



Llywodraeth Cymru
Welsh Government

RENTING HOMES (AMENDMENT) (WALES) BILL

Explanatory Memorandum

Incorporating the Regulatory Impact
Assessment and Explanatory Notes

February 2021

Explanatory Memorandum to the RENTING HOMES (AMENDMENT) (WALES) BILL

This Explanatory Memorandum has been prepared by the Education and Public Services Group of the Welsh Government and is laid before Senedd Cymru.

It was originally prepared and laid in accordance with Standing Order 26.6 in February 2020, and a revised Memorandum is now laid in accordance with Standing Order 26.28.

Member's Declaration

In my view the provisions of the Renting Homes (Amendment) (Wales) Bill, introduced by me on the 10 February 2020 would be within the legislative competence of Senedd Cymru.

Julie James AM
Minister for Housing and Local Government
Member of the Senedd in charge of the Bill

03 February 2021

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1. Description

The Renting Homes (Amendment) (Wales) Bill (“the Bill”) will amend the Renting Homes (Wales) Act 2016 (“the 2016 Act”) prior to its coming into force to provide greater security for people who rent their homes in Wales, in particular those who live in the private rented sector.

2. Legislative Competence

2.1 Senedd Cymru has the legislative competence to make the provisions in the Renting Homes (Amendment) (Wales) Bill ("the Bill") pursuant to Part 4 of the Government of Wales Act 2006 ("GoWA 2006") as amended by the Wales Act 2017.

3. Purpose and intended effect of the legislation

Background

3.1 The publication of *Prosperity for All: the national strategy*, reiterated the importance of housing as a key priority for the Welsh Ministers. The private rented sector (“PRS”) plays an important part in meeting the housing needs of the people of Wales. *Prosperity for All* recognises that the bedrock of living well is a good quality, affordable home which brings a wide range of benefits to health, learning and prosperity.

3.2 The First Minister committed to legislating during the current Senedd term to provide greater security for those who rent their homes in the PRS and a Bill on security of tenure was confirmed in his Legislative Statement of July 2019.

Context: the rental sector in Wales

3.3 The rental sector in Wales is a core part of the housing landscape, providing over 400,000 homes¹. Renting is increasingly becoming a longer-term proposition for a wider range of people. The Welsh Government recognises the role of good quality, affordable and accessible homes in providing a springboard from which individuals and families can create secure and successful futures and meet their full potential. Having a safe, secure and stable home can bring a wide range of benefits to health, learning and prosperity for individuals and families, whilst also providing the foundation for cohesive communities. Changes in the rental sector, both structural and demographic need to be reflected in the way the sector operates and is regulated.

3.4 The PRS market offers an important housing option and currently accounts for approximately 15% of all dwelling stock, having more than doubled in size since 2000/01. The Welsh Government is committed to modernising the PRS and ensuring it is a viable choice for those who wish to rent their home.

3.5 As part of this, the Welsh Government wishes to ensure there is the right balance of support and regulation in the PRS, so that renting a home is an option which provides for security of tenure; where tenants understand their rights and responsibilities and are supported to access them, and where they will have peace of mind that the landlords they rent from will treat them fairly.

3.6 This is particularly important given the changing nature of the PRS. Not only is the PRS continuing to grow in size (increasing from 9% of dwellings in 2007 (122,000) to 15% (208,000) in 2019), but the demographics of the sector are also changing: increasing numbers of families with children, and older people, are letting from private landlords, and for longer periods than has been the case historically. Whereas the sector was once predominantly the domain of younger, mainly single person households and students, for whom

¹ <https://gov.wales/dwelling-stock-estimates-31-march-2019>

flexibility was important, it is increasingly becoming a mainstream housing option for a wider range of household types.

3.7 This issue is highlighted by The Resolution Foundation who state in *A New Generational Contract: The final report of the Intergenerational Commission* ² “[in] the short term, with the private rented sector now a tenure in which millions of children are raised and in which more people will spend retirements in future, it is essential to address its poor record for security.” The number of families with children living in rented accommodation in the UK has risen by 94% in the last decade, with approximately half of children being born to families who are renting privately in 2016-17³. This means that many children will now spend a number of their formative years in private rented accommodation.

3.8 Lack of security within the PRS may also lead to issues with how a contract-holder may be able to enforce their rights. Age UK has highlighted problems that some older renters have with their accommodation in the PRS, including the quality of their accommodation, unexpected rent increases, retaliatory evictions and their ability to adapt their homes. Among other recommendations, Age UK has called for greater security of tenure as a crucial component of addressing some of these concerns.

3.9 It is inevitable that this lack of security within the PRS will hit the more vulnerable the hardest⁴. They are more likely to be disrupted by having to find accommodation at short notice and more likely to suffer hardship as a consequence.

