Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol

Lleoliad:
Ystafell Bwyllgora 2 - y Senedd

Dyddiad:
Dydd Iau, 30 Ebrill 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 a dirprwyon

2 Y Bil Rhentu Cartrefi (Cymru): Sesiwn dystiolaeth 2 - Cymdeithas y Cyfreithwyr (09.15 - 10.15) (Tudalennau 1 - 34)

Jane Plant, Cadeirydd y Pwyllgor Cyfraith Tai, Cymdeithas y Cyfreithwyr
Rhiannon Price, aelod o Bwyllgor Cyfraith Tai, Cymdeithas y Cyfreithwyr

Egwyl (10.15 - 10.30)

3 Y Bil Rhentu Cartrefi (Cymru): Sesiwn dystiolaeth 3 - Let Down in Wales, Undeb Cenedlaethol Myfyrwyr Cymru, Tenantiaid Cymru (10.30 - 11.30) (Tudalennau 35 - 61)

Liz Silversmith, Let Down in Wales

Steve Clark, Tenantiaid Cymru
Beth Button, Llywydd, Undeb Cenedlaethol Myfyrwyr Cymru

4 Cynnig o dan Reol Sefydlog 17.42 i benderfynu gwahardd y cyhoedd o weddill y cyfarfod (trafodaeth ar y dystiolaeth a ddaeth i law o dan eitemau 2 a 3, trafod yr ymgynghoriad ar God Ymarfer ar y Sector Rhentu Preifat ar gyfer Landlordiaid ac Asiantau, ystyried yr adroddiad drafft ar yr ymchwiliad i Dlodi yng Nghymru elfen 1, ac ystyried y dull o graffu ar y Bil Amgylchedd Hanesyddol (Cymru))

5 Y Bil Rhentu Cartrefi (Cymru): trafodaeth ar y dystiolaeth a ddaeth i law yn ystod sesiynau 2 a 3 (11.30 - 11.45)

6 Trafod yr ymgynghoriad ar God Ymarfer ar y Sector Rhentu Preifat ar gyfer Landlordiaid ac Asiantau (11.45 - 12.00) (Tudalennau 62 - 63)

7 Ymchwiliad i Dlodi yng Nghymru Elfen 1: ystyried yr adroddiad drafft (12.00 - 12.30) (Tudalennau 64 - 101)

8 Bil Amgylchedd Hanesyddol (Cymru): Ystyried dull craffu'r Pwyllgor (12.30 - 12.45) (Tudalennau 102 - 117)

Mae cyfyngiadau ar y ddogfen hon

The Law Society

The Law Society of England and Wales is the independent professional body, established for solicitors in 1825, that works globally to support and represent its 159,000 members, promoting the highest professional standards and the rule of law.

This response has been prepared by the Law Society's Housing Law Committee and reflects the expertise of a broad spectrum of practitioners who represent tenants and landlords, both in the private and social sphere.

One of the Committee's objectives is to promote improvements in law and practice relating to residential letting in the public and private sectors. We supported the Law Commission's renting homes proposals published in 2006 and welcome the Welsh Government's aim to incorporate those recommendations into Welsh law.

Given the limited time available for commenting on the Renting Homes (Wales) Bill (the 'Bill'), this response predominantly focuses on the points raised in our response to the Renting Homes White Paper in August 2013[1]. We wish to highlight:-

- the difficulty in introducing new property rights for young people given the provisions of the Law of Property Act 1925;
- the practical implications of a 48 hour exclusion tool for vulnerable tenants; and
- the danger of placing landlords in circumstances where domestic violence is alleged.

Asylum Seekers

Schedule 2 of the Bill contains the exceptions to the types of tenancy agreements that fall within the scope of the Bill. Those exceptions do not include accommodation for asylum seekers which is listed in Schedule 3 of the Bill as occupation contracts which may be standard contracts[2].

Contracts with asylum seekers are standard occupation contracts. The effect of this is that they cannot be terminated unless there is a court order under s.201 of the proposed Bill. Local authorities which participate in consortia contract or sub-contract with the Home Office to ensure that the accommodation is vacated within a short period of time, usually by giving 14 days notice. There are strict financial penalties if local authorities cannot accommodate new asylum seekers because a failed asylum seeker is holding over after notice to terminate.

All standard and secure contracts can be terminated by notice, and subsequently by court order if the occupant does not vacate or is not forcibly detained by the

[1] 'Renting Homes White Paper - Response to the Welsh government's consultation - August 2013'
[2] Currently they are also excluded from being secure by virtue of Schedule 1 to the Housing Act 1985.

enforcement section of the authority responsible for immigration. In our experience the latter seldom happens as removal directions are rarely issued at the time the application for asylum fails. Recovering possession through the court is a lengthy and costly process, and the cost has to be covered by local authorities.

We recommend that contracts for accommodation of asylum seekers be excluded from Schedule 3 of the Bill on social policy grounds and added as an exception to the occupation contracts in Schedule 2 Part 3 of the Bill.

Decant properties

The Law Society welcomes the provisions in the Bill which properly balance the interests of both the contract holder and the landlord.

Paragraph 14 of Schedule 3 of the Bill refers to '*Temporary Accommodation: accommodation during works'* (ie decant properties). Schedule 3 deals with occupation contracts that may be standard contracts rather than secure provided that the notice requirements are satisfied as set out in s.11 of the Bill. The new landlord will have to serve notice before possession can be recovered through the court; however, in all likelihood the contract holder will agree to return to their original home without the need for a court order, otherwise the contract holder may become liable for court costs.

The landlord should be properly directed by the original landlord as to when notice should be served to coincide with the completion of works. Under this provision the contract holder will need to be given sufficient notice of when they will be required to leave, bearing in mind they may have been at the temporary property for a relatively long period of time.

Addressing Antisocial Behaviour

We believe that s.55 of the Bill provides the right degree of flexibly and breadth, by covering other people living in the premises, neighbours, those engaged in a lawful activity in the area and members of the landlord's staff or contractors. It extends this responsibility to not only the contract holder but also to those who live with or visit them. We agree that this term must be incorporated into the standard contracts.

Breach of s.55 would entitle the landlord to apply to court for possession of the premises. This would be a discretionary ground for possession under which the court would have to consider the reasonableness of making any order, which would include the personal circumstances of the defendant and effect that the behaviour has had on others.

In England (and currently in Wales) the position is that landlords can use an "absolute ground" for possession for anti-social behaviour in certain serious circumstances. As the aim of the Bill is to remove that ability, some landlords may argue this will make obtaining possession in anti-social behaviour cases more difficult. When the absolute ground was first proposed in England the Law Society predicted that:-

- it would be used rarely and only in circumstances in which the discretionary ground would have very likely resulted in an outright order for possession in any event; and
- the tenant could always raise proportionality and Article 8 arguments.

Consequently, we do not believe that the loss of the absolute ground for possession will pose such a fundamental problem for landlords: the important point of principle for us is that the court's discretion is maintained.

The antisocial behaviour provisions can be against a person residing in the same property which extends their reach to domestic abuse cases. The Law Society reiterates its comments from 2013: it is not the landlord's responsibility to become involved in domestic abuse situations, other than in exceptional cases.

A tenant faced with domestic violence can seek a non-molestation and occupation order in family proceedings which has the same effect. If someone is at immediate risk, landlords can provide temporary alternative accommodation for the individual and seek an injunction if they cannot do that themselves.

What is being proposed in the Bill would involve the landlord effectively "taking sides" by exercising the power to exclude the person they believe to be the perpetrator. Domestic violence situations are rarely clear cut. At present, a tenant faced with domestic violence can seek a non-molestation and occupation order in family proceedings which has the same effect. Some landlords already have a ground for possession[3] to deal with domestic abuse situations but our experience is that, understandably, this power is rarely used as landlords do not wish to become embroiled in domestic situations.

To give an unmanageable responsibility to a landlord to deal with domestic abuse through the antisocial behaviour provisions appears unnecessary and could lead to challenges around whether a landlord is properly exercising their duties.

