. However, I will consider further whether this position has altered following the completion of Stage 2.

Recommendation 4

I note the Committee's recommendation and I am considering whether this does provide greater clarity on whether the position of the contract-holder has been improved.

Recommendation 5

I am content to consider applying the affirmative procedure in relation to regulations relating to fundamental terms as these represent the primary rights and responsibilities. I believe the negative procedure is more appropriate for supplementary terms.

Recommendation 6

I understand the Committee's aim. However, I believe this recommendation would disadvantage contract-holders. For example, verbally agreed additional terms in favour of the contract-holder would not be included in a default model written statement. Therefore, it could be in a landlord's interest to fail to issue a written statement allowing less favourable terms for the contract-holder to automatically apply. I also have concerns that such an approach would introduce a considerable degree of legal uncertainty about the status and application of contractual terms which had been agreed between the parties. In the event of a dispute over terms for which written statements had not been issued, the parties would still need to seek resolution in the courts.

Recommendation 7

I note the Committee's recommendation and can assure members of the Committee further consultation on the model contracts will be undertaken, including consultation directly with contract-holders.

Recommendation 8

A central aim of this Bill is to require written statements of contracts are issued to all contract-holders. While good progress is being made on addressing digital inclusion, I am concerned the recommendation would impact on people who are unable to access the internet or unable to use it; for example, some people living in rural areas, some older people.

Recommendation 9

I believe the negative procedure is more appropriate. There will be occasions where the model written statements will need to be updated as swiftly as possible, for example to reflect a change in common law.

Recommendation 10

I agree with the Committee's recommendation and confirm guidance on joint contract-holders' rights and responsibilities will be provided.

Recommendation 11

I have listened carefully to the comments of those supporting the current position in the Bill and those seeking the re-instatement of the moratorium. I do not believe evidence has been provided showing landlords will seek to agree shorter fixed terms in general. While understanding the Committee's concerns, I continue to believe removing the moratorium will encourage good landlords to rent to those they currently consider as high risk. This will help prevent these individuals being driven towards rogue landlords and poorer quality housing, and it will also help to prevent homelessness, which can sometimes require the use of Bed & Breakfast accommodation. Notwithstanding the removal of the moratorium, landlords will still wish to retain contract-holders for as long as possible as it does not make business sense for them to create churn and voids within their properties.

Recommendation 12

The proposals within the Bill around retaliatory eviction have been carefully considered to address the issues of disrepair and fitness for human habitation, while ensuring a landlord who meets his or her obligations is not disadvantaged. Widening the provision beyond what is proposed within the Bill could potentially result in all genuine possession claims being contested. Any potential inability of landlords to gain possession through a landlord's notice would be likely to impact negatively on investment within the private rented sector in Wales.

Recommendation 13

I consider the Bill as drafted is fair as it strikes the correct balance, enabling a contract-holder to defend a landlord's notice where a previous complaint exists.

Recommendation 14

The Bill as drafted provides for greater notice for contract-holders of a rent increase than applies at present. Current law provides for a minimum notice period of one month before the first rent increase whereas the Bill provides for a minimum notice period of two months.

For example, where a one year fixed term standard contract ends and has become a periodic standard contract, the Bill allows for a rent increase to take place subject to the two months' notice. Further increases are then limited to an annual basis.

Recommendation 15

The Bill already places a limit of one rent increase in a 12 month period under periodic standard and secure contracts.

Recommendation 16

I have listened to and understand the Committee's concerns in this area. However, I still consider supported standard contracts require the ability for temporary exclusions to take place, albeit in a limited and controlled manner. Such exclusions are essential in order for providers to act swiftly to protect residents and staff from serious harm. Removing this provision would make the supported standard contract unworkable in many instances and present a barrier for some people being accommodated in the sector.

Recommendation 17

As I stated in Committee, I consider guidance is necessary. Therefore, I have tabled an amendment to make provision for the Welsh Ministers to issue guidance to landlords on the exercise of the power to temporarily exclude contract-holders. I will consider how such a review process can be included within this guidance.

Recommendation 18

I am happy to consider how such a requirement can be included within the guidance to be issued.

Recommendations 19 and 20

I am unclear how these recommendations would improve current law. The ability for 16 and 17 year olds to rent needs to be extended to the private sector for it to be effective. As I have previously said at Committee, those aged 16 and 17 can get married, pay taxes, join the armed forces and some consideration is being given to extending the vote to this age group. I therefore consider enabling 16 or 17 year olds to rent a home in their own name, where a landlord is willing, to be a positive and progressive development in the law.

Recommendation 21

I have considered very carefully the Committee's view but I do not consider any amendment is necessary. Both human rights and Equality Act defences are pleaded in possession claims and the provisions in the Bill do not remove those rights.

Recommendation 22

The Bill does not make specific provision for a contract-holder to recover expenses in respect of estate management grounds A and B of Schedule 8. This is because compensation in these circumstances is payable to a contract-holder under section 29 of the Land Compensation Act 1973.

