

Renting Homes (Amendment) (Wales) Bill

October 2020



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Renting Homes (Amendment) (Wales) Bill

October 2020



About the Committee

The Committee was established on 28 June 2016. Its remit can be found at:
www.senedd.wales/SeneddCommunities

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John Griffiths MS
Welsh Labour

Current Committee membership:



Dawn Bowden MS
Welsh Labour



Huw Irranca-Davies MS
Welsh Labour



Mark Isherwood MS
Welsh Conservatives



Delyth Jewell MS
Plaid Cymru



Caroline Jones MS
Independent

The following Member attended as a substitute during this inquiry.



David Melding MS
Welsh Conservative Party

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Recommendations

Recommendation 1. That the Senedd supports the general principles of the Renting Homes (Amendment) (Wales) Bill..... Page 22

Recommendation 2. The Welsh Government should ensure that the post implementation review of the 2016 Act addresses the concerns covered during our scrutiny, in particular issues such as impacts on:

- lending behaviour;
- housing supply;
- landlord’s behaviour;
- numbers of people being found intentionally homeless and outcomes for these people;
- whether there is a need for more mandatory grounds for possession;
- whether there is a shift to grounds based possession where appropriate;
- whether the Minister’s desire to create the proper balance between the rights of landlords and contract-holders is achieved; and
- whether there is a need for consolidation of housing law.Page 23

Recommendation 3. The Welsh Government should commission research by the Wales Centre for Public Policy on the lack of data in the private rented sector, with a view to improving the publicly available data set on the sector.....Page 28

Recommendation 4. The Welsh Government should explore ways and means of improving engagement with contract-holders in the private rented sector, this should include considering whether there is a need for a representative organisation.....Page 28

Recommendation 5. The Welsh Government should bring forward amendments at Stage Two to ensure properties housing ministers of religion as part of their role as a minister are included in the list of exemptions in Schedule 1.....Page 39

Recommendation 6. The Welsh Government should bring forward amendments at Stage Two to extend the period in which a notice can be withdrawn without having to wait a further six months before issuing a new notice. The period should be changed from 14 days to 28 days.....Page 48

Recommendation 7. The Welsh Government should undertake a detailed feasibility study into how a Housing Tribunal / Court could work in Wales. If such a feasibility study found that it was practical and would lead to improvements in housing, the work to establish a Housing Tribunal / Court should be prioritised in the next Senedd term..... Page 53

Recommendation 8. The Welsh Government should issue clear guidance to local authorities that anyone in a household served with a notice that is due to expire within the following 84 days should be considered threatened with homelessness for the purposes of the Housing (Wales) Act 2014. The effectiveness of this guidance should be reviewed two years after it has come into force. Page 57

Recommendation 9. The Welsh Government should amend the Housing (Wales) Act 2014 so that the homelessness duties do not end unless accommodation is available for 12 months, rather than the current six months..... Page 58

1. Background

Our legislative scrutiny was interrupted by the Covid-19 pandemic, however, despite that, we were able to undertake full scrutiny of the Bill.

1. On 10 February 2020, Julie James AM, Minister for Housing and Local Government (“the Minister”) introduced the Renting Homes (Amendment) (Wales) Bill (“the Bill”) and accompanying Explanatory Memorandum (“EM”). The Minister made a statement on the Bill in Plenary on 11 February 2020.
2. At its meeting on 21 January 2020, the Assembly’s Business Committee agreed to refer the Bill to the Equality, Local Government and Communities Committee (“the Committee”) for consideration of the general principles (Stage 1), in accordance with Standing Order 26.9. The Business Committee agreed that the Committee should report by 22 May 2020.
3. On 1 April, the First Minister issued a statement outlining the Welsh Government’s legislative priorities in light of the Covid-19 pandemic. The two Bills that the Government prioritised were the Local Government and Elections (Wales) Bill; and the Curriculum Bill. All other legislation was to remain “under constant review”.¹ We cover in Chapter 3 in more detail the impact of the pandemic, and the changing policy context.
4. At the point the Bill was paused, we had already held a written consultation; a landlord survey and taken the bulk of the oral evidence. One evidence session was cancelled, as a result of the lockdown restrictions which prevented the Committee from meeting. Instead of taking oral evidence from the Chartered Institute of Housing Cymru (“CIH Cymru”), Tai Pawb and Community Housing Cymru (“CHC”), we wrote to these organisations with a list of questions. We also wrote to the Minister, as the final evidence session had to be postponed because of the lockdown restrictions.²
5. During the hiatus in our consideration of the Bill, one of the stakeholders who provided both written and oral evidence, the Residential Landlords Association (“RLA”), merged with the National Landlords Association to form the National Residential Landlords Association (“NRLA”). However, as the evidence was

¹ Welsh Government, [Written statement. The Government’s approach to legislation in light of Covid-19, 1 April 2020](#)

² [Letter from ELGC Committee Chair to the Minister, 31 March 2020](#)

submitted under the previous iteration of the organisation, all our references throughout the report remain as the RLA.

6. On 13 July 2020, the Business Committee agreed a revised timetable, with a new reporting deadline of 2 October 2020.³ We then rescheduled our final evidence session with the Minister on 20 July 2020.

Terms of reference

7. The Committee agreed the following framework within which to scrutinise the general principles of the Bill:

To consider—

- the general principles of the Renting Homes (Amendment) (Wales) Bill and the need for legislation to deliver the stated policy intention. In coming to a view on this you may wish to consider addressing the individual sections of the Bill;
- any potential barriers to the implementation of the Bill’s provisions and whether the Bill takes account of them,
- the appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum).
- whether there are any unintended consequences arising from the Bill, and
- the financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum).

The Committee’s approach

8. Between 13 February 2020 and 12 March 2020, we conducted a public consultation to inform our work, based on the agreed terms of reference. 23 written responses were received and published. We also heard oral evidence from a number of witnesses. The schedule of oral evidence sessions is available at Annex A.

³ Business Committee, [Revised timetable for the Renting Homes \(Amendment\) \(Wales\) Bill, 14 July 2020](#)

9. We conducted a survey aimed at landlords. The survey was promoted via the Committee’s and Assembly’s social media channels. 304 responses were received. An analysis of the responses is available on the Committee’s website⁴.

10. We also held 8 focus groups across Wales seeking the views of tenants. We spoke to 51 citizens from four of the five Assembly regions. Sessions were arranged in Anglesey (Holyhead), Cardiff, Gwynedd (Bangor), Pembrokeshire (Haverfordwest), and Swansea. Those participating in the sessions came from the aforementioned local authority areas and other local authority areas in Wales.⁵

Other Committees’ consideration of the Bill

11. The Assembly’s Finance Committee took evidence from the Minister on the financial implications of the Bill on 14 September 2020.

12. The Assembly’s Legislation, Justice and Constitution Committee were unable to take oral evidence from the Minister due to the Covid-19 pandemic. They wrote to the Minister with questions on the appropriateness of the provisions in the Bill that grant powers to make subordinate legislation on 9 March 2020.⁶ It reported on its conclusions on 2 October 2020.

Terms used throughout the report

13. Currently those renting a home are usually referred to as tenants; however, the 2016 Act, which this Bill seeks to amend, changes the term to “contract-holder”. As this Bill proposes changes to the 2016 Act, we have primarily used contract-holders throughout the report. But where we are referring to the current legislative framework, we use the term tenants. Those who responded to our consultation have used both terms, and we have used whichever term they use when quoting from their evidence.

⁴ ELGC Committee, [Renting Homes \(Amendment\) \(Wales\) Bill – survey analysis, 26 March 2020](#)

⁵ ELGC Committee, [Renting Homes \(Amendment\) \(Wales\) Bill – Summary note of engagement, March 2020](#)

⁶ [Letter from LJC Committee Chair to Minister for Housing and Local Government, 9 March 2020](#)

2. Renting Homes (Wales) Act 2016

The Bill amends the Renting Homes (Wales) Act 2016, which makes sweeping changes to how homes are rented in Wales. This Act has not yet been commenced.

14. This Bill is unusual in that it amends an Act that has not yet been implemented. The Renting Homes (Wales) Act 2016 (“the 2016 Act”) received Royal Assent in 2016, but has not yet been commenced. Having such a significant gap between a Bill becoming law and being implemented is rare. The Bill is also the second piece of legislation to be considered by us which is amending the 2016 Act. We scrutinised the Renting Homes (Fees etc.) (Wales) Act 2019 which banned a range of fees charged to tenants by landlords and letting agents.

15. The 2016 Act is a significant piece of legislation which replaces the existing secure and assured tenancy regimes under which contract-holders rent properties, a regime which has been in place since the *Housing Act 1985* (“the 1985 Act”) and *Housing Act 1988* (“the 1988 Act”). The EM to this Bill lists the main benefits of the 2016 Act as being:

- The requirement to provide a contract;
- Improvements for Joint contracts;
- Enhanced succession rights;
- Landlords must ensure properties are fit for Human Habitation;
- Preventing retaliatory eviction;
- Abandonment procedure;
- A bespoke legal basis for supported accommodation; and
- Time limited possession notices.⁷

16. Before the Bill was introduced, the Minister had stated that the delays in implementing the 2016 Act were the result of changes to court ICT systems, which were the subject of on-going discussions with the UK Government.⁸ In evidence, the Minister also highlighted the on-going work to develop the “over 20 sets of regulations associated with the Act”⁹ adding that two of the most

⁷ Welsh Government, Explanatory Memorandum, paragraph 3.23, February 2020

⁸ Plenary, 17 September 2019, RoP [242]

⁹ ELGC Committee, 27 February 2020, RoP [22]

fundamental sets of regulations on “supplementary terms and prescribing model contracts” needed more work, while the others were “nearing completion”.¹⁰

17. There was disappointment from both CIH Cymru¹¹; and the Bevan Foundation¹² at the delays to implementation. While other stakeholders such as the RLA highlighted that they had been given “multiple dates” for commencement which had been and gone.¹³ There was a clear call for greater certainty on the date for implementation from both those representing landlords, such as CHC¹⁴ and those supporting tenants, such as Crisis.¹⁵

18. The EM states the delays between passing and commencing the Act has enabled the Government to consider new and emerging evidence on security of tenure, and have concluded:

“...retaining an arrangement which enables a landlord to end a contract with only two months’ notice, where the contract-holder is not at fault, undermines the security of tenure we are seeking to achieve.”¹⁶

19. The Minister described to us the “significant body of evidence” to suggest that a two month notice period for no-fault evictions is not enough time for people to find a suitable home in the right area.¹⁷

20. The EM also outlines that introducing this amending Bill before commencement of the 2016 Act was considered to “minimise the disruption” that would be likely if the 2016 Act was commenced, and afterwards important elements of the new system were then changed.¹⁸

21. There was broad support across the different stakeholder groups for this approach, including:

- CHC¹⁹;

¹⁰ ELGC Committee, 27 February 2020, RoP [24]

¹¹ [Written evidence, RHA 12a, CIH Cymru](#)

¹² [Written evidence, RHA 22, Bevan Foundation](#)

¹³ ELGC Committee, 12 March 2020, RoP [45]

¹⁴ [Written evidence, RHA 11a, CHC](#)

¹⁵ ELGC Committee, 12 March 2020, RoP [274]

¹⁶ Welsh Government, [Explanatory Memorandum, paragraph 3.24, February 2020](#)

¹⁷ ELGC Committee, 27 February 2020, RoP [28]

¹⁸ Welsh Government, [Explanatory Memorandum, paragraph 3.25, February 2020](#)

¹⁹ [Written evidence, RHA 11a, CHC](#)

- Tai Pawb²⁰;
- ARLA PropertyMark²¹ (although they do not support the general principles of the Bill, they support implementing all elements “in one go”);
- RLA²² (although they would have preferred to see how the provisions in the 2016 Act were working first, as that is not going to happen, they support one single implementation);
- Generation Rent²³;
- Shelter Cymru²⁴; and
- NUS Wales.²⁵

22. When the Bill was introduced, the stated intention of the Government was to pass this Bill, and then commence the 2016 Act as amended by the end of the current Senedd term.²⁶ Clearly, the global pandemic has had a significant impact on this timetable. When scrutiny of the Bill was restarted, we asked how the delay would affect commencement, officials told us:

“...if this Bill is approved by the Senedd in this term, we've said to allow a six-month lead-in time for implementation to give landlords the time to do the remaining work they need to do, so we're probably looking at implementation in the autumn of 2021, probably around about October, say, in terms of allowing all of the work to be done to allow the implementation to run ahead smoothly.”²⁷