Abandonment of the property by a tenant

The current legislation puts requirements on landlords in terms of notice and making enquiries to satisfy themselves that the property is abandoned. The landlord should apply to court for a possession order following the service of a Notice to Quit[4]. It is widely acknowledged that landlords will often choose not to apply to court if they are satisfied that the tenant has abandoned the property, in an effort to save costs. This action is risky as a tenant may then issue unlawful eviction proceedings if indeed they have not abandoned the property but simply been away for a period of time e.g. visiting family or a hospital stay.

Section 234 of the Bill provides that notice may be given by leaving it at or posting it to the contract holder's last known residence or place of business, or any place specified by the contract holder for service of documents, and if the document is to be given to a person in their capacity as contract holder, the premises. Notice can be given electronically (including by text message), but only if the recipient has agreed. It therefore seems that the landlord can deliver notices under these provisions (ie abandonment) to the premises, make some inquiries, end the contract after expiry of

[3] Ground 14A of The Housing Act 1988
[4] In accordance with s.32 of the Housing Act 1988.

the warning period of four weeks and, if the inquiries do not result in any information, recover possession without a court order.

The Law Society supports this approach as it means that properties can be recovered and rent arrears minimised, subject to proper safeguards to prevent wrongful eviction. For example, if a contract holder goes abroad for two months with the intention of returning and still pays there rent during their absence it would not be right for the landlord to claim that the property had been abandoned. We suggest that the standard and secure contracts contain a requirement that a contract holder notifies their landlord (preferably in writing) of any absence exceeding 1 month to avoid this issue.A clear line of communication between landlord and tenant should be encouraged.

The contract holder can apply to court within six months of receipt of the second notice ending the contract on grounds the landlord failed to fulfil their duties or if the premises is not actually abandoned. If, after further consultation, the provision remains we would propose that the time limit be reduced to three months.

One consequence of these provisions is that the premises may have been re-let by the time of contract holder's application to court to overturn the eviction notice, and landlord may not have any suitable alternative accommodation. Even if alternative accommodation is provided, there would seem to be considerable injustice caused if, for example, the contract holder goes away for more than four weeks and does not receive the warning notice and loses their home as a result. The suggestion above (to give notice to the landlord of periods of absence exceeding 4 weeks) would go some way to addressing this concern.

The Bill does not provide sufficient safeguards to ensure that the system is not misused, and tenants particularly vulnerable tenants are not exploited under the proposed regime. We would advise that this proposal be examined more carefully and the potential consequences understood before a final decision is made. Guidance needs to be given as to how this proposal will align with case law, including what inquires would need to be undertaken in order for landlords to satisfy themselves that a property has been abandoned and they are not exposing themselves to a wrongful conviction claim.

Renting by young people

The Bill proposes that 16 and 17 years olds will be able to hold contracts on the same terms as adults. The intention is to ensure that 16 and 17 year olds are not disadvantaged in obtaining a tenancy. However, the proposal is contrary to well established existing law whereby a 16 and 17 year old is only capable of holding the equitable tenancy with the landlord holding the legal interest upon trust, unless the landlord has appointed someone else to act as trustee[5].

Property law is not a devolved area of law to the National Assembly for Wales, so there must be a question mark over whether s.230(5) of the Bill is effective as it appears to seek to disapply legislation that it does not have power to do so.

[5] s.1(6) and s.2(6) Law of Property Act 1925 and s.2(6) Trusts of Land and Appointments Act 1996

If this subsection is effective then further consideration needs to be given as to whether young people are being exposed to any risk holding a legal interest and having contract terms enforced against them when they are deemed as vulnerable and perhaps less likely capable of sustaining a tenancy.

Ground 8

Currently, Ground 8 allows a landlord to obtain possession of a property if they can demonstrate at the date of the notice seeking possession was served and at the date of the possession hearing that a tenant is more than eight weeks in arrears, the court has little discretion but to make a possession order. The threshold for getting an Article 8 defence beyond summary consideration is very high.

The Law Society supports the abolition of Ground 8 for secure contracts in order to provide the court with a wider discretion as to whether or not to make a possession order. However, we are in a time where welfare reform and universal credit is having a huge impact on collection of rent arrears. Local Authorities and Private Registered Providers are not-for-profit organisations and are dependant on rent collection. The courts should be issued with guidance that rent arrears should be treated seriously and not be allowed to accumulate to levels where repayment is not a viable option before seriously considering eviction.

The Law Society welcomes the fact that Ground 8 is to be retained for the standard contract so as not to deter the private rental market where there is a desperate shortage for housing. We believe that had the abolition of Ground 8 extended to the standard contract that it would have deterred landlords from renting their properties.

The Law Society therefore agrees with the proposals to retain the mandatory ground for the standard contract and abolish it for the secure contract.

48 hour exclusion tool

Schedule 2 part 5 of the Bill enables a landlord to exclude a contract holder from the premises for up to 48 hours in limited serious circumstances. As this provision applies to supported accommodation contracts, the contract holder is likely to be vulnerable, possibly disabled or have mental health problems, and, if excluded, is likely to be homeless for two days, and at serious risk of harm. They may find it very difficult to seek legal advice, access support or medication during this period.

An agent or employee officer of a landlord who may not be specifically trained in dealing with vulnerable people can exclude an individual without reference to the court. Whilst this may be an infringement of Article 8 rights, it is unlikely that a vulnerable person will seek legal advice within the period of exclusion to prevent them living on the streets. Indeed, if the individual does manage to access legal advice on enforcing their Article 8 rights is likely to be restricted given the limits of legal aid.

This power needs to be subject to further consideration about the safeguards to be put in place for vulnerable people, and specifically what alternative accommodation arrangements will be put in place if the power is exercised and who would be responsible for the accommodation arrangements. This power needs to be carefully

balanced also with the impact the alleged behaviour has had on residents in the locality or staff which has resulted in the exclusion.

Retaliatory Evictions

We agree that retaliatory eviction damages the image of the private rented sector and dents tenant confidence. In England, provisions are being drafted into the Deregulation Bill to prevent possession being obtained against tenants on standard contracts in the private rented sector who make complaints about disrepair at the property.

The Bill proposes that where the court is satisfied that the landlord has not complied with their obligations, and that the landlord has issued a possession claim to avoid complying with them, it may treat the possession claim as discretionary, and therefore may refuse to make an order for possession.

The Law Society has concerns about the drafting of s.213(3)(b) of the Bill which states that the court has to be satisfied that the landlord has made the possession claim to avoid complying with those obligations. This will be a matter for judicial consideration at trial, having heard evidence from both landlord and tenant, but there can be many factors that would need to be taken into account when making the finding under s.213(3)(b) of the Bill. For example, whether the tenant has reported a repair but has then failed to give access; any mental health issues; or any unreasonable requests for repairs that do not fall within the repairing obligation of the landlord. Judicial consideration of the *intention* behind the landlord's actions would involve lengthy submissions, evidence and potentially expert evidence which may significantly delay, add cost and ultimately frustrate the landlord's claim even if validly made. It is inevitable that there will be costly appeals on the meaning of s.213(3)(b) which a private landlord is unlikely to be able to afford.

We believe that landlords, tenants and the judiciary would welcome guidance on this provision.

Tenancy Deposit Schemes

The Law Society welcomes the provision at s.45 of the Bill that requires landlords to place deposits within a protected scheme and deal with in accordance with an authorised deposit scheme. The same obligation is being incorporated into English law by way of amendment to the Deregulation Bill.

We recommend that the obligations in the Bill and the consequences for a landlord who fails to comply with those requirements should follow the drafting of the tabled amendment to the Deregulation Bill[6].

[6] http://www.publications.parliament.uk/pa/bills/lbill/2014-2015/0058/amend/su058-II-a.htm

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol
Communities, Equality and Local Government Committee
CELG(4)-11-15 Papur 2 / Paper 2

Let Down in Wales

Campaigning for Private Rented Sector reform

Response to the Renting Homes (Wales) Bill

We are one of many renter groups campaigning with Generation Rent (generationrent.org) and Let Down (letdown.org) to reform the poor state of private rented housing in the UK. Let Down in Wales is the only Welsh campaign group at present specifically focused on the private sector.

