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Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government



Llywodraeth Cymru
Welsh Government

John Griffiths MS
Chair
Equality, Local Government and Communities Committee
Senedd Cymru
Cardiff Bay
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10 July 2020

Dear John,

I am writing in response to your letter of 31 March, and ahead of my second appearance before the ELGC Committee on 20 July to give further evidence on the Renting Homes (Amendment) (Wales) Bill.

Please find enclosed as requested my responses to the questions that would have been asked had the 26 March evidence session gone ahead.

I hope this information is helpful to the committee and I look forward to the resumption of scrutiny of this important legislation.

Yours sincerely,

A handwritten signature in blue ink that reads "Julie James". The signature is written in a cursive, flowing style.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Responses from the Minister for Housing and Local Government to questions from the Equality, Local Government and Communities Committee in relation to the Renting Homes (Amendment) (Wales) Bill

1. How will the provisions in this Bill, and the 2016 Act more generally, be communicated to tenants/contract-holders and other key stakeholders?

My officials will be preparing a range of explanatory information which will be published and promoted through a number of communications channels, including print media and social media, in the run-up to the legislation coming into force. This will provide clear, straightforward guidance for landlords, contract-holders, and organisations which provide support and advice to both, on the new rights and responsibilities.

The communications approaches we employed to publicise and raise awareness of the changes introduced by the Renting Homes (Wales) (Fees etc.) Act were effective, so we will be looking at a similar campaign in support of the Renting Homes (Wales) Act 2016, as amended.

Regarding communications with landlords, we will utilise the ability Rent Smart Wales (RSW) has to reach all landlords.

2. Given the limited engagement with tenants during the development of this Bill, what strategy will the Welsh Government put in place to raise awareness of the 2016 Act with tenants/contract-holders? Should the Bill itself make provision for communicating the changes?

As mentioned above, a range of information is to be developed in advance of this legislation coming into force to raise awareness amongst stakeholders, including contract-holders. We intend to set aside a budget for the development and promulgation of guidance and publicity, and will be working with our partners across sectors to ensure the key messages are promoted as widely as possible in advance of the commencement of the legislation and once it is in force.

It is also worth noting, in relation to awareness-raising amongst contract-holders, that one of the key changes the 2016 Act will introduce is a requirement that landlords provide contract-holders with a written statement of their contract. These statements will include the terms of the contract, the grounds on which the landlord may seek possession and the relevant notice periods. This should result in greater understanding amongst those who rent their homes of their, and their landlords', rights and obligations.

3. What impact will the commencement of the 2016 Act, and the amendments to it made by this Bill, have on tenancies made before the date the 2016 Act, as amended, comes into force? Are there some provisions in the Bill that you envisage acting retrospectively?

The following Bill provisions will apply to converted contracts, that is, tenancies existing prior to the coming into force of the 2016 Act, which convert to standard contracts:

- Restrictions on giving further landlord's notices under periodic standard contract

The Bill will prevent landlords under a periodic standard contract from serving a notice under section 173 of the 2016 Act within six months of the expiry or withdrawal of a previous section 173 notice. This restriction on serving notices in immediate succession will apply to landlords under converted contracts, as well as to landlords under contracts created after the Bill comes into force. As this provision applies to converted contracts, it is retrospective in the very limited sense that it will apply to existing contracts but only in a way that has prospective effects. This approach is necessary in order to avoid the problems created for tenants by the practice of issuing notices, such that a tenancy is always subject to a possession notice. If the provision were to apply only to new contracts, entered into after the coming into force of the Bill and 2016 Act, contract-holders under converted contracts would be treated less favourably than those under new contracts because they would continue to be open to the threat of repeat notices, until such time as that converted contract comes to an end. These provisions will not have effect in respect of repeat notices issued before the 2016 Act comes into force, but would affect landlords of tenancies which were in place prior to the 2016 Act coming into force

- Restriction on giving notice under section 173 under a periodic standard contract and under landlord's break clause under a fixed term standard contract following retaliatory possession claim.

The Bill will prevent landlords from serving a notice under section 173 under a periodic standard contract or under a break clause in a fixed term standard contract for a period of six months, from the date upon which a court finds that a previous possession claim was retaliatory.

