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Communities, Equality and Local Government Committee

Meeting Venue:
Committee Room 3 - Senedd

Meeting date:
Wednesday, 20 May 2015

Meeting time:
09.00

Cynulliad Cenedlaethol Cymru
National Assembly for Wales

For further information please contact:
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Agenda

Private pre-meeting (09.00 - 09.15)

1 Introductions, apologies, substitutions and declarations of interest

2 Renting Homes (Wales) Bill: Evidence session 10 - Housing Law Practitioners Association (09.15 - 10.00) (Pages 1 - 32)

Justin Bates, Housing Law Pracitioners Association

3 Renting Homes (Wales) Bill: Evidence session 11 - Minister for Communities and Tackling Poverty (10.00 - 11.45) (Pages 33 - 45)

Lesley Griffiths AM, Minister for Communities and Tackling Poverty
Simon White, Bill Manager, Welsh Government
Neil Buffin, Senior Lawyer, Legal Services, Welsh Government

4 Papers to note (Pages 46 - 81)

5 Motion under Standing Order 17.42 to resolve to exclude the public

from the remainder of the meeting

6 Renting Homes (Wales) Bill: discussion of evidence received in sessions 10 and 11 and consideration of main themes (11.45 - 12.15) (Pages 82 - 83)

7 Inquiry into Poverty in Wales Strand 1: consideration of draft report (12.15 - 12.30) (Pages 84 - 126)

Agenda Item 2

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HOUSING LAW PRACTITIONERS ASSOCIATION

Renting Homes (Wales) Bill

Submission of the Housing Law Practitioners Association (HLPA)

May 2015

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol
Communities, Equality and Local Government Committee
CELG(4)-14-15 Papur 1 / Paper 1

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About HLPA

The Housing Law Practitioners Association (HLPA) is an organisation of solicitors, barristers, advice workers, environmental health officers, academics and others who work in the field of housing law.

Membership is open to all those who use housing law for the benefit of the homeless, tenants and other occupiers of housing. It has members throughout England and Wales.

HLPA has existed for over 25 years. Its main function is the holding of regular meetings for members on topics suggested by the membership and led by practitioners particularly experienced in that area, almost invariably members themselves. Presently, meetings the take place every two months and are regularly attended by c.100 practitioners.

The Association is regularly consulted on proposed changes in housing law (whether by primary and subordinate legislation or statutory guidance). HLPA's Responses are available at www.hlpa.org.uk.

Membership of HLPA is on the basis of a commitment to HLPA's objectives. These objectives are:

- To promote, foster and develop equal access to the legal system.
- To promote, foster and develop the rights of homeless persons, tenants and others who receive housing services or are disadvantaged in the provision of housing.
- To foster the role of the legal process in the protection of tenants and other residential occupiers.
- To foster the role of the legal process in the promotion of higher standards of housing construction, improvement and repair, landlord services to tenants and local authority services to public and private sector tenants, homeless persons and others in need of advice and assistance in housing provision.
- To promote and develop expertise in the practice of housing law by education and the exchange of information and knowledge.

Justin Bates is the author of this paper. He is a barrister at Arden Chambers (London & Birmingham) and the vice-chair of the HLPA. He is the Deputy General Editor of the Encyclopedia of Housing Law and the author or co-author of various other books on housing law and local government law.

Introduction

1. The Association is delighted to be asked to give evidence to the National Assembly on the Renting Homes (Wales) Bill. It has consistently called for the Renting Homes Bill to be adopted by the Westminster Parliament[1] and expressed strong support for what is now the Renting Homes (Wales) bill in August 2013 in response to the consultation paper *Renting Homes: A Better Way for Wales*.[2] Our view is that the Bill will do much to simplify the law, to the advantage of both landlords and tenants.

2. The Association recognises the demands on members of the Committee and will not seek address every aspect of the Bill. This evidence addresses the following issues, which seem to the Association to be particularly troubling the committee[3] and attempts to identify areas of potential litigation and to suggest proposals to avoid the same.

Contractual terms

3. We are generally supportive of the proposal for prescribed terms and written contracts as we believe that this will bring clarity and certainty for both landlords and tenants.

Written statement of contract

4. We have a concern about cl.34 of the Bill.

5. As it presently stands, it appears to provide that, if a landlord has failed to provide a "written statement of contract"[4], then, after a set period of time,[5] the tenant can apply to court for a declaration as to the terms of the contact and an order that the landlord provide such written terms.

6. We are concerned about how this is to be enforced in practice. In particular, we doubt that legal aid will be available to enable occupiers to engage lawyers to make such an application on their behalf.

[1] See, by way of recent example, its evidence to the CLG Select Committee investigation into the Private Rented Sector, January 2013.
[2] HLPA submission, August 2013.
[3] Particularly having regard to the oral evidence it received from the Minister for Communities and Tackling Poverty, April 22, 2015, the transcript of which is available online and which has been considered when preparing this submission.
[4] which, in substance, is the rental contract itself, including the fundamental and supplementary terms – see cls.31, 32
[5] presently 14 days from the occupation date – cl.31(1)

7. The Bill already envisages that such hearings may be contentious (*e.g.* as to whether there were modifications or whether there was some default on the part of the tenant – cls.34(2), (4)) and we have concerns about legally represented landlords being able to "bamboozle" unrepresented occupiers. Furthermore, putting the onus on the occupier to make the application depends in large part on the occupier already being aware that s/he has such rights. It is our experience that very few tenants will have such knowledge.

8. A more effective way of putting the onus on the landlord to provide this information might be to introduce a prohibition on exercising a right to possession unless the material has already been provided. Such prohibitions are increasingly common in housing law, see, *e.g.* the prohibition on using s.21, Housing Act 1988 where a property is an unlicensed HMO or where there has been a failure to comply with aspects of the Tenancy Deposit rules (Housing Act 2004, in both cases), and are already found elsewhere in the Bill (cl.46).

Name and address of landlord

9. Clause 39(1) requires the landlord to give the occupier notice of an address for service of documents in the United Kingdom. Failure to comply leaves the landlord liable to pay compensation (cl.40).

10. It appears that this is intended to replace the obligations presently found in ss.47, 48, Landlord and Tenant Act 1987. If that is correct, then cl.39 does not fully achieve this end. Breach of ss.47, 48, 1987 Act is "enforced" by the prohibition on the landlord being lawfully entitled to certain monies (including rent in some circumstances) unless the information is provided. It is not clear to the Association why this prohibition is removed and replaced by a financial penalty.

11. Furthermore, cl.39(2) only seems to require a new landlord (*e.g.* where there has been a sale of the reversion) to give the occupier notice of the change in identity of the landlord. Again, compensation is payable in default (cl.40). This appears to have two flaws. First, why does the new landlord only have to give details of his "identity" and not his address for service of documents in the UK? Secondly, it is presumed this provision is intended to replace s.3, Landlord and Tenant Act 1985; but if that is correct, why is the sanction different? In particular, s.3(3) provides that until notice of assignment is given, both the old and new landlord remain liable on *e.g.* repairing covenants. That is an important safeguard for tenants as it prevents disreputable landlords from avoiding liability by simply assigning their interest.

Fit for human habitation

12. We very much welcome cl.91 as a considerable improvement over s.8, Landlord and Tenant Act 1985. The failure of the Westminster Parliament to update the rent levels in s.8 in line with inflation has been criticised by both the Law Commission and the Court of Appeal[6] and the Assembly is to be congratulated on addressing this lacuna. It is only primary legislation which can ensure that property is required to be fit for human habitation, as common law is inadequate for these purposes.[7] We can see no basis at all for suggesting that a landlord should be able to let a property which is not fit for human habitation (especially where public money is paid to that landlord, *e.g.* by way of housing benefit).

13. We do suggest, however, that there should be further provision made in the Bill to assist with determining whether a property is fit for human habitation. Clause 94 contains power to prescribe matters to which regard must be had, but:

(i) there should be a "default" or "fall-back" position, in the event that no matters are ever prescribed (or once prescribed are later repealed), see, for example, s.10, Landlord and Tenant Act 1985;

(ii) it is not clear whether cl.94 is intended to confer power to prescribe *guidance* or an (exhaustive?) list of factors which will constitute "unfitness".

14. Likewise, it would be of assistance to landlords, tenants and the courts if there were to be power[8] to issue guidance as to what constitutes "reasonable expense" for the purposes of cl.95 (the exceptions to cl.91) (*e.g.* is it a subjective test based on the impecunious nature of this landlord, even if the rack rents / reversionary interest are very valuable? Or is it an objective test for the court?).

Possession

Terms of suspension

15. Chapter 10 (possession proceedings) largely follows the existing law. We wonder if cl.207(5) might, however, benefit from further consideration. A power to impose conditions as part of a suspended possession order is unremarkable and unobjectionable. But are those conditions intended only to be negative (*e.g.* do not cause any further anti-social behaviour) or might they also be positive (*e.g.* attend alcohol counselling)? The latter are now expressly provided for in anti-social behaviour injunctions (see Pt.1, Anti-Social Behaviour, Crime and Policing Act

[6] *Issa v Hackney London Borough Council* (1997) 29 H.L.R. 640, which also deals with the Law Commission report.
[7] *Hart v Windsor* (1844) 12 M. & W. 68, *Cruse v Mount* [1933] Ch. 278, *Sleafer v Lambeth LBC* [1960] 1 Q.B. 43.
[8] Or even a duty.

2014), with provisions for, *e.g.* ensuring funding is identified. Is it intended to allow positive conditions? If not, this should be made clear.

Absolute ground for possession

16. We have very real concerns about cls.208 and 209. We do not see any need for the absolute ground for possession and are unaware of any evidence which demonstrates why it is necessary to abandon the "reasonableness" criteria which has been in place since at least 1915.

17. Assuming, however, that the Committee is not with us on that point, we are concerned about cl.208(2) which appears to assert that a court *must* make a possession order *unless* a defence based on the European Convention of Human Rights is made out. The reason, one imagines, is that a disproportionate interference with the rights of the occupier(s) would be unlawful – see s.6, Human Rights Act 1998.

18. But there are other defences which are similarly unlawful. Suppose, for example, that an occupier wished to argue that his eviction on a mandatory ground amounted to, *e.g.* disability discrimination? Such discrimination is prohibited by the Equality Act 2010 and not (necessarily) by the Human Rights Act 1998. Suppose further that the occupier wishes to argue that the decision to institute possession proceedings was made in bad faith (*e.g.* by personal animus on the part of a housing officer). That is plainly a valid public law defence, but not covered by the 1998 Act. Likewise, a defence based on a failure to comply with a published (and statutory) policy.

19. It *might* be said that these defences could be raised under cl.209(4). But this is not clear and, if that is what is intended, then cl.208(2) should be amended to ensure that no doubt arises. The same issues arise under cl.211.

Retaliatory eviction

20. Whilst we welcome cl.213 (restriction on retaliatory eviction for, in effect, asserting repairing rights), we suggest it is far too limited. Retaliatory eviction can (and does) occur for a variety of reasons, *e.g.* in *Chapman v Honig* [1963] 2 Q.B. 502 the landlord served Notice to Quit on a tenant who had given evidence in another tenant's claim for trespass against the landlord. A more general "bad faith" defence would, we suggest, be preferable.

Children as tenants

21. We understand that c.230 has been controversial, *i.e.* allowing children aged 16 and 17 to become contract holders.

22. The reality is that public authorities (both local authorities and other social landlords) already grant tenancies to such children (usually as part of their homelessness duties). The difficulty comes not in the grant, but that very few, if any, local authorities understand the complex nature of the trust arrangement which is imposed by law in such cases.[9] Simplifying the arrangement will be of enormous assistance to authorities.

