

2<sup>nd</sup> March 2020

## Our vision

Everyone in Wales should have a decent and affordable home: it is the foundation for the health and well-being of people and communities.

## Mission

Shelter Cymru's mission is to improve people's lives through our advice and support services and through training, education and information work. Through our policy, research, campaigning and lobbying, we will help overcome the barriers that stand in the way of people in Wales having a decent affordable home.

## Values

- Be independent and not compromised in any aspect of our work with people in housing need.
- Work as equals with people in housing need, respect their needs, and help them to take control of their lives.
- Constructively challenge to ensure people are properly assisted and to improve good practice.

## Our response

Shelter Cymru welcomes the opportunity to respond to this call for evidence. We are in favour of the Bill. We believe it will make renting a home in Wales fairer and more transparent for all parties. It will help to prevent avoidable homelessness and it will give people who rent a greater sense of security in their home.

Through our [campaigning](#) and our [lobbying](#) we have consistently called for a complete end to no-fault evictions, including during the development of the Renting Homes (Wales) Act 2016. We still believe that a complete end to the no-fault route to possession, together with an end to fixed terms, is necessary to deliver tenants the legal certainty that they can stay in their home for as long as they need.

Ideally we would aim to end the use of mandatory possession altogether, so that every eviction is treated as discretionary and therefore has independent oversight to ensure that it is justified and that steps have been taken to avoid eviction into homelessness. However there are distinct benefits to the model proposed in the Bill,

notably that there will be no new grounds created that could be used inappropriately to form new *de facto* no-fault routes, a trend that appears to be emerging in Scotland.

The Bill will make the Renting Homes (Wales) Act more effective by helping to ensure that grounds are used as they are designed to be used. If there has genuinely been no fault on the part of the contract-holder then it is right to recognise the difficulty that having to move home inevitably causes: one way of doing that is by allowing a more realistic notice period of six months to help people to forward-plan and budget.

We have identified a number of potential unintended consequences, particularly in relation to local authority homelessness services, which must be addressed so that people facing or experiencing homelessness are not excluded from the help they need to find and keep a good home.

We have structured our response below according to the inquiry's terms of reference.

The general principles of the Renting Homes (Amendment) (Wales) Bill and the need for legislation to deliver the stated policy intention

### **Section 1 – Increasing the landlord's notice under a periodic standard contract from two months to six**

During the summer of 2019 we ran an online consultation in which 114 people participated: these included 62 private tenants, 24 former private tenants, 13 social tenants, and seven landlords (see appendix 1 for full breakdown). We found that 85 per cent of people supported the Bill's primary aim to increase the notice period to six months: this includes five of the seven landlords who took part.

Evidence emerged that two months is inadequate to find a good home, placing people under a great deal of stress. We asked whether people had been evicted in the last two years: 14 per cent said that they had. The main reason given was that the landlord wanted to sell. The impacts of eviction at short notice were described as 'devastating' and 'very stressful':

'I now feel very insecure and wonder, constantly, when it will re-occur.'

'It came at a critical time when my twins were about to sit A-level exams. Pressure to find somewhere to move to was immense, and I faced blatant discrimination as a single parent. One twin worked all through his exams instead of focusing on revision as he wanted to support me. As a result he missed the grades he needs to go to

medical school. His whole future put in jeopardy because a greedy landlord didn't want to make repairs to the property to resolve issues with damp.'

'This has been very stressful for both myself and my 15-year-old daughter who is at the most important part of the school year. I am in remission and this is making me feel exhausted both physically and mentally. I do not have family I could stay with. It has made me feel ashamed that I am in this position and I feel totally helpless for the first time in my life, as it is out of my control when the council are not keeping you informed of the process of your application.'

'Devastating. Our mental health all suffered badly. My son attempted suicide and got arrested. My daughter ended up also suicidal. We had to live in a wet, not damp, cold house which was £900 per month and we had no choice but to live there in a dangerous area where the neighbours harassed us because they knew we were homeless. We were stuck there for ten months and it was a miserable existence. My son failed his college and I had to cut back my studies and work due to the pressure. I got pneumonia and ended up in hospital but the council said "tough, you have temporary housing, you have to live in it until you're given somewhere."

'I was evicted four years ago after being in a property that was trashed and derelict. I worked hard on it and did it, and my two teenage sons were then living at home with me. Then the owner decided they wanted to sell. It was a horrendous nightmare and being retired and only on pension credit it was such a horrid experience trying to find somewhere with only two months to do so. It's a miracle I came through it all.'

