



## *CHC's Response*

### **About Us**

**Community Housing Cymru (CHC)** is the representative body for housing associations and community mutuels in Wales, which are all not-for profit organisations. Our members provide over 158,000 homes and related housing services across Wales for around 10% of the population.

CHC launched its twenty-year 'Housing Horizons' vision for Welsh housing associations in November 2017. Our vision is a Wales where good housing is a basic right for all, and the vision's commitments include a pledge to build 75,000 new homes by 2036.

Our members work closely with local government, third sector organisations and the Welsh Government to provide a range of services in communities across Wales.

### **CHC's objectives are to:**

- Be the leading voice of the social housing sector.
- Promote the social housing sector in Wales.
- Promote the relief of financial hardship through the sector's provision of low cost social housing.
- Provide services, education, training, information, advice and support to members.
- Encourage and facilitate the provision, construction, improvement and management of low cost social housing by housing associations in Wales.

CHC welcomes the opportunity to provide evidence to the ELGC Committee on the Renting Homes (Amendment) (Wales) Bill on behalf of Welsh housing associations.

### **Summary of Response**

1. Housing associations are committed to working with partners in the public sector and beyond to end homelessness. Significant progress has been made by the social rented sector in recent years, including a halving of the use of eviction notices since 2006.
2. The Renting Homes (Amendment) (Wales) Bill aims to reduce the impact of "no fault" evictions of tenants under the Standard Contract in the private rented sector. We agree that it will go some way towards this aim.



3. However, certain housing association contract types are linked to the Standard Contract due to the drafting of the Renting Homes (Wales) Act 2016. These three contract types are designed to widen access to social housing and prevent eviction.
4. We are pleased that Welsh Government has recognised the impact on two of the three contract types and made provision for them in the Bill. We urge the Committee to further consider the impact of the proposed changes to the third contract type, the Introductory Standard Contract.

### **Introduction and Background (S.173 in the Social Rented Sector)**

5. Collectively, housing associations and CHC are committed to supporting people to thrive in safe, warm homes. In the rare instances where someone cannot remain in their home, we are working to ensure that they never become homeless as a result through developing partnerships to ensure alternative accommodation and support. We are working closely with Welsh Government and public sector partners to make this a reality and continue our leading role in ending homelessness in Wales. The eviction rate in the social rented sector in Wales has halved since 2006, a result of the significant efforts to sustain tenancies by housing associations.<sup>1</sup>
6. We are making good progress towards a system where evictions are rare and, when they do occur, people do not become homeless as a result. However, housing associations take the safety of the neighbourhoods they manage very seriously and must have the tools to move tenants damaging community cohesion, as a last resort.
7. We believe the Bill delivers the stated policy intention in the private rented sector and that legislation was required to reduce the impact of the use of S.21 without fault.
8. Increasing security of tenure for tenants in the private rented sector (PRS) where tenants generally enjoy significantly less security than in the social rented sector will make a vital contribution to reducing homelessness and providing peace of mind for a growing number of families living in privately rented homes. The threat of “no fault” evictions in the PRS can prevent families from feeling settled in their homes, and in some instances contribute to mental health issues including depression and anxiety.<sup>2</sup>
9. Housing associations do not undertake “no fault” evictions, primarily due to this being in opposition to their core purpose as providers of social housing, secondarily due to additional regulations preventing the use of S.21 in a no fault manner by housing associations.
10. Extending the notice period of a S.173<sup>3</sup> notice under the Standard Contract to be used in the private rented sector will be likely to reduce the impact of “no fault” evictions,

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<sup>1</sup> Ministry of Justice court proceedings data <https://www.gov.uk/government/collections/mortgage-and-landlord-possession-statistics>

<sup>2</sup> [https://housingevidence.ac.uk/wp-content/uploads/2018/08/R2018\\_06\\_01\\_Frustrated\\_Housing\\_Aspirations\\_of\\_Gen\\_Rent.pdf](https://housingevidence.ac.uk/wp-content/uploads/2018/08/R2018_06_01_Frustrated_Housing_Aspirations_of_Gen_Rent.pdf)

<sup>3</sup> S.173 of the Renting Homes (Wales) Act 2016



through providing additional time for a family to secure a new home when faced with eviction due to no fault of their own.

11. We support the intention of the Bill to increase security of private rented sector tenants in Wales. However, there are some adverse consequences to social landlords, whether housing associations or councils. We do not believe these fall within the original intention of the Bill or overall policy aim of improving security of tenure in rented housing in Wales.
12. The Standard Contract is set to replace the Assured Shorthold Tenancy (AST), which is the tenancy type currently issued to the majority of PRS tenants. The AST is also used in the social rented sector, in specific circumstances. However, the vast majority of housing association tenants live in their homes under an Assured Tenancy, giving long term security and succession rights. This situation will remain under the Renting Homes (Wales) Act, under the Secure Contract.
13. Housing associations currently issue Assured Shorthold Tenancies (ASTs) in the form of Starter Tenancies and Demoted Tenancies. Additionally, ASTs are issued in medium term supported housing, where tenants may be resident for longer than a few months but not permanently. The use of ASTs in these circumstances provide flexibility for both tenant and landlord and provide a route to a longer term Assured Tenancy when longer term residency is envisaged.
14. Unlike private landlords, housing associations are regulated and restricted in their use of Section 21 of the Housing Act 1988 to undertake repossessions under these ASTs. Housing associations can only issue Section 21 notices in response to rent arrears or anti-social behaviour (ASB). Due to this, housing associations cannot undertake no fault evictions as is the case in the private rented sector. In any case, the core social purpose of housing associations in Wales would prevent any such action.
15. Furthermore, housing associations must follow an additional pre-action protocol when issuing a notice seeking possession (NoSP), which includes informing the tenant of the reason for intended repossession and supporting the tenant to resolve the issue. Due to these additional measures and the regulation described in paragraph 10, the use of Section 21 by housing associations is fundamentally different to its use in the PRS.
16. Local authority landlords currently operate under a different tenancy regime to housing associations. However, parallel tenancy types exist to the Starter and Demoted Tenancies used by housing associations, under similar terms, and a similar route to repossession to S.21<sup>4</sup>

