RH 18
Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/
Communities, Equality and Local Government Committee
Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill
Ymateb gan: Shelter Cymru
Response from: Shelter Cymru

Shelter Cymru works for the prevention of homelessness and the improvement of housing conditions. Our vision is that everyone in Wales should have a decent home. We believe that a home is a fundamental right and essential to the health and well-being of people and communities.

Vision

Everyone in Wales should have a decent and affordable home: it is the foundation for the health and well-being of people and communities.

Mission

Shelter Cymru's mission is to improve people's lives through our advice and support services and through training, education and information work. Through our policy, research, campaigning and lobbying, we will help overcome the barriers that stand in the way of people in Wales having a decent affordable home.

Values

- Be independent and not compromised in any aspect of our work with people in housing need.
- Work as equals with people in housing need, respect their needs, and help them to take control of their lives.
- Constructively challenge to ensure people are properly assisted and to improve good practice.

Summary of key recommendations

- The standard periodic contract should be amended so that, following a six-month probationary period, private landlords cannot evict tenants without good reason. Unless the Bill is amended to increase security of tenure in the periodic standard contract, we strongly oppose the removal of the six-month moratorium.
- The Welsh Government should investigate the feasibility of establishing a specialist tribunal for resolving housing-related disputes.

- The Bill should require private landlords to provide carbon monoxide alarms and five-yearly electrical safety checks in all properties; and should require landlords to provide relevant safety certificates.
- The Key Matters element of the contract should include 'fitness for human habitation' so that the state of the dwelling is listed.
- Landlord contract breaches should be recorded against their licence, with serious or repeat breaches leading to revocation of the licence.
- The prohibited conduct clause should be amended to reinstate the requirement to evidence a criminal conviction.
- We recommend the restoration of the right of the tenant to apply to the Rent Assessment Committee, and also the restrictions on rent increases in the first year of a tenancy.
- Supported accommodation providers who choose to operate an exclusion policy should be required to assist excluded tenants to present as homeless to the local authority in order to access temporary accommodation for the 48-hour period and remove the necessity to sleep rough. Decisions to exclude should always be taken by a senior manager.
- In relation to abandonment, we recommend either extending the notice period to eight weeks, or providing detailed guidance to landlords which must include a minimum period of eight weeks with no rent being paid.
- The Bill should ensure that all pre-existing assured tenancies convert to secure contracts, not just those in the social sector
- Our Legal Team has also identified a number of other areas that could benefit from clarification – these are detailed at the end of this response.

Introduction

Shelter Cymru welcomes the opportunity to respond to this consultation. Reform of tenancy law is long overdue and we are supportive of the overarching approach of the Renting Homes Bill. Tenancy law has become so complex over the years that it has been effectively taken out of the hands of those who need to refer to it – landlords and tenants – both of whom often need to source professional legal assistance to perform transactions that should be relatively simple to do themselves in an efficient system.

Problems in the private rented sector (PRS) make up nearly a third of our casework which is greatly out of proportion to the actual size of the sector (14 per cent of all housing). Many of these problems could be resolved more easily or even avoided entirely if the legal basis for tenancies were more straightforward. Simply ascertaining which type of tenancy someone has can be the cause of lengthy litigation. Illegal evictions are all too common, partly because the law is so prescriptive about the correct process. Tenants and landlords often fail to appreciate their responsibilities and rights, while tenancy agreements are written in incomprehensible language and don't fully describe the actual terms of the legal relationship.

Another consequence of the complexity of the current law is that certain anomalies have developed over time – such as the restrictions around joint tenancies, for example, and the relatively minor differences between local authority and housing association tenancies – and these tend to make the whole system less flexible and responsive to people's needs while serving no clear purpose.

We strongly welcome the Bill's emphasis on the consumer approach, underpinned by clarity and transparency and supported by the universal provision of written contracts. We also welcome the open and consistent way in which the Welsh Government has consulted stakeholders in developing the proposals since 2011 which we feel has already strengthened the scheme in certain areas.

Despite our broad support for the Bill, however, we are concerned about the apparent erosion of tenants' rights in several important areas, including protection from rent rises, the preservation of the rights of fully-assured private tenants, and not least the loss of the six-month moratorium.

We have strong concerns about the lack of security in the periodic standard contract and the likely impact of this on the wellbeing of private tenants as well as the development of the PRS as a whole.

