

2 March

2020 Subject: Written Evidence for the Equality, Local Government, and Communities Committee inquiry into the Renting Homes (Amendment) (Wales) Bill

To the Clerk,

1. Firstly, I would like to thank the Chair for asking the Residential Landlords Association (RLA) Wales to submit written evidence to the Committee's inquiry into the general principles of the Renting Homes (Amendment) Wales Bill. We are approaching this legislation in good faith with a view to improve it so that it may work in the best possible way with as few negative implications as possible.

2. About the RLA

2.1 The RLA represents the interests of landlords in the private rented sector (PRS) across England and Wales. With over 40,000 subscribing members - managing over a quarter of a million properties - and an additional 20,000 registered guests who engage regularly with us, the RLA is the leading voice of PRS landlords. We support and advise members, seeking to raise standards in the PRS through our code of conduct, training, and accreditation. Many of our resources are freely available to non-member landlords and tenants. We campaign to improve the PRS for both landlords and tenants, engaging with policymakers at all levels of government to make renting better. It will soon merge with the National Landlord Association to create the National Residential Landlords Association, pooling our resources together to provide stronger representation for landlords.

3. General principles of the Bill & need for legislation to deliver stated policy intention

3.1 The RLA strongly believes in both a landlord's ability to take possession of their own property and in providing security of tenure for a tenant. Therefore, we welcome the Welsh Government's retention of Section 173. However, there are significant issues with the proposals as they stand. Landlords do not go to court without good reason and prefer to keep good tenants in their homes. Indeed, landlords would like to have a tenant in their property for an extended period. The issue with the proposal is the ability of a landlord to efficiently take possession from a bad tenant or ensure they can take possession of the property in exceptional circumstances, such as needing to move in themselves in a timely manner to avoid becoming homeless. Contrary to the myths around 'no fault evictions', landlords usually only use a S21 notice (soon to be S173) where the tenant is at fault.

3.2 Currently under S21, landlords can take possession from bad tenants with two months' notice and no large legal bill (unless the tenant outstays the notice period). This Bill, by extending the S173 notice period to six months, means a landlord could suffer half a year of arrears or the tenant's neighbours half a year of anti-social behaviour (ASB), before the property is returned to the owner. The RLA understands the Welsh Government has provided what is terms a more "appropriate" route that is S157 and would like landlords who have problem tenants to use this and that the notice period here is one month.

3.3 However, this forces a landlord to go to court and build up substantial sums of legal bills. This would be particularly aggravating in cases of arrears. This also ignores the fact that the courts are already overburdened, and the Bill will only increase that workload. As a result, not only will landlords have to wait longer to take back possession from bad tenants, but serious criminal cases will be delayed as the volume of casework rises.

3.4 The largest survey the RLA ever carried out found 83% of landlords who used S21 had done so because of rent arrears.¹ Over half of all S21 users had experienced anti-social tenants. However, they were five times more likely to use S21 over the S8 notice designed for these situations. This is due to lack of trust in the court system to deliver swift justice and inadequacies in the S8 route. While there will still be an equivalent grounds-based possession route, there are no improvements to this process mentioned in the proposals that would assist landlords suffering with poor tenants.

3.5 Landlords face significant delays in regaining possession of their property once the notice period has ended. Recent statistics show it takes landlords over 22 weeks to regain possession of their property after applying to court. It is little surprise then that 78% of respondents were dissatisfied with the courts. However, there is no mention of improving the court process. It is why we were disappointed to see the Welsh Government in the explanatory memorandum reject advocating for a dedicated housing court. The RLA still maintains a housing court is essential if possession reform is being designed to push more landlords to use legal procedures to regain their property. We were encouraged to see the majority of respondents to the Government's consultation agree with that very sentiment.

3.6 The proposals as they stand could increase the risk of homelessness to armed forces personnel. When working away from home, such personnel may be provided with Service Family Accommodation. As licensees under a Crown Letting, these personnel and their families, may be served a 93-day notice by the MoD. Under the present regime, where two months' notice is required to regain possession, this type of landlord would have adequate time to inform their tenants so that they could move back into their own home. Under the new proposals these members of the armed services may have to find alternative accommodation. This may place a further strain on local authorities as they have a statutory duty to consider whether former armed forces personnel are vulnerable and entitled to homelessness support.

3.7 Another group who stand to have their arrangements further complicated by the Bill are students and young professionals. Under the new rules, to maintain the annual cycle necessary to operate in the student and young professional letting market, the landlord must serve a S173 notice on the first day they are able following the six-month period. Any earlier is not allowed under the legislation, and any later means the tenancy is longer than a year. Students search for 12-month fixed term tenancies for security for a whole academic year and do not wish for longer. Therefore, the change to fixed term tenancies are problematic for landlords and young people who need somewhere to live short-term as the manner in which tenancies are presented and advertised become overly complex.