This restriction will apply to landlords under converted contracts, as well as to landlords under contracts created after the Bill comes into force. This will mean that the provision will have an element of retrospectivity.

The finding of a retaliatory claim would post-date the Bill's enactment and therefore the element of retrospectivity (insofar as the matter might be deemed to be retrospective) is limited to the fact that it only affects landlords of tenancies which have converted (and therefore be of limited effect). This will protect contract-holders who have been subject to a retaliatory claim from receiving a further notice immediately after that court order. Any claim which is retaliatory in nature (namely made for the purpose of avoiding obligations to keep a dwelling in good repair) will be one wrongly and unreasonably brought.

A six month period would offer a contract holder a period of security following a claim to which they should never have been subjected in the first place. It offers a period of security and stability following that court process.

The restriction does not prevent a landlord from serving notice under any other ground, it simply restricts the service of a further notice under section 173 or a landlord's break clause. Other notices for possession, where appropriate, will be capable of being served during the restriction period.

4. Social landlords highlighted in evidence that a reduction in the supply of private rented sector accommodation could increase pressure on social housing and therefore affect homelessness services which rely on the private rented sector to house vulnerable people. What assessment has the Welsh Government made of any potential impact? Is any impact likely to have a disproportionate impact on certain groups with protected characteristics or groups that may be particularly vulnerable?

In the evidence published by the Committee from social landlords there was unanimous agreement that the increased security this Bill will provide will make the PRS a more attractive proposition for prospective tenants. The only concerns expressed, by one respondent, relate to the possibility that longer notice periods could lead to private landlords either leaving the market or becoming more 'selective' about whom they choose to let to. As other witnesses have reminded the Committee, these concerns have been expressed regularly in the past when other changes have been made which impact on the PRS, and as yet there is no evidence to suggest that the PRS is contracting as a result of greater regulation. On the contrary, the sector continues to grow. However, as with all legislation, we will keep the effects under ongoing review.

More broadly, we will also continue in our efforts to support responsible landlords and promote the private rented sector as a tenure of choice through our range of statutory and non-statutory approaches, including Rent Smart Wales, the private sector leasing scheme, and the new housing support grant.

5. Some concerns were raised in written and oral evidence that making no fault evictions more onerous and, potentially, more costly for landlords, may lead to a rise in illegal evictions and harassment. What is the Welsh Government doing to support local authorities in tackling illegal evictions and harassment? Do local authorities need strengthened powers, additional resources, or both?

Illegal eviction is an offence. The law is very specific in relation to eviction of any tenant who has an assured shorthold tenancy, which is the most common tenancy within the PRS. Tenants are protected by the Protection from Eviction Act 1977 to ensure the processes and notice periods are adhered to.

If a landlord is found guilty of illegal eviction, they may face a fine and in some cases a term of imprisonment. The consequences for a landlord who has not followed the correct procedure could therefore be significant.

We do not consider strengthening the powers of local authorities to be necessary. However, we will use the publicity and awareness-raising campaigns which will support the coming into force of this legislation to remind landlords and tenants that an eviction cannot take place without an order from the court.

It is also worth noting that the written contracts which landlords will be required to provide to all contract-holders will include this information, and so should also help reduce future instances of illegal eviction.

6. UK Finance responded to the Committee's consultation and raised concerns that the 2016 Act does not provide a mandatory ground for possession for lenders. Lenders may therefore have to rely on the 6 month no-fault notice as included in this Bill. Is there a risk that lenders will view lending in Wales as higher risk and borrowing could prove more expensive because it might take them longer to repossess a property? What consideration was given to providing a specific ground that lenders could use to recover possession should they need to repossess a property? Why was such a ground not included?

The 2016 Act does not provide a mandatory ground for possession for lenders and that decision was based on evidence that such grounds in existing housing legislation were little used.

The principle of our Bill is that contract-holders should not be evicted without six months' notice where they are not at fault.

Should a lender (who has successfully taken possession against a landlord) choose to seek possession against a contract-holder then, during the six-month notice

period, it would be open to the lender to place the property with a letting agent to manage the property until it becomes vacant, to avoid the lender having to do so.

