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Dear Chair and Members of the Equalities, Local Government and Communities Committee,

We welcome the opportunity to provide further evidence on the impact of the Renting Homes (Amendment) (Wales) Bill.

1) **Is there a need for this Bill and, if so, why?**

The Welsh Government included an intention to increase security of tenure in the private rented sector (PRS) within its programme for government this term. Upon the implementation of the Renting Homes (Wales) Act 2016, this Bill does achieve that aim in increasing the minimum security of tenure for private sector contract holders from six to twelve months unless they breach their occupation contract.

2) **The Welsh Government has decided to amend the Renting Homes (Wales) Act 2016 before it has commenced. Do you agree with this approach or not?**

We agree with the approach of amending the Renting Homes (Wales) Act 2016 prior to implementation. Practically, a significant body of new documentation and guidance is required to enable the implementation of the Act, including prescribed forms and model contracts. Should the amendment of the Act follow implementation, these documents and guidance would require revision, potentially causing confusion in the aftermath of implementation.

Moreover, the Act is the single largest overhaul of tenancy law in generations. It is preferable that the Act is implemented in one tranche, so as to support effective communications to landlords and tenants (contract holders).

3) **What level of awareness is there amongst landlords, tenants and professionals working in the sector that the 2016 Act is coming? What, if anything, can be done to raise levels of awareness?**

There is very good awareness amongst housing associations and related professionals of the upcoming implementation of the Act. However, there is significant uncertainty around the implementation timetable of the Act. We are aware that Welsh Government wish to implement the Act (commencement) prior to Spring 2021. We are also aware that six months' notice will be issued to landlords

prior to the implementation date. Beyond this, for a number of reasons including the current pandemic, we are not aware of a more detailed implementation timeline.

Many housing associations are large-scale landlords, managing tens of thousands of homes. The implementation of the Act will be a significant undertaking involving communications programmes, significant changes to housing management systems and overhauling of documentation. Furthermore, housing professionals will require training and development to operate to a high level within the new framework the Act will bring in. For these reasons, housing associations would benefit from an increased level of certainty over the timeline for implementation of the Act, including the likely date of commencement and when new documentation and guidance will be published for familiarisation prior to this, so they and their workforce can prepare sufficiently.

It is our understanding that the level of awareness of the Act amongst tenants is very low. This is understandable as neither Welsh Government nor landlords have undertaken any communications programmes aimed at tenants. We believe this was the right decision, as meaningful communications can only be achieved when more detail about the implementation timeline, documentation and guidance is known. Furthermore, it is sensible that any communications are held until the Bill has passed through the Senedd.

4) **The Committee has heard evidence about the impact security of tenure can have on people's health, wellbeing and family life. What groups of tenants/contract-holders might benefit the most from this Bill? Does the Bill do anything to address the needs of the most vulnerable groups?**

There is a growing body of evidence that low security of tenure can have negative impacts on mental health and wellbeing, as well as increasing the risk of upheaval to family life including children's schooling. This Bill will provide all private rented sector (PRS) tenants (contract holders) with an increased feeling of security in their homes and decrease the likelihood that they will need to move home more than once a year, in addition to increasing the minimum time given for sourcing a new home to six months, unless in breach of contract.

This Bill would make no change to the majority of social housing contract holders following the commencement of the Renting Homes (Wales) Act 2016, as the Secure Contract is unaffected.

5) **Do you have any views on the potential impact of the Bill on a landlord's right to peaceful enjoyment of property under Article 1 Protocol 1 of the European Convention of Human Rights, and a contract holder's Article 8 right to private and family life?**

We do not hold any concerns around this as the properties owned and managed by housing associations are not owned by individuals, rather a company, co-operative or mutual.

6) **How effectively does the Bill balance the rights of landlords and contract holders?**

The Bill goes some way to increase security of tenure within the private rented sector and reduce the risk of people losing their homes without fault and at two months' notice.

However, we believe that the Bill should further recognise that housing associations are fundamentally different to the private rented sector, are regulated and do not operate for profit. Therefore, we urge the committee to recognise that measures aimed at the private rented sector should not adversely affect the operations of the social rented sector.

7) **To what extent do you consider that this Bill makes progress towards a legislative universal right to adequate housing?**

Security of tenure is an important cornerstone of a legislative right to housing. At Community Housing Cymru, we believe in a Wales where good quality housing is a right for all, as laid out in our 2017 Housing Horizons vision.[1] We are currently undertaking a refresh of this vision, in light of the coronavirus pandemic.