Publicity and public information

23. Finally, although this is outside the scope of the Bill, the Association would urge that sufficient funds be earmarked for a substantial and sustained advertising campaign once the Bill becomes an Act and, again, ahead of the commencement date. This is a significant change in housing law in Wales – probably the most significant change since the Housing Act 1988 – and all parties (landlords, tenants, agents, lawyers) will need to be made aware of the fundamental nature of the changes.

Housing Law Practitioners Association
May 2015

[9] See *Minor Tenants*, Arden QC, Knight, Journal of Housing Law, 2014, pgs.37 and 62 (Pts.1 and 2 of the article).

Agenda Item 3

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol
Communities, Equality and Local Government Committee
CELG(4)-14-15 Papur 2 / Paper 2

Lesley Griffiths AM
Minister for Communities and Tackling Poverty

8 May 2015

Renting Homes (Wales) Bill

Dear Minister

As you are aware, the Committee is in the process of hearing oral evidence on the Renting Homes (Wales) Bill. There are a number of matters that have arisen during the course of the evidence sessions that I would like to draw to your attention in advance of our second meeting with you. In order that we can make the best use of that meeting, I would be grateful to receive your response to the points below **by 14 May 2015**. For convenience, a summary of points for response is included at the end of this letter.

Repeals and Amendments

The Bill will require extensive repeal and amendment of existing legislation. However, this material is not in the Bill itself and is left to subordinate legislation. In order to consider the Bill fully, we need a clear understanding of the repeals and amendments that will be made as the Bill comes into force.

As such, I would be grateful if:

1. you would arrange for us to receive a list of the repeals and amendments proposed for the Bill, and
2. you would give consideration to including this information in the Bill itself.

Protection from Eviction

We note that the new abandonment process allows for recovery of possession without court proceedings. It seems that the Bill will therefore require repeal or amendment of the Protection from Eviction Act 1977. Additionally, the Housing Act 1988 provided for additional penalties for unlawful eviction for financial gain. The Bill does not replicate these provisions. As such, we have some concerns that the Bill could weaken the protection offered to tenants faced with unlawful eviction. I would be grateful for your response to the following questions:

3. What are your intentions in respect of the Protection from Eviction Act 1977?
4. If the 1977 Act is not to be repealed, how do you envisage landlords being able to evict tenants without court proceedings?
5. How will you ensure that landlords do not evict tenants for financial gain?
6. What are the implications for the rights under the "Convention" (see below) of contract-holders, especially as regards Articles 6 and 8?

Human Rights

The Bill's provisions engage various Articles of the Convention for the Protection of Human Rights and Fundamental Freedoms (the "Convention").

Article 8 protects a person's right to respect for his or her home. This is subject to various conditions, such as protecting the rights of others. As you will know, a public authority may interfere with the right so long as it does so in accordance with the law, in pursuit of a legitimate aim, and as necessary in a democratic society (i.e. in a way proportionate to that aim).

The application of Article 8 to a person who rents a home is well established. The right protects an existing home. It does not give a person a right to acquire a home which they do not already have. In order to meet the requirements of Article 8, the law must balance the rights of both the landlord and contract-holder.

7. Are you satisfied that Article 8 rights will be retained for those existing tenants who convert to a contract under this Bill?
8. Are you satisfied that Article 8 rights will be retained for those who enter into new contracts under this Bill? In particular, how does the removal of the '6-month moratorium' affect these rights?

Further, there are several provisions which specifically concern us from a human rights perspective.

Exclusions

We are concerned about the power in section 121 to exclude persons from their property for 48 hours. It appears that this exclusion will not be subject to any form of appeal or judicial oversight. On this point, you have previously told us that a review process would not be worthwhile as it would only render a decision after the exclusion had already ended. You also told us that the process was compatible with Article 8 of the Convention as it struck a proportionate balance between the rights of an excluded occupier and the rights of others.

We are also concerned that the use of the exclusion power could lead to persons becoming street homeless for periods of 48 hours. Given that this power will be used against those who are likely to have other difficulties or are vulnerable for other reasons, we are concerned that, in some cases, excluded persons could subsequently be arrested for other offences, or that their temporary exclusion

could ultimately lead to permanent loss of their home.

The lack of an independent review process could lead to a breach of the excluded person's right to a fair hearing under Article 6 of the Convention. The decision to exclude may also be amenable to judicial review, as it involves a decision being taken by a body exercising a public function.

Additionally, we understand that there is already a process in place to allow for emergency injunctions to exclude persons to be sought in the courts. In light of the above, there seems to be no reason for a process akin to the current emergency injunction powers not to have been included in the Bill.

Further to our concerns about Article 6 rights, we wish to highlight the potential for a breach of the excluded person's rights under Article 8. If the excluded person has been denied a fair hearing, they may also have had their Article 8 right to respect for private and family life violated.

Linked to the above, there may also be some difficulty as to the nature of the qualification of the right suggested. If the exclusion is justified on the basis that it strikes a balance between the rights of the excluded person and the rights of others, it will only be justified if the exclusion is to protect other residents to whom the landlord owes a duty. It will not be justified in relation to the landlord's staff or other neighbours who are not tenants of the landlord, as they do not have legitimate Convention rights against the landlord. Any balance would be based on whether it is proportionate, in terms of the general value to society, to exclude that person. It would also be the case that an exclusion could only be justified in the most serious of cases of anti-social behaviour. However, the Bill does not seem to do enough to limit the use of the power to those situations.

Finally, in the most serious cases (which are those in which the power to exclude would be most likely to be justified), there are already powers for the Police to arrest a person for their behaviour. That person could then be bailed to a different location while the matter is investigated. This would seem to achieve the objective of removing the person from the property, would be carried out by the most appropriate front line enforcement body, would contain an immediate power of further enforcement in the event the person returned to the property, and would avoid the risk of homelessness by the person being bailed to a bail hostel or similar location.

In light of the above, I would be grateful for your response to the following points:

9. How do you respond to the suggestion that the exclusion powers in the Bill violate Articles 6 and 8 of the Convention?
10. What consideration have you given to framing the wording of the exclusion powers more tightly to ensure that they are only used in the most serious cases where there is a real risk to other persons who have legitimate ECHR rights which are at risk of being violated?
11. What consideration have you given to producing statutory guidance setting out the manner and situations in which exclusion powers should be used, and ensuring the power can only be used by a senior member of staff who

has received appropriate training?

Eviction for nuisance or annoyance

Section 55 provides that a contract-holder must not engage (or threaten to engage) in "conduct capable of causing nuisance or annoyance". This is to be a fundamental term of all contracts. If breached, the Court may make a possession order on the basis that the contract has been breached (section 156 and 205). The Court may only make a possession order where it is reasonable to do so.

However, the test of "conduct capable of causing nuisance or annoyance" appears to set a very low threshold for a possession order. The Court's discretion may not be enough to prevent some landlords from engaging in bullying behaviour by threatening contract-holders with possession on this basis for very minimal levels of nuisance or annoyance.

12. How do you consider this provision to be proportionate under Article 8?

Conversion of secure contracts to standard contract

Under section 116, certain landlords can turn secure contracts into standard contracts in cases of anti-social behaviour.

13. How does this provision strike the right balance between landlords and contract-holders under Article 8?

Interference by superior landlord with contract-holder's right to occupy

Section 54 provides that the landlord must not interfere with the contract-holder's right to occupy the dwelling. Section 54(4)(b) provides that a contract-holder's rights are considered to have been interfered with if a "superior" landlord interferes with the contract-holder's right to occupy. So, in a scenario where A lets a house to B and B sublets the house to C, B may be in breach of section 54 where A does something to affect C's right to occupy the house. This seems to put B in the position of being liable for something wholly outside of B's control.

14. How does this affect B's rights under A1P1? Is this proportionate?

Waste and tenant-like user

Section 101 removes the contract-holder's liability for "waste" and "tenant-like user".

15. How will this affect the landlord's rights under A1P1?
16. Is it your intention to make regulations under section 23 (supplementary provisions) to address this?

Minors

We have concerns about the practicability of the provisions relating to minors, as well as the possibility for some unintended consequences.

The granting of a tenancy to a minor currently is possible but the minor is entitled to repudiate the contract, leave the property, and not pay rent. However, where they occupy property the landlord can sue for the rent. There are also problems in relation to possession proceedings as the landlord must sue themselves on the basis that they hold the property on trust for the minor as the minor does not hold a legal estate in the land but only a beneficial interest.

We are not clear about the extent to which the provisions in the Bill change that situation. We have heard evidence to suggest that the Bill as drafted will enable minors to be granted a legal estate in land on the basis that section 1(6) of the Law of Property Act 1925 is to be read as not preventing minors from having such an estate. That evidence suggested that the Welsh Government has no devolved powers in relation to property law and therefore that the alteration in reading to the 1925 Act is outside its competence.

17. How do you respond to the suggestion in evidence that the Welsh Government is not able to change the way that section 1(6) of the Law of Property Act 1925 is read?

We have also heard that injunctions are difficult to obtain against minors. This would place landlords in the position that, if they rent to a minor, they would, for example, be unable to obtain an injunction to access their property for the carrying out of a gas safety check.

18. How do you propose to deal with the difficulties posed by landlords being unable to seek injunctions against minors?

Asylum seekers

We have received evidence from the Law Society that asylum seekers should be excluded from being contract-holders on “social policy grounds”. We note that such provision would replicate existing law. If not excluded in this way, we heard that it could take several months to recover possession of a property that was needed for another asylum seeker. Further to this, the evidence suggested that accommodation providers could face financial penalties if accommodation was not available for new asylum seekers when required.

19. Could you clarify why the Bill takes this approach to accommodation used by asylum seekers?

Summary of points for response

1. Will you arrange for us to receive a list of the repeals and amendments proposed for the Bill?
2. Will you give consideration to including in the Bill the information requested as part of question 1?

3. What are your intentions in respect of the Protection from Eviction Act 1977?
4. If the 1977 Act is not to be repealed, how do you envisage landlords being able to evict tenants without court proceedings?
5. How will you ensure that landlords do not evict tenants for financial gain?
6. What are the implications for the rights under the "Convention" (see below) of contract-holders, especially as regards Articles 6 and 8?
7. Are you satisfied that Article 8 rights will be retained for those existing tenants who convert to a contract under this Bill?
8. Are you satisfied that Article 8 rights will be retained for those who enter into new contracts under this Bill? In particular, how does the removal of the '6-month moratorium' affect these rights?
9. How do you respond to the suggestion that the exclusion powers in the Bill violate Articles 6 and 8 of the Convention?
10. What consideration have you given to framing the wording of the exclusion powers more tightly to ensure that they are only used in the most serious cases where there is a real risk to other persons who have legitimate ECHR rights which are at risk of being violated?
11. What consideration have you given to producing statutory guidance setting out the manner and situations in which exclusion powers should be used, and ensuring the power can only be used by a senior member of staff who has received appropriate training?
12. How do you consider that section 55 is proportionate under Article 8?
13. How does the provision in section 166 strike the right balance between landlords and contract-holders under Article 8?
14. Section 54 provides that the landlord must not interfere with the contract-holder's right to occupy the dwelling. Section 54(4)(b) provides that a contract-holder's rights are considered to have been interfered with if a "superior" landlord interferes with the contract-holder's right to occupy. So, in a scenario where A lets a house to B and B sublets the house to C, B may be in breach of section 54 where A does something to affect C's right to occupy the house. This seems to put B in the position of being liable for something wholly outside of B's control. How does this affect B's rights under A1P1? Is this proportionate?
15. Section 101 removes the contract-holder's liability for "waste" and "tenant-like user". How will this affect the landlord's rights under A1P1?
16. Is it your intention to make regulations under section 23 (supplementary provisions) to address the point in question 15?
17. How do you respond to the suggestion in evidence that the Welsh Government is not able to change the way that section 1(6) of the Law of Property Act 1925 is read?
18. How do you propose to deal with the difficulties posed by landlords being unable to seek injunctions against minors?
19. We have received evidence from the Law Society that asylum seekers should be excluded from being contract-holders on "social policy grounds". We note that such provision would replicate existing law. If not excluded in this way, we heard that it could take several months to recover possession of a property that was needed for another asylum seeker. Further to this, the

evidence suggested that accommodation providers could face financial penalties if accommodation was not available for new asylum seekers when required. Could you clarify why the Bill takes this approach to accommodation used by asylum seekers?