We welcomed the Housing (Wales) Act, particularly the move to license landlords, but we have concerns that it did not go far enough. We need to see far more concrete measures to keep track of landlords and to ensure bad landlords are effectively removed from the rental market. This Act was also predominantly for the social housing sector, rather than the private, but it is vital to remember that more and more vulnerable people are being put in the private sector so it is more important than ever to fix it to work for everyone.

The Code of Conduct for landlords has yet to be drafted, but it seems that this is where the vital voice of tenants will be heard, in making sure that landlords treat tenants - their customers and their livelihoods, essentially - with respect. The Housing Act's effectiveness very much depends on this secondary legislation and how it works with the Renting Homes Bill. We think the Renting Homes Bill could do what the Housing Act didn't, by creating a fair deal for renters and ensure we can hold letting agents and landlords to account. But unfortunately, it will not as it is currently drafted.

1. On standardising rental contracts and making them easier to understand

We very much welcome this and thought the sample documents were a good starting point. They would have to perhaps be altered for letting agents to use in some instances and it should be made clear to tenants how their contract is arranged i.e. if the landlord manages the property or if it is the letting agent they signed with. Tenants have overwhelmingly told us they prefer dealing directly with a responsible landlord as it tends to be simpler and quicker to get repairs done. An agent seems to delay things and are sometimes even less likely to sort out repairs than a landlord would. Arguably, an agent has less interest in keeping a property up to a good standard than the owner would.

Landlords have also told us they prefer to deal directly with good tenants, so the contracts seem useful in how they encourage tenants and landlords to discuss at the beginning who is responsible for what. This will also increase tenants' awareness of their own responsibilities i.e. like ensuring utility companies are informed when they move (or specified in the contract where the landlord or agent will do this instead).

Let Down in Wales began as a campaign highlighting the bad practice of letting agents in Cardiff. We very much welcome that the Bill may professionalise the sector further and make it clearer what tenants should expect. However, we very much regret that it hasn't gone any further in reducing or banning letting agent fees; encouraging longer term 3-year contracts rather than shorter, insecure contracts; or ensuring there is funding for tenant education, or a housing advisory body specifically for the private rented sector (as there are many organisations that are focused on social housing or homelessness, but do not specialise in private tenant issues).

2. Encouraging shorter contracts

Proposals on encouraging shorter term lets are very concerning, as no tenants involved in Let Down have experienced long contracts as a problem. However many have cited instances where they are kicked out of their tenancy without being asked if they would like to renew it or simply kicked out with very little notice.

Renters on rolling contracts (where only one month's notice is needed from either party to leave the property) are particularly vulnerable to being evicted at short notice. This can be because the landlord simply wants to stop renting the property, as they may wish to sell it or move in themselves or, on a worse note, may want new tenants because they don't like the amount of repairs they've been asked to do or complaints that have been made by the current tenants. The problem of 'revenge evictions' was raised by us in a letter to the Minister for Communities and Tackling Poverty; the reply said *"concerns relating to retaliatory eviction was raised in response to the Renting Homes White Paper and have been taken into account in the development of the Renting Homes Bill."* Since the Bill has been introduced, we welcome the mechanism taken when a judge can decide to take retaliatory evictions into account, but it is still slightly flawed in that it relies on the case to go to court, when most tenants with very little money are unlikely to let it get that far. They are more likely to be evicted without any justice of any kind. In fact, they are more likely to accept a lost deposit or lost rent rather than take it to court.

On shorter contracts, the department said: *"Our engagement with landlords indicates a strong preference for letting on contracts of at least six months' duration, with many preferring initial fixed terms of twelve months. Since the six-month moratorium is only relevant to periodic contracts, removing the moratorium will not affect the vast majority of tenancies. It will, however, assist those tenants looking to rent for less than six months."*

This response is hardly reassuring. We maintain that if most tenants and most landlords prefer longer contracts, that this is what the Bill should be encouraging. This in turn should lead to more stable conditions for renters and encourage landlords to seek long term lets. This Bill seems like a key opportunity to show political leadership for long term letting. We found it very concerning that the Minister described social housing as for 'longer term lets' and the rented sector as 'for shorter term lets'. This is one of the vital issues at the centre of private housing; that it is unstable and not set up for people renting long term. But with the average first-time house buyer now aged 36, many renters will have been renting for up to 18 years.

This is not a 'short term sector'. People rent for years but usually in a dozen different homes rather than one house they can take care of, settle into and look after. Most importantly, this is not out of choice; people do not want to move house every year and they definitely do not want to pay more extortionate letting fees in order to do so. Short-term contracts are the result of a badly managed sector that treats its tenants like disposable consumers. This kind of culture is exactly what this Bill should be trying to fix, not encouraging.

3. Monitoring landlord activity and encouraging tenant awareness

Our final concern is how the Code of Conduct will be enforced, alongside new provisions in the Renting Homes Bill that landlords will be required to ensure there are no Category 1 health and safety hazards. How will Councils monitor this and how will tenants know and be encouraged to report those who do not follow the Code of Conduct? We have raised this repeatedly to the Minister and AMs have raised it in the Assembly, but we are none the wiser as to how it will actually be effective. We argue that tenant awareness is vital for all of the new legislation and the Welsh Government's promised communication campaign should only be the start. We would prefer a dedicated and resourced body to provide advice, legal assistance and information for tenants, such as England's Housing Ombudsman or the Housing Tribunal in Scotland.

However a dedicated housing body may be what the Welsh Government intended to begin with. We note with interest that the White Paper originally stated the Welsh Government intends to work towards a "*nationally branded, locally delivered, housing advisory service".* We are wholly supportive of this, if it is still Welsh Government policy. We are concerned that Local Authorities will have great difficulty enacting the legislation, as house inspections will only be carried out by Housing Officers if a complaint has been made, meaning only a small amount may be surveyed and the most vulnerable are unlikely to complain. A nationally-branded service with more central support would be very welcome, as we very much doubt Local Authoritites have the resources right now.

What happened to this policy? A Welsh Government branded and operated advisory service could bring together so many schemes that get 'lost in the wilderness' of housing schemes. It could provide all the information needed for the public on Help to Buy Wales, Nest, Arbed, how housing waiting lists work, the new Renting Homes contracts and even signposting to Shelter, Welsh Tenants or Citizens Advice. We appreciate that in a time of cuts that this could not be as well resourced as we would like. But an online advisory service would be cost-effective but a real game changer for the sector. We would appreciate AMs and Ministers' thoughts on such a scheme.

Finally, whilst local authorities may be well-intentioned, we seriously question whether they have the capacity to do this. And in a time of local government reform, it is not the time to be placing new duties on them. We believe that a new Welsh Government coordinated housing body would be ideal.

What Let Down would like to see in a Renters' Bill

In the last 2 years of campaigning, Let Down has identified some key interventions that would benefit tenants the most in Wales. If not in this Bill, then in another Renters' Bill in the next Assembly.

1. Ending or capping letting agent fees - in the words of Emma Reynolds MP, the shadow Housing Minister, "*just because you know you're getting ripped off, doesn't make it any better*". Agents pretend that an 'exit inspection' or 'references' cost over £100 a time, even when these are often never carried out. The most frequent complaint we received from tenants was the extortionate and various fees that agents charge, particularly 're-signing' fees up to £250 just to renew the contract. It makes no difference that they have to invent a reason as to why they are charging that amount.

2. Longer tenancies - a Renters Bill that is written for tenants, rather than landlords, would increase the length of tenancies and ensure the rent is frozen throughout that contract, or only allowed to rise with inflation. Many renters that 'voluntarily leave' a contract is because it is now too expensive for them. Even when the rent hasn't risen, the cost of living has.

3. A fair council tax system for renters - we would welcome any kind of subsidy or reduction for renters who are living in a council tax-banded property, but do not benefit from the actual value of a property or the surrounding area. Particularly HMOs, where six flats may be crammed into one house, but they are all paying a high band of council tax. Council tax should be reformed for renters, starting by a Wales-wide survey of all private rented housing, including their conditions in terms of energy efficiency and their relative value to renters to re-evaluate Council Tax Bands for Renters.

