

National Assembly for Wales
Constitutional and Legislative Affairs
Committee

Report on the Renting Homes (Wales) Bill

June 2015

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



The National Assembly for Wales is the democratically elected body that represents the interests of Wales and its people, makes laws for Wales and holds the Welsh Government to account.

An electronic copy of this report can be found on the National Assembly's website:
www.assembly.wales

Copies of this report can also be obtained in accessible formats including Braille, large print; audio or hard copy from:

Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

Tel: 0300 200 6565

Email: SeneddCLA@assembly.wales

Twitter: [@SeneddCLA](https://twitter.com/SeneddCLA)

© National Assembly for Wales Commission Copyright 2015

The text of this document may be reproduced free of charge in any format or medium providing that it is reproduced accurately and not used in a misleading or derogatory context. The material must be acknowledged as copyright of the National Assembly for Wales Commission and the title of the document specified.

National Assembly for Wales
Constitutional and Legislative Affairs
Committee

Report on the Renting Homes (Wales) Bill

June 2015

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



Constitutional and Legislative Affairs Committee

The Committee was established on 15 June 2011 with a remit to carry out the functions of the responsible committee set out in Standing Orders 21.2 and 21.3 and to consider any other legislative matter, other than the functions required by Standing Order 26, referred to it by the Business Committee.

Current Committee membership:



David Melding (Chair)
Welsh Conservatives
South Wales Central



Alun Davies
Welsh Labour
Blaenau Gwent



Suzy Davies
Welsh Conservatives
South Wales West



William Powell
Welsh Liberal Democrats
Mid and West Wales



Dafydd Elis-Thomas
Plaid Cymru
Dwyfor Meirionnydd

The following Member was also a Member of the Committee during this inquiry



Simon Thomas
Plaid Cymru
Mid and West Wales

Contents

The Committee's Recommendations	5
1. Introduction	6
Committee Remit.....	6
Introduction and consideration of the Bill.....	6
2. Background	7
Purpose of the Bill	7
3. Legislative Competence	9
Explanatory Memorandum	9
Consideration of Human Rights	9
Our View	9
4. General observations	11
Nature of the Bill	11
Repeals and amendments	11
Our view.....	12
5. Powers to make subordinate legislation and other matters	13
Background	13
Part 2 – Occupation Contracts and Landlords	13
Section 22 – Powers in relation to fundamental provisions	13
Our view	13
Part 3 – Provisions applying to all occupation contracts	14
Section 55 – Anti-social behaviour and other prohibited conduct	14
Section 56 – Power to amend section 55	14
Our view	14
Part 11 – Final Provisions	15
Section 254 – Coming into force	15
Our view	16

The Committee's Recommendations

Recommendation 1. We recommend that the Welsh Government provides more information to the Assembly during the Stage 1 debate on how the Bill engages with human rights and the basis upon which the Minister considers any interference to be justified. (Page 10)

Recommendation 2. We recommend that the Welsh Government table an amendment to the Bill to place the repeals and amendments on the face of the Bill. (Page 12)

Recommendation 3. We recommend that the Welsh Government should table amendments to section 22 of the Bill so that the affirmative procedure is applied to all changes to the fundamental provisions applicable to an occupation contract. (Page 13)

Recommendation 4. We recommend that the Welsh Government considers reviewing the definition of anti-social behaviour in section 55, with a view to amending it to ensure the meaning is clear, and gives appropriate weight to the seriousness of domestic abuse. (Page 14)

Recommendation 5. We recommend that the Welsh Government clearly explains during the Stage 1 debate how the principle of proportionality applies to the current definition of anti-social and prohibited behaviour in s55 of the Bill. (Page 15)

Recommendation 6. We recommend that the negative procedure is applied to commencement orders that include transitory, transitional or saving provision made in accordance with section 254(3). (Page 16)

1. Introduction

Committee Remit

1. The remit of the Constitutional and Legislative Affairs Committee (“the Committee”) is to carry out the functions of the responsible committee set out in Standing Order 21 and to consider any other constitutional or governmental matter within or relating to the competence of the Assembly or the Welsh Ministers.
2. Within this, the Committee considers the political and legal importance and technical aspects of all statutory instruments or draft statutory instruments made by the Welsh Ministers and reports on whether the Assembly should pay special attention to the instruments on a range of grounds set out in Standing Order 21.
3. The Committee also considers and reports on the appropriateness of provisions in Assembly Bills and UK Parliament Bills that grant powers to make subordinate legislation to the Welsh Ministers, the First Minister or the Counsel General.