I look forward to your response.

Yours sincerely,

Christine Chapman AC / AM

Cadeirydd / Chair

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: LF/LG/0491/15

Christine Chapman AM
Chair
Communities, Equality and Local Government Committee
National Assembly for Wales
Cardiff
CF99 1NA

14 May 2015

Dear Chris

Renting Homes (Wales) Bill

Thank you for your letter of 8 May seeking information on a number of matters relating to the Renting Homes (Wales) Bill. Please find below responses in the order the matters were raised in your letter.

Repeals and Amendments

1. *Will you arrange for us to receive a list of the repeals and amendments proposed for the Bill?*

2. *Will you give consideration to including in the Bill the information requested as part of question 1?*

I would hesitate to give a list of amendments. Whilst work has commenced, making provision for consequential amendments is a matter of Bill implementation. As with other Bills, the intention is to make provision by means of Order. The Order will be subject to affirmative resolution.

It should be noted there may only be limited repeals. Since the Bill extends to dwellings wholly within Wales, there is a considerable amount of legislation which will continue to apply within Wales.

I believe the Bill clearly sets out what the new arrangements are, and what forms of tenancy are being replaced with the new occupation contracts.

Protection from Eviction

3. *What are your intentions in respect of the Protection from Eviction Act 1977?*

4. *If the 1977 Act is not to be repealed, how do you envisage landlords being able to evict tenants without court proceedings?*

The Protection from Eviction Act 1977 is not to be repealed. Doing so would assume all licences and tenancies in future would be occupation contracts. Whilst the vast majority will be subject to the Bill, and subject to specific requirements, not all will. There will be certain elements of the 1977 Act which will need to be preserved in any event and others will need to be amended in consequence of the Bill.

In terms of abandonment, a contract-holder who has abandoned the property will not be "evicted". He or she will, of their own choice, have surrendered the contract. The abandonment provisions are not there to ensure eviction, but rather to enable landlords to obtain "possession" of properties, where the contract-holder has already left, subject to the landlord meeting the procedural requirements set out in the Bill.

5. *How will you ensure that landlords do not evict tenants for financial gain?*

The Bill does not affect the operation of sections 27 and 28 of the Housing Act 1988. These are separate, stand-alone provisions conferring statutory (as opposed to contractual) rights on "residential occupiers" where they have been unlawfully evicted.

The intention is for this provision to be preserved, in line with the Law Commission's recommendations (see paragraph A.13 in Appendix 1 of the Commission's Volume 1 Report of 2006, which set out the information the Commission recommended should be provided to contract-holders, including the effect of section 27). It is not set out in the Bill itself, because it is a statutory right existing independently of the occupation contracts.

6. *What are the implications for the rights under the "Convention" of contract-holders, especially as regards Articles 6 and 8?*

In terms of abandonment, first a landlord seeking possession must meet the notification and inquiry requirements in accordance with the Bill. This is a safeguard against a landlord simply taking possession. Additionally, if premises are repossessed and the contract-holder subsequently reappears, the contract-holder will have the right to seek a remedy through the court. The provisions are put in place as a means of balancing the rights of landlords under Article 1 of the First Protocol ("A1P1") with those of contract-holders under Article 8 and A1P1. Currently there is no statutory framework for a landlord to obtain possession, other than a landlord having to seek a possession order, which can be very time-consuming and expensive, notwithstanding that the tenant has walked away and the landlord's property is empty and potentially subject to damage or neglect. This provides a mechanism whereby those dwellings can be re-let in such situations.

It should be noted the provisions were partially based on provision within sections 18 and 19 of the Housing (Scotland) Act 2001.

Human Rights

7. *Are you satisfied that Article 8 rights will be retained for those existing tenants who convert to a contract under this Bill?*

Yes. Schedule 11 makes provision for the retention of existing rights under converted contracts.

8. *Are you satisfied that Article 8 rights will be retained for those who enter into new contracts under this Bill? In particular, how does the removal of the '6–month moratorium' affect these rights?*

The removal of the six-month moratorium does not remove a person's rights to respect for his or her home. First, as has been noted, this relates to new contracts and therefore will not remove the rights of tenants of periodic Assured Shorthold Tenancies, insofar as those tenancies are within the initial six month period. Secondly, the removal of the moratorium in relation to future contracts meets a legitimate aim. That is to ensure flexibility of occupation arrangements and to allow persons who currently may only be able to occupy premises under a licence, due to the short period of the occupancy, to be able to do so under a standard contract, thus ensuring greater clarity, certainty and security.

Exclusions

9. *How do you respond to the suggestion that the exclusion powers in the Bill violate Articles 6 and 8 of the Convention?*

A benefit of the structured approach to exclusions provided for in the Bill will enable an occupation contract to be sustained in situations where, currently, a landlord would be likely to simply terminate a person's licence to occupy the supported premises. Therefore, it provides greater security. Furthermore, in line with the Law Commission's recommendations, evictions of a period longer than 48 hours will require an injunction.

I do not agree the provision cannot be justified in relation to the landlord's staff or other neighbours. The test to be applied, includes violence to any person in the dwelling or risk of significant harm to any person. This may engage other convention rights of a wider category of people, it does not simply apply to residents' rights under Article 8.

On the Article 6 point, there will be no appeal for reasons of practicality in the use of the exclusion power by landlords; a person will simply be excluded. However, the exclusion power is time-limited and also may only be exercised on limited occasions. This is not a violation of Article 6. An excluded person will still have the benefit of a supported standard contract. Furthermore, any provision to extend the 'relevant period' (i.e. prior to an occupation contract being granted) will be subject to review.

The Bill actually makes provision for supported arrangements, which currently are not set out in legislation. It adds clarity, where currently there is little or no provision.

10. What consideration have you given to framing the wording of the exclusion powers more tightly to ensure that they are only used in the most serious cases where there is a real risk to other persons who have legitimate ECHR rights which are at risk of being violated?

The Bill already provides for this. Pursuant to section 145, and as referred to above, exclusion may only occur where the landlord reasonably believes the contract-holder is using violence against any other person in the dwelling, is doing something in the dwelling which creates a risk of significant harm to any person or is behaving in a way which seriously impedes the ability of another resident to benefit from support (as opposed to accommodation) being provided to him or her. These are all serious cases.

11. What consideration have you given to producing statutory guidance setting out the manner and situations in which exclusion powers should be used, and ensuring the power can only be used by a senior member of staff who has received appropriate training?

As indicated when I appeared before Committee on 22 April, whilst I would expect supported housing providers to have a policy in place relating to use of the exclusion power, I am willing to consider whether an additional power to issue guidance relating to exclusions should be added to the Bill.

Eviction for nuisance or annoyance

12. How do you consider that section 55 is proportionate under Article 8?

Sections 18 and 20 provide that anti-social behaviour and other prohibited conduct is to be incorporated as a fundamental term of each occupation contract, not simply a ground for possession. However, to the extent breach of the term gives rise to a ground for possession, it is a discretionary one. The ground is also subject to structured discretion. This means, in determining whether or not to grant a possession order, the courts have to consider the general public interest in restraining the prohibited conduct (section 205 and paragraph 11 of Schedule 9 refer).

The provision seeks to balance the rights of the contract-holder with the rights of other residents or persons going about lawful activity in the locality of the dwelling. It pursues a legitimate aim, which is to avoid anti-social behaviour causing nuisance or annoyance to others. Furthermore, 'nuisance or annoyance' is the current definition of housing-related anti-social behaviour, for example Ground 14 in Schedule 2 to the Housing Act 1988 and section 2 of the Anti-Social Behaviour, Crime and Policing Act 2014.

Conversion of secure contracts to standard contract

13. How does the provision in section 116 strike the right balance between landlords and contract-holders under Article 8?

This is, in effect, the continuation of the current demoted tenancy regime. It acts as a sanction against anti-social behaviour. In many ways it is more about striking a balance between the contract-holders' rights and the rights of other persons living nearby a contract-holder, including their Article 8 and A1P1 rights.

The use of any such power will be subject to consideration by the courts on a discretionary basis and, therefore, subject to appropriate oversight.

Demoted tenancies are also a well-established element of housing law which currently apply to Housing Association assured tenancies and Local Authority secure tenancies.

Interference by superior landlord with contract-holder's right to occupy

14. *Section 54 provides that the landlord must not interfere with the contract-holder's right to occupy the dwelling. Section 54(4)(b) provides that a contract-holder's rights are considered to have been interfered with if a "superior" landlord interferes with the contract-holder's right to occupy. So, in a scenario where A lets a house to B and B sublets the house to C, B may be in breach of section 54 where A does something to affect C's right to occupy the house. This seems to put B in the position of being liable for something wholly outside of B's control. How does this affect B's rights under A1P1? Is this proportionate?*

In such cases, B will still have a lease with A. The decision to sub-let is one taken by B. B must ensure that in so doing, C is able to occupy without interference either by B, but also anyone with superior rights. C will be occupying the dwelling as his or her home and will need to be able to do so without interference. This provision therefore protects C's rights. If A does something to C's detriment, C will be able to seek remedy against B. It will be for B to be satisfied he or she has sufficient controls and remedies available to him or her, prior to granting a sub-occupation contract of the property. Since B will be providing a home for C, it is considered justifiable and proportionate to protect C's rights in this manner.

Waste and tenant-like user

15. *Section 101 removes the contract-holder's liability for "waste" and "tenant-like user". How will this affect the landlord's rights under A1P1?*

16. *Is it your intention to make regulations under section 23 (supplementary provisions) to address the point in question 15?*

The intention is that this will be dealt with by means of supplementary provisions. There is no intention to remove landlords' rights in this regard.

Minors

17. *How do you respond to the suggestion in evidence that the Welsh Government is not able to change the way that section 1(6) of the Law of Property Act 1925 is read?*

The provision is made to enable 16 and 17 year olds to be parties to occupation contracts and therefore concerns access to housing. It is within the Assembly's legislative competence.

18. *How do you propose to deal with the difficulties posed by landlords being unable to seek injunctions against minors?*

If a 16 or 17 year old is a party to an occupation contract then an injunction could be sought against them.
However, in addition, failure to allow entry for such purposes would be a breach of a term of the contract and alternative appropriate remedies could be sought if necessary.

