RH 35
Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/
Communities, Equality and Local Government Committee
Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill
Ymateb gan: Ystâd Parc Pont-y-pŵl
Response from: Pontypool Park Estate

Renting Homes (Wales) Bill, plus Statement of Policy Intent and Explanatory Memorandum

I cannot see a reference on the WAG consultations website to a request for comments on the published draft; but I assume it is there somewhere, and that you will again tolerate my comments nonetheless. I have some 400 pages to digest in a few weeks, and I regret that I have not had time to assess everything. WAG assures me that this is "a clearer, simpler and more straightforward legal framework" (WAG update 16 February 2015), so perhaps I should be grateful it is only 400 pages. Given the short timetable, may I limit myself to comments on the Explanatory Memorandum?

WAG states that there are 440,000 rented homes in Wales, accommodating some one million people. Therefore major change to the statutory arrangements has major implications, and I am not sure that the costs outlined in section 7 are realistic. I am also surprised by the consultations in section 4: seemingly there were only some 100 responses, of which 85%-95% were generally favourable. Is this really true? Could it be that, given the complexity of the matter and the length of the process, the landlord responses were largely made through organisations (CLA, RICS, RLA etc) each representing thousands of members? Has WAG been entirely correct in its portrayal of consent to its proposals?

I do not recognise the apologia for the Bill (paras 12-31; 188-311etc; Policy Intent passim) nor WAG's case studies. These may be true; but do they affect so many of the 440,000 households that new legislation is required? They seems of specialist application, perhaps to housing associations. The bill seems strangely concerned with domestic abuse (paras 301, 318, 324, 332 etc), an important matter which is nonetheless completely outside my experience. I cannot see the wider relevance of the other supposed advantages: tenants who are minors, joint tenancies etc; and the aspiration that "a prohibited conduct term…will help to reduce anti-social behaviour" (para 147) is bewildering.

I am not clear that the Bill will create "a clearer, simpler and more straightforward legal framework". The Bill will not bring all tenancy forms into one of two options, since it allows *inter alia* the continuation of Rent Act tenancies (para 47). The new periodic contract is supposedly modelled on the current Assured Shorthold (para 34) and I believe that new private residential leases since 1997 have been Assured Shortholds. So the Bill will in fact largely address Assured Tenancies, of which the small number would lapse with time anyway. WAG is effectively bringing in the new legislation, with the massive cost, confusion and disruption it entails, in order to replace the Assured Shorthold with something which WAG claims is similar. Is this really sensible or proportionate?

It is difficult to be convinced by WAG's intellectual arguments. WAG quotes Lord Woolf in 1996 (para 18; ie before the implementation of the Housing Act 1996) and an article from a circuit judge in 2000 (para 15). Is this the best it can do? Assured Shortholds were introduced to tackle the perceived inefficiencies of *inter alia* the Rent Act 1977; since 1997 Assured Shortholds have been the tenancy of default; the Bill's Standard Contract is supposedly (and for now) "based on a current assured shorthold tenancy" (para 34). So why change? Will the Bill really ameliorate domestic abuse?

There are issues with housing, particularly at the bottom end, and these problems may continue in any event, such arrangements continuing to operate below the legal radar. The Bill retains the barriers on eviction for housing association tenants, and this will continue to prejudice the domestic enjoyment of other tenants who have to suffer from anti-social behaviour. Richer tenants will be able to move;

poorer tenants will be locked in to bad neighbours. How does the Bill help them? There are also issues *inter alia* with homelessness, and semi-sheltered, transient, and student accommodation. How will the Bill resolve these concerns? The Bill avoids real problems, which will continue. But the Bill will penalise landlords (and their agents) who already operate properly and provide a valuable service.

Para 6: "the Bill contains considerable detail and some elements are technical and complex" but (para 247) private landlords only need one day @ £96 to "become familiar to the level required". Now £96 may exaggerate the value of my daily contribution to the Wales economy; but I fear that, dim as I am, I may not be able to grasp all the details in one day. Yet the Bill creates financial and legal penalties for faults, and the new Housing Act requires licencing, breach of which may remove my right to trade.

Para 9: it would be helpful to see the results of the consultation.

Para 12: "there are many different forms of tenancy" is not helpful. Are not private residential leases since 1997 Assured Shortholds by default, whether there is an agreement to that effect or not (para 33)? Now the Bill will create two new tenancies, with a burdensome model agreement currently running to sixty two pages of text, with opt-in and opt-out clauses, and penalties to the landlord (but of course not the tenant) if it is wrong. Any landlord with properties in England will continue to have to use Assured Shortholds. And any tenant recently from England (perhaps 15-20% of our client list) will have to digest a new Wales-only contract, as will any tenant with her own properties to let (perhaps 10-15% of our client list) if she has properties in both England and Wales.

