

RH 07

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/  
Communities, Equality and Local Government Committee  
Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill  
Ymateb gan: Professor Martin Partington  
Response from: Professor Martin Partington

**A short memorandum of evidence from Professor Martin Partington CBE QC  
former Law Commissioner for England and Wales**

## **Introduction**

I have been invited to submit a short note of evidence in relation to the Renting Homes (Wales) Bill 2015.

As members of the Committee will know, I was the Law Commissioner responsible for leading the work at the Law Commission which led to our reports on the subject. In a sense, therefore, what I might wish to argue here is all set out in our published reports. This note is however a personal note. It does not represent the views of the Law Commission

I would, however, like to take this opportunity to make a small number of additional points that relate to implementation.

- **Publicity**

Although those familiar with the existing law can see how it maps on to the proposed new law, there are changes in terminology that all those involved in the rented sector will need to come to terms with. The Law Commission always thought it very important that whichever government enacted its proposals, there would need to be a significant public education programme about the changes, to remove fear of the unknown, and to help people understand the advantages of the reformed law.

### **1. Plain language model agreements**

The model tenancy agreements - which will reflect the statutory provisions of the new law - must be written in plain language so that those most affected - landlords and tenants - understand both their rights and responsibilities under those agreements.

### **2. Tenancy deposits**

The Law Commission's reports were written before the Tenancy Deposit Protection schemes were introduced. As I now chair the Board of one of those schemes (The Dispute Service - TDS) I am aware that

there are some issues concerning what happens when one of a number of joint tenants wants to leave the agreement. I understand that TDS is submitting more detailed evidence on this issue. This will need to be considered carefully.

### **3. Fixed term agreements**

The Law Commission was anxious to get across the message that where more security of tenure was desirable for standard contracts - but short of the full security available under the secure contract - this should be achieved by the use of the contract, which can be applied flexibly, rather than by general statutory rules that are inevitably less flexible. I look forward to seeing the Welsh Assembly Government encouraging innovation in the provision of standard contracts of different lengths.

### **4. Abolition of the 6 month moratorium**

I understand that there is still concern about the proposal to abolish the 6 month moratorium. I have been commissioned by Welsh Housing Quarterly to write a short article on the case *for* abolition. I attach this as an annex to this note of evidence.

### **5. Estate management ground for possession**

I thought our recommendations relating to this ground were important. If I may make a personal and perhaps rather political point, my own view is that the spare bedroom limit under the Housing Benefit scheme - the so-called 'bedroom tax' - was, in essence a reflection of the fact that social landlords were not managing their estates as effectively as they should. It is therefore arguably unfair that the burden of this lack of active estate management should fall only on the families concerned. I accept that many social landlords, with limited availability of accommodation, may in any event find it hard to move people. However, the creation of the single social tenure should enable social landlords to work together to manage their portfolios in such a way that families affected by the bedroom tax may be helped more easily. It may also be possible for local authorities to enter agreements with private landlords that they provide accommodation in specific circumstances to people on a secure tenancy basis - putting such tenants on the same footing as others in the social rented sector. It will be necessary to stress in this context that security of tenure means that, while a secure tenancy will be provided, the address of that tenancy may have to change.

### **6. Investment**

One of the bases on which the Law Commission undertakes all its work is that it does not engage in projects that are highly party political. The opportunity for the Commission to undertake the Renting Homes project arose from the high degree of party political consensus that would enable a new framework for renting and letting to be created without major changes to the underlying structure of the law. In the intervening years, the rented sector has become considerably more important in the delivery of housing services. The private rented sector in particular has grown significantly. One of the challenges is to encourage more investment in build-to-let. We were told that a new legal framework that appeared to offer a secure base against which long-term investment decisions could be made (as happens in other European countries - notably Germany) would be welcomed by investors.