'No-fault' eviction powers are often used inappropriately because landlords perceive that they are easier to use than discretionary powers. Landlords may wish to evict tenants for alleged anti-social behaviour or similar reasons, but often use no-fault powers in order to avoid the perceived uncertainty of using discretionary grounds.

This means that tenants are denied the right to defend their actions and their home, in much the same way as the current Ground 8, which the Bill proposes to remove for social housing along with mandatory possession powers for anti-social behaviour (ASB).

We believe that the spirit of the Renting Homes Bill is about ensuring that the new legal framework is fit for purpose and that grounds are used as they are intended to be used.

Within the Bill there is also a general move away from mandatory grounds, and a broad recognition that there should be judicial oversight over a matter as important as someone losing their home. However, the periodic standard contract as currently framed in the Bill enables landlords to keep tenants on periodic contracts indefinitely – within two months' notice of homelessness at any time, including during the first six months – thus making it considerably easier to use the no-fault 'landlord's notice' grounds.

This will make it even less likely that landlords use appropriate grounds, thus preventing the proper exercise of judicial discretion, as well as masking the true extent of problems in the sector that could potentially be addressed by other policy measures.

This imbalance of power is illustrated in section 126 of the Bill: when giving notice of a variation of a periodic standard contract, the landlord must inform the tenant that unless they consent to the variation, the landlord will issue notice seeking possession.

This amounts to a unilateral variation of a contract – conflicting with an important principle of common law – something that we believe undermines the whole concept of the consumer approach.

Current and former private tenants consulted as part of our response state clearly that stability and security are essential qualities of a home. If the periodic standard contract becomes the default contract for the PRS, as is currently proposed, then it will inevitably end up applying in many inappropriate situations, prejudicing the most vulnerable members of the community, as well as giving Wales the distinction of having the most insecure private rented sector in the whole of Western Europe.

We have a number of recommendations for improving this aspect of the Bill and others. We also have a number of specific comments from our Legal Team, which are detailed at the end of our response.

Security of tenure and the periodic standard contract

We know that Committee members already have a good understanding of the evidence around the changing nature of the Welsh PRS and the growing demands being placed upon it. The sector is no longer primarily housing transient workers and students but is home to an increasingly diverse range of people including households with dependent children who now make up a third of all PRS tenant households[1].

So far tenancy law has not kept pace with these changes, and in recent years the most common tenancy in the PRS (the Assured Shorthold Tenancy or AST) has become the focus of much targeted campaigning by private tenants' groups. Although in Wales we have no strong private tenant voice, elsewhere in the UK there is remarkable consistency in the policy asks of private tenants' groups: *'secure tenancies for all – for as long as you want to stay'*[2] is a key demand for the vast majority of grassroots groups.

Below are some comments from current and former private tenants who are involved in Shelter Cymru's Take Notice project:

'I wouldn't ever go back to privately rented just because of the insecurity of having someone else decide the rest of your life really and the future for you.'

'We were evicted (from privately rented accommodation), we were made homeless with a new baby and suffered extreme trauma and basically it was heart-breaking.'

'I'd never want to go back (to privately renting) unless I really was desperate and I had to. I'd never want to live that way again.'

'That's my ultimate goal at the moment is to save enough for somewhere to call mine for as long as I want to really, and not have to worry if my landlord has other plans.'

[1] Census 2011
[2] Haringey Housing Action Group

'For me (security of tenure) is quite an important thing because I've got a daughter and that's why you need the stability because otherwise you can't plan for your future or your children's future either.'

As well as the voice from private tenants themselves there is also a growing body of statistical evidence emphasising the need for more secure tenancies. In 2014 we carried out a YouGov survey of private tenants in partnership with British Gas – the biggest private tenant survey ever carried out in Wales[3]. This survey asked respondents whether it would suit them to have a short-term tenancy of less than six months. Only 13 per cent said it would suit them to have a short-term tenancy – while 58 per cent said that it would not suit their needs.

In short, the evidence shows that tenants have varying requirements, some preferring short-term flexibility while others value long-term stability. But the two are not incompatible: security of tenure need not be at the expense of flexibility. A robust legal framework should be able to provide both, meeting the needs of different tenants equally effectively.

