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Llywodraeth Cymru
Welsh Government

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John Griffiths AM
Chair Equalities, Local Government and Communities Committee
National Assembly for Wales

22nd May 2017

Dear John

ABOLITION OF THE RIGHT TO BUY AND ASSOCIATED RIGHTS (WALES) BILL

Thank you for your letter of 12 May following my recent letters about the Abolition of the Right to Buy and Associated Rights (Wales) Bill.

In your letter, you asked for clarification on a number of matters ahead of my evidence session on 25 May. I have set out the additional details below.

Consultation

Consultation on the proposal to abolish the right to buy was undertaken across Wales, including in all areas in which the right to buy has been suspended.

The Welsh Government's substantive consultation on the proposals for the Right to Buy and associated rights was conducted through the Housing White Paper 'The Future of the Right to Buy and Right to Acquire', between January and April 2015. The White Paper was published on the Welsh Government's website and sent to a wide range of stakeholders, including organisations representing landlords, tenants and the third sector. As mentioned in Part 1 (4) of the Explanatory Memorandum for the Bill, 94 responses were received from a wide range of respondents, including 30 from tenants of social landlords.

Additionally, stakeholder sessions were held between September 2015 and February 2016. These sessions included organisations representing tenants and Shelter Cymru. Welsh Tenants emphasised the need for an adequate supply of social rented housing to meet the needs of those who cannot afford to acquire a home through the housing market. It was with the support of the tenants' representative organisations (Welsh Tenants and TPAS Cymru) that the duty for information to be issued to all tenants was added to the face of the Bill.

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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.

Shelter Cymru favoured a window of opportunity for eligible tenants in areas where suspension is in place. Conversely they, along with the tenants' representative organisations, were also supportive of the use of the 2011 Measure.

The Measure requires local authorities to consult stakeholders as part of the process of applying for suspension, including bodies representing the interests of tenants within the authority's area and such other persons as the authority considers appropriate.

In order for the right to buy to be suspended, a local authority needs to have evidenced that the demand for social housing substantially exceeds its supply or is likely to do so, and that imbalance between supply and demand is likely to increase as a result of the exercise of the right to buy.

European Convention on Human Rights – Suspended Areas

The Government does not consider that tenants in areas where the right to buy is suspended, have a possession for the purposes of Article 1 of the First Protocol (A1P1).

However, we are satisfied that even if A1P1 were to apply, that the provisions of the Bill, insofar as they work in the context of suspended areas would be compliant with A1P1 and tenants' Convention rights.

The provisions contained in the Bill were designed to give effect to the policy of ending the right to buy, and in doing so we are satisfied that the proposals are Convention rights compliant. This is not the same as saying that the proposals in the Bill, in particular in respect of the one year period before abolition, are necessary for the Bill to be Convention rights compliant.

Article 1 of the First Protocol

A1P1 provides that every natural or legal person is entitled to peaceful enjoyment of their possessions. No one shall be deprived of their possessions except in the public interest and subject to the conditions provided for by law and the general principles of international law. This does not prevent a state enforcing such laws as it deems necessary to control the use of property in accordance with the general interest. In considering whether an interference with a person's possession is compliant with A1P1 the general test is whether:

- the measures taken are in pursuit of a legitimate aim in the public interest;
- the measures taken are reasonable and proportionate and in pursuit of that aim; and
- they strike the "necessary fair balance" between affected parties (see *Mellacher v Austria* (1989) ECHR 10522/83).

In establishing a legitimate aim, States have a wide margin of appreciation in the field of social justice, including social housing (see *James v UK* [1986] ECHR 8793/79).

The legitimate public aim being sought is the protection of social housing stock. Whilst the proposals in the Bill may affect existing tenants directly, the policy is intended to benefit existing tenants, tenants currently on waiting lists, homeless people and any individuals who may find themselves in a position of needing to rely on social housing stock in the future. Whilst there are tenants in areas in which the right to buy has been suspended, and tenants in areas that can still exercise the right to buy, as stated above, where suspension already exists, local authorities will have needed to demonstrate acute levels of housing pressure and a substantial imbalance in supply and demand.

Tenants will also have been consulted upon suspension and have had the opportunity to buy the bricks and mortar in their homes, prior to suspension taking effect.

