

Julie James AS/MS
Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government



Llywodraeth Cymru
Welsh Government

Llyr Gruffydd MS
Chair
Finance Committee
Senedd Cymru
Cardiff Bay
Cardiff CF99 1SN

16 July 2020

Dear Llyr,

I am writing in response to your letter of 30 March, and ahead of my appearance before the Finance Committee on 14 September to give evidence on the Renting Homes (Amendment) (Wales) Bill.

Please find enclosed as requested my responses to the questions that would have been asked had the 18 March evidence session gone ahead.

I hope this information is helpful to the committee and I look forward to the resumption of scrutiny of this important legislation.

Yours sincerely,

A handwritten signature in blue ink that reads "Julie James". The signature is written in a cursive, flowing style.

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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.

Responses from the Minister for Housing and Local Government to questions from the Finance Committee in relation to the financial implications of the Renting Homes (Amendment) (Wales) Bill

1. Can you give a brief outline of the objectives of the Bill; why is amending legislation required to achieve the policy objectives and why has the Welsh Government not yet commenced the 2016 Act?

This Government has made a commitment to improve security of tenure in the private rented sector during the current Senedd term, and the amending Bill is necessary to achieve that.

Without the amendments this Bill makes to the Renting Homes (Wales) Act 2016 (“the 2016 Act”), a landlord would need to provide only two months’ notice under a section 173 notice when that Act comes into force.

The amending Bill will improve security by increasing the notice period under a landlord’s notice from two months to six months. It will also add a further significant benefit for contract-holders by preventing the serving of a possession notice during the first six months of occupation, where there is no breach of contract, rather than four months as the Act currently provides.

The Bill will be particularly beneficial for those who rent their homes in the private rented sector and whose current assured shorthold tenancies will convert to standard occupation contracts when the 2016 Act comes into force, because unlike secure tenancies, these contracts will include a landlord’s notice ground.

We always knew it would take some time to implement the 2016 Act, not least because it is supported by approximately 20 SIs, which have taken time to develop and draft. Many of these, such as the regulations on determining fitness for human habitation, are extremely complex and have required bespoke consultation and engagement with stakeholders.

The 2016 Act requires significant changes to be made to the courts’ Civil Procedure Rules and IT systems in order for it be enacted in Wales. Both of these have entailed a significant volume of work and protracted negotiations with the UK Government, a process which has been made even more complex due to the fact that Her Majesty’s Courts and Tribunals Service (HMCTS) have also been engaged in their own IT reform programme, the timetable for which has slipped several times already.

2. In Plenary last September you stated that the Welsh Government was going to implement the court IT changes at its own expense, in advance of the whole court system being changed. Can you explain why this is the case; what is the estimate of the cost and why has it not been reflected in the Regulatory Impact Assessment (RIA).

When it became clear to us that the timescales of the HMCTS IT reform programme were hindering our ability to implement the 2016 Act, we committed to funding the

changes required to the system to enable the new arrangements to operate in Wales ourselves.

Having taken this decision, my officials have been working with HMCTS counterparts to finalise the necessary changes, which it seems may be less significant than we had originally anticipated¹. We are confident therefore, that this will not further delay our implementation of the legislation once the amending Bill has been passed.

The cost for this piece of work has been included in the RIA: it is at paragraph 8.53 on page 51. However, I should be clear that this cost is not as a result of the amending Bill, but rather will be incurred in order to allow for the provisions of the 2016 Act to become operational, irrespective of whether we make this amending legislation or not. I am also confident the amending Bill will not of itself require further changes to be made to the IT systems, so this cost will not increase. Since there is no additional cost as a result of this Bill, it would not be appropriate to include any IT costs in the RIA summary tables on pages 25-28 of the Explanatory Memorandum.

3. Costs are quantified for a period of five years since “the costs and benefits of the Bill are expected to reach a steady state quickly”. Can you explain on what evidence this assumption is based?

The five-year projection relates only to local authority costs and savings. We have estimated that there will be modest cost savings to local authorities in meeting their homelessness duties as a result of longer notice periods. Projecting over five years allows us to demonstrate the potential savings across a range of scenarios.

As set out in the RIA, we have estimated the potential costs and savings which could be achieved should 10% to 40% of contract holders who receive a Section 173 notice successfully self-resolve, thereby avoiding the need for local authority intervention (tables 8.2 & 8.3 on pp.50-51 refer).

The assumption that a steady state will be achieved quickly is based on the fact that all the legislative changes resulting from this Bill, and the 2016 Act which it amends, will come into effect on a set date, rather than being implemented incrementally, with the vast majority of existing tenancies converting into one of the new occupation contracts. So whilst there will be initial transitional costs as the sector moves to the new regime, there will be no further ongoing costs as a result of the amendments made by this Bill.