8) **The Committee has heard that some of the evidence base for this Bill is anecdotal. How strong is the evidence base for changing the**

[1] https://chcymru.org.uk/en/affordable-housing-review/housing-horizons

current approach to no-fault evictions? Is anecdotal evidence sufficient to change the law in this area?

We believe data on repossessions in Wales is relatively sparse, mainly relying on Ministry of Justice court proceedings data. There is little evidence, for instance, over whether a PRS tenancy would have ended through the fault-based system if the Section 21 process did not exist.

However, much of the impact of Section 21 in the private rented sector is psychological, with tenants knowing that they face the potential of losing their home with two months' notice at no fault, even if this is unlikely to occur.

9) Should the Welsh Government be doing more to understand how the sector operates, and how could it do this?

We believe that the Welsh Government is developing a good understanding of the operations of the private and social rented sectors through Rent Smart Wales and regulation of social housing. This understanding could be furthered through these existing tools through the collection of better data on the performance of the two sectors, including information on who is living in homes and the reasons they leave them.

10) Community Housing Cymru says the use of Section 21 (no fault) notices by housing associations is fundamentally different to its use in the PRS. Could you explain what those differences are?

Housing associations use the tenancy framework as laid out in the Housing Act 1988. This is generally the same tenancy framework used by the private rented sector (PRS). However, the maintenancy issued by housing associations is the assured tenancy, affording a high level of security of tenure. The PRS are able to use the assured tenancy also, but choose on the most part to issue the more flexible assured shorthold tenancy (AST).

It can therefore be said that housing associations share their tenancy framework with the PRS, whereas local authority landlords have a separate tenancy framework laid out in other housing acts.

The Renting Homes (Wales) Act 2016 ends this through amalgamating the housing association and local authority tenancy frameworks. Thereafter referred to as *community landlords*. However, some shared aspects will remain between the PRS and community landlords. Crucially, contract types such as the Introductory Standard Contract are variants of the Standard Contract for the PRS, rather than being distinct legal entities.
In the current tenancy framework, housing associations use the AST, but in circumstances restricted through agreement with Welsh Government. These are mainly in the form of:

- Starter tenancies (which will be replaced by the introductory standard contract under the Renting Homes (Wales) Act 2016)). Starter tenancies are issued for a 12-month period to new tenants ahead of an assured tenancy.
- Demoted tenancies (to be replaced by the prohibited conduct standard contract under the Act). Demoted tenancies are issued following a court order to assured tenants as an alternative to eviction.
- Some supported housing tenancies, where this would give an increased security compared to a license.

The AST can be ended by court order following the service of a Section 21 notice. However, the process for this differs fundamentally between housing associations and the PRS.
Firstly, housing associations must ascribe a 'fault' when issuing a Section 21 notice. This should be anti-social behaviour (ASB)[2] or rent arrears. In the PRS, no fault is required. It is our belief that the use of Section 21 by housing associations cannot be referred to as 'no fault'.

Secondly, housing associations follow a pre-action protocol which details actions that should be taken prior to the possession claim going to court. This includes ensuring that the tenant has accessed support to maximise income to reduce rent arrears among other measures.

[2] ASB in this instance refers to seriously dangerous or criminal behaviour such as arson or endangering community safety.

Finally, housing associations generally have rigorous internal appeals processes for Section 21 notices.

11) Tai Pawb's evidence notes that the mechanisms to engage with private rented sector tenants are lacking or underfunded. What challenges does the lack of tenant representation, particularly in the private rented sector, present to policymakers?

We agree that the PRS does not benefit from the same level of tenant representation as the social rented sector. The lack of a tenant union in Wales does make assessing the impact of policy decisions on PRS tenants difficult. Formal consultation is not always accessible to PRS tenants and the contribution of bodies collecting the views of social rented sector tenants, including TPAS Cymru, are valuable.

12) To what extent are social landlords able to use no-fault evictions at present and why do they use them?

Housing associations are not able to undertake no-fault evictions. The ability to use Section 21 by housing associations, and how this does not result in no-fault evictions, are detailed in our response to question 10.