The current perception of insecurity among private renters plays a significant role in hampering the development of the sector. Addressing tenants' concerns about security should be a key element of proposals to reform tenancy law. However, the periodic standard contract proposed under Renting Homes not only fails to address these concerns, but actually travels in the opposite direction with the proposed removal of the moratorium.

There is a real danger that Wales will end up with the dubious distinction of having the most insecure PRS in the whole of Western Europe – not only because of the loss of the moratorium but because developments are underway elsewhere in the UK that could see the end of short-term insecure PRS tenancies in Scotland and England.

Currently, proposals for more secure private tenancies are being considered at a number of different levels in the UK:

- The Scottish Government has recently consulted[4] on a new tenancy for the private sector that includes the removal of 'no-fault' eviction powers. The consultation document states that: '*Better security of tenure may persuade more tenants to assert their existing rights, for example on the condition of their homes, without fear of eviction. Knowing they can only be asked to leave their home on certain specified grounds is likely to give them a greater feeling of security. In short tenants may feel they have more power and sense of community*.' In common with Renting Homes, the proposals include measures to simplify and streamline possession procedures so that landlords have more confidence that they can gain possession if they need to.

- In May 2014 the Labour Party in England announced proposals to introduce three-year private tenancies with regulation of rent rises: '*We will change the law to make three-*

[3] We commissioned YouGov Plc to carry out a Wales-wide survey of PRS tenants. Total sample size was 602 adults. Fieldwork was undertaken between 11th December 2013 and 16th January 2014. The survey was carried out online. Figures were weighted to be representative of all private renters in Wales (aged 18+).
[4] http://www.gov.scot/Resource/0046/00460022.pdf

year tenancies the norm instead of the six or 12-month short-term tenancies that most renters have now – so that landlords and tenants both have more stability, but with the ability to terminate contracts early with proper notice if they have to.'[5]

- Greater security of tenure has also been considered by the Conservatives: Eric Pickles MP proposed a 'tenants' charter' at the 2013 party conference that would give tenants the power to demand longer fixed terms. We understand that discussions on longer fixed terms are continuing between the Conservatives and the Residential Landlords' Association.

Within Europe, the UK's private rented market is unusual for offering such low security to tenants. Most other countries have standard lease lengths or open-ended leases: Austria's are a minimum of three years; Spain's are five years; Belgium's are nine years; Germany's, Sweden's and Switzerland's are unlimited.

In the Republic of Ireland, four-year tenancies were introduced by Part IV of the Residential Tenancies Act 2004: following a six-month probationary period, provided tenants haven't been given written notice of termination they automatically acquire the right to stay for a further three-and-a-half years. Part IV tenancies can only be ended on specific grounds and can be periodic or fixed term.

The Renting Homes Bill gives Wales an opportunity to lead the way in the UK in creating a more secure and sustainable PRS. Greater security of tenure would also demonstrate the Welsh Government's commitment to the rights of the 112,000 children living in the Welsh PRS[6], whose education and wellbeing are highly vulnerable to disruption if they have to move home frequently.

Security of tenure: our preferred solution

We have been vocal opponents of the proposal to remove the six-month moratorium that protects tenants from eviction during the first six months of their tenancy. We see the current moratorium as a bare minimum of security: if the Welsh Government intends on retaining the periodic standard contract in its current form as the default for all PRS tenancies, the removal of the moratorium is highly likely to reduce the proportion of fixed terms that are offered to private tenants, particularly those on low incomes.

In our view, this will create a two-tier PRS where the most vulnerable tenants will also have the least bargaining power with landlords due to their weak security of tenure. It will be impossible for families in these circumstances to put down roots and find stability.

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[5] http://www.labour.org.uk/issues/detail/renting

[6] According to the Census 2011 there were 66,125 households with dependent children in the Welsh PRS. Average number of children per family was 1.7

However, Shelter Cymru believes that we should be more ambitious than fighting to retain a mere six months' security. We believe that it is consistent with the principles of Renting Homes to ensure that the new framework is fit for purpose and that grounds for possession are used as they are intended to be used.

There is a broad principle within Renting Homes that there should be judicial oversight over something as important as losing a home: however, that principle has not yet quite translated to the standard contract despite the fact that more vulnerable people are living in the PRS than ever before. The current proposals simply make it too easy for landlords to evict on mandatory grounds in circumstances when they should be using discretionary grounds to give tenants the right to defend their home.

