

Agenda – Y Pwyllgor Cydraddoldeb, Llywodraeth Leol a Chymunedau

Lleoliad:	I gael rhagor o wybodaeth cysylltwch a:
Committee Room 5 – Tŷ Hywel	Naomi Stocks
Dyddiad: Dydd Llun, 20 Gorffennaf 2020	Clerc y Pwyllgor 0300 200 6565
Amser: 13.30	SeneddCymunedau@senedd.cymru

Rhag-gyfarfod anffurfiol (13.30 – 14.00)

Yn unol â Rheol Sefydlog 34.19, mae'r Cadeirydd wedi penderfynu gwahardd y cyhoedd o gyfarfod y Pwyllgor er mwyn amddiffyn iechyd y cyhoedd. Bydd y cyfarfod hwn yn cael ei ddarlledu'n fyw ar www.senedd.tv

1 Cyflwyniad, ymddiheuriadau, dirprwyon a datgan buddiannau

2 Bil Rhentu Cartrefi (Diwygio) (Cymru): sesiwn dystiolaeth 6

(14.00 – 15.00)

(Tudalennau 1 – 89)

Julie James AS, y Gweinidog Tai a Llywodraeth Leol

Emma Williams, Cyfarwyddwr Tai ac Adfywio, Llywodraeth Cymru

Simon White, Pennaeth Strategaeth Tai a Deddfwriaeth, Llywodraeth Cymru

[Bil Rhentu Cartrefi \(Diwygio\) \(Cymru\)](#)

[Memorandwm Esboniadol](#)

3 Cynnig o dan Reol Sefydlog 17.42(ix) i benderfynu gwahardd y cyhoedd o weddill y cyfarfod ac o'r cyfarfod ar 14 Medi 2020



4 Bil Rhentu Cartrefi (Diwygio) (Cymru) – trafod y dystiolaeth a ddaeth i law a thrafod y materion allweddol

(15.00 – 16.00)

5 Ymchwiliad i COVID-19 a'i effaith ar faterion sy'n ymwneud â chylch gwaith y Pwyllgor Cydraddoldeb, Llywodraeth Leol a Chymunedau: Trafod y materion allweddol mewn perthynas ag adroddiad COVID-19 a chydraddoldeb

16.00 – 16.30

(Tudalennau 90 – 97)

Mae cyfyngiadau ar y ddogfen hon

Julie James AS/MS
Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government



Llywodraeth Cymru
Welsh Government

John Griffiths MS
Chair
Equality, Local Government and Communities Committee
Senedd Cymru
Cardiff Bay
Cardiff CF99 1SN

10 July 2020

Dear John,

I am writing in response to your letter of 31 March, and ahead of my second appearance before the ELGC Committee on 20 July to give further evidence on the Renting Homes (Amendment) (Wales) Bill.

Please find enclosed as requested my responses to the questions that would have been asked had the 26 March evidence session gone ahead.

I hope this information is helpful to the committee and I look forward to the resumption of scrutiny of this important legislation.

Yours sincerely,

Julie James AS/MS
Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

Tudalen y pecyn 34
We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Responses from the Minister for Housing and Local Government to questions from the Equality, Local Government and Communities Committee in relation to the Renting Homes (Amendment) (Wales) Bill

1. How will the provisions in this Bill, and the 2016 Act more generally, be communicated to tenants/contract-holders and other key stakeholders?

My officials will be preparing a range of explanatory information which will be published and promoted through a number of communications channels, including print media and social media, in the run-up to the legislation coming into force. This will provide clear, straightforward guidance for landlords, contract-holders, and organisations which provide support and advice to both, on the new rights and responsibilities.

The communications approaches we employed to publicise and raise awareness of the changes introduced by the Renting Homes (Wales) (Fees etc.) Act were effective, so we will be looking at a similar campaign in support of the Renting Homes (Wales) Act 2016, as amended.

Regarding communications with landlords, we will utilise the ability Rent Smart Wales (RSW) has to reach all landlords.

2. Given the limited engagement with tenants during the development of this Bill, what strategy will the Welsh Government put in place to raise awareness of the 2016 Act with tenants/contract-holders? Should the Bill itself make provision for communicating the changes?

As mentioned above, a range of information is to be developed in advance of this legislation coming into force to raise awareness amongst stakeholders, including contract-holders. We intend to set aside a budget for the development and promulgation of guidance and publicity, and will be working with our partners across sectors to ensure the key messages are promoted as widely as possible in advance of the commencement of the legislation and once it is in force.

It is also worth noting, in relation to awareness-raising amongst contract-holders, that one of the key changes the 2016 Act will introduce is a requirement that landlords provide contract-holders with a written statement of their contract. These statements will include the terms of the contract, the grounds on which the landlord may seek possession and the relevant notice periods. This should result in greater understanding amongst those who rent their homes of their, and their landlords', rights and obligations.

3. What impact will the commencement of the 2016 Act, and the amendments to it made by this Bill, have on tenancies made before the date the 2016 Act, as amended, comes into force? Are there some provisions in the Bill that you envisage acting retrospectively?

The following Bill provisions will apply to converted contracts, that is, tenancies existing prior to the coming into force of the 2016 Act, which convert to standard contracts:

- Restrictions on giving further landlord's notices under periodic standard contract

The Bill will prevent landlords under a periodic standard contract from serving a notice under section 173 of the 2016 Act within six months of the expiry or withdrawal of a previous section 173 notice. This restriction on serving notices in immediate succession will apply to landlords under converted contracts, as well as to landlords under contracts created after the Bill comes into force. As this provision applies to converted contracts, it is retrospective in the very limited sense that it will apply to existing contracts but only in a way that has prospective effects. This approach is necessary in order to avoid the problems created for tenants by the practice of issuing notices, such that a tenancy is always subject to a possession notice. If the provision were to apply only to new contracts, entered into after the coming into force of the Bill and 2016 Act, contract-holders under converted contracts would be treated less favourably than those under new contracts because they would continue to be open to the threat of repeat notices, until such time as that converted contract comes to an end. These provisions will not have effect in respect of repeat notices issued before the 2016 Act comes into force, but would affect landlords of tenancies which were in place prior to the 2016 Act coming into force

- Restriction on giving notice under section 173 under a periodic standard contract and under landlord's break clause under a fixed term standard contract following retaliatory possession claim.

The Bill will prevent landlords from serving a notice under section 173 under a periodic standard contract or under a break clause in a fixed term standard contract for a period of six months, from the date upon which a court finds that a previous possession claim was retaliatory.

This restriction will apply to landlords under converted contracts, as well as to landlords under contracts created after the Bill comes into force. This will mean that the provision will have an element of retrospectivity.

The finding of a retaliatory claim would post-date the Bill's enactment and therefore the element of retrospectivity (insofar as the matter might be deemed to be retrospective) is limited to the fact that it only affects landlords of tenancies which have converted (and therefore be of limited effect). This will protect contract-holders who have been subject to a retaliatory claim from receiving a further notice immediately after that court order. Any claim which is retaliatory in nature (namely made for the purpose of avoiding obligations to keep a dwelling in good repair) will be one wrongly and unreasonably brought.

A six month period would offer a contract holder a period of security following a claim to which they should never have been subjected in the first place. It offers a period of security and stability following that court process.

The restriction does not prevent a landlord from serving notice under any other ground, it simply restricts the service of a further notice under section 173 or a landlord's break clause. Other notices for possession, where appropriate, will be capable of being served during the restriction period.

4. Social landlords highlighted in evidence that a reduction in the supply of private rented sector accommodation could increase pressure on social housing and therefore affect homelessness services which rely on the private rented sector to house vulnerable people. What assessment has the Welsh Government made of any potential impact? Is any impact likely to have a disproportionate impact on certain groups with protected characteristics or groups that may be particularly vulnerable?

In the evidence published by the Committee from social landlords there was unanimous agreement that the increased security this Bill will provide will make the PRS a more attractive proposition for prospective tenants. The only concerns expressed, by one respondent, relate to the possibility that longer notice periods could lead to private landlords either leaving the market or becoming more 'selective' about whom they choose to let to. As other witnesses have reminded the Committee, these concerns have been expressed regularly in the past when other changes have been made which impact on the PRS, and as yet there is no evidence to suggest that the PRS is contracting as a result of greater regulation. On the contrary, the sector continues to grow. However, as with all legislation, we will keep the effects under ongoing review.

More broadly, we will also continue in our efforts to support responsible landlords and promote the private rented sector as a tenure of choice through our range of statutory and non-statutory approaches, including Rent Smart Wales, the private sector leasing scheme, and the new housing support grant.

5. Some concerns were raised in written and oral evidence that making no fault evictions more onerous and, potentially, more costly for landlords, may lead to a rise in illegal evictions and harassment. What is the Welsh Government doing to support local authorities in tackling illegal evictions and harassment? Do local authorities need strengthened powers, additional resources, or both?

Illegal eviction is an offence. The law is very specific in relation to eviction of any tenant who has an assured shorthold tenancy, which is the most common tenancy within the PRS. Tenants are protected by the Protection from Eviction Act 1977 to ensure the processes and notice periods are adhered to.

If a landlord is found guilty of illegal eviction, they may face a fine and in some cases a term of imprisonment. The consequences for a landlord who has not followed the correct procedure could therefore be significant.

We do not consider strengthening the powers of local authorities to be necessary. However, we will use the publicity and awareness-raising campaigns which will support the coming into force of this legislation to remind landlords and tenants that an eviction cannot take place without an order from the court.

It is also worth noting that the written contracts which landlords will be required to provide to all contract-holders will include this information, and so should also help reduce future instances of illegal eviction.

6. UK Finance responded to the Committee's consultation and raised concerns that the 2016 Act does not provide a mandatory ground for possession for lenders. Lenders may therefore have to rely on the 6 month no-fault notice as included in this Bill. Is there a risk that lenders will view lending in Wales as higher risk and borrowing could prove more expensive because it might take them longer to repossess a property? What consideration was given to providing a specific ground that lenders could use to recover possession should they need to repossess a property? Why was such a ground not included?

The 2016 Act does not provide a mandatory ground for possession for lenders and that decision was based on evidence that such grounds in existing housing legislation were little used.

The principle of our Bill is that contract-holders should not be evicted without six months' notice where they are not at fault.

Should a lender (who has successfully taken possession against a landlord) choose to seek possession against a contract-holder then, during the six-month notice

period, it would be open to the lender to place the property with a letting agent to manage the property until it becomes vacant, to avoid the lender having to do so.

However, as stated above we will keep all aspects of this legislation under review and if, at some future point, the evidence supports an exception to the six months' notice requirement in situations of lender repossession, then the Bill provides a power for such an exception to be added to new Schedule 8A to the 2016 Act

7. What consideration have you given to providing a universal right to adequate housing in the Bill? Why hasn't such a provision been included?

We recognise there may be potential benefits in placing a statutory duty on local authorities to have due regard to the right to adequate housing. But there would be little sense in creating such a duty without a thorough understanding of what it would entail and knowing that all of the necessary resources are in place to meet the duty. Work is underway with external partners to consider the scope for legislating in respect of equality and human rights. If adopted following due consideration, any recommendations arising from that work would need to be taken forward in the next Senedd term.

8. A number of witnesses told the Committee that there was little confidence in the ability of the courts to deal with possession claims. Claims often involved significant delays leading to additional costs and uncertainty. What is the Welsh Government's position on having a dedicated housing court or tribunal? What discussions have there been with the UK Government on this and what can be learned from the experience in Scotland where such a tribunal has been introduced? Would a more effective system of dealing with possession claims have resulted in more support for this Bill from private landlords?

Concerns expressed by landlords regarding the length of time current cases take to go through the court would not necessarily be addressed by having a specialist court or tribunal, not least because many current delays are more due to resourcing issues faced by courts rather than difficulties in the court procedures themselves. The experience of Scotland, where all housing cases have now been transferred to a tribunal, is that it has resulted in considerable delays to cases being heard. We would therefore wish to examine the Scottish experience carefully before deciding on what might be a suitable approach in Wales.

In the meantime, we support the operational changes the UK Government proposed to help process claims more quickly through the county courts system, and my

officials remain in ongoing dialogue with Whitehall counterparts in relation to any potential reforms to the courts service which, whilst outside our remit, we would obviously support if this were to improve current processes.

As for the courts' ability to deal with possession claims following the changes this amending Bill will introduce, whilst we accept that there is likely to be a small increase in the number of claims requiring hearings from private landlords as a result of the Bill, this needs to be considered alongside the significant reduction in evictions by social landlords that we are seeking to achieve through other means, which should provide the courts with sufficient capacity to deal with any increase in claims from private landlords and our overall policy of working with all landlords to avoid and prevent evictions.