4. The RIA notes three options have been considered. These include the option to introduce an amending Bill to remove the section 173 ‘no fault’ ground from the 2016 Act and add a further range of possession grounds in its place. This

¹ HMCTS gave us an initial ‘Rough Order of Magnitude’ of up to around £500,000. However, following more detailed work with HMCTS we are confident it will be a much lower figure. However, I am not able to provide an accurate estimate of what this lower figure will be at the current time, but am happy to forward this to the Committee once it has been confirmed, if that would be helpful.

approach would be similar to the arrangements recently introduced in Scotland and those consulted on by the UK Government for potential introduction in England. On what basis did you discount this option and why have its costs and benefits not been quantified.

We ruled out the approach taken in Scotland where the 'no-fault' ground has been replaced with a wider range of alternative grounds, as we are unconvinced that this approach, in reality, actually increases security of tenure in a meaningful way: it is open to abuse and the arrangements there still allow for eviction with only 28 days' notice in certain situations where the tenant is not at fault.

Having determined that this option would not achieve our policy objectives we did not take them forward for further analysis – that is why we did not include an assessment of the potential costs and benefits in the RIA.

5. How have you engaged with stakeholders in respect of the financial implications of the Bill, particularly contract holders; how has this provided assurance that the estimates are complete and accurate.

In our consultation we included a specific question regarding the costs and financial implications of the Bill. The responses we received, including from Shelter Cymru which conducted its own online questionnaire to which 114 individuals responded, helped inform our thinking in developing the RIA.

Prior to publishing the RIA, in order to gain a tenant support perspective, my officials discussed the assumptions we had included with both Shelter Cymru and the National Housing Networks Manager: neither raised concerns, nor felt the assumptions were unfair. We also attempted to meet with the Residential Landlords Association for a similar discussion, but for a number of reasons we were not able to do so. We have, however, engaged closely with the RLA, and other landlords' representatives, in developing the Bill more generally, which stakeholders have acknowledged during their evidence to the ECLG Committee.

It is also worth bearing in mind that whilst engagement with stakeholders has been helpful in developing and testing our assumptions, the accuracy of any cost/benefit estimation exercise is limited by the very nature of section 21 of the Housing Act 1988 and how the current system operates: in particular, because an unknown number of those tenants who receive a section 21 notice leave the property without the landlord having to make a claim to the court it is very difficult to calculate the precise costs of these arrangements and how, and by whom, they are incurred.

6. The RIA does not reflect all costs likely to be borne by landlords, including legal fees. How do you respond to the Residential Landlords Association statement, set out in its consultation response, that these are 'clearly costs' to landlords and Welsh Government 'must justify itself' as the changes are as result of legislation it will have brought forward.

The RIA provides an estimate of the costs that will be incurred directly as a result of the amendments the Bill will make to the 2016 Act. The extended notice periods and other changes the Bill makes will not increase the cost of seeking possession under section 173 as court fees for doing so will remain the same as they currently are.

If by 'legal costs' the RLA mean solicitors fees, we did not include these costs as there is no requirement to instruct a solicitor in order to seek possession, and, again, although we do not have precise information as to the percentage of claims where a solicitor is engaged, I would expect that in all but the most complex cases there would be little need for a landlord to seek such support.

We have included in the RIA a range of hypothetical examples to highlight the difference in costs and potential rent arrears which might be incurred depending on which ground a landlord chooses to rely on when seeking possession. Based on Ministry of Justice data, these are worse-case scenarios in the sense that they assume the landlord has been required to go through the entire possession/eviction process and that no rent has been paid since the first month of the tenancy. Whilst we believe that these scenarios show the potential benefits to landlords of pursuing possession through the appropriate ground, ultimately it will be for individual landlords to decide which route they choose to take.

7. Witnesses told the Assembly's Equality, Local Government and Communities Committee on 4 March 2020 they have "serious" concerns about the Residential Landlord Association survey data, used for the cost estimates. What assurance can you give that this represents 'the best available data'.

We opted to cite the RLA survey data in the impact assessment on the basis that it had recently been published and was directly relevant to the legislation we were developing. As mentioned above, there has been little research undertaken with landlords themselves to understand what lies behind their use of section 21, so this survey was a useful source of information for us.

I am aware that Dr Gurney of Glasgow University and Dr Simcock of Edge Hill University have both advised the ELGC Committee to treat the RLA survey figures with caution, but we need to be clear that their reservations are based on concerns that the survey data may have *overestimated* both the number of PRS landlords who have sought possession against tenants in the past five years, and the percentage of landlords who report using section 21 notices to seek possession where a tenant is in rent arrears or has breached their tenancy in some other way.

