

RH 36

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/  
Communities, Equality and Local Government Committee  
Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill  
Ymateb gan: Tenantiaid Cymru  
Response from: Welsh Tenants

## About Us

The Welsh Tenants is the representative body for tenants in Wales. Formed in 1988 we have over 350 member groups consisting of federations, representative tenant & resident associations and panels.

Our membership and support covers the full range of mixed communities. Over the past ten years this has included a developing private rented sector. We believe that Wales can lead the way in developing a new less restrictive more vibrant form of renting that extends opportunity while providing adequate protection or renters.

## Our mission

To enhance and promote the rights, representations and housing standards of tenants in Wales.

## Our values

- Every tenant has a right to a decent quality affordable home, as a right not a privilege
- We actively support the principles of the UN Universal declaration of Human Rights and the right to an adequate standard of living as expressed in article 11.1. of the International Covenant on Economic, Social and Cultural as enlivened by the Right to Adequate Housing.
- We believe that everyone has the right to express themselves in accordance with their cultural values and beliefs providing this doesn't discriminate unlawfully against others
- We believe that everyone must have the freedom to make informed choices about their home, welfare and community and that every tenant has a right to influence decisions about the services they receive

*“Our mission is to enhance and promote the rights, representations and housing standards of tenants across Wales”*

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## Summary

- While we support the principles behind the bill there are considerations for consumer protection, education and support that need to be considered to ensure the principles of joint rights and obligations are enlivened and realised. We believe that this should be provided through better provisions for consumer representation, protection and support for renters that is open to all and better. We would recommend consideration of a Property Services Ombudsman for PRS that is open to all, and not just those whose landlord subscribe to the PSO scheme and thus excluding the majority of private renters.
- We also believe that Wales requires better strategic oversight due to the significant changes in approach between other countries of the UK on the PRS and would recommend setting up a Welsh Private Residential Tenancies Board as in the Republic of Ireland to provide strategic oversight of the sector.
- We strongly oppose the withdrawal of 26 weeks protection in the standard periodic contract without the removal of the no fault eviction through the serving of a Section 21 notice to quit. This could lead to unchallenged bias by landlords or letting agents. We also believe that reduction in security runs contrary to Article 11.1 of the Convention on Economic, Social and cultural rights and the Right to Adequate housing as expressed by treaty within the framework of the Human Rights Convention.
- We accept that efforts that have been made to address 'retaliatory eviction' in Wales as distinct from that proposed in the Deregulation bill is a necessary inclusion but only addresses disrepair obligations. Better remedies to address harassment and other practices needs also to be considered to support the consumer protection approaches.
- We support the general provisions to ensure better protection under the fitness for human habitation utilising the 29 hazards of the Housing Health And Safety Rating System. However, we would wish to see better safety on the face of the bill to ensure sufficient protection from hazards. We would wish to see Schedule 14 of the 2004 amended to ensure that social landlords have to comply with HMO standards. We would also wish to see the Minister introduce regulations that ensure mandatory protection from carbon monoxide poisoning and 5 year mandatory electrical safety checks to reduce death and serious injury by fire or poisoning.
- We would also wish to see a mandatory requirement publishing any prohibition notices in force or registered against the property in the past 5 years for the property being proposed for rent and to make it an offence not to provide such information to prospective renters.
- The 'prohibitive conduct' clause should be amended to reinstate the requirement to evidence criminal conviction.

