

RH 28

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/  
Communities, Equality and Local Government Committee  
Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill

Ymateb gan: Tai Pawb

Response from: Tai Pawb

### **Who we are**

Tai Pawb (housing for all) is a registered charity and a company limited by guarantee. The organisation's mission is, "To promote equality and social justice in housing in Wales". It operates a membership system which is open to local authorities, registered social landlords, third (voluntary) sector organisations, other housing interests and individuals.

### **What we do**

Tai Pawb works closely with the Welsh Assembly Government and other key partners on national housing strategies and key working groups, to ensure that equality is an inherent consideration in national strategic development and implementation. The organisation also provides practical advice and assistance to its members on a range of equality and diversity issues in housing and related services.

### **Tai Pawb's vision is to be:**

The primary driver in the promotion of equality and diversity in housing, leading to the reduction of prejudice and disadvantage, as well as changing lives for the better.

A valued partner who supports housing providers and services to recognise, respect and respond appropriately to the diversity of housing needs and characteristics of people living in Wales, including those who are vulnerable and marginalised.

For further information visit: [www.taipawb.org](http://www.taipawb.org)

Charity registration no. 1110078

Company No. 5282554

### **Introduction**

Tai Pawb welcomes the opportunity to respond to this consultation and the invitation to provide oral evidence to the Local Government and Equality Committee's enquiry.

Due to natural development and diversification of the sector and wider societal changes the issue of tenancy and tenancy law has become a very complex area. Therefore, like many of our colleagues across the housing and third sectors, we

welcome of the creation of a new rental system for rented homes in Wales. We hope that this new approach will ensure that it is easier for both tenants and landlords to understand and execute their rights and responsibilities in relation to renting their homes. This is particularly important as the current, overly complex system, could be significantly disadvantaging people from a variety of backgrounds. For example, people from non-White British backgrounds who compared to White British people are more likely to use the PRS<sup>1</sup>. These groups can face considerable language and cultural barriers in accessing accommodation, while people from other protected groups such as disability, age, sexual orientation, gender reassignment, and religion or belief can face other types of barriers when accessing accommodation. We hope that by simplifying the rental system the current unintentional discrimination could be removed for these groups as well as others.

### **Occupation Contracts and Landlords**

The adoption of two forms of contracts and the subsequent ability to provide model contracts will make it clearer for tenants and landlords. However we have some concerns that the Supported Secure Contract is not seen as a third form of occupational contract. Those people who are likely to be provided with this type of contract are often some of the most marginalised within our society. Part of the rehabilitation process for this group of people is to move them on from this level of intensive supported accommodation into a position where they are able to maintain their own tenancy (potentially with less support). The suggested approach in relation to occupation contract classification, albeit unintentionally, further underlines the distinction between this group of people and anybody else and could further marginalise them.

### **ASB and Prohibited Conduct**

While we welcome the work which has been undertaken to ensure a wide variety of undesirable behaviours fall within the remit of the definition used currently in the Bill we still have a number of concerns. As we mentioned in our official response to 'Renting Homes – A better way for Wales' the term we feel it is key that abuse such as economic, psychological, emotional and other coercive behaviours are also covered by the terms 'ASB and Prohibited Conduct'.

The proposed wording: "conduct capable of causing nuisance or annoyance<sup>2</sup>" is very vague. There is potential that the test applied to decide if conduct falls within this category could be open to abuse and unintentional bias for example in relation to domestic abuse where somebody subjecting a victim to psychological abuse the notion of 'nuisance or annoyance' seems to fall far short of the reality. In complete contradiction to this the notion of 'nuisance or annoyance' could mean that repeat low-level annoyances such as parking space issues could result in being defined as ASB.

The wording for the definition for ASB and prohibited conduct is of particular importance when we consider that tenants of a community landlord (RSL) could have their tenancy demoted to periodic standard contract as a result of breach of

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<sup>1</sup> Census 2011, DC4201EW - Tenure by ethnic group by age - Household Reference Persons, Wales stats only

<sup>2</sup> Renting Homes Bill, Section 3 Chapter 7

tenancy, in other cases they may be evicted. While we recognise the importance of, and support the ability for, landlords to use this tool we are concerned about the potential for bias and unfair treatment for some people from certain groups. In order to protect people we would recommend that an amendment is made to reflect 'harm caused to another person' because of said nuisance or annoyance. This approach would remove any potential for powers to be used irresponsibly by landlords for relatively minor nuisances or annoyances. We would also recommend that you look to reflect the wording for domestic abuse in other legislation to ensure that the letter of the law reflects the spirit it intends (and which we fully support). We would also encourage you to consider issues concerning burden of proof – strong statutory guidance is needed in this area.

## **Deposits**

We welcome the direction of travel with relation to deposits for joint contract holders. However colleagues in the PRS have raised concerns relating to the ability for the existing infrastructure to handle these potential changes. We would highly recommend that this is investigated further to ensure that the current deposits schemes will not fall foul of the new legislation due to the technical restrictions of the systems they are using. We feel this should be addressed through consultation to ensure the implementation timeframe takes account of any changes which might be needed.