3.10 A study by Salford University on the post-implementation evaluation of Part 2 of the Housing Act (Wales) 2014⁵, which places duties on local authorities and other public bodies to assist people who may be homeless or threatened with homelessness, recognises that whilst the PRS is an option to alleviate homelessness, it can also be a causal factor for many homelessness applications. Those participating within the first wave of fieldwork who were rehoused in the PRS, under the local authority’s homelessness duties, still felt that their situation was precarious.

3.11 In the same Salford study, local authorities were questioned about their opinions of the PRS as a solution to end homelessness. Some felt this was not an ideal long term solution and service users were sometimes reluctant to enter the PRS for a range of reasons, including anticipated eviction and the short term nature of tenancies.

² <https://www.resolutionfoundation.org/app/uploads/2018/05/A-New-Generational-Contract-Full-PDF.pdf>

³ <https://www.royallondon.com/siteassets/site-docs/media-centre/policy-papers/the-parent-rent-trap-policy-paper---royal-london.pdf>

⁴ Cromarty, H and Bellis, A (2017) Private renting solutions for homeless and vulnerable people, House of Commons Library, UK: London

⁵ https://www.salford.ac.uk/_data/assets/pdf_file/0009/1979766/Ahmed-et-al.-2018-Post-implementation-evaluation-of-Part-2-of-the-Ho.pdf

3.12 A third sector representative, also within the above study, said “Lots of our casework is people coming to the end of their Section 21 notice and panicking. They can't find somewhere else to live.” This underlines the need to ensure that people have sufficient time to find alternative accommodation in such circumstances.

3.13 The links between spatial insecurity and mental health were highlighted in ‘Housing insecurity and mental health in Wales; an evidence review’ by Dr Jenny Preece and Dr Emma Bimpson, published in March 2019⁶. The report highlights that evictions and foreclosures have been shown to have an adverse effect on mental health (Vasquez-Vera et al., 2017⁷, Hardy and Gillespie, 2016⁸). Research in Sweden found that individuals facing eviction were four times more likely to attempt suicide than the rest of the population (Rojas and Stenberg, 2016)⁹.

3.14 However, it is not just loss of housing that is related to mental ill health, but also a wider sense of insecurity and the potential to be asked to leave one's home. For those living in the private rented sector, insecurity of tenure has been shown to hinder individuals' ability to feel settled (McKee and Soaita, 2018)¹⁰.

Housing legislation in Wales

Current possession grounds in Wales – the Housing Act 1988

3.15 Under current legislation in Wales, the vast majority of renting in the PRS takes place under the provisions of the Housing Act 1988 ('the 1988 Act').

3.16 Most private tenants in Wales have an assured shorthold tenancy (AST), issued under the 1988 Act. Under section 21 of the 1988 Act, landlords are able to evict tenants, following a two-month notice period, without needing to give a reason. This is often referred to as a 'no fault' eviction because a landlord does not have to evidence the tenant is at fault when using this ground. However, a court cannot make a section 21 possession order that takes effect within the first six months of a tenancy. Provided the section 21 notice has been served legally, and provided a minimum of two months' notice is given to the tenant, they will be expected to leave by the specified date. If the tenant remains in occupation following the expiry of the two

⁶ https://housingevidence.ac.uk/wp-content/uploads/2019/03/190327-Housing-insecurity-and-mental-health-in-Wales_final.pdf

⁷ VASQUEZ-VERA, H., PALENCIA, L., MAGNA, I., MENA, C., NEIRA, J. & BORRELL, C. 2017. The threat of home eviction and its effects on health through the equity lens: A systematic review. *Social Science & Medicine*, 175, 199-208.

⁸ <http://www.e15report.org.uk/>

⁹ <https://www.ncbi.nlm.nih.gov/pubmed/26537566>

¹⁰ https://housingevidence.ac.uk/wp-content/uploads/2018/08/R2018_06_01_Frustrated_Housing_Aspirations_of_Gen_Rent.pdf

months' notice, this creates the ground on which the landlord can make a possession claim to the court.

3.17 The Renting Homes (Wales) Act 2016 ("the 2016 Act") retains a landlord's ability to serve a two month possession notice on a contract-holder under section 173, which is similar to the existing section 21 notice procedure. However, additional protection is given to the contract-holder under the 2016 Act. The 2016 Act allows the court, where it considers the notice is retaliatory in nature as a result of a contract-holder seeking repairs, to refuse to grant possession to a landlord. An additional power is set out in section 217 of the 2016 Act for the Welsh Ministers to extend the scope of what would constitute a retaliatory possession claim. This is intended to enable certain other abuses of the section 173 notice procedure which come to light to be addressed.

3.18 Additionally, a notice issued under section 173 of the 2016 Act has an expiry date. As such, a landlord is prevented from bringing possession proceedings more than two months after the possession date specified in the notice. A landlord who wishes to seek possession after this date will be required to issue a new notice to the contract-holder. This is unlike the current situation, where a landlord can issue a section 21 notice on the first day of the tenancy but leave it in abeyance so that, if a decision is made to seek possession at a later date, the two month notice requirement has already been met and the landlord can proceed straight to court to seek possession.