However, as stated above we will keep all aspects of this legislation under review and if, at some future point, the evidence supports an exception to the six months' notice requirement in situations of lender repossession, then the Bill provides a power for such an exception to be added to new Schedule 8A to the 2016 Act

7. What consideration have you given to providing a universal right to adequate housing in the Bill? Why hasn't such a provision been included?

We recognise there may be potential benefits in placing a statutory duty on local authorities to have due regard to the right to adequate housing. But there would be little sense in creating such a duty without a thorough understanding of what it would entail and knowing that all of the necessary resources are in place to meet the duty. Work is underway with external partners to consider the scope for legislating in respect of equality and human rights. If adopted following due consideration, any recommendations arising from that work would need to be taken forward in the next Senedd term.

8. A number of witnesses told the Committee that there was little confidence in the ability of the courts to deal with possession claims. Claims often involved significant delays leading to additional costs and uncertainty. What is the Welsh Government's position on having a dedicated housing court or tribunal? What discussions have there been with the UK Government on this and what can be learned from the experience in Scotland where such a tribunal has been introduced? Would a more effective system of dealing with possession claims have resulted in more support for this Bill from private landlords?

Concerns expressed by landlords regarding the length of time current cases take to go through the court would not necessarily be addressed by having a specialist court or tribunal, not least because many current delays are more due to resourcing issues faced by courts rather than difficulties in the court procedures themselves. The experience of Scotland, where all housing cases have now been transferred to a tribunal, is that it has resulted in considerable delays to cases being heard. We would therefore wish to examine the Scottish experience carefully before deciding on what might be a suitable approach in Wales.

In the meantime, we support the operational changes the UK Government proposed to help process claims more quickly through the county courts system, and my

officials remain in ongoing dialogue with Whitehall counterparts in relation to any potential reforms to the courts service which, whilst outside our remit, we would obviously support if this were to improve current processes.

As for the courts' ability to deal with possession claims following the changes this amending Bill will introduce, whilst we accept that there is likely to be a small increase in the number of claims requiring hearings from private landlords as a result of the Bill, this needs to be considered alongside the significant reduction in evictions by social landlords that we are seeking to achieve through other means, which should provide the courts with sufficient capacity to deal with any increase in claims from private landlords and our overall policy of working with all landlords to avoid and prevent evictions.

9. The Explanatory Memorandum notes that the Justice Impact Assessment concluded that the net effect of changes resulting from this legislation, alongside the Welsh Government's policy on reducing social landlord possession claims, is expected to be neutral. Social landlords told us that implementing the policy of no evictions into homelessness is at an "early stage". What account did the impact assessment take of that? The Committee has not had the opportunity to scrutinise the Justice Impact Assessment, the contents of which will be key to understanding the impacts of this Bill. When will it be published?

The Justice Impact Assessment for the Bill has been agreed with the Ministry of Justice and a copy of the JIA statement is available [here](#).

UK Government agreed with our conclusion that that the overall impact of the new legislation on caseload for the court system in Wales is likely to be negligible over time. This is based on the fact that around two-thirds of current possession claims are from social landlords and the Welsh Government's policy is to significantly reduce social landlord repossessions. This will free up sufficient court time to offset any increase in claims from private landlords that may result from the longer section 173 notice period incentivising landlords' to use alternative (more appropriate) grounds to end contracts¹.

The provisional figures for 2019 show a slight reduction in overall orders made of

During 2018, 3,640 possession orders which required a court hearing were granted by the courts in Wales, of which 3,050 were granted to social landlords and 590 to private landlords. In addition, 616 orders were granted under the Section 21 'accelerated procedure' which does not require a court hearing

around 2% compared to 2018. Applications by social landlords resulted in around 69% of all orders made in 2019, in 2018 this was 72%.²

I announced in January that the new five year agreement on rent policy will include a requirement for social landlords to work to minimise all evictions and to not evict into homelessness.

We consider evicting into homelessness to be a systems failure which simply moves the burden from one department to another. We are continuing to work with social landlords and other key stakeholders to strengthen approaches designed to minimise all types of eviction and deliver on a new agreement not to evict into homelessness. As this policy comes to fruition, pressure on the court system and applications from social landlords in Wales will reduce.