1. Introduction
  - 1.1. The Welsh Tenants response to the bill focuses on the general provisions and policy implications for renters. We have largely left the specific technical legal matters regarding housing law to others more competent to evaluate the specific legal definitions and interpretations of law.
  - 1.2. As a principle, we accept that the private rented sector has a significant role to play in the provision of housing for a very broad section of the community. Indeed 1 in 3 people now rent their home. Today's renters increasingly consist of people and families who have less choice, limited financial freedoms or the capacity to take advantage of the exercise of their rights. Policy's that could force tenants to move more frequently, pay a higher cost to mitigate the landlords risk, increase the need for access to legal advice, prevent access to justice, or where policy consequences may impact on their ability to receive timely welfare to supplement income or enable access to market rent properties, are all considerations that we have in mind when consulting tenants and compiling responses. We are mindful, that when new laws, policy's and delivery programmes are developed, renters are not disadvantaged in furtherance of common accessible standards that simplify and make more accessible fairness in renting.
2. General provisions
  - 2.1. Welsh Tenants is a long-time supporter of the principles that underpin the Renting Homes (Wales) bill since its development in 2003 and its successor reports<sup>1</sup>. We fully endorse the universal provision of written contracts and that these should be made available in non-electronic as well as electronic formats and that failure to issue contracts in line with the model contract provision would default to the Welsh Government model.
  - 2.2. We support the approach to develop model contracts, for both secure<sup>2</sup> and assured<sup>3</sup> tenancy's underpinned by statute that will set out "*the basis upon which accommodation is rented, providing clear and accurate statements of the rights and responsibilities of the parties, including the circumstances in which rights to occupy may be brought to an end*"<sup>4</sup>.
  - 2.3. Framing legislation utilising principles contained in the International Convention on Human Rights, UK equalities legislation and consumer protection principles is a mature reflective approach and one which many tenants, landlords, agents

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<sup>1</sup> Renting Homes: the Final Report (1) (2006) Law Com No 297, [http://lawcommission.justice.gov.uk/docs/lc297\\_Renting\\_Homes\\_Final\\_Report\\_Vol1.pdf](http://lawcommission.justice.gov.uk/docs/lc297_Renting_Homes_Final_Report_Vol1.pdf) (last visited 6 February 2013).

<sup>2</sup> Secure tenancy as defined in the Housing Act 1985

<sup>3</sup> The Assured tenancy regime in the Housing Act 1988 & Housing Act 1996

<sup>4</sup> [http://lawcommission.justice.gov.uk/docs/lc337\\_renting\\_homes\\_in\\_wales\\_english-language-version.pdf](http://lawcommission.justice.gov.uk/docs/lc337_renting_homes_in_wales_english-language-version.pdf)

and advisors in Wales will benefit from once enshrined in statute. We particularly welcome the general aim behind the bill to make housing law less exclusive and thereby more accessible and more readily understood by renters, providers and advisors.

3. Consumer protection and redress
  - 3.1. Placing renting a home in this context ensures that consumers have basic rights that include, the satisfaction of basic needs, a right to safety, to be informed, the right to choose, to be heard, and the right to redress. However, support to enliven these basic provisions should not be ignored when initiating this important change.
  - 3.2. While secure contract holders will have access to redress through the Public Ombudsman Service Wales (POSW) currently the Property Ombudsman Services (POS) is only available to letting agents and landlords who enrol in the scheme, thereby excluding tens of thousands of private renters whose landlord do not subscribe.
  - 3.3. We would wish to see adequate provisions in place for private renters to ensure that consumers have access to these dispute resolution services avoiding potential costly court action. We would also suggest greater use of Her Majesties Court Tribunal Service as a pre-court mechanism. This will require access to support to consider individual complaints. There is of course options to utilise existing services such as the Residential Property Tribunal or developing a Private Residential Tenancies Board with statutory powers as in Republic of Ireland, the latter could have powers to address super complaints or thematic consumer redress issues.
  - 3.4. Provisions will of course need to be made to ensure that any schemes developed for private tenants in Wales meets the requirements of the Consumers, Estate Agents and Redress Act, 2007 which is overseen by the Office of Fair Trading.
  - 3.5. Information and education concerning the change will be a significant challenge, but nevertheless is absolutely necessary to ensure fair and equitable treatment for both landlords and tenants. For example, we are concerned that 'additional terms' will be added by landlords only, because of market exclusivity, with few landlords accepting additional terms by tenants – will this lead to bias? We see wide spread exclusion of people in receipt of welfare from accessing private accommodation, or refusing to improve the property before let for disabled tenants, where the requirement to make reasonable adjustments are flouted.
  - 3.6. It is our view that collective oversight of the market will need tight monitoring to consider the extensive changes that are occurring in the private rented sector to oversee; registration and licensing<sup>5</sup>, periodic and fixed term contracts;

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<sup>5</sup> Housing (Wales) Act 2014

tenancy deposits; charging; PSO scheme; and standards and unfair practices. We would therefore recommend a single regulator board with extensive powers to oversee the development of the PRS in Wales.