Asylum seekers

19. *We have received evidence from the Law Society that asylum seekers should be excluded from being contract-holders on "social policy grounds". We note that such provision would replicate existing law. If not excluded in this way, we heard that it could take several months to recover possession of a property that was needed for another asylum seeker. Further to this, the evidence suggested that accommodation providers could face financial penalties if accommodation was not available for new asylum seekers when required. Could you clarify why the Bill takes this approach to accommodation used by asylum seekers?*

I have noted the evidence submitted by the Law Society and will consider whether an amendment to the Bill is necessary in this regard.

I trust this response is helpful and look forward to appearing before the Committee on 20 May.

Regards

Lesley

Lesley Griffiths AC / AM
Y Gweinidog Cymunedau a Threchu Tlodi
Minister for Communities and Tackling Poverty

Agenda Item 4

20 May 2015 - Papers to note cover sheet

Paper No:	Issue	From	Action Point
Public papers to note			
4	Renting Homes (Wales) Bill	Welsh Tenants	Additional information following the meeting on 30 April 2015
5	Renting Homes (Wales) Bill	The Law Society	Additional information following the meeting on 30 April 2015
6	Renting Homes (Wales) Bill	Community Housing Cymru Group	Additional information following the meeting on 6 May 2015
7	Renting Homes (Wales) Bill	Tai Pawb	Additional information following the meeting on 6 May 2015
8	Renting Homes (Wales) Bill	Welsh Local Government Associations	Additional information following the meeting on 6 May 2015
9	Renting Homes (Wales) Bill	Cymorth Cymru	Additional information following the meeting on 6 May 2015

Milbourne Chambers
Glebeland street
Merthyr Tydfil

Tenantiaid Cymru Welsh Tenants

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol
Communities, Equality and Local Government Committee
CELG(4)-14-15 Papur 4 / Paper 4

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Christine Chapman AM, Chair
Communities, equality and Local Government Committee
National Assembly for wales
Cardiff Bay
Cardiff
CF99 1NA

7th May 2015

Dear Christine,

Find attached our response to the written questions the committee requested. If I can be of any further assistance please advise.

Yours sincerely

Steve Clarke CIHM

Managing Director

Communities, equality and Local Government Committee
Renting Homes (Wales) bill

7th May 2015

There were a number of issues that the Committee did not have an opportunity to explore during the session, due to time constraints. Our response to these are set out below:

1. **You will know that the Bill requires landlords to keep their property in good repair and ensure it is fit for human habitation. In your written submission you have called for the Minister to 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. You have also called for prospective renters to have access to any notices served by the local authority in the past 5 years and to make it an offence not to provide such information.**

   Do you have a view on whether the Bill will improve the condition of dwellings in the private rented sector?

   We would also welcome your views on whether it is right that enforcement of these conditions is effectively left to contract-holders taking the matter to court.

   Response:

   Q1 Will the bill improve the conditions of dwellings in the PRS?

1.1. Part 4, Chap 2 s91-s92 places emphasis on the need to ensure at the '**start of tenancy'** that the property is **fit for human habitation** and '**during the tenancy'** (92) **kept in good repair** (Structure and exterior, pipe etc. upon which most repair problems occur i.e. rising damp, roofing, guttering etcetera.)

1.2. We interpret this as meaning at the start of any New tenancy the landlord will **need to inspect the property and ensure it complies with fitness for human habitation, according to the guidance produced by Welsh Government**. s94 subsection 2 also enables Ministers to make regulations in respect of standards of fitness and provisions in relation to the housing health and safety rating system (Housing Act 2004). s93 also makes provision for making good any damage caused by works or repairs in order to comply with s91-92.

1.3. The bill simply reinstates current provisions. It doesn't repeal the responsibility of the local authority in relation to the Housing Act 2004. But also allows the contract holder to do the following;

a) make a judgment as to whether the landlord is committed to improving the condition, via stating improvements requested and agreed into the contract

b) informs the contract holders of their rights to redress, if they do insert and then don't deliver

1.4. We recognise that it does not for example, set a benchmark standard for the sector in the way WHQS has done for social housing sector. As stated in our evidence session, we see the Renting Homes (Wales) bill and the Housing (Wales) Act 2014 coupled with evolving regulations, as a gradual process towards improving housing in the PRS - and not as a means to improve provisions on its own.

1.5. What the bill does provide is the ability of potential renters to 'take a view as to the condition and cost' and make a judgment as to whether they would want to see conditions improved prior to signing the contract and have these added to the contract as additional terms. This can be an empowering process – provided

1) contract holders are aware of their ability to add terms

2) the landlord would agree to the additional terms

1.6. This process does however have consequences in;

1) the timing of a response from the landlord particularly if the letting agent is handling the process and needs to obtain the consent of the landlord, and

2) whether the landlord will simply choose not to rent the property to the informed tenant as a consequence of their request

1.7. Landlords are required to provide an EPC (Energy Performance Certificate) to give the property an energy rating & provide an in force Gas safety Certificate on let. Although the former provides general information as to the energy consumption (at the point of assessment), it's of little use as a tool to improve energy performance in itself. Tenants may wish to look at the EPC and try and commit the landlord to improve the dwelling through insulation or updating the heating system et cetera over time. However there's nothing to prevent the landlord from saying – we will not let the property on that basis or terminate the fixed term contract before the due date.

1.8. What the Part 2 does do, is seek to empower the consumer to seek improvements and try and commit the landlord to addressing any disrepair or standards. This is why we believe it important to have the full facts about the property and any in-force or satisfied prohibition notices as well as the information available through the landlord registration process.

1.9. The approach used in the bill does rely on the landlord's discretion on whether to improve the property prior to let – and to make it more attractive for renters. However, there is little evidence that empowering consumers in this way will have the desired effect of improving the property prior to let.

1.10. We are therefore of the opinion that using the 'empowered consumer' to ensure improvements or disrepair will not on its own addressed improvements in the

PRS stock. Neither will the introduction of WHQs type standard where properties will often be classed as 'acceptable fails' because of age (pre 1919) or those with heritage status.

1.11. Our view regarding improvements is more progressive. We believe that investment and improvement could only be dealt with via conditionality on taxation allowances, exemption from value added tax on repairs and improvements and incentives to improve, such as grants and regeneration programmes and not through a bill that deals ostensibly with tenancy terms and conditions as presented. **It is our view therefore that Part Four Chapter 2 on its own will not improve the conditions of ALL rented properties**.

Q2 whether it is right that enforcement of these conditions is effectively left to contract-holders taking the matter to court.

1.12. It is our view that while access to justice via the courts should be a route available to contract holders, it should not be the only route to rely upon to resolve disputes, including those related to repair.

1.13. The contract law approach is often a black and white approach with substantial costs incurred defending or enforcing entrenched positions. This route is also becoming more difficult via restrictions on legal aid, stresses on voluntary services and the stresses and strains of self representation.

1.14. We would suggest that matters could be resolved more quickly via an effective complaints process as outlined in 'codes of practice', moving to mediation or onto an independent ombudsman as arbitration services with the power to make awards and for the courts to enforce them if necessary.

1.15. It is our view that the majority of cases can be resolved (with advocacy support) through dialogue and discussion. However, this does involve better education regarding rights and obligations for both landlords and contract holders and a coordinated national approach to tenant support.

1.16. We would wish to see the link made between the Housing (Wales) Act 2014, codes of practice, and a 'charter' that commits landlords (particularly those receiving housing benefit subsidy) to commit to the charter in return for receiving state aid via HB or grants.

1.17. We would also suggest that better 'on line assessment' and dispute resolution processes could be used either as a 'pre-case assessment' before use of the courts or other arbitration services.

2. In your written submission you have stated that you support the removal of ground 8 mandatory eviction, to reflect human rights thinking on issues of proportionality and removing difference on grounds for eviction for those renting from housing associations by bringing them into line with those for local councils.

In response to the consultation, Community Housing Cymru argued that local authorities are not subject to the same lending constraints as housing associations so it is reasonable to retain the ground for serious rent arrears. We would be grateful to know how you would respond to the comments by Community Housing Cymru.

Response

2.1. The primary concern from Community Housing Cymru is that those in receipt of housing benefit are more likely to accumulate rent arrears as a consequence of welfare reforms - and that this could be exacerbated with the introduction of direct payments under Universal Credit.

2.2. The means available to landlords to recover rent arrears include a voluntary payment plan (through exercising Pre Court Action Protocol) or to seek possession through the courts, which is often suspended on condition that the tenant would pay a set amount off the arrears.

2.3. Generally speaking, voluntary agreements are often higher than court determined repayments. The typical amount a court would impose is £3.65 (£14.60 per 4 weeks) as a deduction from welfare payments (for example) in addition to the rent.

2.4. Landlords were naturally worried about arrears increasing sharply with bedroom tax and direct payments and sought to challenge this and find a solution with the DWP who accepted the general argument that arrears would increase due to Universal Credit paid 4 weeks in arrears.

2.5. For existing tenants already in arrears of (*Housing Associations 43,685 (2013) with tenants 13 wks or more in arrears being 2,851 (2013)*[1] there is concern that ground 8 would be used more frequently as a consequence of these risks. Although the figures may seem high, arrears have decreased by -2% since 2010.

2.6. When Universal Credit begins, social tenants will have no benefit income for 5 weeks meaning that the UC system was set up to see all tenants go more than 4 weeks in arrears straight off. Landlords are therefore encouraging tenants to catch up to 4 weeks in advance by paying additional £5 per week.

2.7. However the most significant change is that the Housing Association sector have agreed preferential terms for arrears collection with the DWP under '**The Third Party Deductions Scheme**' (TPDS) to ensure rent arrears are kept under control in the future.

2.8. Lord Freud, the welfare minister, announced that the DWP deductions from tenant benefits would be between 10% and 20%, as opposed to the court average of £3.65 per week, **meaning that up to £80 per month could be deducted at source** thereby enabling the social housing sector to recover significantly more money to

[1] Source: Stats Wales Jan 2015

cover rent arrears and hence mitigate the need to retain ground 8 to halt the escalation of arrears.

2.9. This puts social landlords in a much better position than previously and should also reassure lenders of the ability of social landlords to hold down rent arrears via exercising the TPD rule. *See Appendix 1 FOI DWP request*.

2.10. With the TPD scheme landlords have a better way of enforcing payback for rent arrears directly through the DWP. **So the argument that ground 8 needs to be retained in order to maintain confidence in rent collection is now largely mitigated.**

2.11. We are also concerned that tenants cannot present a defence which is contrary to the principle of justice. The other points have already been well documented i.e. the courts caution as to the proportionality argument while tenants also exposed to the risk that ground 8 can be used for eviction to mask other grounds.

2.12. Ground 8 offers no judicial discretion which is worrying and contrary to the principles of fairness and justice which the Senedd upholds.

ABANDONMENT

3. **In relation to abandonment, you will have noted that the Bill proposes a procedure that will allow a landlord to recover possession of a property without the need to obtain a possession order from the court. Do you have a view on how the proposed abandonment procedure could impact upon vulnerable contract-holders, for example people who may spend prolonged periods in hospital**.

Response:

3.1. As a general principle we do not support eviction of someone's home without recourse to the courts and judicial oversight. The issue as presented by landlords is the fear that tenants will walk away from the property and not make payments of rent; sub-letting or leaving the property unattended and hence potential to cause damage to the property and to possibly neighbouring properties.

3.2. In the first instance, there are already provisions to recover possession under rent arrears where the argument can be put before the courts (with the exception of ground 8).

3.3. Where the contract holder is in receipt of housing benefit the Third Party Deduction Scheme can be initiated to recover arrears at high amounts than previous. There are also mechanisms to recover costs through the county courts if abandonment has caused damage to the property, that includes a claim for rent arrears and other costs. Landlords can also use the accelerated possession process

and obtain a fast track high court writ to obtain possession if they did feel the tenant had absconded and this was proven in court.