9. The Explanatory Memorandum notes that the Justice Impact Assessment concluded that the net effect of changes resulting from this legislation, alongside the Welsh Government's policy on reducing social landlord possession claims, is expected to be neutral. Social landlords told us that implementing the policy of no evictions into homelessness is at an "early stage". What account did the impact assessment take of that? The Committee has not had the opportunity to scrutinise the Justice Impact Assessment, the contents of which will be key to understanding the impacts of this Bill. When will it be published?

The Justice Impact Assessment for the Bill has been agreed with the Ministry of Justice and a copy of the JIA statement is available [here](#).

UK Government agreed with our conclusion that that the overall impact of the new legislation on caseload for the court system in Wales is likely to be negligible over time. This is based on the fact that around two-thirds of current possession claims are from social landlords and the Welsh Government's policy is to significantly reduce social landlord repossessions. This will free up sufficient court time to offset any increase in claims from private landlords that may result from the longer section 173 notice period incentivising landlords' to use alternative (more appropriate) grounds to end contracts¹.

The provisional figures for 2019 show a slight reduction in overall orders made of

During 2018, 3,640 possession orders which required a court hearing were granted by the courts in Wales, of which 3,050 were granted to social landlords and 590 to private landlords. In addition, 616 orders were granted under the Section 21 'accelerated procedure' which does not require a court hearing

around 2% compared to 2018. Applications by social landlords resulted in around 69% of all orders made in 2019, in 2018 this was 72%.²

I announced in January that the new five year agreement on rent policy will include a requirement for social landlords to work to minimise all evictions and to not evict into homelessness.

We consider evicting into homelessness to be a systems failure which simply moves the burden from one department to another. We are continuing to work with social landlords and other key stakeholders to strengthen approaches designed to minimise all types of eviction and deliver on a new agreement not to evict into homelessness. As this policy comes to fruition, pressure on the court system and applications from social landlords in Wales will reduce.

10. While the Bill focuses entirely on notice requirements placed on landlords, several witnesses have told the Committee in written evidence that there is a case for changing the notice requirements placed on contract-holders. Specifically, should there be a requirement on contract-holders to give notice if they wish to leave at the end of a fixed term? Has this been considered by the Welsh Government?

The possibility of a contract-holder being required to provide notice to end a fixed term contract has been considered but such a requirement presents a number of issues. Currently, and under the 2016 Act, a contract-holder may leave the contract on the day the agreed fixed term period ends. However, the vast majority of current tenancies are provided on the basis of a six month fixed term, with the intention of both parties being that this fixed term will lead seamlessly into a periodic contract. A fundamental term requiring a contract-holder to provide notice, say a month before the fixed term ends, would likely provide grounds for eviction if a contract-holder failed to leave. This could be particularly problematic for students who may be unsure about the exact end of a course or their plans for the summer, for example.

The issue raised during evidence sessions is acknowledged but the Welsh Government is unaware of any particular problems with fixed terms prior to this. Therefore, any legislation to require the giving of a notice by contract-holders within this context, would need further consideration.

11. The Committee heard some criticism of the evidence base used to develop this Bill. Specifically, there is a lack of data relating to the use of no fault

²https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/877999/Mortgage_and_Landlord_Possession_Statistics_Tables_Oct-Dec_19.xlsx (Table 9)

evictions in Wales. This led the Welsh Government to rely on a survey carried out by the RLA. What steps is the Welsh Government taking to ensure they have a better evidence base in relation to the private rented sector? How will the proposed evaluation of the 2016 Act improve the evidence base and establish a robust and comprehensive baseline prior to any further legislative changes?

The RLA data was only relied upon to provide information relating to the reasons for issuing a section 21 notice and not as an evidence base for improving security of tenure. We considered several reports relating to security and the benefits of having longer notice periods in developing our thinking for this Bill.

We opted to cite the RLA survey data in the impact assessment on the basis that it had recently been published and was directly relevant to the legislation we were developing, so this survey was a useful source of information for us.

I am aware that Dr Gurney of Glasgow University and Dr Simcock of Edge Hill University have both advised the ELGC Committee to treat the RLA survey figures with caution. However, we need to be clear that their reservations are based on concerns that the survey data may have overestimated both the number of PRS landlords who have sought possession against tenants in the past five years, and the percentage of landlords who report using section 21 notices to seek possession where a tenant is in rent arrears or has breached their tenancy in some other way.

The figures Drs Gurney and Simcock quoted in their evidence to the ELGC Committee in February were taken from a Manchester Metropolitan University study which suggested that some 54% of section 21 notices were issued because a tenant was at fault, rather than the 84% figure in the RLA survey. If this lower number is closer to the actual position, then, as Dr Simcock has pointed out, the impacts of the Bill on the courts and on landlords' costs are likely to be a lot lower than those we have included in the RIA. It also follows that we would expect even fewer households to present as homeless to local authorities by virtue of the six-month notice than our estimates in the RIA suggest, with potentially greater savings to local authorities in discharging their statutory homelessness duties than we have included in the RIA.

As far as improving our evidence base in future is concerned, our evaluation of this legislation, coupled with the ever-expanding engagement with private landlords that Rent Smart Wales is facilitating, will over time greatly expand our understanding of how the sector operates. We will take the opportunity to evaluate whether the legislation, including the use of written contracts, leads to a reduction in disputes and court cases and the degree to which landlords will continue to rely on 'no-fault' notices, rather than breach of contract or serious rent arrears grounds. We will, of course, use this information to inform any future decisions as to whether the

legislation needs further fine-tuning, or whether any further, more fundamental legislative changes are required.

12. Shelter Cymru have recommended looking again at the Housing (Wales) Act 2014 and how it interacts with this Bill. In particular the 56 day period during which people are considered threatened with homelessness; ending homelessness duties where accommodation is likely to be available for six months; and the potential for an increase in findings of intentionality. Is there a risk that merely amending guidance will not achieve the desired result if the guidance is not followed by local authorities? What can the Welsh Government do to ensure a contract-holder who has been given six months' notice does not have to wait a further four months to receive any practical assistance from a local authority?

The current law is already clear in respect of the definition of a person who is homeless and a person who is threatened with homelessness. Section 55(4) of the Housing (Wales) Act 2014 ("the 2014 Act") does provide that a person is considered to be threatened with homelessness if it is likely that the person will become homeless within 56 days. These concerns were addressed in the development of the 2014 Act.

Section 60 of the 2014 Act places a duty on local authorities to provide information, advice and assistance in accessing help. This duty is owed to those people who are threatened with homelessness but also to those who do not meet that definition because the reference to 56 days does not apply to them.

The homelessness legislation is a safety net. The Welsh Government supports local authorities to provide a range of homelessness prevention services through the Housing Support Grant and the Revenue Support Grant. Our policy is clear, the focus is on early intervention and prevention such that homelessness becomes rare, brief and non-repeated. Any authority declining to support a household until such time as they are 56 days from homelessness is clearly not acting in the spirit of the legislation nor in line with our policy guidelines. The review of the Code of Guidance for Local Authorities on the Allocation of Accommodation and Homelessness, provides us with an opportunity to highlight the need to shift much more of our energy and resources to preventing homelessness, with services working within the spirit of the law.

The intentionality decisions are not expected to increase. The decision around whether a person is intentionally homeless must be based on the circumstances that have resulted in the homelessness and not solely based on the type of notice they have received.

The number of households found to be intentionally homeless has reduced significantly since the 2014 Act came into force.

13. How will you assess the impact of this Bill on homelessness services, and will it form part of any evaluation?

We will work with the sector to monitor the impact of this Bill, utilising existing data collection methods. The current homelessness data returns do provide aggregate data on the main causes of homelessness.

14. Why are prohibited conduct standard contracts included in new Schedule 8A to the 2016 Act given that the Welsh Government and social landlords are working to end evictions into homelessness?

Prohibited conduct standard contracts (PCSCs) are included in new Schedule 8A as an aid to prevent homelessness. Section 116(3) of the 2016 Act provides that the court may make an order imposing a PCSC only if it is satisfied that the contract-holder is in breach of section 55 of the 2016 Act (anti-social behaviour and other prohibited conduct). Furthermore, the court must be satisfied it would have made an order for possession on the ground in section 157 (breach of contract) in reliance only on that breach and that the landlord will make available to the contract-holder a programme of social support, the aim of which is the prevention of prohibited conduct. Therefore, a PCSC provides landlords with an alternative to seeking outright possession in the hope the contract-holder's behaviour can be improved, preventing eviction. It is an opportunity to offer a contract-holder a "last chance" of avoiding eviction. Any action which may discourage landlords from seeking a PCSC, such as extending the notice period to six months, would make it more likely that outright possession would be sought by the landlord immediately, as an alternative.

15. Housing associations have expressed concerns that introductory standard contracts are not included in new Schedule 8A. Why is this type of contract not included, and what impact might this make on social landlords?

There is no justification for providing less security of tenure within the social sector than the PRS. A community landlord who wishes to use section 173 will still be able to under an introductory contract but only after six months have elapsed, the same way as in the PRS. There are of course other specific grounds to deal with ASB or rent arrears should a landlord require possession for those reasons.

16. The Committee received evidence from Cytûn, the umbrella body for the main Christian denominations of Wales, that highlighted some unintended consequences of the Bill. Cytûn suggest that the Bill will impact upon churches where accommodation normally used for ministers of religion is let in the private rented sector. They note that the longer notice period is likely to mean that trustees of church residential property will not let houses during vacant periods and the properties are likely to be retained as empty properties pending occupation by a minister of religion. How do you respond to those concerns? Should there be exceptions in the Bill for accommodation normally occupied by ministers of religion, even when it is used for other purposes?

There is a power in the Bill to amend schedule 8A, so it would be possible to make such an exception to allow dwellings usually occupied by Ministers of religion to be exempted from the extended notice period, so that the two- month notice period would continue to apply.

My officials will be arranging to discuss this issue in more detail with Cytûn in due course, to consider if the issues necessitate such an exemption.

17. The National Union of Students highlighted purpose-built student accommodation as a significant growth area. When developing this Bill, what consideration was given to purpose built student accommodation, particularly in terms of the exemptions the Bill gives to accommodation let by Higher Education Institutions? Was any consideration given to treating purpose built student accommodation in the same way? If not, why not?

Consideration was given to the entire range of student accommodation including HEI run accommodation, PRS student accommodation and on and off campus accommodation. Purpose-built student accommodation (PBSA) is run by private providers in the same way as accommodation provided to students within the PRS. The support provided by HEIs to first year students, possibly away from home for the first time, requires specific access to their halls of residence every 12 months for first year students. Landlords of PBSAs and those renting to students within the PRS do not provide equivalent support. Therefore, there is no justification for providing students renting PBSA accommodation with any less security of tenure than other contract-holders who rent from private landlords.

18. The RLA suggested that landlords should be able to give a no fault notice earlier than 6 months, but the notice would only expire at the end of the 12 months. What objections would the Welsh Government have to that proposal? It would ensure contract-holders receive at least six months' notice, potentially

more, and allow landlords to maintain a 12 month cycle, something that is particularly important in certain markets – such as lettings to students.

The Bill, as currently drafted, does provide for a 12-month cycle to be maintained. A landlord can serve a notice immediately upon expiry of six months' occupation and that notice can provide that the contract-holder must leave the property in exactly six months.

19. The Minister explained in the first evidence session that the restriction on the use of break clauses in fixed term contracts (so they cannot be used in contracts of less than 24 months, and cannot be activated by the landlord until 18 months into the contract) is to try and stop break clauses being used as a rolling set of shorter contracts. Can you expand on this? Could this, and the 12 months' security of tenure, have been achieved if the restriction on exercising a break clause was at 12 months? How do you justify, in terms of human rights, and specifically the landlord's A1P1 rights, restricting the use of a Landlord's break clause until 18 months has passed?

The aim of the Bill provisions which increase the period of time before which a landlord may exercise a break clause under a fixed term standard contract is to ensure that the policy of increasing security of tenure in respect of periodic standard contracts is not undermined.

Consultation responses indicated that, generally, landlords issuing new tenancies will either issue a periodic tenancy from the outset or, alternatively, an initial fixed term tenancy of, typically, six months which becomes a periodic tenancy at the end of the fixed term. The latter is the more common approach and once the fixed term has expired, it is commonplace for the contract to "roll over" into a periodic tenancy.

Given the Bill provisions which increase the moratorium and notice period in respect of notices served under section 173 of the 2016 Act, some landlords may choose to offer only long-term fixed-term contracts from the outset. Making break clauses available as early as the 12 month point may not be a sufficient deterrent to discourage landlords from only offering longer term fixed-term contracts. Some landlords may accept having to wait an extra 6 months to regain possession of their property in the shorter term (as compared with a periodic standard contract), in order to buy certainty of income and to lock contract-holders in for the long term. The combined effect of these factors indicates that this provision is an appropriate and proportionate means of addressing these issues.

