

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



By email only

11 May 2015

Dear Sirs

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

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

Minimum Standards above the 'human habitation' threshold

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

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

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

" 94 Determination of fitness for human habitation

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

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



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

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

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

Jurisdiction of the Residential Property Tribunal

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

- **Appropriate forum:** There may be difficulties in placing some disputes into the more inquisitorial ambit such as the RPT. For example, disputes involving allegations of antisocial behaviour are generally heated, and the adversarial system operating within the court system may be a more appropriate forum.
- **Interpretation of expert evidence and representation:** If, for example, all private sector disrepair disputes were transferred from the court to the RPT it would be likely that the contract holder would be representing themselves; legal aid would not be available and their ability to obtain legal representation may be impeded further as costs are not recoverable in the RPT. Disrepair claims require a surveyor's report and it would be left to the contract holder to present that expert evidence to a tribunal panel. Effectively, the case rests on the surveyor's evidence. The RPT may have the ability to conduct site visits but contract holders would still have to represent themselves through potentially lengthy and factually complicated matters.



The Law Society

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

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

Yours Faithfully

Alice Owen
Policy Assistant
Family & Social Justice Team