3.4. Our concern is that there are many circumstances where 'perceived abandonment' could be used by the landlord, where a person may be held on remand while criminal conviction is being sought, but may prove to be ultimately innocent or where the CPS drops charges. Or when a person has a long stay in hospital, has no friends or relatives or spends extended periods abroad. Or indeed, where their work has taken them abroad, armed forces or extended work contracts. In such circumstances it may not always be possible to inform the landlord in advance or have the ability to defend against landlords actions.

3.5. The bill already provides protect against illegal sub-letting as this would constitute a breach of contract. There is also additional protection for landlords under 'The Prevention of Social Housing Fraud Act 2014' to protect landlords on sub-letting and housing benefit or other fraud.

3.6. Our view is that the security of someone's tenure should never be terminated without recourse to the courts. It is not sufficient to say oh well, we made a mistake, we will offer you somewhere else, where somewhere else may not be appropriate for the tenant, or indeed available from the landlord.

3.7. There is also no protection for existing occupiers, where the tenancy is in the name of the contract holder and the contract holder dies and or leaves their partner and children in the property. If they were unmarried they may not be able to succeed the tenancy or have the agreement of private rented sector landlord to take over the tenancy. We could have situations where death could be interpreted as abandonment leaving existing partners on the street with no defence through the courts. There is no amount of guidance that can be developed to compensate for the use of judicial discretion, this should always be sought on matters of tenure security and is a fundamental principle in human rights conventions.

4. In relation to the new provisions relating to anti-social behaviour, you have stated that you believe the 'prohibitive conduct' clause should be amended to reinstate the requirement to evidence a criminal conviction. We would be grateful if you could expand on these comments.

Response:

4.1. We are concerned that landlords may be misled by potential complainants and inadvertently seek eviction based on bias of neighbours who may be opposed to lifestyle choices or via discrimination. Landlords or small agents who would have this power could be exposed to litigation as a consequence.

4.2. Having the tool of 'proven criminal conviction' in order to evidence anti-social behavior provides a level of certainty and security for both the landlord and the tenant.

4.3. Taking matters to court will also involve substantial costs if defended against. We would not want to encourage an adversarial process that simply increases costs for both sides.

5. Finally, you will have noted that the Bill uses the county court (or High Court) for a number of purposes. In your written submission you suggested that the Residential Property Tribunal could be a suitable body to progress mediation services and that this could avoid costly court action. We would be grateful if you could expand on this point and comment on how you believe the Residential Property Tribunal, or an alternative body, could be developed to reduce the need to go to a court in order to resolve a dispute.

Response

5.1. We would always recommend the use of good complaint processes to enable contract holders to make complaints and have them heard. Good landlords or agents should always adhere to regulations in the social housing sector and or use of codes of practice and other means to ensure that complaints can be resolved quickly and fairly. This however is patchy, particularly for private tenants.

5.2. The Residential Property Tribunal Service is a useful service to obtain independent arbitration of disputes. However, the process does attract fees commensurate to the charges being in dispute, if the claims are substantial, then tenants would want to ensure they have adequate representation which could increase costs even further.

5.3. There is a waiver process for people claiming certain benefits, however again depending on the complexity of the case they may want to engage professional support both to make the case and to defend or enforce a right. The problem is that it is little known about. The service cover rent assessments, leasehold valuation tribunal and general residential property issues such as housing health and safety rating system.

5.4. Welsh Tenants has used the residential property tribunal in the past to achieve recognition for park mobile home residents as a recognised constitutional group following a site owners refusal to recognise the group.

5.5. Although the PST can make orders, it cannot enforce them and may still require the tenant seeking a county court order to enforce their judgement. The pre-trial process also enables the parties to present a case prior to trial which is also useful. One safeguard that could be put in place if the case proceeds, is a guaranteed access to support if economic or social vulnerability was proven.

HMCT

5.6. Other routes that could be considered are extending provisions for use of Her Majesties Court Tribunal Service, via the first and upper tribunals through too the court of appeal. This system could be used as specialized Housing Court Tribunals. The HMCT process already deals with estate agents, information rights et cetera. The first tier tribunal is accessible and relatively straight forward to use with opportunities to take cases to the upper courts. However, the courts look mainly at administrative issues and may not currently have the resources to visit or conduct independent assessments via for example surveyors. The major benefit is that HMCTS is free for people to use, accessible and relatively informal.

5.7. We would welcome better distinction between use of the courts as a final means to enforce contractual obligations and the use of alternative dispute resolution processes. It is our belief that court action should always be a last resort. In this respect we would welcome the consideration of access to the use of Her Majesties Court Tribunal Services as a pre-court action process.

5.8. Disputes regarding defence against section 21 for example where repair obligations, harassment or contractual undertakings in supplementary terms have not been kept may not be idea for HMCTS.

5.9. There are clearly several circumstances where recourse to the courts would be appropriate or indeed where the courts could recommend mediation to resolve a dispute. Again our concern is the accessibility of an experienced solicitor to ensure all the processes of law are complied with.

5.10. Tenants have stated that the danger of having recourse to the courts as the only means will mean that only the most educated consumer would use courts to enforce their rights or defend against the landlords actions. This would only work if there was a national coordinated means of access to advice and support.

Appendix 1.

Central FoI Team
www.dwp.gov.uk
Caxton House
6-12 Tothill Street
London
SW1H 9NA

Email: [DWP request email]
Our Ref: IR 654
Date : 14 January 2015

Dear Glenys Harriman,

Thank you for your Freedom of Information (FoI) internal review request received on 18 December 2014. You asked:

> "Now that third party deductions for rent arrears under Universal Credit are to be taken at a rate of no lower than 10% of the appropriate standard allowance and no higher than 20%, could you point me in the direction of any guidance on when the higher amount should be used in preference to the lower?
>
> I know that the 20% deduction is low priority in the order of which deductions should be taken first when the 40% overall maximum deduction would otherwise be exceeded, but I cannot see any regulation or guidance stipulating when a 20% rate should be applied in preference to a lower rate."

I understand that you would like to clarify your FOI request as: I understand the priority order of deductions but have not seen any guidance etc. which explains whether there is any discretion - and if so on what grounds- to prefer a 10% deduction even where it is possible to take a 20% deduction (possible because any other deductions would not take this over the overall 40% limit.) And, similarly, should the DWP decide to pay at 20%, on what grounds could a claimant request that the lower 10% rate be taken instead (eg if suffering hardship)?

In response to your request, I can confirm that the handling of your original request and response has now been appropriately reviewed and that the official was unconnected with the handling of your original request.

Third party deductions as provided for in The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 are discretionary (i.e. the Secretary of State can require the third party deduction to be made "in such cases and circumstances as he sees fit"), allowing the Department to take relevant factors are taken into account when deciding

whether to order payment of the rent arrears and to what extent. Where the Secretary of State decides that it is in the claimant's best interests to order repayment of the arrears he can do so at an amount equal to between 10% and 20% of the claimant's standard allowance. Where a rent arrears deduction is made, we do so in the claimant's best interest to avoid the severe hardship caused by eviction when all other options for recovering arrears have failed.

In practice, we take a total amount from Universal Credit equal to up to 40% of the claimant's standard allowance for all the deductions that are required, so would take the minimum 10% and up to a further 10% to repay rent arrears depending on other deductions that sit between the minimum and maximum deductions on the priority order. The 40% maximum deduction is the safeguard we have put in place to protect claimants from excessive deductions.

We will consider a claim for hardship to reduce the amount the claimant repays for rent arrears.

The repayment rate will not be reduced to less than the minimum 10% rate under this process. I attach the information note from 19/12/2014 that was sent to staff setting out the guidance for dealing with such requests.

I hope this has answered your question fully. If you have any queries about this letter please contact the Department quoting the reference number above.

Yours sincerely,

WP Strategy FoI Team

Attachment: UC Continuous Improvement Note 325/14

The Law Society

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

By email only

11 May 2015

Dear Sirs

Call for Evidence Renting Homes (Wales) Bill 30 April 2015

I am writing in response to a request from the Communities, Equality and Local Government Committee ('the Committee') for further information from the Law Society's Housing Law Committee ('HLC') in addition to the written submission that was provided by the HLC on 26 March 2015 and our oral evidence on 30 April. For the avoidance of doubt nothing in this letter constitutes or should be construed as legal advice.

Minimum Standards above the 'human habitation' threshold

On 30 April 2015 the Committee asked HLC witnesses whether they could identify any potential reasons why the Bill could not be amended to include minimum standards which must be met for a dwelling to be suitable as a rental property. Our witnesses said that they could not identify any reasons at the time the question was put to them but would consider the matter further and respond to the Committee in writing.

It is the intention of Welsh Ministers to base the fit for human habitation regulations on the 29 category 1 and 2 hazards listed under the Housing Health and Safety Rating System, as stated at paragraph 138, page 32 of the explanatory memorandum. We understand that Welsh Ministers have said that without the enactment of a further Bill, they cannot prescribe regulations that go beyond the threshold of 'fit for human habitation'.

Reference is made to category 1 and 2 hazards at s.94 of the Bill:

" 94 Determination of fitness for human habitation

(1) In determining for the purposes of section 91(1) whether a dwelling is fit for human habitation, regard must be had (among other things) to such matters or circumstances as may be prescribed by the Welsh Ministers.

(2) In exercising the power in subsection (1), the Welsh Ministers may prescribe matters and circumstances by reference to any regulations made by the Welsh Ministers under section 2 of the Housing Act 2004 (c. 34) (meaning of "category 1 hazard" and "category 2 hazard")."

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The proper construction is a matter for specialist advice, but it would appear to us that Welsh Ministers can include category 1 and category 2 hazards in determining fitness for human habitation but *may* be constrained in the definition of category 1 and category 2 hazards by any regulations which have been prescribed under s.2 of the Housing Act 2004.

Whatever the minimum standard criteria, if they form a fundamental term in the contract and there is a breach of that term, the contract holder would have a potential remedy, although their ability to take their case forward through the civil courts may be impeded by the limited availability of legal aid.

In our evidence we also raised concerns about the application of s.95 of the Bill whereby if it would cost the landlord too much to bring the property up to standard the landlord may have a defence for a breach of s.94. It is unclear how the court would determine what was beyond 'reasonable expense'. We recommend that however the minimum criteria are determined, there is detailed guidance on the application of s.95 as to when a landlord could state that it would not be reasonable for such repairs to be made. For any minimum criteria to have the desired impact of improving the overall condition of rented properties there would have to be enforceable penalties for those landlords who were in breach.

Jurisdiction of the Residential Property Tribunal

We were also asked for our views on whether property disputes should be transferred to the Residential Property Tribunal ('RPT') in Wales, possibly leaving only repossession proceedings in the courts. HLC have the following concerns with placing property disputes in the RPT jurisdiction:

- **Appropriate forum**: There may be difficulties in placing some disputes into the more inquisitorial ambit such as the RPT. For example, disputes involving allegations of antisocial behaviour are generally heated, and the adversarial system operating within the court system may be a more appropriate forum.

- **Interpretation of expert evidence and representation:** If, for example, all private sector disrepair disputes were transferred from the court to the RPT it would be likely that the contract holder would be representing themselves; legal aid would not be available and their ability to obtain legal representation may be impeded further as costs are not recoverable in the RPT. Disrepair claims require a surveyor's report and it would be left to the contract holder to present that expert evidence to a tribunal panel. Effectively, the case rests on the surveyor's evidence. The RPT may have the ability to conduct site visits but contract holders would still have to represent themselves through potentially lengthy and factually complicated matters.