An additional 12 month period (as compared with the security of tenure offered by a periodic standard contract) is likely to be sufficient to prevent landlords from viewing the long term fixed term option as the preferred option. We certainly do not wish to

create a regime where long term fixed term contracts would become a landlord's preferred option because contract-holders are unable to release themselves from that contract were, for example, an offer of social housing to be made to them.

While this provision will mean that a landlord will have to wait longer to regain possession of their property under a fixed term standard contract than under a periodic standard contract, the length of that period will place both regimes on an equal footing in terms of how they are viewed by landlords. This will encourage an environment where an 'inequality of arms' as between the landlord and the contract-holder, at the outset of the contract, has less impact on the contract-holder in terms of the renting regime they end up accepting.

Extending the period before which a landlord may exercise a break clause, to 18 months, is therefore a proportionate means of ensuring that the competing interests of the landlord and contract-holder are fairly and properly balanced. Other, potentially more intrusive, means of achieving this aim were considered but this approach strikes a fair balance between the A1P1 rights of the landlord and the contract-holder's Article 8 rights. A landlord may choose to offer a fixed-term standard contract to ensure certainty of income but will not be incentivised to do so in order to circumvent amendments which the Bill makes in respect of periodic standard contracts, including the increased moratorium and notice period in respect of section 173 notices and the restrictions against repeat service of those notices.

20. Where a landlord makes a possession claim on the basis of a notice under Section 173, but the court determines the notice is invalid, when can the landlord serve a new notice under Section 173? Is the landlord prevented from serving a further notice for six months? Is this scenario covered by Section 7 of the Bill? For clarification, if a notice is defective, is it still considered a valid notice for the purposes of the restrictions in Section 7?

Where the court finds a notice to be invalid, it is treated as not having been served in the first place and therefore section 7 is not engaged.

21. While the Bill gives landlords 14 days during which they can withdraw a no fault notice and serve a new one, the Committee heard concerns from landlords and agents that this may not be a sufficient period of time. For example, the Committee was told that a landlord may not become aware that a contract-holder has not signed for a notice sent by recorded delivery within that period. They proposed a 28 day period. Why is a 14 day period more appropriate than a slightly longer period? Would a 28 period not strike a more equitable balance between the rights of landlords and the rights of contract-holders?

Any proposed period would present the same problem if the landlord has not chased delivery confirmation promptly. In any event, whether the contract-holder has received the notice or not should not prevent the landlord identifying an issue with the notice within the 14 day period. We consider 14 days is sufficient for the landlord to examine and identify any error with the notice.

22. How do you justify, on human rights grounds, the landlord being prevented from obtaining possession of their property after six months, in circumstances where the parties to a contract may have originally agreed that the occupation contract would only be for a fixed six months term?

Amendments to the way in which fixed term standard contracts operate are essential to ensure that the Bill provisions which seek to increase security of tenure in periodic standard contracts are not undermined. Allowing a landlord to terminate a fixed-term standard contract of six months, at the end of the fixed term would fundamentally undermine the improved security of tenure being sought by the Bill. This would present a potential 'loophole' which would encourage the practice of landlords issuing six month fixed-term contracts at the outset of the contract and, at the same time, issue a notice to end the contract at the end of the fixed term, following which, either a landlord would take possession or the contract-holder would leave the property. Alternatively, where the contract-holder wishes to remain in occupation, a landlord is likely to offer another fixed term of six months with a notice to end the contract at the end of the fixed term, because this would avoid a landlord having to offer the 12 months' security of tenure provided by a periodic standard contract.

Provision was clearly required to prevent landlords from circumventing the Bill provisions which increase security of tenure in respect of periodic standard contracts. This provision is the least intrusive means of achieving that aim and balances the competing interests of landlords (who may desire the certainty of income offered by a fixed term contract) with those of the contract-holder, (who should expect to benefit from the increased security of tenure offered by periodic standard contracts provided by the Bill, without the prospect of a landlord circumventing those provisions by only offering fixed term standard contracts). These provisions simply afford contract-holders commensurate safeguards with respect to termination, whether they occupy dwellings under fixed term or periodic arrangements.

These provisions are prospective and therefore landlords will be aware of this position prior to entering into a fixed term standard contract and will therefore be aware that they may not be able to rent to a different contract-holder immediately at the end of the fixed term.

23. In the first evidence session the Minister suggested that landlords, when agreeing fixed term contracts, will have to take the requirement to give six-month notice at the end of a fixed-term contract into account. The Committee take this to mean, for example, that if a landlord wants to agree an 18 month fixed term contract with a tenant, they should agree a 12 month fixed term contract. However with this solution, is the landlord still at a disadvantage in making future plans for the property because a tenant could change their mind and leave at the end of the 12 months?

This will be a matter for the landlord to decide during the issuing of the contract. If ensuring the property is vacant at month 18 is the priority then issuing a 12 month fixed term, as set out in the question, is a potential option. Should a landlord instead wish to ensure they have a guaranteed income for this 18 month period, then they would likely choose to issue a fixed term of 18 months.

Under current legislation, a tenant is free to vacate the property at the end of a fixed-term contract without giving prior notice to the landlord, even though the landlord may expect or wish the tenancy to continue beyond this point. However, the Bill does remove the landlord's ability to serve a section 186 notice during the currency of the fixed term, to terminate the contract at the end of the fixed term. This provision is required in order to achieve the policy of improving a contract-holder's security of tenure.



Renting Homes (Amendment) (Wales) Bill

Submission to Equality, Local Government and Communities Committee

The Welsh Local Government Association (WLGA) represents the 22 local authorities in Wales, and the three national park authorities, the three fire and rescue authorities are associate members.

The WLGA is a politically led cross-party organisation, with the leaders from all local authorities determining policy through the Executive Board and the wider WLGA Council. The WLGA also appoints senior members as Spokespersons and Deputy Spokespersons to provide a national lead on policy matters on behalf of local government.

The WLGA works closely with and is often advised by professional advisors and professional associations from local government, however, the WLGA is the representative body for local government and provides the collective, political voice of local government in Wales.

This submission is framed around the questions set out in the Committee Chair's letter of 17th March 2020: -

General questions

1. Is there a need for this Bill and, if so, why?

WLGA is supportive of the general principles of the Bill, and agree that legislation is required to deliver the policy objectives.

2. The Welsh Government has decided to amend the Renting Homes (Wales) Act 2016 before it has been commenced. Do you agree with that approach or not? If not, why not?

WLGA supports the amendment of the Renting Homes (Wales) Act 2016.

3. What level of awareness is there amongst landlords, tenants and professionals working in the sector that the 2016 Act is coming? What, if anything, can be done to raise levels of awareness?

Local authorities are aware that the 2016 Act is coming, however, the continued uncertainty around the implementation timetable has inevitably meant that the attention of landlords may have been taken up by more current and pressing issues. It would be helpful if, when the implementation timetable is clear, Welsh Government could organise a number of engagement opportunities for landlords and others to refresh their understanding of the changes being introduced by the Act's implementation, and the necessary changes required in relation to policy and practice.

4. The Committee has heard evidence about the impact security of tenure can have on people's health, wellbeing and family life. What groups of tenants/contract-holders might benefit the most from this Bill? Does the Bill do anything to address the needs of the most vulnerable groups?

The provisions within the Bill will make the Private Rented Sector (PRS) a more attractive option for prospective tenants, some of whom would previously have seen the relative lack of security within the sector as a particular barrier, and will make it easier for local authority Housing Options teams to promote the PRS as a sustainable and secure option, and as a viable and genuine alternative to social housing. Households with children of school age, which are currently unable to access social housing because of a lack of supply in some areas, are likely to benefit because of increased certainty over proximity to schools and other services.

5. Do you have any views on the potential impact of the Bill on a landlord's right to peaceful enjoyment of property under Article 1 Protocol 1 of the European Convention of Human Rights, and a contract holder's Article 8 right to private and family life?

WLGA has no position on this.

6. How effectively does the Bill balance the rights of landlords and contract holders?

Generally, the provisions within the Bill will have the effect of providing greater security for contract holders in the PRS sector. This will make the PRS sector more attractive to many of the prospective customers on which landlords depend.

7. To what extent do you consider that this Bill makes progress towards a legislative universal right to adequate housing?

By providing greater security for contract holders, the Bill makes some limited progress towards a legislative universal right to adequate housing.

Consultation and evidence base

8. The Committee has heard that some of the evidence base for this Bill is anecdotal.

How strong is the evidence base for changing the current approach to no-fault evictions? Is anecdotal evidence sufficient to change the law in this area?

The WLGA has the view that there is sufficient evidence to support the proposed changes to the current approach to no-fault evictions.

9. Should the Welsh Government be doing more to understand how the sector operates, and how could it do this?

Welsh Government should continue to engage with the representative bodies of landlords, tenants and professional engaged in the sector, with a particular focus on developing a full understanding of the different components of the PRS and their inter-relationships and key differences and challenges.

10. Tai Pawb's evidence notes that the mechanisms to engage with private rented sector tenants are lacking or underfunded. What challenges does the lack of tenant representation, particularly in the private rented sector, present to policymakers?

The PRS is a very diverse sector, which provides homes for households from a wide variety of backgrounds and with a broad range of needs. This diversity presents a challenge to policymakers as the lack of representation makes this a particularly difficult sector to consult with and therefore to effectively develop policies which entirely avoid any unintended consequences in at least some part of the sector.

Changes to no fault evictions

11. To what extent are social landlords able to use no-fault evictions at present and why do they use them?

Local authority landlords in Wales do not currently use no-fault evictions.

12. Where no fault evictions are used by social landlords, what measures are in place to protect tenants from any misuse?

Local authority landlords in Wales do not currently use no-fault evictions.

13. The Bill exempts prohibited conduct standard contracts and supported standard contracts from the new extended no fault notice requirements. Do you support this provision, and why?

Yes, the WLGA supports this provision which reflects the specialist nature of supported accommodation and services, and the management challenges posed by embracing the need to provide homes for individuals and households with sometimes challenging behaviours.

14. Introductory standard contracts are not given any exemption by the Bill and will be subject to the new arrangements for no fault notices. What impact might this have on social landlords?

The impact on the use of Introductory Tenancies by Community Landlords is rightly identified within the Explanatory Memorandum and this will have an impact on local authorities by reducing the perceived effectiveness of Introductory Tenancies, however, we are in agreement with the overall principle that social housing settings should be no less secure than those in the private rented sector. It is not the current practice of Local Authority landlords to utilise Section 21.

15. Would including introductory standard contracts in the list of exemptions mean that social landlords would retain an additional mechanism to evict tenants in a way that private landlords would not? Do you think this would be in line with the policy intention of the Bill?

Yes it would. WLGA are in agreement with the overall principle that social housing settings should be no less secure than those in the private rented sector.

16. Given there is work underway to eliminate evictions into homelessness from social housing, is there a case, as some stakeholders have claimed, for removing the ability to issue a no fault notice entirely so landlords always have to give a reason for eviction?

Local authority landlords in Wales do not currently use no-fault eviction processes, therefore, removing the ability to issue a no-fault notice entirely would not have a meaningful detrimental effect.

Impact on the private sector

17. Are there concerns that private landlords will leave the sector as a result of the amendments in this Bill? Does the Bill in any way risk reducing the supply of private rented accommodation and putting additional pressure on social housing providers?

18. Are there concerns that the changes to no fault evictions in this Bill might make private sector landlords less likely to let their properties to more vulnerable tenants who may be seen as higher risk?

19. Could this further increase demand for social housing? What wider implications might this have for social landlords given some vulnerable contract-holders may have high support needs?

The provisions within the Bill will make the PRS a more attractive option for prospective tenants, and will make it easier for local authority Housing Options teams to promote the PRS as a sustainable and secure option, and as a viable and genuine alternative to social housing.

However, it is possible that some PRS landlords may be more reluctant to rent their properties to vulnerable people who are on low incomes, therefore reducing housing options in some areas.

In addition if, as a consequence of the provisions of the Bill, some PRS landlords chose to leave the market, or not enter it in the first place, this could have the unintended effect of reducing the overall stock of housing available to vulnerable households in some areas. However, this possibility needs to be viewed against the significant growth in the PRS as a proportion of the overall housing market in Wales over recent years.

Demand for social housing is very high in most parts of Wales, and considerable efforts are being made by local authorities and their partners to increase the supply of social housing to better meet that demand. Support services for vulnerable contract holders should be designed in a way that they can be delivered for vulnerable people irrespective of the tenure of their housing.