In relation to the deposits paid where there are joint tenancy holders consideration should be given to instances where a joint contractor removes their proportion of the deposit upon ending their contract, in particular instances where there is proven domestic abuse. There needs to be clearer legislation regarding the position of the tenant and security of tenure relating to this.

## **Variation to rent – periodic standard contract**

While we welcome that the face the Bill has restricted rent increases to one per annum we have significant concerns that the Bill, as it stands, appears to erode the current rights of tenants in Wales in other areas in connection to rent. It is our understanding that the new Bill proposes that rent increases for periodic standard contractor-holders can be issued from two months after the contract was signed. It also appears that this, initial rent increase, could be for any amount and the only option the tenant has is to accept this or to give notice and leave their home. This significantly worsens the current rights of tenants in two ways:

1. Currently tenants cannot have their rents increased within the first year of their tenancy
2. Tenants have the right to apply to the Rent Assessment Committee which has the effect of delaying any rent increase until the matter has been decided.

As we have indicated previously the PRS has a significant number of people who are from non-White British backgrounds within it, the Bill also provides for younger people to be contract holders, and the Housing (Wales) Act 2014 has enabled the PRS to be used more often for more vulnerable people. We are particularly concerned that unscrupulous landlords may entice vulnerable people into contracts with low rents only to raise rents significantly after the first two months. Tai Pawb is concerned with the potential for vulnerable tenants to be extorted under the new

provision. Under the conditions of the Bill, as it now stands, landlords could attempt to recoup money spent on repairs or choose increase rents once a property has been adapted (with no financial contribution from the landlord) for a disabled person knowing they are unlikely to be able to secure other suitable accommodation. The current Bill would not prevent this and with no recourse to the Rent Assessment Committee there appears to be no protection for tenants from such unscrupulous behaviour.

### **Supported Standard Contracts**

Please also see the section above on 'Occupation Contracts and Landlords'.

We are, broadly, in support of the inclusion of the Supported Standard Contract. We recognise, in many respects, this serves to codify existing practices within the sector to which this applies. However, we have two main areas of concern in relation to the Supported Standard Contract.

1. We recognise and understand the importance for some types of provision to be able to issue temporary exclusion notices. While we support this ability, in principle, we would like to see the Bill strengthened to protect those people who may be excluded. As we interpret the Housing (Wales) Act 2014 section 55 these people would be classified as homeless. Given the nature and vulnerability of these people we would like to see the Bill amended to place a duty of care on the support providers to help assist these people find alternative accommodation for the period of exclusion.
2. Reading the definitions within the Bill for Supported Accommodation which states support can be "supporting someone who finds it difficult to live independently because of age, illness, disability or any other reason." We have concerns that supported living could potentially fall within this. Supported living currently, tends, to refer to a small group of people living together in a property each with their own tenancy but there is support provided. Our concern is this group of people they could have their current tenancy rights eroded. We strongly feel in these instances these people should have their tenancies converted to a secure or standard contract in line with provision the standard provision. We are also concerned that new people who would benefit from this type of accommodation are not automatically given a Supported Standard Contract where they should be provided a secure or standard contract when they enter.

### **Abandonment**

We feel the proposed approach to abandonment could place vulnerable tenants at significant risk. Within the proposal the landlord is required to make enquiries to ensure the property has been abandoned and also to issue a notice to the tenant. If the landlord is satisfied, after 4 weeks, the property has been abandoned they can take actions needed to secure and dispose of the property as they wish. The implications of this proposal is that tenants are expected to inform their landlord of any extended periods of absence from the property for some people, such as those who may be admitted to hospital, this is not practical or reasonable. Even with the ability for the court to overturn a decision and instruct a landlord to provide suitable

alternative accommodation for many people, either due to their needs for accessible / adapted housing or due to the limited housing a landlord may have, there is a significant risk that alternative suitable accommodation will not be available.

In specific regard to the notice issued by the landlord, there is no obligation in the legislation for this to be in a format requested by the tenant or to be issued to a support worker. It would also be beneficial for the contract issued to specifically state the need to inform the landlord of any expected absences (over a certain length) and an obligation for the landlord to provide indication of receiving this to avoid the potential for unscrupulous behaviour on both parts. If such provisions were included within statutory guidance then this would help. Overall clearer guidance on the burden of proof might also be useful for the appeals procedure; however our fundamental concern is that the 4 week period may not be long enough and the judicial oversight through the appeals process may come too late.

### **Variation of Contract – Periodic Standard Contract**

The Bill proposes at section 126 that a landlord may vary a contract on agreement with the contract-holder. If contract-holders does not agree to this variation they must provide notice of termination to their landlord, if they fail to do so within the notice period applicable to contract variation (2 months) the landlord may seek possession.

