

## **INTRODUCTION**

CLA Cymru represents the interests of over **3500** owners and managers of rural land, accounting to approximately half the land mass of Wales. Members operate a wide range of primarily rural businesses including residential tenancies, agriculture, tourism and commercial ventures – at the last count CLA Cymru represents some **250** different types of rural businesses. They also manage and/or own a quarter to a third of all heritage, including the built environment, so that CLA Cymru is by far the largest heritage-owner stakeholder group.

We have been looking after the interests of our members, as well as promoting the positive aspects of land ownership, land management and rural business activities for more than 100 years. Members have been involved in the private rented sector for generations and promote housing's critical role in the community and local economy.

CLA Cymru is pleased to have the opportunity to comment on the Renting Homes (Wales) Bill published on 9 February 2015.

## **THE IMPORTANCE OF THE PRIVATE RENTED SECTOR IN RURAL COMMUNITIES**

The rented sector has increased tenfold in recent years to today where it houses one in three people, over 1 million in all, in Wales.

This has nothing to do with a change of mentality in the housing market toward tenure – the majority of people still want to own their own homes. But as the Explanatory Memorandum to this Bill notes, the 'financial downturn in 2008, combined with tighter lending criteria and housing supply pressures, means that the rental sector is playing an increasingly important part in our housing system.'

Given this, the CLA is concerned about increased intervention in the private rented sector which plays a crucial, and ever increasing, role in the wider housing market. Especially in rural communities where it is often the case that relationships between landlord and tenant are co-operative and long-standing.

It is precisely the relative flexibility and freedom of the Assured Shorthold Tenancy (AST) regime that regenerated the sector. In recent years a series of interventions, introduced piecemeal, have placed a number of additional burdens on landlords. It would be a real shame for increasing regulation to drive locally engaged landlords from the sector.

The result would be a severe depletion of rural rented accommodation at a time when there is already a shortage of affordable homes. The knock on effect to rural communities and the local economy must also remain a consideration. As such, it is vital that this Bill places as few burdens as possible on landlords, and without risk of financial penalty, if we are to ensure sustainable rural communities.

## **GENERAL OBSERVATIONS**

This Bill imposes wide-sweeping reforms on the rented housing sector in Wales with the stated intention to '*provide a clearer, more efficient and cost effective process for both landlord and contract-holder wishing to rent a home.*'

Whilst the Bill is replacing the plethora of social housing tenures contracts as part of these reforms, the reality for the private rental market is that the AST is being replaced like for like

by the standard contract. The burden on the landlord, however, of this replacement is increased significantly as a current simple and relatively short AST may well have to be replaced by sixty plus pages, including fundamental, supplementary and additional terms. The administrative costs as well as the time involved with applying the new requirements to a large portfolio of properties will be considerable, and there is a risk that this could be passed on to the tenant, in the form of higher rents.

CLA Cymru believes that any additional burden placed on landlords, particularly when considering rural properties which due to their age and location are often more expensive to look after, may discourage investment in rural communities and could have the adverse effect of depleting private rented housing stock to the benefit of neither tenant nor landlord.

Furthermore, concern has been expressed by CLA members about how mortgage lenders will react to the proposed reforms and the effect this might have on the housing and buy-to-let markets.

## **SPECIFIC CONCERNS**

### **1) PROVISION OF WRITTEN AGREEMENTS**

Many CLA Cymru members manage mixed property portfolios of hundreds of homes, on a variety of different contracts. Given that each contract will have to be adapted from the original – sufficient time must be allocated to ensure private landlords can manage their properties. We recommend these following changes:

- The period in which a landlord is required to provide a written contract is extended to 28 days.
- The timeframe given for a landlord to issue new contracts to existing tenants in line with the legislation following the introduction of the Bill should be extended to 9 months.

The CLA does not agree that landlords should face financial penalties for failure to provide such agreements.

### **2) HOUSING STANDARDS**

CLA does not agree with the assertion in the Explanatory Memorandum that the *'requirement of fitness for human habitation....based upon the current Housing Health and Safety Rating System (HHSRS) will not place an additional burden on those landlords already renting property that meets HHSRS requirements.'*

The creation of a new fitness for human habitation test will create duplication with the current system of HHSRS, which as the Bill notes it is largely based on, as well as creating a reliance on the courts over local authority. This will lead to further costs and potential litigation.

A possible example of this would be if a tenant went straight to the court without making a complaint to the relevant housing authority. The court would need the complaint to be assessed - no doubt this would be done by an environmental officer of the relevant housing authority who would have undertaken the HHSRS assessment in the first place. This is particularly problematic when considering disputes over such things as damp, where it is often the case that the tenant has not fulfilled their obligation to heat the property correctly causing the damp. Deterioration of the "fitness" of the property is often as a result of how it is used rather than due to neglect by the landlord but this will not prevent landlords being embroiled in costly litigation with very little hope, in reality, of ever recovering their costs.

Furthermore, it is our experience that many complaints that trigger a HHSRS procedure can be resolved through discussions with a local housing authority without incurring any legal costs and reversion to the courts.

As such, the creation of the new system does have the possibility to place additional burdens on landlords and will create unnecessary duplication with the current HHSRS.

### **3) EXCLUSIONS**

CLA Cymru welcomes the exclusion of lodgers from the Bill.