The figures Drs Gurney and Simcock quoted in their evidence to the ELG Committee in February were taken from a Manchester Metropolitan University study which suggested that some 54% of section 21 notices were issued because a tenant was at fault, rather than the 84% figure in the RLA survey. If this lower number is closer to the truth, then, as Dr Simcock has pointed out, the impacts of the Bill on the courts and on landlords' costs are likely to be a lot lower than those we have included in the RIA. It also follows that we would expect even fewer households to present as

homeless to local authorities by virtue of the six-month notice than our estimates in the RIA suggest, with potentially greater savings to local authorities in respect of their costs to provide statutory homelessness functions to households in the private sector.

8. The RIA assumes all types of stakeholders will require the same amount of time (a day or 8 hours) to familiarise themselves with the changes introduced by the Bill. What evidence supports this assumption?

This is not a lengthy Bill, and the changes it makes to the regime set out in the 2016 Act are relatively straightforward to understand, inasmuch as it extends notice periods and limits the use of particular types of notice in certain situations.

In the RIA for the original Renting Homes Bill (now the 2016 Act) we used the same assumption of one day's familiarisation for that legislation, which was a much larger and more complex piece of law, so it may be that we have been overly generous in our assumptions this time.

My officials will be preparing a range of explanatory information which will be published in the run-up to the legislation coming into force. This will provide clear, straightforward guidance for landlords, contact-holders, and organisations which provide support and advice to both, on their new rights and responsibilities.

9. The RIA does not set out any costs relating to contract holders, including the cost of awareness raising of the changes introduced by the Bill. Why is this the case when the financial implications of other Bills have included related costs?

As mentioned above, a range of information is to be developed in advance of this legislation coming into force to raise awareness amongst stakeholders, including contract-holders. As the RIA notes, estimates of these costs were included in the original Renting Homes (Wales) Bill RIA, but perhaps we should have restated those figures directly, rather than simply referring to the previous RIA. In any case, the estimated costs we included in the previous RIA were £100,000 in the year prior to implementation with a further £20,000 in each subsequent year for guidance documents and publicity. We have added to that in the RIA for this Bill an additional £18,000 cost for a part time post within Welsh Government to lead on that work over two years.

It is also worth noting in relation to awareness-raising amongst contract-holders that one of the key changes the 2016 Act will introduce is a requirement that all landlords provide all of their contract-holders with a written statement of their contract. These statements will include the terms of the contract, the grounds on which the landlord may seek possession and the relevant notice periods, and should result in greater understanding amongst those who rent their homes of their, and their landlords, rights and obligations.

Finally, we will also continue to rely on the good offices of our third sector partners such as Shelter Cymru and Citizen's Advice Cymru, as well as local authority housing advice teams, who do such sterling work in supporting some of our most vulnerable citizens, to ensure that contract-holders are made aware of the new arrangements.

10. The RIA identifies costs for Citizens Advice but not Shelter Cymru, which it states is the other 'prominent provider' of advice and information on renting a property. Why is this and how have the cost estimates been derived for Citizens Advice?

The Citizens Advice Cymru figure of £45,000 was provided to us by the organisation itself. No comparable information was provided by Shelter Cymru in their consultation response, however, I note that in their evidence to the ELGC Committee they stated that they would expect any potential increase in PRS-related casework to be offset by a reduction in support for social sector contract-holders as a result of our 'no eviction into homelessness' policy. As mentioned previously, my officials did engage directly with Shelter Cymru prior to the publication of the RIA and they were content with our assumptions.

Finally, we did include in the RIA a one-off £10,000 familiarisation cost to the third sector generally.

11. What evidence has informed your assessment that 10% of contract holders will find accommodation before the end of the six month period and why are the range of benefits assumed to be constant over the five years for which the financial implications of the Bill have been quantified?

Accurately estimating the demands and costs to local authorities of discharging their homelessness duties in relation to those seeking support due to the loss, or threatened loss, of rented accommodation is challenging. This is mainly because the most recent exercise to identify the average costs to local authorities was undertaken nearly a decade ago.

Nonetheless this is the only data available so we have uplifted it in line with inflation to give us an average unit cost of £961 per case. There are also some difficulties in accurately recording the number of cases that local authorities deal with each year, given that key performance indicators are measured in terms of outcomes rather than inputs.

Within these constraints, we have made a best estimate of overall costs to local authorities of discharging their duties: these are set out at table 8.1, giving us a total of £7.65m for 2018/19, and an average cost over the three years that we have been recording this information of £7.25m – so a slight upward trend over that period.