3.19 Section 8 of the 1988 Act provides for an alternative route to possession for landlords. A notice issued under section 8 has to specify the particular ground(s) on which possession is being sought. Some of these relate to breaches of the tenancy, for example rent arrears, while others do not require the tenant to be at fault, only that the landlord needs possession for a stated reason, such as to live in the property themselves. For claims under section 8, the notice period can vary depending on which ground the landlord is seeking possession. The full list of grounds applicable under section 8 of the 1988 Act are set out in Annex 1.

3.20 Generally, possession grounds can be either mandatory grounds or discretionary grounds. Mandatory possession grounds mean that, if the court is content that the landlord has evidenced that the ground is met, then the court must make a possession order. Discretionary grounds, by contrast, do not oblige the court to make a possession order. Instead the court is expected to decide, on the evidence provided, whether or not it is reasonable to grant possession.

Recent Welsh Government Legislation

3.21 The Welsh Government has already taken a number of steps to improve regulation of the PRS:

- Introducing legislation under Part 1 of the Housing (Wales) Act 2014 ('the 2014 Act') to ensure every AST of every privately-rented home is managed by a registered and licensed landlord or agent. Licensing,

which currently takes place via Rent Smart Wales, ensures that a landlord or agent is both “fit and proper” to hold a licence and has completed training about their roles and responsibilities.

- Introducing legislation, in the form of the Renting Homes (Fees etc.) (Wales) Act 2019, which improves access to, and the affordability of, renting in the private sector by making it an offence to charge a contract-holder¹¹ any payment that is not specified as a ‘permitted payment’ in the Act. This means contract-holders cannot be charged for such things as an accompanied viewing, receiving an inventory, signing a contract, or renewing a tenancy.

3.22 In addition, our landmark legislation, the 2016 Act will entirely replace the secure tenancy and assured tenancy regimes which currently operate under the Housing Act 1985 and Housing Act 1988 respectively. When implemented, the 2016 Act will make the process of renting a home much easier.

3.23 The main benefits of the 2016 Act are as follows:

- **The requirement to provide a contract** - The Act aims to make it simpler and easier to rent a home in Wales. The central requirement of the Act is for a landlord to issue an occupation contract to the contract-holder. These contracts will replace the current confusing array of tenancy and licence agreements, and mean that for the first time written contracts are issued to many who are renting their homes
- **Improvements for Joint Contracts** - The new approach to joint contracts will enable contract-holders to be added or removed from occupation contracts without the need to end the contract for every contract-holder, as is currently the case. Furthermore, one contract-holder will not be able to end the contract acting alone, which will avoid some current homelessness cases. This approach will also help victims of domestic abuse, by enabling the perpetrator to be targeted for eviction.
- **Enhanced Succession Rights** - Succession rights are broadly enhanced, enabling both a ‘priority’ and ‘reserve’ successor to succeed to the occupation contract. This will potentially enable two successions to the contract to take place, for example a spouse followed by a child. In addition, a new succession right for carers is created.
- **Fitness for Human Habitation** - Landlords must ensure any dwelling subject to an occupation contract is fit for human habitation (FFHH). What constitutes FFHH will be set out in secondary legislation. In

¹¹ The 2016 Act uses the term ‘contract-holder’ to describe tenants and licensees. Whilst the term ‘tenant’ has been used in the preceding sections of this document for the sake of clarity for the lay reader, the term ‘contract-holder’ is used in the Bill and in the EM from this point onwards.

addition, three specific requirements will be placed on landlords to ensure:

- The presence of smoke alarms;
 - The presence of carbon monoxide alarms;
 - Electrical safety testing being undertaken in the dwelling at least every five years.
- **Preventing Retaliatory Eviction** - The Act protects a contract-holder from the practice of retaliatory eviction (where a landlord responds to request for repair by issuing an eviction notice). A landlord will no longer be automatically entitled to possession where the Court is satisfied the possession notice was issued in response to a contract-holder's request in respect of disrepair or FFHH.
 - **Abandonment Procedure** - Landlords will have access to a new abandonment procedure, enabling them to repossess an abandoned property without needing a court order. This will enable abandoned properties to be re-let more quickly.
 - **Supported Accommodation** - Those in supported accommodation will, for the first time, have a bespoke legal basis underpinning their occupation. Where occupation within supported accommodation extends beyond six months, the occupant will generally become entitled to a '*supported standard contract*'.
 - **Time limited possession notices** - Currently, some landlords issue a section 21 possession notice at the start of a tenancy. Whilst a court is prevented from enforcing a section 21 notice by making a possession order within the first six months of a tenancy, the two month notice period can run in this first six months. With no expiry date on the validity of the notice a landlord is free to make a claim in court for possession at any point after the initial six months. Renting Homes prevents this practice by limiting the validity of a possession notice to two months following the expiry of the notice period

Intended Effect of the Amending Bill

Background

3.24 The 2016 Act is yet to be implemented. This provided us with an opportunity to consider emerging evidence in relation to security of tenure, to further engage with landlords' and contract-holders' representatives, and to monitor legislative changes introduced or proposed by governments in other parts of the UK since the 2016 Act received Royal Assent. As a result, we have concluded that 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, and believe that addressing this is in the interests of both contract-holders and the wider sector. Furthermore, it could be argued that a failure to address this

issue could potentially result in contract-holders in Wales being subject to a less favourable set of arrangements than apply in other parts of the UK.

