

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol
Communities, Equality and Local Government Committee
CELG(4)-14-15 Papur 2 / Paper 2

Lesley Griffiths AM
Minister for Communities and Tackling Poverty

8 May 2015

Renting Homes (Wales) Bill

Dear Minister

As you are aware, the Committee is in the process of hearing oral evidence on the Renting Homes (Wales) Bill. There are a number of matters that have arisen during the course of the evidence sessions that I would like to draw to your attention in advance of our second meeting with you. In order that we can make the best use of that meeting, I would be grateful to receive your response to the points below **by 14 May 2015**. For convenience, a summary of points for response is included at the end of this letter.

Repeals and Amendments

The Bill will require extensive repeal and amendment of existing legislation. However, this material is not in the Bill itself and is left to subordinate legislation. In order to consider the Bill fully, we need a clear understanding of the repeals and amendments that will be made as the Bill comes into force.

As such, I would be grateful if:

1. you would arrange for us to receive a list of the repeals and amendments proposed for the Bill, and
2. you would give consideration to including this information in the Bill itself.

Protection from Eviction

We note that the new abandonment process allows for recovery of possession without court proceedings. It seems that the Bill will therefore require repeal or amendment of the Protection from Eviction Act 1977. Additionally, the Housing Act 1988 provided for additional penalties for unlawful eviction for financial gain. The Bill does not replicate these provisions. As such, we have some concerns that the Bill could weaken the protection offered to tenants faced with unlawful eviction. I would be grateful for your response to the following questions:



3. What are your intentions in respect of the Protection from Eviction Act 1977?
4. If the 1977 Act is not to be repealed, how do you envisage landlords being able to evict tenants without court proceedings?
5. How will you ensure that landlords do not evict tenants for financial gain?
6. What are the implications for the rights under the “Convention” (see below) of contract-holders, especially as regards Articles 6 and 8?

Human Rights

The Bill’s provisions engage various Articles of the Convention for the Protection of Human Rights and Fundamental Freedoms (the “Convention”).

Article 8 protects a person’s right to respect for his or her home. This is subject to various conditions, such as protecting the rights of others. As you will know, a public authority may interfere with the right so long as it does so in accordance with the law, in pursuit of a legitimate aim, and as necessary in a democratic society (i.e. in a way proportionate to that aim).

The application of Article 8 to a person who rents a home is well established. The right protects an existing home. It does not give a person a right to acquire a home which they do not already have. In order to meet the requirements of Article 8, the law must balance the rights of both the landlord and contract-holder.

7. Are you satisfied that Article 8 rights will be retained for those existing tenants who convert to a contract under this Bill?
8. Are you satisfied that Article 8 rights will be retained for those who enter into new contracts under this Bill? In particular, how does the removal of the ‘6-month moratorium’ affect these rights?

Further, there are several provisions which specifically concern us from a human rights perspective.

Exclusions

We are concerned about the power in section 121 to exclude persons from their property for 48 hours. It appears that this exclusion will not be subject to any form of appeal or judicial oversight. On this point, you have previously told us that a review process would not be worthwhile as it would only render a decision after the exclusion had already ended. You also told us that the process was compatible with Article 8 of the Convention as it struck a proportionate balance between the rights of an excluded occupier and the rights of others.

We are also concerned that the use of the exclusion power could lead to persons becoming street homeless for periods of 48 hours. Given that this power will be used against those who are likely to have other difficulties or are vulnerable for other reasons, we are concerned that, in some cases, excluded persons could subsequently be arrested for other offences, or that their temporary exclusion



could ultimately lead to permanent loss of their home.

The lack of an independent review process could lead to a breach of the excluded person's right to a fair hearing under Article 6 of the Convention. The decision to exclude may also be amenable to judicial review, as it involves a decision being taken by a body exercising a public function.

Additionally, we understand that there is already a process in place to allow for emergency injunctions to exclude persons to be sought in the courts. In light of the above, there seems to be no reason for a process akin to the current emergency injunction powers not to have been included in the Bill.