Impact of the Bill on the courts

20. Many stakeholders have expressed concerns about how the courts deal with possession claims. How effective will this Bill be without reforms of the court system, and what measures to reform the system should the Welsh Government push for?

WLGA has no position on this.

21. Should there be a dedicated housing court or tribunal that deals with possession claims and other housing disputes?

WLGA has no position on this.

22. The Minister told the Committee that she expects a reduction in the number of social housing possession claims, and that this will free up court time. When is this reduction in possession claims by social landlords likely to happen? Is it likely to happen before the 2016 Act is commenced – expected to be in spring 2021?

While we are in agreement with the overall principle of avoiding the situation where social landlords have no option but to take action which results in a household becoming homeless, the detailed implementation of such an approach is not yet finalised. It may take some time for this to be successfully implemented, and discussions about the additional resources required to support success, e.g. through additional services commissioned via Housing Support Grant, have yet to be successfully concluded.

Impact of the Bill on homelessness

23. A number of stakeholders have raised concerns with the Committee about the potential impacts on homelessness. Given there could be more use of ground/fault based possession claims, particularly in the private rented sector, is it likely that more households will be found to be intentionally homeless?

Local authorities would consider all of the information relevant to each individual case on its merits. This does not necessarily suggest a direct relationship with the proportion of households found to be intentionally homeless, which is currently a very small proportion of all households being assisted by local authorities.

24. Will there be an expectation that contract-holders should challenge ground based possession claims in the courts if they present as homeless?

Local authorities would consider all of the information relevant to each individual case on its merits. There should not be a blanket presumption that if a grounds-based possession case is not challenged by the tenant that the grounds are agreed.

25. The Minister told this Committee that homeless applicants should expect a service from local authorities at the point they are served with notice, even if that is six months before their notice expires.

26. Will this happen in practice, or will local authorities wait until it is 56 days until the applicant is threatened with homelessness?

27. If local authorities wait until contract-holders are 56 days from their notice expiring, will the six month notice period make any difference to those facing homelessness? Is this a matter that could be clarified in guidance or does there need to be legislative change?

Local authorities will always pay due regard to statutory guidance as well as the relevant legislation. This has been illustrated by the response of local authorities to the Minister's letter clarifying the position with regard to vulnerability and priority need during the current pandemic emergency. On that basis, the matter could be clarified in guidance without the need for legislative change.

28. In light of the changes in the Bill, Shelter Cymru have called for the statutory definition of successful prevention and relief of homelessness to be increased from having suitable accommodation likely to be available for six months to 12 months.

29. The Minister has said that there is no need to do this, as a notice cannot be issued within the first six months of an occupation contract, so in practice there is a minimum 12 month contract once the six month notice is taken into account.

30. Do you think the justification the Minister has given is sufficient, or do you consider that a change to the statutory definition in the 2014 Act is needed?

The justification given by the Minister is sufficient, and no change to the statutory definition in the 2014 Act is required.

31. Shelter Cymru said that if a local authority was able to persuade a landlord to serve a 6 month no fault notice rather than a 28 day ground based notice that would count as preventing homelessness. Should a scenario like that be classed as

successful prevention of homelessness?

Yes. In this scenario, the intervention by the local authority secures the tenant an additional period of time during which alternative accommodation arrangements can be explored and put in place.

Dear Chair and Members of the Equalities, Local Government and Communities Committee,

We welcome the opportunity to provide further evidence on the impact of the Renting Homes (Amendment) (Wales) Bill.

1) Is there a need for this Bill and, if so, why?

The Welsh Government included an intention to increase security of tenure in the private rented sector (PRS) within its programme for government this term. Upon the implementation of the Renting Homes (Wales) Act 2016, this Bill does achieve that aim in increasing the minimum security of tenure for private sector contract holders from six to twelve months unless they breach their occupation contract.

2) The Welsh Government has decided to amend the Renting Homes (Wales) Act 2016 before it has commenced. Do you agree with this approach or not?

We agree with the approach of amending the Renting Homes (Wales) Act 2016 prior to implementation. Practically, a significant body of new documentation and guidance is required to enable the implementation of the Act, including prescribed forms and model contracts. Should the amendment of the Act follow implementation, these documents and guidance would require revision, potentially causing confusion in the aftermath of implementation.

Moreover, the Act is the single largest overhaul of tenancy law in generations. It is preferable that the Act is implemented in one tranche, so as to support effective communications to landlords and tenants (contract holders).

3) What level of awareness is there amongst landlords, tenants and professionals working in the sector that the 2016 Act is coming? What, if anything, can be done to raise levels of awareness?

There is very good awareness amongst housing associations and related professionals of the upcoming implementation of the Act. However, there is significant uncertainty around the implementation timetable of the Act. We are aware that Welsh Government wish to implement the Act (commencement) prior to Spring 2021. We are also aware that six months' notice will be issued to landlords



prior to the implementation date. Beyond this, for a number of reasons including the current pandemic, we are not aware of a more detailed implementation timeline.

Many housing associations are large-scale landlords, managing tens of thousands of homes. The implementation of the Act will be a significant undertaking involving communications programmes, significant changes to housing management systems and overhauling of documentation. Furthermore, housing professionals will require training and development to operate to a high level within the new framework the Act will bring in. For these reasons, housing associations would benefit from an increased level of certainty over the timeline for implementation of the Act, including the likely date of commencement and when new documentation and guidance will be published for familiarisation prior to this, so they and their workforce can prepare sufficiently.

It is our understanding that the level of awareness of the Act amongst tenants is very low. This is understandable as neither Welsh Government nor landlords have undertaken any communications programmes aimed at tenants. We believe this was the right decision, as meaningful communications can only be achieved when more detail about the implementation timeline, documentation and guidance is known. Furthermore, it is sensible that any communications are held until the Bill has passed through the Senedd.

4) The Committee has heard evidence about the impact security of tenure can have on people's health, wellbeing and family life. What groups of tenants/contract-holders might benefit the most from this Bill? Does the Bill do anything to address the needs of the most vulnerable groups?

There is a growing body of evidence that low security of tenure can have negative impacts on mental health and wellbeing, as well as increasing the risk of upheaval to family life including children's schooling. This Bill will provide all private rented sector (PRS) tenants (contract holders) with an increased feeling of security in their homes and decrease the likelihood that they will need to move home more than once a year, in addition to increasing the minimum time given for sourcing a new home to six months, unless in breach of contract.





This Bill would make no change to the majority of social housing contract holders following the commencement of the Renting Homes (Wales) Act 2016, as the Secure Contract is unaffected.

5) Do you have any views on the potential impact of the Bill on a landlord's right to peaceful enjoyment of property under Article 1 Protocol 1 of the European Convention of Human Rights, and a contract holder's Article 8 right to private and family life?

We do not hold any concerns around this as the properties owned and managed by housing associations are not owned by individuals, rather a company, co-operative or mutual.

6) How effectively does the Bill balance the rights of landlords and contract holders?

The Bill goes some way to increase security of tenure within the private rented sector and reduce the risk of people losing their homes without fault and at two months' notice.

However, we believe that the Bill should further recognise that housing associations are fundamentally different to the private rented sector, are regulated and do not operate for profit. Therefore, we urge the committee to recognise that measures aimed at the private rented sector should not adversely affect the operations of the social rented sector.

7) To what extent do you consider that this Bill makes progress towards a legislative universal right to adequate housing?

Security of tenure is an important cornerstone of a legislative right to housing. At Community Housing Cymru, we believe in a Wales where good quality housing is a right for all, as laid out in our 2017 Housing Horizons vision.¹ We are currently undertaking a refresh of this vision, in light of the coronavirus pandemic.

8) The Committee has heard that some of the evidence base for this Bill is anecdotal. How strong is the evidence base for changing the

¹ <https://chcymru.org.uk/en/affordable-housing-review/housing-horizons>





current approach to no-fault evictions? Is anecdotal evidence sufficient to change the law in this area?

We believe data on repossessions in Wales is relatively sparse, mainly relying on Ministry of Justice court proceedings data. There is little evidence, for instance, over whether a PRS tenancy would have ended through the fault-based system if the Section 21 process did not exist.

However, much of the impact of Section 21 in the private rented sector is psychological, with tenants knowing that they face the potential of losing their home with two months' notice at no fault, even if this is unlikely to occur.

9) Should the Welsh Government be doing more to understand how the sector operates, and how could it do this?

We believe that the Welsh Government is developing a good understanding of the operations of the private and social rented sectors through Rent Smart Wales and regulation of social housing. This understanding could be furthered through these existing tools through the collection of better data on the performance of the two sectors, including information on who is living in homes and the reasons they leave them.

10) Community Housing Cymru says the use of Section 21 (no fault) notices by housing associations is fundamentally different to its use in the PRS. Could you explain what those differences are?

Housing associations use the tenancy framework as laid out in the Housing Act 1988. This is generally the same tenancy framework used by the private rented sector (PRS). However, the maintenance issued by housing associations is the assured tenancy, affording a high level of security of tenure. The PRS are able to use the assured tenancy also, but choose on the most part to issue the more flexible assured shorthold tenancy (AST).





It can therefore be said that housing associations share their tenancy framework with the PRS, whereas local authority landlords have a separate tenancy framework laid out in other housing acts.

The Renting Homes (Wales) Act 2016 ends this through amalgamating the housing association and local authority tenancy frameworks. Thereafter referred to as *community landlords*. However, some shared aspects will remain between the PRS and community landlords. Crucially, contract types such as the Introductory Standard Contract are variants of the Standard Contract for the PRS, rather than being distinct legal entities.

In the current tenancy framework, housing associations use the AST, but in circumstances restricted through agreement with Welsh Government. These are mainly in the form of:

- Starter tenancies (which will be replaced by the introductory standard contract under the Renting Homes (Wales) Act 2016)). Starter tenancies are issued for a 12-month period to new tenants ahead of an assured tenancy.
- Demoted tenancies (to be replaced by the prohibited conduct standard contract under the Act). Demoted tenancies are issued following a court order to assured tenants as an alternative to eviction.
- Some supported housing tenancies, where this would give an increased security compared to a license.

The AST can be ended by court order following the service of a Section 21 notice. However, the process for this differs fundamentally between housing associations and the PRS.

Firstly, housing associations must ascribe a 'fault' when issuing a Section 21 notice. This should be anti-social behaviour (ASB)² or rent arrears. In the PRS, no fault is required. It is our belief that the use of Section 21 by housing associations cannot be referred to as 'no fault'.

Secondly, housing associations follow a pre-action protocol which details actions that should be taken prior to the possession claim going to court. This includes ensuring that the tenant has accessed support to maximise income to reduce rent arrears among other measures.

² ASB in this instance refers to seriously dangerous or criminal behaviour such as arson or endangering community safety.





Finally, housing associations generally have rigorous internal appeals processes for Section 21 notices.

11) Tai Pawb's evidence notes that the mechanisms to engage with private rented sector tenants are lacking or underfunded. What challenges does the lack of tenant representation, particularly in the private rented sector, present to policymakers?

We agree that the PRS does not benefit from the same level of tenant representation as the social rented sector. The lack of a tenant union in Wales does make assessing the impact of policy decisions on PRS tenants difficult. Formal consultation is not always accessible to PRS tenants and the contribution of bodies collecting the views of social rented sector tenants, including TPAS Cymru, are valuable.

12) To what extent are social landlords able to use no-fault evictions at present and why do they use them?

Housing associations are not able to undertake no-fault evictions. The ability to use Section 21 by housing associations, and how this does not result in no-fault evictions, are detailed in our response to question 10.

The majority of housing association tenants hold assured tenancies, which cannot be ended using the Section 21 process. Section 21 is used by housing associations where a tenant holds an assured shorthold tenancy (AST). The use of ASTs by housing associations in social housing is restricted to certain applications. These are:

- Starter Tenancies. These are issued to tenants for an initial 12 month period at the start of their occupancy, before converting to an assured tenancy. Starter tenancies support housing associations to let homes to tenants who have high levels of previous rent arrears or have recently perpetrated serious ASB.
- Demoted tenancies. These are issued to tenants in response to a court order, as an alternative to an eviction. Demoted tenancies revert back to assured tenancies after a period of time.





- Some short to medium term supported housing uses the AST, as a reflection that the residency there is designed to develop independence prior to move on to more permanent accommodation.

Due to the specific circumstances of tenants who are resident in social housing under one of the above tenancies, Section 21 is a crucial tool in housing management, particularly for the safeguarding of community safety. As mentioned previously, housing associations only use Section 21 in response to serious ASB or rent arrears.

As discussed, many tenants holding starter and demoted tenancies will have perpetrated serious ASB or have incurred rent arrears in the past.

13) Where no fault evictions are used by social landlords, what measures are in place to protect tenants from any misuse?