3.25 We have, therefore, decided to introduce this amending legislation now, before the 2016 Act is implemented, and to bring the Act, as amended, into force before the end of the current Senedd term. We believe that taking this approach will minimise the disruption that might otherwise occur if we were to allow the 2016 Act arrangements to come into effect and then change key elements of these within a short time of the new regime having been implemented.

Intended effect

3.26 The overarching aim of the Bill is to improve security of tenure for those who rent their home in Wales. Whilst its provisions will apply to all landlords who issue standard contracts, its greatest impact will be felt in the PRS. Increased security of tenure will be achieved by amending the 2016 Act to extend the minimum notice period for a notice given under section 173 – Landlord’s Notice – from two months to six months, and to restrict the issuing of such a notice until six months after the occupation date of the contract (the 2016 Act currently sets this at four months). These changes will apply to the ‘periodic standard contract’, which is the default contract for use by private landlords under the 2016 Act.

3.27 The net effect of these changes will be to double the length of time before a landlord can obtain possession at the beginning of a periodic standard contract from six months to one year – as long as the contract holder does not breach the terms of the contract. It will also ensure that, thereafter, in the event of a section 173 notice being served, contract-holders will have six months, rather than two, to find and move to a new home.

3.28 Given the changing nature of the sector, and the emerging evidence mentioned above, the Welsh Government has come to the conclusion that two months is no longer an adequate notice period. We believe that six months is more appropriate, as it will allow sufficient time for contract-holders to:

- Find suitable alternative accommodation within the same community or area where they are current living should they wish to do so. Having only two months to make such arrangements increases the likelihood of having to accept ‘any’ accommodation, rather than find optimal alternative accommodation. This can also result in households not only having to leave the property, and potentially the community, with their children having to change schools. Such an experience can be a contributing factor to adverse childhood experiences (ACEs);
- Arrange for changes to existing care packages where an individual or someone they live with may be in ill health or require care and support and a move to a different local authority or health board area is required;

- Make arrangements to try to avoid having to change their child's school, or to be given enough time to make arrangements for the change where it is necessary or desirable;
- Save up to pay for the cost of the move and complete all necessary administrative tasks, including making contact with housing support or benefit agencies where appropriate.
- Generally 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.

(Many of the stakeholder organisations who responded to our consultation supported this rationale and agreed that six months was a more realistic timescale for making the necessary arrangements)

3.29 There is evidence, including a large number of responses from landlords to our recent consultation exercise, to suggest that section 21 is currently being used routinely in cases of rent arrears and antisocial behaviour, and there is no reason to suppose that this practice would not continue, via section 173, if the 2016 Act was implemented as currently enacted.

3.30 This leads us to further believe that the proposed change to the notice period under section 173 to six months would have an added benefit of encouraging landlords to use, where relevant, the breach of contract possession ground under section 157 of the 2016 Act. While the breach of contract ground requires only a one month notice period the ground also affords the contract-holder an opportunity to present his or her case at court. This could potentially allow the possession not to be granted where there are good reasons why the contract-holder has breached the contract, for example a delay in benefits caused the rent to be late.

3.31 Importantly, this approach will not limit a landlord's ability to regain their property in a timely manner where the contract-holder has breached the terms of their contract, nor does it mean that the full six month notice period is likely to be required by the contract-holder in every case. There is no reason why the contract-holder should not leave sooner, by mutual consent or by way of the contract holder serving notice if they have found suitable alternative accommodation within the six month notice period.

3.32 We also consider that this approach is proportionate; it provides greater security to contract-holders without preventing landlords being able to regain possession, for example if they wish to sell the property, albeit this may take longer than currently provided for. Where a contract-holder is in breach of contract, a landlord can continue to use the general 'breach of contract' ground under section 157 of the 2016 Act, which has a notice period of one month but, importantly, can be challenged in court. It should also be highlighted that the mandatory ground in relation to serious rent arrears (of eight weeks or two months) is being retained, under which the notice period is

only two weeks.

3.33 Our priority in introducing this amending Bill is to ensure that, in all cases where a landlord wishes to seek possession where there is no breach of contract, a reasonable period of time (i.e. six months) should be provided to enable them to find alternative accommodation and to make all of the other necessary arrangements that moving home entails. Where the contract-holder has breached the contract, landlords will retain the option of regaining possession of their property sooner through the use of the appropriate possession ground.

