



**Ymddiriedolaeth
Genedlaethol
National Trust**

RH 16

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/
Communities, Equality and Local Government Committee
Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill

Ymateb gan: National Trust

Response from: National Trust

Introduction

The National Trust cares for beautiful and historic places in Wales. We are a business as well as a charity; in addition to our hundreds of places that are open to the public, we have a wider estate of houses, cottages and farms available for tenants to let. Many were acquired as part of larger estates and often include estate villages which had historically provided homes for estate workers. Of the 25,000 buildings that we own in Wales, England and Northern Ireland, more than 5,000 are houses and cottages.

We are a major employer and invest in parts of Wales that may otherwise be bypassed by normal market forces.

We currently act as a private landlord for 326 properties across Wales, many of which are residential properties. Renting homes is of great importance to the National Trust in Wales. Renting properties ensures that full use is made of buildings in our care.

Rental income from all our let properties in Wales constitutes around one quarter of the National Trust's annual income in Wales; aside from membership income, it is our largest income stream. The profits we generate from rental income in Wales directly support the National Trust's vision of protecting and enhancing special places forever, for everyone.

We are a self-supporting charity and our main aim in renting homes is to generate rental income to support our purposes. However, we have several subsidiary objectives:

- to safeguard the physical contribution that our houses and cottages make to the historic built environment;
- to further our work in the locality through selection of tenants with suitable skills and
- where possible, to favour those prospective tenants who make a contribution to their community.



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1. General comments on the Principles of the Renting Homes (Wales) Bill.

Our approach

We do not propose to comment on the social housing aspects of the Renting Homes (Wales) Bill ('the Bill') but will concentrate on the proposals which affect private landlords, focussing in particular on those aspects that will affect us. For this reason we have not responded on every part of the Bill.

The National Trust and Inalienability

The National Trust has the power to declare 'inalienable' the properties entrusted to us and we have done so in relation to most of our property. This power enables us to protect our properties for the benefit of the nation in perpetuity. We cannot sell inalienable property but we are able to let it provided the letting is not so long as to amount, in effect, to a sale. Other than in exceptional circumstances, we do not grant leases unless we are confident that we will recover possession no more than 99 years from the date of the lease.

This means that we must pay particular care in situations where a tenancy is subject to rights of succession, and where a tenant has a right to renew, extend or enfranchise. We make specific comments about the interface between the Bill and inalienability below.

Part 2 of the Bill

As we mentioned in our response to the Welsh Government's previous White Paper on this topic, we support the Welsh Government's desire to simplify and bring clarity to renting a home in Wales.

The Housing Act 1988 has helped generate a vibrant and varied private rented housing sector in Wales, in which the National Trust plays a part. For this reason, we are glad to see that the 'Standard Contract' builds on the Assured Shorthold Tenancy (AST) regime with which we have been working for a while now. The AST regime introduced flexibility and certainty which has enabled us to bring many varied, and sometimes historic, properties to the private rental market. This flexibility and certainty must similarly have helped private landlords across Wales.

Part 3 of the Bill

We are supportive of the obligation on landlords to provide a written statement of certain key terms. We believe this will help provide clarity for both landlords and contract holders. However as a charity, we currently seek to recover our reasonable administration costs of issuing the agreement and it would be helpful if this could continue.

We welcome the fact that the tenancies listed in schedule 2 are excluded from the Bill. However we are confused as to how the Bill intends to deal with the situation of Assured Tenants. It is clear that Assured Shorthold Tenancies issued by private landlords will become Standard Contracts. However there is no express reference to Assured Tenancies. In the guidance issued by the Welsh Government, the only reference to Assured Tenancies relate to those issued by Housing Associations. These become Secure Contracts. The Guidance does state that 'other private tenancies & licences issued by

private landlords become Standard Contracts'. We therefore presume that it is intended that Assured Tenancies issued by private landlords become Standard Contracts but believe this should be explicit in the Bill itself.

Standardising succession rights (sections 73-83 & 247)

It seems from the Bill that enhanced succession rights would apply to what are currently Assured Tenancies, particularly periodic arrangements granted to sole tenants. These enhanced succession rights could see contract holders being entitled to an extra succession, potentially tying up a property for decades more than under the existing Assured Tenancies regime. This would reduce flexibility for landlords and impede the efficient operation of the rental market.