Housing associations are not able to undertake no-fault evictions. The ability to use Section 21 by housing associations, and how this does not result in no-fault evictions, are detailed in our response to question 10.

Where Section 21 is used by housing associations there are a number of safeguards, including:

- The pre-action protocol
- Internal appeals/review processes
- Ultimate Article 8 defence in court

Housing associations are also ultimately socially responsible landlords, accountable to their boards. The use of Section 21 is closely monitored and scrutinised.

14) The Bill exempts prohibited conduct standard contracts and supported standard contracts from the new extended no fault notice requirements. Do you support this provision, and why?

We support this provision, as we believe the specific circumstances of the two contract types require the shorter notice period for S.173.





With regards to the prohibited conduct standard contract, a notice period of 6 months, followed by a 6 month moratorium, as per the standard contract, would prevent the use of Section 173 within the first 12 months of the contract. As the contract is designed to run for a term of 12 months, this would remove the option of Section 173, therefore making the contract a less effective tool as an alternative to eviction.

The standard supported contract is a complex contract type, blending elements of licenses and the standard contract. It is designed for use in short-medium term supported accommodation settings. We believe the shorter notice period for S.173 in this circumstance will encourage the use of the standard supported contract over the use of a license, therefore increasing security of tenure.

15) Introductory standard contracts are not given any exemption by the Bill and will be subject to the new arrangements for no fault notices. What impact might this have on social landlords?

Under the current tenancy regime, housing associations utilise Section 21 to end starter tenancies where seriously dangerous or criminal behaviour has been perpetrated by the tenant and is having an impact on the safety of the surrounding community. This situation would continue under the introductory standard contract and Section 173.

In the current regime, the pre-action protocol, regulation of the use of Section 21, and appeals processes put in place by housing associations ensure that tenants are robustly protected from being unjustly evicted using the Section 21 process. Furthermore, the court must be satisfied that the housing association is acting reasonably when applying for a possession order under Section 21.

The alternative repossession route to Section 21 assured shorthold tenancies is laid out under Section 8 of the Housing Act 1988. This is mostly mirrored under Section 173 and Section 55 of the Renting Homes (Wales) Act 2016.

In theory, the Section 8 process is designed to provide a balance between the right of the landlord to recover possession following breach of tenancy and the right of the tenant to remain in their home unless they are at sufficient fault. However, the serious under resourcing of HM Courts and Tribunals Service and the under





provision of quality housing advice and representation has led to significantly drawn out repossession processes in some cases, regardless of the strength of the case. This has led to, in some cases, at fault tenants remaining in their current home for over a year following serious offences against their neighbours, including assault and arson. These cases inevitably end in eviction and the tenant moving into more suitable accommodation, but at the detriment of the surrounding community during the long and drawn out court process. In these minority instances, Section 21 currently provides a much more balanced solution.

Additionally, under the Renting Homes (Wales) Act 2016, only serious rent arrears remains as a mandatory ground, where a court must award possession if the case is proven. The discretionary nature of other breaches of contract is likely to place increased pressure on the courts system, leading to cases taking longer to be heard and decisions delayed.

Where seriously dangerous behaviour is threatening neighbouring tenants and all support services have failed to resolve the issue, the discretionary nature of repossession in these cases is likely to cause serious damage to community cohesion, as vulnerable witnesses are required to attend court and could be more likely to see the dangerous behaviour continue. Under the S.173 process, there is no need for witnesses to attend court.

CHC believes the Section 8 system is not currently fit for purpose, with the resourcing of HM Courts and Tribunal Service and the current range of mandatory and discretionary grounds leading to long and drawn out hearings. This causes unnecessary trauma for tenants, negative impacts on the surrounding community in cases of dangerous behaviour and increased resource burden on housing associations. As the court system remains mostly unaltered under the Renting Homes (Wales) Act, we assume this situation will remain under the new regime.

Housing associations and CHC are committed to reducing evictions and ending evictions into homelessness. We are working closely with Welsh Government and public sector partners to make this a reality. However, to maintain safe communities and keep rent affordable, this cannot equate to zero consequences for dangerous behaviour or serious non-payment of rent.

In cases of seriously dangerous behaviour, the use of Section 21, and in future the use of Section 173 of the RHWA with a two-month notice period, remain a





necessity for ensuring the safety of communities, due to the more definite process compared to Section 8 and its RHWA equivalent. Recent situations of dangerous behaviour include serious assaults with weapons against housing association staff, and attempted arson in a block of flats, threatening the lives of the surrounding community. In these situations, Section 21 provides the ability to make the community safe, whilst ensuring the evicted tenant can be rehoused rapidly.

16) Would including introductory standard contracts in the list of exemptions mean that social landlords would retain an additional mechanism to evict tenants in a way that private landlords would not? Do you think this would be in line with the policy intention of the Bill?

Both private and social landlords would be able to utilise Section 173 to repossess properties. However, only a minority of social housing tenants will occupy their homes under a variant of the standard contract at any one time and therefore subject to Section 173. The majority of social housing tenants will occupy under a secure contract. Nearly all PRS tenants will occupy under a standard contract and will be subject to Section 173.

Including the introductory standard contract in the list of exemptions would retain the notice period for Section 173 under this contract type at two months, rather than the proposed extension to six months under the standard contract. However, we believe this is necessary, as the introductory standard contract is significantly different in its use compared to the standard contract as the introductory standard contract is only intended to last 12 months, for new social housing tenants, prior to conversion to a secure contract. The standard contract in the PRS will be a long-term contract.

We believe that exempting the introductory standard contract, alongside the prohibited conduct standard contract and the standard supported contract would be in line with the policy intention of the bill, as we understand this is to increase security of tenure in the private rented sector. The introductory standard contract will not be issued by private landlords.

17) Given there is work underway to eliminate evictions into homelessness from social housing, is there a case, as some stakeholders have claimed, for removing the ability to issue a no





fault notice entirely so landlords always have to give a reason for eviction?

Housing associations cannot undertake no fault evictions and currently are required to give a reason, either rent arrears or ASB, when issuing a Section 21 notice.

We believe that the Section 21 process, and Section 173, are necessary due to the inadequacies of the current Section 8 process and its Renting Homes (Wales) Act 2016 equivalent. Much of this is due to the lack of resourcing within the courts and tribunals service. Should the fault based system under Section 8 improve in terms of speed and robustness, it could be argued that there would be no need for Section 8 or 21, or their Renting Homes (Wales) Act 2016 equivalents.

18) Are there concerns that private landlords will leave the sector as a result of the amendments in this Bill? Does the Bill in any way risk reducing the supply of private rented accommodation and putting additional pressure on social housing providers?

Community Housing Cymru does not hold a strong view on the actions of private sector landlords. However, if it were the case that landlords were to leave the market, this would be of concern due to potentially increased difficulty in discharging homelessness duties for local authorities and also the leasing of temporary accommodation from private landlords.

19) Are there concerns that the changes to no fault evictions in this Bill might make private sector landlords less likely to let their properties to more vulnerable tenants who may be seen as higher risk?

Community Housing Cymru does not hold a strong view on the actions of private sector landlords.

20) Could this further increase demand for social housing? What wider implications might this have for social landlords given some vulnerable contract-holders may have high support needs?

Demand for social housing is significant in all areas of Wales due to the housing crisis, particularly the lack of affordable housing and inadequacy of the welfare system to cover housing costs. As a general rule, social housing tenants tend to be





more vulnerable than people living in the PRS, due to the nature of the allocations system prioritising people with vulnerabilities for social housing. As such, social housing providers are expert at delivering housing for those who are more vulnerable.

Should the proportion of social housing tenants who are vulnerable increase, pressure on services would increase and additional resources would be required to deliver them.

21) Many stakeholders have expressed concerns about how the courts deal with possession claims. How effective will this Bill be without reforms of the court system, and what measures to reform the system should the Welsh Government push for?

We believe that the Section 21 process, and Section 173, are necessary due to the inadequacies of the current Section 8 process and its Renting Homes (Wales) Act 2016 equivalent. Much of this is due to the lack of resourcing within the courts and tribunals service. Should the fault based system under Section 8 improve in terms of speed and robustness, it could be argued that there would be no need for Section 8 or 21, or their Renting Homes (Wales) Act 2016 equivalents.

Ultimately, we do not believe that housing is well served within the existing court arrangements. A separate housing tribunal, providing specialist judges, would increase the efficiency and robustness of decision making, and ensure fairness to both tenants and landlords.

22) Should there be a dedicated housing court or tribunal that deals with possession claims and other housing disputes?

We believe a dedicated housing tribunal for Wales would be beneficial to both tenants and landlords. No one benefits from poor levels of access to justice. Currently, many housing cases are heard by judges non-expert in housing, a famously thorny area of law. This can sometimes lead to cases being unnecessarily adjourned and delayed. A dedicated tribunal would focus on housing cases, as well as providing the space and time for non-legal interventions such as mediation.





Furthermore, the Renting Homes (Wales) Act 2016 increases the possibility of access to justice by tenants, particularly in the area of fitness for human habitation. This can only be fully realised if the courts/tribunal system has the capacity to offer increased access to justice.

23) The Minister told the Committee that she expects a reduction in the number of social housing possession claims, and that this will free up court time. When is this reduction in possession claims by social landlords likely to happen? Is it likely to happen before the 2016 Act is commenced – expected to be in spring 2021?

The rate of social housing possession claims has decreased steadily over recent years, in fact halving between 2001 and 2017. This is despite the serious challenges posed by the roll out of Universal Credit, which has increased the rent arrears levels of some tenants. This reduction reflects the tireless work of housing associations across Wales in supporting tenants to ensure that issues are remedied before they reach the point where an eviction could be likely.

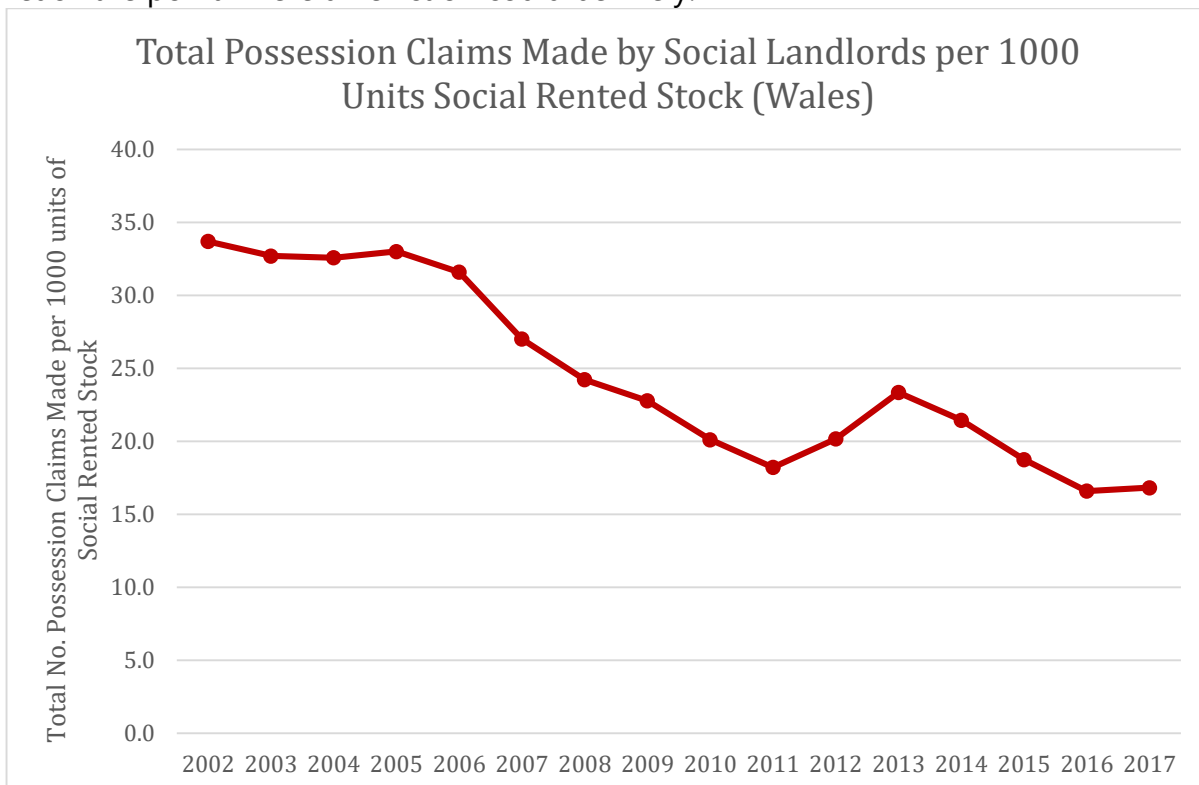




Figure 1: Possession Claim Rate by Social Landlords in Wales (Source: Ministry of Justice)

Efforts to reduce the number of claims to court, not all of which lead to eviction, has intensified in recent years. We believe that this work will lead to a continued reduction in the possession claim rate between now and spring 2021.

