

**National Assembly for Wales**  
Communities, Equality and Local  
Government Committee

**Renting Homes (Wales) Bill:  
Stage 1 Committee Report**

June 2015

Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



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## **Renting Homes (Wales) Bill: Stage 1 Committee Report**

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# Communities, Equality and Local Government Committee

The Committee was established on 22 June 2011 with a remit to examine legislation and hold the Welsh Government to account by scrutinising expenditure, administration and policy matters encompassing: Wales's culture; languages communities and heritage, including sport and the arts; local government in Wales, including all housing matters; and equality of opportunity for all.

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## Current Committee membership:



**Christine Chapman (Chair)**

Welsh Labour  
Cynon Valley



**Peter Black**

Welsh Liberal Democrats  
South Wales West



**Alun Davies**

Welsh Labour  
Blaenau Gwent



**Jocelyn Davies**

Plaid Cymru  
South Wales East



**Janet Finch-Saunders**

Welsh Conservatives  
Aberconwy



**Mike Hedges**

Welsh Labour  
Swansea East



**Mark Isherwood**

Welsh Conservatives  
North Wales



**Gwyn Price**

Welsh Labour  
Islwyn



**Gwenda Thomas**

Welsh Labour  
Neath



**Rhodri Glyn Thomas**

Plaid Cymru  
Carmarthen East and Dinefwr

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The following Member attended as a substitute member of the Committee during this inquiry.



**John Griffiths**

Welsh Labour  
Newport East



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# Summary of conclusions and recommendations

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**Around a third of the population of Wales live in rented accommodation. The changes proposed by the Renting Homes (Wales) Bill will affect almost all of those people and their landlords.**

# General principles

We note that one of the main objectives of the Bill is the simplification of existing legislation. Whilst simplification in itself is not without merit, there seems to be very little else within the Bill that will deliver clear improvement for Welsh contract-holders in the social and private rented sectors. We believe that the Bill lacks ambition in a number of key areas, not least in relation to the quality of housing in the private rented sector (PRS). The Minister could have used the Bill as a vehicle to make more significant improvements for those involved in renting homes in Wales.

Our scrutiny of the Bill has highlighted the need for considerable read-across with the Housing (Wales) Act 2014, particularly in terms of Part 1 of that Act, which addresses landlord/agent registration and licensing and, to a lesser extent, Part 2 of the Act which deals with homelessness. We feel that specific provision for such read-across is missing from the Bill, to the extent that we have been able to review the Bill and associated repeals.

It seems to us that the Bill will require considerable repeal and amendment of existing legislative provisions. We believe the Bill would be strengthened by the inclusion of a schedule of repeals and amendments, rather than leaving this as a matter to be the subject of subordinate legislation.

We believe that any change in the law in this area should be accompanied by a significant public education and awareness raising campaign. There will also be a need for appropriate training about the new rights and responsibilities provided for under the Bill. Both of these matters come with considerable cost implications and, based on the evidence we have received, we have concerns as to whether the Minister has made sufficient provision in this regard.

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**We recommend that the Assembly agrees the general principles of the Bill.**

**We recommend that the Minister publishes a list of all amendments and repeals to be made to existing legislation as a consequence of the Bill, and that she does so before the Committee completes its consideration of the Bill.**

**We recommend that the Minister revisits her estimate of costs for training and awareness raising about the provisions of the Bill.**

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# Occupation contracts

We support the principle of the introduction of two main types of occupation contract to replace nearly all existing tenancies and licences. We agree that this represents a simplification of the current system and an important step in enabling both landlords and contract-holders to understand their respective rights and responsibilities.

We note that the Bill makes provision for landlords and contract-holders to negotiate certain terms. In reality, we believe there is little likelihood of this taking place, particularly because of market pressures (particularly in areas where demand for rental properties is high) and, in most cases, the superior negotiating position of landlords.

We believe that when negotiating terms, the question of what constitutes an improvement to the position of the contract-holder requires further amplification on the face of the Bill, by way of additional regulation or by statutory guidance.

We note that section 22 of the Bill enables the Welsh Ministers to add or remove fundamental provisions to a contract using both the negative and affirmative procedures. Further, we note that regulations relating to supplementary terms will be subject to the negative procedure.

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**We recommend that the Minister amends the Bill to set out more clearly the criteria for judging whether the modification or removal of a fundamental term has “improved the position” of the contract-holder. We believe this should be in the “reasonable view” of the individual contract-holder concerned, rather than on the basis of contract-holders in general.**

**We recommend that the Minister amends the Bill to provide for regulations relating to fundamental and supplementary terms to be subject to the affirmative procedure in all cases.**

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# Occupation contracts

## Written statements

We welcome the introduction of a requirement for contract-holders to be given a written statement of the terms of their occupation contract. Where a landlord has failed to provide a contract-holder with a written statement, we do not believe it is reasonable to expect the contract-holder to go to the courts to enforce their rights, particularly given the limitations on legal aid. We support the suggestion for the imposition of a default contract in such circumstances.