We also refer to our comments above about inalienability. We do not think it appropriate that existing Assured Tenancies granted on certain succession rights should retrospectively be converted to contracts with an extra succession. This is a very sensitive area for us because most of our properties are inalienable (see above), and we look very closely at the expected duration of tenancies when making the decision whether or not to grant them. If contract holders are concerned about the lack of succession in their agreements then they can seek to become joint tenants with their potential successors

We are also concerned by the addition of long term carers to the category of persons entitled to succeed. Whilst tackling the social problems associated with the provision of long term care is laudable, private landlords should not find their properties encumbered in pursuit of this goal. If implemented, the proposal would reduce flexibility for landlords and impede the efficient operation of the rental market.

We also think it essential that where an Assured Tenancy has arisen on the succession of a family member (rather than a spouse) to a protected tenancy under the Rent Act 1977 (or the Rent (Agriculture) Act 1976) that there would be no further potential to succession.

Provisions Requiring Landlord's consent (sections 84-86 & Schedule 6)

We note that in responding to a request for landlord's consent, it is proposed that landlords have a period of 14 days, starting with the date of the request within which to ask for any further information. Whilst we endeavour to deal with all requests as quickly as possible, we anticipate that this timescale will prove a challenge for any large landlord where consent to such a request needs to be obtained internally via any relevant internal decision making process (necessary in our case to ensure we comply with the requirements of the Charities Act 2011). We would suggest a longer period of time is permitted to ask for additional information.

Part 4 of the Bill

Condition of the Dwelling (sections 91-101)

We are opposed to the removal of liability on a contract holder for waste and the removal of any implied duty to use the dwelling in a tenant-like manner. Many buildings entrusted to us are of architectural or historic interest, or form part of a landscape which is of exceptional beauty. To ensure that we preserve those features we need to have a level of control greater than that which most other landlords require, particularly in respect of repair

and alterations, its use and the behaviour of the occupier.

Without any obligation on a contract holder not to commit waste, we will need to ensure that we incorporate additional terms in all relevant occupational agreements to protect the property. This will add complexity to agreements when the thrust of the legislation is to simplify agreements with contract holders.

Part 7 of the Bill

Provisions Relating to Fixed Term Standard Contracts (sections 132-142)

As the provisions of Fixed Term Standard Contracts can only be varied by agreement, we are unclear how it is intended a rent review should operate under the Bill. The Bill does not include any express provision in respect of increasing rent under a Fixed Term Standard Contract. We assume this is because it is based on current assured shorthold tenancies where the overwhelming practice is for them to be granted for either six or twelve months only. In these agreements there is rarely a need to increase the rent during the fixed term. However we (and we imagine other landlords) have granted assured shorthold tenancies for much longer terms during which there is a need to increase the rent. Would a provision in an existing agreement which provided for say an open market rent review (which can ultimately be decided by an external third party) be permitted under the Bill? It would seem unfair if landlords, who entered into these tenancies in good faith, were not able to review the rent for fear of litigation.

With this uncertainty it is possible that initially many landlords will avoid granting longer term arrangements and instead grant short term contracts until such time as certainty had been clarified through the courts. This acts against the purpose of the Bill which is to help provide certainty and stability in the housing market. As such we suggest the position regarding rent reviews under Fixed Term Standard Contracts should be clarified in the draft Bill.

Part 9 of the Bill

Termination of Occupation Contracts (sections 167-197)

We are concerned that as drafted, the Bill implies that a contract holder under a Standard Contract has a defence to a possession claim based on ECHR rights. Private landlords are not currently subject to a defence based on ECHR rights, such a defence is only applicable to landlords of Secure Contracts. We therefore feel that this distinction should be incorporated into the Bill otherwise it will cause confusion for contract holders and landlords.

Retaliatory Evictions (section 213)

S213 of the Bill is intended to prevent rogue landlords who receive legitimate complaints about the condition of the property seeking to terminate the agreement. Whilst we support the spirit of this provision, we see the provisions as drafted being open to misuse by contract holders and their advisors leading to the potential to frustrate or significantly delay landlords' mandatory possession claims. It will also add considerable expense to what should be routine possession claims because it will be too easy for a contract holder to create repairing complaints in order to avoid the mandatory nature of the possession

claim. We believe strongly that the drafting should impose some basic requirements for a contract holder to satisfy before a defence of retaliatory eviction can be considered, for example, evidence of written reports/complaints sent to the landlord prior to the service of the relevant landlord's notice.