Introduction and consideration of the Bill

4. On 9 February 2015, the Minister for Communities and Tackling Poverty, Lesley Griffiths AM (“the Minister”) introduced the Renting Homes (Wales) Bill (“the Bill”) and accompanying Explanatory Memorandum.¹
5. The Assembly’s Business Committee referred the Bill to the Communities, Equality, and Local Government Committee for consideration with a deadline of 26 June to report on the general principles.
6. We considered the Bill on 11 May 2015, taking evidence from the Minister.

¹ Welsh Government, *Renting Homes (Wales) Bill, Explanatory Memorandum Incorporating the Regulatory Impact Assessment and Explanatory Notes*, February 2015.

2. Background

Purpose of the Bill

7. The Explanatory Memorandum states:

“The Bill brings together and modernises the existing complex raft of legislation into one new piece of legislation, and in doing so seeks to improve the arrangements for renting a home in Wales. It proposes:

- (i) Two main types of occupation contract, which will replace existing forms of occupation arrangements;
- (ii) These new contracts will comprise fundamental terms set out on the face of the Bill, supplementary terms to be set out in regulations made by Welsh Ministers, and any additional terms as negotiated and agreed by landlords and contract holders;
- (iii) Contracts will also have to cover key matters such as the address of the property, the level of rent and the rental period; and
- (iv) An approach supported by model contracts, which incorporate the relevant fundamental and supplementary terms depending on differing circumstances.”²

8. The Explanatory Memorandum explains that this aims to achieve:

- “(i) A clearer, more logical, legal framework, which reflects fairness and equality;
- (ii) A simple and effective basis for renting a home from a community or private landlord;
- (iii) Greater understanding by landlords and tenants of their respective rights and responsibilities, thus reducing the problems and difficulties that occur with the current system; and

² Explanatory Memorandum para 7.

(iv) More flexibility for community landlords, private landlords and support services to meet people's housing needs, including those of vulnerable groups.”³

³ Explanatory Memorandum para 8.

3. Legislative Competence

Explanatory Memorandum

9. The Explanatory Memorandum states that the Assembly has competence by virtue of Subject 11 of Part 1 of Schedule 7 to the Government of Wales Act 2006.⁴

10. The Minister told us that she was confident that the Bill was within competence.⁵

Consideration of Human Rights

11. Consideration of human rights is fundamental to assessing whether a Bill is within competence. The Bill's provisions engage Article 8⁶ and Article 6⁷ of the European Convention on Human Rights, as well as Article 1 of Protocol 1 to the Convention.⁸ The Explanatory Memorandum makes very little reference to Convention rights. The Equality Impact Assessment is focused on the rights of children under the UN Convention on the Rights of the Child.

12. When questioned on their consideration of human rights, the Welsh Government spoke in broad terms and did not provide us with any details, saying only:

“We carry out a very thorough assessment of provisions.”⁹

Our view

13. We note the Minister's view of the Assembly's ability to make this legislation.

14. We found the oral evidence of the Welsh Government in relation to human right considerations to be vague.

15. It is essential that the Assembly has confidence that the impact of legislation on fundamental human rights has been thoroughly

⁴ Explanatory Memorandum para 3.

⁵ Constitutional and Legislative Affairs Committee (“the Committee”), 11 May 2015, RoP [5].

⁶ Article 8 in this context protects a person's right to respect for his or her home.

⁷ Article 6 protects the right to a fair trial.

⁸ Article 2 of Protocol 1 protects the enjoyments of a person's property, but the law may deprive a person of his or her possessions in the public interest, subject to the general principles of international law.

⁹ CLA Committee, 11 May 2015, RoP [82].

considered and that the proper balance has been struck between competing rights. This is particularly relevant in light of the Supreme Court's judgement on the Agricultural Sector (Wales) Bill which emphasised the importance of documents generated by both the Welsh Government and the Assembly when considering compatibility with Convention rights.