- 3.7. The provision of collective representation in Wales for private renters is something that also needs government support and needs to be considered most urgently by government to ensure consumers have a strong voice from which the sector can benefit in similar ways as the social housing sector.
4. Registered Social Landlords (RSLs)
  - 4.1. Of the provisions for RSLs, it makes absolute sense to level up provisions for security and standardisation of rights and obligations in the social housing sector. We welcome the ability of government to add terms in order to achieve policy objectives provided there are adequate means of consultation and representation (see other matters). Equally, for registered social landlords this will require oversight by the Regulatory Board Wales and the Welsh Government as regulator who monitors compliance with the regulatory framework in the social housing sector.
5. Removing 26 week protection from eviction
  - 5.1. We are extremely concerned at the removal of the 26 week moratorium that currently prevents landlords from evicting renters and their families within 26 weeks of taking up their tenancy. The provision exists to ensure families can place their children in schooling, register with a doctor, dentist and have time to come to know the community they have chosen to settle. This may even complicate claims for universal credit due to time lapses as a result of potentially more frequent changes in address. But importantly, they have basic protection against potential bias of an unprofessional landlord.
  - 5.2. In recent history, the market has demonstrated that the absence of restraints to seek charges from the renter are maximised to their fullest extent to the advantage of the landlord or agent. We predict that removing the moratorium will mean the default starter agreement will be substantially reduced to some 16-20 weeks as opposed to the current 26 weeks with the nuclear option of section 21 notice built in, 1 day after the tenancy agreement begins as currently occurs in some fixed term contracts.
  - 5.3. One of the key arguments from landlords bodies is that shorter term tenancies will meet the demands of floating tenants (those who travel around with work, due to micro jobbing or traveling zero hour contracts). There are already provisions under 'fixed term contracts' to terminate early for both the tenant and landlord provided, *a) that both agree, b) that there is a break clause term in the tenancy agreement, and c) the tenant has followed any requirements for giving notice.* The onus is on the landlord or letting agent to provide for such in their range of model tenancy agreements to better suit the needs of the renter. Under these arrangements, if the property is handed back the landlord has a

duty to mitigate the tenant's loss of future rent by re-letting while charging reasonable re-letting fees and avoiding double charging. They do not do so because they will want to contractually bind for the duration of the 6 months and tenants are not generally aware that this clause can be added to better meet their accommodation requirements.

- 5.4. In our view there is no justification for changing the 26 weeks security protection, for ALL renters for the benefit of a few that can already be served through better market awareness. These arrangements can be made, but as a whole do not, because landlords will want to maximise income for least effort and as such the market works more in favour of the landlord as opposed to the renter in terms of tenancy length.
- 5.5. We feel that longer term tenancies exist in the PRS more by accident or lack of competence than design, this is demonstrated by the response received as part of the impact assessment conducted by government and a failure to renew fixed terms so that it defaults to a statutory periodic tenancy.

## 6. Security of tenure

- 6.1. For Welsh Tenants the principles of the Universal Declaration of Human Rights are more important than ever. Since its adoption in 1948, the convention has helped set a benchmark for a range of other treaties, rights and obligations of which progressive countries have rightly subscribed, including the UK and Wales. The right to an "adequate standard of living for himself and family" contained under Article 11.1<sup>6</sup> of the Convention on Economic, Social and Cultural Rights (1966) includes a provision that enlivens this treaty obligation. Central to the adequacy of this right is the provision of fair and reasonable security of tenure within the 'Right to Adequate housing'<sup>7</sup>.
- 6.2. Quite rightly the HRC has important principles at its heart, more notably non-discrimination and equality. However, there is also the principle in human rights law of 'non-retrogression', which commits member states to the progressive realisation of these rights. The principle of non-retrogression means that signatories to the convention are not allowed under any circumstances to introduce, laws, policy's or programmes that are regressive to the convention rights – "even in a situation of global economic crisis or austerity measures"<sup>8</sup>. The principle ensures that all of us can enjoy the progressive realization of a right to adequate housing, and a home, with fair and proportionate security of tenure and protection from eviction.
- 6.3. It is our view, the removal of the 26 week protection from eviction for All tenants while retaining the ability to serve a no fault eviction notice under

