



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref: LF/LG/0408/15

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

16 April 2015

Dear Christine,

## **Renting Homes (Wales) Bill**

Thank you for your letter of 2 April 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.

### **1. Common Law**

In line with the Law Commission's recommendations, the Bill incorporates certain aspects of common law which would benefit from being set out in statute, for example, Chapter 13 of the Bill which deals with abandonment. The particular benefit of this approach is to achieve greater clarity by including such matters as terms within an occupation contract. Schedule 9 on structured discretion, which sets out circumstances to be taken into account by the court in reaching a decision on possession claims and other matters, is also intended to shape the development of the common law.

### **2. Legislative Gaps**

A concern is expressed regarding landlords being able to avoid the restrictions on no-fault possession by using other mandatory grounds in ways not intended, for example, by requiring a variation of a contract term which is likely to be unacceptable to the contract-holder or by raising rent unreasonably. This is not considered to be a significant risk for the reasons set out below.

- Sections 108, 127 and 135 limit the variation of any fundamental terms such that the variation must be in favour of the contract-holder.
- Section 126, which deals with variation of terms of periodic standard contracts other than rent, provides for a notice seeking variation of terms to take effect as a landlord's notice under section 172. As a result, any such notice becomes subject to the restrictions in sections 174 and 175 and cannot be given where those restrictions apply. Further consideration will be given as to whether this could be made clearer in the Bill.

- In relation to contracts where the intention is to grant security of tenure, case law provides that clauses providing for substantial rent increases are unenforceable. Also, the limitation in the Bill to annual rent increases, following the first increase, will restrict the occasions on which rents may be increased. Furthermore, should a rent increase be used as a device to avoid the restriction on retaliatory eviction, it would be open to the contract-holder to submit a counter-claim in respect of the landlord's failure to meet the repairing or fitness for human habitation requirements.

For the above reasons, it is considered there are no significant gaps in the Bill.

### **3. Termination without a Possession Claim**

If, under section 152 (termination by agreement), a contract-holder fails to leave the property on the agreed date, then the original contract would continue. The landlord would be able to seek possession as otherwise provided for by the Bill in relation to the relevant contract.

### **4. Waste**

In line with the Law Commission's recommendations, the concepts of Waste and Tenant-Like User will be dealt with by terms within the occupation contract, rather than relying on common law. For example, in place of Tenant-Like User, a supplementary provision dealing with the contract-holder's responsibility to take care of the dwelling will be included in the regulations to be made under section 23.

### **5. Welsh Residential Property Tribunal and Courts**

The Residential Property Tribunal currently deals with a small number of rent assessments. In 2013-14, Rent Assessment Committees were formed to consider six cases and, in 2014-15, four cases were considered. In half of those ten cases, the Committees either confirmed the rent being proposed by the landlord or set a higher rent. All of the cases were brought under section 13 of the Housing Act 1988, with no cases brought under section 6. Consequently, whilst the Bill makes provision in paragraph 16 of Schedule 11 for the assured tenants to whom this procedure applies to continue to have access to it, the Bill does not carry forward this arrangement for new contracts. The overall impact of the Bill will, therefore, reduce the burden on the Tribunal.

No projections have been made as to the number of cases likely to fall to the Tribunal following implementation of Part 1 of the Housing (Wales) Act 2014. Experience of previous legislative changes of this nature indicates the setting of precedents by the Tribunal will greatly reduce the volume of appeals in later years. My officials will work with the Tribunal to monitor workloads.

Regarding the resolution of disputes more generally, the existing arrangements will continue to apply. It is understood a number of bodies have argued for a greater proportion of disputes to be handled by the Tribunal, or for a specialist housing court to be established. Whilst there are good arguments in support of such a change, it was felt the Bill already involves a considerable change for landlords and contract-holders. Furthermore, as evidenced by the numbers above, very significant capacity-building would be required for the Tribunal to take on a greater role.

## **6. Judicial Review**

On the matter of redirecting judicial review processes away from the court and toward the Residential Property Tribunal, it is felt the administrative law review process is a highly specialised matter which is best performed by the court. We do not have projections as to the number of such reviews but this will be monitored as part of the evaluation of the Bill's implementation.

## **7. Minors**

Section 230, which allows those aged 16 and 17 to hold an occupation contract on the same basis as those aged 18 and over, is an enabling provision to address issues in housing this age-group. Since the provision is limited to occupation contracts we do not believe there is scope for the common law to be altered more widely. Similarly, section 230(5) is limited to occupation contracts under the Bill and, since long leases of more than 21 years are specifically excluded from being occupation contracts, we do not believe the Bill would allow minors to succeed to such leases.

## **8. Cost**

My officials have been in discussion with the Ministry of Justice, Her Majesty's Courts and Tribunals Service, the Judicial College and with judges directly regarding the proposals set out in the Bill. We do not believe the Bill will result in an overall increase in costs. Indeed, over time, there is every reason to expect disputes to reduce as a consequence of greater clarity on rights and responsibilities. Similarly, the costs to landlords and contract-holders should also reduce over time, rather than increase.

I trust this response is helpful and look forward to appearing before the Committee on 22 April.

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive style with a large, sweeping flourish at the end.

**Lesley Griffiths AC / AM**

Y Gweinidog Cymunedau a Threchu Tlodi  
Minister for Communities and Tackling Poverty