3.34 The Bill will also remove a landlord's ability to serve a section 173 notice within the six month period following expiry of any previous section 173 notice which the landlord has served. This is to discourage the practice whereby some landlords issue a section 173 notice 'just in case' they wish to use it.

Extension of the minimum notice period

3.35 Under the 2016 Act, mandatory possession under section 173 will still be available to a landlord without the need to cite a specific reason relating to a breach of the contract. However, the Bill amends the two-month notice period applicable to a section 173 notice, specified in section 174 of the Act, to a period of six months.

3.36 Notwithstanding the additional protections under the 2016 Act, the Welsh Government recognises that a landlord being able to end a contract with only two months' notice undermines security of tenure and can cause difficulty, hardship and even lead to homelessness in some cases.

Increasing the period at the beginning of a contract during which a landlord cannot give notice from four months to six months

3.37 Under the current 1988 Act arrangements for issuing notices for periodic assured shorthold tenancies, a landlord can issue a notice at the start of the tenancy regardless of whether they intend to seek possession. This causes unnecessary uncertainty for the contract-holder and undermines the feeling of safety and security one would expect with a home.

3.38 The 2016 Act seeks to improve this situation by only allowing a section 173 notice to be issued after the expiry of four months from the occupation date of the contract. The Bill increases the period before a landlord can issue a section 173 notice from four to six months. Therefore, in conjunction with the extension of the notice period, this will provide a contract-holder a minimum of 12 months' security of tenure at the outset of their occupation under the contract, subject to meeting the terms of their contract.

Changes to fixed term standard contracts

3.39 In order to avoid the increased security under a periodic standard contract being undermined, the Bill will remove a landlord's ability to issue a

notice, during a fixed term standard contract, to end the contract at the expiry of the fixed term (see section 186 of the 2016 Act). This will mean that, if a contract-holder chooses not to vacate the property at the end of the fixed term, the contract will automatically be replaced by a periodic standard contract (under section 184). Except in the case of a breach of contract, a landlord who wishes to remove a contract-holder who remains in occupation at the end of the fixed term will be required to serve a section 173 notice to bring the new periodic standard contract to an end. This would be subject to the amended six-month notice period. Should an initial short fixed term period be agreed with a contract-holder, for example four months, a landlord would still be required to wait a minimum period of six months from the occupation date before a section 173 notice could be issued. This ensures a contract-holder will be provided a minimum twelve months' security, regardless of the initial fixed term contract length.

Placing a six month restriction on issuing a notice following the expiry of a previous notice

3.40 As described above in 3.37, landlords have been known to issue notices "just in case". There is a concern that the extension of the notice period from two months to six months could increase the practice of landlords repeatedly issuing notices and allowing them to expire, without necessarily having any intention of acting upon them in the first place.

3.41 The Bill restricts this practice by preventing a landlord, following the expiry of a previous notice, from issuing another notice for six months. This is in support of the basic policy premise of increasing security of tenure for contract-holders. As the Law Commission stated in their 2006 Report "*contract-holders should not be kept in a state of uncertainty for unreasonably long periods.*"¹²

3.42 Landlords will also be restricted from issuing another notice for a six month period should a claim for possession fail on the basis that the notice was invalid on a technicality. We consider that documents such as notices should be completed with due care and attention and, therefore, we do not consider restricting the landlord from issuing a repeat notice following the identification of an error to be unfair. However, the Bill does allow a landlord a period of 28 days to address any errors and re-issue a corrected notice. In such cases, the six month notice period will begin from the date of the re-issued notice and not the original serving date.

The use of break clauses in fixed term contracts

3.43 The inclusion of break clauses in an occupation contract only arises where a landlord and contract-holder will have agreed to the same. While the ability to include break clauses is not a fundamental provision in the 2016 Act, the Bill

¹²

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/272281/6781.pdf See paragraph 2.40

will restrict landlords' rights around possession where the parties have agreed to the inclusion of break clauses. The amendments to the operation of break clauses will further reinforce the increased security of tenure which the other provisions of the Bill seek to achieve. To support the overarching policy of increasing security of tenure, the Bill provides that a break clause cannot be used in contracts of duration of less than 24 months, and cannot be activated until month 18. Landlords will also be required to serve a six month notice in relation to a break clause. In addition, if a landlord and contract-holder enter into a further fixed-term contract of two years or longer at the end of a previous fixed-term contract, the landlord will have to wait at least 18 months from the beginning of that subsequent contract before being able to give a six month notice under a landlord's break clause.

4. Consultation

4.1 The Bill aims to make relatively straightforward amendments to existing legislation and it was not considered essential to consult on a draft Bill as the consultation proposals made very clear what the impact on the current legislation was going to be.

4.2 On July 11th 2019, the Welsh Government issued an eight week consultation¹³ seeking views on the following:

- extending the minimum notice period from two months to six months;
- increasing the period at the beginning of a contract during which a landlord cannot give notice from four months to six months;
- placing a six month restriction on issuing a notice following the expiry of a previous notice;
- removing a landlord's ability to end a fixed term standard contract (under section 186); and
- the use of break clauses in fixed term contracts.