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<sup>6</sup> International Covenant on Economic, Social and Cultural Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976, in accordance with article 27

<sup>7</sup> [http://www.ohchr.org/Documents/Publications/FS21\\_rev\\_1\\_Housing\\_en.pdf](http://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf)

<sup>8</sup> Lelani Farhar UN Special Rapporteur on the Right to Adequate Housing in a video message to the Welsh Tenants conference in 2014. [Click here to view Ms Farhars video](#)

Section 21<sup>9</sup> would put tenants in a worse position regarding their 'security of tenure' and would be a breach of an entitlement under the convention rights. We would therefore urge the committee to consider the advice we received on the convention rights from the UN Special Rapporteur for the right to adequate housing concerning retrogression.

- 6.4. Our understanding is the principle of non-retrogression is measured by specific criteria (see appendix 1). It is our view that to remove protection from eviction as currently provided and as proposed in the bill would place Wales in the unenviable position of having a worse private sector tenure security scheme than any other country in western Europe and runs contrary to the commitments given under the convention rights.
- 6.5. While removing the moratorium may be beneficial for a small percentage of 'floating renters', this is not the case for the vast majority of the estimated 14,500 annual market gap in housing who seek more stable accommodation. We would therefore recommend that tenancy agreements be extended to a minimum of 12 months as opposed to potentially reducing security to potentially 16 weeks as a consequence of the removal of the moratorium.
- 6.6. Cost implications for renters - It is our concern that tenants will require a greater amount of money in order to secure a tenancy as a consequence of removing the 26 week moratorium.
  - 1) The ability to write into agreements 2 month notice at the start of the agreement will mean they will have the ability to increase rents every time a contract is terminated, rents could increase more rapidly as an average because of the landlords ability to reset rents on shorter re-lets.
  - 2) Turnover increases - Landlord or letting agents subsequent recharges for inspection of the property, revised credit checks, guarantors, recharges and other rechecks on credit worthiness will be more frequent increasing the turnover costs for tenants over a five year period due to less security.Either way, tenants will require more of their income to be spent on housing costs, this adding to an already increasing high proportion of their income to be set aside for securing a home. Without a commitment to offer longer term tenancy the market would take advantage of the increased revenue being made available to them.
- 6.7. It is our view that removing the moratorium would provide no stable foundation for occupants and their children and increase costs for the renter. With no regulatory oversight there are no controls over letting agent and landlord behaviour regarding this. This could mean an inevitable call for rent controls.

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<sup>9</sup> Section 21 Housing Act 1988 gives a landlord an automatic right of possession without having to give any grounds (reasons) once the fixed term has expired



- 6.8. In our view the proposal also enables the landlord to summarily evict rather than use the uncertainty of discretionary grounds through due process of law and lead to further challenges. It would also force tenants to be on the defensive with regard to repair notifications and 'look for faults' in order to secure protection under the 'retaliatory eviction defence'. This is not conducive of good landlord, tenant relations.
- 6.9. In recent years, we have seen sections of the private rented market in Wales and elsewhere adopt an increasing bias against individuals and families because of their perceived current or past economic status or indeed their lifestyle choices. This has added to the pressure on government intervention. In parts of the housing market, many tenants agree that it has returned to the practice of the style and substance of Rachmanism of the 60's. It is a strongly held view among our members and from consultations that removal of the 26 week moratorium would encourage the non-professional landlord sector (estimated to be 80% of the PRS market in Wales) to have the 'power to evict' on the basis of 'bias or discrimination' without recourse to a defence in court.
7. Other matters considered
- 7.1. The Welsh Tenants welcomes the efforts made in dealing more effectively with domestic abuse and the anti-social behaviour of some households through having a 'prohibited conduct' term in every contract. We also welcome the more victim centred approach that ensures the home remains with the victim.
- 7.2. We support the removal of ground 8 mandatory eviction, to reflect human rights thinking on issues of proportionality and removing differences on grounds for eviction for those renting from housing associations by bringing them into line with those for local councils.
8. Part 3 Succession rights and transfer - Chapter 8, section 73-86
- 8.1. Welsh Tenants supports amendments to the law that makes it easier for people to join or leave joint rental contracts and standardising the right to take over a housing association or council tenancy when the current tenant dies, and giving a new right to a long-term resident carer.
- 8.2. We welcome the modification of 91(3) of the Housing Act 1985 making it a fundamental term for who can and cannot succeed a tenancy on death that allows a secure tenant to assign their secure tenancy before entering residential care. We also welcome the provision for joint transfer and succession and the retention of section 92 of the 1985 Act that enables tenants to exchange their tenancies allowing a chain of moves to take place.
- 8.3. Chapter 9, Landlords consent - We recommend that guidance is prepared in relation to the meaning of '*reasonableness*' and '*conditions*' under which an assessment is made. Currently successions are often not granted to the family home but to a 'tenancy' on the basis that the successor will not fully occupy the