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- **<u>Artificial extraction</u>**: If repossession claims were to remain in the court and other disputes transferred to the RPT, there may be unintended consequences. For example, what would happen in the event that disrepair is raised as a defence to a possession claim. In these circumstances, would a contract holder be better off waiting until the landlord seeks possession of the property and then bring disrepair as a defence in a court where they may be entitled to legal representation?

We hope this assists the Committee and please do not hesitate to contact us should you require any further information.

Yours Faithfully

Alice Owen
Policy Assistant
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Grŵp Cartrefi Cymunedol Cymru

Community Housing Cymru Group

Christine Chapman AC/AM
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12 May 2015

Dear Christine

Thank you for your letter and request for additional information following the evidence session on the Renting Homes Bill on 6 May 2015. The specific information the Committee requires is detailed below.

- ***Numbers of 16-17 year olds entering into Occupational Contracts***

  Occupational contracts do not exist in the social housing sector and will be created by the Renting Homes Bill. 16-17 year olds are currently only able to hold a license.

- ***The impact of welfare reform on serious rent arrears and the implications of removing Ground 8 for housing associations.***

  The Welfare Reform Act 2012 brought changes to benefit entitlement which has coincided with an increase in rent arrears.

  Statistics for Wales[i] show that RSL arrears now stand at 32.4%, an increase from 31.8% prior to the bedroom tax / Removal of the Spare Room Subsidy. Those in arrears of 13 weeks or more (serious rent arrears) increased from 1.6% to 2.2%.

  According to the Wales Audit Office[ii] current housing association tenant arrears increased from £12.406 million to £15.643 million between April and October 2013.

  Early evidence from work conducted by CHC Your Benefits Are Changing team shows that Universal Credit claimants are on average £607 in rent arrears, which is 8 weeks

of rent payments (this is categorised as serious and is the point at which direct payments are switched to the landlord).

Removal of Ground 8

Ground 8 is only ever used as a last resort and its use has been very limited across the sector in the last 2 years- ranging from no use at all by some Associations to a maximum of four times per annum (CHC, 2015) However, more RSLs have said that they will look to use Ground 8 to deal with serious arrears.

RSLs are rarely awarded full possession orders even in serious arrears cases. This means that tenants can request suspension of any evictions which are always granted. This will result in difficulty evicting, increased rent loss and increased court costs through potentially applying for multiple warrants. Ground 8 helps overcome this . Ground 8 also serves as an important reminder for tenants about the importance of paying rent. If tenants know that there is always going to be discretion from the judge they may start to take the court process less seriously as they will nearly always get a suspended order. Word usually gets around and solicitors also know this. The removal of Ground 8 will also more time is spent chasing arrears which leaves less time to spend on other tenants who need help.

Increases in rent arrears and continued increases in court costs pose a real challenge for RSLs. Lenders have been clear that if rent arrears continue to rise then they may increase borrowing costs to reflect higher levels of risk. Increased borrowing costs and higher levels of arrears will be unsustainable for some RSLs long-term, which puts all tenants at risk of facing homelessness. The proposal to remove Ground 8 is therefore of much concern to CHC and we strongly propose Ground 8 should be retained as an option for serious cases of arrears.

- **Should there be evidence of a criminal conviction before someone is evicted on the basis of anti-social behaviour (ASB) ?**

Anti-social behaviour is defined in the new Anti-Social Behaviour Crime and Policing Act 2014 as:

- conduct that has caused, or is likely to cause, harassment, alarm or distress to any person,
- conduct capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises, or
- conduct capable of causing housing-related nuisance or annoyance to any person.

Often this behaviour is not of a criminal nature and cannot be proven beyond reasonable doubt. Examples of anti-social behaviour that would not lead to a criminal conviction are numerous and include visitors back and forth to the property, causing a nuisance in the early of the morning to neighbours, drinking alcohol etc. If

Housing Associations are only able to evict on anti-social behaviour grounds where there is evidence of a criminal conviction they would be reliant on police involvement before any action could be undertaken. This is of much concern given reductions in police resources.

CHC does not believe evidence of a criminal conviction should be required prior to eviction for anti-social behaviour. Anti-social behaviour can fall under the civil law and often the issues are low level but are regular issues that impact significantly on residents within the facility of the occurring anti-social behaviour. Often there are no criminal proceedings for anti-social behaviour and the civil proceedings allow for appropriate action to be taken.

Example of recent cases are:-.

- *An injunction and a Notice Seeking Possession was served on X for noise nuisance (loud music and abusive language when arguing with partner). This in turn encouraged social services to take action and the children were removed from the property. During the time this case was open it was believed that there were drugs at the property. The police conducted a number of raids on the property, drugs were found each time but did not result in any custodial sentences. X breached the injunction on 8 occasions and was arrested on 3 occasions, with the last resulting in a 1 year sentence for breach of the injunction. Alongside the final arrest she was also arrested for a Public Oder offence for which she only received a fixed penalty notice.*
- *In another case X who was a starter tenant was allowing her children to act in an anti-social manner within the locality of her home, the police were regularly called to incidents of fighting in the home and on the street outside, drug use and noise nuisance. Again there was little evidence that this was resulting in convictions. A section 8 notice was served on X and an injunction was also taken out against X. X was arrested for breaching the injunction on 2 separate occasions. She could have potentially served a month's sentence for the breaches but the order was used to our advantage to encourage X to surrender the tenancy before the section 8 notice expired. This again alleviated the worry of the local residents.*
- *In another case X was causing significant* anti-social behaviour *to his neighbours but was claiming to have mental health issues. The police had arrested him on a number of occasions and submitted him for assessment but was released without further action each time. The injunction was also unenforced for breaches early on because X seemed to have a fit/seizure in court each time, eventually his mental health assessment showed he was able to understand the consequence of his actions and he was sentenced to a month in prison following a subsequent breach of the injunction for noise nuisance. The breach (ASB action) leading to the sentencing would unlikely have had any custodial sentence if the injunction was not in place.*

In all three examples not needing a criminal conviction led to a better outcome for all involved and the community.

In addition to the issue around having a criminal conviction CHC is also concerned that the new Mandatory Ground for possession given to landlords as part of the ASB, Crime and Policing Act 2014 is looking to be withdrawn by the Renting Homes Bill. The withdrawal of the absolute ground would impact significantly on victims and witnesses. The key benefit of the absolute ground for witnesses is that they do not have to attend Court and give evidence. Victims and witnesses find attending Court and giving evidence a traumatic experience, even where intense support is put in place for them, and may refuse to support a case. This is increasingly likely in matters relevant to the absolute ground, where cases are likely to relate to serious criminal/anti social behaviour and/or issues that have been on-going for some time.

Where the circumstances for the absolute ground would otherwise be made, the victim may already have given evidence in the original hearing (e.g. the criminal conviction or breach of injunction hearing) and may find the prospect of having to do so again in a possession hearing too difficult to consider. There have been cases where the witness has refused to support the second hearing after their experiences of the first.

- **Whether the proposed changes to joint contracts will help deal with situations involving domestic abuse.**

  We welcome the broad approach the Bill takes to joint contract holders ie allowing each of the parties, wherever possible, to be treated as an individual - this allows a joint contract-holder to end their interest in an occupation contract, without ending the whole contract. However, the proposed changes still rely on victims giving evidence to the landlord in order to obtain a possession order and remove the one contract holder from the tenancy. Without that evidence the court will be unlikely to find that it is reasonable to make a possession order. We know all to well that victims are not prepared to give evidence against their abusers and put themselves in the vulnerable position that it attracts. CHC therefore believes the new legislation should go further in helping landlords to deal with domestic abuse.

- **Do you have evidence explaining how serious a problem abandonment is for community landlords, and how they deal with it at present? Do you have a view on whether the proposals in the Bill relating to abandonment could be improved, including in relation to ensuring that vulnerable people are not exploited?**

  Abandoned properties cost social landlords a significant amount of time and money they tying up a scarce resource in social housing and recover possession is a difficult task. It is often difficult to prove an abandonment and hard to gain evidence from other agencies such as utility companies and other service providers. Since the removal of the spare room subsidy vacancies in the RSL sector have been rising steadily year on year and are more of a problem for RSLs operating in low value areas where the Local Housing Allowance can be the same for a bigger property.

The proposals on abandonment are very helpful, in particular, the enablement of the landlord to repossess the property without a court. Abandonment frequently leads to the landlord having to seek approval of the court to repossess the property which takes times, is costly and adds to supply pressures.
However, the legislation should place a duty on those agencies to provide this information so landlords can more easily satisfy themselves of abandonment.

There is provision in the Renting Homes Bill for vulnerable tenants to able to challenge possession and be rehoused if necessary.

- **Does the Bill presents an opportunity to expand the role of the Residential Property Tribunal or other mediation services?**

One of the main reasons for introducing new legislation is the complex nature of housing law. This is exacerbated by inconsistent court decisions by non-specialist judges that lead to applications to the higher courts and appeals. A dedicated housing court, dealing with only housing cases, where judges are trained and knowledgeable in this area of law would benefit both landlords and tenants to get consistent decisions across the board and a more clearer understanding of how the law will be applied.

The Residential Property Tribunal Wales is an independent tribunal that has been set up to resolve disputes relating to private rented and leasehold property. Not many housing Associations have used the service as its aimed at private landlords, however, some have been involved in a Leasehold valuation tribunals. The advantage of the Residential Services Tribunal is that you can represent yourself which saves costs, however, some Associations already do this in Court.

Mediation can definitely help. It is a very useful way of dealing with ASB and enables early intervention, is impartial and it helps tenants get to the root of the problem (preventing escalation) and helps them reach compromises and solutions. Some members have used Cognitive Behaviour Therapy and report a good success rate (one Association estimated that they saved around £50k using this approach in 2014).

One member reported that two thirds of mediation cases lead to positive improvements. A recent case proved very successful involving two single females who were having a negative impact on their community. The situation was fully resolved through mediation.

Weighted against court fees, eviction and void costs/rental loss and staff time, mediation is also a cheaper way of dealing with tenancy management. For 2014, mediation services cost £4,208.47 for 14 cases (just over £300.00 on average). Void cost, for repairs alone, can be around £2000.00.

We trust this additional information is helpful. If, however, you have further queries or require more information please do not hesitate to contact me.

Kind regards

Stuart Ropke
Chief Executive

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[i] Social housing vacancies, lettings and rent arrears, 2013-14
[ii] Managing the Impact of Welfare Reform Changes On Social Housing Tenants in Wales

promoting equality in housing
hybu cydraddoldeb ym maes tai

Tai Pawb

Supplementary Written Information Part One – Communities, Equalities and Local Government Committee held on 6th May 2015

14th Many 2015

For further information about this paper please contact:
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Who we are

Tai Pawb (housing for all) is a registered charity and a company limited by guarantee. The organisation's mission is, "To promote equality and social justice in housing in Wales". It operates a membership system which is open to local authorities, registered social landlords, third (voluntary) sector organisations, other housing interests and individuals.

What we do

Tai Pawb works closely with the Welsh Assembly Government and other key partners on national housing strategies and key working groups, to ensure that equality is an inherent consideration in national strategic development and implementation. The organisation also provides practical advice and assistance to its members on a range of equality and diversity issues in housing and related services.