We recommend that the Welsh Government provides more information to the Assembly during the Stage 1 debate on how the Bill engages with human rights and the basis upon which the Minister considers any interference to be justified.

4. General observations

Nature of the Bill

16. According to the Welsh Government, the Bill is based on the work of the Law Commission, who reviewed housing law in 2006 at the request of the UK Government. The Law Commission recommended fundamental changes to rental laws, and produced a draft Bill. The UK Government decided not to implement the bulk of the recommendations. In 2013, the Law Commission reviewed and updated its recommendations for Wales, at the request of the Welsh Government. The Minister told us:

“it absolutely draws on the work of the Law Commission, so it’s got a very solid and very firm evidence base.”¹⁰

17. While this Bill is not a consolidation Bill, there are consolidating elements to it. As the Minister explained:

“the Bill will also put the vast majority of primary legislation relating to arrangements for occupying homes into one Act...this Bill will then form the absolute principal legislation when it comes to renting homes.”¹¹

Repeals and amendments

18. The Bill will require extensive repeal and amendment of existing legislation. This is not set out in the Bill, but is left to subordinate legislation.

19. When we questioned the Welsh Government on why they had taken this approach, they explained:

“it is a huge Bill, and providing core consequential amendments is seen as part of the implementation project of the Bill, which is why we thought it was appropriate to take an Order-making power in this regard.”¹²

20. The Welsh Government told us they knew what needed to be repealed. They added that the Order would be subject to the

¹⁰ CLA Committee, 11 May 2015, RoP [26].

¹¹ CLA Committee, 11 May 2015, RoP [26].

¹² CLA Committee, 11 May 2015, RoP [11].

affirmative procedure, and therefore subject to scrutiny.¹³ They agreed they could have put much of the repeals and amendments on the face of the Bill but felt that they:

“probably would have needed to do more. So, in some terms, it’s a bit of a judgment call, and, is it better to have it in the Bill and then have other Orders subsequently making amendments, or is it better to have it in one place? For the sake of clarity, I think that there’s a good argument to have it in one Order as part of that implementation.”¹⁴

Our view

21. We welcome the Government’s use of the Law Commission’s expertise. As part of our inquiry into Making Laws, we have touched upon the accessibility of legislation. We are pleased to see a move to make legislation that has such an impact on people across Wales, more accessible and easier to understand. However, we believe it could have gone further.

22. We are not convinced by the decision to place the repeals and amendments in subordinate legislation. As well as undermining the level of scrutiny available, it also makes it more difficult for the public to understand the full implications of the Bill. This is particularly disappointing when one of the aims of the legislation is to achieve a clearer legal framework and improve landlords and tenant’s understanding of their rights and responsibilities.¹⁵ We also note the suggestion that the size of the Bill could determine the information contained on the face of the Bill. This is not a view we consider has any merit.

We recommend that the Welsh Government table an amendment to the Bill to place the repeals and amendments on the face of the Bill.

¹³ CLA Committee, 11 May 2015, RoP [19].

¹⁴ CLA Committee, 11 May 2015, RoP [17].

¹⁵ Explanatory Memorandum, para 8.

5. Powers to make subordinate legislation and other matters

Background

23. The Bill contains 255 sections and 11 schedules. There are 30 regulation making powers, of which 13 are or may be (if the regulations amend primary legislation) subject to the affirmative procedure. There is one order making power to which no procedure applies.

24. We welcome the Government's balance between primary and secondary legislation in this Bill, and believe that, the choice of procedure is appropriate in most cases. As a result, we only have comments on a few sections.

Part 2 – Occupation Contracts and Landlords

Section 22 – Powers in relation to fundamental provisions

25. Section 22 allows the Welsh Ministers to add or remove fundamental provisions applicable to a contract. If the regulations amend the Bill, they would be subject to the affirmative procedure. However, if they did not, they would be subject to the negative procedure. The negative procedure would therefore apply if the Welsh Ministers decided to make regulations that included new fundamental provisions or listed provisions which must be incorporated unchanged into all contracts, but did not make any changes to the face of the Bill.

Our view

26. We are concerned that new fundamental terms could be created without the appropriate level of scrutiny. It also seems to contradict the Welsh Government's aim of making the rights and responsibilities of both tenant and landlord clearer to both parties.