home. Quite often this a 'single offer is made, to meet legislative requirements on succession. However, all such successions could for example be 'reasonably refused' on the basis of demand for 'x' size properties. This would not then be a 'right to succeed' but a 'right to be suitably housed'. If this is the intention - the bill should state so or clarify the position upon which succession of the home should not be granted to the home being succeeded.

- 8.4. Chapter 10, (87) – Compensation – We feel the compensation payable to the tenant is derisory considering the impact this will have on the potential successor including the threat of actual homelessness through a failure to agree to 'variations' and hence challenge the 'statement of variation' (on average less than £12.40 per day on an @ £87 per wk rent) and hence the 100% cap placed upon the courts.
- 8.5. **We would also recommend to include a 'protection from eviction clause' while the 'statement of variation' is being challenged in the courts.**
9. Part 4 – Chapter 2 Condition of dwelling
  - 9.1. Too often, people are forced to rent properties that are simply not fit for renting, because they have no option but to take what's on offer because of poor credit history, their inability to secure a guarantor, market rents, because they are housing benefit claimants, disabled, have a mental health illness, elderly, or vulnerable.
  - 9.2. People should have the confidence that the property they rent is 'safe and free from serious hazard' or as a minimum, know the risk and have support to secure additional terms to rectify or address them within the contract, this could be for example sharing costs in return for longer terms.
  - 9.3. We are disappointed not to see a total ban on renting properties that have serious category 1 hazards in addition to the broad based approach as proposed in the bill. We would recommend therefore 'a duty to inform' renters of hazards prior to renting as a minimum standard.
  - 9.4. We are concerned that (91,3) will provide too much of a leeway given the nature of rented housing stock, age and condition, in some parts of Wales and needs further illustration. This is often an excuse for not modernising to make it fit for renting and contributes towards ill health of the occupants and a consequential public purse burden. We are also concerned at (95,1) Limits on sections (91 and 92: general). Surely, if the property is not fit for human habitation it should not be let! regardless of the liability of the landlord in relation to their repair obligation at reasonable cost. This also provides an unacceptable and unfair defence intention of retaliatory eviction protection.
  - 9.5. With the inclusion of the above we support the compromise developed to ensure better protection under the 'fitness for human habitation' utilising the 29 hazards of the Housing Health And Safety Rating System<sup>10</sup> and other

provisions. However we would wish to see better requirements on the face of the bill to ensure sufficient protection from hazards in relation to serious damp, electrical safety, poisoning and serious disrepair;

- We recommend a mandatory requirement to publish any ‘prohibition notices in force’ or ‘registered against the property in the past five years’ for the accommodation being proposed for rent and to make it an offence not to provide such information to prospective renters.
- We recommend amending Schedule 14 of the Housing Act 2004 to ensure that social landlords have a duty to comply with HMO regulations to address the growth of shared accommodation and to ensure where family accommodation is converted to shared accommodation, renters are adequately protected and communities are consulted on change of use from category C (family accommodation) to category D, shared accommodation and that bedroom size criteria is adhered to.
- We recommend the Minister introduces regulations that ensure mandatory protection from carbon monoxide poisoning (in particular solid fuels and to address developments in non-traditional or alternative fuels) to seek to reduce incidents of death and serious injury by poisoning and 5 year mandatory electrical safety checks to help reduce incidents of death and serious injury by fire.