Further to our concerns about Article 6 rights, we wish to highlight the potential for a breach of the excluded person's rights under Article 8. If the excluded person has been denied a fair hearing, they may also have had their Article 8 right to respect for private and family life violated.

Linked to the above, there may also be some difficulty as to the nature of the qualification of the right suggested. If the exclusion is justified on the basis that it strikes a balance between the rights of the excluded person and the rights of others, it will only be justified if the exclusion is to protect other residents to whom the landlord owes a duty. It will not be justified in relation to the landlord's staff or other neighbours who are not tenants of the landlord, as they do not have legitimate Convention rights against the landlord. Any balance would be based on whether it is proportionate, in terms of the general value to society, to exclude that person. It would also be the case that an exclusion could only be justified in the most serious of cases of anti-social behaviour. However, the Bill does not seem to do enough to limit the use of the power to those situations.

Finally, in the most serious cases (which are those in which the power to exclude would be most likely to be justified), there are already powers for the Police to arrest a person for their behaviour. That person could then be bailed to a different location while the matter is investigated. This would seem to achieve the objective of removing the person from the property, would be carried out by the most appropriate front line enforcement body, would contain an immediate power of further enforcement in the event the person returned to the property, and would avoid the risk of homelessness by the person being bailed to a bail hostel or similar location.

In light of the above, I would be grateful for your response to the following points:

9. How do you respond to the suggestion that the exclusion powers in the Bill violate Articles 6 and 8 of the Convention?
10. What consideration have you given to framing the wording of the exclusion powers more tightly to ensure that they are only used in the most serious cases where there is a real risk to other persons who have legitimate ECHR rights which are at risk of being violated?
11. What consideration have you given to producing statutory guidance setting out the manner and situations in which exclusion powers should be used, and ensuring the power can only be used by a senior member of staff who



has received appropriate training?

Eviction for nuisance or annoyance

Section 55 provides that a contract-holder must not engage (or threaten to engage) in “conduct capable of causing nuisance or annoyance”. This is to be a fundamental term of all contracts. If breached, the Court may make a possession order on the basis that the contract has been breached (section 156 and 205). The Court may only make a possession order where it is reasonable to do so.

However, the test of “conduct capable of causing nuisance or annoyance” appears to set a very low threshold for a possession order. The Court’s discretion may not be enough to prevent some landlords from engaging in bullying behaviour by threatening contract-holders with possession on this basis for very minimal levels of nuisance or annoyance.

12. How do you consider this provision to be proportionate under Article 8?

Conversion of secure contracts to standard contract

Under section 116, certain landlords can turn secure contracts into standard contracts in cases of anti-social behaviour.

13. How does this provision strike the right balance between landlords and contract-holders under Article 8?

Interference by superior landlord with contract-holder’s right to occupy

Section 54 provides that the landlord must not interfere with the contract-holder’s right to occupy the dwelling. Section 54(4)(b) provides that a contract-holder’s rights are considered to have been interfered with if a “superior” landlord interferes with the contract-holder’s right to occupy. So, in a scenario where A lets a house to B and B sublets the house to C, B may be in breach of section 54 where A does something to affect C’s right to occupy the house. This seems to put B in the position of being liable for something wholly outside of B’s control.

14. How does this affect B’s rights under A1P1? Is this proportionate?

Waste and tenant-like user

Section 101 removes the contract-holder’s liability for “waste” and “tenant-like user”.

15. How will this affect the landlord’s rights under A1P1?

16. Is it your intention to make regulations under section 23 (supplementary provisions) to address this?



Minors

We have concerns about the practicability of the provisions relating to minors, as well as the possibility for some unintended consequences.

The granting of a tenancy to a minor currently is possible but the minor is entitled to repudiate the contract, leave the property, and not pay rent. However, where they occupy property the landlord can sue for the rent. There are also problems in relation to possession proceedings as the landlord must sue themselves on the basis that they hold the property on trust for the minor as the minor does not hold a legal estate in the land but only a beneficial interest.

