



Llywodraeth Cymru
Welsh Government

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Chair
Communities, Equality and Local Government Committee
National Assembly for Wales
Cardiff
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Dear Chris

Renting Homes (Wales) Bill

Thank you for your letter of 8 May seeking information on a number of matters relating to the Renting Homes (Wales) Bill. Please find below responses in the order the matters were raised in your letter.

Repeals and Amendments

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?*

I would hesitate to give a list of amendments. Whilst work has commenced, making provision for consequential amendments is a matter of Bill implementation. As with other Bills, the intention is to make provision by means of Order. The Order will be subject to affirmative resolution.

It should be noted there may only be limited repeals. Since the Bill extends to dwellings wholly within Wales, there is a considerable amount of legislation which will continue to apply within Wales.

I believe the Bill clearly sets out what the new arrangements are, and what forms of tenancy are being replaced with the new occupation contracts.

Protection from Eviction

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 *If the 1977 Act is not to be repealed, how do you envisage landlords being able to evict tenants without court proceedings?*

The Protection from Eviction Act 1977 is not to be repealed. Doing so would assume all licences and tenancies in future would be occupation contracts. Whilst the vast majority will be subject to the Bill, and subject to specific requirements, not all will. There will be certain elements of the 1977 Act which will need to be preserved in any event and others will need to be amended in consequence of the Bill.

In terms of abandonment, a contract-holder who has abandoned the property will not be "evicted". He or she will, of their own choice, have surrendered the contract. The abandonment provisions are not there to ensure eviction, but rather to enable landlords to obtain "possession" of properties, where the contract-holder has already left, subject to the landlord meeting the procedural requirements set out in the Bill.

5. *How will you ensure that landlords do not evict tenants for financial gain?*

The Bill does not affect the operation of sections 27 and 28 of the Housing Act 1988. These are separate, stand-alone provisions conferring statutory (as opposed to contractual) rights on "residential occupiers" where they have been unlawfully evicted.

The intention is for this provision to be preserved, in line with the Law Commission's recommendations (see paragraph A.13 in Appendix 1 of the Commission's Volume 1 Report of 2006, which set out the information the Commission recommended should be provided to contract-holders, including the effect of section 27). It is not set out in the Bill itself, because it is a statutory right existing independently of the occupation contracts.

6. *What are the implications for the rights under the "Convention" of contract-holders, especially as regards Articles 6 and 8?*

In terms of abandonment, first a landlord seeking possession must meet the notification and inquiry requirements in accordance with the Bill. This is a safeguard against a landlord simply taking possession. Additionally, if premises are repossessed and the contract-holder subsequently reappears, the contract-holder will have the right to seek a remedy through the court. The provisions are put in place as a means of balancing the rights of landlords under Article 1 of the First Protocol ("A1P1") with those of contract-holders under Article 8 and A1P1. Currently there is no statutory framework for a landlord to obtain possession, other than a landlord having to seek a possession order, which can be very time-consuming and expensive, notwithstanding that the tenant has walked away and the landlord's property is empty and potentially subject to damage or neglect. This provides a mechanism whereby those dwellings can be re-let in such situations.

It should be noted the provisions were partially based on provision within sections 18 and 19 of the Housing (Scotland) Act 2001.

Human Rights

7. *Are you satisfied that Article 8 rights will be retained for those existing tenants who convert to a contract under this Bill?*

Yes. Schedule 11 makes provision for the retention of existing rights under converted contracts.

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?*

The removal of the six-month moratorium does not remove a person's rights to respect for his or her home. First, as has been noted, this relates to new contracts and therefore will not remove the rights of tenants of periodic Assured Shorthold Tenancies, insofar as those tenancies are within the initial six month period. Secondly, the removal of the moratorium in relation to future contracts meets a legitimate aim. That is to ensure flexibility of occupation arrangements and to allow persons who currently may only be able to occupy premises under a licence, due to the short period of the occupancy, to be able to do so under a standard contract, thus ensuring greater clarity, certainty and security.

Exclusions

9. *How do you respond to the suggestion that the exclusion powers in the Bill violate Articles 6 and 8 of the Convention?*

A benefit of the structured approach to exclusions provided for in the Bill will enable an occupation contract to be sustained in situations where, currently, a landlord would be likely to simply terminate a person's licence to occupy the supported premises. Therefore, it provides greater security. Furthermore, in line with the Law Commission's recommendations, evictions of a period longer than 48 hours will require an injunction.