We believe that the right solution for Wales is to offer security of tenure to all PRS tenants following a six-month probationary period during which the landlord has ready access to the 'landlord's notice' ground. Following this probationary period, tenants should have the right to stay as long as they choose, unless they breach the terms of the tenancy.

An alternative solution would be to offer standard tenancy lengths of four-and-a-half years, following the probationary period, giving tenants a total of five years' security of tenure on a cyclic basis. Within the five-year period tenancies may be periodic or fixed term as required, as is the case in Ireland, to enable landlords to safeguard their income. Notice periods for tenants would remain the same as currently proposed in the Bill.

Our preferred solution would be the former. In the case of the latter, we would like to see the Bill grant powers to the Minister to remove 'landlord's notice' grounds altogether via Regulations at a future date.

Either approach would need to permit landlords to raise rents by an acceptable rate within the tenancy. Mid-tenancy rent increases should be limited to no more than one per year and they should be subject to an upper limit in line with an inflationary index.

We also believe it is reasonable for landlords to have an additional ground so that they can gain possession if they need to sell the property.

For tenants, creating more security of tenure would:

- Give renters confidence that they can stay in their home for as long as they need, while also allowing the flexibility that tenants in both social and private sectors value about renting
- Foster more cohesive neighbourhoods and communities with higher levels of engagement from PRS tenants
- Empower tenants by enabling them to use their rights effectively and exercise consumer power to raise standards in the PRS

- Ensure that landlords use appropriate grounds for eviction and would ensure that evictions are carried out justly, with judicial oversight
- Support the increasing numbers of vulnerable people living in the PRS
- Promote a tenure-neutral approach to housing policy in Wales where the PRS is a viable third tenure option alongside social renting and owner-occupation.

For landlords, this approach would:

- Increase consumer confidence in the PRS as a provider of stable and secure accommodation
- Reduce the potential for void months where no rent is paid
- Encourage tenants to see a home as 'theirs' and care for it accordingly
- Encourage a greater focus on homelessness prevention – thanks to the Housing Act 2014, local authority homelessness services will be seeking to engage private landlords at an early stage before formal possession proceedings are begun. Landlords would be more motivated to access this assistance if they lack ready access to mandatory grounds
- Provide a tenancy framework that works for landlords, alongside clearly laid out grounds for possession that are considerably easier to use than current legislation.

This is why Shelter Cymru believes that addressing the insecurity of the PRS should be front and centre of the reform of tenancy law. This would provide the foundation for growth in the sector, and support private renting as a positive, stable housing option alongside social housing and home ownership. As an increasing number of people move to the private sector, and stay for longer, it is vital that we take this opportunity to modernise the tenancy regime.

Resolving disputes

Shelter Cymru recognises that changes to the tenancy regime must be fair and need to work for landlords as well as tenants. Landlords should be confident that they'll be able to regain possession if their tenant breaches the tenancy terms. The Renting Homes Bill will make it easier and more straightforward to use discretionary grounds, which will lead to more predictable outcomes, thus helping to address landlords' concerns in this area.

However we also agree with our landlord colleagues that the county court is not always the most effective route for resolving disputes. As well as the escalating court costs

themselves, we also find that a lack of expertise in housing law among District Judges can sometimes result in delays and poor decision-making that ultimately prejudice both parties.

Many other countries have specialist housing tribunals. The Republic of Ireland has a Private Residential Tenancies Board which now has jurisdiction over private tenancy disputes rather than the courts; Scotland has a Private Rented Housing Panel and recently consulted on a Housing Panel to oversee housing-related disputes across all sectors.

We suggest that the most cost-effective solution for Wales may be to expand the role of the Residential Property Tribunal, which is currently quite under-used.

Creating a specialist tribunal for Wales would considerably increase landlords' and tenants' confidence that they can resolve disputes quickly and fairly when they need to. We recommend that ensuring access to housing justice for all should be an integral part of the Renting Homes approach. While we understand it may not be practical to include this in the Bill itself, we hope that the Welsh Government is able to commit some resource to investigating the feasibility of this approach in future.