4. Freezing rents - controlling rent is something that is far more common in Europe, where many countries seem to have forseen and acted on unfairness in the private rented sector, rather than foster conditions for a 'buy to let' market. Generation Rent proposes caps based on property values that still allow landlords to charge higher rent, but they have to pay 50% (or less) of any additional rent above the cap back into a government fund that is specifically there to improving housing conditions. So increasing rents would in turn help fund new housing, better PRS conditions and better information services.

5. Harsher sanctions on landlords who do not fulfill their contract - We do not think that simply losing a license is an effective way of discouraging bad practice. They can simply ask an agent or someone else to obtain a license and rent out the property a different way. We do not think the licensing measures have gone far enough to deter rogue landlords and think harsher sanctions may make more of an impression. There is an argument that we should wait to see how effective they are when fully introduced, but Let Down would also argue that by the time we wait and measure the performance of the Housing Act, we would have lost a generation of renters to poor, unstable and unpleasant conditions. The worst off will end up homeless with no chance of ever living in a decent private property, let alone owning a property. We need to act now.

Let Down in Wales

Campaigning for Private Rented Sector reform

About the campaign

We focus our work on the key issues facing tenants in Wales.

1. ***Improving conditions in the private rented sector:*** by asking that landlords maintain their properties to a high standard, by ensuring health and safety checks are rigorous and compulsory, by incentivising landlords with recommendations and further business if they are recommended or endorsed by tenants

2. ***Giving a voice to tenants:*** by improving their relationship with landlords, making sure they don't fear revenge evictions after complaints, by making them aware of their rights and responsibilities, and by enabling them to campaign on issues that still need work

3. ***Making renting a 'good option':*** making sure that policy-makers and decision-makers don't just consider home buyers but renters too, by raising awareness of tenants' needs, and campaigning for lower rents so tenants are not prevented from saving

We gather renters' views through formal and informal conversations, online letting agent and landlord reviews and social media. These views inform the campaign priorities.

Find us online at:

letdownincardiff.wordpress.co

Let Down in Wales

@letdowncardiff

About Us

The Welsh Tenants is the representative body for tenants in Wales. Formed in 1988 we have over 350 member groups consisting of federations, representative tenant & resident associations and panels.

Our membership and support covers the full range of mixed communities. Over the past ten years this has included a developing private rented sector. We believe that Wales can lead the way in developing a new less restrictive more vibrant form of renting that extends opportunity while providing adequate protection or renters.

Our mission

To enhance and promote the rights, representations and housing standards of tenants in Wales.

"Our mission is to enhance and promote the rights, representations and housing standards of tenants across Wales"

Our values

- Every tenant has a right to a decent quality affordable home, as a right not a privilege
- We actively support the principles of the UN Universal declaration of Human Rights and the right to an adequate standard of living as expressed in article 11.1. of the International Covenant on Economic, Social and Cultural as enlivened by the Right to Adequate Housing.
- We believe that everyone has the right to express themselves in accordance with their cultural values and beliefs providing this doesn't discriminate unlawfully against others
- We believe that everyone must have the freedom to make informed choices about their home, welfare and community and that every tenant has a right to influence decisions about the services they receive

Contents

Summary

- While we support the principles behind the bill there are considerations for consumer protection, education and support that need to be considered to ensure the principles of joint rights and obligations are enlivened and realised. We believe that this should be provided through better provisions for consumer

representation, protection and support for renters that is open to all and better. We would recommend consideration of a Property Services Ombudsman for PRS that is open to all, and not just those whose landlord subscribe to the PSO scheme and thus excluding the majority of private renters.

- We also believe that Wales requires better strategic oversight due to the significant changes in approach between other countries of the UK on the PRS and would recommend setting up a Welsh Private Residential Tenancies Board as in the Republic of Ireland to provide strategic oversight of the sector.
- We strongly oppose the withdrawal of 26 weeks protection in the standard periodic contract without the removal of the no fault eviction through the serving of a Section 21 notice to quit. This could lead to unchallenged bias by landlords or letting agents. We also believe that reduction in security runs contrary to Article 11.1 of the Convention on Economic, Social and cultural rights and the Right to Adequate housing as expressed by treaty within the framework of the Human Rights Convention.
- We accept that efforts that have been made to address 'retaliatory eviction' in Wales as distinct from that proposed in the Deregulation bill is a necessary inclusion but only addresses disrepair obligations. Better remedies to address harassment and other practices needs also to be considered to support the consumer protection approaches.
- We support the general provisions to ensure better protection under the fitness for human habitation utilising the 29 hazards of the Housing Health And Safety Rating System. However, we would wish to see better safety on the face of the bill to ensure sufficient protection from hazards. We would wish to see Schedule 14 of the 2004 amended to ensure that social landlords have to comply with HMO standards. We would also wish to see the Minister introduce regulations that ensure mandatory protection from carbon monoxide poisoning and 5 year mandatory electrical safety checks to reduce death and serious injury by fire or poisoning.
- We would also wish to see to a mandatory requirement publishing any prohibition notices in force or registered against the property in the past 5 years for the property being proposed for rent and to make it an offence not to provide such information to prospective renters.
- The 'prohibitive conduct' clause should be amended to reinstate the requirement to evidence criminal conviction.

1. Introduction

1.1. The Welsh Tenants response to the bill focuses on the general provisions and policy implications for renters. We have largely left the specific technical legal matters regarding housing law to others more competent to evaluate the specific legal definitions and interpretations of law.

1.2. As a principle, we accept that the private rented sector has a significant role to play in the provision of housing for a very broad section of the community. Indeed 1 in 3 people now rent their home. Today's renters increasingly consist of people and families who have less choice, limited financial freedoms or the capacity to take advantage of the exercise of their rights. Policy's that could force tenants to move more frequently, pay a higher cost to mitigate the landlords risk, increase the need for access to legal advice, prevent access to justice, or where policy consequences may impact on their ability to receive timely welfare to supplement income or enable access to market rent properties, are all considerations that we have in mind when consulting tenants and compiling responses. We are mindful, that when new laws, policy's and delivery programmes are developed, renters are not disadvantaged in furtherance of common accessible standards that simplify and make more accessible fairness in renting.

2. General provisions

2.1. Welsh Tenants is a long-time supporter of the principles that underpin the Renting Homes (Wales) bill since its development in 2003 and its successor reports[1]. We fully endorse the universal provision of written contracts and that these should be made available in non-electronic as well as electronic formats and that failure to issue contracts in line with the model contract provision would default to the Welsh Government model.

2.2. We support the approach to develop model contracts, for both secure[2] and assured[3] tenancy's underpinned by statute that will set out "*the basis upon which accommodation is rented, providing clear and accurate statements of the rights and responsibilities of the parties, including the circumstances in which rights to occupy may be brought to an en*d"[4].

2.3. Framing legislation utilising principles contained in the International Convention on Human Rights, UK equalities legislation and consumer protection principles is a mature reflective approach and one which many tenants, landlords, agents and advisors in Wales will benefit from once enshrined in statute. We particularly welcome the general aim behind the bill to make housing law less exclusive and thereby more accessible and more readily understood by renters, providers and advisors.

[1] Renting Homes: the Final Report (1) (2006) Law Com No 297, http://lawcommission.justice.gov.uk/docs/lc297_Renting_Homes_Final_Report_Vol1.pdf (last visited 6 February 2013).
[2] Secure tenancy as defined in the Housing Act 1985
[3] The Assured tenancy regime in the Housing Act 1988 & Housing Act 1996
[4] http://lawcommission.justice.gov.uk/docs/lc337_renting_homes_in_wales_english-language-version.pdf

3. Consumer protection and redress

3.1. Placing renting a home in this context ensures that consumers have basic rights that include, the satisfaction of basic needs, a right to safety, to be informed, the right to choose, to be heard, and the right to redress. However, support to enliven these basic provisions should not be ignored when initiating this important change.

3.2. While secure contract holders will have access to redress through the Public Ombudsman Service Wales (POSW) currently the Property Ombudsman Services (POS) is only available to letting agents and landlords who enrol in the scheme, thereby excluding tens of thousands of private renters whose landlord do not subscribe.