I do not agree the provision cannot be justified in relation to the landlord's staff or other neighbours. The test to be applied, includes violence to any person in the dwelling or risk of significant harm to any person. This may engage other convention rights of a wider category of people, it does not simply apply to residents' rights under Article 8.

On the Article 6 point, there will be no appeal for reasons of practicality in the use of the exclusion power by landlords; a person will simply be excluded. However, the exclusion power is time-limited and also may only be exercised on limited occasions. This is not a violation of Article 6. An excluded person will still have the benefit of a supported standard contract. Furthermore, any provision to extend the 'relevant period' (i.e. prior to an occupation contract being granted) will be subject to review.

The Bill actually makes provision for supported arrangements, which currently are not set out in legislation. It adds clarity, where currently there is little or no provision.

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?

The Bill already provides for this. Pursuant to section 145, and as referred to above, exclusion may only occur where the landlord reasonably believes the contract-holder is using violence against any other person in the dwelling, is doing something in the dwelling which creates a risk of significant harm to any person or is behaving in a way which seriously impedes the ability of another resident to benefit from support (as opposed to accommodation) being provided to him or her. These are all serious cases.

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?

As indicated when I appeared before Committee on 22 April, whilst I would expect supported housing providers to have a policy in place relating to use of the exclusion power, I am willing to consider whether an additional power to issue guidance relating to exclusions should be added to the Bill.

Eviction for nuisance or annoyance

12. How do you consider that section 55 is proportionate under Article 8?

Sections 18 and 20 provide that anti-social behaviour and other prohibited conduct is to be incorporated as a fundamental term of each occupation contract, not simply a ground for possession. However, to the extent breach of the term gives rise to a ground for possession, it is a discretionary one. The ground is also subject to structured discretion. This means, in determining whether or not to grant a possession order, the courts have to consider the general public interest in restraining the prohibited conduct (section 205 and paragraph 11 of Schedule 9 refer).

The provision seeks to balance the rights of the contract-holder with the rights of other residents or persons going about lawful activity in the locality of the dwelling. It pursues a legitimate aim, which is to avoid anti-social behaviour causing nuisance or annoyance to others. Furthermore, 'nuisance or annoyance' is the current definition of housing-related anti-social behaviour, for example Ground 14 in Schedule 2 to the Housing Act 1988 and section 2 of the Anti-Social Behaviour, Crime and Policing Act 2014.

Conversion of secure contracts to standard contract

13. How does the provision in section 116 strike the right balance between landlords and contract-holders under Article 8?

This is, in effect, the continuation of the current demoted tenancy regime. It acts as a sanction against anti-social behaviour. In many ways it is more about striking a balance between the contract-holders' rights and the rights of other persons living nearby a contract-holder, including their Article 8 and A1P1 rights.

The use of any such power will be subject to consideration by the courts on a discretionary basis and, therefore, subject to appropriate oversight.

Demoted tenancies are also a well-established element of housing law which currently apply to Housing Association assured tenancies and Local Authority secure tenancies.

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

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?

In such cases, B will still have a lease with A. The decision to sub-let is one taken by B. B must ensure that in so doing, C is able to occupy without interference either by B, but also anyone with superior rights. C will be occupying the dwelling as his or her home and will need to be able to do so without interference. This provision therefore protects C's rights. If A does something to C's detriment, C will be able to seek remedy against B. It will be for B to be satisfied he or she has sufficient controls and remedies available to him or her, prior to granting a sub-occupation contract of the property. Since B will be providing a home for C, it is considered justifiable and proportionate to protect C's rights in this manner.

Waste and tenant-like user

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?

The intention is that this will be dealt with by means of supplementary provisions. There is no intention to remove landlords' rights in this regard.

Minors

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?

The provision is made to enable 16 and 17 year olds to be parties to occupation contracts and therefore concerns access to housing. It is within the Assembly's legislative competence.

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

If a 16 or 17 year old is a party to an occupation contract then an injunction could be sought against them.

However, in addition, failure to allow entry for such purposes would be a breach of a term of the contract and alternative appropriate remedies could be sought if necessary.

Asylum seekers

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 have noted the evidence submitted by the Law Society and will consider whether an amendment to the Bill is necessary in this regard.

I trust this response is helpful and look forward to appearing before the Committee on 20 May.

*Regards
Lesley*

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