However, tenants currently housed under the Rent Act 1977 should NOT be excluded but brought within the ambit of the Bill if it is to realise its stated purpose of simplifying the system and bring consistency to the PRS.

The CLA does not understand the reluctance to include **private sector** Rent Act tenancies in the current overhaul. The fact that landlords can own properties that hold a decreased value by virtue of its occupant, with a disproportionately low rent, is preventing landlords making much needed investment in properties that are falling into disrepair.

This is a missed opportunity to deal with an important issue.

The CLA's view is that Rent Act tenancies should be included in the current proposed programme of reform and that these serious historical iniquities should be addressed.

Failing this, at the very least, The Rent Acts (Maximum Fair Rent) Order 1999 should be removed and there should be an ability to assess the rents based upon all improvements carried out by a landlord rather than just those since the previous review so that they become cumulative. If a landlord does some improvements, e.g. double-glazed windows, which are not sufficient in themselves to break the capping on review, and then, for instance, installs central heating at a later date, then all of those improvements should be taken into account at subsequent reviews. Landlords are being disadvantaged by doing piecemeal improvements, but often are forced to do so because of financial constraints.

### **4) SERVICE OCCUPIERS**

CLA Cymru believes that service occupiers should be excluded from the Bill.

The provision of accommodation to employees is a term of their employment contract and, as such, the employee occupies as a licensee and for the better performance of their duties. It is not appropriate for housing legislation to redefine existing contractual employment arrangements.

The current position is that the occupation rights of service occupiers do not extend beyond the existence of the job for which they are housed. This is for good reason especially in rural employment such as game keeping and caring for livestock. If the job has not worked out then it will be essential to be able to house the replacement worker as a matter of urgency. If, for example, an employee has been dismissed for gross misconduct, it cannot be appropriate for him to then have to be given 2 months notice (as currently required under the Bill as the occupier will have a standard contract).

Landlords who are also employers are very concerned about this fundamental change in property rights of their employees. Where the employment relationship has broken down, not being able to regain possession of the accommodation that goes with the job will have a detrimental effect on this important aspect of the rural economy.

Where a house is required for an incoming farm or estate worker it is often vital that they can start immediately as livestock and environmental management require on site and uninterrupted management.

## **5) JOINT TENANCIES**

CLA understands the Welsh Government's approach to creating more flexible joint tenancies. Landlords must be reassured that this approach, however, will not impact on the terms of the existing tenancy and that the liability for the contract remains with all tenants until a new contract is agreed.

## **OUTSTANDING QUERIES**

There will be more queries arising as the detail of the Bill is analysed further but the following are of immediate concern to CLA Cymru:

### **1) ASSURED AGRICULTURAL OCCUPANCIES**

The treatment of agricultural workers who were housed after 15 January 1989 requires some clarification.

Although tenancies governed by the Rent (Agriculture) Act 1976 are excluded, Assured Agricultural Occupancies **under the Housing Act 1988** are not specifically referred to and, as a type of Assured tenancy it is assumed that they will be treated as/converted to a secure contract, but confirmation is sought on this point?

Many CLA members have housed qualifying agricultural workers since 1989 who, therefore, are Assured Agricultural Occupants. If their rights/agreements are converted into the new Secure Contract, many issues arise. For example: will the ability to have an outgoing agricultural worker housed by the Local Authority still exist?

If Assured Tenancies become Secure Contracts with the potential for a 'priority successor' and a 'reserve successor' this would appear to be an extension of the existing position where there is currently the potential for only one succession. The concern here is that some of the more generous (and complex) succession provisions would have a detrimental effect on the rural economy and specifically the need to provide homes for workers in remote rural areas when workers change jobs.

**The CLA believes that the best way to deal with assured agricultural occupants is to exclude them from the Bill along with Rent (Agriculture) Act 1976 tenants and other service occupiers.**

### **2) HOUSING OF AGRICULTURAL WORKERS UNDER ASTs**

In practice these days, many agricultural workers are housed under Assured Shorthold Tenancies (ASTs) provided they are served with the correct notice before the tenancy is entered into. CLA Cymru would like to know whether qualifying agricultural workers will still need to be served with a special notice before they are granted a Standard Contract or whether the replacement of the Housing Act 1988 in Wales will make such a step unnecessary?

Or indeed, will it be possible to house such workers under a Standard Contract without any additional security of tenure arising?

This is an area of the law that is often misunderstood and needs careful consideration.

### **3) SUCCESSION RIGHTS**

CLA Cymru seeks specific assurance that, where an Assured Tenancy has arisen on the succession of a family member (rather than a spouse) to a protected tenancy under the Rent Act 1977 or the Rent (Agriculture) Act 1976, there would be no further potential successions if such a tenancy were to be converted to a Secure Contract.

It seems anachronistic that if one of the aims of these reforms is increased flexibility in the housing market across the sectors that this Bill seeks to encumber properties for generations. It is surely a retrograde step to be considering returning to the levels of security similar to those under the Rent Act 1977 which had such a devastating effect on the private rented sector.

The potential for two successions is something that CLA objects to in principle.

### **4) PROPORTIONALITY DEFENCE**

The CLA is looking for reassurance that this potential to challenge repossession actions will **not** be extended to private sector tenancies?