'I was in private rented accommodation with my husband who at the time suffered strokes and cancer. We were told in the beginning it was hoped we would make it our family home, but when the landlady died and all was passed to her grandson, we were told to leave as he wanted to raise game birds on the land around the property for their annual shoot. It was hell for us, my husband being so ill, and he suffered a few falls whilst I tried to move us out. He was trying to help but couldn't. The agents for the landlord are a well-known firm in <local authority> but they and their "client" couldn't have cared less about us, even resorting to the courts to get us out. We weren't refusing, we were devastated and struggling having had our home there for 11 and a half years. My husband has since died.'

'We had been living there for five years, and were very surprised that we had to leave. Owing to the shortage of suitable accommodation, we ended up living in a guest room in a retirement complex. We have now found accommodation, but it is a small flat, so most of our furniture and all my tools are in storage, which is an extra expense. The stress levels have been unbelievable.'

'We were served with a section 21 notice for alleged rent arrears. In fact, the agent had changed their bank details but omitted to tell us. Fortunately, we were able to prove that we'd paid and she agreed not to enforce the notice – but didn't rescind it, either. A six-month notice period would not have had anything like such a disastrous effect on our health.'

A total of 13 respondents (11 per cent) were opposed to the proposal, of whom five respondents were opposed because they felt it should go further.

'It may make it easier to find somewhere else to live, but would not lessen the impact of moving from my family home involuntarily. It would disrupt family life and may affect my children's schooling. They may even have to move school. It is not fair to have to go through this simply because I can't afford to buy a house.'

Our position is that although six months is a more realistic length of time to find alternative accommodation, a no-fault eviction is still an inherently unfair concept. A number of respondents said they would still be at risk of no-fault eviction and that fear of no-fault would hold back their sense of security and ability to feel at home.

A truly fair system would not permit landlords to evict someone from their home without having to justify why. However, even though we will still be calling for an eventual end to fixed terms, we do recognise the advantages that a longer notice period will bring. These include:

- An increase in judicial oversight of evictions, bringing greater fairness and peace of mind to contract-holders in the knowledge that if they pay the rent and look after the property, they will have longer to find a new home if their landlord decides to evict;
- A relatively clear system with a limited number of grounds, which will be less complicated for both parties, and which doesn't unwittingly create multiple new no-fault routes by establishing additional mandatory grounds for possession that might be open to manipulation. Anecdotally we are hearing that in

Scotland, the ground allowing landlords to evict in order to sell has been open to abuse;

- A strong deterrent to revenge eviction, which frequently features in Shelter Cymru casework – putting contract-holders in a better position to enforce their right to live in a home fit for habitation;
- An effective end to the use of no-fault by housing associations, which we agree with – housing associations are keen to ensure that nobody is evicted from social housing without a good reason, meaning that judicial oversight should not be an unwelcome prospect;
- Potentially, better use of homelessness resources: if the rent arrears ground is relied on more often there may be increased scope for raising counterclaims for disrepair or other landlord faults such as failure to protect the deposit. Where this happens currently, we find it increases the possibility of tenancies being saved through negotiation with the landlord. For example, a landlord who is at fault through failure to carry out repairs may agree to clear a tenant's arrears and issue a new tenancy, rather than face the expense of the counterclaim. There is potential for this type of negotiation to take place more regularly, preventing homelessness and incentivising investment in addressing disrepair.

We do not believe that these benefits can be realised without legislative change. Voluntary approaches to increasing security of tenure have not had widespread success, mainly because long fixed term tenancies typically tie tenants into unrealistic financial commitments for years into the future.

### **Schedule 1 – standard occupation contracts to which two months' notice will apply rather than six months**

The new Schedule allows a wide variety of tenancy contracts to be excluded from the requirement to give six months' notice. While we understand the rationale in most cases, we do not agree with the inclusion of prohibited conduct standard contracts. These contracts allow social landlords easy access to the no-fault 'landlord's notice' ground – but if there has been evidence of prohibited conduct, there are already appropriate grounds that should be used so that the facts can be ascertained and the contract-holder has a right to defend their home.

Our casework includes instances of social landlords using section 21 when we know that the tenant is not in fact at fault and would have been likely to keep their home should the landlord have relied on a discretionary ground. Allowing social landlords continued access to an easy no-fault route will undermine the purpose of the Act as well as the Welsh Government's policy commitment to ending evictions that lead to

homelessness. The Bill could have the unintended consequence of encouraging landlords to seek higher numbers of prohibited conduct standard contracts, which would undermine security in the social sector and take up court time. Allowing social landlords to retain the ability to use 'no fault' where there has been alleged fault, is not consistent with the policy intention of this Bill.