3.8 This complication will have other impacts if the Bill is not amended: if a landlord does miss the very narrow window to maintain the annual cycle then the tenant can live in the property a few weeks or months longer. The landlord is left with a choice where they have to keep an empty property until the annual cycle begins again - bearing the loss of rent on

¹ Nick Clay, 'Possession Reform in the Private Rented Sector: Ensuring Landlord Confidence', *RLA PEARL*, July 2019, <https://research.rla.org.uk/wp-content/uploads/Possession-Reform-in-the-PRS-July-2019-1.pdf>

council tax premiums on an empty home - or be forced to change their entire business structure in a very short time to ensure that they are not inflicted with those premiums or loss of rent. Leaving the student lets market to avoid this will mean a change-of-use for the property, creating an administration burden for councils to process this.

3.9 To overcome this, the RLA has two alternative proposals, both of which should be adopted, that still maintain the objective of creating 12-months' security of tenure:

- Allow for a six-month S173 notice to be served after four months but not to take effect until immediately after the six-month moratorium ends, giving tenants more notice but the landlord flexibility to preserve the annual business cycle and reducing the chance of administrative errors.
- Allow for a S173 notice to be given within the initial period of a fixed term standard contract, but amending the minimum contract length to 12 months but allowing a six-month tenant-only break if landlord and tenant agree at the outset of the contract, allowing tenants to still have 6 month tenancy agreements if both sides are happy with this.

3.10 We also believe tenants should have to give one month's notice for the tenancy to end on the fixed term. Otherwise, a rolling contract is entered into (unless the landlord has given notice). Without this, the landlord has no guarantee their property will be filled.

3.11 The proposal to prohibit on serving a second S173 notice after 14 days means that in a worst-case scenario, where a landlord has made a slight error on the notice form, rendering it invalid, they could have to wait two years for a repossession claim to process (6 months for the notice to expire; 2 months for the court to identify the notice is invalid and needs to be withdrawn; 6 months prohibition on service; 6 months for the second notice and 5 months (22 weeks) for court and bailiff enforcement). This is particularly important as the 2016 Act does little to tackle ASB. This demonstrates a problem with the legislation in its current form.

3.12 We argue 14 days is not enough time for a landlord to ensure correction of a notice. An example to illustrate this is when notice is sent to the tenant via recorded delivery in the post, as it could take two weeks for them to discover the tenant has not signed for it or delays have mean the tenant has had to pick it up from the depot, etc. We recommend that a S173 notice can be issued as soon as the court identifies the notice is invalid. Indeed, if the notice is invalid, it has not been served. Therefore, a landlord cannot be prohibited from serving another valid notice immediately. This is a proportional response balancing a landlord's mistake, their property rights (afforded under the Human Rights Act 1998), and a tenant's security of tenure, while avoiding the worst-case scenario above.

3.13 Although the Welsh Government is maintaining mandatory grounds to repossess regarding rent arrears, the RLA believes it is vital to give more prominence to a persistent pattern of arrears. It is also essential that, if the six-month notice period were to become law, more mandatory grounds for possession must be created, especially one for ASB.

3.14 RLA Wales argues this because the remaining mandatory ground in the 2016 Act is open to abuse by tenants in the same way the current ground for rent arrears is under S8. As tenants need to be in two months' arrears at the time the notice is served and at the point of the hearing, many tenants pay just £1 off their arrears just before the date of the hearing. This £1 removes the mandatory ground, leaving the landlord with virtually two months of arrears, £355 in court costs, and a tenant who is likely to continue to build up further arrears in the future. If S173 is extended without revising the ground so that

persistent rent arrears becomes a mandatory ground, then it risks clogging up an overstretched court system with many more of these cases.

3.15 The result is bad tenants will remain in properties for longer, risking a landlord's mortgage in the case of arrears, or blighting a community where the tenant is anti-social. If the proposals are implemented, there must be a significant strengthening of possession rights in the event that serious anti-social or illegal behaviour is occurring. Incorporating something similar to Ground 7a of S8 (introduced in the Anti-social Behaviour, Crime, and Policing Act 2014) with a reduced notice period would allow landlords to have some confidence that the worst tenant behaviour could be ameliorated.

3.16 It is important to add that the standard occupation contracts that will replace Assured Shorthold Tenancies when the 2016 Act is commenced are still being drafted by the Welsh Government when it essential to see them to scrutinise this Bill. This is because the way they are drafted could seriously affect the notice period itself if uncertainty surrounds certain definitions. We urge that these contracts are released and finalised before any further action on this Bill. We also believe that the regulations concerning Fitness for Human Habitation (FFHH) standards are released as soon as possible too given the work many landlords could have to ensure their properties are up to standard.