The majority of housing association tenants hold assured tenancies, which cannot be ended using the Section 21 process. Section 21 is used by housing associations where a tenant holds an assured shorthold tenancy (AST). The use of ASTs by housing associations in social housing is restricted to certain applications. These are:

- Starter Tenancies. These are issued to tenants for an initial 12 month period at the start of their occupancy, before converting to an assured tenancy. Starter tenancies support housing associations to let homes to tenants who have high levels of previous rent arrears or have recently perpetrated serious ASB.
- Demoted tenancies. These are issued to tenants in response to a court order, as an alternative to an eviction. Demoted tenancies revert back to assured tenancies after a period of time.

- Some short to medium term supported housing uses the AST, as a reflection that the residency there is designed to develop independence prior to move on to more permanent accommodation.

Due to the specific circumstances of tenants who are resident in social housing under one of the above tenancies, Section 21 is a crucial tool in housing management, particularly for the safeguarding of community safety. As mentioned previously, housing associations only use Section 21 in response to serious ASB or rent arrears.

As discussed, many tenants holding starter and demoted tenancies will have perpetrated serious ASB or have incurred rent arrears in the past.

13) Where no fault evictions are used by social landlords, what measures are in place to protect tenants from any misuse?

Housing associations are not able to undertake no-fault evictions. The ability to use Section 21 by housing associations, and how this does not result in no-fault evictions, are detailed in our response to question 10.

Where Section 21 is used by housing associations there are a number of safeguards, including:

- The pre-action protocol
- Internal appeals/review processes
- Ultimate Article 8 defence in court

Housing associations are also ultimately socially responsible landlords, accountable to their boards. The use of Section 21 is closely monitored and scrutinised.

14) The Bill exempts prohibited conduct standard contracts and supported standard contracts from the new extended no fault notice requirements. Do you support this provision, and why?

We support this provision, as we believe the specific circumstances of the two contract types require the shorter notice period for S.173.

With regards to the prohibited conduct standard contract, a notice period of 6 months, followed by a 6 month moratorium, as per the standard contract, would prevent the use of Section 173 within the first 12 months of the contract. As the contract is designed to run for a term of 12 months, this would remove the option of Section 173, therefore making the contract a less effective tool as an alternative to eviction.

The standard supported contract is a complex contract type, blending elements of licenses and the standard contract. It is designed for use in short-medium term supported accommodation settings. We believe the shorter notice period for S.173 in this circumstance will encourage the use of the standard supported contract over the use of a license, therefore increasing security of tenure.

15) Introductory standard contracts are not given any exemption by the Bill and will be subject to the new arrangements for no fault notices. What impact might this have on social landlords?

Under the current tenancy regime, housing associations utilise Section 21 to end starter tenancies where seriously dangerous or criminal behaviour has been perpetrated by the tenant and is having an impact on the safety of the surrounding community. This situation would continue under the introductory standard contract and Section 173.
In the current regime, the pre-action protocol, regulation of the use of Section 21, and appeals processes put in place by housing associations ensure that tenants are robustly protected from being unjustly evicted using the Section 21 process. Furthermore, the court must be satisfied that the housing association is acting reasonably when applying for a possession order under Section 21.

The alternative repossession route to Section 21 assured shorthold tenancies is laid out under Section 8 of the Housing Act 1988. This is mostly mirrored under Section 173 and Section 55 of the Renting Homes (Wales) Act 2016.

In theory, the Section 8 process is designed to provide a balance between the right of the landlord to recover possession following breach of tenancy and the right of the tenant to remain in their home unless they are at sufficient fault. However, the serious under resourcing of HM Courts and Tribunals Service and the under

provision of quality housing advice and representation has led to significantly drawn out repossession processes in some cases, regardless of the strength of the case. This has led to, in some cases, at fault tenants remaining in their current home for over a year following serious offences against their neighbours, including assault and arson. These cases inevitably end in eviction and the tenant moving into more suitable accommodation, but at the detriment of the surrounding community during the long and drawn out court process. In these minority instances, Section 21 currently provides a much more balanced solution.

Additionally, under the Renting Homes (Wales) Act 2016, only serious rent arrears remains as a mandatory ground, where a court must award possession if the case is proven. The discretionary nature of other breaches of contract is likely to place increased pressure on the courts system, leading to cases taking longer to be heard and decisions delayed.