### **Section 8 – withdrawal of landlord's notice under section 173 by the landlord**

We feel it is reasonable to allow landlords to withdraw a defective section 173 notice and re-issue it in correct form, with the proviso that the notice period begins from the date of re-issuing. We sometimes defend possessions on the basis that the notice is defective and this can be a valuable way of gaining some extra time for tenants, particularly as there is so little scope for defending a section 21. However, we recognise that a longer notice period will make it more important that landlords are given the opportunity of correcting defects.

We would recommend that the Bill is amended so that landlords are required to explicitly give notice to the contract-holder that the first notice is withdrawn. This will avoid confusion for either party. For example, a contract-holder might not understand which notice is the correct one; or a landlord might seek to rely on either/or if one has a defect. Clarity in these circumstances will be beneficial for both parties.

### **Section 9 – restriction on giving notice following a retaliatory possession claim**

The vast majority of people who took part in our consultation exercise felt that nobody should have to live in substandard accommodation, and that landlords should honour their responsibilities to keep properties in a good state of repair. There were 16 spontaneous mentions of direct experiences of revenge eviction, or the fear of eviction deterring people from asking for repairs:

'Because I live in an old house and it would be nice to ask for some upgrades without feeling vulnerable.'

'I was in a situation where this very nearly happened, but I decided not to push the landlord as my flatmate was incredibly vulnerable and couldn't cope with the stress and anxiety. This protection would enable tenants to have stronger and more protected voices.'

'I have in my work through my environmental health team taken landlords on for the protection of tenants and they have subsequently evicted these tenants because they complained to me about the dangerous state of the property so this proposal... is very much needed.'

'I myself have been through an issue with a landlord renting me a property that was in disrepair and I ended up leaving after six months. He continuously has people in the property for six months and then gets new tenants in to avoid repairs.'

'Our current property has damp, exposed electrics, failing guttering. This has been the case from almost the moment we arrived but we didn't want to say anything because the price was good. No way we're going to push about these things because we don't want to be punished. We don't want to piss off the landlord. We were told right from the start – he doesn't like spending money.'

Although the 2016 Act had already made welcome provisions to deter landlords from retaliatory eviction, this Bill will strengthen those provisions by ensuring that the no-fault route to possession is no longer a quick fix. The notice period, together with the defence to a retaliatory action outlined in section 9, will put contract-holders in a stronger position to ask for repairs and maintenance.

'Might be more likely to push to have something done about the damp etc.'

'I would feel I could report/ask for repairs to be done without feeling if I complain I will be at risk of being evicted.'

For those people whose landlords have attempted a retaliatory eviction, the Bill will mean more time for the repairs to be carried out and more time to make a compensation claim if needed. However, it's important to ensure that there aren't negative consequences for tenants whose landlords refuse point blank to carry out repairs. In this situation, with a six-month ban on a further section 173 notice being served, contract-holders could potentially be left in substandard or dangerous accommodation for months on end, if they were unable to find anywhere suitable and affordable to move to.

'This would offer more security to all tenants, but needs to be paired with proper enforcement and action on repairs.'

Our casework suggests that some local authority environmental health services may be struggling to meet demand for disrepair enforcement: improvement notices are not always followed up on, leaving some tenants with little recourse to help.

When landlords persistently refuse to undertake repairs, it would be desirable for the Welsh Government to issue guidance to local authorities that contract-holders ought to be deemed homeless, in that their accommodation is not reasonable to occupy.

We do recognise that in the most serious cases where a home is deemed not fit for human habitation under the Act, landlords would have a strong incentive to invest in repairs since otherwise contract-holders are no longer obliged to pay rent. This does depend however on access to environmental health services, and on the disrepair being sufficiently serious to be classed as unfit.

### **Section 12 – landlord’s request to vary periodic standard contract terms**

We welcome the removal of the provision in the 2016 Act to allow a landlord to treat a notice to vary the terms in the contract as a section 173 notice. We have previously pointed out how this ability undermined the consumer contract intent of the Act by allowing landlords unilateral power to vary the contract, threatening eviction if the contract-holder does not consent. The amended Act will help to rebalance negotiations over contract variations.

### **Section 13 – Power to restrict right to exclude contract-holder from dwelling for specified periods**

We understand that the intention of this is to allow contracts to be designed that fit the requirements of the student sector. It is welcome that the Welsh Government is proposing to make regulations, to give more time to engage with students and landlords. We would recommend that the legislation gives contract-holders the ability to challenge exclusions, to avoid the provision being misused by landlords.

Any potential barriers to the implementation of the Bill’s provisions and whether the Bill takes account of them

### **Court time**

We know that other stakeholders are citing pressures on court time as a potential barrier. Although these pressures are real we do not see this problem as insurmountable, for a number of reasons.