Para 13: "joint tenancies can present difficulties" but not if the tenancies are periodic Assured Shortholds, when both joint tenants would be on the same short notice. Rent Act tenants are protected anyway, nor does the Bill cover them. So this concerns seems largely related to housing associations and their tenants, whom the Bill continues to penalise by retaining effective security of tenure.

Para 13: "renting [is] a last resort as a housing option, or the only alternative for those who are unable to buy a home". I do not understand the relevance of this statement, or the latent concerns. Most people live in a home; that home can be rented or bought. How many other alternatives are there? People choose to rent or buy for many different reasons. I live in a rented home; many of my clients are also property owners themselves. There is no right or wrong. There was a period some ten years ago when many people in Britain felt they had to buy; but surely WAG does not wish to reignite that speculative bubble? It is expensive to buy a house, and it is not necessarily helpful for people to tie up large sums of capital in a semi-liquid asset. Outside central London and other areas of restricted supply, and in the absence of material capital gains, it is may be better value for people to rent. And renting gives people flexibility, and more free cash to spend or invest, and thereby help the economy. It is a surprising insight that WAG believes a million people in Wales are living in a "last resort".

Para 14: "the law for renting a home…is complex and not easily understood", and WAG's Bill will ensure that this remains the case. Even WAG agrees the Bill is complex (para 6).

Para 18: this is not a rigorous argument.

Para 29: "clearer arrangements…should translate into fewer disputes"; so why will WAG force me and my clients to swap a three-page Assured Shorthold for sixty two pages of WAG's new text?

Para 33: "some landlords will purport to issue a licence; whereas in law a tenancy will have been created"; so how do the sixty two pages protect materially beyond what already exists?

Para 28: on what basis does WAG claim that the Bill will provide "simpler and more flexible arrangements for renting a home"? What could be simpler than three pages?

Para 38: “most existing agreements will convert to the appropriate type of occupation contract”; but, if the norm for private properties is an Assured Shorthold already, what will have changed?

Para 42: “some of the fundamental terms can be left out or changed by agreement, but only where this benefits the contract-holder”. How can I be sure what “benefits the contract-holder”, given that I will be penalised for getting it wrong? The answer seems to be in WAG’s draft Periodic Standard Contract which explains “only if it gives [the tenant] greater protection than under the Rented Homes Act 2006”. So my client now has to read another Act before she signs WAG’s “simple” agreement?

Para 47: so the Bill really only applies to Assured Tenancies; are they worth all this trouble?

Para 53: “a clear, understandable, contract is essential”; but WAG will deny one to my clients.

Para 56: most landlords would surely prefer a written contract. But if the law will infer a contract anyway, why further penalise a landlord for not providing a written contract? The people now responsible for tenancies without written contracts are likely to be 1) unsophisticated accidental or occasional landlords, who may now have to change or be penalised, and 2) landlords who now knowingly operate below the legal radar, and are likely to continue to do so, whatever the law.

Para 57: it seems unfair that landlords should be fined, but not tenants.

Para 62: am I correct that WAG is changing the tenant notice period to four weeks, from the current one month from the term date? Have I read it correctly that executors may be able to end a tenancy even earlier? These sort of changes may increase the rent that must be paid by other tenants.

Para 63: I am unclear of the relevance of WAG’s reference to 5,122 possession claims and 4,393 possession orders in 2012/2013. Is this good or bad? How many of these relate to housing associations? And how will the Bill make it easier for housing associations to meet their obligations to their decent tenants by being able to evict their anti-social or non-paying tenants?

Para 74: the landlord’s notice will be two months from when? And why four weeks for tenants? If a departing tenant must now pay less, the remaining tenants may now have to pay more. Is this fair?

Paras 83-124: the procedures for abandonment and the removal of the six months moratorium seem sensible, if likely to be limited in their relevance.

Paras 113-124: I assume the procedures for succession are easier to understand, if you say so.

Paras 125-128: I believe that the Housing Act 2004 deposit rules only apply to tenancies after April 2007. Does WAG now intend to make all tenancies retrospectively liable to deposit protection rules?

Para 130: WAG seems to define and extend the landlord’s repairing obligations in ways that may not be appropriate for all houses. I note for example that septic tanks may now be a landlord item. But with rural properties, where such tanks may be used by one property only and where the landlord has effectively no control over what is put into the tank, it can be pragmatic to make emptying the tank a tenant item. Equally, cleaning of gutters and drains seem obviously best done by the person on site: the tenant. If not, then the prudent landlord may be forced to increase rent to cover call-out charges for such periodic cleaning, and the costs of damage caused by inadvertent blockages. Reasonable landlords would want to repair any defects not caused by the tenant; but the Bill may not say that.

Paras 134 – 140: the fitness for human habitation requirements are likely to give lawyers plenty to argue about for years to come. And many lawyers may not trouble with legislation applicable only to Wales, so less competition means the remaining lawyers will be able to charge higher fees.