23. Stakeholders were very clear about the importance of sufficient notice before implementation to ensure that landlords and tenants understood the significant changes. CHC described the extent of the changes on housing associations:

“Many housing associations are large-scale landlords, managing tens of thousands of homes. The implementation of the Act will be a significant undertaking involving communications programmes, significant changes to housing management systems and overhauling

²⁰ Written evidence, RHA 13a Tai Pawb

²¹ ELGC Committee 12 March 2020, RoP [38]

²² ELGC Committee, 12 March 2020, RoP [37]

²³ ELGC Committee, 12 March 2020, RoP [179]

²⁴ ELGC Committee, 12 March 2020, RoP [262]

²⁵ ELGC Committee, 12 March 2020, RoP [181]

²⁶ Welsh Government, Explanatory Memorandum, paragraph 3.25, February 2020

²⁷ ELGC Committee, 20 July 2020, RoP [16]

of documentation. Furthermore, housing professionals will require training and development to operate to a high level within the new framework the Act will bring in. For these reasons, housing associations would benefit from an increased level of certainty over the timeline for implementation of the Act, including the likely date of commencement and when new documentation and guidance will be published for familiarisation prior to this, so they and their workforce can prepare sufficiently.”²⁸

24. ARLA Propertymark also highlighted the amount of work needed to prepare their members before implementation of the 2016 Act, calling it a “fundamental change” to what landlords and letting agents have been doing “for the last 30-odd years”. They called for “legislative certainty in as far as advance” to enable organisations like themselves, Rent Smart Wales, and others time to get people “up to speed as quickly as possible.”²⁹

25. While it is unfortunate that it has taken over four years to commence the 2016 Act, we understand the differing factors that have contributed to this delay. We support amending the Act before it has been commenced, this is a sensible approach. We now expect that all efforts are taken to ensure that the Act is commenced in autumn 2021.

26. Housing law is amongst the most important part of the legislative code, and it is therefore important the changes are clearly communicated to both landlords and contract-holders. The requirements in the 2016 Act where new contracts will have to be issued to all contract-holders will provide an opportunity to make all contract-holders aware of both their revised rights and responsibilities. The Welsh Government must ensure they do everything to support landlords and support organisations to ensure contract-holders are aware of these changes.

²⁸ Written evidence, RHA, 11a, CHC

²⁹ ELCG Committee, 12 March 2020, RoP [44]

3. The impact of Covid-19

There have been changes to the possession process over the last six months because of the pandemic. Notice periods have been temporarily increased to six months for many tenants; and there was a stay on possession proceedings for a period.

27. In Chapter 1, we outlined the impact that Covid-19 had on our scrutiny of the Bill. There have also been significant shifts in housing policy to alleviate some of the impacts of Covid-19. The bulk of our evidence was taken before the pandemic, and therefore does not reflect this. However, our final evidence session with the Minister did take account of the impact of Covid-19. We have also been undertaking separate work looking at the impact of Covid-19 on housing, equalities and local government. All of which has highlighted issues which relate to this Bill.

28. The *Coronavirus Act 2020* temporarily increased the notice period a landlord in England or Wales had to give before they could ask a court for a possession order to three months. This covered council tenants, housing association tenants and tenants in the private rented sector. This was combined with a temporary suspension on court proceedings for evictions. The initial suspension was in place until 23 August, it was then extended to 20 September 2020.

29. The Welsh Government subsequently made regulations which further extended the notice period that landlords must give to tenants from three months to six months for notices that are issued under section 21 of the *Housing Act 1988* (commonly referred to as “no-fault” notices / evictions). This applies to tenants with assured and assured shorthold tenancies. The regulations also extended the notice period for notices served under section 8 of the *Housing Act 1988*. However, a three month notice period will continue to apply to notices under Section 8 of the *Housing Act 1988* that seek possession on grounds that relate to anti-social behaviour. This came into force for all notices issued on or after 24 July 2020 and initially applied to all notices issued until 30 September.

30. In announcing these changes, the Minister said:

“The effect will be to further delay evictions during the ongoing public health emergency; fewer people will face eviction into

homelessness at a time when local authorities are less able to respond to these situations; those renting their homes will benefit from increased security and reduced anxiety; and individuals at risk of eviction will be provided with increased time to seek support to resolve any problems.”³⁰

- 31.** The Legislation, Justice and Constitution Committee reported on these regulations. The report noted that there was no analysis in the Explanatory Memorandum of landlords’ rights under Article 1 Protocol 1 of the European Convention on Human Rights (“A1P1”), and how interference with these rights was justified.³¹ The Welsh Government responded to the report stating that the Government “consider that the provisions are compatible with the European Convention on Human Rights.”³²
- 32.** The NRLA wrote to the Minister following this announcement urging “that the six month notice period be reconsidered....” They also called for a number of other actions, including “adoption of a low-cost (or interest free) tenant loan scheme for Covid-19 related arrears.....a mechanism for landlords to access grants where renters are unwilling to engage or make an application themselves....”³³
- 33.** On 15 September 2020, the Minister announced that six month notice period would continue to apply until March 2021. However, the notice period for possession grounds relating to anti-social behaviour and domestic abuse would return to their “pre-COVID position.”³⁴
- 34.** On 11 August 2020, the Minister announced a “Tenancy Saver Loan Scheme” which “will provide an affordable way to cover rent arrears, or future months’ rent, reducing the risk of eviction and homelessness.” The loans are not available to

³⁰ Welsh Government, [Written Statement: Use of powers under the Coronavirus Act 2020, 23 July 2020](#)

³¹ Legislation, Justice and Constitution Committee, [Report on SL\(5\)585 – The Coronavirus Act 2020 \(Assured Tenancies and Assured Shorthold Tenancies, Extension of Notice Periods\) \(Amendment\) \(Wales\) Regulations 2020](#)

³² Welsh Government, [Written response to LJC Committee report on SL\(5\)585– The Coronavirus Act 2020 \(Assured Tenancies and Assured Shorthold Tenancies, Extension of Notice Periods\) \(Amendment\) \(Wales\) Regulations 2020](#)

³³ [Letter from Chief Executive, NRLA to Minister for Housing and Local Government, 4 August 2020](#)

³⁴ Plenary, 15 September, RoP [295-296]

people who were in “significant” rent arrears before March 1 2020, and will be paid directly to landlords.³⁵

35. We will be monitoring the impacts of these decisions on housing policy in the coming months.

³⁵ Welsh Government, [Press release, Welsh Government unveils package of support to keep people in their homes and end homelessness](#), 11 August 2020

4. General principles and need for legislation

There was a clear split in opinion as to whether the legislation was required; landlords and their representative organisations said it would have a significant negative impact; while contract-holders and advice organisations supported the Bill.

Current legislative framework

36. While the Bill is amending the new rental framework introduced by the 2016 Act, all of the evidence we have gathered has been based on the experiences of how the current legislative framework operates.

37. The most common type of tenancy in the private rented sector is currently an Assured Shorthold Tenancy (“AST”) which was introduced under the Housing Act 1988. The 1988 Act included a no-fault ground for possession under section 21 (often referred to as either “no-fault notices” or “section 21 notices”). This is currently the regime in place in Wales. While the 2016 Act will change the types of tenancies available³⁶; the no-fault provisions remain fundamentally the same as under the 1988 Act, with a two month notice period still in place under a section 173 (the equivalent no-fault provision) notice in the 2016 Act.

38. While most tenants in the social sector have long term security of tenure, housing associations sometime use ASTs for “starter tenancies”. The WLGA said that local authorities do not “currently use no-fault evictions.”³⁷

The Bill’s purpose and effect

39. The EM states that the Bill’s “overarching aim” is “to improve security of tenure for those who rent their homes in Wales.” It adds that the greatest impact will be in the private rented sector, although the provisions apply to all landlords who issue standard contracts under the 2016 Act.³⁸

40. The primary changes in the Bill will be to double the length of time from the start of a periodic standard contract before a landlord can regain possession of a property, extending it from six months (as it would currently stand if the 2016 Act

³⁶ The 2016 Act will replace the existing secure and assured tenancies with a new system of secure and standard occupied contracts.

³⁷ [Written evidence, RHA.10a WLGA](#)

³⁸ Welsh Government, [Explanatory Memorandum, paragraph 3.26, February 2020](#)

were implemented without amendment) to 12 months. The extension is achieved through two means: one by extending the notice period from 2 months to 6 months; and second, by preventing a notice being issued within the first 6 months of a contract. These combined provide 12 months security before a contract-holder would have to leave a property, if no breach of contract had occurred.

41. The EM states that due to changes in the sector and the emerging evidence, they have concluded that “two months is no longer an adequate notice period.”³⁹ This is to ensure there is enough time to:

- Secure “suitable alternative accommodation” in the same community or area, including enabling keeping children in their existing school, or enabling sufficient time to change schools if necessary;
- Arrange changes to existing care packages including supporting moves to a different local authority or health board if necessary;
- Save up to cover the cost of a move and to make other necessary administrative changes; and
- “...plan for the move around their everyday lives, including employment and family commitments, in a manner more similar to those who are selling their home.”⁴⁰

42. The EM highlights that section 21 notices are currently used “routinely” in cases where a breach of contract, such as rent arrears or anti-social behaviour has occurred. It is intended that the change in notice period will help in “encouraging” landlords to use the appropriate breach of contract possession ground.⁴¹ The EM states that in cases of contract breaches “landlords will retain the option of regaining possession of their property sooner through the use of the appropriate possession ground.”⁴² We will explore this in more detail in Chapter 8.

43. The Bill also makes changes in relation to fixed term standard contracts which “ensures a contract-holder will be provided a minimum twelve months’ security, regardless of the initial fixed term contract length.”⁴³ This is done by removing the landlord’s ability to issue a notice during the fixed term contract to end the contract when the fixed term expires. The Bill prohibits landlord break clauses in fixed term contracts of less than 24 months. Where a fixed term is for 24

³⁹ Welsh Government, [Explanatory Memorandum, paragraph 3.28, February 2020](#)

⁴⁰ Welsh Government, [Explanatory Memorandum, paragraph 3.28, February 2020](#)

⁴¹ Welsh Government, [Explanatory Memorandum, paragraphs 3.29-3.30, February 2020](#)

⁴² Welsh Government, [Explanatory Memorandum, paragraph 3.33, February 2020](#)

⁴³ Welsh Government, [Explanatory Memorandum, paragraph 3.39, February 2020](#)

months or longer, a break clause may be included but cannot be activated until month 18. The notice period in relation to a break clause will be six months.

Abolition of no-fault evictions

44. The Bill does not abolish no-fault evictions. Instead it increases the notice period for contract-holders, providing them with more time to secure an alternative home.

45. No-fault evictions were banned in Scotland under the *Private Housing (Tenancies) (Scotland) Act 2016*. 18 grounds were created by which a landlord could end a tenancy. After the first six months of the tenancy landlords must give 84 days' notice to a tenant, but in some circumstances there is a 28 day notice period, including if the notice relates to a breach of contract. Analysis undertaken by Shelter into the impact of this Act found that while it was still early, the initial signs indicate a "positive change" for those renting in Scotland. Survey work undertaken also seems to suggest that renters feel more secure in their tenancies, and are less anxious about becoming homeless.⁴⁴

46. The Queen's Speech in December 2019, included a proposed Renters' Reform Bill. One of the elements of this proposed Bill, includes abolishing no-fault evictions and reforming the grounds of possession; while also reforming the law around possession for landlords where there is a legitimate need for them to regain possession, and improving the court process to make it quicker and easier.⁴⁵ There was a consultation on this policy between July and October 2019, and, at the time of writing, the responses to this are being analysed.