This Bill will be implemented at a time when there is considerable reform taking place in the social sector, thanks to [our work](#) and the Welsh Government’s commitment to eliminate evictions from social housing that lead to homelessness. As social landlords account for around two-thirds of possession cases, we agree with the Welsh Government’s impact assessment that the zero evictions movement is likely to free up considerable court time.

Over and above this important work, there are a number of options for increasing the courts’ capacity to cope with higher numbers of possession hearings. While the idea of a Welsh specialist housing tribunal is attractive, this does carry significant costs



and there would need to be Legal Aid available to ensure tenants had advocacy (which is not currently the case for tribunals).

It may be more practical to focus on improving current systems. Our court duty caseworkers find that there is already good practice in Wales in the management of housing lists: for example, Swansea and Newport are felt to have well-organised approaches. There is also potential to require housing cases to be heard by specialist judges, thereby increasing efficiency and consistency.

### **Contract-holders' awareness of their rights**

Anecdotally, tenants' lack of awareness of their rights has been an issue in Scotland despite the Scottish Government investing considerable funds in a comms strategy. Non-attendance at the recently established tribunal is a problem, as we currently find for possession hearings in courts in Wales.

The fact that Scotland has had challenges raising awareness is not a reason to neglect investment in communications in Wales. We should engage with the Scottish Government to learn what has been most effective and any lessons for our approach. We also have some advantages in Wales: the Renting Homes Act's emphasis on accessible written contracts should help contract-holders have access to clear information; Rent Smart Wales' database of properties also has great potential to reach people in their homes.

We find, however, that awareness in itself is not always enough: some tenants are still unwilling to stand up for their rights, either because they are afraid of their landlord or the formality of the court, or because they are unwilling to put themselves and their family through the stress of a dispute. Although we work with thousands of tenants every year to help them defend their homes, we are only too aware that there are many more who do not seek advice. In reality, some will always seek to move once notice is served, regardless of the justice of the situation. It is important to help persuade contract-holders to exercise their rights by reassuring them through the provision of clear and non-threatening information, and by ensuring that independent advice services continue to be accessible in every part of Wales.

### **Harassment and illegal evictions**

During 2019 we helped 292 people in Wales who had been illegally evicted by a private landlord. In our experience it is extremely rare for landlords to face any consequences for this course of action: while a tenant may be able to get an injunction to get back into the property, we find that police and local authorities rarely take any enforcement action. We believe that this reluctance to enforce has

emboldened some landlords to attempt illegal eviction in order to avoid the court process.

There is a likelihood that increasing the notice period to six months will lead to a rise in illegal evictions, which will undermine implementation by creating an alternative route to possession operating outside the protections of the law. There may also be a rise in harassment, with some landlords attempting to force contract-holders out by taking measures such as cutting off utilities. To mitigate against this, the Welsh Government should:

- engage with police and local authorities to understand the practical issues they face in enforcing the law around harassment and illegal eviction
- provide training to the police in tenant rights on eviction
- engage with Rent Smart Wales and ensure that they are able to monitor harassment and illegal eviction and hold landlords to account
- prioritise work that helps contract-holders be aware of their rights.

### **Inducements to leave early**

A further possible effect of the Bill could be an increase in landlords offering inducements to contract-holders to leave the property early. Mutually beneficial arrangements should not be discouraged, as negotiation and an earlier departure may be beneficial to the contract-holder. However, if contract-holders are vulnerable they may end up feeling pressured to leave early. Again, people's awareness of their rights is very important.

The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation

We believe the powers are appropriate.

Whether there are any unintended consequences arising from the Bill

### **Impacts on homelessness**

The two month notice period puts great stress on families using local authority homelessness services who are often told that they must remain in the property, sometimes even until the warrant is executed, because this is less difficult than placing them in temporary accommodation. As well as creating stress and uncertainty

this can also lead to court costs (although homelessness services will sometimes pay these out of spend-to-save funds) and increasing rent arrears.