Alongside the collective work of housing associations to reduce the eviction rate, we are working across the public sector to ensure that, where evictions do take place, suitable alternative accommodation and support are secured. We do not believe that a zero eviction rate is possible, due to the need to protect communities from serious ASB. However, we believe our vision of zero homelessness as a result of eviction from social housing is possible.

24) A number of stakeholders have raised concerns with the Committee about the potential impacts on homelessness. Given there could be more use of ground/fault based possession claims, particularly in the private rented sector, is it likely that more households will be found to be intentionally homeless?

There is a possibility that councils could find an increased number of households intentionally homeless following a grounds based repossession for wilful non-payment of rent, ASB or other contract breach. We believe that the intentionality test for homelessness should be removed altogether.

25) Will there be an expectation that contract-holders should challenge ground based possession claims in the courts if they present as homeless?

It is very difficult to predict how the Renting Homes (Wales) Act 2016 will operate concerning local authority homelessness decisions prior to commencement. However, care should be taken to avoid increased potential for people to be found intentionally homeless. This is best achieved through the end of the intentionality test.

26) The Minister told this Committee that homeless applicants should expect a service from local authorities at the point they are served with notice, even if that is six months before their notice





expires. Will this happen in practice, or will local authorities wait until it is 56 days until the applicant is threatened with homelessness?

Practice in homelessness prevention varies considerably across local authorities, for a number of reasons including demand and resourcing. Our understanding is that the majority of people presenting before the 56 days are supported by their council. However, we believe that the prevention duty should be extended to six months in line with the changes to S.173. There is a possibility that this will lead to increased demand on council homelessness services and this should be considered in terms of how they are resourced.

27) If local authorities wait until contract-holders are 56 days from their notice expiring, will the six month notice period make any difference to those facing homelessness? Is this a matter that could be clarified in guidance or does there need to be legislative change?

We believe legislative change is required, to provide an absolute legal safety net for people presenting to their council. We also believe that regard should also be given to the level of access to administrative justice in Wales, to ensure that citizens have the ability to challenge the level of service they receive under the prevention duty.

28) In light of the changes in the Bill, Shelter Cymru have called for the statutory definition of successful prevention and relief of homelessness to be increased from having suitable accommodation likely to be available for six months to 12 months. The Minister has said that there is no need to do this, as a notice cannot be issued within the first six months of an occupation contract, so in practice there is a minimum 12 month contract once the six month notice is taken into account. Do you think the justification the Minister has given is sufficient, or do you consider that a change to the statutory definition in the 2014 Act is needed?





We do not hold strong views on this. It would seem sensible that the statutory definition of accommodation deemed to provide successful prevention or relief should be amended to align with the extended security of tenure afforded by the Renting Homes (Wales) Act 2016 as potentially amended by the Bill.

29) Shelter Cymru said that if a local authority was able to persuade a landlord to serve a 6 month no fault notice rather than a 28 day ground based notice that would count as preventing homelessness. Should a scenario like that be classed as successful prevention of homelessness?

We do not believe this should be regarded a successful prevention of homelessness.

For more details, or for answers to further questions, please contact:

Will Henson
Policy & External Affairs Manager



CIH Cymru oral evidence submission

Scrutiny of: Renting Homes Amendment (Wales) Bill

For: Equality, Local Government and Communities Committee

Provided by: Matt Dicks



**Chartered
Institute of
Housing**
Cymru

Responses

1. Is there a need for this Bill and, if so, why?

As we've noted in our evidence:

- Increasing the security of tenure supports our call, alongside Tai Pawb and Shelter Cymru to see the right to adequate housing fully enshrined in Welsh legislation (We have included the executive summary of this research as a separate piece of evidence to the committee.)
- The private rented sector makes-up almost 17 per cent of the housing stock in Wales and houses a wide variety of people. For some specific groups such as families with children and older people, increasing security of tenure remains an issue of high importance.
- We believe this is a matter of increasing consistency in what people can expect from their experience of renting in Wales (regardless of tenure), increasing the attractiveness of renting for tenants and landlords alike and using this as an opportunity to increase the resources focussed at preventing eviction proceedings and potential homelessness in the first instance.

2. The Welsh Government has decided to amend the Renting Homes (Wales) Act 2016 before it has been commenced. Do you agree with the approach or not? If not, why not?

- We agree in principles with the approach taken by the Assembly.
- Our main concern that we've reflected on in our evidence is over the delay to implementing the provisions of the 2016 Act and the impact the amendments will have on those provisions, such as the standard contracts.
- One action that would aid implementation is a clear timetable for bringing the legislation online, with clear recognition of the need for landlords to digest the changes and prepare beforehand.

3. What is the level of awareness is there amongst landlords, tenants and professionals working in the sector that the 2016 Act is coming? What, if anything, can be done to raise levels of awareness?

- We are confident that most of our members have a good level of awareness relating to the Act – but note that there is a level of frustration and anxiety in the sector given the delay between passing and implementation.

- We are concerned however that some private landlords may not have sufficient awareness still of the Act and some of the measures it brings in – such as changes to contracts and the health and safety requirements.
- We did some research on Private Renting and Mental Health in early 2019 through our Tyfu Tai Cymru project. One of the findings suggested there was a wide variety of places a private landlord might go to find information about good practice/ policy changes. (Such as local government websites, Citizens Advice and Rent Smart Wales). The research suggested that there was no predominant form of information landlords regularly engage with. With this in mind, we believe its important to utilise a variety of channels served by different organisations to increase reach into the private landlord sector and raise general awareness and visibility of the changes.
- Both social and PRS landlords will need to continue to communicate proactively with tenants to inform on the wider changes of the Renting Homes Act in tandem with impact of this Amendment Bill.

4. The Committee has heard evidence about the impact security of tenure can have on people’s health, wellbeing and family life. What groups of tenants/ contract-holders might benefit the most from this bill? Does this Bill do anything to address the needs of the most vulnerable groups?

- As mentioned previously there are specific groups who will benefit in particular from greater security of tenure. Namely, households with children and older people. For these groups’ security is important to maintain social links and access to community support and infrastructure.
- For some households who cannot afford to buy a home the private rented sector is the only viable option. Whilst it is important to continue with activity that increases people’s income helping to broaden the range of housing options available, the legislation in the interim will provide welcome security to those who cannot afford to buy a home or would prefer to rent.
- For some vulnerable people/households, security of tenure will be important in creating one less worry. The Bill understandably does not reflect on the role of housing-related support services, but we would like to highlight that without these services ensuring potentially vulnerable individuals can live independently the Bill’s purpose

5. Do you have any views on the potential impact of the Bill on a landlord’s right to peaceful enjoyment of property under Article 1 Protocol 1 of the European Convention of Human Rights, and a contract holder’s Article 8 right to private and family life?

- We recognise that this needs to be a careful balancing act between the rights of individuals as property owners and doing what’s in the best interest of society as a whole in meeting the demand for housing.
- Whilst the Bill clearly brings forward powers to increase the security tenants experience whilst renting, this will need to be accompanied by greater support for

landlords to avoid evictions in the first place and when it is deemed necessary, access to efficient court proceedings that are transparent, well supported and easily engaged with by all parties involved.

- We believe that with the issues outlined addressed in our response that this legislation could pave the way to improving standards (both physical standards of homes and housing management) within the PRS, create a better environment for renting for tenants and landlords alike and improve people's overall experiences of renting in Wales.

6. How effectively does the Bill balance the rights of landlords and contract-holders?

- We believe that the Bill would offer a good balance, if other activity to improve support for landlords and tenants is effectively undertaken.

7. To what extent do you consider that this Bill makes progress towards a legislative universal right to adequate housing?

- As our report produced by Dr. Simon Hoffman outlines, a universal right to adequate housing needs to encompass both access to suitable homes and also the ability to feel secure and well within the home.
- Whilst the Bill certainly makes progress in this area, to be fully realised effectively in practice it must be accompanied by well-resourced services aimed at sustaining tenancies in addition to the broader and long-term resources needed to increase the supply of social and affordable housing, whilst in tandem increasing the quality of existing homes on a cross-tenure basis.
- However, a right to adequate housing will only truly be realised with the full incorporation of the right to adequate housing into Welsh law as defined by the United Nations International Covenant on Economic, Social and Cultural Rights (ICESCR), which provides for legal recourse to challenge against the delivery of this right.

8. The committee has heard that some of the evidence for this Bill is anecdotal. How strong is the evidence base for changing the current approach to no-fault evictions? Is anecdotal evidence sufficient to change the law in this area?

- There is a clear issue in that we do not have strong robust data in Wales about the impact of tenancy insecurity – we do not know the common things people feel apart from what the anecdotal data tells us around stress, anxiety (general impact on mental health) of being in a tenancy that lacks any real security. We do believe that given the impact of these factors on people's ability to prosper in their home and community that they should not be taken lightly – and alone merit a change in policy.
- Aside from this we believe that there is a need to increase equality between tenures, making sure that people who rent privately and landlords themselves can expect

sufficient levels of support, advice and info to maintain business/ quality of life respectively.

- Since the Housing (Wales) Act 2014 came into force local authorities in Wales partly rely on the PRS to discharge their homelessness duty. A vital part of housing people who may require additional support in the PRS has been providing high quality housing support services through Housing Support Grant. In playing this role in supporting more vulnerable households it seems natural to accompany this with more security for tenants.
- Lastly with such pressure on social housing supply, any measure that keeps people in their homes, potentially avoids evictions and increases the certainty under which people live in their homes is a positive step forward.

9. Should the Welsh Government be doing more to understand how the sector operates, and how could it do this?

- Once again reflecting on the findings of our PRS and mental health research, we found that data about operating practice in the PRS was sparsely held, and often depended on the resources local authorities were able to offer at a local level to engage with landlords.
- At a Welsh Government level there is a need for greater leadership to ensure the issues specific to the PRS are sufficiently recognised and progressed. We welcomed the broadening out of a Welsh Government stakeholder group focussing on welfare benefit issues in the PRS, to consider issues much broader to the PRS than this. Civil servants have played a proactive and leading role in taking forward recommendations from our PRS and mental health work which we strongly welcome but note that the group as a whole does not meet regularly and that in-turn stifles overall progress in other areas.
- The onus on understanding the PRS is often left for local authorities to unpick at a local level, which given how different housing markets and housing demand can be is understandable. However, as we have alluded to previously local authorities have different levels of resources available to achieve this which can make approaches and engagement inconsistent – for example some authorities operate private landlord forums whilst others do not.

10. Tai Pawb's evidence notes that the mechanisms to engage with private rented sector tenants are lacking or underfunded. What challenges does the lack of tenant representation, particularly in the private rented sector, present to policymakers?

- Meaningful tenant involvement is one of the most challenging aspects of delivering social and affordable housing. In the PRS where tenants may move-on quicker and landlords have less resources (no comms team etc) involving and engaging tenants can be difficult. But not addressing this issue fully creates its own problems.
- The lack of representation means that in practice we risk not knowing how widespread a particular issue is, how issues might impact different groups (such as those with protected characteristics) and miss opportunities to use feedback to

improve policy nationally. In addition, there's a possibility that tenants feel muted due to the lack of a way of speaking up – creating the perception of a power imbalance.

11. To what extent are social landlords able to use no-fault evictions and present an why do they use them?

- Social landlords must provide a reason for eviction, due to the way organisations are regulated they do not operate in the same way as private landlords. The reasons largely being as a result of rent arrears or anti-social behaviour.
- Many social landlords are seeking to move towards a 'no evictions' policy, and many at least to a 'no evictions into homelessness' policy.

12. Where no fault evictions are used by social landlords, what measures are in place to protect tenants from any misuse?

- As mentioned previously social landlords do have to always give a reason. And there will often be a number of trigger points where they'll seek to contact and make tenants aware of the possibility of eviction and of the issues they're seeking to engage them on, usually referred to as pre-eviction protocols. Many social landlords seek to add in additional points to those usually completed via the protocols to increase the likelihood of avoiding possession proceedings.
- When considering rent arrears organisations are increasingly developing approaches that consider Adverse Childhood Experiences (ACEs) – recognising that things like rent arrears and anti-social behaviour can be indicators of struggle in someone's life that require understanding and more flexible approaches.
- But as social landlords are often quite large-scale providers, they are in a better position to carry the risk that comes with rent arrears and ASB – that isn't to say it isn't an issue, but compared with smaller PRS landlords, the difference between viability and real risk to the business is much tighter meaning that there's more capacity for practices to be flexible.