Improving home safety

We welcome the inclusion of landlords' repairing obligations in contracts. We also welcome the inclusion of protection from retaliatory eviction, which should give tenants greater confidence to assert their rights. However we also believe that the Renting Homes Bill is an opportunity to improve home safety in further ways.

Our survey carried out jointly with British Gas revealed that nearly two-thirds (64 per cent) of private tenants said that they had had at least one of the following problems in the previous 12 months: damp, leaking roof or windows, electrical hazards, mould, animal infestations or gas leaks.

Just over half were aware that a gas safety check had been carried out in the last 12 months, and one in six (17 per cent) said they had electrical hazards.

One in 10 tenants said that their health had been affected due to the landlord not dealing with repairs and poor conditions over the last 12 months; and of those with dependent children, one in ten said their children's health had suffered.

Further research carried out by British Gas and Shelter England found that just over four-fifths of landlords ensure they have some sort of electrical check carried out at their properties. Of the estimated 189,600 properties in the Welsh PRS, this means there are likely to be around 36,000 without any planned electrical checks.

We would like to see the Renting Homes Bill:

- Require the presence of an audible carbon monoxide alarm in all PRS properties
- Require five-yearly electrical safety checks in all PRS properties

- Require landlords to provide Energy Performance Certificates, gas safety certificates and proof of electrical safety checks to tenants along with the contract at the start of the tenancy and every 12 months thereafter
- Ensure that the Key Matters element of the contract includes 'fitness for human habitation' so that the state of the dwelling is listed.

Enforcement

Cuts to Environmental Health budgets and Legal Aid have both made it considerably more difficult for tenants to enforce their rights in respect of disrepair in recent years. While there is no easy legislative solution to these problems, we believe that existing resources could be used more effectively with stronger links between the Renting Homes Bill and Part 1 of the Housing (Wales) Act. In particular, we think the Bill should ensure that landlord contract breaches are recorded against their licence, with serious or repeat breaches leading to revocation of the licence.

Prohibited conduct

The Bill is an opportunity to define a distinctly Welsh approach to dealing with anti-social behaviour, diverging where appropriate from the Anti-Social Behaviour, Crime and Policing Act. The Welsh Government has already signalled willingness to do this with the proposed removal of the mandatory ground for possession for ASB in the secure contract.

We welcome the broad approach taken by the 'prohibited conduct' clause and the reintroduction of the discretionary ground. However we still believe that the clause as currently worded is too broad. In particular, we are concerned that the Bill removes the requirement for a landlord to produce evidence of an actual conviction. This is a considerable relaxation of the current criminal activity ground for possession.

Existing law[7] states that 'The tenant or a person residing in or visiting the dwelling-house *has been convicted of* using the dwelling-house or allowing it to be used for immoral or illegal purposes, or *has been convicted of an arrestable offence* committed in, or in the locality of the dwelling-house' (emphasis added).

By contrast, section 55 of the Bill states that a breach of contract would be using, or threatening to use, the premises for criminal purposes. A landlord would not have to produce evidence of a conviction as now, and could for example rely on a caution, or lay witness evidence – a situation that would be very open to abuse. **We strongly recommend that the requirement to produce evidence of a conviction is reinstated.**

[7] Ground 2(b) of Sch 2 Housing Act 1985 (Grounds for possession let under secure tenancies)

Rent increases

We welcome the fact that the Bill has restricted rent increases to a maximum of one per year. However, the Bill excludes several other aspects of current legislation that are necessary to protect tenants from disproportionate rent rises, and we would strongly recommend their reinstatement.

Firstly, the Bill appears to remove the contract-holder's right to apply to the Rent Assessment Committee (RAC) as now under the Housing Act 1988 ss.13/14. At present, if before the beginning of the new period from which the increase is to take effect, the tenant applies to the RAC, the increase does not take effect pending the decision of the Committee.

The Bill gives the landlord a right to increase, in the first instance, at any time, and for any amount. **This is effectively a landlord's charter to increase the rent without any independent scrutiny, and constitutes a removal of protection for private tenants.** If the tenant doesn't agree with the increase, it appears their only option is to give notice and leave.

Landlords have a tendency to try and recover via a rent increase money they have had to spend on repairs (not improvements), and the Bill as drafted could not prevent this, whereas the RAC would not permit an increase on those grounds. We strongly recommend reinstating tenants' rights to apply to the RAC.