9.6. We would recommend (98,2) increased to 48 hour notice to accommodate night shift workers, arranging for carers or time to secure time-off or for someone to be present. We would also wish to include provisions of weekends rather than simply ‘workdays’ that disadvantage the employed.

9.7. We would also wish to see provisions within this section for securing ‘alternative accommodation’ for all contracts at the expense of the landlord, where it is demonstrated that it is the landlord’s failure to properly maintain the property and where putting right the disrepair may present a hazard to the family.

9.8. Private Rented Sector Tenants Charter – The health of occupants is of grave concern in some parts of the PRS as is the cost to the public purse. We would recommend Ministerial guidance published as to reasonable timescale for repairs so that tenants are aware of the landlords timeliness of response and that these form part of a Private Sector Tenants Charter that outlines the commitments registered private landlords should undertake to meet their responsibilities. This should also include our recommendations above.

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<sup>10</sup> Introduced under the Housing Act 2004 and supplementary guidance 2006

10. Part 5 –Chapter 2- variation of contracts / ‘fundamental terms’

10.1. While we support the general principle of a landlord and secure contract holder being able to vary a fundamental terms in (106), subject to the exclusions in (108) we fear that without safeguards this could be abused. The Welsh Tenants have examples where tenancy terms have been amended, with promises made to compensate for the change that have failed to materialise, resulting in tenants feeling duped and in some cases vulnerable.

10.2. Adequate safeguards in the form of guidance needs to be in place to ensure that secure tenants with dementia, the elderly and independent living schemes, people with undiagnosed mental health, the disabled, have protection against agreeing terms they don’t understand, or are misrepresented and as such result in withdrawal of services.

10.3. To protect consumers, we recommend that where fundamental terms are being presented for change, that access to ‘independent support’ should always be made available and that tenants should be consulted about who should provide that support. In addition, where it is proven that this has not been independently provided, then the terms are to be seen as being approved under duress and invalid.

11. Part 5 – Provisions applying to contracts

11.1. We generally support attempts to address ASB through ‘prohibitive conduct terms’ for neighbours who should not have to put up with serious and consistent noise or ASB. Recent developments in anti social behaviour legislation<sup>11</sup> provides for notice in relation to proceedings on ASB. By contrast, we are concerned that section (55) of the Bill which allows for widespread discretion on the part of the landlord to bring proceedings to end the contract for using or ‘threatening’ to use, the premises for criminal purposes as too broad. The landlord would not have to produce evidence of a conviction as now, and could for example rely on a caution, or lay witness evidence to advance proceedings. This would be open for abuse and may further introduce bias in renting. We recommend that the requirement to produce evidence of a conviction is reinstated

11.2. We welcome the approach within the bill to domestic abuse compliments provisions around Violence against Women, Domestic Abuse and Sexual Violence (Wales) Bill.

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<sup>11</sup> Anti Social Behaviour Police and Crime Act 2014, Part 1 Exclusion from Home, Sect 13, Part 4 Chap 3 closure of premises; Part 5 Recovery of possession of dwelling houses on ASB grounds(94) see <http://www.legislation.gov.uk/ukpga/2014/12/part/5/enacted>

12. Part 5, Chapter 4. Lodgers

12.1. The Bill allows a secure contract holder to take in lodger(s), without requiring consent. Lodger agreement will be with the contract holder and the lodger under a model lodging agreement. The process of allowing a “supplementary” term to be included in contract is to be welcomed. However we are concerned at the new proposals that require tenants to test the immigration status of a lodger. These developments are worrying concerning the potential penalties that could accrue for not doing so.

12.2. As with other provisions, access to independent information and advice at least cost to the tenant should be encouraged and indeed we would recommend that guidance documents should be made available to the renter and there is an obligation to sign post tenants to appropriate support.

13. Part 8 – Supported standard contracts

13.1. Part 8 - Chap 6 – and schedule 2, part 5. We welcome the inclusion of a legal framework for supported housing. The exclusion from requiring to give an occupation contract where intended for less than 6 months will alleviate some concerns of supported housing providers. We welcome the approach and the compromise that after 6 months persons become entitled to a “*supported housing contract*” with two new powers for the landlord/provider. Temporary exclusion for up to 48 hours and the ability to move the occupier within the scheme to an alternative room within the building to mitigate any potential harm or risk.