4.3 Most respondents were landlords or agents. This was to be expected as we have a direct link to landlords and agents through Rent Smart Wales, which was used to publicise the consultation exercise. We have no such comparable route to make direct contact with contract-holders. The main findings from the consultation were:

- a majority of respondents were against any increase to minimum notice periods, or increasing the period when notice cannot be served at the start of a tenancy;
- a majority supported proposals to end a landlord's ability to serve a notice for possession if they have not complied with other laws covering the PRS (presence of smoke and CO alarms, EPC, Gas Safety etc.); and,
- there was fairly strong support (but not 50%) for restricting the ability to regain possession if a landlord has been found to have attempted to evict someone in a retaliatory manner.

Summary of Contract-Holder Responses

4.4 Contract-holders were generally very supportive of the proposals to extend notice periods.

- 35% of contract-holders who responded have been evicted within the last two years.
- 70% of contract-holders in the PRS who responded were supportive of the main proposal to extend the notice period for section 173 evictions

¹³ <https://gov.wales/increasing-minimum-notice-period-no-fault-eviction>

to six months (those who were against were classified as both contract-holders and landlords).

- 78% of contract-holders in the PRS were supportive of the proposal to prevent an eviction notice from being served within the first six months of a new occupation contract.
- 78% of contract-holders in the PRS were supportive of the proposal to prevent an eviction notice from being served within six months of the expiry date of a previous eviction notice.
- 84% of contract-holders in the PRS were supportive of the proposal to prevent an eviction notice from being served within a fixed term contract.

Summary of Responses from Landlords

4.5 Landlords were overwhelmingly against the proposals.

- 35% of landlords who responded have issued a section 21 eviction notice within the last two years. The majority of responses pointed to the need to remove an unsuitable contract-holder as quickly as possible.
- 94% of private landlords who responded were against the main proposal to extend the notice period for section 173 evictions to six months. The overwhelming trend was that six months was felt to be too long and that this would potentially harm the property owner financially and risk further damage to the property in the case of 'bad' contract-holders.
- 83% of private landlords were against the proposal to prevent an eviction notice from being served within the first six months of a new occupation contract, giving much the same reasons as for why they were against the proposal to extend notice periods.
- 78% of private landlords were against the proposal to prevent an eviction notice from being served within six months of the expiry date of a previous eviction notice.
- 86% of private landlords were against the proposal to prevent an eviction notice from being served within a fixed term contract.

Summary of Responses from Letting Agents

4.6 Letting agents were also overwhelmingly against the proposals.

- 86% of letting agents who responded had issued a section 21 eviction notice within the last two years. The majority of responses also pointed to the reason for doing so being 'the need to remove an unsuitable contract-holder as quickly as possible'.
- 98% of letting agents who responded were against the main proposal to extend the notice period for section 173 evictions to six months. Again, the overwhelming view was that six months was felt to be too long and that this would potentially harm the property owner financially

and risk further damage to the property in the case of 'bad' contract-holders.

- 92% of letting agents were against the proposal to prevent an eviction notice from being served within the first six months of a new occupation contract, giving much the same reasons as for why they were against the proposal to extend notice periods.
- 90% of letting agents were against the proposal to prevent an eviction notice from being served within six months of the expiry date of a previous eviction notice.
- 90% of private landlords were against the proposal to prevent an eviction notice from being served within a fixed term contract.

Break Clauses

- Only 12% of contract-holders in the PRS, 11% of private landlords and 28% of letting agents who responded currently had a break clause in a tenancy agreement, or have had one in the last two years.
- Contract-holders in the social rented sector and social landlords who responded did not use break clauses in a contract.
- Only 5% of private landlords who responded had ever exercised a break clause to end a tenancy agreement, with the same percentage having done so in the last year.
- Only 17% of agents who responded had ever exercised a break clause, although 22% of those answering question 29 said that they had done so in the last two years.

4.7 The majority of respondents did not see much of a benefit to break clauses. Agent representative bodies were generally in favour of break clauses as they felt it could affect a landlord's ability to rent to more vulnerable contract-holders. However, they were clear that guidance should be given to control their use. Most landlords had never seen the need to use break clauses, and in several cases had never even heard of them.

Restrictions on serving notices due to retaliatory eviction

- 51% of all respondents were against the proposal to restrict possession rights for landlords who had been found to have tried to evict someone in a retaliatory manner.
- 48% of all respondents were supportive of the proposals, but support varied widely among different groups.
- 55% of private landlords who responded were against, while 45% were for the proposals.
- 71% of private letting agents who responded were against, with only 29% for the proposals.
- 84% of contract-holders in the PRS who responded were for the proposals, while 16% were against.
- 100% of local authorities who responded supported the proposal.

4.8 The majority of landlords who were against the proposal were of the view that they should be able to evict a contract-holder regardless of having had a previous eviction turned down for being retaliatory in nature. Most landlords who were in agreement with the proposal saw this as a justified response to retaliatory behaviour.