Tai Pawb's vision is to be:

The primary driver in the promotion of equality and diversity in housing, leading to the reduction of prejudice and disadvantage, as well as changing lives for the better.

A valued partner who supports housing providers and services to recognise, respect and respond appropriately to the diversity of housing needs and characteristics of people living in Wales, including those who are vulnerable and marginalised.

For further information visit: www.taipawb.org

Charity registration no. 1110078
Company No. 5282554

We would like to thank the committee for inviting us to provide oral evidence on 6th May 2015, and the opportunity to submit further written information on areas of interest to the committee which we were unable to cover at the hearing due to time constraints.

In addition to this submission to this Tai Pawb has agreed to approach our members in relation to their views 'on what could be included in an equivalent to the Welsh housing quality standard for the private rented sector'. With the agreement of the Committee clerk this will be submitted separately on 18th May 2015 to allow time for adequate consultation.

Question One:

"You will know that the Bill requires landlords to keep their property in good repair and ensure it is fit for human habitation. Do you have a view on whether the Bill will improve the condition of dwellings in the private rented sector and, if it won't, how the Bill could be amended?"

Our Response:

1.1 Tai Pawb welcomes the proposals in the Bill as we recognise that poor quality housing conditions in the private sector can have a serious impact on a tenant and their household's physical and mental health. A Race Equality Foundation report notes that "a Shelter survey of 4,300 people living in the private rented sector found that 10 per cent of tenants state that their health has been affected by the failure of their landlord to deal with repairs and poor conditions (Gousy, 2014).[1] Properties where there are damp and mould issues or health and safety hazards that have not been dealt with will increase the chance of tenants getting ill both physically and mentally, exacerbating existing conditions and may contribute to accidents. This is highlighted in a case study from the Consumer Wales Focus Report:

> One participant at the Families with Children group in Llandrindod Wells had serious problems with their eldest son's bedroom, which is cold and damp because of excess condensation. This has caused water to collect, ruining the carpet and leaking through the floors, and is also making her son's health problems worse.[2]

1.2 In relation to poor conditions research shows that private renters are reluctant to ask and challenge their landlord in order to rectify the situation, and that in some cases landlords continuously ignore requests. Shelter research into private renters noted that:

- 7% did nothing at all because they were scared of the consequences
- 41% spoke to their landlord who took no action
- 12% ignored the problem as they did not think anything would happen
- 13% left the property and did nothing.[3]

Research into the experiences of migrants housed in HMO accommodation note issues with housing conditions including health and fire risks also[i] The research explains that this may be due to a reluctance to complain due to low or uncertain expectations, dependency on the employer or agent for accommodation (and hence concern about the possible outcome of a complaint), intimidation (especially if the landlord or agent is from the same migrant community) and wanting to avoid spending more money on better accommodation because of low wages and/or the imperative to send or take money home.[4]

There has also been concern at a UK national level with the accommodation standards and conditions in relation to NASS accommodation. Contracts have been

[1] Megan McFarlene, Ethnicity, health and the private rented sector, Race Equality Foundation, 2014: http://www.better-housing.org.uk/sites/default/files/briefings/downloads/Housing%20Briefing%2025.pdf

[2] Consumer Focus Wales, 2012, p34

[3] Shelter, *Homes fit for families? The case for stable private renting*, 2012, p10

[4] John Perry, Joseph Rowntree Foundation, 2012, p18

in the past primarily awarded on price [5] and this means that NASS accommodation at a local level is likely to be at the lower end of the private rented sector, where generally property conditions are worse. Barnardos when giving evidence to the Home Affairs Committee noted that

> Our practitioners support asylum seekers who are provided with NASS accommodation and advocate on their behalf. They report that many housing providers do not maintain their properties appropriately and that good conditions are the exception rather than the rule. The houses are often damp, small and have a range of issues from pest infestation to poor heating. These conditions are not in the best interests of children and do not promote their welfare. Worse still, we know of examples of accommodation with broken windows, broken heating or water systems, and broken locks.[6]

1.3 The above examples show that for a certain sector of the Private Rented Sector, in particular, there are currently concerns regarding standards. Therefore the proposals set out within the Bill are welcomed, in particular the removal of the potential for a landlord to retaliatory evict a tenant for requesting repairs. However as we noted within both our written submission and our oral evidence on the 6th May Tai Pawb has concerns around the potential for retaliatory evictions 'by the back door' through the use of rent rises to offset the cost of repairs. Please see our response to question four below in relation to how this potential negative behaviour from landlords could be addressed.

1.4 Tai Pawb does have concerns with the power currently conferred in the Bill which gives a landlord the right not comply with the obligations outlined in relation to both the fitness for human habitation and in connection with undertaking repairs. As the Bill is currently written there is no obligation for the landlord to take into consideration the needs of the tenant in relation to access to the property, specifically in relation to non-urgent / non-emergency repairs. We note the landlord must give a 24hr notice period only – we would like to see this strengthened to reflect that reasonable consideration should be given to the needs of the contract-holder and their families when arrangements are made for repairs. This is of particular importance for those who may need a chaperone or advocate present, and those who have caring responsibilities (typically women). We feel the Bill would be strengthened in relation to reflecting the Equality Act in connection to 'reasonable adjustments'. It is our concern that as the Bill currently stands disabled people, those from particular religious backgrounds, women, older and younger people, in particular could be disproportionately adversely affected by some landlords providing appointment times which aren't suitable. We are particularly concerned =such behaviour could be intentional on the part of the landlord to avoid work being carried

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[5] Joseph Rowntree Foundation, *Home Affairs Committee Inquiry into Asylum, Evidence from the Joseph Rowntree Foundation and the Housing Migration Network*, April 2013, p5-4: http://www.jrf.org.uk/sites/files/jrf/consultation-home-affairs-cmttee-asyluml.pdf

[6] Barnardos, *Report of the Parliamentary inquiry into asylum support for children and young people* (2013), Home Affairs Committee: http://www.publications.parliament.uk/pa/cm201314/cmselect/cmhaff/71/71vw32008_HC71_01_VIRT_HomeAffairs_ASY-67.htm

out. Leading to contract-holders feeling forced to either live in poor conditions or terminate their contract with the landlord.

1.5 It is our understanding that, in particular circumstances, the Bill allows for a landlord to evict a tenant when they are unable to gain access in relation to repairs. We feel that the Bill would be strengthened by referencing the Equality Act. We feel that further guidance in relation to the notion of 'matters arising from disability' would be of particular use for both landlords and contract holders in relation to helping them understand, and in protecting their, rights and responsibilities in relation to this matter. If this area of work is taken forward Tai Pawb would be happy to assist with this.

1.6 In addition to strengthening the Bill by reflecting the Equality Act there is also the potential to look at mediation or tribunal services when disputes occur – this will be addressed in more detail in our answer to question four below.

Question Two:

"As you will know all contracts resulting from the Bill will contain a term prohibiting anti-social behaviour, and if a contract-holder breaches this term they could be evicted under breach of contract ground.[...] Do you have a suggestion as to how the definition of 'anti-social behaviour' could be improved? In addition, do you have a view on whether there should be evidence of a criminal conviction before someone is evicted on the basis of anti-social behaviour?"

2.1 Tai Pawb is fully supportive of the inclusion of the Bill in relation to the protection of those who may be victims of hate crime / incidents, Anti-social behaviour, and domestic abuse. We believe this Bill has the potential to, in particular, make improvements for those living in shared accommodation.

2.2 Our concerns lie not with the intention of the Bill rather the way these are phrased. The term currently suggested in the Bill 'prohibitive conduct' is not one that either tenants or landlords are likely to be familiar with. This could lead to confusion in relation to what is covered by this. The current definition used to explain the terms is "conduct capable of causing a nuisance or annoyance". We feel does not help clear the confusion. In fact we have concerns that such a vague definition had the potential to be applied in very different ways by different landlords and could lead to instances of unconscious bias and discrimination. We feel amending the current definition to read "conduct capable of causing harm or having a substantial negative effect on the wellbeing of another person" would be an improvement on the current definition. While we realise that it may not be appropriate to place, in statute, a list of behaviours which are covered by this term we would also like to ensure that explicit reference is made to Domestic Abuse within this section. Further we would strongly suggest that this section of the Bill has reference to the Equality Act, The Human Rights Act, and in particular matters arising from disability.

2.3 In relation to the above proposed amendments we think that detailed guidance on this area would greatly benefit both contract-holders and landlords in understanding their rights and responsibilities. This will be particularly key in relation to the Equality Act and 'matters arising from disability', especially as we expect to see a rise in the number of more vulnerable people using the private rented sector and this is likely to provide some landlords with new challenges.

2.4 People from some protected characteristics have significant difficulties accessing justice, while others maybe more disadvantaged within the justice system in relation to conviction rates. Given this we do not feel that there should be a criminal conviction present to evict somebody due to anti-social behaviour. In relation to evictions in connection to domestic abuse we feel it is vitally important that the bar is not set too high as many victims feel unable to go to the police in relation to these matters. By insisting on a burden of proof which is set too high (i.e. criminal conviction) the Bill might, unintentionally, place victims of domestic abuse and gender based violence in significant danger. We would fully support a robust and appropriate level set for burden of proof which is not reliant on criminal conviction. This could be fully explored in statutory guidance, if this is felt where it is best placed to be by the legislators, Tai Pawb would be happy to support any work around this area given if it is felt our expertise on equality issues and our recent work in relation to hate crime could be of benefit.

Question Three:

"The Bill proposes a procedure that will allow a landlord to recover possession of a property without the need to obtain a possession order from the court. [...] Do you have any additional views on whether the proposals in the Bill relating to abandonment could be improved, including in relation to ensuring that vulnerable people are not exploited?"

3.1 Tai Pawb has a number of concerns in relation to how this proposal might adversely affect those who are more vulnerable. This section would be strengthened by referencing the Equality Act, the Human Rights Act, and also specifically matters arising from disability. Our key concern with the current formation is those people who may be isolated from the communities where they live and do not have any support networks could be evicted if they were to be admitted to hospital if they are unable to contact their landlord to inform them. This is likely to have a significant negative impact on delaying discharge if a patient has lost their (potentially adapted) home whilst in hospital care. Potentially there is a body of work to be undertaken with health care professionals to ensure they are aware of the changes to renting homes in Wales and their role in helping remove the potential for unnecessary and unfair evictions for those who are in hospital for a significant period of time.

3.2 Currently the Bill suggests that the landlord needs to make reasonable enquiries that a contract-holder has abandoned the property. There is no reference to rent having been missed. It is possible that, if a landlord chooses to, they could

evict a contract-holder who had taken a long holiday or has had significant caring responsibilities away from home, even though the rent is still being paid. While we agree this is unlikely it does allow a landlord to gain possession of the property when a contract-holder has been away from the property for over four weeks this could potentially negatively impact on those from BME backgrounds, those who have disabilities, those who may undertake pilgrimages in connection to their beliefs, and those who have caring responsibilities. We feel this should be made explicitly clear by landlords when an individual signs a contract to help ensure that both unintentional mistakes and deliberate discriminatory behaviour is minimised.

3.3 We feel some of these concerns could be addressed in Statutory Guidance – for example the need for notices to be issued in a format and language preferred by the contract-holder, where this is known to the landlord. This would be further strengthened by ensuring that landlords make enquiries regarding the needs of their tenants in relation when contracts are drawn up / signed. We would strongly recommend that the reference to informing the landlord in writing is also addressed to ensure it does not exclude those who may be unable to do this.