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**We recommend that the Welsh Government's model contract should be used as the basis for a default contract where a landlord has failed to provide a written statement.**

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## Model contracts

We support the principle of model contracts, which should act as an industry-standard, providing clarity and protection for both landlords and contract-holders.

We wish to emphasise the need for model contracts to be clear, accessible, and written in plain language. Consequently, we urge the Minister to engage in further consultation with stakeholders before finalising the model contracts. We consider it particularly important that such consultation is undertaken directly with sample groups of contract-holders and not just stakeholder bodies.

We believe the Assembly should maintain oversight of the final version of the model contract and any additional terms which are added to it, given its importance to the operation of the Bill.

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**We recommend that the Minister consults further with stakeholders before finalising the model contracts, and that such consultation should be undertaken directly with contract-holders, as well as representative bodies.**

**We recommend that the Minister amends the Bill so that the issuing of occupation contracts is digital by default.**

**We recommend that the Minister amends the Bill so that regulations made under section 29(1) relating to model written statements of contract must be subject to the affirmative procedure.**

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# Occupation contracts

## Joint contracts

We agree in principle with the changes proposed by the Bill to the current law in relation to joint contracts. We welcome the greater flexibility the changes will bring to both contract-holders and landlords when dealing with joint occupation contracts in the future.

We are concerned that the Bill does not deal effectively with deposits for joint contract-holders. There appears to be no mechanism to allow a joint contract-holder leaving an occupation contract which will continue, to recover their money either from the landlord or the other contract-holders, or for the landlord to ensure that a sufficient deposit is maintained in this situation. We therefore urge the Minister to give further consideration to the provisions relating to deposit protection.

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**We recommend that the Minister considers including specific details and guidance about joint contracts to prospective contract-holders as part of a contract-holder education and awareness scheme.**

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# Standard contracts

## Six-month moratorium

We have some concerns regarding the removal of the six-month moratorium. We have heard evidence to suggest that it will encourage landlords to rent to contract-holders who would normally find it difficult to secure accommodation in the private sector. We have also received evidence that suggests that placing more of the most vulnerable people in the private sector while at the same time reducing their security is counter-productive.

We are concerned that the loss of the moratorium could lead to a race to the bottom, with the private sector offering shorter tenancies across the board. This change also appears to put Wales significantly out of step with moves in England and Scotland to restrict the use of landlord's no-fault eviction processes further and could lead to a perception that Wales is offering a less secure contract in the private sector.

We believe that removing the moratorium could impact on accommodation for homeless people. If local authorities believe they are likely to be challenged about the suitability of accommodation used for this purpose, they may be more reluctant to offer any PRS accommodation of less than six months to homeless applicants. We encourage the Minister to consider amending the Housing (Wales) Act 2014 to clarify her intention regarding discharge of homelessness duties in the PRS.

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**We recommend that the Minister amends the Bill to prevent a landlord from recovering possession on the 'no-fault' ground during the first six months of a standard contract.**

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# Standard contracts

## Retaliatory eviction

While we welcome the provisions in the Bill to address retaliatory eviction, we agree with witnesses that the definitions need to be widened to include issues other than disrepair and fitness for human habitation, and we refer the Minister to the evidence we have received on this matter.

We note the concerns of landlords' representatives regarding the potential for a contract-holder to use this defence to their advantage to avoid a possession claim. We therefore believe that there need to be safeguards in place to demonstrate that the contract-holder has registered a complaint with the landlord before an eviction notice has been issued. Without this, there is a risk of nuisance claims and delays as a result of protracted court proceedings.

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**We recommend that the Minister amends the Bill to widen the definition of retaliatory eviction beyond disrepair and fitness for human habitation.**

**We recommend that the Minister amends the Bill to include a rebuttable presumption that an eviction is retaliatory in cases where it occurs after a contract-holder has registered a complaint with the landlord about the condition of the property.**

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## Rent increases

We are concerned that there is no provision in the Bill for a rent increase to be challenged, except in the case of a contract that was previously an assured tenancy. We believe that there should be a minimum period of 12 months before a notice varying the rent could be served on the first occasion.

We also believe that all standard contract-holders should be able to challenge rent increases, and we recommend that the Minister amends the Bill to make specific provision for this. Further, we believe that such challenges should continue to fall within the remit of the Residential Property Tribunal (RPT) Wales.