Extending the notice period is an opportunity to prevent homelessness at an earlier stage, allowing more time to find alternative accommodation, access support services, and maximise positions on social housing waiting lists, thereby relieving pressure on temporary accommodation and on family stress. However, we will need to make some changes to homelessness policy and practice otherwise we may not see these positive benefits and may in fact see current problems worsen. Specifically:

- Some of the homelessness duties in Part 2 of the Housing (Wales) Act 2014 are a poor fit for a six month notice period. For example, the definition of ‘threatened with homelessness’ has a timeframe of ‘within 56 days’. Under this definition, contract-holders who have received a no-fault notice would be deemed not threatened with homelessness, and would be told to come back when the notice has almost expired. There would be no legal duty to intervene earlier, but failure to do so may lead to much higher rent arrears, deteriorating mental health, and a worsening relationship with the landlord. Our recommendation is that the Housing (Wales) Act is amended to extend this definition to ‘within six months’. Without statutory backing it may be difficult for the Welsh Government to persuade local authorities to carry out early prevention. Additional resources would help to an extent, but local authorities are under great pressure and because of this, we are finding that a culture of minimal statutory compliance is an issue in some areas.
- Similarly, the statutory definition of successful prevention and relief of homelessness is that ‘suitable accommodation is likely to be available for occupation by the applicant for a period of at least six months’. This definition was originally developed with reference to the standard minimum length of a private tenancy. We are therefore recommending that this be increased from six months to twelve.

### **Increased fault-based possessions**

We are supportive of the principle that any alleged fault on the part of the contract-holder should be decided via independent judicial oversight. This is a crucial part of a fair housing system. However, a rise in fault-based possessions will have a number of effects that need to be addressed. Currently the section 21 route does give people an opportunity to move on from previous bad experiences without necessarily having a poor reference for future housing. However this may not be so easy if there are rises in fault-based possessions and use of money judgments, which would have a visible effect on people’s housing histories and their affordability profile.

This is not a reason to hold back security of tenure for the majority of contract-holders, but it does mean we must look at other aspects of the Welsh housing system to ensure that we don't end up worsening some people's access to the housing they need and increasing the likelihood that they will experience prolonged episodes of homelessness:

- Allocations policies will need to be revised to ensure that a thorough assessment is done before people's housing applications are penalised. Currently there are at least two local authorities in Wales where people are banned from the waiting list if they have former tenant arrears from privately rented housing – absurdly barring people from affordable housing because they can't afford market rents. This really needs to be addressed in revised guidance from the Welsh Government.
- There are consequences for intentionality. Thanks to the Welsh Government, use of intentional homelessness has effectively been ended for households with children. However there is still a steady stream of intentionality cases for all households (with 201 cases in 2018/19) and it is also used as an informal threat to encourage applicants' compliance. Previous [research](#) has shown the extremely damaging impacts of intentional homelessness decisions on people's lives. We are in favour of ending intentionality completely: however, as a short-term measure we would suggest issuing statutory guidance to avoid a spike in intentionality (as well as in 'unreasonable failure to cooperate'). For example, the guidance could stress the need for a very thorough affordability assessment in arrears cases (some criteria would be useful, perhaps based on the recent case of *Samuels v Birmingham City Council*).
- The Welsh Government should issue guidance to local authority homelessness services so that they don't insist on people going to court to defend possession if their case is weak or if they aren't represented or have Legal Aid. This could lead to contract-holders having to pay considerable court costs: these can easily spiral into thousands of pounds for section 8 cases currently. Whether or not a case has merit is not always apparent to people without specialist legal knowledge. The Welsh Government will need to ensure that there is access to legal advice for contract-holders and local authority homelessness services – embedded legal advisors may be useful here.

### **Prohibited conduct standard contracts**

As outlined above, we caution against incentivising social landlords to seek higher numbers of prohibited conduct standard contracts. It would not be desirable to reduce social tenants' security unnecessarily, or to take up court time to do so.

## The financial implications of the Bill

We are actively considering the financial implications of the Bill for our services, which already experience a high level of demand. We are optimistic that we will see a reduction in casework from the social sector in future (although it is too soon for this to have materialised as yet). The Bill will create a need for more litigation in the private rented sector. The more effectively the Welsh Government can achieve the aim of eliminating social evictions into homelessness, the better able we will be to meet the increased demand for advice from people who rent privately.

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## Appendix 1: Survey demographics

Housing status	Private tenant	62	54%
	Previous private tenant	24	21%
	Social tenant	13	11%
	Landlord	7	6%
	Owner-occupier	4	4%
	Homeless	1	1%
	Other	3	3%
Gender	Female	69	61%
	Male	42	37%
	Non-binary	3	3%
Ethnicity	White	113	99%
	Mixed	1	1%
Age	18-24	9	8%
	25-34	18	16%
	35-44	18	16%
	45-54	21	18%
	55-64	22	19%
	65+	26	23%
Children	Dependent children	37	32%
	Non dependent children	2	2%
	No	10	9%
Claiming housing benefit / UC	Yes	38	33%
	No	76	67%

**Total sample size was 114 adults. Fieldwork was undertaken between 9<sup>th</sup> and 27<sup>th</sup> August 2019. The survey was carried out online.**