47. There was a divide in the evidence we received as to whether Wales should abolish no-fault evictions completely. Organisations such as Shelter Cymru⁴⁶; Citizens Advice Cymru⁴⁷; NUS Wales⁴⁸; The Wallich⁴⁹; and Generation Rent⁵⁰ all supported complete abolition. While ARLA Propertymark⁵¹; and the RLA⁵² supported the retention of no-fault evictions. CHC said that if the fault based

⁴⁴ Shelter, [The new private rental tenancies: Evaluating changes to rental agreements in Scotland, May 2019](#)

⁴⁵ UK Government, [The Queen's Speech 2019 Background Briefing Notes, 19 December 2019](#)

⁴⁶ [Written evidence, RHA.03 Shelter Cymru](#)

⁴⁷ [Written evidence, RHA.04 Citizens Advice Cymru](#)

⁴⁸ [Written evidence, RHA.08 NUS Cymru](#)

⁴⁹ [Written evidence, RHA.16 The Wallich](#)

⁵⁰ [Written evidence, RHA.19 Generation Rent](#)

⁵¹ ELGC Committee, 12 March 2020, RoP [100]

⁵² [Written evidence, RHA.05 RLA](#)

possession processes were to be improved in terms of “speed and robustness” then “it could be argued there would be no need” for no-fault evictions.⁵³

48. The Minister told us that it was “not actually possible” to ban no-fault evictions because “if somebody owns a house, they have a right to it” and that there will be instances where a landlord could find themselves homeless because they cannot access a home they own.⁵⁴ She described the “balance” they had tried to seek, between tenants organisations who wanted them to go further, and landlord organisations saying they were going too far:

“We’re trying to sit somewhere in the middle.”⁵⁵

49. She acknowledged the difficulties in finding the balance between the differing opinions, but committed to careful monitoring of the implementation:

“If it doesn't work, because we still have a range of no-fault evictions that seem unfair to us, we will have to look at that again. And if we did have a mass exodus of good landlords out of the sector, we'd have to look at that again.”⁵⁶

Human rights

50. The Llywydd wrote to us highlighting that her view on legislative competence of the Bill was:

“...qualified on the basis that the Bill engages with Article 1 of Protocol 1 (Protection of Property) of the European Convention on Human Rights. In considering the legislative competence of the Bill, I came to the assessment that while it engages Article 1 of Protocol 1 it does not breach it.”⁵⁷

51. The EM states that the Welsh Government had considered the Bill’s impact on human rights and concluded it was compatible with the ECHR. It notes that the provisions engage with the rights of both landlords (under Article 1 of Protocol 1) and the rights of contract-holders under Article 8. However, they believe that the provisions “strike a fair and proportionate balance between these rights.”⁵⁸

⁵³ [Written evidence, RHA 11a CHC](#)

⁵⁴ ELGC Committee, 27 February 2020, RoP [43]

⁵⁵ ELGC Committee, 27 February 2020, RoP [45]

⁵⁶ ELGC Committee, 27 February 2020, RoP [62]

⁵⁷ [Letter from Llywydd to ELGC Committee Chair, 4 March 2020](#)

⁵⁸ Welsh Government, [Explanatory Memorandum, paragraph 10.3, February 2020](#)

They also note that while the provisions may apply to pre-existing contracts, they are not “truly retrospective” as they apply to actions in the future. In oral evidence, the Welsh Government stated that they felt the six month notice period helped achieve the balance of rights between the landlord and contract-holder.⁵⁹

Post legislative scrutiny

52. The EM states that a review of the implementation of this Bill, if passed by the Senedd, will be covered by the planned evaluation of the 2016 Act. This will be an independent evaluation project, which will be two or three years in duration, and will begin before commencement of the 2016 Act to allow the collection of baseline information. The effectiveness of the 2016 Act as amended by this Bill, will be “evaluated in a number of ways.....[and will] include both process and impact evaluation.” It will include qualitative and quantitative methods, and will “consider the impacts(s) of the new legislation against the desired effects of the 2016 Act, as amended....”⁶⁰

53. Witnesses highlighted the importance of post legislative scrutiny to understand the impact of the changes on the private rented sector in Wales. For example, UK Finance said the impact evaluation project should “consider the impact on BTL [Buy to let] lending in the Welsh market...”⁶¹ Tai Pawb also supported calls to monitor the impact on lender behaviour calling it “absolutely crucial” as well as the impact on the size of the PRS in areas where it is “desperately needed” due to a lack of other housing tenures being available.⁶²

Our view

54. We support the general principles of the Bill. We acknowledge the Minister’s comments about trying to achieve a balance between the differing views and interests of contract-holders and landlords, and that this may result in a solution that does not satisfy everybody.

55. We understand the calls for a complete ban on no-fault evictions, but there will be times when a landlord has a legitimate need to regain possession of their property. As individual Members we hold different views on whether no-fault evictions should be abolished totally. But we note it would be very difficult to legislate for all the instances in which a landlord wishes to regain possession, and

⁵⁹ ELGC Committee, 27 February 2020, RoP [43]

⁶⁰ Welsh Government, [Explanatory Memorandum, paragraphs 11.1-11.6, February 2020](#)

⁶¹ [Written evidence, RHA 21 UK Finance](#)

⁶² [Written evidence, RHA 13a Tai Pawb](#)

believe there is a risk that in those circumstances, grounds could potentially be misused. In those instances where possession is needed by the landlord, we believe that ensuring people have sufficient notice to find a new home which is in the right area and meets all their needs is the most pressing issue. (We explore the issue about the length of notice period in more detail in Chapter 6).

56. We believe an important change is in ensuring the right route is used to regain possession, so that the no-fault route is not routinely used for repossession on the basis of rent arrears or anti-social behaviour, where there are other more appropriate routes. We are aware though that there are difficulties and challenges in using the fault based grounds, which we explore in Chapter 8.

57. We note both the Welsh Government's and the Llywydd's views on the legislative competence of the Bill as it relates to human rights. We believe that on the evidence we have heard the correct balance has been struck between landlord and contract-holder's rights.

Recommendation 1. That the Senedd supports the general principles of the Renting Homes (Amendment) (Wales) Bill.

58. As the Minister reminded us, the 2016 Act is a large scale and fundamental change in how the rental market will work in Wales. It is therefore important that there is effective post legislative scrutiny of how it is working. We welcome the planned evaluation project, which will encompass the changes brought forward in this Bill, if passed. Post legislative scrutiny is essential in understanding whether the Bill's purpose and effect has been successfully achieved. There are a number of specific issues which we cover throughout this report, which we believe it is important that the impact evaluation covers, as well as future post legislative scrutiny undertaken by the Senedd. We also believe that the 2016 Act as amended is one that is deserving of post legislative scrutiny by a future Senedd committee.

59. We think it is important to state that post legislative scrutiny does not imply that the implementation of an Act has gone badly, and where implementation has gone well with few unintended consequences, it can be a rapid exercise. But when an Act has the potential to have such significant impact on households around Wales, it is important that it is undertaken.

60. We note that housing law is currently found in numerous pieces of legislation, both those passed by the Senedd, and also Acts passed by Westminster prior to devolution. There is an argument that housing law is one that lends itself to a full consolidation exercise, but we note that the Welsh

Government is prioritising the consolidation of planning law. Any post legislative scrutiny of the 2016 Act should also consider the need for consolidation of housing law.

Recommendation 2. The Welsh Government should ensure that the post implementation review of the 2016 Act addresses the concerns covered during our scrutiny, in particular issues such as impacts on:

- lending behaviour;
- housing supply;
- landlord's behaviour;
- numbers of people being found intentionally homeless and outcomes for these people;
- whether there is a need for more mandatory grounds for possession;
- whether there is a shift to grounds based possession where appropriate;
- whether the Minister's desire to create the proper balance between the rights of landlords and contract-holders is achieved; and
- whether there is a need for consolidation of housing law.

5. Evidence base

There is a lack of data and robust evidence about the private rented sector. This coupled with difficulties with engaging those renting in this sector makes it difficult to ensure that legislation and policy is evidence based and informed by those most affected by the changes.

Consultation

61. In July 2019, the Welsh Government launched a consultation seeking views on changes to the notice period.⁶³ These proposals matched the provisions which were ultimately in the Bill. The majority of those who responded to the consultation were landlords or agents, the Welsh Government said this was expected because of the direct link to them through Rent Smart Wales, and the lack of comparable access routes to contract-holders.⁶⁴

62. According to the EM, of those who responded to the survey, the majority were against any increase to minimum notice periods. However, those respondents who were contract-holders were “generally very supportive” of the proposals. The majority of all respondents supported preventing landlord’s being able to serve a notice if they had not complied with other legislation governing the private rented sector.⁶⁵

63. Of landlords who responded, 94% opposed the main proposal to extend the notice period, with most feeling that six months was too long and could harm the landlord financially, or increase the risk of damage to the property. 83% also opposed the restriction of eviction notices being served in the first six months of contract.⁶⁶ While 98% of letting agents who responded opposed the extension to six months, for the same reasons given by landlords; and 92% opposed the ban on notices being served in the first six months.⁶⁷

64. On this consultation, the RLA said:

⁶³ Welsh Government, [Increasing the minimum notice period for a ‘no fault eviction’](#), 11 July 2019

⁶⁴ Welsh Government, [Explanatory Memorandum, paragraph 4.3, February 2020](#)

⁶⁵ Welsh Government, [Explanatory Memorandum, paragraph 4.3, February 2020](#)

⁶⁶ Welsh Government, [Explanatory Memorandum, paragraph 4.5, February 2020](#)

⁶⁷ Welsh Government, [Explanatory Memorandum, paragraph 4.6, February 2020](#)

“Not only are the effects of the proposals more far reaching than suggested in the consultation, they completely ignore the overwhelming opposition to the them and the explanations. It is telling that 70%-90% of respondents opposed them.”⁶⁸

65. We also ran a survey aimed at landlords and letting agents. This resulted in similar results. 304 responded, of which 77.69% were landlords, 9.9% were letting agents, 1.0% were social landlords, and 11.5% were neither a landlord nor a letting agent. 80.6% of all respondents disagreed or strongly disagreed with the proposal to extend the notice period from two to six months. 75.2% disagreed or strongly disagreed with the proposal to restrict notices being issued during the first six months of a contract.⁶⁹

Lack of data

66. Throughout this Senedd term, when we have scrutinised previous pieces of housing legislation and undertaken policy scrutiny, the lack of robust data on housing, in particular within the PRS has arisen. The establishment of Rent Smart Wales has improved data in relation to the number of landlords and where rental properties are located.

67. In relation to this Bill, there is no clear data on why, for example, section 21 notices are used, and in particular whether they are used when fault based grounds could be used. Although surveys have been used to elicit this information. The RLA told us that the “largest survey” they had carried out:

“...found 83% of landlords who used S21 had done so because of rent arrears. Over half of all S21 users had experienced anti-social tenants. However, they were five times more likely to use S21 over the S8 notice designed for these situations. This is due to lack of trust in the court system to deliver swift justice and inadequacies in the S8 route.”⁷⁰

68. This correlated with our own survey, that found of those landlords who responded 84.6% of respondents had issued a section 21 notice. Of those who had issued such a notice, 80.3% did so because of non-payment of rent, followed by 43.9% using them for antisocial behaviour. (Please note that respondents could select more than one reason for issuing the notice).⁷¹ We explore this issue in more

⁶⁸ [Written evidence, RHA 05 RLA](#)

⁶⁹ [ELGC Committee, Renting Homes \(Amendment\) \(Wales\) Bill – survey analysis, 26 March 2020](#)

⁷⁰ [Written evidence, RHA 05 RLA](#)

⁷¹ [ELGC Committee, Renting Homes \(Amendment\) \(Wales\) Bill – survey analysis, 26 March 2020](#)

detail in Chapter 8. CHC called the available data on repossessions in Wales as “relatively sparse” and said there was “little evidence” if a tenancy would have ended on a fault based ground if no-fault evictions were not available.⁷² A view supported by Generation Rent.⁷³ While Shelter Cymru described a “lack of data, on the whole” on no-fault evictions.⁷⁴

69. Some of the other issues where a need for further data was highlighted included:

- A greater understanding of private rent levels. It was suggested Rent Smart Wales could be used to collect data on annual rent levels (Crisis)⁷⁵;
- Retaliatory evictions (CIH Cymru)⁷⁶;
- Impact of tenancy insecurity (CIH Cymru)⁷⁷;
- Operating practices in the private rented sector (CIH Cymru)⁷⁸; and
- A Welsh Housing Survey (Shelter Cymru)⁷⁹

70. As a result of a lack of data, it was clear that there was a reliance on anecdotal information in terms of the development of this Bill. The Minister herself said in relation to the use of no-fault evictions where fault based grounds may be more appropriate that there was “lots” of information, but that “it is quite anecdotal.”⁸⁰

71. Some stakeholders, such as Tai Pawb highlighted though that while it may only be anecdotal, it was “robust” evidence.⁸¹ NUS Cymru highlighted that some of this anecdotal evidence can come from a range of sources, including support organisations like NUS Cymru, Crisis and Citizens Advice, as well as from our own case work as Members of the Senedd.⁸² Certainly our work on the Bill has been informed by the casework we receive from our constituents, which would suggest

⁷² [Written evidence, RHA 11a CHC](#)

⁷³ [Written evidence, RHA 19 Generation Rent](#)

⁷⁴ ELGC Committee, 12 March 2020, RoP [308]

⁷⁵ [Written evidence, RHA 06 Crisis](#)

⁷⁶ [Written evidence, RHA 12 CIH Cymru](#)

⁷⁷ [Written evidence, RHA 12a CIH Cymru](#)

⁷⁸ [Written evidence, RHA 12a CIH Cymru](#)

⁷⁹ ELGC Committee, 12 March 2020, RoP [307]

⁸⁰ ELGC Committee, 20 July 2020, RoP [94]

⁸¹ [Written evidence, RHA 13a Tai Pawb](#)

⁸² ELGC Committee, 12 March 2020, RoP [203]

there is a need for the Bill. Generation Rent said anecdotal evidence should not be discounted.⁸³

Representation of contract-holders in the PRS

72. Dr Craig Gurney said he had concerns about how little the voice of tenants had been heard in the development of both this Bill, and the 2016 Act.⁸⁴ Although Citizen’s Advice Cymru said they were broadly satisfied that tenants had been consulted sufficiently, saying “great strides” had been made in tenant engagement.⁸⁵

73. A number of organisations highlighted the difficulty with engaging with tenants in the private rented sector. The WLGA told us that the “diversity” of the sector presents particular challenges for consultation.⁸⁶ CHC⁸⁷, CIH Cymru⁸⁸, Shelter Cymru⁸⁹ and Tai Pawb⁹⁰ all highlighted the lack of a single organisation representing tenants in the private rented sector.