We recommend that the Welsh Government should table amendments to section 22 of the Bill so that the affirmative procedure is applied to all changes to the fundamental provisions applicable to an occupation contract.

Part 3 – Provisions applying to all occupation contracts

Section 55 – Anti-social behaviour and other prohibited conduct

Section 56 – Power to amend section 55

27. Section 55 of the Bill defines anti-social behaviour as “conduct capable of causing nuisance or annoyance.” This section makes it a breach of contract, which can result in eviction for the contract holder, to engage in, or threaten to engage in, anti-social behaviour or to “allow, incite or encourage” anyone living in or visiting the dwelling to engage in, or threaten to engage in, anti-social behaviour. This is a fundamental provision, as it must be incorporated into all rental contracts.

28. Section 56 gives the Welsh Ministers the power to amend section 55 through regulations, which are subject to the affirmative procedure.

Our view

29. We agree with the Welsh Government, that as this would amend primary legislation, the affirmative procedure is appropriate.

30. However, we do have concerns about the definition of anti-social behaviour and prohibited conduct as set out on the face of the Bill. It is a very wide definition, which could lead to differences in interpretation. For example, the Minister told us:

“for me, absolutely domestic abuse comes under that annoyance and nuisance term.”¹⁶

31. Yet it does not seem clear to us that the current definition would cover domestic abuse.

We recommend that the Welsh Government considers reviewing the definition of anti-social behaviour in section 55, with a view to amending it to ensure the meaning is clear, and gives appropriate weight to the seriousness of domestic abuse.

32. Having such a broad definition could also mean that less serious behaviours could be covered by the definition.

¹⁶ CLA Committee, 11 May 2015, RoP [39].

33. The House of Commons Home Affairs Select Committee criticised a similarly broad definition of anti-social behaviour during pre-legislative scrutiny of the Anti-Social Behaviour, Crime and Policing Act 2014. They stressed the issue of proportionality.¹⁷

34. The Explanatory Memorandum does not make any reference to proportionality. When we questioned the Welsh Government on this issue, they told us that:

“The tests are there. The balancing of various people’s rights is there. Consideration of proportionality, and consideration of the role of the courts – that’s all there.”¹⁸

35. We are not content that the Explanatory Memorandum demonstrates this clearly, in particular how making it possible to evict contract-holders on such broad grounds as “engaging in or threatening to engage in conduct capable of causing nuisance or annoyance” is a proportionate means of achieving a legitimate aim. We believe that the Memorandum would have benefited from making this work far more explicit and clear to the reader.

We recommend that the Welsh Government clearly explains during the Stage 1 debate how the principle of proportionality applies to the current definition of anti-social and prohibited behaviour in s55 of the Bill.

Part 11 – Final Provisions

Section 254 – Coming into force

36. Section 254 provides for certain Bill provisions to come into force on Royal Assent. The remaining provisions of the Bill come into force on the date specified by the Welsh Ministers in commencement orders made under this section.

37. An order under this section also allows Welsh Ministers to make transitory, transitional or saving provisions in connection with the commencement of this Bill’s provisions. There is no scrutiny

¹⁷ “The draft Anti-Social Behaviour Bill: pre-legislative scrutiny” Twelfth Report of Session 2012-13, 15 February 2013 HC 836-I, para 28.

¹⁸ CLA Committee, 11 May 2015, RoP [99].

procedure. The Explanatory Memorandum states that this is because ‘these orders relate to commencement and are technical in nature’.¹⁹

38. The Minister told us:

“The Assembly will have approved the policy areas to be commenced by the passing of this Bill. So, approval of commencement Orders would, in effect, mean approval of matters that have already been approved. I think, again, we’ve probably touched on this before in previous Bills, but it’s about striking a balance, and I think what the Government’s done is to seek to strike a balance in doing this.”²⁰

Our view

39. We have repeatedly expressed our concerns about these issues during the Fourth Assembly, and it is disappointing that the Welsh Government continues to apply no procedure to commencement orders with transitory, transitional or saving provisions. We continue to urge the Welsh Government that the negative procedure should be applied to such powers.

We recommend that the negative procedure is applied to commencement orders that include transitory, transitional or saving provision made in accordance with section 254(3).

¹⁹ Explanatory Memorandum page 50.

²⁰ CLA Committee, 11 May 2015, RoP [61].