Where seriously dangerous behaviour is threatening neighbouring tenants and all support services have failed to resolve the issue, the discretionary nature of repossession in these cases is likely to cause serious damage to community cohesion, as vulnerable witnesses are required to attend court and could be more likely to see the dangerous behaviour continue. Under the S.173 process, there is no need for witnesses to attend court.

CHC believes the Section 8 system is not currently fit for purpose, with the resourcing of HM Courts and Tribunal Service and the current range of mandatory and discretionary grounds leading to long and drawn out hearings. This causes unnecessary trauma for tenants, negative impacts on the surrounding community in cases of dangerous behaviour and increased resource burden on housing associations. As the court system remains mostly unaltered under the Renting Homes (Wales) Act, we assume this situation will remain under the new regime.

Housing associations and CHC are committed to reducing evictions and ending evictions into homelessness. We are working closely with Welsh Government and public sector partners to make this a reality. However, to maintain safe communities and keep rent affordable, this cannot equate to zero consequences for dangerous behaviour or serious non-payment of rent.

In cases of seriously dangerous behaviour, the use of Section 21, and in future the use of Section 173 of the RHWA with a two-month notice period, remain a

necessity for ensuring the safety of communities, due to the more definite process compared to Section 8 and its RHWA equivalent. Recent situations of dangerous behaviour include serious assaults with weapons against housing association staff, and attempted arson in a block of flats, threatening the lives of the surrounding community. In these situations, Section 21 provides the ability to make the community safe, whilst ensuring the evicted tenant can be rehoused rapidly.

16) Would including introductory standard contracts in the list of exemptions mean that social landlords would retain an additional mechanism to evict tenants in a way that private landlords would not? Do you think this would be in line with the policy intention of the Bill?

Both private and social landlords would be able to utilise Section 173 to repossess properties. However, only a minority of social housing tenants will occupy their homes under a variant of the standard contract at any one time and therefore subject to Section 173. The majority of social housing tenants will occupy under a secure contract. Nearly all PRS tenants will occupy under a standard contract and will be subject to Section 173.
Including the introductory standard contract in the list of exemptions would retain the notice period for Section 173 under this contract type at two months, rather than the proposed extension to six months under the standard contract. However, we believe this is necessary, as the introductory standard contract is significantly different in its use compared to the standard contract as the introductory standard contract is only intended to last 12 months, for new social housing tenants, prior to conversion to a secure contract. The standard contract in the PRS will be a long-term contract.

We believe that exempting the introductory standard contract, alongside the prohibited conduct standard contract and the standard supported contract would be in line with the policy intention of the bill, as we understand this is to increase security of tenure in the private rented sector. The introductory standard contract will not be issued by private landlords.

17) Given there is work underway to eliminate evictions into homelessness from social housing, is there a case, as some stakeholders have claimed, for removing the ability to issue a no

fault notice entirely so landlords always have to give a reason for eviction?

Housing associations cannot undertake no fault evictions and currently are required to give a reason, either rent arrears or ASB, when issuing a Section 21 notice.

We believe that the Section 21 process, and Section 173, are necessary due to the inadequacies of the current Section 8 process and its Renting Homes (Wales) Act 2016 equivalent. Much of this is due to the lack of resourcing within the courts and tribunals service. Should the fault based system under Section 8 improve in terms of speed and robustness, it could be argued that there would be no need for Section 8 or 21, or their Renting Homes (Wales) Act 2016 equivalents.

18) Are there concerns that private landlords will leave the sector as a result of the amendments in this Bill? Does the Bill in any way risk reducing the supply of private rented accommodation and putting additional pressure on social housing providers?

Community Housing Cymru does not hold a strong view on the actions of private sector landlords. However, if it were the case that landlords were to leave the market, this would be of concern due to potentially increased difficulty in discharging homelessness duties for local authorities and also the leasing of temporary accommodation from private landlords.

19) Are there concerns that the changes to no fault evictions in this Bill might make private sector landlords less likely to let their properties to more vulnerable tenants who may be seen as higher risk?

Community Housing Cymru does not hold a strong view on the actions of private sector landlords.

20) Could this further increase demand for social housing? What wider implications might this have for social landlords given some vulnerable contract-holders may have high support needs?

Demand for social housing is significant in all areas of Wales due to the housing crisis, particularly the lack of affordable housing and inadequacy of the welfare system to cover housing costs. As a general rule, social housing tenants tend to be

more vulnerable than people living in the PRS, due to the nature of the allocations system prioritising people with vulnerabilities for social housing. As such, social housing providers are expert at delivering housing for those who are more vulnerable.