74. Tai Pawb highlighted the Open Doors project, which ran until 2019, in partnership with the RLA. This programme engaged both landlords and tenants in the private rented sector.⁹¹ We have used this project to help us engage with tenants in the private rented sector in our legislative scrutiny on the *Renting Homes (Fees etc.) (Wales) Act 2019*.

Our view

75. As we have noted, the combined difficulties of a lack of data around the private rented sector, along with a lack of formulised structures for tenant engagement in the PRS has made development of policies in this sector more difficult. As we note in paragraph 26, the commencement of the 2016 Act will provide an unique opportunity for communication with all contract-holders, and this should be utilised to communicate key messages to this group.

⁸³ [Written evidence, RHA 19 Generation Rent](#)

⁸⁴ [Written evidence, RHA 01 Dr Craig Gurney](#)

⁸⁵ ELGC Committee, 12 March 2020, RoP [311]

⁸⁶ [Written evidence, RHA 10a WLGA](#)

⁸⁷ [Written evidence, RHA 11a CHC](#)

⁸⁸ [Written evidence, RHA 12a CIH Cymru](#)

⁸⁹ ELGC Committee, 12 March 2020, RoP [316]

⁹⁰ [Written evidence, RHA 13a Tai Pawb](#)

⁹¹ [Written evidence, RHA 13a Tai Pawb](#)

76. We note the comments made around the fact that the Welsh Government went ahead with the proposals despite the consultation responses being overwhelmingly against them. This is not in itself a problem. Consultations responses can easily be unbalanced with a preponderance of respondents from one type of background. This comes back to the Minister's view that she has tried to strike a balance between these two different positions throughout development of the Bill.

77. We value the evidence we received from both individual landlords and organisations representing landlords. We know that we will get detailed evidence informed by landlords' day to day experiences when we issue consultations on the private rented sector. We also know that private tenants do not have the same organisational clout behind them. In fact there is no single organisation with a dedicated Welsh presence that supports and advocates for Welsh tenants in the private rented sector.

78. It is difficult to engage with tenants in the private rented sector, they are a very disparate, diverse and transient group. However, as the PRS grows and it increasingly becomes a lifelong tenure, it becomes even more important that there are mechanisms established to enable tenants to actively engage in policy development that affects their day to day lives, if they so wish. This will ultimately prove incredibly beneficial to the Welsh Government.

Recommendation 3. The Welsh Government should commission research by the Wales Centre for Public Policy on the lack of data in the private rented sector, with a view to improving the publicly available data set on the sector.

Recommendation 4. The Welsh Government should explore ways and means of improving engagement with contract-holders in the private rented sector, this should include considering whether there is a need for a representative organisation.

6. Impact on contract-holders

The changes in this Bill will have a significant impact on contract-holders, most of which we heard will be positive and improve the private rented sector as a tenure of choice.

79. Sections 1 and 2 of the Bill amend the 2016 Act to increase the minimum no-fault notice period to end periodic and fixed term standard contracts, from two months to six months. Section 3 introduces Schedule 1 of the Bill which inserts a new Schedule 8A in to the 2016 Act. The new Schedule 8A sets out exceptions to Sections 1 and 2, therefore the types of standard contracts which will continue to be terminated with two months' notice.

80. Section 13 inserts regulation making powers into the 2016 Act to restrict landlords' powers to exclude contract-holders from properties for a period specified in a contract.⁹² The new regulation making powers will allow Welsh Ministers to specify what type of occupation contracts this may or may not apply to.

Security of tenure

81. The EM states that the primary aim of the Bill is to provide greater security of tenure in the private rented sector in Wales. It states that lack of security of tenure for contract-holders could affect how they enforce their rights, and that providing more security will improve peace of mind that they will receive fair treatment. Sections 1 and 2 of the Bill contain provisions to strengthen this security by increasing the no-fault notice period to end the majority of occupation contracts from two months to six months.

82. The majority of the evidence we heard was in favour of increasing the minimum notice period, with the exception of landlord and letting agent organisations. The WLGA told us that increasing the minimum notice period would make the private rented sector more "attractive" to prospective tenants.⁹³

⁹² Welsh Government, [Explanatory Memorandum, Table 5.1, February 2020](#).

⁹³ [Written evidence, RHA 10, WLGA](#).

83. Several respondents, including the WLGA⁹⁴ and Tai Pawb⁹⁵ told us that two months is not enough time for renters to find “suitable”⁹⁶ accommodation that is “safe and secure, of appropriate size, in close proximity to schools”, especially for children who need local, specialist support.⁹⁷ Respondents including Citizen’s Advice⁹⁸ and Shelter⁹⁹ also highlighted the financial difficulties faced by tenants when moving from one rented property to another, and that an increase from two to six months will allow more time for them to “plan, prepare and save” for the cost of a deposit, rent in advance and other incidental costs.¹⁰⁰

84. CLA Cymru, said that they support the increased notice period but that landlords will need to be able to “effectively regain possession of a property through the court system when required, due to a breach of tenancy or on estate management grounds.”¹⁰¹ We explore this in more detail in Chapter 8.

85. As mentioned in paragraph 82, landlord and letting agent respondents were not supportive of the provisions in Sections 1 and 2, which they felt are “overly biased” towards contract-holders. The RLA said that increasing the minimum notice period for no-fault evictions could result in landlords suffering rent arrears as they attempt to “take possession from bad tenants”. We explore this in more detail in Chapter 8. They also told us that in the event of anti-social behaviour, the longer notice period means that the community local to the property is at risk of being disrupted.¹⁰²

86. ARLA Propertymark told us that even when using the Accelerated Possession route, its members cite delays when using fault based grounds for eviction. It said that if court processes are not altered following the implementation of the Bill, then “the full eviction process will take approximately 12 months from the date the notice is issued.”¹⁰³ We discuss the impact of court delays in more detail in Chapter 8.

⁹⁴ [Written evidence, RHA 10, WLGA](#)

⁹⁵ [Written evidence, RHA 13, Tai Pawb](#)

⁹⁶ [Written evidence, RHA 10, WLGA](#)

⁹⁷ [Written evidence, RHA 13, Tai Pawb](#)

⁹⁸ ELGC Committee, 12 March 2020, RoP [257]

⁹⁹ [Written evidence, RHA 03, Shelter Cymru](#)

¹⁰⁰ ELGC Committee, 12 March 2020, RoP [257]

¹⁰¹ [Written evidence, RHA 18, CLA, Cymru](#)

¹⁰² [Written evidence, RHA 05, RLA](#)

¹⁰³ [Written evidence, RHA 09, ARLA Propertymark](#)

87. The Minister agreed with respondents’ concerns on the current length of notice period. She said that evidence supporting the Bill’s proposals show that two months’ notice for a “no-fault” eviction “isn’t enough for a family, in particular, to find themselves another good rented home in a similar area to make sure that their children are not disrupted from school”.¹⁰⁴

Contract-holders’ well-being

88. One of the key reasons given in support of the Bill was the improvement to contract-holders well-being. We heard overwhelming evidence that security of tenure impacts on this:

“...much of the impact of Section 21 in the private rented sector is psychological, with tenants knowing that they face the potential of losing their home with two months’ notice at no fault”¹⁰⁵.

89. Several respondents including academics¹⁰⁶ and tenant organisations¹⁰⁷ highlighted the link between contract-holders’ anxiety and stress, and the insecure nature of renting in the private sector.

90. We heard that the impact of insecurity of tenure can be a particular issue for some specific groups including:

“...people with families;
those with a disability;
or those with mental health problems.”¹⁰⁸

91. Several respondents including local authorities¹⁰⁹, housing organisations¹¹⁰, housing support agencies¹¹¹ and academics¹¹² told us that the following groups of people in particular would benefit from improved psychological and physical

¹⁰⁴ ELGC Committee, 27 February 2020, RoP [28]

¹⁰⁵ [Written evidence, RHA 11a, CHC](#)

¹⁰⁶ [Written evidence, RHA 02, Dr Tom Simcock](#)

¹⁰⁷ ELGC Committee, 12 March 2020, RoP [189]

¹⁰⁸ [Written evidence, RHA 13a, Tai Pawb](#)

¹⁰⁹ [Written evidence, RHA 10a, WLGA](#)

¹¹⁰ [Written evidence, RHA 12a, CIH Cymru](#)

¹¹¹ [Written evidence, RHA 13, Tai Pawb](#)

¹¹² [Written evidence, RHA 02, Dr Tom Simcock](#)

well-being as a result of the greater security of tenure provided by the provisions in the Bill:

- households with school-age children and families;
- households with older people in order for them to “maintain social links and access to community support and infrastructure”¹¹³;
- low income households¹¹⁴;
- tenants with health conditions or those living in adapted properties¹¹⁵; and
- tenants with caring responsibilities.¹¹⁶

92. We heard that improved security of tenure is key to reducing anxiety, depression and stress, resulting in improved mental health overall.¹¹⁷ The longer-term, wider benefits of improving contract-holders’ psychological well-being were also highlighted, with Dr Tom Simcock stating that it could mean “reduced health costs and improved productivity in the workplace, which could potentially lead to improved economic performance”.¹¹⁸

93. As this report was drafted and published during the Covid-19 pandemic, we heard that security of tenure currently has even greater importance, “particularly given long-standing government and public health regulations around staying at home and self-isolation over the past few months.”¹¹⁹

94. We were told that without security of tenure in their property, contract-holders are less likely to engage with their local community. The Bevan Foundation said that being under the threat of eviction at short notice could “lead to a sense of alienation from their community” and that those contract-holders are less likely to form relationships and “set down roots”.¹²⁰ We heard that communities could benefit from contract-holders having a greater sense of

¹¹³ [Written evidence, RHA 12a, CIH Cymru](#)

¹¹⁴ [Written evidence, RHA 20 TPAS Cymru](#)

¹¹⁵ [Written evidence, RHA 20 TPAS Cymru](#)

¹¹⁶ [Written evidence, RHA 20 TPAS Cymru](#)

¹¹⁷ ELGC Committee, 4 March 2020, RoP [11]

¹¹⁸ [Written evidence, RHA 02 Dr Tom Simcock](#)

¹¹⁹ [Written evidence, RHA 13a Tai Pawb](#)

¹²⁰ [Written evidence, RHA 22 Bevan Foundation](#)

security and a “stake” in their home, as they would be more likely to “invest” in the local community.¹²¹

95. We heard that the current framework for renting means that there can be a power imbalance between landlords and contract-holders. Dr Tom Simcock said that landlords have “considerable power over someone’s home life in having that ability to evict with two months’ notice”¹²² while Generation Rent told us that “it is difficult to quantify the feeling that renters have that they can never fully trust their landlord when they can be evicted without grounds”.¹²³ Generation Rent said that the provisions in the Bill could strengthen tenants’ trust in their landlords, and improve the likelihood of them raising issues, such as disrepair of the property, without fear of a retaliatory eviction.¹²⁴

Unintended consequences

96. The RLA¹²⁵ and ARLA Propertymark¹²⁶ told us that they disagreed with the provisions in Sections 1 and 2 due to possible unintended consequences.