Local authorities and RSLs in areas where suspension has arisen will have developed business plans on that basis, and have taken action to implement those plans and ensure the delivery of social housing for those most in need of it. To reverse suspension would have the effect of acting in a manner which, albeit temporarily, ignores the fact high pressure for homes exists.

The proposals in the Bill also need to be considered in a wider context. The ending of the right to buy will not affect tenants' rights to occupy their homes; tenants will still have security of tenure and affordable rents, and will benefit from the investment by landlords to bring all social housing up to the WHQS. There are also a range of other measures being taken by the Government to assist access to housing in a variety of tenures, for example Help to Buy – Wales and Homebuy. The Government and social landlords are also investing in new social housing stock which will be safeguarded for future generations by removing the obligation on a landlord to sell their assets at a discount.

The equality and children's rights impact assessments (published on the Welsh Government's website) also show a positive impact as a result of the Bill, and the proposals in the Bill are fully aligned with the principles of the Well-being of Future Generations (Wales) Act 2016.

To summarise, the Government is content that all of the proposals contained in the Bill, including their impact on tenants in both suspended and other areas, are in pursuit of a legitimate aim in the public interest, are reasonable and proportionate in pursuit of that aim, and strike the necessary fair balance. Therefore, the Government considers the provisions in the Bill are compatible with Convention rights and are within the Assembly's competence.

Article 14

Article 14 provides "*the enjoyment of the rights and freedoms set forth in this European Convention on Human Rights shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status*". Article 14 does not provide for a free-standing right to non-discrimination but requires that all other Convention rights are secured without discrimination. As stated, the Government considers that A1P1 does not apply in respect to tenants in suspended areas, on which basis neither does Article 14. However, even if it did, the Government does not believe that there would be discrimination on any of the grounds listed, and in any event the circumstances of tenants in the different areas are not analogous.

Scotland also had areas in which the right to buy was suspended prior to abolition, which took place in 2016. Those suspensions were not lifted prior to abolition. I understand there has not been any formal complaint on Human Rights grounds in Scotland.

Tenants of Suspended Areas - Legitimate Expectation

There has been wide consultation in respect of abolition of the right buy, and the policy was included in Labour and Plaid Cymru's manifesto prior to the election in May 2016. We do not consider that tenants could reasonably expect that the suspensions would come to an end prior to abolition.

A direction suspending the right to buy in an area under the Housing (Wales) Measure 2011 can last initially for five years, extendable to ten. All applications for suspension so far have been for five years.

The abolition of the right to buy was included in the manifestos of both Welsh Labour and Plaid Cymru prior to the Assembly election in 2016. At no point has the Government made any promise or representation that suspensions would be lifted before abolition. Therefore, given the wide publicity of, and consultation on, the Government's proposals to abolish the right to buy, we do not think that any tenants could reasonably say that they have an expectation that the suspension will be lifted prior to abolition (whether after five years, or ten years, if extended) and that an opportunity to exercise the right to buy would be available at that point.

Judicial Review

We cannot comment on the action individuals may take in bringing any action for judicial review. That is a matter for those individuals. However, we can reiterate that we consider the Bill to be within the Assembly's legislative competence and compliant with Convention rights to the extent that they arise.

"Previously let stock"

Thank you for your comments in respect of sections 2 and 4 of the Bill. We appreciate that these provisions are complex and the Government has endeavoured to draft them as simply as possible. However, there are some constraints due to the need to deal with the intricacies of existing legislation, with complexities arising in particular in relation to the preserved right to buy, and due to the need to carve out some exceptions from the general rule restricting the right to buy.

We did consider phrasing these sections with reference to "newly let stock", and in fact an earlier draft of the Bill was produced on this basis. The definition of "newly let stock" was necessarily still framed in reference to stock that was not 'existing stock', though, ie previously let stock. So it was not possible to avoid this concept altogether. In addition, we found that dealing with the complexities of the exception and the preserved right to buy was conceptually complicated by this approach. So, for drafting reasons, the alternative approach in the Bill was adopted.

I hope this information is helpful and look forward to attending the Committee's meeting on 25 May.

Yours sincerely



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