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**We recommend that the Minister amends the Bill to make provision for a minimum period of 12 months before a rent varying notice can be served on the first occasion.**

**We recommend that the frequency of rent increases after the first increase be restricted to no more than once every 12 months.**

# Supported standard contracts

## Temporary exclusion

We are deeply concerned by the power in section 145 of the Bill to exclude persons in supported accommodation from their property for 48 hours. It appears that this exclusion is to be at the discretion of the relevant housing provider, or one of their staff members, and is not subject to any judicial oversight. We believe that any decision to exclude a person from their home should be taken at a senior level.

Additionally, we are deeply concerned that the use of the exclusion power could lead to persons becoming street homeless for periods of 48 hours. Given that this power will be used against those who are also likely to have other difficulties or be vulnerable for other reasons, their temporary exclusion could ultimately lead to permanent loss of their home.

We believe that a failure to have any form of independent review process would lead to a breach of the excluded person's right to a fair hearing under Article 6 of the European Convention on Human Rights. Finally, it would seem to us that in the most serious cases of violent or threatening behaviour, which are those in which the power to exclude would be most likely to be justified, there are already powers for the police to arrest a person for that behaviour and then bail them to a different location while the matter is investigated.

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**We recommend that the Minister amends the Bill to remove the temporary exclusion provisions within supported standard contracts.**

**If the provision for temporary exclusions is not removed from the Bill, we recommend that the Minister amends the Bill to provide for an independent review of decisions to exclude persons in supported accommodation from their property for 48 hours, and that such reviews should be able to take place within the exclusion period.**

**Further, and if the provision for temporary exclusions is not removed, we recommend that the Minister makes arrangements for any decision to temporarily exclude a person in supported accommodation from their home to be taken at a senior level.**

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## Occupation contracts for 16 and 17 year olds

We are concerned by the proposal to grant occupation contracts to minors. While we applaud the intention to help young people secure and maintain their own accommodation, we believe the proposals may be unworkable in practice and may have unintended effects.

In particular, we remain of the view that a minor would find it difficult to enter into ancillary contracts for utilities and other items relevant to their occupation, such as contents insurance for their possessions.

We are concerned that the Bill places 16 and 17 year olds in a position where they can enter into occupation contracts, but where the additional necessary services that they need in order to utilise that property may be unavailable or only available on an unattractive basis. This is in contrast to the current system under which a 16 or 17 year old is more usually granted a tenancy or licence which is underwritten and supported by a third party, often a local authority social services department.

We note the evidence that providing the necessary support to enable minors to live in suitable accommodation should remain the focus of solving housing problems for young people; this is something that we agree with. The evidence we received from a number of respondents suggested that, in the PRS at least, landlords would be unlikely to enter into contracts with 16 and 17 year olds. Additionally, we are concerned that the private sector may not provide the right support for these potentially vulnerable contract-holders, who could be open to exploitation.

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**We recommend the Minister amends the Bill so as to restrict its provisions relating to 16 and 17 year olds to occupation contracts issued by community landlords.**

**We recommend that the Minister amends the Bill so that the provision of guidance and support is a statutory requirement of all landlords when offering contracts to 16 and 17 year olds.**

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## Grounds for possession

The Bill provides for six grounds for possession, including: contract-holder's notice; estate management grounds; and landlord's notice.

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**We recommend that the Minister gives further consideration to sections 208 and 209 relating to possession claims made on the ground of contract-holder's notice, in the light of the evidence from the Housing Law Practitioners Association.**

**We recommend that the Minister gives further consideration to estate management grounds for possession, in the light of the evidence we have received.**

**We draw the Minister's attention to the evidence from Shelter Cymru relating to section 152, termination by agreement, and the lack of requirement for a termination agreement to be in writing. We recommend that she gives further consideration to this section in light of the evidence.**

**We draw the Minister's attention to the evidence from Shelter Cymru relating to section 214 (reviewing a claim). We recommend that she gives further consideration to this section in light of the evidence.**

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## Anti-social behaviour and other prohibited conduct

We are concerned that the test of “conduct capable of causing nuisance or annoyance”, provided for in section 55 of the Bill, appears to set a very low threshold for a possession order. The courts’ discretion may not be enough to prevent some landlords from engaging in bullying behaviour by threatening contract-holders with possession on this basis for very minimal levels of nuisance or annoyance.

We are also not convinced that section 55 would always cover domestic abuse, as the perpetrator’s partner may not necessarily fall into the definition in section 55(1) of a person with a right to live in the dwelling or in the locality of the dwelling.

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**We recommend that the Minister considers amending section 55 of the Bill to ensure that it applies to the partner of a contract-holder, where that contract-holder is a perpetrator of domestic abuse and the partner does not live in the dwelling or in the locality of the dwelling.**

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# Condition of the dwelling

## **Fitness for human habitation**

We note the Welsh Government's commitment to improving the condition of rental properties, and the health and well-being of those who live in them. While we support this, we do not believe that the fitness for human habitation test provided for in the Bill is sufficient to raise the standard of accommodation in the rental sector in a meaningful way.