13. The Bill exempts prohibited conduct standard contracts and supported standard contracts from the new extended no fault eviction requirements. Do you support this provision, and why?

- Prohibited standard contracts often provide an alternative to eviction proceedings and under the Bill the supported standard contract offers additional security for those living in supported accommodation – we support these being exempted.

14. Introductory standard contracts are not given any exemption by the Bill and will be subject to the new arrangements for no fault notices. What impact might this have on social landlords?

- Social landlords may use section 173 to gain possession of a home where there is a serious threat to an individual or community safety. As organisation who will have a role to play in managing large amounts of homes it is important that they retain an ability to have this kind of impact in response to the most serious circumstances. Not providing an exemption will potentially impact how social landlords quickly gain possession in these instances and despite there being other ground-related routes available the pressure on the court system means that swift repossession is not possible using these methods as the alternative.
- 15. Would including introductory standard contracts in the list of exemptions mean that social landlords would retain an additional mechanism to evict tenants in a way that private landlords would not? Do you think this be in line with the policy intention of the Bill?**
- We do not believe this would be the case given the pre-eviction protocols social landlords must operate. Given that impact of the activities that might prompt a social landlord to seek to utilise section 173 on other households and the wider community we believe that inclusion in the list of exemptions would be a proportionate measure.
- 16. Given there is work underway to eliminate evictions into homelessness from social housing, is there a case, as some stakeholders have claimed, for removing the ability to issue a no fault notice entirely so landlords always have to give a reason for eviction?**
- Linked to the point made previously – for social landlords a reason will always need to be provided, even when using a section 173. We believe there is some logic in extending this requirement across tenures to increase accountability and gain richer data on evictions.
- 17. Are there concerns that private landlords will leave the sector as a result of the amendments in this Bill? Does the Bill in any way risk reducing the supply of private rented accommodation and putting additional pressure on social housing providers?**
- This is where measures to make the system more efficient and find that balance where landlords can still legitimately get their properties back are important – but with the right support infrastructure we believe there will be less need for this, which in terms of people staying in homes longer should make the environment a more attractive one for landlords.
 - Proactive and consistent communication will be important to address the concerns of landlords who may be concerned about the provisions in the Bill.

18. Are there concerns that the changes to no fault evictions in this Bill might make private sector landlords less likely to let their properties to more vulnerable tenants who may be seen as high risk?

- This is a problem at present, with or without this legislation. Private landlords need greater confidence over the levels of support tenants who may need it to live independently can expect in their homes. Without this we believe there is a real risk that this Bill may exacerbate this issue further.
- Our Tyfu Tai Cymu research on private renting and mental health found that:
 - One in three support organisations feel there is ‘never’ enough mental health support for tenants renting privately
 - 62 per cent of landlords have had, or currently have a tenant with a mental health problem
 - Almost half of private landlords felt they ‘never’ had enough support or information to support tenants living with mental health problems
 - There are suggestions that people with mental health problems sometimes face discrimination when trying to access private rented sector housing
 - Private landlords told us that the solution to the problems are straightforward; that there should be better advice available online for what landlords and tenants can do to access support.

19. Could this further increase the demand for social housing? What wide implications might this have for social landlords given some contract-holders may have high support needs?

- It seems reasonable to suggest that if private landlords were to leave the market in high volumes that pressure on social landlords would increase further, given the important role many private landlords currently play in supporting local authorities to discharge their homelessness duty.
- We note that the Welsh Government has maintained the same level of funding for Housing Support Grant for the forthcoming financial year, which whilst welcome in terms of maintaining the support on offer may mean that services are not able to accommodate the demand for support that will be needed to meaningfully reduce evictions.

20. Many stakeholders have expressed concerns about how the courts deal with possession claims. How effective will this Bill be without reforms of the court system, and what measures to reform the court system should the Welsh Government push for?

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21. Should there be a dedicated housing court or tribunal that deals with possession claims and other housing disputes?

- Like our evidence suggests it seems that without considerable reform of the court system measures are likely to be ineffective in meeting the stated policy intention.
- We support the call for a specialist resource for dealing with housing-related cases, such as a housing court. Having well-trained housing expertise could increase consistency with which decisions are made and increase fairness and transparency.
- In Scotland, instead of going through the Sheriff Court a dedicated tribunal has been established so that tenants in the private rented sector could have housing disputes dealt with in a more proportionate, efficient and cost-effective way.
- Experience from Scotland shows:
 - In Scotland initial feedback from our members suggests the new system was greatly under-resourced but activity is now aimed at increasing the availability of staff.
 - The underestimation of what resources were needed was partly due to an assumption that the caseload would largely reflect the caseload going through the courts previously. But a no-fault eviction wouldn't make it as far as that, meaning the real demand was much greater than at first anticipated.
 - Some cases were turned away due to paperwork being completed incorrectly – some tenants found the system difficult to navigate.
 - As this isn't the same as a court, there isn't legal representation. Therefore, consideration of how people's support needs for undertaking this process needs to be considered, in addition to the impact on third sector organisations who may be best placed to provide support.
 - Some social landlords in Scotland have suggested widening the remit of the tribunal to consider their cases as way of embedding fairness across the system.
 - The Nationwide Foundation have commissioned a project seeking to understand how some of the new measures, including the tribunal system, are working in Scotland – this isn't due to report formally for a couple of years but this may be an important report by which to understand the impact of these measures, and learn how best to monitor any new approach in Wales.

22. The Minister has told the committee she expects a reduction in the number of social housing possession claims, and that this will free up court time. When is this reduction in possession claims by social landlords likely to happen? Is it likely to happen before the 2016 Act is commenced – expected to be spring 2021?

- The process towards reducing evictions across the sector will take time, although a number of organisations are leading the way and demonstrating how this can be done through well-resourced housing management.
- Given the experience in Scotland where a large amount of demand was found once the Housing Tribunal was established we would urge caution in assuming that even with improvements in practice a reduction in evictions from social housing and elsewhere may not release substantial capacity in the court system. This will require ongoing monitoring.

23. A number of stakeholders have raised concerns with the Committee about the potential impacts on homelessness. Given there could be more use of ground/fault based possession claims, particularly in the private rented sector, is it likely that more households will be found intentionally homeless?

- We would re-emphasise the need to consider the provision in this legislation in tandem with the need for increasing the provision of prevention services that work with landlords and tenants to avoid evictions and ultimately reduce homelessness.
- We do not believe it is clear at present the impact on households being found intentionally homeless, but recognise the risk posed by any increase in possession claims on a ground or fault basis.
- For higher risk or groups deemed more vulnerable, local authorities do not have to consider intentionality when looking at their duty to find someone a home. And in some circumstances, there are protections for more at risk groups (such as households with children and pregnant women) where the local authority will still need to secure suitable accommodation even if intentionality is proven.
- Before a local authority can consider intentionality, all reasonable steps must have been taken to remove the threat of homelessness, which is where the prevention measures come in. To some extent with proper resourcing any increase in households being found intentionally homeless could be offset through increasing available resources for local authorities to undertake their prevention activity.

24. Will there be an expectation that contract-holders should challenge the ground-based possession claims in the courts if they present as homeless?

- It would be a significant burden on contract-holders should this be the case. We believe that there must be clear guidance provided to local authorities to work with households presenting as homeless and be accompanied by clear sign-posting to support services who may be able to help in terms of navigating the process.

25. In light of the change in the Bill, Shelter Cymru have called for the statutory definition of successful prevention and relief of homelessness to be increased from having suitable accommodation likely to be available for 6 months to 12 months.

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26. The Minister has said that there is no need to do this, as a notice cannot be issued within the first six months of an occupation contract, so in practice there is a minimum 12 month contract once the six month notice is taken into account.

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27. Do you think the justification the Minister has given is sufficient, or do you consider that a change to the statutory duty definition in the 2014 Act is needed?

- This point was much debated at the time of shaping the legislation in 2014. We believe that given that the new approach brought in by the legislation has had an opportunity to become more embedded it is the right time to consider extending what 'prevention' means in practice.
- Measuring progress in sustaining tenancies for longer periods of time seems more in sync with our desire to keep people from losing their homes and providing more preventative support to landlords and tenants.
- Any change to the statutory definition would need to be done in partnership with local authorities, seeking views on how this would be monitored effectively and resourced in practice.

28. Shelter Cymru said that if a local authority was able to persuade a landlord to serve a 6 month no fault notice rather than a 28 day ground based notice that would count as preventing homelessness. Should a scenario like this be classed as successful prevention of homelessness?

- Whilst there is a case on the one hand to class that activity as preventing homelessness – as for some households it may well achieve that in practice with greater time to identify alternative accommodation or potentially mitigate eviction proceedings we do not believe classing this as 'homelessness prevention' is truly in the spirit of the Housing (Wales) Act 2014.



A response from Tai Pawb in lieu of oral evidence July 2020

Equalities, Local Government and Communities Committee: RENTING HOMES (AMENDMENT) (WALES) BILL

GENERAL QUESTIONS

1. Is there a need for this Bill and, if so, why?

Tai Pawb believes there is a need for this Bill and welcomes the proposals outlined in it. In our view, the longer notice period goes some way to further fulfilling and progressing tenants' rights to adequate housing as per the International Covenant on Social, Economic and Cultural Rights. That has been ratified by the UK government and is therefore binding on the Welsh Government. One of the crucial elements of adequate housing, as defined by the UN, is security of tenure. In our view, current arrangements under section 21 as well as forthcoming section 173 and 186 are not consistent with the right to housing.

In light of our equality remit, data from the 2011 Census shows that BAME and migrant populations are much more likely to live in the Private Rented Sector than other groups (while just over 15% of people in Wales live in the PRS, the number goes up to over 40% for Indian, 47% for African and over 50% for Arab populations and 61% for.) The Bill therefore provides additional security for groups of people who have suffered disproportionately.

2. The Welsh Government has decided to amend the Renting Homes (Wales) Act 2016 before it has been commenced. Do you agree with that approach or not? If not, why not?

Tai Pawb agrees with this sensible approach which ensures that the Act, when introduced, includes the Amendment.

3. What level of awareness is there amongst landlords, tenants and professionals working in the sector that the 2016 Act is coming? What, if anything, can be done to raise levels of awareness?

While we have no specific evidence to measure how robust awareness is among landlords, tenants and professionals, Tai Pawb is clear that resources must be committed to get the message out about the changes in legislation; in particular for tenants and their rights. We noted in our original written response the sterling work of Rent Smart Wales in engaging with landlords. However, the mechanisms to engage with PRS tenants in Wales are lacking or are underfunded. Even Generation Rent, a relatively high profile campaign, has only five staff, of which none are based in Wales (as of October 2019).

Organisations such as 'Let Down Wales' or Shelter Cymru make a valued and positive contribution to policy. There is however, there is no appropriately resourced organisation or group which would allow for continuous engagement with private tenants, who constitute a group of ca 200,000 people in Wales. Until 2019, Tai Pawb in partnership with Residential Landlords Association ran a PRS project, Open Doors, which engaged with both PRS landlords and PRS tenants. The project ^{Tudalen 93} ~~was~~ ^{has} ~~been~~ ^{enabled} ~~to~~ ^{Senedd} ~~engage~~ ^{engage} with PRS tenants. Unfortunately the funding for this project has now ended.

4. The Committee has heard evidence about the impact security of tenure can have on people's health, wellbeing and family life. What groups of tenants/contract-holders might benefit the most from this Bill? Does the Bill do anything to address the needs of the most vulnerable groups?

In our original response, we highlighted that, in our view, the proposal will have a significantly positive impact on PRS tenants. This is more especially the case where lack of security of tenure and the resulting threat of homelessness can and does have a disruptive effect on tenants' lives. In particular, there is substantial disruption for those people with families; those with a disability; or those with mental health problems.

Some 16% of households threatened with homelessness last year were households with dependent children who faced homelessness due to loss of rented or tied accommodation (Stats Wales 2018). This statistic is particularly worrying in light of the rights of children espoused by Welsh legislation, in particular the Wales Children and Young People measure. According to Article 27 of the UNCRC, as incorporated by the measure, children have the right to a good standard of living, including housing.

It is not difficult to imagine the difficulty of finding a new home within a 2 month period, especially when that home has to be safe and secure, of appropriate size, in close proximity to schools, especially when the child is disabled and attends specialist school or needs specialist support and advice within that area.

