

SP 19

Blaenoriaethau ar gyfer y Pwyllgor Cydraddoldeb,
Llywodraeth Leol a Chymunedau

Priorities for the Equality,

Local Government and Communities Committee

Ymateb gan: The Law Society

Response from: The Law Society

Equality, Local Government and Communities Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

By email only

1 September 2016

Dear Sirs,

Consultation - Priorities for the Equality, Local Government and Communities Committee

I am writing in response to your consultation on priorities for the Equality, Local Government and Communities Committee (the Committee). The Law Society broadly supports the areas of work the Committee has identified. This response, which has been drafted in consultation with the Society's Housing Law Committee (HLC), proposes the following recommendations.

Housing (Wales) Act 2014

The HLC supported the Housing (Wales) Act 2014 (the Act), and in particular, the provisions outlined in Parts One and Two. The Committee will be aware of the reception Part Two of the Act has received in both England and Wales for its potential impact on reducing homelessness.

(a) Post-legislative scrutiny of new homelessness duties

By introducing new duties for local authorities in Wales, the Act should successfully direct focus and resources towards homelessness prevention. The Committee may be aware that the new duties have encouraged ongoing debate in England, to the extent that the Department for Communities and Local Government (DCLG) has expressed an intention to investigate the viability of introducing similar measures in England. We therefore support and welcome the Committee's post legislative scrutiny of these duties.

We would further support research to understand the practical impact these new duties have had on housing authorities. For example, interviews with various authorities would provide the Committee with an opportunity to build on the quantitative data already available in order to best understand and collate the experiences of authorities in meeting needs early on to prevent homelessness. We believe that such an exercise would also produce useful best practice guidance to inform homelessness services and future policy considerations across Wales (and England in the event that similar provisions are introduced).

Alongside a review of the effects of the homelessness duties on local housing authorities, we suggest that the Committee consider investigating the quality of private rented accommodation. The Act, although empowering local housing authorities to discharge their housing duties into the private rented sector, places a duty on authorities to ensure any accommodation offered is suitable, taking into consideration Part One of the Housing Act 2004. It is therefore vital that local housing authorities are confident that the

accommodation they offer homeless persons meets their needs. We remain confident that the introduction of mandatory registration and licensing of landlords will help improve standards in the private rented sector, but welcome a review and monitoring of standards as the Act embeds in Wales.

(b) Section 78: Deciding to have regard to intentionality

Section 78 of the Act allows local housing authorities to disregard intentionality when reaching a decision on homelessness applications. Building on this, we understand that the Welsh government has announced its decision to abolish the intentionality criteria from homelessness legislation by 2019. Given this, we strongly suggest an understanding of the impact this may have on authorities is necessary and would encourage the Committee to examine use of the intentionality criteria by housing authorities prior to further legislative reform.

In addition, we invite the Committee to examine the following:

(c) Section 14: Duty to maintain register in relation to rental properties

The HLC fully supported a mandatory register for private landlords and letting agents. We believe that this mechanism will help improve standards in the private rented sector and alert landlords to their responsibilities. We also expect that a mandatory scheme will increase tenant trust in the sector.

In our 2014 submission on the Bill, as it then was, the HLC recommended the creation of a comprehensive online database of all private landlords and letting and management agents. We note that the Rent Smart Wales website hopes to have this facility operational during 2016 and would encourage the Committee to follow this up to ensure the scheme provides the most benefit to the public.

We are not aware that the register, in its current form, holds details of the mortgage status of landlords. Unauthorised subletting can be unlawful under mortgage terms. We encourage the Committee to examine whether such checks are, or should, be conducted as part of a check on the 'integrity' of landlords upon registration. We believe these safeguards would help to increase tenant confidence in the private rented sector and reduce tenancy fraud.

(d) Section 28: Prosecution by a licensing authority or local housing authority

Section 28 empowers licensing authorities to prosecute for a number of offences, including a landlord or agent's failure to register, the appointment of an unlicensed agent, a landlord's failure to update the licensing authority and so on. This power is not yet in force, however, we encourage the Committee to examine the extent the readiness of licensing and local authorities to enforce these powers ahead of implementation.. We also recommend that the Committee consider what resources have been made available to authorities to empower them to utilise the new provisions. We would be particularly interested to know what guidance or procedures will be made available to ensure these powers are utilised consistently across authorities, as slow or inconsistent enforcement is likely to damage the impact and reputation of the registration and licensing scheme.