Access to the private rented sector

97. One of the key concerns raised is the potential impact on contract-holders’ access to the private rented sector and the flexibility of the sector¹²⁷, particularly for tenants considered vulnerable. We heard anecdotal evidence from several respondents including ARLA Propertymark¹²⁸, Tai Pawb¹²⁹, Dr Tom Simcock¹³⁰, the RLA¹³¹, UK Finance¹³² and Cardiff Council¹³³ that the proposals to increase the minimum notice period to end a tenancy could result in landlords leaving the private rented sector. We consider this in Chapter 7.

¹²¹ [Written evidence, RHA 19 Generation Rent](#)

¹²² ELGC Committee, 4 March 2020, RoP [22]

¹²³ [Written evidence, RHA 19 Generation Rent](#)

¹²⁴ ELGC Committee, 12 March 2020, RoP [252]

¹²⁵ [Written evidence, RHA 05 RLA](#)

¹²⁶ [Written evidence, RHA 09, ARLA Propertymark](#)

¹²⁷ [Written evidence, RHA 02 Dr Tom Simcock](#)

¹²⁸ [Written evidence, RHA 09, ARLA Propertymark](#)

¹²⁹ [Written evidence, RHA 13a Tai Pawb](#)

¹³⁰ [Written evidence, RHA 02 Dr Tom Simcock](#)

¹³¹ [Written evidence, RHA 05 RLA](#)

¹³² [Written evidence, RHA 21 UK Finance](#)

¹³³ [Written evidence, RHA 17, Cardiff Council](#)

98. We also heard from the RLA¹³⁴, the WLGA¹³⁵ and the Vale of Glamorgan Council¹³⁶ that landlords may feel discouraged to rent to certain contract-holders due to Sections 1 and 2 of the Bill restricting the “swiftness”¹³⁷ of evicting a tenant. We were told that these tenants would more likely be:

- those on lower incomes;
- those with “chaotic” personal circumstances¹³⁸; and
- single parents.¹³⁹

99. Respondents including Cardiff Council¹⁴⁰, UK Finance¹⁴¹ and Dr Craig Gurney¹⁴² also said that landlords leaving the private rented sector could result in an increase in market rental prices, which would impact on tenants’ access to the sector, as well as consequentially reducing the social housing stock available.¹⁴³

100. We heard that neighbours and the wider community could be negatively affected by the Bill if a tenant is engaging in anti-social behaviour and a landlord is unable to use a no-fault eviction to remove them at short notice.¹⁴⁴ (As we explore in Chapter 8, landlords often use no-fault proceedings where there is a breach of contract.)

101. We also heard that the provisions could have a negative effect on relationships between contract-holders and their landlords, including the risk of harassment from landlords, illegal evictions and refusals to carry out repairs,¹⁴⁵ as well as landlords misusing other possession grounds and engineering disagreements.¹⁴⁶

¹³⁴ [Written evidence, RHA 05, RLA](#)

¹³⁵ [Written evidence, RHA 10, WLGA](#)

¹³⁶ [Written evidence, RHA 15, Vale of Glamorgan Council](#)

¹³⁷ [Written evidence, RHA 22, Bevan Foundation](#)

¹³⁸ [Written evidence, RHA 16, The Wallich](#)

¹³⁹ [Written evidence, RHA 20, TPAS Cymru](#)

¹⁴⁰ [Written evidence, RHA 17, Cardiff Council](#)

¹⁴¹ [Written evidence, RHA 21, UK Finance](#)

¹⁴² [Written evidence, RHA 01, Dr Craig Gurney](#)

¹⁴³ [Written evidence, RHA 13a, Tai Pawb](#)

¹⁴⁴ [Written evidence, RHA 12a, CIH Cymru](#)

¹⁴⁵ [Written evidence, RHA 03, Shelter Cymru](#)

¹⁴⁶ [Written evidence, RHA 23, Individual 2](#)

Properties occupied by ministers of religion

102. Whilst Cytûn are generally in favour of the provisions to increase notice periods from two months to six months, believing that it's "reasonable and fairer to tenants", they told us that in the case of housing for ministers of religion, six months is "too long". Cytûn told us that church properties can be vacant for several months between ministers of religion changing posts, and "It is the practice of most member churches to let houses where possible during this period." Cytûn gave examples of the type of tenants churches may let to, including those in the process of seeking a house having moved to a new area with their work, or those needing temporary accommodation while renovating a newly purchased property.¹⁴⁷ If the Bill proceeds as drafted, Cytûn told us:

"The longer notice period is likely to mean that trustees of church residential property will not let houses during vacancy periods and the properties are likely to be retained as empty properties pending occupation by a minister of religion."¹⁴⁸

103. We are also aware that the Minister and her officials were in discussion with Cytûn about other issues relating to houses occupied by ministers of religion.¹⁴⁹ We understand that this may have included discussions around challenges in terminating service occupancy agreements when a Minister leaves post. We were told that the Bill as introduced includes regulation making powers to allow Welsh Ministers to make exemptions when required, to support policy decisions, including in the lead-in time to implementation of the 2016 Act.¹⁵⁰

104. Shortly before we finished our consideration of the Bill, we received further information on these issues from the Representative Body of the Church in Wales. They stated that while they did not believe Church in Wales ministers occupying parsonage properties would be affected by the 2016 Act, they were concerned that "some denominations and faith groups" would be subject to the Act, and that this could be entirely down to "happenstance of how denominations and faith groups modelled their constitutions decades (if not centuries) ago."¹⁵¹

105. As a result they were concerned about the practical implications for some faith groups such as the impact on annual rotation of clergy for some

¹⁴⁷ [Written evidence, RHA 07, Cytûn](#)

¹⁴⁸ [Written evidence, RHA 07, Cytûn](#)

¹⁴⁹ ELGC Committee, 20 July 2020, RoP [101]

¹⁵⁰ ELGC Committee, 20 July 2020, RoP [101]

¹⁵¹ [Written evidence, RHA24, The Representative Body of the Church in Wales](#)

communities; and the issue of a lengthy notice period if a minister “is removed due to a serious disciplinary issue.”¹⁵²

106. They could not see whether any “specific attention” had been given to the specific position of those ministers of religion who they say in some cases are “distinct from service occupants who are employees...” As a result, they believe that:

“...the direct effect of the Act would alter the relationship between church and minister from a relationship which is not an employment relationship to one which is an employment relationship.”¹⁵³

Students

107. We heard evidence from the NUS Wales about the possible impact of the Bill’s provisions in Sections 1 and 2 on students. They told us that the student element of the private rented sector is complex and that there is a lack of awareness amongst students about their housing rights.¹⁵⁴ They said that clarity and more enforcement in the sector is key to improving students’ experiences.¹⁵⁵

108. We heard that currently short term no-fault evictions are damaging and distressing for students¹⁵⁶, that they can be scared to challenge landlords or raise issues leading to some living in properties in disrepair and “squalor”.¹⁵⁷

109. As a result the NUS Wales is in favour of increasing the minimum notice period to end private sector tenancies from two to six months, as it provides more time for students to access advice and support if they are being evicted.¹⁵⁸ The NUS Wales also said that this notice period better accommodates the usual twelve month student “cycle”.¹⁵⁹

110. Shelter Cymru told us that they support the NUS Wales’ evidence regarding the provisions’ impact on students. Dr Tom Simcock shared this view, telling us

¹⁵² [Written evidence, RHA24, The Representative Body of the Church in Wales](#)

¹⁵³ [Written evidence, RHA24, The Representative Body of the Church in Wales](#)

¹⁵⁴ ELGC Committee, 12 March 2020, RoP [183]

¹⁵⁵ ELGC Committee, 12 March 2020, RoP [197-198]

¹⁵⁶ ELGC Committee, 12 March 2020, RoP [175]

¹⁵⁷ ELGC Committee, 12 March 2020, RoP [187]

¹⁵⁸ ELGC Committee, 12 March 2020, RoP [200]

¹⁵⁹ ELGC Committee, 12 March 2020, RoP [250]

that students don't have "less right" to security of tenure in their home, "if they're not doing anything wrong."¹⁶⁰

111. The RLA is not in favour of the inclusion of student private sector lettings in Sections 1 and 2 of the Bill's provisions. They told us that students looking for short-term tenancies could be disadvantaged¹⁶¹ and that the provision of student housing stock "has to be focussed" around the 12 month "life cycle" in which students arrive, and leave, for their studies.¹⁶²

112. The RLA said that to maintain the "annual cycle necessary to operate" the student market within the private rented sector, a landlord must ensure that they serve a six month notice to the student tenants the first day after the end of the six month contract. In the RLA's view, students "do not wish for longer" than a 12 months fixed term contract for the academic year.¹⁶³ The RLA told us they were concerned about this impact on landlords, which will be explored in a later chapter.

113. Whilst the NUS Wales agree that students tend to operate on 12-month rental contracts, they said that they oppose any amendment that would differentiate students from other tenants in the private rented sector.¹⁶⁴ They told us that students would have difficulty in finding suitable accommodation in two months' time if they were evicted part way through a 12-month contract.¹⁶⁵

Accommodation for students in higher education

114. Schedule 1 of the Bill means that student properties with Higher Education Institution landlords are exempt from the provisions in Sections 1 and 2. The NUS Wales told us that it is in favour of this exemption¹⁶⁶ and would also support an inclusion of Purpose Built Student Accommodation (PBSA) in Schedule 1, stating that this part of the sector has been "overlooked" and "specific attention should be paid" to it.¹⁶⁷

¹⁶⁰ ELGC Committee, 4 March 2020, RoP [139]

¹⁶¹ [Written evidence, RHA 05 RLA](#)

¹⁶² ELGC Committee, 12 March 2020, RoP [164]

¹⁶³ [Written evidence, RHA 05 RLA](#)

¹⁶⁴ [Written evidence, RHA 08 NUS Cymru](#)

¹⁶⁵ ELGC Committee, 12 March 2020, RoP [250]

¹⁶⁶ [Written evidence, RHA 08 NUS Cymru](#)

¹⁶⁷ [Written evidence, RHA 08 NUS Cymru](#)

Exclusion of contract-holders from accommodation

115. Section 13 of the Bill gives the Welsh Government regulation making powers over landlords' abilities to exclude tenants from properties for a period of time, providing it is specified in the contract. NUS Wales stated that "conferencing forms a significant part of a university's commercial services"¹⁶⁸, and so it supports these provisions, providing the exclusion of students from accommodation is clearly communicated and there is accountability.

116. The Minister stated that she is "not persuaded" by arguments that students in the private rented sector should be treated any differently, and in the context of security of tenure, "more poorly", than other private rented sector tenants.¹⁶⁹

117. In relation to the provisions in Section 13 to exclude certain contract-holders, including students, from properties for specified periods, the Minister told us that she would expect that students being excluded under these provisions would be provided "with places to store their belongings".¹⁷⁰ She also highlighted that "ordinary" landlords would not be able to use these provisions to exclude tenants from the premises,¹⁷¹ but it means that in an "ordinary" landlord-and-contract-holder situation, the landlord cannot evict somebody by simply excluding them from the premises for two months for no apparent reason.¹⁷²

Our view

118. We all support the Bill's provisions in Sections 1 and 2, to increase the minimum notice period to end private rented sector contracts from two months to six months. We think these changes reflect the changes to the private rented sector over recent years, in particular the demographic changes to those who rent, including more people with young children, and older people; who may have less flexibility in where they can move to. Two months is not necessarily long enough to secure the right property in the right location for your individual circumstances.

119. In relation to the evidence we heard from Cytûn, we support their calls for amendments to the Bill to exempt properties which are let out to ministers of religion in connection with their role. However, we do not support their calls for

¹⁶⁸ ELGC Committee, 12 March 2020, RoP [247]

¹⁶⁹ ELGC Committee, 20 July 2020, RoP [103-104]

¹⁷⁰ ELGC Committee, 27 February 2020, RoP [207]

¹⁷¹ ELGC Committee, 27 February 2020, RoP [207]

¹⁷² ELGC Committee, 27 February 2020, RoP [207]

church property to be exempted from the six month notice period when let on the open market.