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<sup>4</sup> Local Authorities Introductory and Demoted Tenancies are created by the Housing Act 1996. Housing Association Assured and Assured Shorthold Tenancies are created by the Housing Act 1988.



17. Under the Renting Homes (Wales) Act 2016, local authority and housing associations tenancy types are combined, and both categories of landlord brought together under the banner of 'Community Landlord'.
18. Contract types derived from the Standard Contract are created under the Renting Homes (Wales) Act 2016 to replace the use of ASTs by housing associations and their local authority equivalents. These new tenancies, for Community Landlords, are:
  - a. Introductory Standard Contract (replacing the Starter and Introductory Tenancies)
  - b. Prohibited Conduct Standard Contract (replacing demoted tenancies). Demoted tenancies can be ordered by a court and provide an important alternative to eviction, through keeping people in their homes under a different contract for a short time period before restoring full security of tenure.
  - c. Standard Supported Contract (a new contract type designed to encourage greater security of tenure for residents of supported housing).
19. These contract types are based on the Standard Contract and, as such, contain provisions under Section 173 and associated sections, and are affected to varying degrees by the Renting Homes (Amendment) (Wales) Bill.
20. We are pleased to see that Welsh Government has recognised the specific impacts of extending the notice period for a S.173 notice served under the Prohibited Conduct Standard Contract and the Standard Supported Contract. This has been reflected in an exemption from the extension for these contract types in the Renting Homes (Amendment) (Wales) Bill, alongside other minority contract types outside of the social rented sector.
21. However, the notice period for S.173 under the Introductory Standard Contract is set to extend to six months under the Bill, despite the specific impacts on this contract type.

### **Adverse Implications of Extending Section 173 Notice Period under the Introductory Standard Contract**

22. Under the current tenancy regime, housing associations utilise Section 21 to end starter and demoted 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.
23. 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.



24. The alternative repossession route to Section 21 Assured Shorthold tenancies is laid out under Section 8 of the Housing Act 1988. Section 8 is also the sole repossession route for Assured Tenancies. Under section 8, there are a range of grounds for recovering possession, including serious rent arrears and anti-social behaviour. Some grounds are mandatory, where possession should be granted if the ground is satisfied. These include, for example, Ground 8: serious rent arrears and Ground 7A: serious anti-social behaviour. Other grounds are discretionary, leaving the decision over whether to award possession to the court where the ground has been proven.
25. 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.
26. 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.
27. 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.
28. 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.

## **29. Community Safety**



30. 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.
31. 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.

**32. Impact on Tenants**

33. When a tenancy is ended through Section 21, and the tenant becomes homeless despite the best efforts of the housing association and local authority, there are few barriers to the tenant being rehoused. However, where a tenant is evicted through Section 8 proceedings, particularly due to high levels of rent arrears, rehousing can be more difficult. Reasons for this include; the tenant being found intentionally homeless through non-payment of rent, and some PRS landlords refusing a tenancy on the grounds of a previous eviction for rent arrears.
34. We urge the Committee to consider the impact on the wider systems of homelessness prevention of a change to S.173, particularly with regards to the Standard Contract in the PRS.
35. Where seriously dangerous behaviour has been perpetrated on the community, it is highly likely that a court would award possession through Section 8. However, the process remains less definitive than through Section 21. In these cases, Section 21 provides a more definitive conclusion to the situation for the tenant.

**36. Conclusion**

37. The Introductory Standard Contract exists to widen access to social housing, through ensuring that landlords have the tools to let to tenants with significant prior rent arrears or issues with anti-social behaviour (ASB), alongside provision of tenancy support and a trauma informed approach to housing management.
38. We are pleased that Welsh Government have acknowledged the specific roles of the Prohibited Conduct Standard Contract and Standard Supported Contract in the provision of social and supported housing. The retention of the notice period of two months under S.173 for these contract types will protect the efficacy of these contract types in providing medium term supported housing for those in need and preventing evictions.



39. Section 173 provides a backstop for social landlords to protect communities in the rare circumstances where the alternative repossession process can lead to increased impact on tenant and their neighbours.
40. As a priority, the resourcing and processes of HM Courts and Tribunal Service should be improved, to ensure that all repossession processes are fair to tenants and landlords. However, we understand that this is mostly out of the purview of Welsh Government. It is vital, therefore, that the backstop of Section 173 continues to exist.
41. To retain the efficacy of the Introductory Standard Contract in widening access to social housing, the notice period for Section 173 should be retained at two months, in line with the Standard Supported and Prohibited Conduct Standard Contract.

For further information, please contact:

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