10. While the Bill focuses entirely on notice requirements placed on landlords, several witnesses have told the Committee in written evidence that there is a case for changing the notice requirements placed on contract-holders. Specifically, should there be a requirement on contract-holders to give notice if they wish to leave at the end of a fixed term? Has this been considered by the Welsh Government?

The possibility of a contract-holder being required to provide notice to end a fixed term contract has been considered but such a requirement presents a number of issues. Currently, and under the 2016 Act, a contract-holder may leave the contract on the day the agreed fixed term period ends. However, the vast majority of current tenancies are provided on the basis of a six month fixed term, with the intention of both parties being that this fixed term will lead seamlessly into a periodic contract. A fundamental term requiring a contract-holder to provide notice, say a month before the fixed term ends, would likely provide grounds for eviction if a contract-holder failed to leave. This could be particularly problematic for students who may be unsure about the exact end of a course or their plans for the summer, for example.

The issue raised during evidence sessions is acknowledged but the Welsh Government is unaware of any particular problems with fixed terms prior to this. Therefore, any legislation to require the giving of a notice by contract-holders within this context, would need further consideration.

11. The Committee heard some criticism of the evidence base used to develop this Bill. Specifically, there is a lack of data relating to the use of no fault

²https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/877999/Mortgage_and_Landlord_Possession_Statistics_Tables_Oct-Dec_19.xlsx (Table 9)

evictions in Wales. This led the Welsh Government to rely on a survey carried out by the RLA. What steps is the Welsh Government taking to ensure they have a better evidence base in relation to the private rented sector? How will the proposed evaluation of the 2016 Act improve the evidence base and establish a robust and comprehensive baseline prior to any further legislative changes?

The RLA data was only relied upon to provide information relating to the reasons for issuing a section 21 notice and not as an evidence base for improving security of tenure. We considered several reports relating to security and the benefits of having longer notice periods in developing our thinking for this Bill.

We opted to cite the RLA survey data in the impact assessment on the basis that it had recently been published and was directly relevant to the legislation we were developing, so this survey was a useful source of information for us.

I am aware that Dr Gurney of Glasgow University and Dr Simcock of Edge Hill University have both advised the ELGC Committee to treat the RLA survey figures with caution. However, we need to be clear that their reservations are based on concerns that the survey data may have overestimated both the number of PRS landlords who have sought possession against tenants in the past five years, and the percentage of landlords who report using section 21 notices to seek possession where a tenant is in rent arrears or has breached their tenancy in some other way.

The figures Drs Gurney and Simcock quoted in their evidence to the ELGC Committee in February were taken from a Manchester Metropolitan University study which suggested that some 54% of section 21 notices were issued because a tenant was at fault, rather than the 84% figure in the RLA survey. If this lower number is closer to the actual position, then, as Dr Simcock has pointed out, the impacts of the Bill on the courts and on landlords' costs are likely to be a lot lower than those we have included in the RIA. It also follows that we would expect even fewer households to present as homeless to local authorities by virtue of the six-month notice than our estimates in the RIA suggest, with potentially greater savings to local authorities in discharging their statutory homelessness duties than we have included in the RIA.

As far as improving our evidence base in future is concerned, our evaluation of this legislation, coupled with the ever-expanding engagement with private landlords that Rent Smart Wales is facilitating, will over time greatly expand our understanding of how the sector operates. We will take the opportunity to evaluate whether the legislation, including the use of written contracts, leads to a reduction in disputes and court cases and the degree to which landlords will continue to rely on 'no-fault' notices, rather than breach of contract or serious rent arrears grounds. We will, of course, use this information to inform any future decisions as to whether the

legislation needs further fine-tuning, or whether any further, more fundamental legislative changes are required.

12. Shelter Cymru have recommended looking again at the Housing (Wales) Act 2014 and how it interacts with this Bill. In particular the 56 day period during which people are considered threatened with homelessness; ending homelessness duties where accommodation is likely to be available for six months; and the potential for an increase in findings of intentionality. Is there a risk that merely amending guidance will not achieve the desired result if the guidance is not followed by local authorities? What can the Welsh Government do to ensure a contract-holder who has been given six months' notice does not have to wait a further four months to receive any practical assistance from a local authority?