We are not clear about the extent to which the provisions in the Bill change that situation. We have heard evidence to suggest that the Bill as drafted will enable minors to be granted a legal estate in land on the basis that section 1(6) of the Law of Property Act 1925 is to be read as not preventing minors from having such an estate. That evidence suggested that the Welsh Government has no devolved powers in relation to property law and therefore that the alteration in reading to the 1925 Act is outside its competence.

17. How do you respond to the suggestion in evidence that the Welsh Government is not able to change the way that section 1(6) of the Law of Property Act 1925 is read?

We have also heard that injunctions are difficult to obtain against minors. This would place landlords in the position that, if they rent to a minor, they would, for example, be unable to obtain an injunction to access their property for the carrying out of a gas safety check.

18. How do you propose to deal with the difficulties posed by landlords being unable to seek injunctions against minors?

Asylum seekers

We have received evidence from the Law Society that asylum seekers should be excluded from being contract-holders on “social policy grounds”. We note that such provision would replicate existing law. If not excluded in this way, we heard that it could take several months to recover possession of a property that was needed for another asylum seeker. Further to this, the evidence suggested that accommodation providers could face financial penalties if accommodation was not available for new asylum seekers when required.

19. Could you clarify why the Bill takes this approach to accommodation used by asylum seekers?

Summary of points for response

1. Will you arrange for us to receive a list of the repeals and amendments proposed for the Bill?
2. Will you give consideration to including in the Bill the information requested as part of question 1?



3. What are your intentions in respect of the Protection from Eviction Act 1977?
4. If the 1977 Act is not to be repealed, how do you envisage landlords being able to evict tenants without court proceedings?
5. How will you ensure that landlords do not evict tenants for financial gain?
6. What are the implications for the rights under the "Convention" (see below) of contract-holders, especially as regards Articles 6 and 8?
7. Are you satisfied that Article 8 rights will be retained for those existing tenants who convert to a contract under this Bill?
8. Are you satisfied that Article 8 rights will be retained for those who enter into new contracts under this Bill? In particular, how does the removal of the '6-month moratorium' affect these rights?
9. How do you respond to the suggestion that the exclusion powers in the Bill violate Articles 6 and 8 of the Convention?
10. What consideration have you given to framing the wording of the exclusion powers more tightly to ensure that they are only used in the most serious cases where there is a real risk to other persons who have legitimate ECHR rights which are at risk of being violated?
11. What consideration have you given to producing statutory guidance setting out the manner and situations in which exclusion powers should be used, and ensuring the power can only be used by a senior member of staff who has received appropriate training?
12. How do you consider that section 55 is proportionate under Article 8?
13. How does the provision in section 166 strike the right balance between landlords and contract-holders under Article 8?
14. Section 54 provides that the landlord must not interfere with the contract-holder's right to occupy the dwelling. Section 54(4)(b) provides that a contract-holder's rights are considered to have been interfered with if a "superior" landlord interferes with the contract-holder's right to occupy. So, in a scenario where A lets a house to B and B sublets the house to C, B may be in breach of section 54 where A does something to affect C's right to occupy the house. This seems to put B in the position of being liable for something wholly outside of B's control. How does this affect B's rights under A1P1? Is this proportionate?
15. Section 101 removes the contract-holder's liability for "waste" and "tenant-like user". How will this affect the landlord's rights under A1P1?
16. Is it your intention to make regulations under section 23 (supplementary provisions) to address the point in question 15?
17. How do you respond to the suggestion in evidence that the Welsh Government is not able to change the way that section 1(6) of the Law of Property Act 1925 is read?
18. How do you propose to deal with the difficulties posed by landlords being unable to seek injunctions against minors?
19. We have received evidence from the Law Society that asylum seekers should be excluded from being contract-holders on "social policy grounds". We note that such provision would replicate existing law. If not excluded in this way, we heard that it could take several months to recover possession of a property that was needed for another asylum seeker. Further to this, the



evidence suggested that accommodation providers could face financial penalties if accommodation was not available for new asylum seekers when required. Could you clarify why the Bill takes this approach to accommodation used by asylum seekers?

I look forward to your response.

Yours sincerely,



Christine Chapman AC / AM

Cadeirydd / Chair