3.3. We would wish to see adequate provisions in place for private renters to ensure that consumers have access to these dispute resolution services avoiding potential costly court action. We would also suggest greater use of Her Majesties Court Tribunal Service as a pre-court mechanism. This will require access to support to consider individual complaints. There is of cause options to utilise existing services such as the Residential Property Tribunal or developing a Private Residential Tenancies Board with statutory powers as in Republic of Ireland, the latter could have powers to address super complaints or thematic consumer redress issues.

3.4. Provisions will of cause need to be made to ensure that any schemes developed for private tenants in Wales meets the requirements of the Consumers, Estate Agents and Redress Act, 2007 which is overseen by the Office of Fair Trading.

3.5. Information and education concerning the change will be a significant challenge, but nevertheless is absolutely necessary to ensure fair and equitable treatment for both landlords and tenants. For example, we are concerned that 'additional terms' will be added by landlords only, because of market exclusivity, with few landlords accepting additional terms by tenants – will this lead to bias? We see wide spread exclusion of people in receipt of welfare from accessing private accommodation, or refusing to improve the property before let for disabled tenants, where the requirement to make reasonable adjustments are flouted.

3.6. It is our view that collective oversight of the market will need tight monitoring to consider the extensive changes that are occurring in the private rented sector to oversee; registration and licensing[5], periodic and fixed term contracts; tenancy deposits; charging; PSO scheme; and standards and unfair practices. We would therefore recommend a single regulator board with extensive powers to oversee the development of the PRS in Wales.

[5] Housing (Wales) Act 2014

3.7. The provision of collective representation in Wales for private renters is something that also needs government support and needs to be considered most urgently by government to ensure consumers have a strong voice from which the sector can benefit in similar ways as the social housing sector.

4. Registered Social Landlords (RSLs)

4.1. Of the provisions for RSLs, it makes absolute sense to level up provisions for security and standardisation of rights and obligations in the social housing sector. We welcome the ability of government to add terms in order to achieve policy objectives provided there are adequate means of consultation and representation (see other matters). Equally, for registered social landlords this will require oversight by the Regulatory Board Wales and the Welsh Government as regulator who monitors compliance with the regulatory framework in the social housing sector.

5. Removing 26 week protection from eviction

5.1. We are extremely concerned at the removal of the 26 week moratorium that currently prevents landlords from evicting renters and their families within 26 weeks of taking up their tenancy. The provision exists to ensure families can place their children in schooling, register with a doctor, dentist and have time to come to know the community they have chosen to settle. This may even complicate claims for universal credit due to time lapses as a result of potentially more frequent changes in address But importantly, they have basic protection against potential bias of an unprofessional landlord.

5.2. In recent history, the market has demonstrated that the absence of restraints to seek charges from the renter are maximised to their fullest extent to the advantage of the landlord or agent. We predict that removing the moratorium will mean the default starter agreement will be substantially reduced to some 16-20 weeks as opposed to the current 26 weeks with the nuclear option of section 21 notice built in, 1 day after the tenancy agreement begins as currently occurs in some fixed term contracts.

5.3. One of the key arguments from landlords bodies is that shorter term tenancies will meet the demands of floating tenants (those who travel around with work, due to micro jobbing or traveling zero hour contracts). There are already provisions under 'fixed term contracts' to terminate early for both the tenant and landlord provided, a) *that both agree, b) that there is a break clause term in the tenancy agreement, and c) the tenant has followed any requirements for giving notice*. The onus is on the landlord or letting agent to provide for such in their range of model tenancy agreements to better suit the needs of the renter. Under these arrangements, if the property is handed back the landlord has a duty to mitigate the tenant's loss of future rent by re-letting while charging reasonable re-letting fees and avoiding double charging. They do not do so because they will want to contractually bind for the duration of the 6 months

and tenants are not generally aware that this clause can be added to better meet their accommodation requirements.

5.4. In our view there is no justification for changing the 26 weeks security protection, for ALL renters for the benefit of a few that can already be served through better market awareness. These arrangements can be made, but as a whole do not, because landlords will want to maximise income for least effort and as such the market works more in favour of the landlord as opposed to the renter in terms of tenancy length.

5.5. We feel that longer term tenancies exist in the PRS more by accident or lack of competence than design, this is demonstrated by the response received as part of the impact assessment conducted by government and a failure to renew fixed terms so that it defaults to a statutory periodic tenancy.

6. Security of tenure

6.1. For Welsh Tenants the principles of the Universal Declaration of Human Rights are more important than ever. Since its adoption in 1948, the convention has helped set a benchmark for a range of other treaties, rights and obligations of which progressive countries have rightly subscribed, including the UK and Wales. The right to an "adequate standard of living for himself and family" contained under Article 11.1[6] of the Convention on Economic, Social and Cultural Rights (1966) includes a provision that enlivens this treaty obligation. Central to the adequacy of this right is the provision of fair and reasonable security of tenure within the 'Right to Adequate housing'[7].

6.2. Quite righty the HRC has important principles at its heart, more notably non-discrimination and equality. However, there is also the principle in human rights law of 'non-retrogression', which commits member states to the progressive realisation of these rights. The principle of non-retrogression means that signatories to the convention are not allowed under any circumstances to introduce, laws, policy's or programmes that are regressive to the convention rights – "*even in a situation of global economic crisis or austerity measures*"[8]. The principle ensures that all of us can enjoy the progressive realization of a right to adequate housing, and a home, with fair and proportionate security of tenure and protection from eviction.

6.3. It is our view, the removal of the 26 week protection from eviction for All tenants while retaining the ability to serve a no fault eviction notice under Section 21[9] would put tenants in a worse position regarding their 'security of tenure' and would be a breach of an entitlement under the convention rights.

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[6] International Covenant on Economic, Social and Cultural Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976, in accordance with article 27

[7] http://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf

[8] Lelani Farhar UN Special Rapporteur on the Right to Adequate Housing in a video message to the Welsh Tenants conference in 2014. Click here to view Ms Farhars video

[9] Section 21 Housing Act 1988 gives a landlord an automatic right of possession without having to give any grounds (reasons) once the fixed term has expired

We would therefore urge the committee to consider the advice we received on the convention rights from the UN Special Rapporteur for the right to adequate housing concerning retrogression.

6.4. Our understanding is the principle of non-retrogression is measured by specific criteria (see appendix 1). It is our view that to remove protection from eviction as currently provided and as proposed in the bill would place Wales in the unenviable position of having a worse private sector tenure security scheme than any other country in western Europe and runs contrary to the commitments given under the convention rights.

6.5. While removing the moratorium may be beneficial for a small percentage of 'floating renters', this is not the case for the vast majority of the estimated 14,500 annual market gap in housing who seek more stable accommodation. We would therefore recommend that tenancy agreements be extended to a minimum of 12 months as opposed to potentially reducing security to potentially 16 weeks as a consequence of the removal of the moratorium.

6.6. Cost implications for renters - It is our concern that tenants will require a greater amount of money in in order to secure a tenancy as a consequence of removing the 26 week moratorium.

1) The ability to write into agreements 2 month notice at the start of the agreement will mean they will have the ability to increase rents every time a contract is terminated, rents could increase more rapidly as an average because of the landlords ability to reset rents on shorter re-lets.

2) Turnover increases - Landlord or letting agents subsequent recharges for inspection of the property, revised credit checks, guarantors, recharges and other rechecks on credit worthiness will be more frequent increasing the turnover costs for tenants over a five year period due to less security.

Either way, tenants will require more of their income to be spent on housing costs, this adding to an already increasing high proportion of their income to be set aside for securing a home. Without a commitment to offer longer term tenancy the market would take advantage of the increased revenue being made available to them.

6.7. It is our view that removing the moratorium would provide no stable foundation for occupants and their children and increase costs for the renter. With no regulatory oversight there are no controls over letting agent and landlord behaviour regarding this. This could mean an inevitable call for rent controls.

6.8. In our view the proposal also enables the landlord to summarily evict rather than use the uncertainty of discretionary grounds through due process of law and lead to further challenges. It would also force tenants to be on the defensive with regard to repair notifications and 'look for faults' in order to

secure protection under the 'retaliatory eviction defence'. This is not conducive of good landlord, tenant relations.