Restrictions on serving notices due to other breaches of housing legislation

- 69% of all respondents agree with further restrictions on issuing notices for landlords who have breached other housing legislation. 30% were against the proposal.
- 67% of landlords and 68% of letting agents who responded were supportive of the proposal.
- 93% of contract-holders in the PRS, and 100% of contract-holders in the social rented sector who responded were supportive of the proposal.
- Local authorities who responded were 100% in agreement with the proposal.
- 80% of social landlords who responded backed the proposal.

4.9 Of the majority of respondents who agreed with the proposals, there was a common trend around the importance of the restrictions on serving notices for breaches of other housing legislation. Most respondents who disagreed were either against further restrictions for breaches of legislation for which sanctions already existed, or they believed that legislation was too weighted in favour of contract-holders already.

4.10 Given the current widespread use of section 21 possession notices, the Welsh Government had anticipated that there would be some opposition to the proposal to extend section 173 notice period, and to limit its use in certain circumstances. The evidence submitted by a range of stakeholders from across the landlord sector, including social landlords, confirmed that section 21 is routinely being used to regain possession in situations where other more relevant possession grounds exist (under section 8 of 1988 Act). The most commonly cited reasons for using section 21 were for rent arrears and antisocial behaviour.

4.11 In addition to the consultation document, officials engaged with a variety of stakeholders during the consultation period, holding roundtable events and bilateral meetings with representatives from local government, landlord groups, third sector agencies, representative bodies and housing associations.

4.12 The views of contract-holders were represented by organisation such as Shelter Cymru, TPAS and Citizens advice.

5. Power to make subordinate legislation.

The Bill contains provisions to make subordinate legislation. Table 5.1 (subordinate legislation) sets out in relation to these:

- (i). the person upon whom, or the body upon which, the power is conferred;
- (ii). the form in which the power is to be exercised;
- (iii). the appropriateness of the delegated power;
- (iv). the applied procedure; that is, whether it is “affirmative”, “negative”, or “no procedure”, together with reasons why it is considered appropriate.

The Welsh Government will consult on the content of the subordinate legislation where it is considered appropriate to do so. The precise nature of consultation will be decided when the proposals have been formalised.

Table 5.1: Summary of powers to make subordinate legislation in the provisions of the Renting Homes (Amendment) (Wales) Bill

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
Section 13(2)	Welsh Ministers	Regulations	Section 13(2) inserts a regulation-making power into sections 121 of the 2016 Act. Subsection (1) of this section allows for periodic standard contracts to contain provision that the contract-holder is not entitled to occupy the dwelling as a home for specified periods. Regulations may amend the 2016 Act so as to provide that subsection (1) of section 121 does not apply, or applies only to contracts of a particular description, as well as for the purpose of specifying limits to such exclusions or circumstances in which such exclusions may not apply. Suitable for delegated power because this enables a response to be made addressing circumstances in which it is not appropriate for contracts to include powers to exclude contract-holders and allows the Welsh Ministers the flexibility to respond to changes in legislation and housing practice.	Affirmative	Power allows for the amendment of primary legislation so affirmative procedure is appropriate.
Section 13(3)	Welsh Ministers	Regulations	Section 13(3) inserts a regulation-making power into section 133 of the 2016 Act. Subsection (1) of this section allows for fixed term standard contracts to contain provision that the contract-holder is not entitled to occupy the dwelling as a home for specified periods. Regulations may amend the 2016	Affirmative	Power allows for the amendment of primary legislation so affirmative procedure is appropriate.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			Act so as to provide that subsection (1) of section 133 does not apply, or applies only to contracts of a particular description, as well as for the purpose of specifying limits to such exclusions or circumstances in which such exclusions may not apply. Suitable for delegated power because this enables a response to be made addressing circumstances in which it is not appropriate for contracts to include powers to exclude contract-holders allows the Welsh Ministers the flexibility to respond to changes in legislation and housing practice.		
Section 17(2)	Welsh Ministers	Order	Suitable for delegated powers because this provision enables the Welsh Ministers to provide for commencement of the Bill.	No procedure	These Orders relate to commencement and are technical in nature.
Schedule 1, Paragraph 14	Welsh Ministers	Regulations	Schedule 1 sets out new Schedule 8A to the 2016 Act, which lists standard contracts that can be terminated on two months' notice by giving notice under section 173 or under a landlord's break clause. Schedule 8A incorporates, at paragraph 14, a power for the Welsh Ministers to amend Schedule 8A. This allows the Welsh Ministers the flexibility to respond to changes in legislation and housing practice.	Affirmative	Power allows for the amendment of primary legislation so affirmative procedure is appropriate.
Schedule 2,	Welsh Ministers	Regulations	Schedule 2 sets out new Schedule 9A to the 2016 Act, which lists restrictions on giving notice under section 173, under section 186, and under a	Affirmative	Power allows for the amendment of primary legislation