The current law is already clear in respect of the definition of a person who is homeless and a person who is threatened with homelessness. Section 55(4) of the Housing (Wales) Act 2014 ("the 2014 Act") does provide that a person is considered to be threatened with homelessness if it is likely that the person will become homeless within 56 days. These concerns were addressed in the development of the 2014 Act.

Section 60 of the 2014 Act places a duty on local authorities to provide information, advice and assistance in accessing help. This duty is owed to those people who are threatened with homelessness but also to those who do not meet that definition because the reference to 56 days does not apply to them.

The homelessness legislation is a safety net. The Welsh Government supports local authorities to provide a range of homelessness prevention services through the Housing Support Grant and the Revenue Support Grant. Our policy is clear, the focus is on early intervention and prevention such that homelessness becomes rare, brief and non-repeated. Any authority declining to support a household until such time as they are 56 days from homelessness is clearly not acting in the spirit of the legislation nor in line with our policy guidelines. The review of the Code of Guidance for Local Authorities on the Allocation of Accommodation and Homelessness, provides us with an opportunity to highlight the need to shift much more of our energy and resources to preventing homelessness, with services working within the spirit of the law.

The intentionality decisions are not expected to increase. The decision around whether a person is intentionally homeless must be based on the circumstances that have resulted in the homelessness and not solely based on the type of notice they have received.

The number of households found to be intentionally homeless has reduced significantly since the 2014 Act came into force.

13. How will you assess the impact of this Bill on homelessness services, and will it form part of any evaluation?

We will work with the sector to monitor the impact of this Bill, utilising existing data collection methods. The current homelessness data returns do provide aggregate data on the main causes of homelessness.

14. Why are prohibited conduct standard contracts included in new Schedule 8A to the 2016 Act given that the Welsh Government and social landlords are working to end evictions into homelessness?

Prohibited conduct standard contracts (PCSCs) are included in new Schedule 8A as an aid to prevent homelessness. Section 116(3) of the 2016 Act provides that the court may make an order imposing a PCSC only if it is satisfied that the contract-holder is in breach of section 55 of the 2016 Act (anti-social behaviour and other prohibited conduct). Furthermore, the court must be satisfied it would have made an order for possession on the ground in section 157 (breach of contract) in reliance only on that breach and that the landlord will make available to the contract-holder a programme of social support, the aim of which is the prevention of prohibited conduct. Therefore, a PCSC provides landlords with an alternative to seeking outright possession in the hope the contract-holder's behaviour can be improved, preventing eviction. It is an opportunity to offer a contract-holder a "last chance" of avoiding eviction. Any action which may discourage landlords from seeking a PCSC, such as extending the notice period to six months, would make it more likely that outright possession would be sought by the landlord immediately, as an alternative.

15. Housing associations have expressed concerns that introductory standard contracts are not included in new Schedule 8A. Why is this type of contract not included, and what impact might this make on social landlords?

There is no justification for providing less security of tenure within the social sector than the PRS. A community landlord who wishes to use section 173 will still be able to under an introductory contract but only after six months have elapsed, the same way as in the PRS. There are of course other specific grounds to deal with ASB or rent arrears should a landlord require possession for those reasons.

16. The Committee received evidence from Cytûn, the umbrella body for the main Christian denominations of Wales, that highlighted some unintended consequences of the Bill. Cytûn suggest that the Bill will impact upon churches where accommodation normally used for ministers of religion is let in the private rented sector. They note that the longer notice period is likely to mean that trustees of church residential property will not let houses during vacant periods and the properties are likely to be retained as empty properties pending occupation by a minister of religion. How do you respond to those concerns? Should there be exceptions in the Bill for accommodation normally occupied by ministers of religion, even when it is used for other purposes?

There is a power in the Bill to amend schedule 8A, so it would be possible to make such an exception to allow dwellings usually occupied by Ministers of religion to be exempted from the extended notice period, so that the two- month notice period would continue to apply.

My officials will be arranging to discuss this issue in more detail with Cytûn in due course, to consider if the issues necessitate such an exemption.