Should the proportion of social housing tenants who are vulnerable increase, pressure on services would increase and additional resources would be required to deliver them.

21) Many stakeholders have expressed concerns about how the courts deal with possession claims. How effective will this Bill be without reforms of the court system, and what measures to reform the system should the Welsh Government push for?

We believe that the Section 21 process, and Section 173, are necessary due to the inadequacies of the current Section 8 process and its Renting Homes (Wales) Act 2016 equivalent. Much of this is due to the lack of resourcing within the courts and tribunals service. Should the fault based system under Section 8 improve in terms of speed and robustness, it could be argued that there would be no need for Section 8 or 21, or their Renting Homes (Wales) Act 2016 equivalents.

Ultimately, we do not believe that housing is well served within the existing court arrangements. A separate housing tribunal, providing specialist judges, would increase the efficiency and robustness of decision making, and ensure fairness to both tenants and landlords.

22) Should there be a dedicated housing court or tribunal that deals with possession claims and other housing disputes?

We believe a dedicated housing tribunal for Wales would be beneficial to both tenants and landlords. No one benefits from poor levels of access to justice. Currently, many housing cases are heard by judges non-expert in housing, a famously thorny area of law. This can sometimes lead to cases being unnecessarily adjourned and delayed. A dedicated tribunal would focus on housing cases, as well as providing the space and time for non-legal interventions such as mediation.

Furthermore, the Renting Homes (Wales) Act 2016 increases the possibility of access to justice by tenants, particularly in the area of fitness for human habitation. This can only be fully realised if the courts/tribunal system has the capacity to offer increased access to justice.

23) The Minister told the Committee that she expects a reduction in the number of social housing possession claims, and that this will free up court time. When is this reduction in possession claims by social landlords likely to happen? Is it likely to happen before the 2016 Act is commenced – expected to be in spring 2021?

The rate of social housing possession claims has decreased steadily over recent years, in fact halving between 2001 and 2017. This is despite the serious challenges posed by the roll out of Universal Credit, which has increased the rent arrears levels of some tenants. This reduction reflects the tireless work of housing associations across Wales in supporting tenants to ensure that issues are remedied before they reach the point where an eviction could be likely.