6.9. In recent years, we have seen sections of the private rented market in Wales and elsewhere adopt an increasing bias against individuals and families because of their perceived current or past economic status or indeed their lifestyle choices. This has added to the pressure on government intervention. In parts of the housing market, many tenants agree that it has returned to the practice of the style and substance of Rachmanism of the 60's. It is a strongly held view among our members and from consultations that removal of the 26 week moratorium would encourage the non-professional landlord sector (estimated to be 80% of the PRS market in Wales) to have the 'power to evict' on the basis of 'bias or discrimination' without recourse to a defence in court.

7. Other matters considered

7.1. The Welsh Tenants welcomes the efforts made in dealing more effectively with domestic abuse and the anti-social behaviour of some households through having a 'prohibited conduct' term in every contract. We also welcome the more victim centred approach that ensures the home remains with the victim.

7.2. We support the removal of ground 8 mandatory eviction, to reflect human rights thinking on issues of proportionality and removing differences on grounds for eviction for those renting from housing associations by bringing them into line with those for local councils.

8. Part 3 Succession rights and transfer - Chapter 8, section 73-86

8.1. Welsh Tenants supports amendments to the law that makes it easier for people to join or leave joint rental contracts and standardising the right to take over a housing association or council tenancy when the current tenant dies, and giving a new right to a long-term resident carer.

8.2. We welcome the modification of 91(3) of the Housing Act 1985 making it a fundamental term for who can and cannot succeed a tenancy on death that allows a secure tenant to assign their secure tenancy before entering residential care. We also welcome the provision for joint transfer and succession and the retention of section 92 of the 1985 Act that enables tenants to exchange their tenancies allowing a chain of moves to take place.

8.3. Chapter 9, Landlords consent - We recommend that guidance is prepared in relation to the meaning of '*reasonableness'* and '*conditions'* under which an assessment is made. Currently successions are often not granted to the family home but to a 'tenancy' on the basis that the successor will not fully occupy the home. Quite often this a 'single offer is made, to meet legislative requirements on succession. However, all such successions could for example be 'reasonably refused' on the basis of demand for 'x' size properties. This would not then be a 'right to succeed' but a 'right to be suitably housed'. If this is the intention - the

bill should state so or clarify the position upon which succession of the home should not be granted to the home being succeeded.

8.4. Chapter 10, (87) – Compensation – We feel the compensation payable to the tenant is derisory considering the impact this will have on the potential successor including the threat of actual homelessness through a failure to agree to 'variations' and hence challenge the 'statement of variation' (on average less than £12.40 per day on an @ £87 per wk rent) and hence the 100% cap placed upon the courts.

8.5. **We would also recommend to include a 'protection from eviction clause' while the 'statement of variation' is being challenged in the courts**.

9. Part 4 – Chapter 2 Condition of dwelling

9.1. Too often, people are forced to rent properties that are simply not fit for renting, because they have no option but to take what's on offer because of poor credit history, their inability to secure a guarantor, market rents, because they are housing benefit claimants, disabled, have a mental health illness, elderly, or vulnerable.

9.2. People should have the confidence that the property they rent is 'safe and free from serious hazard' or as a minimum, know the risk and have support to secure additional terms to rectify or address them within the contract, this could be for example sharing costs in return for longer terms.

9.3. We are disappointed not to see a total ban on renting properties that have serious category 1 hazards in addition to the broad based approach as proposed in the bill. We would recommend therefore 'a duty to inform' renters of hazards prior to renting as a minimum standard.

9.4. We are concerned that (91,3) will provide too much of a leeway given the nature of rented housing stock, age and condition, in some parts of Wales and needs further illustration. This is often an excuse for not modernising to make it fit for renting and contributes towards ill health of the occupants and a consequential public purse burden. We are also concerned at (95,1) Limits on sections (91 and 92: general). Surely, if the property is not fit for human habitation it should not be let! regardless of the liability of the landlord in relation to their repair obligation at reasonable cost. This also provides an unacceptable and unfair defence intention of retaliatory eviction protection.

9.5. With the inclusion of the above we support the compromise developed to ensure better protection under the 'fitness for human habitation' utilising the 29 hazards of the Housing Health And Safety Rating System[10] and other provisions. However we would wish to see better requirements on the face of the bill to ensure sufficient protection from hazards in relation to serious damp, electrical safety, poisoning and serious disrepair;

[10] Introduced under the Housing Act 2004 and supplementary guidance 2006

- We recommend a mandatory requirement to publish any 'prohibition notices in force' or 'registered against the property in the past five years' for the accommodation being proposed for rent and to make it an offence not to provide such information to prospective renters.
- We recommend amending Schedule 14 of the Housing Act 2004 to ensure that social landlords have a duty to comply with HMO regulations to address the growth of shared accommodation and to ensure where family accommodation is converted to shared accommodation, renters are adequately protected and communities are consulted on change of use from category C (family accommodation) to category D, shared accommodation and that bedroom size criteria is adhered too.
- We recommend the Minister introduces regulations that ensure mandatory protection from carbon monoxide poisoning (in particular solid fuels and to address developments in non-traditional or alternative fuels) to seek to reduce incidents of death and serious injury by poisoning and 5 year mandatory electrical safety checks to help reduce incidents of death and serious injury by fire.

9.6. We would recommend (98,2) increased to 48 hour notice to accommodate night shift workers, arranging for carers or time to secure time-off or for someone to be present. We would also wish to include provisions of weekends rather than simply 'workdays' that disadvantage the employed.

9.7. We would also wish to see provisions within this section for securing 'alternative accommodation' for all contracts at the expense of the landlord, where it is demonstrated that it is the landlord's failure to properly maintain the property and where putting right the disrepair may present a hazard to the family.

9.8. Private Rented Sector Tenants Charter – The health of occupants is of grave concern in some parts of the PRS as is the cost to the public purse. We would recommend Ministerial guidance published as to reasonable timescale for repairs so that tenants are aware of the landlords timeliness of response and that these from part of a Private Sector Tenants Charter that outlines the commitments registered private landlords should undertake to meet their responsibilities. This should also include our recommendations above.

10. Part 5 –Chapter 2- variation of contracts / 'fundamental terms'

10.1. While we support the general principle of a landlord and secure contract holder being able to vary a fundamental terms in (106), subject to the exclusions in (108) we fear that without safeguards this could be abused. The Welsh Tenants have examples where tenancy terms have been amended, with promises made

to compensate for the change that have failed to materialise, resulting in tenants feeling duped and in some cases vulnerable.

10.2. Adequate safeguards in the form of guidance needs to be in place to ensure that secure tenants with dementia, the elderly and independent living schemes, people with undiagnosed mental health, the disabled, have protection against agreeing terms they don't understand, or are misrepresented and as such result in withdrawal of services.

10.3. To protect consumers, we recommend that where fundamental terms are being presented for change, that access to 'independent support' should always be made available and that tenants should be consulted about who should provide that support. In addition, where it is proven that this has not been independently provided, then the terms are to be seen as being approved under duress and invalid.

11. Part 5 – Provisions applying to contracts

11.1. We generally support attempts to address ASB through 'prohibitive conduct terms' for neighbours who should not have to put up with serious and consistent noise or ASB. Recent developments in anti social behaviour legislation[11] provides for notice in relation to proceedings on ASB. By contrast, we are concerned that section (55) of the Bill which allows for widespread discretion on the part of the landlord to bring proceedings to end the contract for using or 'threatening' to use, the premises for criminal purposes as too broad. The landlord would not have to produce evidence of a conviction as now, and could for example rely on a caution, or lay witness evidence to advance proceedings. This would be open for abuse and may further introduce bias in renting. We recommend that the requirement to produce evidence of a conviction is reinstated

11.2. We welcome the approach within the bill to domestic abuse compliments provisions around Violence against Women, Domestic Abuse and Sexual Violence (Wales) Bill.

12. Part 5, Chapter 4. Lodgers

12.1. The Bill allows a secure contract holder to take in lodger(s), without requiring consent. Lodger agreement will be with the contract holder and the lodger under a model lodging agreement. The process of allowing a "supplementary" term to be included in contract is to be welcomed. However we are concerned at the new proposals that require tenants to test the immigration status of a

[11] Anti Social Behaviour Police and Crime Act 2014, Part 1 Exclusion from Home, Sect 13, Part 4 Chap 3 closure of premises; Part 5 Recovery of possession of dwelling houses on ASB grounds(94) see http://www.legislation.gov.uk/ukpga/2014/12/part/5/enacted

lodger. These developments are worrying concerning the potential penalties that could accrue for not doing so.