## **7. The situation in England**

I am certain that the Welsh Assembly Government is not thinking about the implications for England of its decision to implement the Renting Homes Bill. If, however, after the implementation period is over and the new scheme has bedded down, I hope that experience in Wales may be used to encourage the London Government to review its current decision not to implement that Law Commission's proposals. It is, in any event, likely that many landlord and agents who operate on both sides of the border will want to argue that the law should be the same in both countries.

## Annex

# Abolishing the six month moratorium: the case in favour

by Martin Partington<sup>1</sup>

### Introduction

Since I was the person who led the programme for the reform of Housing Law which the Law Commission for England and Wales carried out in the period 2001-2006. Our aim was to create a framework which - once in force - would make the rights and responsibilities of both landlords and tenants clearer.

### Our approach: increasing flexibility

Under our Terms of Reference, we were asked, in effect, to recast the then existing law into a more rational framework. At the same time we were asked to increase flexibility in the market by enabling local authorities, social landlords and private landlords to work together to offer rented housing services to those who needed them in innovative ways, and bring investment into the market.

Thus, we should not seek to change the rights and obligations that existed under the current law, *unless* the existing rules created an impenetrable obstacle to achievement of the principal objectives of clarity and flexibility.

Two key issues emerged in relation to which we had to balance the retention of the status quo and the desire for clarity and flexibility. The first was abolition of Ground 8 - which gave a mandatory ground for possession to landlords where their tenants were more than two months in arrear of rent.

This proposal was resisted by housing associations. But to have retained it would have prevented housing associations from being able to let on exactly the same terms as local authorities - a key objective to promote flexibility.

The second was abolition of the 6 month moratorium, to which I now turn.

### Abolition of the 6 month moratorium

The private rented sector is currently based on assured shorthold tenancies, where tenants do not have long-term security of tenure guaranteed by legislation, but they do have a minimum period of 6

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<sup>1</sup> Former Law Commissioner for England and Wales; I write here in a purely personal capacity.

month's occupation before a court can make an order for possession against him or her (on the assumption that there was no breach of the tenancy agreement). We asked whether this vestige of statutory security of tenure should be retained under our proposed scheme.

The Commission received many submissions that the 6 month moratorium should be retained. But on the basis of the evidence we received, that there was little evidence that it retained any practical value.

On the contrary. In general landlords do not want to bring tenancies to an end after only a short period of time. It is better for business to keep tenants in occupation rather than risk period of voids when no income is coming in. The Explanatory Memorandum on the Renting Homes (Wales) Bill, offers the latest figures on this point.

It could be argued that if most tenancy contracts are for at least 6 months, then no harm is done by retaining the moratorium. We nonetheless recommended abolition for two main reasons:

- the moratorium did cause some unnecessary inflexibility in the private rented sector. There is a potential demand for one month or three month tenancies. We did not see why these should be excluded from the scheme of standard contracts we were proposing;
- more importantly, we wanted to change the way people thought about their obligations when they rent. We wanted to encourage parties to agree the period of the tenancy, and then have a clear regulatory framework that would enforce those agreements. We were not against the idea of security tenure. But we argued that security should be created by the parties' agreement, not by a rigid statutory framework to which all tenancies had to conform.

In Wales, I understand that discussions are already under way between some landlords' organisations and the Welsh Assembly Government about the creation of a 5 year tenancy. That would be completely possible under the Renting Homes scheme. This would not be the only option: you could have 2 year tenancies; or tenancies which last until the children in the household reach school leaving age.

Special contractual arrangements could be made between local authorities and private landlords for longer term tenancy contracts for housing homeless persons or housing people in need of social housing from the housing waiting list.

Some may argue that abolishing the 6 month moratorium will encourage that minority of really bad landlords to carry on evicting tenants as and when they please. Our response to that is that the 6 month moratorium is not deterring bad landlords from behaving badly. Dealing with bad landlords needs to be done by ensuring that enforcement measures are in place to prevent really bad landlords from continuing to operate in this sector of the market.