3.17 Finally, it must be noted the Bill's general principles were overwhelmingly opposed in the Welsh Government's consultation and several of the reasons for that opposition have not been addressed: 88% disagreed with extending the minimum notice period to six months; 78% opposed extending the period to serve notice to six months into the tenancy; 73% disagreed with restricting re-issuing a notice for six months after the previous' expiry; and 80% opposed removing a landlord's ability to give notice to end a fixed-term contract.

4. Any potential barriers to the implementation of the Bill's provisions and whether the Bill takes account of them

4.1 The RLA's response to these issues can be found elsewhere in this document.

5. The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation.

5.1 Given how impactful these regulations made under the Bill should it become an Act are, the RLA agrees with the decision to designate all those sections to go through the affirmative procedure as such. It does not object to S17(2) undergoing no procedure.

6. Whether there are any unintended consequences arising from the Bill, and – the financial implications of the Bill.

6.1 Landlords will leave the market altogether as they have less confidence in the system and their ability to protect their investment. This is shown in the RLA survey previously mentioned, where despite rarely having cause to use it, 96% of those who supply homes to PRS tenants feel very strongly that S21/S173 is important to their business. Over 40% of landlords feel so strongly about it that they cannot envisage supplying homes to tenants if it is removed, regardless of any compensatory reforms. It could be made even harder as landlords choose to invest outside Wales, especially those near the border as they could be less likely to secure buy-to-let mortgages.

6.2 This, in turn, leads to less private rented housing, rent increases in the PRS, and more pressure on social housing waiting lists. It would make landlords more selective about to whom they rent as they need guaranteed rental income. The RLA survey showed 84% of landlords would likely become more restrictive to whom they rent. This is reflected in stakeholder responses to

the Government's consultation. Therefore, the end result of this attempt to create security of tenure is increasing the likelihood of homelessness as housing becomes limited and rents too high.

6.3 Regarding the Bill's financial implications as set out in the Explanatory Memorandum's Regulatory Impact Assessment (RIA), we have the following comments to make:

- The RIA says costs to landlords will not exceed that associated with compliance, estimated between £9.5m-£12.4m (calculated on paid time for all landlords and agents to familiarise themselves with the new regime). However, it is obvious that the price landlords must pay does not end there.
- The RIA states: "*There may be circumstances where landlords opt to use S157 or S181 of the 2016 Act instead of S173. The cost of these alternative processes is approximately £30 lower than S173 per occurrence.*" However, this does not consider the costs associated with the use of legal services necessary.
- The RIA states "*we do anticipate administrative cost savings to landlords*" but also "*we have not sought to identify landlords savings*". Given how impactful this will be on landlords, not seeking to identify savings to them is neglectful. We believe that if cost savings are anticipated, then they should be clearly set out.

6.4 In paragraph 8.32 of the Explanatory Memorandum, the Welsh Government gives a scenario to show the cost to landlords if they were to take possession from a tenant in arrears if they were to follow one of three potential possession routes - S173, S181, or S157 - to demonstrate why landlords should not use S173. Using S173 would cost £11,305, S181 £3,949.50, and S157 £4,298. However, none of these substantial costings include legal fees. The S173 route costs so much because the landlord has to absorb the arrears exacerbated by the lengthier notice period. These are clearly costs to the landlord and should be included as such. The Welsh Government, if it judges these to be acceptable costs for those compliant landlords who have acquired non-rent paying tenants, must justify itself as the changes are a result of legislation it will have brought forward itself.

6.5 Other unintended consequences have been outlined in part three of this response.

7. Final Comments

7.1 This Bill further represents further neglect of the reasonable arguments of conscientious, compliant, and responsible PRS landlords. Not only are the effects of the proposals more far-reaching than suggested in the consultation, they completely ignore the overwhelming opposition to the them and the explanations. It is telling that 70%-90% of respondents opposed them. However, the Bill can be made to work for PRS landlords, as long as our recommendations are adopted and our critiques recognised.

7.2 The RLA's mission statement is to make renting better not just for landlords, but tenants too. Therefore, we approached the proposals with this in mind in a constructive manner, and to ensure the Bill accommodates the needs of both landlords and tenants. We urge the Welsh Government to consider our proposals as they maintain the spirit of the Bill and the objective of the Minister in providing longer term security while allowing landlords to operate an efficient business that will encourage them to stay in the PRS and continue to rent to the wide variety of tenants they currently do. The 2016 Act and this Bill will greatly affect how landlords operate and, therefore, the Government have a responsibility to ensure landlords are helped to achieve Ministers' objectives and their business needs.