Recommendation 5. The Welsh Government should bring forward amendments at Stage Two to ensure properties housing ministers of religion as part of their role as a minister are included in the list of exemptions in Schedule 1.

120. In relation to Section 13 and the regulation making powers to restrict landlords' ability to exclude tenants from accommodation, we note that these regulations are already subject to the affirmative procedure, and so any changes to these regulation making powers will require the Senedd's consent. We are content with this.

7. Impact on landlords

This Bill will have a significant impact on landlords, which we heard could potentially be negative. There were particular concerns around restrictions on serving a notice within the first six months of a contract; and the ban on serving a further notice within six months of a previous notice expiring.

121. In the previous chapter, we have looked at the extension to the no-fault notice period, which will have a significant impact on both landlords and contract-holders. In this section we focus on the provisions about when no-fault notices can be served, and the broader impacts of the Bill on landlords.

Restrictions on when notices can be served

122. Section 4 increases the period at the start of a periodic standard occupation contract during which a landlord may issue a no-fault notice under section 173 of the 2016 Act from four to six months. This combined with the increased notice period, provides the 12 month security of tenure at the outset of a contract.

123. We heard that this restriction on issuing notices for the first six months, providing an initial 12 month security of tenure would be particularly beneficial to those who are moving on from temporary accommodation. The Wallich said that 12 months security will give “them security in that crucial first year as they get back on their feet.”¹⁷³ While Citizens Advice called this provision “ahead of the curve” highlighting that similar provisions are not present in the Scottish legislation, and unlikely to be found in any forthcoming English legislation.¹⁷⁴

124. The RLA called for amendments to this section, so that a notice could be served earlier in the contract, but would only come into effect six months into the contract. They suggested this would be particularly important for landlords operating in “city-centre-style-renting” where they suggest that to maintain a one year tenancy you would have to “serve that notice on the day, on one particular day, and you have to do it by hand” to maintain the annual cycle. They said that this was a minor change but would make a “really big difference” to how acceptable the overall scheme changes proposed in this Bill would be to

¹⁷³ [Written evidence RHA.16.The Wallich](#)

¹⁷⁴ ELGC Committee, 12 March 2020, RoP [287]

landlords.¹⁷⁵ This was supported by Arla Propertymark, citing the Deregulation Act where a similar approach was taken.¹⁷⁶

125. The Minister was not convinced by this argument, saying it was mainly an issue of “knowing when you can serve the notice.”¹⁷⁷ She said that while the RLA had said this could be a particular issue for smaller landlords, she did not think it was difficult and highlighted that both Rent Smart Wales and the introduction of standardised forms and documents will help. She said:

“I take the view that I think a tenant having to live under that notice for all that time in order to prevent the landlord from having to remember the date is not something that I want to live with.”¹⁷⁸

126. However, she committed to monitoring this issue, in particular the impact on “small landlords who are good landlords but who have found themselves in difficult positions....”¹⁷⁹

127. Section 5 increases the period which a landlord may not give notice under section 196 of the 2016 Act (where there is a landlord’s break clause in a fixed term occupation contract) from four months to 18 months. Section 11 restricts a landlord’s break clause to a fixed term standard occupation contract made for a term of two years or more, unless the contract is within the new Schedule 9C (inserted by Schedule 4 to this Bill).

128. ARLA Propertymark were concerned that the restrictions on the use of break clauses in fixed term contracts would “create less flexibility and provide less protection for landlords.” They also added that it may remove flexibility for contract-holders who may feel stuck in a fixed term contract which may limit where they can work, or may affect where children can go to school.¹⁸⁰

129. The RLA told us that break clauses were not in widespread use across the sector, but said that tenant only break clauses would be “a really useful tool” but that this provision as drafted would not be used much.¹⁸¹ Dr Tom Simcock also

¹⁷⁵ ELGC Committee, 12 March 2020, RoP [125-126]

¹⁷⁶ ELGC Committee, 12 March 2020, RoP [127]

¹⁷⁷ ELGC Committee, 20 July 2020, RoP [115]

¹⁷⁸ ELGC Committee, 20 July 2020, RoP [115]

¹⁷⁹ ELGC Committee, 20 July 2020, RoP [113]

¹⁸⁰ [Written evidence, RHA 09, ARLA Propertymark](#)

¹⁸¹ ELGC Committee, 12 March 2020, RoP [150]

highlighted the importance of ensuring contract-holders in fixed term contracts have some flexibility available to accommodate changes in their own life.¹⁸²

130. The Minister explained that the rationale behind this provision was to avoid a situation where there are a “rolling set of break clauses” which undermine security of tenure. She said that she was unclear why there would be a need for a fixed term contract with an artificial break, and that in those circumstances where a landlord needed to secure possession at a specific point, a fixed term contract could just be used.¹⁸³

131. Section 6 places restrictions on when a landlord can issue no-fault possession notices. It consolidates instead of changing existing law. The current law places restrictions on landlords issuing no-fault notices if they do not comply with certain statutory requirements, including failure to register with Rent Smart Wales; not complying with deposit protection requirements; and charging prohibited fees. While the 2014 Act is clear that unlicensed landlords cannot serve a no-fault notice, it was not clear as to whether they can serve a fault based notice under section 8 (on a specified ground, such as rent arrears). This was recently considered in *Jarvis v Evans* at the Court of Appeal. The Court found that unlicensed landlords cannot serve a notice under section 8.¹⁸⁴ The Minister said that this was “the outcome we would have liked” but noted that it may yet be appealed. She added:

“...officials are going through it in fine detail to make sure that there aren't things there that we need to make more clear, or whatever, to make sure that that's the outcome.”¹⁸⁵

Withdrawing a notice once issued

132. Section 7 places an additional restriction on issuing a no-fault notice under section 173 of the 2016 Act, meaning that if a landlord issues a notice, and then withdraws the notice within the six month period, a further notice cannot be issued until six months has passed from the withdrawal of the notice. However, this section provides an exemption, that a notice can be reissued if it is withdrawn within the first 14 days of being issued. This in effect creates a “cooling off” period, and enables a landlord to withdraw a defective notice and reissue a valid notice.

¹⁸² [Written evidence, RHA 02, Dr Tom Simcock](#)

¹⁸³ ELGC Committee, 27 February 2020, RoP [137]

¹⁸⁴ Royal Courts of Justice, [\[2020\] EWCA Civ 854, 7 July 2020](#)

¹⁸⁵ ELGC Committee, 20 July 2020, RoP [48]

133. Section 8 amends section 180 of the 2016 Act to reflect the changes in section 7 about the cooling off period, enabling the notice to be withdrawn without needing the contract-holder’s consent.

134. In relation to the six month restriction on a notice being served, after an earlier notice has been withdrawn, there were different views as to whether this was reasonable. ARLA Propertymark said it did not take account of circumstances where a landlord needed to gain possession quickly. They gave examples of where this could be problematic including where a contract-holder addresses rent arrears, so possession does not need to be regained, but subsequently the landlord needs to secure possession for other reasons.¹⁸⁶

135. Organisations such as TPAS Cymru¹⁸⁷; Shelter Cymru¹⁸⁸ and the Bevan Foundation¹⁸⁹ supported the restriction, highlighting that that these restrictions would help improve stability within the sector.

136. The Minister accepted that there may be cases where a landlord could be “disadvantaged” through “no fault of their own” but that she did not want to have contract-holders living “under a succession of six-month notices permanently into the future”.¹⁹⁰ She told us that there was only anecdotal evidence to suggest that landlords were issuing rolling notices, but that this was sufficient, as they did not want this happening.¹⁹¹

137. Landlord’s organisations raised concerns about the 14 day “cooling off” period, in which a defective notice could be withdrawn and reissued without having to wait six months before issuing a new notice. The RLA said 14 days was not enough time to identify problems with a form or if there were issues with a notice being received by a contract-holder:

“An example to illustrate this is when notice is sent to the tenant via recorded delivery in the post, as it could take two weeks for them to discover the tenant has not signed for it or delays have mean[t] the tenant has had to pick it up from the depot, etc.”¹⁹²

¹⁸⁶ [Written evidence, RHA 09, ARLA Propertymark](#)

¹⁸⁷ [Written evidence, RHA 20 TPAS Cymru](#)

¹⁸⁸ ELGC Committee, 12 March 2020, RoP [375]

¹⁸⁹ [Written evidence, RHA 22 Bevan Foundation](#)

¹⁹⁰ ELGC Committee, 27 February 2020, RoP [178]

¹⁹¹ ELGC Committee, 27 February 2020, RoP [173]

¹⁹² [Written evidence, RHA 05, RLA](#)

138. They also highlighted that there was a higher likelihood of mistakes being made because of the legislative changes.¹⁹³ They called for the 14 day period to be extended to 28 days, saying it often takes local authorities or support organisations more than two weeks to notify that the notice is defective.¹⁹⁴

Retaliatory evictions

139. Section 9 inserts a new section 177A into the 2016 Act, which places restrictions on the landlord serving a section 173 notice where the court has found a possession claim to be retaliatory. This restricts the issuing of a notice until six months after the court has found the claim to be retaliatory.

140. Section 9 also replaces section 198 with new text, placing a six month restriction on serving a no-fault notice under a landlord's break clause where the court found the claim for possession to be retaliatory.

Termination of fixed term contracts

141. Section 10 limits the ability of a landlord to end fixed term standard contracts at the end of the fixed term by giving a notice under section 186 of the 2016 Act. Notices issued under section 186 will only apply to those types of occupation contracts listed in the new Schedule 9B. The notice period for the contracts listed in Schedule 9B will remain at two months.

142. The types of contracts listed in Schedule 9B are those which the Welsh Government considered it is reasonable for a landlord to have greater certainty over their ability to regain possession. This covers accommodation for homeless people; and accommodation where a person's contract of employment requires them to occupy the building. This Schedule can be amended by Welsh Ministers by regulations.

143. Section 11 restricts the use of landlord break clauses so that they can only be incorporated into fixed term standard contracts that are at least two years in length.

Risk of landlords leaving the sector

144. We heard that one of the effects of the Bill could be of landlords leaving the private rented sector, as initially referenced in paragraphs 97-99. Removal of no-fault evictions, would lead to one of two possible situations, said ARLA

¹⁹³ ELGC Committee, 12 March 2020, RoP [158]

¹⁹⁴ ELGC Committee, 12 March 2020, RoP [161]

Propertymark; either the property will be removed from the private rental sector; or “a worse problem...it goes into the hands of a less scrupulous landlord” who will ignore the law.¹⁹⁵

145. The RLA told us that landlords will leave the market because they have less confidence in their ability to protect their investment. They noted that in a recent survey run by the RLA:

“Over 40% of landlords feel so strongly about it that they cannot envisage supplying homes to tenants if it is removed, regardless of any compensatory reforms.”¹⁹⁶

146. Both the RLA¹⁹⁷ and ARLA Propertymark¹⁹⁸ noted that a potential unintended consequence would be to place more pressure on the social housing sector.

147. Dr Tom Simcock said that when any major change has been proposed in the sector, landlords have said they will sell up, but that there was a “disconnect” between those who say they will sell, and then the numbers who actually do. He believed in the past it has been “a median difference of seven percentage points” and said “the actual extent to which they might be selling might be overstated.”¹⁹⁹

148. In the EM, this risk is addressed, but it states that while the Bill may reduce some flexibility currently available to landlords, it will not:

“significantly affect the most important driver for investment in the private rented sector: the rate of return on investment...”²⁰⁰

149. The Minister said that if there was a “mass exodus of good landlords”, then the Welsh Government would review the length of the minimum notice period.²⁰¹ However “most of the landlords in Wales...are really good landlords. People are very happy to rent houses from them, they have good services from those landlords and the relationship is a good and friendly one”.²⁰² She said that in her view some landlords aren’t included in this category, and therefore hopes that only these would leave the private rented sector market as a result of the

¹⁹⁵ ELGC Committee, 12 March 2020, RoP [100]

¹⁹⁶ [Written evidence, RHA 05, RLA](#)

¹⁹⁷ [Written evidence, RHA 05, RLA](#)

¹⁹⁸ [Written evidence, RHA 09, ARLA Propertymark](#)

¹⁹⁹ ELGC Committee, 4 March 2020, RoP [65]

²⁰⁰ Welsh Government, [Explanatory Memorandum, paragraph 10.7, February 2020](#)

²⁰¹ ELGC Committee, 27 February 2020, RoP [62]

²⁰² ELGC Committee, 27 February 2020, RoP [53]

increased notice period. The Minister told us that consequentially that would create a “fair and equitable” market for landlords who “do want to give a good service.”²⁰³

Social landlords

150. Although the Bill is primarily focused on the private rented sector, there is some impact on social landlords. In certain circumstances, registered social landlords (but, as noted in evidence from the WLGA, not local authority landlords) currently use no-fault evictions. RSLs can grant assured shorthold tenancies to new tenants – often called starter tenancies which allows the use of Section 21 (no-fault) notices. Demoted assured shorthold tenancies, where a court has been satisfied there has been anti-social behaviour, can also be ended by a no-fault notice.