We feel the process proposed within in the Bill is an improvement on the current situation where variations of contract are only possible through issuing an eviction notice then a new tenancy. The new process allows for the potential negotiation of terms between the tenant and landlord. However we recognise that some people would not be able to enter into such negotiations without support and this may put additional pressure on services such as Shelter Cymru and the Citizen's Advice Bureau. We also recognise that some unscrupulous landlords might use intimidation to ensure tenants agree variation of terms by threatening eviction if they do not, or may choose to frequently vary terms amounting to harassment of the tenant (as landlords may vary terms other than rent as frequently as they choose to)..

### **Improving Home Safety**

We welcome the inclusion of a landlord's obligation to repair within the contracts, along with protection from retaliatory eviction. However we have a number of concerns with regard to the current proposals within the Bill:

1. Equality Considerations – currently if a landlord cannot gain access to a property in certain circumstances it is possible for a landlord to issue eviction notices. We are concerned that there is no protection for vulnerable tenants or those from diverse backgrounds. As the Bill stands currently there is no obligation for the landlord to ensure that the attempts to enter the property are reasonable and take account of the needs of the tenant, for example to have a carer, support worker, or chaperone present. While this could be addressed either in the Bill or in statutory guidance we feel this must be addressed before implication.
2. With the current variation to contract provisions (as discussed earlier) there is no protection to ensure that rent rises are not to cover the cost of repairs nor

they are so high as to be, in effect, simply retaliatory eviction by another mean.

### **Security of Tenure – Periodic Standard Contract**

It is currently posited that the standard default position for the PRS in Wales will be the issuing of a Periodic Standard Contract. This contract option has also removed the six-month moratorium. We feel it is likely that the most vulnerable tenants will be issued this contract as default with only those perceived to be ‘less risky’ tenants offered the more secure fixed term standard contract. Our concern is as more vulnerable tenants, including younger tenants, those from diverse cultural and national backgrounds, and disabled people, need to use the PRS due to low availability within the social rented sector this could create a two tier PRS. We are concerned that the periodic standard contract is seen as a, potential, way of encouraging private landlords to rent to people they might not previously have considered. In effect this could be seen to suggest to landlords that ‘if it doesn’t work out’ it is easy to remove these people from the property in a relatively short timeframe. We feel strongly this sends the wrong message to the PRS and places vulnerable people from diverse backgrounds in particular jeopardy of a revolving door of short term tenancies resulting in them being unable to put down roots, and having significant impact on community cohesion.

This approach seems to be a contradiction to the spirit of the rest of the legislation which is strongly based on a consumer approach. The current proposals in relation to Periodic Standard Contracts means that tenants can be kept on these indefinitely meaning they are never more than two months notice away from homelessness (including within the first 6 months of their tenancy) this makes it very easy for a landlord to, in effect, use a ‘no-fault’ eviction route instead of a fully transparent discretionary ground which could have judicial oversight.

### **Security of Tenure – removal of ‘Ground 8’**

As noted in our consultation response ‘Renting Homes – A better way for Wales’ this power is not widely used currently, despite the increase in rent arrears due to changes in welfare benefits.

The removal of ‘ground 8’ in relation to the Secure Contract and community landlords (RSLs) is welcomed by Tai Pawb as it levels the playing field between Local Authority Housing and Registered Social Landlords where inequity has existed in relation to rent arrears. We feel that the approach outlined in the Bill strikes the correct balance as we recognise that there may be times where eviction is the only course of action, in the face of serious rent arrears, and this can still be achieved through the discretionary powers of judicial oversight. We strongly support the notion that decisions to remove somebody’s home should never be taken lightly or arbitrarily. Therefore the use of judicial oversight to take into consideration the individual circumstances we feel is the correct approach. We feel this protects vulnerable people who may accrue significant rent arrears through no fault of their own. In particular removal of ground 8 could be seen as proactively meeting the general duty within the Equality Act 2010 for example; in relation to those with significant mental health problems, those with language difficulties, disabled people who may not have accessible ways to pay their rent, younger people who may be

entering their first tenancy, older people, and trans\* people who may not have been corresponded with in the correct name.

### **Equality Considerations**

We are significantly concerned that throughout the Bill there is no mention of the Equality Act 2010 or the requirements therein. We are particularly concerned there is no reference to this neither in relation to Anti-Social Behaviour and Prohibited Conduct nor within the notion of 'reasonable refusals' by the landlord. Specifically we are concerned that there is no mention of the protection afforded to Lesbian, Bi-sexual and Gay people when requesting joint tenancies.

### **Dispute Resolution**

Like many of our colleagues, within the housing and third sector, Tai Pawb feels that recourse to the county court is not the most beneficial way to enter into dispute resolution. The costs are high and often the detailed knowledge of housing within the system is lacking. We feel that alternative dispute resolution provision should be explored to include mediation and the use of a specialised tribunal. In our opinion this could potentially save money, free up court time, ensure that judgements are fair and backed by expert knowledge, and could make access to housing justice open to many more people.

### **Appropriate powers in the Bill for Welsh Ministers to make subordinate legislation**

It appears that there are appropriate powers for Welsh Ministers to make subordinate legislation. However we would like to, respectfully, remind the committee the importance of ensuring that all subordinate legislation is fully equality impact assessed and within this process there has been due consideration and active engagement with the people of Wales.