17. The National Union of Students highlighted purpose-built student accommodation as a significant growth area. When developing this Bill, what consideration was given to purpose built student accommodation, particularly in terms of the exemptions the Bill gives to accommodation let by Higher Education Institutions? Was any consideration given to treating purpose built student accommodation in the same way? If not, why not?

Consideration was given to the entire range of student accommodation including HEI run accommodation, PRS student accommodation and on and off campus accommodation. Purpose-built student accommodation (PBSA) is run by private providers in the same way as accommodation provided to students within the PRS. The support provided by HEIs to first year students, possibly away from home for the first time, requires specific access to their halls of residence every 12 months for first year students. Landlords of PBSAs and those renting to students within the PRS do not provide equivalent support. Therefore, there is no justification for providing students renting PBSA accommodation with any less security of tenure than other contract-holders who rent from private landlords.

18. The RLA suggested that landlords should be able to give a no fault notice earlier than 6 months, but the notice would only expire at the end of the 12 months. What objections would the Welsh Government have to that proposal? It would ensure contract-holders receive at least six months' notice, potentially

more, and allow landlords to maintain a 12 month cycle, something that is particularly important in certain markets – such as lettings to students.

The Bill, as currently drafted, does provide for a 12-month cycle to be maintained. A landlord can serve a notice immediately upon expiry of six months' occupation and that notice can provide that the contract-holder must leave the property in exactly six months.

19. The Minister explained in the first evidence session that the restriction on the use of break clauses in fixed term contracts (so they cannot be used in contracts of less than 24 months, and cannot be activated by the landlord until 18 months into the contract) is to try and stop break clauses being used as a rolling set of shorter contracts. Can you expand on this? Could this, and the 12 months' security of tenure, have been achieved if the restriction on exercising a break clause was at 12 months? How do you justify, in terms of human rights, and specifically the landlord's A1P1 rights, restricting the use of a Landlord's break clause until 18 months has passed?

The aim of the Bill provisions which increase the period of time before which a landlord may exercise a break clause under a fixed term standard contract is to ensure that the policy of increasing security of tenure in respect of periodic standard contracts is not undermined.

Consultation responses indicated that, generally, landlords issuing new tenancies will either issue a periodic tenancy from the outset or, alternatively, an initial fixed term tenancy of, typically, six months which becomes a periodic tenancy at the end of the fixed term. The latter is the more common approach and once the fixed term has expired, it is commonplace for the contract to "roll over" into a periodic tenancy.

Given the Bill provisions which increase the moratorium and notice period in respect of notices served under section 173 of the 2016 Act, some landlords may choose to offer only long-term fixed-term contracts from the outset. Making break clauses available as early as the 12 month point may not be a sufficient deterrent to discourage landlords from only offering longer term fixed-term contracts. Some landlords may accept having to wait an extra 6 months to regain possession of their property in the shorter term (as compared with a periodic standard contract), in order to buy certainty of income and to lock contract-holders in for the long term. The combined effect of these factors indicates that this provision is an appropriate and proportionate means of addressing these issues.

An additional 12 month period (as compared with the security of tenure offered by a periodic standard contract) is likely to be sufficient to prevent landlords from viewing the long term fixed term option as the preferred option. We certainly do not wish to

create a regime where long term fixed term contracts would become a landlord's preferred option because contract-holders are unable to release themselves from that contract were, for example, an offer of social housing to be made to them.

While this provision will mean that a landlord will have to wait longer to regain possession of their property under a fixed term standard contract than under a periodic standard contract, the length of that period will place both regimes on an equal footing in terms of how they are viewed by landlords. This will encourage an environment where an 'inequality of arms' as between the landlord and the contract-holder, at the outset of the contract, has less impact on the contract-holder in terms of the renting regime they end up accepting.

Extending the period before which a landlord may exercise a break clause, to 18 months, is therefore a proportionate means of ensuring that the competing interests of the landlord and contract-holder are fairly and properly balanced. Other, potentially more intrusive, means of achieving this aim were considered but this approach strikes a fair balance between the A1P1 rights of the landlord and the contract-holder's Article 8 rights. A landlord may choose to offer a fixed-term standard contract to ensure certainty of income but will not be incentivised to do so in order to circumvent amendments which the Bill makes in respect of periodic standard contracts, including the increased moratorium and notice period in respect of section 173 notices and the restrictions against repeat service of those notices.