Secondly, section 123(3)(a) of the Bill allows the landlord to increase the rent as soon as two months after the beginning of the contract, unless the contract includes a term fixing the rent for a minimum period. This is considerably sooner than is permitted in current legislation[8], which does not allow an increase earlier than one year from the outset of the tenancy, unless provided for in the tenancy agreement.

We would urge that sections 13 and 14 of the Housing Act 1988 are re-enacted in the Bill.

Exclusions in the Supported Standard Contract

We support the provisions relating to the Supported Standard Contract, which will increase tenants' housing rights while also giving flexibility to providers to ensure best use of their resources. Our main concern relates to the proposal to temporarily exclude occupiers of supported accommodation.

We understand that many providers already exclude service users in some circumstances when they feel they need to protect other residents. However it is also the case that other providers operate non-exclusion policies, in recognition of the fact that excluding

[8] Housing Act 1988

vulnerable people can lead to further detrimental impacts not only for the individual but also for the wider community.

The very nature of supported accommodation is that it is occupied by the most vulnerable people of society. Such people are likely to find it very difficult to access support or health services or seek legal advice within this period of exclusion. These people would be at serious risk of being forced to live on the streets for up to 48 hours.

Tenants who have been excluded would be defined as homeless under section 55 of the Housing (Wales) Act 2014, and would be eligible for temporary accommodation for that 48-hour period due to their vulnerability.

We recommend that the Bill is amended to require those supported accommodation providers who choose to operate an exclusion policy to assist excluded tenants to present as homeless to the local authority in order to access temporary accommodation and remove the necessity to sleep rough.

The Bill should also require decisions to exclude to be made by a senior manager, following existing best practice in the sector.

Abandonment

While we understand the need to simplify current processes for dealing with abandonment, the current proposals run the risk of disadvantaging vulnerable tenants and are also open to abuse by landlords.

Case law has established that a tenant may leave premises for a long absence without being deemed to have abandoned the property, provided they retain an intention to return. For example, a tenant could leave the premises to visit family abroad for as long as two years, leaving his possessions on the premises and a caretaker person to pay rent, and can be deemed to be continuously occupying.

Under the procedure outlined in the Bill the landlord must make inquiries to satisfy himself that the contract holder has abandoned. Under the procedure it seems that the landlord can deliver notices, make some enquiries, end the contract after the expiry of the warning period of four weeks if the inquiries do not result in any information, and recover possession without a court order.

While there is a process for appealing the notice within six months we do not believe this gives sufficient protection for tenants who may, for example, have been taken into hospital for extended periods and not received the warning notice. There is an implication that there is a duty on the contract-holder to inform the landlord of his or her whereabouts, or risk losing the contract.

Even if the court overturns the notice and orders that the landlord provide suitable alternative accommodation there is no guarantee that suitable accommodation will be available, particularly if the landlord is not a social landlord. A disabled tenant, or one who

has learning difficulties, for whom no other accommodation would be suitable, would be particularly prejudiced by this procedure.

A four-week notice period is insufficient to establish whether a property has indeed been abandoned. For example, it may not be possible to ascertain whether rent is being paid within that four-week period since many rental periods are per calendar month.

We recommend either extending the notice period to eight weeks, or providing detailed guidance to landlords which must include a minimum period of eight weeks with no rent being paid.

Security for fully-assured private tenants

It is clear because of the provisions in Part 2, Chapter 1 that pre-existing tenancies with community landlords will convert to secure tenancies. However, those pre-existing fully-assured periodic tenancies with private landlords will convert into a standard contract unless the landlord gives notice that the tenancy is to be a secure contract (s.17(1)). If the landlord chooses not to, the tenancy becomes a standard contract, with the consequent significant loss of security because of exposure to a s.172 ‘no-fault’ landlord’s notice.

This tendency was legislated against in the Housing Act 1988, under which a landlord cannot grant an AST to a tenant who was immediately previously their fully-assured tenant. This prevents landlords reducing tenants’ rights by issuing a new AST which in our experience they often try to do.

We strongly recommend insertion of a term to ensure that all existing fully assured tenancies convert to secure tenancies, whoever the landlord may be.