Recommendation 23

Section 152 is a fundamental provision which is therefore incorporated as a fundamental term of each contract, allowing for termination by the mutual consent of both parties. Whilst this mutual consent can be placed in writing (should the parties wish) it is not a requirement under the Bill. The section recognises the ability of both parties to end the contract by consent at any time rather than insist upon formal notices. In doing so, the Bill recognises the contract no longer has effect when occupation is given up by the contract-holder. However, should the contract-holder not give up occupation for some reason, the Bill makes provision for substitute occupation contracts.

A formal written notice is required under the Bill for any party wishing to leave the contract unilaterally. Therefore, an amendment requiring a mutual consent agreement to be in writing would likely bind the parties and work against a contract-holder who had changed their mind.

Recommendation 24

The purpose of section 214 is to ensure that the review of a landlord's decision is taken by the same court as the one to which the possession claim has been brought. It brings together the ability to consider all the relevant matters, as opposed to having to apply to set aside a possession notice in a county court pending determination of a judicial review claim in relation to the decision to make the claim in the High Court. If a contract-holder seeks a review under section 214(3), the court will consider that issue. If it considers the decision to make the claim was incorrect (etc.), it may then dismiss the possession proceedings. Section 214 allows for the efficient consideration of a landlord's claim and a contract-holder's claim as part of the same proceedings. The contract-holder will be a party to the landlord's possession claim and therefore in a position to decide whether to apply for a review of the landlord's decision.

Recommendation 25

An amendment of this nature would extend the Bill beyond housing law. It would be inappropriate for someone's actions away from the dwelling or locality to lead to eviction.

Recommendation 26

I would have concerns in raising the standard too high and too quickly as doing so would adversely affect the private rented sector. In the light of my statement during Committee, I have tabled an amendment to broaden the regulation-making power. This will allow this regulation-making power to be used on a progressive basis to raise standards.

Recommendation 27

Fitness for human habitation is the appropriate definition as it is a well-established legal concept which is well understood by the housing sector and courts.

Recommendation 28

I accept this recommendation and I am happy to place such a requirement on the face of the Bill.

Recommendation 29

These regulations for determining whether a dwelling is fit for habitation will contain a substantial amount of detail and I do not consider the affirmative procedure to be appropriate. The negative procedure is best suited to regulations of this type. The regulations made by the Welsh Ministers under section 2 of the Housing Act 2004 relating to Category 1 and Category 2 hazards, to which the regulations under section 94 will refer, are similarly made under the negative procedure.

Recommendation 30

I have already tabled an amendment broadening the regulation-making power which will enable regulations to be made in respect of the fitting of carbon monoxide detectors, smoke detectors and periodic electrical safety testing in all rented properties.

Recommendation 31

I am considering the use of existing regulation-making powers under the Housing (Wales) Act 2014 in this regard. This approach would identify specific provisions in the Bill as being relevant to determining whether an applicant for a licence under Part 1 of the Housing (Wales) Act 2014 is a fit and proper person.

Recommendation 32

It would not be practical to make provision in the Bill for definitive timescales for repairs. There will always be instances where repairs cannot reasonably be undertaken within set timescales. The Code of Practice being introduced under Part 1 of the Housing (Wales) Act 2014 refers to landlords carrying out repairs within a reasonable timescale.

Recommendation 33

The Bill already provides significant powers for the court to address where landlords have not carried out the necessary checks and investigations, including making any order it sees fit. Additionally, failing to follow the correct procedure would render the recovery of possession unlawful and a landlord could be prosecuted under the Protection from Eviction Act 1977.

Recommendation 34

I agree with the Committee and will provide guidance on the use of the abandonment procedure for landlords.

Recommendation 35

The purpose of the abandonment provision is to enable a landlord to regain possession of an abandoned property quickly and without the need for a court order, provided possession is recovered in accordance with the statutory provisions. This recommendation would remove the ability for landlords to regain possession any more quickly than is currently possible under the court process. As the abandonment procedure is likely to be used by community landlords in the main, I would be eager to see such properties re-let as quickly as possible.

In situations where abandonment is clear and obvious, properties may also be left unsecured and subject to vandalism, thus requiring landlords to act swiftly. In addition, cases of abandonment are not always associated with rent arrears.

Recommendation 36

Whilst such an amendment may initially have some attraction, the Residential Property Tribunal for Wales does not have the necessary capacity to deal with such disputes. Building in such capacity would be costly and would need to be fully considered and consulted upon.

Recommendation 37

The Explanatory Memorandum will be reviewed in light of Stage 2 proceedings and amended accordingly.

I trust this response is helpful and look forward to appearing before the Committee on 30 September.

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive style with a large, sweeping 'L' and 'G'.

Lesley Griffiths AC / AM

Y Gweinidog Cymunedau a Threchu Tlodi
Minister for Communities and Tackling Poverty