13.2. We welcome the provision that should landlords want to extend the initial 6 months, that the landlord will have to apply to a local authority for a 3 month extension, 4 weeks before end of contract period. We would wish to see that the occupier has adequate independent representation during this process.

13.3. In relation to exclusions we would wish to seek assurances that people who are subject to ‘an exclusion order’ from the scheme have access to shelter as a statutory provision as a rough sleeper and are not left wandering the streets.

13.4. We are also pleased to see night shelters excluded from the bill.

14. Part 9 – Termination of occupational contracts

14.1. We are pleased to see an acceptance that section 21 no fault eviction has been abused by a section of landlords who would rather evict than deal with repairs or the legitimate concerns of renters. However, it also needs to be acknowledged that retaliatory eviction is not wholly confined to repairs and can also include, objections to accessing the property without consent, unreasonable terms being imposed post tenancy and general complaints regarding harassment or simply making enquires.

14.2. However we do welcome new fairer rules around use of section 21, where the court is satisfied that the landlord hasn’t complied with their obligations

regarding fitness of habitation and provisions for the court may treat the claim as discretionary not mandatory.

14.3. We also support measures to substitute demoted tenancies within the Bill that allows landlords to seek an order from the court to demote the tenancy from a secure tenancy to a standard contract for a period of 12 up to 18 months, where there is evidence of serious anti social behaviour.

14.4. Estate management grounds – compulsory purchase – Welsh Tenants and TPAS Cymru have had a great deal of experience with the extremely traumatic process of homeloss through demolition and compulsory purchase<sup>12</sup>, this can be extremely debilitating for the elderly with decades of investment in the home and community gone.

14.5. The loss of a home should not be taken lightly. We are concerned that Part 9 chapter 3 Section (4), eviction on estate management grounds, where the *“landlord must pay to the contract-holder (regarding all occupational contracts, and section (2) a sum equal to the reasonable expenses likely to be incurred by the contract holder in moving from the dwelling”* as insufficient. The section does not mention ‘homeloss’ payment<sup>13</sup> on displacement to which the contract holder (as tenant) will be entitled - in addition to reasonable disturbance payments.

14.6. **We recommend that homeloss payments for secure tenants are reinstated in line with the Welsh Government scheme<sup>14</sup> currently in force.**

15. Running a business from your home

15.1. Today in an increasing service economy it is no longer acceptable to have a blanket moratorium on the ability to run a business from your home. Self-employment has widened dramatically, particularly in areas of information technology and online hobby businesses to supplement income. Such a practice if not in the contract would be an enforceable technical breach of contract.

15.2. We would wish to see this included as a general principle providing clarity regarding this important issue to reflect changes in home working. We would wish to see the ability to operate a ‘business’ from the home a key right within the contract subject to permission from the landlord, however with the principle that this could not be unreasonably withheld or monopolised upon through increased rent.

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<sup>12</sup> Involving Residents in Improvements - A Major Works Agreement Compendium, CIH Cymru, S.Clarke, 2002

<sup>13</sup> Land Compensation Act 1973 Part III Homeloss payments & subsequent amendments  
<http://www.legislation.gov.uk/ukpga/1973/26/part/III/crossheading/home-loss-payments>

<sup>14</sup> The Home Loss Payments (Prescribed Amounts) (Wales) Regulations 2007 & The Home Loss Payments (Prescribed Amounts) (Wales) Regulations 2008

16. Right to manage

- 16.1. Members have commented there is no provisions regarding the Right to Manage regulations 1994 (and amendments thereafter), for secure tenants in the bill. For many tenants this right has been preserved on ballot of tenants in stock transfer. Evidence suggests that where RTM has resulted in self-management this has created jobs, internships, apprenticeships, and improved services at reduced cost to the tenant. Self-management as defined in the right to manage regulations is a positive progression for tenants to take responsibilities for their communities and to involve and engage tenants in the management of their home. Although central funding to realise this aspiration has been suspended for tenants wanting to utilise this route towards local empowerment, and co-operative approaches to management, the preservation of this right was important to retain in stock transfer ballots.
- 16.2. We are disappointed to see this co-operative principle in Wales as an extension to involvement and participation by tenants in their communities being eroded. We would wish to see the right to manage for secure tenants actively encouraged and supported among secure tenants via the insertion of a key term for secure tenants.