20. Where a landlord makes a possession claim on the basis of a notice under Section 173, but the court determines the notice is invalid, when can the landlord serve a new notice under Section 173? Is the landlord prevented from serving a further notice for six months? Is this scenario covered by Section 7 of the Bill? For clarification, if a notice is defective, is it still considered a valid notice for the purposes of the restrictions in Section 7?

Where the court finds a notice to be invalid, it is treated as not having been served in the first place and therefore section 7 is not engaged.

21. While the Bill gives landlords 14 days during which they can withdraw a no fault notice and serve a new one, the Committee heard concerns from landlords and agents that this may not be a sufficient period of time. For example, the Committee was told that a landlord may not become aware that a contract-holder has not signed for a notice sent by recorded delivery within that period. They proposed a 28 day period. Why is a 14 day period more appropriate than a slightly longer period? Would a 28 period not strike a more equitable balance between the rights of landlords and the rights of contract-holders?

Any proposed period would present the same problem if the landlord has not chased delivery confirmation promptly. In any event, whether the contract-holder has received the notice or not should not prevent the landlord identifying an issue with the notice within the 14 day period. We consider 14 days is sufficient for the landlord to examine and identify any error with the notice.

22. How do you justify, on human rights grounds, the landlord being prevented from obtaining possession of their property after six months, in circumstances where the parties to a contract may have originally agreed that the occupation contract would only be for a fixed six months term?

Amendments to the way in which fixed term standard contracts operate are essential to ensure that the Bill provisions which seek to increase security of tenure in periodic standard contracts are not undermined. Allowing a landlord to terminate a fixed-term standard contract of six months, at the end of the fixed term would fundamentally undermine the improved security of tenure being sought by the Bill. This would present a potential 'loophole' which would encourage the practice of landlords issuing six month fixed-term contracts at the outset of the contract and, at the same time, issue a notice to end the contract at the end of the fixed term, following which, either a landlord would take possession or the contract-holder would leave the property. Alternatively, where the contract-holder wishes to remain in occupation, a landlord is likely to offer another fixed term of six months with a notice to end the contract at the end of the fixed term, because this would avoid a landlord having to offer the 12 months' security of tenure provided by a periodic standard contract.

Provision was clearly required to prevent landlords from circumventing the Bill provisions which increase security of tenure in respect of periodic standard contracts. This provision is the least intrusive means of achieving that aim and balances the competing interests of landlords (who may desire the certainty of income offered by a fixed term contract) with those of the contract-holder, (who should expect to benefit from the increased security of tenure offered by periodic standard contracts provided by the Bill, without the prospect of a landlord circumventing those provisions by only offering fixed term standard contracts). These provisions simply afford contract-holders commensurate safeguards with respect to termination, whether they occupy dwellings under fixed term or periodic arrangements.

These provisions are prospective and therefore landlords will be aware of this position prior to entering into a fixed term standard contract and will therefore be aware that they may not be able to rent to a different contract-holder immediately at the end of the fixed term.

23. In the first evidence session the Minister suggested that landlords, when agreeing fixed term contracts, will have to take the requirement to give six-month notice at the end of a fixed-term contract into account. The Committee take this to mean, for example, that if a landlord wants to agree an 18 month fixed term contract with a tenant, they should agree a 12 month fixed term contract. However with this solution, is the landlord still at a disadvantage in making future plans for the property because a tenant could change their mind and leave at the end of the 12 months?

This will be a matter for the landlord to decide during the issuing of the contract. If ensuring the property is vacant at month 18 is the priority then issuing a 12 month fixed term, as set out in the question, is a potential option. Should a landlord instead wish to ensure they have a guaranteed income for this 18 month period, then they would likely choose to issue a fixed term of 18 months.

Under current legislation, a tenant is free to vacate the property at the end of a fixed-term contract without giving prior notice to the landlord, even though the landlord may expect or wish the tenancy to continue beyond this point. However, the Bill does remove the landlord's ability to serve a section 186 notice during the currency of the fixed term, to terminate the contract at the end of the fixed term. This provision is required in order to achieve the policy of improving a contract-holder's security of tenure.