To be absolutely clear: the reference at paragraph 8.49 of the RIA to a 'best estimate' of 10% of contract-holders self-resolving within the extended notice period

relates only to the cohort of people who, when served with a landlord's notice, would typically seek support from a local authority to find alternative accommodation. I recognise that a 10% reduction in such presentations appears very modest. However, we were concerned in developing the RIA that we should not overestimate any potential savings to local authorities as a result of the extended notice period. It would perhaps have been more accurate to describe this as a 'conservative' rather than 'best' estimate, and I will ask my officials to amend the RIA at stage 2 to make this clearer.

As for why the range of benefits are assumed to be constant over the five years for which the financial implications of the Bill have been quantified: we felt that given the limitations on available data mentioned above, and the difficulties in predicting future trends, it would be safer to assume potential savings at a steady state over five years, which we based on the average data from the previous three years that were available to us at that time.

12. The RIA also quantifies the benefits where 20 and 40 per cent of contract holders find accommodation before the end of the six-month period. Why was the range of benefits not reflected in the estimate of the total cost of the Bill?

One of the key benefits of the Bill is that it will provide contract-holders with a six month notice period if their landlord serves a section 173 notice. This means contract-holders will have more time to find suitable alternative accommodation, to raise funds for a move and to arrange the move. As a result, we expect fewer contract-holders will seek an intervention from their local authority's homelessness service. However, the scale of this effect is unknown.

As mentioned above, in order to avoid overestimating the potential cost-saving to local authorities, we assumed there would be a minimal – i.e. 10 % – reduction in the proportion of relevant contract-holders who require statutory intervention from homelessness services.

The 20% and 40% reductions were included in tables 8.2 and 8.3 of the RIA as a form of sensitivity analysis to demonstrate the potential cost-savings if a higher proportion of contract holders were able to secure alternative accommodation for themselves. Given we have no evidence to support these higher reductions in the number of contract-holders needing local authority support, we did not think it appropriate to include these estimates in the headline figures for the cost of the Bill.

13. The Residential Landlords Association's consultation response to the Equality, Local Government and Communities Committee said, given the impact on them, it was 'neglectful' that cost savings for landlords have not been estimated. How do you respond to this?

We do not accept that this was neglectful. We stated in the RIA that whilst we anticipate that there may be some administrative cost savings to landlords, we are not able to quantify what those savings may be. This is because we do not expect

the overall numbers of possession claims to decrease (or increase for that matter), so there would be no savings to the sector as a whole in that respect.

For individual possession claims, we state in the RIA that we anticipate that there may be some administrative cost savings for landlords. This is based on our assumption that more landlords will choose to use appropriate possession grounds for rent arrears, ASB or other breaches of contract in future, rather than the landlord's notice ground. The court fees for claims made to court under antisocial behaviour, rent arrears or other breach of contract grounds are slightly less than for a 'no-fault' possession claim, hence the potential savings. However, not all landlords require a claim to be made to the courts when seeking possession, as occupiers often move out before the end of the notice period. Furthermore, when a claim is made and a court hearing takes place, not all landlords require the services of a solicitor. Given this, it would have been extremely challenging for us to make any meaningful estimates of potential savings, as there so many possible scenarios, timescales and outcomes depending on which possession route the landlord chooses, how the occupier responds to the notice, whether a claim is filed, whether the court accepts the ground is made out, and so on.

14. Can you explain why you have not quantified the benefits to other stakeholders such as contract holders?

The Explanatory Memorandum does set out the benefits of increased security of tenure generally, and the positive impacts this will have for those who rent their home from a private landlord. However, it would be difficult to quantify in financial terms, the benefits for example to health, wellbeing and peace of mind of individuals and families.

15. On 27 February 2020, you told the Equality, Local Government and Communities Committee that Welsh Government would introduce some amendments to the Bill after Stage 1. Can you confirm whether these amendments will affect the cost estimates and if so, are you able to provide some details and quantify their impact.

Any amendments we table will be concerned with tightening up drafting and ensuring consistency, rather than policy changes, so I would not expect them to have an impact on the cost estimates in the RIA. Of course, we will prepare an amended Explanatory Memorandum as appropriate at Stage 2, including for any non-Government amendments that are accepted, which may have financial implications.

16. How will the proposed legislation be monitored for effectiveness?

The monitoring and evaluation of the provisions of this amending legislation, and of the 2016 Act, are set out in the Explanatory Memoranda to both pieces of legislation. As stated, we intend to take forward a post-implementation evaluation of the 2016 Act as amended, including gathering the views and experiences of contract-holders

and landlords of the legislation, the use of model contracts, and the experience on the ground of advice and support agencies and representative organisations. The impacts the longer notice period and other restrictions set out in this Bill will be a key aspect of that work.