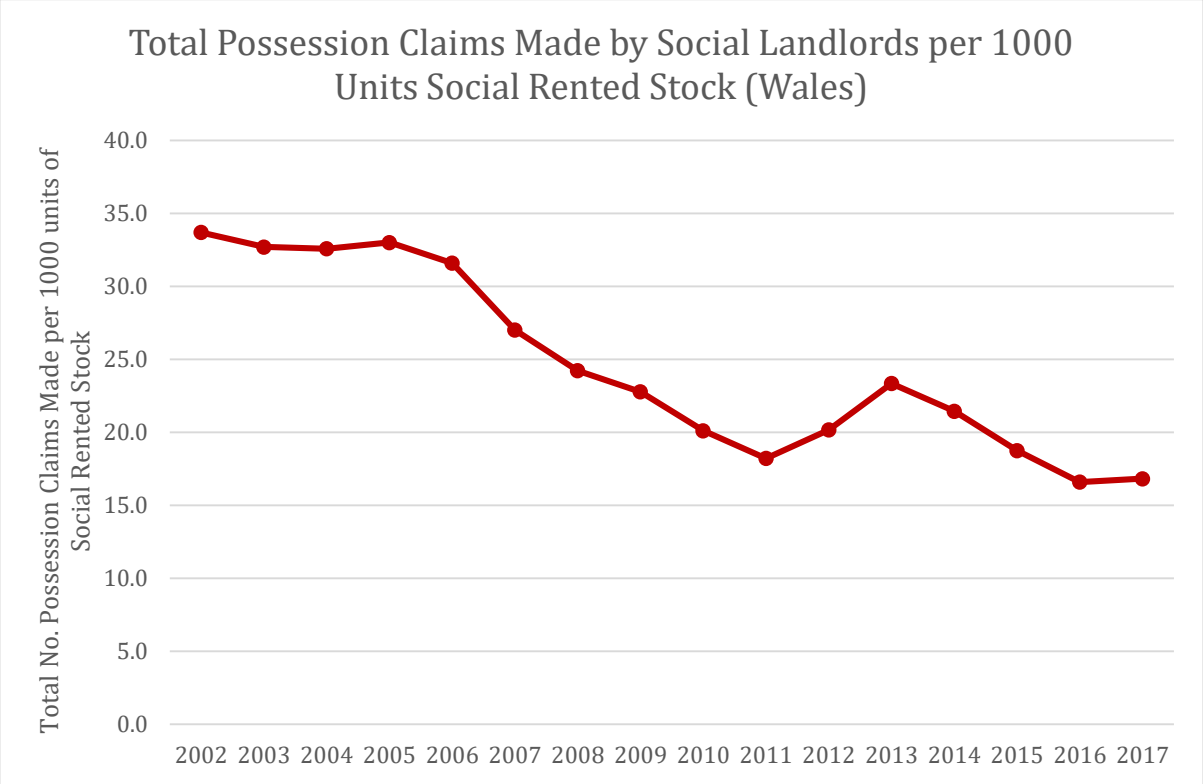

Figure 1: Possession Claim Rate by Social Landlords in Wales (Source: Ministry of Justice)

Efforts to reduce the number of claims to court, not all of which lead to eviction, has intensified in recent years. We believe that this work will lead to a continued reduction in the possession claim rate between now and spring 2021.

Alongside the collective work of housing associations to reduce the eviction rate, we are working across the public sector to ensure that, where evictions do take place, suitable alternative accommodation and support are secured. We do not believe that a zero eviction rate is possible, due to the need to protect communities from serious ASB. However, we believe our vision of zero homelessness as a result of eviction from social housing is possible.

24) A number of stakeholders have raised concerns with the Committee about the potential impacts on homelessness. Given there could be more use of ground/fault based possession claims, particularly in the private rented sector, is it likely that more households will be found to be intentionally homeless?

There is a possibility that councils could find an increased number of households intentionally homeless following a grounds based repossession for wilful non-payment of rent, ASB or other contract breach. We believe that the intentionality test for homelessness should be removed altogether.

25) Will there be an expectation that contract-holders should challenge ground based possession claims in the courts if they present as homeless?

It is very difficult to predict how the Renting Homes (Wales) Act 2016 will operate concerning local authority homelessness decisions prior to commencement. However, care should be taken to avoid increased potential for people to be found intentionally homeless. This is best achieved through the end of the intentionality test.

26) The Minister told this Committee that homeless applicants should expect a service from local authorities at the point they are served with notice, even if that is six months before their notice

expires. Will this happen in practice, or will local authorities wait until it is 56 days until the applicant is threatened with homelessness?

Practice in homelessness prevention varies considerably across local authorities, for a number of reasons including demand and resourcing. Our understanding is that the majority of people presenting before the 56 days are supported by their council. However, we believe that the prevention duty should be extended to six months in line with the changes to S.173. There is a possibility that this will lead to increased demand on council homelessness services and this should be considered in terms of how they are resourced.

27) If local authorities wait until contract-holders are 56 days from their notice expiring, will the six month notice period make any difference to those facing homelessness? Is this a matter that could be clarified in guidance or does there need to be legislative change?

We believe legislative change is required, to provide an absolute legal safety net for people presenting to their council. We also believe that regard should also be given to the level of access to administrative justice in Wales, to ensure that citizens have the ability to challenge the level of service they receive under the prevention duty.

28) In light of the changes in the Bill, Shelter Cymru have called for the statutory definition of successful prevention and relief of homelessness to be increased from having suitable accommodation likely to be available for six months to 12 months. The Minister has said that there is no need to do this, as a notice cannot be issued within the first six months of an occupation contract, so in practice there is a minimum 12 month contract once the six month notice is taken into account. Do you think the justification the Minister has given is sufficient, or do you consider that a change to the statutory definition in the 2014 Act is needed?

We do not hold strong views on this. It would seem sensible that the statutory definition of accommodation deemed to provide successful prevention or relief should be amended to align with the extended security of tenure afforded by the Renting Homes (Wales) Act 2016 as potentially amended by the Bill.

29) Shelter Cymru said that if a local authority was able to persuade a landlord to serve a 6 month no fault notice rather than a 28 day ground based notice that would count as preventing homelessness. Should a scenario like that be classed as successful prevention of homelessness?

We do not believe this should be regarded a successful prevention of homelessness.

For more details, or for answers to further questions, please contact:

Will Henson
Policy & External Affairs Manager