Question Four:

"... you will have noted that the Bill uses the county court or (High Court) for a number of purposes. In your written submission you state that "recourse to the county court is not the most beneficial way to enter into dispute resolution". We would be grateful if you could expand on this point and let us know if whether you have a view whether the Bill presents an opportunity to expand the role of the Residential Property Tribunal or other mediation services?"

4.1 As we have referenced in our written submission Tai Pawb feels that there may be a more appropriate way for contract holders and landlords to resolve their disputes. While we feel it may be possible to extend the role of the Residential Property Tribunal, or existing mediation services, what is imperative is the solution best meets the needs of all contract-holders and landlords. Careful consideration should be given to specific needs or difficulties accessing justice people from protected characteristics may face. We would recommend that all options are fully explored and those with expert knowledge of equality, diversity, access to justice, housing, and contract-holders themselves, are fully consulted with.

4.2 As part of these considerations it would be beneficial to consider the remit of these services and in what circumstances they could be accessed. The areas of attention could include; rent disputes, repairs, ASB / prohibitive conduct, abandonment, amongst others

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Chair
Communities, Equalities and Local Government Committee
National Assembly for Wales
Cardiff Bay
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Dear Christine

Renting Homes (Wales) Bill: request for additional information following the evidence session on 6th May 2015

Thank you for your letter dated 6th May 2015 regarding the above; I am able to respond to your specific queries as follows:

1. **The provision of a statutory needs assessment for all 16/17 year olds before entering into an occupation contract**

   The current position with regards to 16 / 17 years is that following the "Southwark" judgement, all persons of this age approaching the Council as homeless should initially receive an assessment under the relevant section of the Children's Act to determine whether they are a "child in need" and if so whether it is appropriate for them to receive relevant services.

   The reality is that often these pre-assessments do not take place either due to the immediacy of the presenting situation, availability of Children's Services staff or, most regularly, the reluctance / refusal of the individual to cooperate in terms of having the assessment; they do not see themselves as needing it. This results in the needs of the individual not fully being explored by relevant professionals and potentially someone being placed in accommodation without the required support and assistance being made available; not all 16 / 17 year olds of course require support – a point made during the evidence session.

   In terms of the proposed position in the new Bill in relation to 16/17 year olds, the above arrangements would not change, the question to be considered is whether provision should be made within the new legislation that before entering into an occupation contract a 16/17 year old should be <u>required</u> to undergo some form of statutory assessment.

Fundamentally, this takes away the underlying principle that a 16/17 year old should be allowed to enter into a contract a position which the WLGA has previously indicated support for.

Key issues to be considered would be:

- What type of assessment would be required – would it be about general suitability to be a tenant or capacity to be a tenant with or without support?
- Who would undertake the assessment and would there be sufficient resources available to fulfil this role
- What would happen if the individual refused an assessment?
- If as part of the assessment support is identified as a need – what resources would there be to fulfil the identified need?
- The introduction of a requirement to have an assessment is likely to deter private sector landlords from considering 16/17 year olds due to the additional bureaucracy and time spent in getting an assessment done.

As suggested at the evidence session, an alternative to this would be a negotiated position whereby the landlord could choose to put in additional term/s in the contract to cover the acceptance of support; this would enable a case by case basis to be established.

2. **A) As you will know all contracts resulting from the Bill will contain a term prohibiting antisocial behaviour and if a contract-holder breaches this term they could be evicted under the breach of contract ground. Do you have a view on whether there should be evidence of a criminal conviction before someone is evicted on the basis of anti-social behaviour?**

   It is the view of the WLGA that there should <u>not</u> be a requirement to evidence a criminal conviction before someone is evicted on the basis of ASB.

   Securing a criminal conviction can be a lengthy process and often requires the assistance of witnesses. During the period of awaiting trial, the victim or victims are likely to continue to experience ASB which is unacceptable.

   Notwithstanding this position, there needs to be some mechanism of ensuring that action is being taken appropriately and on a reasonably sound evidence base to avoid retaliatory or spurious claims.

   B) In addition we would be interested to hear your views on the fact that anti-social behaviour is a discretionary ground for possession rather than an absolute ground.

In considering this matter, it is appropriate to understand that there are many types and causes of ASB and the ability of the courts to consider whether it is reasonable or not to grant possession on the grounds of ASB, it is important to ensure that vulnerable members of society are not unduly affected by the imposition of an absolute ground for ASB.

As an example, some people with a Learning Disability are prone to noise or other forms of behaviour which may not be acceptable to the general population; such situations would be better addressed by the input of support to the individual to try to resolve behavioural difficulties. The option of a discretionary ground would enable the court to direct agencies to work together to resolve a situation rather than an absolute ground which would not necessarily allow for this resolution.

C) We would also be keen to hear your view on whether the proposed changes to joint contracts will help deal with situations involving domestic abuse?

It is our view that the ability of one contract-holder to terminate their contract without impacting upon the rights of another contract-holder at the same address is welcomed. This is an area which for many years has caused difficulties for landlords.

The proposal will protect the rights of all parties and not lead to the rendering of domestic abuse victims as homeless, thus providing stability for the victim and their children.

3. **The Bill proposes a procedure that will allow a landlord to recover possession of a property without the need to obtain a possession order from the court. In your written submission you state that the WLGA welcomes the provisions relating to abandonment; do you have a view on whether the proposals in the Bill relating to abandonment could be improved, including in relation to ensuring that vulnerable people are not exploited?**

The reality of recovering possession of a property because it is deemed that the tenant has abandoned it is that the property is then reallocated to another person in housing need. Once this has happened, there is no turning back; the former tenant cannot regain possession of that same property.

A suggestion has been made that perhaps the “outgoing” tenant should have the right of appeal against the actions of the landlord, however again this will not reinstate the status quo, the only benefit that there could be is that the individual could prove a case that they were “legitimately” not in occupation at the time and

have an entitlement to the tenancy of another property, notwithstanding that this new property may not meet all the needs of an individual.

Our previous submission suggested that a thorough approach is taken in terms of undertaking investigations as to why the property is not apparently being occupied to avoid the inappropriate regaining of possession; this is still our view.

4. **Finally, you will have noted that the Bill uses the county court (or High Court) for a number of purposes. A number of responses to the public consultation proposed alternative bodies and processes to settle disputes that arise under the Bill. Do you have a view on whether the Bill presents an opportunity to expand the role of the Residential Property Tribunal or other mediation services?**

   The RPT exists to resolve leaseholder and private rented sector disputes; it does not appear to have a role to play in terms of resolving disputes between social housing landlords and tenants.

   Subject to the RPT being appropriately resourced to take on the role, it may be that there could be a role for it in the private sector and this would be helpful in terms of the advice role of Local Authorities in terms of signposting to an independent organisation to seek to resolve disputes brought to our attention.

I trust this additional evidence is useful.

Yours sincerely

Lyn Hambidge
For and on Behalf of WLGA

Cymorth Cymru: Evidence for the Communities, Equality and Local Government Committee on the Renting Homes Bill

Questions on areas not already consulted:

You asked us questions for our members that we had not yet consulted on directly. These were as follows:

1. The provisions in the Bill relating to the need for the condition of the dwelling to be fit for human habitation.
2. What could be included in an equivalent to the Welsh housing quality standard for the private rented sector?
3. Do you have a view on whether the Bill will improve the condition of dwellings in the private rented sector and, if it won't, how the Bill could be amended?
4. In addition, do you have a view of whether it is right that enforcement of these conditions is effectively left to contract-holders taking the matter to court?

We have not yet received detailed responses from our members on these points, and as a membership organisation it would not be appropriate to comment without having received this detailed input. We can provide input further in the process if needed, but until we have had a longer opportunity to engage with our members on the above points we will have to leave these questions unanswered.

Questions on areas already consulted:

You also asked additional questions that drew on areas we had already engaged with our members, and so we have outlined our responses to the questions below.

Question:

As you will know all contracts resulting from the Bill will contain a term prohibiting anti-social behaviour, and if a contract-holder breaches this term they could be evicted under the breach of contract ground. In your written submission you stated that you had particular concerns that domestic abuse is not mentioned specifically in section 55 of the Bill. You also noted your concerns that some behaviour might present as anti-social but in reality the contract holder may need support, for example, with a mental health condition. Do you have a suggestion as to how the definition of 'anti-social behaviour' could be improved? Do you believe that there should be an explicit reference to 'domestic abuse' within section 55? In addition, do you have a view on whether there should be evidence of a criminal conviction before someone is evicted on the basis of anti-social behaviour?

Answer:

We would encourage reference to the response in this matter by Tai Pawb, namely that the definition should be amended to reflect 'harm', which narrows the definition slightly and reduces the opportunity for abuse or misinterpretation.

In addition, we would want there to be a requirement added to pursue 'reasonable steps' in the legislation, and reflect the requirements of the Equality Act 2010, to ensure that support has been sought to resolve issues without the need for punitive procedures, to ascertain that anti-social behaviour caused by a mental health condition is picked up by services and that those affected by the condition are given every opportunity to engage before action is taken.

These reasonable steps could be developed further in the guidance, but could include the landlord contacting local services to request support on their tenant's behalf (for example, with floating support, people with mental health problems might be able to change behaviour and sustain tenancies for longer periods of time). If these reasonable steps have been taken and no change has been noted then the 'normal' procedure can be followed. We think this would provide that extra safety net for those with mental health problems, without adversely affecting the comfort / health / safety of others in the community. This approach would also fit in with the Housing Act's duty to discharge into the PRS - where tenants with 'chaotic lives' will become more common.

With regards to domestic abuse being added to the legislation itself, we would support Welsh Women's Aid in this point. We believe that whilst in effect, domestic abuse would be included in the current definition by default, if we are to ensure it is treated with the importance it deserves, and if we want to make sure that landlords understand with

simple clarity that this is a clear change, adding domestic abuse to what is considered prohibited conduct would send a clear message *and* remove any ambiguity on this point for all involved.

Regarding the need for a criminal conviction for anti-social behaviour, with the exception of domestic abuse (where we are satisfied there would need to be a civil burden of proof – on the balance of probabilities), we do not take a direct view on this. As long as efforts have been made to engage with those causing anti-social behaviour (as per the 'reasonable steps' suggested above), and that there has been a prolonged period of antisocial behaviour, we are in broad agreement that it is reasonable for landlords to take steps to resolve the situation via eviction. Our concern on this point is that there are sufficient services in place to better work with landlords and tenants to resolve anti social behaviour earlier, and that those who are evicted are caught by preventative services early so that their problems do not become embedded, and that they do not get passed from pillar to post, from landlord to landlord.

Question:

The Bill proposes a procedure that will allow a landlord to recover possession of a property without the need to obtain a possession order from the court. Do you have any views on whether the proposals in the Bill relating to abandonment could be improved, including in relation to ensuring that vulnerable people are not exploited?

Answer:

We are in agreement with the points and safeguards raised by Tai Pawb.

Question:

Finally, you will have noted that the Bill uses the county court (or High Court) for a number of purposes. A number of responses to the public consultation proposed alternative bodies and processes to settle disputes that arise under the Bill. Do you have a view on whether the Bill presents an opportunity to expand the role of the Residential Property Tribunal or other mediation services.

Answer:

We would also agree with our third sector colleagues in this area, both in terms of costs, but also in terms of accessibility. Many vulnerable individuals would find a county court intimidating and potentially exclusionary. A mediation service and other bodies as first steps would be more inclusive, and could still be passed up to the county court if necessary for appeal.

If you require any additional comment or input from Cymorth Cymru, please contact olivertownsend@cymorthcymru.org.uk.

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