Abandonment of the Property (sections 216 & 220)

As a charity which has suffered loss of income and damage to properties as a result of abandonment, we are generally very happy to see the proposals in the Bill. However we consider the period of six months within which a contract holder can apply to the court for a declaration that they have not abandoned the dwelling to be too long as it could inhibit the ability of the landlord to relet the property and thereby put it back into use.

2. Implementation

We submit that a phased approach for the implementation of the changes could reduce what will inevitably be a considerable administrative burden for landlords across Wales.

If model contracts, and appropriately detailed guidance for their use, were published long in advance of the full introduction of the new regime, and legislation were passed which allowed the new regime to operate alongside the old regime for a while, landlords would be able to place new contract holders and renewing contract holders on the new Standard Contracts and Secure Contracts as and when the tenancies were entered into. There will obviously have to be a date on which the old regime finally falls away and the new regime takes over but, given the dynamic nature of the AST market, if this date could be set some time in the future, landlords could make significant inroads into the administrative burden that change-over will entail, almost in the normal course of business.

3. Financial Implications of the Bill

We believe that the costs set out in the Explanatory Memorandum for private landlords are a significant under estimate of the likely costs of introduction of the Bill. We believe the assumptions as to the time taken to produce new agreements and the time taken for professionals to adapt to the new regime have been under estimated¹.

For landlords letting a single property, the assumptions may well be correct. However landlords with larger property portfolios managing a diverse range of properties will need to check the applicability of the model agreements for each property.

In our case, as explained above, as many of the buildings which have been entrusted to us are of architectural or historic interest, or because many form part of a landscape which is of exceptional beauty, we need to have a level of control greater than that which most other landlords require. As many of our properties are unique, it will mean that we are unable to just rely on the model agreements and it will be necessary to consider the appropriate additional terms for us to incorporate in each of our agreements. Whilst some terms could be standard across our portfolio, this process will take longer and therefore

¹ The Explanatory Memorandum assumes that it will take one day for landlords to become familiar to the level required to comply with the new law, it assumes the time taken for landlords to administer, post and print a new contract will be 15 minutes per contract and that the introduction of model contracts will reduce the need for landlords to seek legal advice as it assumes they will be reassured in relying on a model agreement.

incur a much greater cost than anticipated by the Explanatory Memorandum. We consider it would take at least one hour per contract to ensure that the contract issued on any specific property was appropriate (which in terms of staff time would be in the region of £100 per contract). Doing this for several hundred agreements will be a considerable cost and divert time from other charitable activities.

Due to the number of residential leases for which we are the landlord, it will be important for us to have a higher level of knowledge of housing law than the typical landlord. The level of knowledge we require is more akin to that of a community landlord or local authority. Whilst we note that the Explanatory Memorandum has factored in the cost of such familiarisation for some community landlords and local authorities, it has not been factored in for private landlords. In any event, we believe that the level of familiarisation involved for any large landlord (private or community) will be much greater than anticipated.

We anticipate that we will need to familiarise all our legal team, our 9 Rural Surveyors (who manage our let portfolio in Wales) and, to a basic level our 11 general managers in Wales. We anticipate that this will take on average 3 days for each of our rural surveyors and lawyers to provide them with the level of knowledge they will require, (much less for our General Managers). We will need to set up some standard additional terms applicable across our particular portfolio (we anticipate 4 days of work) and we will also need to review our national policies and procedures to ensure that they are in line with the new arrangements (such as our tenancy deposit scheme, our tenants handbook etc). Across such a varied housing portfolio, we anticipate this could be a further 5 days of work. We would anticipate that any large landlord (be it a community landlord/local authority or private landlord) would incur similar costs.

As mentioned above, we believe that if model contracts, and appropriately detailed guidance for their use, were published long in advance of the full introduction of the new regime, and legislation were passed which allowed the new regime to operate alongside the old regime for a while, these costs could be significantly reduced as landlords would be able to place new contract holders and renewing contract holders on the new Standard Contracts and Secure Contracts as and when new agreements were being entered into.

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