Tyfu Tai research conducted by Tai Pawb in 2019, Private Renting and PRS, a Way Forward (CIH Cymru 2019), also demonstrates issues experienced by tenants with mental health problems who are trying to access PRS accommodation. For example, the research shows 90 per cent of the people who responded from support organisations thought that people with mental health problems trying to access accommodation in the private rented sector face discrimination from letting agents or landlords always, most of the time or sometimes. Over a third (37.4 per cent) of people from support organisations felt this was the case always or most times. Consequently, people with mental health problems who are given 2 months' notice to leave their home face not only the likelihood of their mental health worsening due to the anxiety each of us would experience in this situation, but they also face enormous barriers when trying to access new accommodation in that period. The research also shows that the support available for tenants is insufficient, especially in terms of early intervention.

We would support the evidence contained in Shelter Cymru's briefing (2018) which is based on their 2017 PRS tenants research, describing the changing nature of PRS and the impact no fault evictions have on tenants, in particular families <https://sheltercymru.org.uk/wp-content/uploads/2018/02/End-s21-policy-briefing-Nov-17-FINAL-1.pdf>.

Noting the changing of PRS tenants and renting, there are more vulnerable people and families now occupying PRS for longer periods of time. No longer is the PRS associated only with mobile young professionals and students but is now home to tenants from a wide variety of backgrounds, ethnicities and household compositions, (Census, 2011). For instance, we know that there are:

- *Much higher numbers of younger people than older people living in the PRS: 60% of those aged 24 and under live in the sector compared to 6% of those aged 64-74. However more older and middle aged people now live in the sector. (Census 2011)*
- *High numbers of migrants, particularly new migrants (those that have been in the UK for five years or less) living in the PRS. 38% of those born outside of the UK live within the sector compared to 15% of those who born in the UK. This figure rises to 61% when considering migrants to have arrived in the UK since 2001. (Census 2011).*
- *Every BAME group is more than White British people to live in the PRS in Wales, (35.6% BAME vs. 14.9% White). (Census, 2011).*

- *The PRS in Wales, now represents a lifetime tenure for 40% of its tenants (Dawson, 2017).*

We have received some evidence from one local authority who reported an exponential rise in EU migrant families presenting to homelessness service following a Section 21 notice by their private landlord "due to Brexit". We haven't got evidence of this treatment of EU migrants being a trend across Wales in any way and it is impossible to tell whether the reason was linked to a perception of EU migrants now being higher risk or simply prejudice or any other factors. It is clear however that they are at a higher risk of evictions in this area and a longer notice period will go some way towards alleviating the impact on EU tenants and families.

During the second half of the 20th century the PRS became the sector of flexibility for young single professionals or childless couples (Lund 2006). As such, the sector is now also being accessed by tenants with needs that would have traditionally been met by social landlords. The PRS is in a critical position where diverse ranges of people are accessing the sector; some of whom with vulnerabilities which the sector needs to be able to meet the needs of.

Moreover, recent reports as part of Welsh Government's COVID-19 BAME Advisory Group have highlighted the use of the private rented sector by BAME people in particular, with "half the BAME population in Wales living in a rented property (compared to a third of the white population); and BAME people being more likely to live in a private rented property than social". The report also highlights that BAME people are more likely to live in an overcrowded conditions and a correlation between BAME residents and the likelihood of poor quality housing.(<https://gov.wales/sites/default/files/statistics-and-research/2020-06/coronavirus-covid-19-and-the-black-asian-and-minority-ethnic-population-154.pdf>)

Indeed, in light of the COVID-19 pandemic, the importance of security of tenure is abundantly clear, particularly given long-standing government and public health regulations around staying at home and self-isolation over the past few months. The commitment by both the Welsh and UK Governments to emergency COVID regulations around evictions (at least for a period of time) has already paved the way and created an underpinning element of security for tenants fearful of losing their homes during an international health crisis (through, for example, loss of employment or being placed on a furlough scheme).

5. Do you have any views on the potential impact of the Bill on a landlord's right to peaceful enjoyment of property under Article 1 Protocol 1 of the European Convention of Human Rights, and a contract holder's Article 8 right to private and family life?

N/A

6. How effectively does the Bill balance the rights of landlords and contract holders?

While recognising the impact on the private sector and landlords in particular (encouraging Welsh Government to take into account their views and experiences), Tai Pawb believes that the amendment strikes a far more effective balance between the rights of landlords and tenants than is currently the case.

7. To what extent do you consider that this Bill makes progress towards a legislative universal right to adequate housing?

Combining questions 6 and 7: Tai Pawb believes that the amendment is a positive step forward on the journey to abolishing no-fault evictions altogether and in progress to the right to housing.

We believe passionately in recognising the right to adequate housing in Wales through legislative means – a Bill - and have been working with partners in the housing sector over the past 12 months, engaging in conversation with tenants, professionals and stakeholders to bring it forward.

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8. The Committee has heard that some of the evidence base for this Bill is anecdotal. How strong is the evidence base for changing the current approach to no-fault evictions? Is anecdotal evidence sufficient to change the law in this area?

We agree with the principle that strong evidence should be the basis of policy changes. However, as mentioned in this response, there has been a longstanding lack of engagement with PRS tenants which has perhaps hampered (formal) evidence gathering. Tai Pawb believes that where anecdotal evidence exists, it is robust. We welcome the amendment as it provides additional security and stability for PRS tenants Wales-over, creating safer and more cohesive communities.

9. Should the Welsh Government be doing more to understand how the sector operates, and how could it do this?

(See our more substantive responses to Q3 on awareness and Q10 on engaging with PRS tenants).

10. Tai Pawb's evidence notes that the mechanisms to engage with private rented sector tenants are lacking or underfunded. What challenges does the lack of tenant representation, particularly in the private rented sector, present to policymakers?

(Please also see our response to Q3).

Whilst Rent Smart Wales has been a welcome intervention in improving the standards in the PRS, independent evaluation has evidenced that the majority of tenants surveyed are still unaware of Rent Smart Wales and how the scheme is of any direct benefit to them, (RSM, 2018). This is particularly worrying for the sector as any positive intervention made is limited if tenants are not aware of how the changes impact them. One of the ways in ensuring that tenants are aware of changes and how they affect them, would be to ensure that debates around legislative changes include PRS tenants as key stakeholders. The findings from the independent review of Rent Smart Wales suggests that there is still significant progress to be made in engaging PRS tenants in Wales.

Having spoken to a group of PRS or former PRS tenants, it is also crucial that, when announcing any of the changes under this Bill, Welsh government re-emphasizes the rights of tenants to give notice. The current conversation on these principles only describes the rights and responsibilities of landlords to give notice and it could be misconstrued by many tenants as changing the minimum notice period for tenants to 6 months. In addition to the above, we are also aware of the confusion as to whether currently tenants have to give notice to end a fixed term contract. This could be addressed in the forthcoming communication.

Tai Pawb again calls for there to be a commitment of resources to ensure that (a) the voices of PRS tenants are heard and considered and (b) there is the raising of awareness of changes that impact them directly.

CHANGES TO NO FAULT EVICTIONS

11. To what extent are social landlords able to use no-fault evictions at present and why do they use them?

12. Where no fault evictions are used by social landlords, what measures are in place to protect tenants from any misuse?

13. The Bill exempts prohibited conduct standard contracts and supported standard contracts from the new extended no fault notice requirements. Do you support this provision, and why?

14. Introductory standard contracts are not given any exemption by the Bill and will be subject to the new arrangements for no fault notices. What impact might this have on social landlords?

15. Would including introductory standard contracts in the list of exemptions mean that social landlords would retain an additional mechanism to evict tenants in a way that private landlords would not? Do you think this would be in line with the policy intention of the Bill?

16. Given there is work underway to eliminate evictions into homelessness from social housing, is there a case, as some stakeholders have claimed, for removing the ability to issue a no fault notice entirely so landlords always have to give a reason for eviction?

IMPACT ON THE PRIVATE SECTOR

17. Are there concerns that private landlords will leave the sector as a result of the amendments in this Bill? Does the Bill in any way risk reducing the supply of private rented accommodation and putting additional pressure on social housing providers?

18. Are there concerns that the changes to no fault evictions in this Bill might make private sector landlords less likely to let their properties to more vulnerable tenants who may be seen as higher risk?

19. Could this further increase demand for social housing? What wider implications might this have for social landlords given some vulnerable contract-holders may have high support needs?

Combining questions 17, 18 and 19: Anecdotally, Tai Pawb believes there are concerns about the prospect of private landlords leaving the PRS as a direct result of the amendments. While we strongly support the proposal, we are also mindful of the care that will be needed in considering the impact on private landlords.

There may also be a knock-on effect on the broader housing market, including availability of PRS accommodation. PRS tenancies fill a widening gap in the supply of housing in general, but more specifically social housing, and any unintended consequences of the legislation, especially any potential decrease in availability, must to be balanced against the much needed increase in social housing supply. This would ensure that the Welsh Government puts measures in place to prevent any regression in the right to adequate housing in Wales as a result of this measure.

For commonly known reasons, no fault evictions are often used by PRS landlords as the relatively easy means of dealing with evictions of tenants who might have committed ASB or who are in rent arrears. Although we understand that court processes, including those pertaining to other possession grounds, are not a devolved area, it is important to take into account some of the difficulties that landlords might experience in relation to possession proceedings relating to those grounds, in particular timescales, IT systems and shortage of administrative resources leading to prolonged processes. RLA's possession reform survey found that in the majority of court cases it took landlords more than 15 weeks to regain possession of their property after applying to court.

It is important that Welsh Government takes landlords views and experiences into account and works closely with the UK government on improving court possession proceedings. The same pertains to analysing the response of buy-to-let lenders. We know that some landlords have acquired landlords not to rent to tenants in receipt of benefits. It is absolutely crucial to monitor the effect of the above proposals on lender behaviour, mortgage prices and, going forward impact on the size of the PRS, especially in areas where it is desperately needed due

to other housing shortages. It is difficult to predict this effect, for example we previously had forecasts of Rent Smart Wales leading to shrinkage in the PRS in Wales due to an increased licensing burden but we are not aware of any evidence that this has actually taken place. Learning from other nations which introduced similar measures is therefore important.

IMPACT OF THE BILL ON THE COURTS

20. Many stakeholders have expressed concerns about how the courts deal with possession claims. How effective will this Bill be without reforms of the court system, and what measures to reform the system should the Welsh Government push for?

21. Should there be a dedicated housing court or tribunal that deals with possession claims and other housing disputes?

Combining questions 20 and 21: As above, we have highlighted that there are particular difficulties in court proceedings for private landlords which centre around the lengthy timescales and shortage of administrative resources.

Going forward, in our view, Welsh Government should consider establishing a housing ombudsman office as well as a separate housing tribunal system – both of which would go a long way to speeding up possession and other processes for both tenants and landlords alike. A Welsh housing tribunal would certainly make housing fairer for all in Wales and would enable both groups a better access to execution of their rights.

22. The Minister told the Committee that she expects a reduction in the number of social housing possession claims, and that this will free up court time. When is this reduction in possession claims by social landlords likely to happen? Is it likely to happen before the 2016 Act is commenced – expected to be in spring 2021?

IMPACT OF THE BILL ON HOMELESSNESS

23. A number of stakeholders have raised concerns with the Committee about the potential impacts on homelessness. Given there could be more use of ground/fault based possession claims, particularly in the private rented sector, is it likely that more households will be found to be intentionally homeless?

In our original response to the committee's evidence call, we raised the need to consider the impact of the changes on local authority homelessness teams. The change does not constitute a change in the statutory homelessness prevention period of 56 days. There is a question as to what extent and in what way a local authority would use evidence of tenants' actions in terms of finding new accommodation before the 56 days period is reached (i.e. in the first 4 months of the notice period). That in turn could potentially lead to using intentionality clauses more frequently. Moreover, there are queries as to how this would affect the consideration of tenants' circumstances and what assistance could and would be provided to those who have been given 6 months' notice, at the beginning of this period.

24. Will there be an expectation that contract-holders should challenge ground based possession claims in the courts if they present as homeless?

N/A

25. In light of the changes in the Bill, Shelter Cymru have called for the statutory definition of successful prevention and relief of homelessness to be increased from having suitable accommodation likely to be available for six months to 12 months.

Tai Pawb would support this call as a further means of protection.

26. The Minister has said that there is no need to do this, as a notice cannot be issued within the first six months of an occupation contract, so in practice there is a minimum 12 month contract once the six month notice is taken into account.

See above.

27. Do you think the justification the Minister has given is sufficient, or do you consider that a change to the statutory definition in the 2014 Act is needed?

See above.

28. Shelter Cymru said that if a local authority was able to persuade a landlord to serve a 6 month no fault notice rather than a 28 day ground based notice that would count as preventing homelessness. Should a scenario like that be classed as successful prevention of homelessness?

Eitem 5

Yn rhinwedd paragraff(au) vi o Reol Sefydlog 17.42

Mae cyfyngiadau ar y ddogfen hon