(e) Part 4: Standards for social housing

As English and Welsh law continues to diverge, the HLC would encourage the Committee to explore the relationship between Part 4 of the Housing (Wales) Act 2014, the existing

Welsh Housing Quality Standard and Part 1 of the Housing Act 2004 (Housing conditions). We are confident that any emerging guidance on this increasingly complex area of housing law would be valuable to both landlords and tenants.

Renting Homes (Wales) Act 2016

Alongside a review of the homelessness provisions already proposed, we invite the Committee to examine the Renting Homes (Wales) Act 2016 (the 2016 Act). The Committee will be aware that the HLC supported much of the content of this legislation. However, we expressed some reservations regarding provisions which we believe have not achieved the necessary balance for tenants and landlord interests.

a) Occupation contracts

A vital component of the 2016 Act was the promised simplification of tenancy agreements within Wales. Once implemented, the 2016 Act will ensure tenancies fall into one of two categories – standard and secure – and include fundamental terms. To assist landlords and tenant groups to make the transition to this new legal framework, Ministers committed to publishing model contracts, as a means of ensuring agreements are practical and easy for individuals to use and understand. The contracts are yet to be published and there is no indication as to when they might be introduced and implemented.

We, like other stakeholder groups, remain concerned that the length and language of any model contracts should be accessible to all parties. We therefore echo the Committee's recommendation to the Minister that a further consultation on the model contracts, with tenants as well as stakeholder groups, should be urgently undertaken. The success of these agreements will rely on the speed with which the rental market can adapt to the new provisions; we therefore invite the Committee to monitor delays in the drafting and publication of the contracts.

b) Rent arrears on secure contracts

Once implemented, the 2016 Act will abolish rent arrears as a mandatory ground for possession in secure contracts. In light of the reported increased levels of rent arrears following the implementation of welfare initiatives such as Universal Credit, we anticipate that registered providers and housing authorities will continue to seek possession for serious rent arrears. We therefore reiterate our suggestion that guidance will be needed for the courts as well as parties to clarify the relationship between Schedule 10, the pre-action protocol and existing case law prior to the implementation of this provision. We are confident that such guidance will help ensure cases are managed effectively and prove valuable for all landlords, tenants and their representatives.

We also invite the Committee to investigate the anticipated relationship between the rent arrears provisions and the homelessness duties under the Housing (Wales) Act 2014. If, as we suggest above, rising levels of rent arrears lead social housing providers to continue to seek possession, local housing authorities may experience a higher volume of homelessness casework. We suggest that the Committee examine how this might impact on local housing authority resources as well as what steps might be taken to prepare housing authorities for any such increase in caseload.

c) Abandonment

Chapter 13 of the 2016 Act empowers landlords to take possession of their property without obtaining a court order where they believe the property has been genuinely

abandoned. Section 220(4) places a duty on a landlord wishing to rely on these provisions to make 'such inquiries as are necessary' to satisfy himself that the property has been abandoned. However, the Act is silent on what these inquiries are. We are aware that several stakeholders have called on the Minister to issue guidance clarifying what these steps are in order to ensure landlords follow the correct process and avoid unnecessary litigation. We also believe that any such guidance should be consulted on to ensure the right balance is achieved between ensuring quick access to vacant properties for landlords, and safeguarding the interests of tenants. In its final report on the Renting Homes (Wales) Bill, the Committee recommended amendments be made to ensure that a landlord's failure to follow the correct procedure should constitute an unlawful eviction. We agree that setting this out clearly in the 2016 Act would provide clear additional safeguards in those instances where the correct procedure is not followed.

The Committee may be aware that similar abandonment provisions were introduced in England through the Housing and Planning Act 2016. In our discussions with the DCLG, we highlighted our concerns that a lack of judicial scrutiny in this process may lead to increased litigation. We therefore encourage the Committee to monitor the implementation of Chapter 13 to establish whether landlords understand and comply with the possession process as stipulated in any regulations or guidance from the Minister, and to ascertain whether tenants are aware of the remedies outlined in section 222, and indeed, whether these are felt to be satisfactory to those who unknowingly lose their home.

We would be happy to assist in drafting clear and effective guidance on this matter.

I hope this assists the Committee in shaping its important work programme over the coming years. Please do not hesitate to contact me directly if we can of further help in any of these areas.

Yours faithfully

Mary Fapojuwo
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Public & Criminal Law Team