Further clarity

Finally, our Legal Team has highlighted a number of further areas in the Bill that could benefit from clarification, in order to reduce uncertainty and legal challenge post-implementation:

- Although the Bill aims to reduce distinctions between tenancies and licences, there may still be instances when a contract-holder will need to know whether she or he is a tenant or licensee, and it is hard to predict when these circumstances will arise. There is nothing in the Bill to require the contract to state whether it is a tenancy or a licence. Potentially this may lead to confusion. We suggest that the Key Matters should be required to state whether it is a tenancy or licence.

- On the provisions relating to protecting deposits, it is unclear whether the sanctions apply when the landlord complies with the requirements late. For example, if the landlord protects the deposit and/or provides the prescribed information after say 31 days, can the landlord serve a landlord’s notice, or can s/he only do so after s/he

returns the deposit to the contract-holder? For the sake of clarity, we suggest that the Bill is amended to bring it into line with the existing provisions of the Housing Act 2004 as amended by the Localism Act 2011.

- There is a lack of clarity in section 66 of the Bill (on sub-occupation contracts) regarding the situation where a contract-holder (i.e. the sub landlord) abandons both the contract with the head landlord and the sub-contract holder/s. The sub-contract holder may apply to the court for an order that the contract-holder's rights and obligations are transferred to the head landlord. Subsection 10 does not allow the court to make the order if the head landlord persuades the court that a possession order against the sub-contract holder would have been made on application for possession by the contract-holder. The Bill is not clear about what then happens – the court cannot make an order to transfer rights and obligations to the head landlord, but no further provision is made as to any other order the court might make. The court cannot make a possession order unless notice has been served. Does the head landlord have to follow the procedure for serving notice to the contract-holder, and copying it to the sub contract-holder, apply for possession and extended possession? Further clarity on this point would be helpful.

- Section 172 does not require a landlord to give reasons for the decision to terminate an introductory or prohibited conduct. Under current law, a notice to terminate an introductory or demoted tenancy must give reasons – failure to do so is a defence against a possession claim. It is a matter of public law duty for the community landlord to provide the reasons in order for the contract-holder to address them in the representations to a review. We suggest adding a subsection to s.150 to state that, in the case of a s.172 notice served to terminate an introductory or prohibited conduct standard contract, the notice must inform the contract-holder of the reasons for the decision to terminate the tenancy.

- Section 152 (termination by agreement) enacts the law of express surrender where the parties agree for the tenancy to end on a certain date. At present, express surrender has to be effected by deed. While this section replaces that requirement, there is no requirement for the agreement to be in writing – we recommend that the agreement should be in writing signed by both landlord and contract-holder.

- In addition, it is unclear whether the Bill excludes the common law surrender by operation of law, where the parties each do an unequivocal act that clearly treats the tenancy as at an end. It would be very undesirable for surrender by operation of law to be abolished by the legislation – can the Bill be amended to expressly include it?

- Under the estate management grounds for possession, reasonable removal expenses must be paid by the landlord for all grounds except the redevelopment grounds (A and B in Schedule 8). Why is an exception being made for grounds A and B? We would recommend that the landlord pay reasonable removal expenses for all estate management grounds.

- Sections 186 and 191 govern break clauses in standard fixed term contracts. Usually a prudent landlord includes a break clause in a fixed term which can only operate if the tenant defaults on rent or breaches the contract. In our view it is unacceptable to give the landlord a right to bring a fixed term contract to an end early where the tenant has not defaulted – particularly with the removal of the moratorium, which will allow the landlord to grant a standard periodic contract if s/he wants to reserve the right to end the contract after less than six months. We recommend that section 191 is amended to require break clauses to operate only if the contract-holder breaches the contract.

- We welcome that the Bill (in s.203) removes the requirement for a divorced spouse to apply to court under the Family Law Act 1996 to be joined to proceedings. However, we would also recommend including any unmarried ex-partners still living in the former shared home in this section, to avoid any inequality arising here.

- Finally, section 214(9) governs the right of a contract-holder under a standard contract to apply for judicial review to the county court of a possession claim by a community landlord on a mandatory ground. The Bill proposes to remove the right of a tenant to apply for judicial review after an order has been made. This restricts the current position, whereby a tenant can apply to set aside a possession order and/or have a warrant suspended while a judicial review is made to the High Court. It would be procedurally simpler for a contract-holder if an application for review could be made in conjunction with an application to set aside a possession order.

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