12.2. As with other provisions, access to independent information and advice at least cost to the tenant should be encouraged and indeed we would recommend that guidance documents should be made available to the renter and there is a an obligation to sign post tenants to appropriate support.

13. Part 8 – Supported standard contracts

13.1. Part 8 - Chap 6 – and schedule 2, part 5. We welcome the inclusion of a legal framework for supported housing. The exclusion from requiring to give an occupation contract where intended for less than 6 months will alleviate some concerns of supported housing providers. We welcome the approach and the compromise that after 6 months persons become entitled to a "*supported housing contract*" with two new powers for the landlord/provider. Temporary exclusion for up to 48 hours and the ability to move the occupier within the scheme to an alternative room within the building to mitigate any potential harm or risk.

13.2. We welcome the provision that should landlords want to extend the initial 6 months, that the landlord will have to apply to a local authority for a 3 month extension, 4 weeks before end of contract period. We would wish to see that the occupier has adequate independent representation during this process.

13.3. In relation to exclusions we would wish to seek assurances that people who are subject to 'an exclusion order' from the scheme have access to shelter as a statutory provision as a rough sleeper and are not left wandering the streets.

13.4. We are also pleased to see night shelters excluded from the bill.

14. Part 9 – Termination of occupational contracts

14.1. We are pleased to see an acceptance that section 21 no fault eviction has been abused by a section of landlords who would rather evict than deal with repairs or the legitimate concerns of renters. However, it also needs to be acknowledged that retaliatory eviction is not wholly confined to repairs and can also include, objections to accessing the property without consent, unreasonable terms being imposed post tenancy and general complaints regarding harassment or simply making enquires.

14.2. However we do welcome new fairer rules around use of section 21, where the court is satisfied that the landlord hasn't complied with their obligations regarding fitness of habitation and provisions for the court may treat the claim as discretionary not mandatory.

14.3. We also support measures to substitute demoted tenancies within the Bill that allows landlords to seek an order from the court to demote the tenancy from a secure tenancy to a standard contract for a period of 12 up to 18 months, where there is evidence of serious anti social behaviour.

14.4. Estate management grounds – compulsory purchase – Welsh Tenants and TPAS Cymru have had a great deal of experience with the extremely traumatic process of homeloss through demolition and compulsory purchase[12], this can be extremely debilitating for the elderly with decades of investment in the home and community gone.

14.5. The loss of a home should not be taken lightly. We are concerned that Part 9 chapter 3 Section (4), eviction on estate management grounds, where the "*landlord must pay to the contract-holder (*regarding all occupational contracts, and section (2) *a sum equal to the reasonable expenses likely to be incurred by the contract holder in moving from the dwelling"* as insufficient. The section does not mention 'homeloss' payment[13] on displacement to which the contract holder (as tenant) will be entitled - in addition to reasonable disturbance payments.

14.6. **We recommend that homeloss payments for secure tenants are reinstated in line with the Welsh Government scheme[14] currently in force**.

15. Running a business from your home

15.1. Today in an increasing service economy it is no longer acceptable to have a blanket moratorium on the ability to run a business from your home. Self-employment has widened dramatically, particularly in areas of information technology and online hobby businesses to supplement income. Such a practice if not in the contract would be an enforceable technical breach of contract.

15.2. We would wish to see this included as a general principle providing clarity regarding this important issue to reflect changes in home working. We would wish to see the ability to operate a 'business' from the home a key right within the contract subject to permission from the landlord, however with the principle that this could not be unreasonably withheld or monopolised upon through increased rent.

16. Right to manage

16.1. Members have commented there is no provisions regarding the Right to Manage regulations 1994 (and amendments thereafter), for secure tenants in the bill. For many tenants this right has been preserved on ballot of tenants in stock transfer. Evidence suggests that where RTM has resulted in self-management this has created jobs, internships, apprenticeships, and improved services at reduced cost to the tenant. Self-management as defined in the right to manage regulations is a positive progression for tenants to take

[12] Involving Residents in Improvements - A Major Works Agreement Compendium, CIH Cymru, S.Clarke, 2002
[13] Land Compensation Act 1973 Part III Homeloss payments & subsequent amendments http://www.legislation.gov.uk/ukpga/1973/26/part/III/crossheading/home-loss-payments
[14] The Home Loss Payments (Prescribed Amounts) (Wales) Regulations 2007 & The Home Loss Payments (Prescribed Amounts) (Wales) Regulations 2008

responsibilities for their communities and to involve and engage tenants in the management of their home. Although central funding to realise this aspiration has been suspended for tenants wanting to utilise this route towards local empowerment, and co-operative approaches to management, the preservation of this right was important to retain in stock transfer ballots.

16.2. We are disappointed to see this co-operative principle in Wales as an extension to involvement and participation by tenants in their communities being eroded. We would wish to see the right to manage for secure tenants actively encouraged and supported among secure tenants via the insertion of a key term for secure tenants.

17. Statutory procedures to consult

17.1. For decades secure and assured tenants have had the active support of successive governments to reinforce the value of individual and collective engagement to improve policy and practice relating to services, support and decision making. This has been critical to develop, and seek support for improvements in policy and practice in the housing sector as a whole.

17.2. The provision of a statutory duty to inform and consult on rent increases in secure and assured tenancy agreements or on changes to housing management for example are important principles that are considered fair, reasonable and progressive. We are mindful of the need to ensure that the means of collective involvement and representation is considered regarding the development of guidance and policy in relation to the bill and any subsequent amendments thereafter, particularly where there are matters under consideration that are not on the face of the bill which are to be developed, consulted and approved by Ministers (22).

17.3. In relation to the process of decision making, the supreme court accepted what has become to be known as the 'Gunning[15]', or 'Sedley[16]' principles in which the process for developing and taking decisions[17] should be adopted[18]. The supreme court concluded it was hard to see how any of these principles could be rejected or indeed improved upon, saying the time had come for the Supreme Court to endorse the Sedley criteria Gunning principles' or 'requirements'. We would also wish to see the principles for consultation on the face of the bill.

17.4. In several areas of the bill there is recourse to give powers to the Minister to develop such policy and guidance (Part 2 Chap 3, 22 Chap 4,23 Chap 6, 29 etc).

[15] https://www.supremecourt.uk/decided-cases/docs/UKSC_2013_0116_Judgment.pdf

[16] The principles of consultation advocated by Stephen Sedley QC in the Gunning case (later Lord Justice Sedley)

[17] http://www.adminlaw.org.uk/docs/18%20January%202012%20Sheldon.pdf

[18] Mr. Stephen Sedley QC and adopted by Mr. Justice Hodgson in R v. Brent London Borough Council, ex parte Gunning (1985) 84 LGR 168 at 169. They were subsequently approved by Simon Brown LJ in R v. Devon County Council, ex parte Baker [1995] 1 All.E.R. 73 at 91g-j; and by the Court of Appeal in R v. North and East Devon Health Authority, ex parte Coughlan [2001] QB 213 at[108].

We would wish to see statutory principles that the ministers should follow as suggested in the Gunning principles;

(i) consultation must take place when the proposal is still at a formative stage;

(ii) sufficient reasons must be put forward for the proposal to allow for intelligent consideration and response;

(iii) adequate time must be given for consideration and response; and

(iv) the product of consultation must be conscientiously taken into account.

17.5. In such important matters as are being considered such as; structured discretion for eviction; prohibitive conduct; disrepair definitions; that are not on the face of the bill, we recommend strengthening the process by which these matters are considered and decisions reached by the insertion of the Gunning / Sedley principles to ensure that the principles have statutory force within the bill.

Appendix 1.