151. CHC said that for these specific types of contracts, no-fault evictions were “a crucial tool in housing management, particularly for the safeguarding of community safety.” No-fault evictions are only used in cases of “serious ASB or rent arrears.” They outlined a number of safeguards that are put in place for use of no-fault evictions including the pre-action protocol; internal appeals / reviews; and the “ultimate Article 8 defence in court.”²⁰⁴

152. The Bill as drafted exempts prohibited conduct standard contracts (which can be imposed as a result of a breach of section 55 of the 2016 Act, such as anti-social behaviour and other prohibited conduct) from the provisions within this Bill, but does not exempt introductory standard contracts. CHC called for this to be included within the exemptions saying that its use in the social housing sector was “significantly different” as it is only intended to last 12 months before the contract is converted to a secure contract.²⁰⁵

153. Shelter Cymru did not agree with the inclusion of prohibited conduct contracts being exempted from the six month notice period saying that if there was 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.”²⁰⁶

²⁰³ ELGC Committee, 27 February 2020, RoP [53]

²⁰⁴ [Written evidence, RHA 11a.CHC](#)

²⁰⁵ [Written evidence, RHA 11a.CHC](#)

²⁰⁶ [Written evidence, RHA 03.Shelter Cymru](#)

154. They told us about casework which has included social landlords using no-fault notices where the tenant would have “been likely to keep their home should the landlord have relied on a discretionary ground.”²⁰⁷ They believed that allowing social landlords to retain the option to use no-fault evictions for some of their contracts would undermine the purpose of the Bill and the broader policy commitment to end evictions into homelessness.²⁰⁸

Our view

155. The Bill will have a significant impact on landlords in the private sector, primarily, and we have covered much of this in other sections of the report. The role landlords play when observing best practice in providing good quality accommodation is important in delivering a stronger and more stable housing market. We need to ensure that there is a balance between landlord and contract-holders rights to ensure that being a landlord continues to be an attractive option to those who wish to rent their properties. As we have stated on the general principles of the Bill, we believe the Bill broadly gets this balance right.

156. We were not convinced by the argument put forward by landlord representatives on their wish for amendments to be made to the Bill to enable a possession notice to be issued before the first six months of a contract, but only coming into force at the six month point. One of the primary aims of the Bill is to improve stability within the private rented sector, and being issued a notice to leave a home, potentially only a few weeks or months into moving in, would undermine this aim. We were convinced by the Minister’s arguments that support would be provided via Rent Smart Wales and the use of standardised forms that should mean even those landlords with only one or two properties should be able to operate within the system in a manner that suits them and the people they rent properties to. We do not believe the sense of security, which we heard was of fundamental importance to people’s well-being and health, should be undermined.

157. We also do not believe that Schedule 1 should be amended to exempt introductory standard contracts. We were not convinced that there should be a difference in security of tenure at the outset of a contract in the social housing sector, to that in the private rented sector.

²⁰⁷ [Written evidence, RHA 03 Shelter Cymru](#)

²⁰⁸ [Written evidence, RHA 03 Shelter Cymru](#)

158. We are satisfied with the section 5 provisions restricting the issue of a no-fault notice until month 18 of a fixed term contract. We are also satisfied with the restrictions on issuing further notices within a six month period.

159. In relation to the 14 day cooling off period as provided in sections 7 and 8, we agree with the RLA, that it is a reasonable balance to amend this to extend the period from 14 days to 28 days. We believe this balances landlord and contract-holder's rights and ensures that landlords are not delayed in gaining possession of a property by a further six months because of an administrative error.

Recommendation 6. The Welsh Government should bring forward amendments at Stage Two to extend the period in which a notice can be withdrawn without having to wait a further six months before issuing a new notice. The period should be changed from 14 days to 28 days.

8. Impact on courts

One of the strongest themes throughout our work was the role of courts in the possession process. There was strong evidence that the effectiveness of this Bill and the 2016 Act is predicated on the courts operating effectively and efficiently.

160. The EM states that during 2018 there were 783 claims for possession made to Welsh courts using the section 21 no-fault route. Ministry of Justice data indicates that the mean time for landlords gaining possession under this process is 26.4 weeks (excluding the 2 month notice period). Using the section 8 fault based grounds, the mean time for regaining possession was 22.2 weeks (again this excludes the notice period).²⁰⁹

161. There were calls for improvements to the court systems and process to make the repossession process more efficient and easier to navigate from CHC²¹⁰; CIH Cymru²¹¹; Tai Pawb²¹²; CLA Cymru²¹³; RLA²¹⁴ and ARLA Propertymark²¹⁵.

162. The Welsh Government emphasised the work they are currently undertaking with social landlords and local authorities to stop evictions from social housing into homelessness, as a key way of freeing up court time for increased possession claims from private landlords arising from this Bill.²¹⁶ The majority of possession claims that currently go to court are from the social sector rather than the private rented sector.

163. Organisations like TPAS Cymru²¹⁷ and Shelter Cymru²¹⁸ agreed that this change in approach in the social sector would free up court time but WLGA

²⁰⁹ Welsh Government, [Explanatory Memorandum, paragraphs 8.9, 8.14 and 8.15, February 2020](#)

²¹⁰ [Written evidence, RHA 11, CHC](#)

²¹¹ [Written evidence, RHA 12, CIH Cymru](#)

²¹² [Written evidence, RHA 13, Tai Pawb](#)

²¹³ [Written evidence, RHA 18, CLA Cymru](#)

²¹⁴ ELGC Committee, 12 March 2020, RoP [98]

²¹⁵ ELGC Committee, 12 March 2020, RoP [117]

²¹⁶ ELGC Committee, 27 February 2020, RoP [107]

²¹⁷ [Written evidence, RHA 20, TPAS Cymru](#)

²¹⁸ [Written evidence, RHA 03, Shelter Cymru](#)

highlighted the implementation of such an approach was at the early stages, and “may take some time” before it is successfully implemented.²¹⁹

Use of no-fault based route when there are fault based grounds

164. It is very clear that no-fault evictions are being used when a contract-holder may well be at fault. When we asked landlord organisations if this was the case, ARLA Propertymark told us:

“Absolutely. It happens all day, every day...

[...] unfortunately, the law in section 8, the grounds for possession, don’t work, and, therefore, it’s the only reasonable avenue a landlord can use to get possession.”²²⁰

165. The RLA said that no-fault evictions were actually a “no-reason given eviction” and that they are used because other parts of the law “are not sufficient enough to be able to rectify and evict people on the basis they should be evicted on...”²²¹ Landlord organisations emphasised the certainty of regaining possession in using the no-fault process in comparison to fault based grounds.²²² Of the respondents to our survey who had used the section 8 process, 56.5% experienced challenges, with the third most common issue being court delays (experienced by 61.5%).²²³

166. The RLA also highlighted the costs of going to court as a potential barrier for landlords, saying they can “build up substantial sums of legal bills” which would be “particularly aggravating” when a contract-holder is building up arrears. They said the current mandatory ground for rent arrears is “open to abuse” because “many tenants pay just £1 off their arrears just before the date of the hearing. This £1 removes the mandatory ground, leaving the landlord with virtually two months of arrears, £355 in court costs, and a tenant who is likely to continue to build up further arrears in the future.” They were also concerned that unless persistent rent arrears becomes a mandatory ground for possession under the new system, there was a risk the already overstretched court system would be further “clogged up”.²²⁴

²¹⁹ [Written evidence, RHA 12, WLG](#)

²²⁰ ELGC Committee, 12 March 2020, RoP [22-24]

²²¹ ELGC Committee, 12 March 2020, RoP [31]

²²² ELGC Committee, 12 March 2020, RoP [34]

²²³ The most common difficulties were tenant(s) refusing to leave a property without a court order (92.3% followed by the cost of the court procedure (84.6%) ELGC Committee, [Renting Homes \(Amendment\) \(Wales\) Bill – survey analysis, 26 March 2020](#)

²²⁴ [Written evidence, RHA 05, RLA](#)

167. In the social housing sector, similar reasons to those in the private sector were given for use of the no-fault process. CHC highlighted cases where:

“...at fault tenants remaining in their current home for over a year following serious offences against their neighbours, including assault and arson. These cases inevitably end in eviction and the tenant moving into more suitable accommodation, but at the detriment of the surrounding community during the long and drawn out court process. In these minority instances, Section 21 currently provides a much more balanced solution.”²²⁵

168. The Minister was clear that she hoped that the changes in the Bill would help encourage landlords to use the most appropriate route, e.g if there is fault, that the fault based grounds are used. Dr Craig Gurney supported this, saying landlords should use “the appropriate mechanism” if there is a breach of contract.²²⁶

Establishment of a Housing Court / Tribunal

169. One of the possible solutions proposed, has been the creation of a Housing Court or Tribunal. The RLA told us:

“a housing court is essential if possession reform is being designed to push more landlords to use legal procedures to regain their property.”²²⁷

170. A view supported by ARLA PropertyMark who want a “specialist housing Tribunal”. Such a tribunal would have the powers which currently sit with the County Court and the First Tier Tribunal (Property Chamber) to enable proceedings to be dealt with by a single process. They suggest such a Tribunal would make longer contracts “workable” for landlords.²²⁸

171. CHC also supported this proposal saying it would improve efficiency and make the system fairer to both contract-holders and landlords.²²⁹ CIH Cymru highlighted that such a system would “increase consistency” in decision making.²³⁰

²²⁵ [Written evidence, RHA 11a, CHC](#)

²²⁶ ELGC Committee, 4 March 2020, RoP [96]

²²⁷ [Written evidence, RHA 05, RLA](#)

²²⁸ [Written evidence, RHA09, ARLA PropertyMark](#)

²²⁹ [Written evidence, RHA 11a, CHC](#)

²³⁰ [Written evidence, RHA 12a, CIH Cymru](#)

Tai Pawb wanted to see a Housing Ombudsman office created alongside a tribunal.²³¹

172. Shelter Cymru highlighted that there have been some issues with the establishment of a Tribunal in Scotland, in particular access to legal aid. They told us that currently legal aid is not available for tribunal cases and this could lead to a situation where a contract-holder does not have legal representation but a landlord does. They said that “the jury’s out” on a Housing Tribunal.²³²

173. The Minister told us that she did not feel that housing proceedings should be “in the same court as ordinary debt proceedings...”²³³ but that the limitations on the amount of time available in the current Senedd session, meant they could not have considered this in more detail at this stage. She said:

“...it's not something that's very controversial, and it clearly, very seriously, enables tenants to protect their rights and good landlords to do the right thing in a more effective way than just having it all clogged up in a normal county court-process style.”²³⁴

Our view

174. The effectiveness of the 2016 Act as amended by this Bill is clearly dependent on the effectiveness of the court system. As a non-devolved system, the Welsh Government is limited in the actions it can take to make improvements to the system. The Welsh Government needs to ensure it maximises all its opportunities to ensure that changes to the court system take account of Wales specific needs. This is particularly pressing in those policy areas such as housing which is largely devolved.

175. We note the calls from private landlords²³⁵ for an increase in the number of mandatory grounds for possession under the 2016 Act, in particular in relation to anti-social behaviour. We also note how, under the current system, Section 21 notices are used to address anti-social behaviour by both housing associations and private landlords. There is no doubt that anti-social behaviour can have a significant impact on neighbours and communities. It is therefore important that landlords have the legislative tools to effectively address this issue. We would like

²³¹ [Written evidence, RHA 13, Tai Pawb](#)

²³² ELGC Committee, 12 March 2020, RoP [385-386]

²³³ ELGC Committee, 20 July 2020, RoP [57]

²³⁴ ELGC Committee, 20 July 2020, RoP [59]

²³⁵ [Written evidence, RHA 05, RLA](#)

to see the Welsh Government explore this issue in more detail with stakeholders to see if amendments should be made in the future. We also believe this should be examined in more detail as part of the post legislative scrutiny we call for in recommendation 3.