Paras 141- 145: the retaliatory eviction rules are also likely to be a good source of legal fees. It seems adviseable, under the Bill proposals, for any tenant who is in arrears of rent, and knowing she is likely to be served notice, to submit a pre-emptive "request by a contract holder for repairs or a complaint regarding fitness for human habitation". This should effectively limit no-fault evictions to decent tenants, who will already have had to pay more rent to protect the landlord against increased litigation.

The best way to avoid eviction litigation is for WAG to be unequivocal in its support of no-fault evictions after service of the appropriate notice. But it seems WAG wants to have an effective rental market, plus security of tenure, plus rent controls. We tried that in the 1970s: it did not work.

Para 146 – 155: "setting out a prohibited conduct term clearly within every contract will help to reduce anti-social behaviour and so result in fewer evictions" (para 147 etc) is touching in its naivety. A key protection for a landlord, and therefore for a tenant, is the ability to regain possession of the property quickly, without cost or litigation, in the event that the tenancy is no longer appropriate. WAG is right to be concerned about tenant response to poor-quality landlords. But the best protection is competition: the more choice, the more power to the tenant. So WAG should focus on trying to increase supply, and encourage more people to let their properties. WAG accepts the free market for its own politics and elections; why does it think that regulation will solve the problems in housing?

Para 166: "The Bill provides for all existing residential tenancies to convert to the appropriate form of occupation contract on a specific date…Terms in any existing tenancy which do not conflict with the relevant fundamental terms will continue to have effect under the occupation contract to which the tenancy will have converted". I do not share WAG's optimism that this will be so easy. We have many tenancy agreements, some going back many years and written on half a sheet of paper. They are nonetheless covered by statute, and clients (and their legal advisers) know the rules. WAG now requires all relevant leases to change within six months and, while I hope I will know what to do, WAG will fine and penalise me if I get it wrong. And my clients will be required to read, understand, take advice on, and sign a new contract of extraordinary length and complexity, the worry and time of which seems to be dismissed by WAG as inconsequential (para 282). It is difficult to be enthusiastic.

Para 168: please explain the "legal requirement is for the landlord to issue the written statement" and its relation with the appropriate contract. Remember, WAG will fine me if I get it wrong.

Para 174: I question WAG's claim that there is overwhelming support for the new arrangements.

Para 178: I question WAG's claim that there is massive support for the model contracts.

Para 183-184: the powers to make subordinate legislation imply that WAG accepts this is not the end of the matter. I fear that WAG will find it is not possible to cover every eventuality with prescriptive legislation, but will continue to prescribe (and to blame all parties other than itself).

Para 195: how will the current Bill, with its sixty two pages of bewildering pictograms and opt-in and opt-out clauses, provide "a better understanding of rights and obligations [which] can help to prevent…the reality of losing a home". How many will read such "complex" contracts before signing? How many read (before ticking they have read) the terms and conditions of an airline ticket purchase? The contract itself may not be the best protection for landlord or tenant; for a landlord it may be the ability to regain possession and, for the tenant, the choice of other properties to rent.

Para 196: I question WAG's claim that "there is an overwhelming call for a reform of the rented sector".

Paras 183- 311 Section 7: I question the rigour and value of WAG's analysis and predictions.

Para 282: I question whether it is insulting to our clients to suggest that the costs to tenants of WAG's proposals are immaterial since "the time they would devote to reading information" is not considered "actual costs". I respect my clients and their time, and am disappointed, for their sake as well as mine, that we shall all be subject under law to these new, burdensome and complex requirements.

Para 296: "It is not considered that the Bill places significant additional burdens on landlords". I disagree. I have already spent some forty hours on this Bill, and I am not yet working under the threat of fines and legal penalties which will tax me once the Bill becomes law. May I have my £96 now?

But I am also disappointed how this Bill may reflect on WAG's view of government and governed. I do not doubt WAG's sincerity; but there seems a detachment from the reality of those affected by WAG's decisions. The economy of Wales is not solely the fault of history, or Westminster, or an unequal distribution of English or EU subsidy; WAG also has a responsibility. WAG's massive spend of taxpayers' money on trophy projects such as Cardiff Airport, the Circuit of Wales (sic), or Pinewood may be far-sighted investment. But it also runs the risk of being perceived as statist intervention, or vanity. The health of the economy of Wales, and the quality of life for people who live and work in Wales, also relies on a multitude of inter-related triggers, balances and checks which together mould a tolerable environment. This Bill seems more political than pragmatic.

Landlords like this estate, with a commitment to an area over centuries, are hardly typical. Most private landlords are accidental or commercial investors, who assess the risks and returns of private rental property in relation to the risks and returns on other investments. If the costs of holding residential property in Wales increase, investors will have to charge more rent in order to retain the same return on capital. If the private rental market is unattractive, investors will sell their rented property portfolio, and invest in property in England, or chose another asset class. If WAG seeks to social engineer through further legislative burdens, it may make matters worse. Assembly Members themselves no doubt would insist on the right of electors to choose them over other candidates; why does WAG hesitate if my clients likewise may choose between me and my competitors?