We note that the Minister proposes the criteria for the test will be based on the hazard criteria under the Housing Health and Safety Rating System. We do not believe this is sufficiently ambitious. It is unclear exactly what standard "fit for human habitation" will actually be until, and unless, regulations are made.

We note that section 94 of the Bill enables the Minister to make regulations for the purposes of determining whether a property is fit for human habitation. We are concerned that no clear commitment to make such regulations has been given by the Minister.

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**We recommend that the Minister reconsiders the criteria to be used for the "fitness for human habitation" test for the purpose of setting a more ambitious test. Such criteria could be based on the Repairing Standard provisions contained in the Housing (Scotland) Act 2006.**

**We recommend that the Minister reconsiders the use of the term "fitness for human habitation" and amends the Bill accordingly.**

**We recommend the Minister amends the Bill so as to require Welsh Ministers to make regulations for the purpose of determining whether a dwelling is fit for habitation.**

**We recommend that these regulations are subject to the affirmative procedure.**

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## **Gas and electrical safety**

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**We agree with respondents that the Bill should make provision for the installation of carbon monoxide detectors and smoke alarms, and the periodic inspection of electrical installations to be mandatory in rental properties. We recommend that the Minister amends the Bill accordingly.**

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# Anti-social behaviour and other prohibited conduct

## **Landlord's obligation to keep dwelling in repair**

We feel that the Bill is lacking in ambition, as it simply restates the current position with regard to landlords' obligations to keep their dwellings in repair, rather than seeking to improve upon it.

We agree with witnesses that enforcement is a problem. As a result of resource pressures facing local authorities, the onus is on the contract-holder to take their landlord to court and, given that legal aid is only available in the most serious cases of disrepair, many are deterred from pursuing this course of action.

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**We recommend that the Minister makes provision for penalties to be issued against landlords who are in breach of contract, with serious or repeated breaches leading to revocation of the landlord's licence under the Housing (Wales) Act 2014.**

**Further, we recommend that the Minister makes appropriate provision for clear timescales within which landlords must carry out repairs.**

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# Abandonment

We note that the abandonment process provided for in the Bill allows for recovery of possession by a landlord without a court order. We are concerned that the Bill weakens the protection offered to contract-holders faced with unlawful eviction. More generally, we agree with the principle that a contract-holder who pays their rent in a timely manner but chooses not to occupy the property for periods of time should not face a possession claim from the landlord. We believe that a landlord should not be able to make use of the abandonment procedure unless the contract-holder is in serious rent arrears.

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**We recommend that the Minister amends the Bill to make provision that failure by a landlord to follow the correct abandonment procedure should constitute an unlawful eviction.**

**We recommend that the Minister issues guidance to landlords on the use of the abandonment procedure.**

**We recommend that the Minister amends the Bill so that landlords can only seek possession for abandonment where the serious rent arrears ground for possession, under sections 179(2) and 184(2), has been made out.**

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## Use of the courts

It is our view that the Bill places too much reliance on the courts to resolve disputes. We believe that going to court should not be the only option for contract-holders or landlords wishing to enforce their rights, particularly given the limitations on legal aid and the intimidating nature of court proceedings.

There is already a body operating in Wales, whose role includes resolving disputes over rent, licensing and the condition of property. As such, it seems counter-intuitive to remove a number of its core functions, particularly when it is able, and willing, to provide a service that would be more accessible and expedient, and less costly than court proceedings. That body has been conferred new powers and obligations under the terms of the Housing (Wales) Act 2014 and will presumably require training and expansion to deal with those obligations. We do not see that a further modest increase from this Bill will add unduly to that burden.

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**We recommend that the Minister amends the Bill to make provision for adjudication over disputes in relation to rent increases, fitness for human habitation issues, succession rights, failure to supply a contract and alternative dispute resolution/mediation services. We believe the most effective way of doing this would be to expand the current role of the RPT Wales.**

**We recognise that there will be cost implications associated with this recommendation and that the Minister will need to undertake further cost analysis in this area.**

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## Costs

We have not been convinced by the cost assessments and, having received evidence from a number of respondents on this matter, we believe that the costs of implementing the Bill's provisions are likely to be higher than the Minister's estimates.

We note that the Finance Committee has concerns about the financial estimates provided for in the Regulatory Impact Assessment, and that it does not believe there is sufficient evidence to allow for proper financial scrutiny of the Bill.

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**We recommend that the Minister reviews the financial estimates for the Bill in light of the Finance Committee's concerns and the evidence we have received on this matter, and updates the Explanatory Memorandum following stage 2 proceedings to take account of this review.**

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