176. Almost all those who discussed the establishment of a dedicated housing court / tribunal to hear all housing disputes, including possession claims, were supportive of such a scheme. Although some concerns were raised about specific practicalities, such as the availability of legal aid for tribunals. We believe that the approach taken in Scotland should be monitored closely by the Welsh Government, including possible lessons to learn for the establishment of such a system in Wales. It is an important part of balancing the rights between landlords and contract-holders, that there is an appropriate mechanism that is accessible and fair to both landlords and contract-holders.

177. We believe that such a tribunal has the potential to address a number of concerns raised during our scrutiny of the Bill, and to more broadly improve the effectiveness and fairness of renting a home in Wales. We are aware that there is now limited time left in the current Senedd term, but believe that further detailed exploration of how such a tribunal could work would be useful.

Recommendation 7. The Welsh Government should undertake a detailed feasibility study into how a Housing Tribunal / Court could work in Wales. If such a feasibility study found that it was practical and would lead to improvements in housing, the work to establish a Housing Tribunal / Court should be prioritised in the next Senedd term.

9. Impact on homelessness

The Bill will interact with other legislative duties around preventing homelessness. We heard calls to ensure all the duties align with the periods within this Bill, which we support.

178. As the private rental sector increasingly plays a role in housing people who are homeless, it is clear that the changes in this Bill could have an impact both on individuals facing homelessness; and local authorities and other organisations that support them.

Fault based possession

179. As we have detailed in Chapter 8, the Welsh Government hopes that the changes being introduced by the Bill will lead to landlords using the most appropriate route to seek possession. As we explored earlier, it is clear that the no-fault route is routinely used where fault based possession could be used.

180. Advice agencies in particular were concerned that a move towards more fault based repossessions could lead to an increase in households being assessed as intentionally homeless. Shelter Cymru told us that “there is still a steady stream of intentionality cases for all households...” with 201 cases in 2018/19.²³⁶ While they acknowledged that in Wales there is a “stepping away”²³⁷ from intentionality, they said that in the short term, statutory guidance should be issued “to avoid a spike...”²³⁸ Tai Pawb also acknowledged the risk of the changes potentially leading to intentionality being used “more frequently.”²³⁹

181. CHC also highlighted that those contract-holders who are evicted on the basis of non-payment of rent through section 8 proceedings may find it more difficult to secure another home because of being found to be intentionally homeless through non-payment of rent.²⁴⁰ They also supported the removal of the intentionality test.²⁴¹

²³⁶ [Written evidence, RHA 03 Shelter Cymru](#)

²³⁷ [ELGC Committee, 12 March 2020, RoP \[323\]](#)

²³⁸ [Written evidence, RHA 03 Shelter Cymru](#)

²³⁹ [Written evidence, RHA 13 Tai Pawb](#)

²⁴⁰ [Written evidence, RHA11, CHC](#)

²⁴¹ [Written evidence, RHA 11a, CHC](#)

182. When we explored this with the WLGA, they said that local authorities assess every case “on its merits” and that the proportion of households who are intentionally homeless is “very small”.²⁴² CIH Cymru highlighted that intentionality test did not apply to “higher risk or groups deemed more vulnerable...”²⁴³

Definition of being ‘threatened with homelessness’

183. The *Housing (Wales) Act 2014* (“the 2014 Act”) places a duty on local authorities to prevent homelessness. The 2014 Act defines a person as being threatened with homelessness if it is likely that the person will become homeless within 56 days. A duty which Crisis said has “successfully prevented many households from becoming homeless...”²⁴⁴

184. As this Bill, if passed, will change the notice period to six months, we were told that the duty in the 2014 Act should be changed to align with the longer notice period. Shelter Cymru told us that if the definition in the 2014 Act was not changed, there was a risk that contract-holders who were served a no-fault notice may be told by their local authorities to “come back when the notice has almost expired” potentially leading to a build-up of rent arrears; an impact on mental health and / or a deterioration in the relationship with the landlord. They were concerned that unless such a statutory change was made, it may be difficult to “persuade local authorities to carry out early prevention.”²⁴⁵ Crisis also supported a change to “mirror” the notice period in the duty.²⁴⁶ Citizens Advice said that amending the “legislation would just give that sense of confidence to anybody actually applying those principles.”²⁴⁷

185. The WLGA though felt this could be clarified in guidance without the need for further legislative change. They highlighted that local authorities will always pay “due regard to statutory guidance as well as the relevant legislation” adding that this could be shown by their response to the Minister’s recent letter on vulnerability and priority need during the current pandemic.²⁴⁸

²⁴² [Written evidence, RHA 10a, WLGA](#)

²⁴³ [Written evidence, RHA 12a, CIH Cymru](#)

²⁴⁴ [Written evidence, RHA 06 Crisis](#)

²⁴⁵ [Written evidence, RHA 03 Shelter Cymru](#)

²⁴⁶ [Written evidence, RHA 06 Crisis](#)

²⁴⁷ ELGC Committee, 12 March 2020, RoP [345]

²⁴⁸ [Written evidence, RHA 10a, WLGA](#)

186. Dr Simcock also supported a move to strengthened guidance before legislative change.²⁴⁹

187. The Minister was very clear in setting out her expectations that the 56 days was a “safety net” not a “target”.²⁵⁰ She said that people should expect support from local authorities at the point they are served a notice and that the duty should not prevent that support being accessed at the earliest point. She said that the Government would be “making that very plain in guidance.”²⁵¹ She also told us:

“...if we had a lot of evidence that a lot of authorities were taking it to the wire like that all the time, then I think we probably would consider putting it up, but we haven't got that evidence...”²⁵²

188. She added that while previously some local authorities had been struggling with providing support, the recent experience with the pandemic suggest that this is no longer the case. However, if there was evidence in the future with a lack of consistency between the two pieces of legislation that “...I'm sure that a future Senedd will have a look at increasing it.”²⁵³

Definition of successful prevention and relief of homelessness

189. The 2014 Act defines the successful prevention and relief of homelessness as suitable accommodation being available for occupation for six months. Shelter Cymru have called for this to be increased to bring it in line with the extension of tenure security from six months at the issuing of a contract to 12 months, noting that the 2014 definition was “developed with reference to the standard minimum length of a private tenancy.”²⁵⁴

190. The Minister did not feel there was any need to amend the definition saying that the duty is “much more general” and that it can be discharged in a number of ways, and is not just a case of placing someone in a privately rented home. She said that the fact the notice cannot be served within the first six months of a contract means the duty is being met.²⁵⁵

²⁴⁹ ELGC Committee, 4 March 2020, RoP [100]

²⁵⁰ ELGC Committee, 20 July 2020, RoP [74]

²⁵¹ ELGC Committee 27 February 2020, RoP 120]

²⁵² ELGC Committee, 20 July 2020, RoP [91]

²⁵³ ELGC Committee, 20 July 2020, RoP [91]

²⁵⁴ [Written evidence, RHA 03 Shelter Cymru](#)

²⁵⁵ ELGC Committee, 27 February 2020, RoP [114]

Our view

191. One of the intended policy aims of this Bill is to improve security of tenure, and therefore reduce the risk of people facing homelessness. It is clear that it interacts with the 2014 Act and in particular the duties placed on local authorities to support those facing homelessness.

192. We note the concerns raised by stakeholders that a move to more fault based possession claims, which the provisions within this Bill seeks to encourage, could led to an increase in households being assessed as intentionally homeless. While there is not clear evidence that this will happen, because the impact on those households affected could be significant, we therefore believe that this should be covered in the post legislative scrutiny in recommendation 3. If it was found that the Bill was increasing the numbers of households found intentionally homeless, changes should be made to mitigate this. We are also aware of the changing policy context within Wales which seeks to reduce the use of intentionality.

193. On the issues of ensuring alignment between the 2014 Act and this Bill, we believe that further changes are necessary. There should be clear alignment between the different pieces of legislation to ensure a coherent framework governing homelessness. This should be done in the most effective way possible, and we are therefore sympathetic for such changes to be made in statutory guidance, with legislative changes only following if the guidance is not being followed. Changing legislation can take time, whereas changes to guidance can be made much more quickly.

194. In relation the section 66 duty in the 2014 Act, we agree that 56 days is not long enough. We acknowledge that six months is possibly too long, and that not all cases need support at that stage. We therefore believe an appropriate balance would be to amend the guidance to say that support should be provided at 84 days. This should then be reviewed after two years, with the option for the Welsh Government to amend if necessary.

Recommendation 8. The Welsh Government should issue clear guidance to local authorities that anyone in a household served with a notice that is due to expire within the following 84 days should be considered threatened with homelessness for the purposes of the Housing (Wales) Act 2014. The effectiveness of this guidance should be reviewed two years after it has come into force.

195. We have explored the issue of security of tenure in Chapter 6. We have accepted the Welsh Government's assertion that 12 months security at the outset

of a contract is important for a wide range of reasons, but in particular for the well-being of the contract-holder. Those who are supported under the homelessness duties in the 2014 Act can often be vulnerable, and security of tenure can often be of utmost importance to those who have been precariously housed, or homeless. We therefore believe that there is a clear case that this definition needs to be amended to bring both pieces of legislation in line.

Recommendation 9. The Welsh Government should amend the Housing (Wales) Act 2014 so that the homelessness duties do not end unless accommodation is available for 12 months, rather than the current six months.

Annex A: List of oral evidence sessions.

The following witnesses provided oral evidence to the committee on the dates noted below. Transcripts of all oral evidence sessions can be viewed on the Committee's website.

Date	Name and Organisation
27 February 2020	<p>Julie James AM, Minister for Housing and Local Government Emma Williams, Deputy Director, Housing Policy Division, Rebecca Raikes, Lawyer, Simon White, Head of Housing Strategy and Legislation, Welsh Government</p>
4 March 2020	<p>Dr Craig M. Gurney CIHM, Lecturer in Housing, School of Social and Political Sciences (Urban Studies), University of Glasgow</p> <p>Dr Thomas Simcock CMRS, Research Fellow, Unit for Evaluation and Policy Analysis, Edge Hill University</p>
12 March 2020	<p>Douglas Haig, Vice-Chair and Director for Wales, Residential Landlords Association</p> <p>David Cox, Chief Executive, ARLA PropertyMark</p> <p>Rob Simkins, President, NUS Wales</p> <p>Dan Wilson Crow, Director, Generation Rent</p> <p>Alun Evans, Senior Campaigns and Advocacy Officer, Citizen's Advice</p> <p>Jennie Bibbings, Campaigns Manager, Shelter Cymru</p> <p>Nick Morris, Policy and Communications Manager (Wales), Crisis</p>
20 July 2020	<p>Julie James MS, Minister for Housing and Local Government Emma Williams, Director of Housing and Regeneration, Simon White, Head of Housing Strategy and Legislation,</p>

	Welsh Government
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Annex B: List of written evidence

The following people and organisations provided written evidence to the Committee. All Consultation responses and additional written information can be viewed on the Committee's website.

Reference	Organisation
RHA 01	Dr Craig Gurney
RHA 02	Tom Simcock
RHA 03	Shelter Cymru
RHA 04	Citizens Advice
RHA 05	Residential Landlords Association
RHA 06	Crisis
RHA 07	Cytûn
RHA 08	National Union of Students
RHA 09	ARLA Propertymark
RHA 10	Welsh Local Government Association (WLGA)
RHA 11	Community Housing Cymru
RHA 12	Chartered Institute of Housing Cymru
RHA 13	Tai Pawb
RHA 14	Individual 1
RHA 15	Vale of Glamorgan Council
RHA 16	Wallich
RHA 17	Cardiff Council
RHA 18	CLA
RHA 19	Generation Rent
RHA 20	TPAS Cymru
RHA 21	UK Finance
RHA 22	Bevan Foundation
RHA 23	Individual 2
RHA 24	The Representative Body of the Church in Wales

Additional Information

Title	Date
RHA 10a WLGA	9 July 2020
RHA 11a Additional evidence CHC	9 July 2020
RHA 13a Additional evidence Tai Pawb	9 July 2020
RHA 10a WLGA	9 July 2020