Criteria upon which non retrogression has been measured includes:

- Is the measure "*justified*"
- Is the change "necessary"
- Is the change in law "*potentially discriminatory*"
- Has the people impacted had "*meaningful participation*" and "*involvement*" in its development
- Have "*accountable*" mechanisms been put in place
- Has the change been subject to "*independent*" review at national levels
- Are there "*remedies*" for violation of rights
- Is the law change "*permanent of temporary*"

Source:

United Nations- General Assembly A/HRC/24/44, July 2013 (Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque),

The principle of non-retrogression and austerity measures page 5 paragraphs 13-17 are explored here.

http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/Documents/A-HRC-24-44_en.pdf

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol
Communities, Equality and Local Government Committee
CELG(4)-11-15 Papur 4 / Paper 4

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1. I am responding to this consultation on behalf of NUS Wales, in my capacity as Policy and Governance Consultant.

2. NUS Wales is the representative body of over a quarter of a million students in Wales. We represent students in both the FE and HE sectors.

General Comments

Part 2

3. We are strongly supportive of the move to underpin all home rentals by a written contract. It is vital, for both the landlord and tenant, to have surety and a written contract outlining respective rights. We also support the principle of the introduction of "contract-holder" for clarity. The move towards a simpler, transparent system for both landlords and tenants is something that should be encouraged.

4. The Bill also makes provisions for the introduction of "occupation contracts". Students are most likely to fall under a standard contract, but naturally this will not always be the case. A standard contract appears to be the one that will most likely be used in the private sector, with a secure contract being the preferred option for the social sector.

5. We agree with the definitions used for the contracts, and in the necessary separation. The standard contract can either be periodic or fixed term. In some existing cases, a fixed term contract will become fixed term at the end of the fixed term tenancy. For landlords and letting agents who primarily target students, a fixed term contract will normally only become another fixed term contract. There is therefore limited flexibility for a student to remain in that property when they finish their studies.

6. One of the serious difficulties facing students across Britain is in fixed terms contracts. The nature of how some letting agents operate means that some students feel they have to know who they will live with by the end of the first week at university. [1] A fifth of respondents to NUS UK's *Housing Fit for Study* said that they had signed up for a property seven months in advance, with 40% thinking they would be left with no home. This often means that they will have signed for a property in January or February, and they will not even move into that property until September. Arrangements between students – often several living in houses of multiple occupancy – can change markedly in such a large window of time, and

[1] http://www.nusconnect.org.uk/resources/open/housing/Homes-Fit-for-Study-Housing-Report/

students will still be tied into their contract. There are currently contracts where people can (for example) sign up to a property for a year but, after six months, only give one months' notice as a break clause. The landlord is tied into the contract for a year, but the students have a degree of flexibility to move to a smaller property if their situation demands it. We would advocate a move to where this contract becomes offered in the first instance, in order to offer security to both tenants and landlords. Point 62 (a) in the guidance notes aides this.

Part 3

7. The early stages of Part 3 within the existing Bill address written contracts. As we have already outlined, we strongly believe in written contracts for both the contract-holder and the landlord. We do have concerns regarding 34 (1). The right for the contract-holder to take the landlord to court is an important one, but it must be properly advertised to all tenants. We would therefore suggest that the 14 day limit is extended, at least in the early days of the legislation coming into effect in Wales. 14 days is not much time for people who are unsure of legal proceedings to take the decision to take someone to court. We believe this should be extended to give students the opportunity to challenge potentially unfair decisions.

8. Part 3, Chapter 5 tied neatly into our point 6. 48 (1) states that each joint contract-holder is responsible to the "performance of every obligation". This means that if one contract-holder withdraws from a property, the remaining contract-holders will be responsible for the full rent. This is, of course, perfectly acceptable for the landlord. Our reservation is that if the circumstances of a group of students change in the nine months between them signing and moving in, the remaining students will be liable for any outstanding rent. Likewise, if a student decides to move out of a property following the start of the tenancy, the other students may be forced to pay the rent for the rest of the fixed-term contract. While it is true that the students' union may be able to find someone else to move in, this in itself will normally require a payment (to change the names on the contracts). A break clause protecting these joint contract-holders, so that they can give a months' notice, is vital. This contract exists and more must be done to ensure that letting agents advertise it. It is also vital that the landlord is still bound to the entirety of the fixed-term contract. If not, they could decide to serve a notice on the tenants' so that they could find someone who would be there for longer. We believe that letting agents should have to make students and landlords aware of these contracts before the agency fee is paid.

9. 52 (3) is unclear about whether or not the ceasing contract-holder will still be able to claim their share of a deposit back. It appears to clash with 52 (2). This must be clarified. Otherwise, the ceasing contract-holder will not get any of their deposit back until the end of the fixed term contract. This could be as long as a year away, which will make it more difficult for the exiting tenant to afford a deposit for another property.

10. 53 (1) to 53 (3) stipulate that there can also be joint landlords. For joint contract-holders, a named individual must presumably act as a lead/head tenant. A similar proviso should be in place here, to ensure a consistent point of contact between the contract-holder and the landlord.

11. Part 3, as highlighted in Chapter 7, presumably, if a contract-holder is found to have engaged in anti-social or other prohibited activity they will be removed from the contract. However, it is not clear what impact this would have on the remaining joint

contract-holders which would be cause for concern. We agree with the principle behind this proposal, but it needs to be made clearer. If the contract-holder is evicted from the property, it is unclear whether the other joint-contract holders will still be responsible for "all the obligations". If so, it is vital that they have a break clause.

12. Chapter 8 concerns the responsibility for repairs and maintenance. According to the Explanatory Memorandum, the landlord will be responsible for water, gas, electricity, sanitation and heating/hot water. It is vital that the contract-holder has a right of complaint in the event that the landlord does not do this satisfactorily.

Part 4

13. We support the principle that no-one should have to live in accommodation that is not fit for human habitation. In *Housing Fit for Study,* three quarters of respondents felt that they had problems with the condition of their home. We do note with concern that the Bill, as proposed, will not see local authorities carrying out inspections on properties. We accept that placing duties on local councils would have budgetary implications – which would be particularly acute in some areas. However, we are concerned about the accountability of the landlord when issues are raised by tenants with regards repairs of housing quality. For instance, top of the criteria list in the Explanatory Memorandum for "criteria for unfitness for human habitation" is damp and mould growth. This can cause serious health issues. The contract-holder can bring a claim against the landlord if this is not dealt with, but this is extremely intimidating for a lot of people. We hope that the Welsh Government would consider the feasibility of a complaint function within the office of the Public Services Ombudsman, or a new body.

14. It would be easier if a time limit was placed on the landlord, for how soon they have to inspect and remedy the problem. We are also concerned about 140 (EM). What limit will be placed on reasonable effort, with regards to access? The landlord will not be liable if they cannot access areas with reasonable effort. But what if the problem persists? Will the contract-holders be forced to live in a house not fit for habitation? This is an area that needs clarity.

Part 5

15. 104 (1) is of concern to us in this section. The landlord should of course be able to increase proportionally rent as they see fit, but there is no clear right of appeal. We are glad that 104 (3) (b) is in place, but we still believe that a percentage increase in rent should have a right of appeal.

16. The issue of what is reasonably practicable is another challenging one, but it is very relevant to 111 (4). The landlord must give notice to other contract-holders when it is "reasonably practicable". This is surely something that there can be, and must be, a firm timeframe on. We would propose 7 days at the very most, considering how most contract-holders will be looking to give one months' notice.

17. We would also like to put on record our strong support of the principle for parts of this legislation; notably, that often one tenant serves a withdrawal notice and it leads to the entire party being withdrawn. Such issues must be addressed, and we are glad that this legislation seeks to do that.

Parts 6 and 7

18. We are broadly happy with the specific proposals for Parts 6 and 7.

Part 8

19. Our concerns here relate to 145, Temporary Exclusion. A supported individual may be asked to leave the property for 48 hours. The acts for which this can be done are in 145 (2). However, it is unclear whether or not an independent body will be involved to ensure that this is not done on an ad-hoc basis.

Part 9

20. We have cause for concern with 155. The contract may end upon the death of the landlord. Systems will need to be put in place to ensure that the contract-holders are not immediately evicted from the property.

21. We would strongly reinforce our earlier points, regarding flexibility within contracts for students/contract-holders who wish to break their contract.

Parts 10 and 11

22. We are satisfied with these parts.

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