17. Statutory procedures to consult

- 17.1. For decades secure and assured tenants have had the active support of successive governments to reinforce the value of individual and collective engagement to improve policy and practice relating to services, support and decision making. This has been critical to develop, and seek support for improvements in policy and practice in the housing sector as a whole.
- 17.2. The provision of a statutory duty to inform and consult on rent increases in secure and assured tenancy agreements or on changes to housing management for example are important principles that are considered fair, reasonable and progressive. We are mindful of the need to ensure that the means of collective involvement and representation is considered regarding the development of guidance and policy in relation to the bill and any subsequent amendments thereafter, particularly where there are matters under consideration that are not on the face of the bill which are to be developed, consulted and approved by Ministers (22).
- 17.3. In relation to the process of decision making, the supreme court accepted what has become to be known as the 'Gunning<sup>15</sup>', or 'Sedley<sup>16</sup>' principles in which the process for developing and taking decisions<sup>17</sup> should be adopted<sup>18</sup>. The

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<sup>15</sup> [https://www.supremecourt.uk/decided-cases/docs/UKSC\\_2013\\_0116\\_Judgment.pdf](https://www.supremecourt.uk/decided-cases/docs/UKSC_2013_0116_Judgment.pdf)

<sup>16</sup> The principles of consultation advocated by Stephen Sedley QC in the Gunning case (later Lord Justice Sedley)

<sup>17</sup> <http://www.adminlaw.org.uk/docs/18%20January%202012%20Sheldon.pdf>

<sup>18</sup> Mr. Stephen Sedley QC and adopted by Mr. Justice Hodgson in R v. Brent London Borough Council, ex parte Gunning (1985) 84 LGR 168 at 169. They were subsequently approved by Simon Brown LJ in R v. Devon County Council, ex parte Baker [1995] 1 All.E.R. 73 at 91g-j; and by the Court of Appeal in R v. North and East Devon Health Authority, ex parte Coughlan [2001] QB 213 at [108].

supreme court concluded it was hard to see how any of these principles could be rejected or indeed improved upon, saying the time had come for the Supreme Court to endorse the Sedley criteria Gunning principles' or 'requirements'. We would also wish to see the principles for consultation on the face of the bill.

17.4. In several areas of the bill there is recourse to give powers to the Minister to develop such policy and guidance (Part 2 Chap 3, 22 Chap 4, 23 Chap 6, 29 etc). We would wish to see statutory principles that the ministers should follow as suggested in the Gunning principles;

- (i) consultation must take place when the proposal is still at a formative stage;
- (ii) sufficient reasons must be put forward for the proposal to allow for intelligent consideration and response;
- (iii) adequate time must be given for consideration and response; and
- (iv) the product of consultation must be conscientiously taken into account.

17.5. In such important matters as are being considered such as; structured discretion for eviction; prohibitive conduct; disrepair definitions; that are not on the face of the bill, we recommend strengthening the process by which these matters are considered and decisions reached by the insertion of the Gunning / Sedley principles to ensure that the principles have statutory force within the bill.

#### Appendix 1.

Criteria upon which non retrogression has been measured includes:

- Is the measure "*justified*"
- Is the change "*necessary*"
- Is the change in law "*potentially discriminatory*"
- Has the people impacted had "*meaningful participation*" and "*involvement*" in its development
- Have "*accountable*" mechanisms been put in place
- Has the change been subject to "*independent*" review at national levels
- Are there "*remedies*" for violation of rights
- Is the law change "*permanent of temporary*"

Source:

United Nations- General Assembly A/HRC/24/44, July 2013 (Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque),



The principle of non-retrogression and austerity measures page 5 paragraphs 13-17 are explored here.

[http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/Documents/A-HRC-24-44\\_en.pdf](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/Documents/A-HRC-24-44_en.pdf)