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
Paragraph 10			landlord's break clause. Schedule 9A incorporates, at paragraph 10, a power for the Welsh Ministers to amend Schedule 9A. This allows the Welsh Ministers the flexibility to respond to changes in legislation and housing practice.		so affirmative procedure is appropriate.
Schedule 3, Paragraph 12	Welsh Ministers	Regulations	Schedule 3 sets out new Schedule 9B to the 2016 Act, which lists fixed term standard contracts which can be terminated by giving notice under section 186. Schedule 9B incorporates, at paragraph 12, a power for the Welsh Ministers to amend Schedule 9B. This allows the Welsh Ministers the flexibility to respond to changes in legislation and housing practice.	Affirmative	Power allows for the amendment of primary legislation so affirmative procedure is appropriate.
Schedule 4, Paragraph 12	Welsh Ministers	Regulations	Schedule 4 sets out new Schedule 9C to the 2016 Act, which lists fixed term standard contracts which may contain a landlord's break clause even if made for a term of less than two years. Schedule 9C incorporates, at paragraph 12, a power for the Welsh Ministers to amend Schedule 9C. This allows the Welsh Ministers the flexibility to respond to changes in legislation and housing practice.	Affirmative	Power allows for the amendment of primary legislation so affirmative procedure is appropriate.
Schedule 5	Welsh Ministers	Regulations	Schedule 5 makes various miscellaneous amendments to the 2016 Act, including adding, via a new Section 239A, a regulation-making power that enables the Welsh Ministers to make provision in relation to tenancies and licences which will be abolished by section 239 of the 2016 Act and to	Affirmative	Power allows for the amendment of primary legislation so affirmative procedure is appropriate.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			make provision in relation to the end of the term of a long tenancy (within the meaning of paragraph 8 of Schedule 2 to the 2016 Act). Regulations made under this power may make provision about tenancies or licences which are not and cannot be occupation contracts. This power is intended to allow the Welsh Ministers to make provision specifically in relation to assured agricultural occupancies and secure tenancies which are Housing Association Tenancies,		

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Regulatory Impact Assessment

6.1 A Regulatory Impact Assessment has been completed for the Bill and it follows below.

6.2 There are no specific provisions in the Bill which charge expenditure on the Welsh Consolidated Fund.

The following table presents a summary of the costs and benefits for the Bill as a whole. The table has been designed to present the information required under Standing Order 26.6 (viii) and (ix).

SUMMARY – REGULATORY IMPACT ASSESSMENT (RIA)

Renting Homes (Amendment) (Wales) Bill		
Preferred option: Extension of section 173 notice to six months - Option 3		
Stage: Introduction	Appraisal period: 2020-21 to 2024-25	Price base year: 2019/20
Total Cost Total: £9,545,863 - £12,950,675 PV: £9,277,087 - £12,533,684	Total Benefits Total: 0 PV: 0	Net Present Value (NPV): £-9,277,087 – £-12,533,684

Administrative cost

Costs: There will be a limited transitional cost to Welsh Government of providing briefing for local authorities, community landlords, private landlords and advice agencies. We consider this to be equivalent to 0.2 of a policy officer post at HEO grade or approximately £9,000 per annum. This cost will be incurred in 2020-21 and 2021-22.			
Transitional: £18,000	Recurrent: £0000	Total: £18,000	PV: 17,097

Cost-savings:

There may be savings achieved by local authorities in the delivery of their housing advice services due to the additional time contract-holders will have to find alternative accommodation under this preferred option. The best estimate shows a cost-saving of between £67,270 and £171,990 per annum from 2021-22.

We have not sought to identify landlords savings. We do anticipate administrative cost savings to landlords but these savings are unknown.

Transitional: £0	Recurrent: £269,080 – £687,960	Total: £269,080 - £687,960	PV: £238,732 - £610,370
Net administrative cost: £-251,080 - £-669,960 (a net cost-saving)			

Compliance costs

There is expected to be a transitional cost to stakeholders as they familiarise themselves with the new provisions/amendments in the Bill. These costs (which are opportunity costs) are expected to be incurred in 2020-21 and are estimated to be:

Community landlords	£211,224 - £352,040
Local Authorities	£35,810
Letting agents and Landlords	£9,530,725 - £12,375,842
Legal services / Solicitors	£428,064
Third sector agencies	£10,000

The main ongoing cost relates to the cost to landlords to regain possession of their property. The cost of instigating possession proceedings is assumed to remain at the current rate of £325 - £355. The Bill does not change these costs.

There may be circumstances where landlords opt to use section 157 or 181 of the 2016 Act instead of section 173. The cost of these alternative processes is approximately £30 lower than Section 173 per occurrence.

Recent Ministry of Justice (“MOJ”) data for 2018-19 indicated 783 cases were filed under the accelerated procedure. We anticipate 520 cases would now use alternative routes to seek possession which may require a hearing, however there are potential wider costs to landlords as outlined in the unquantified costs and disbenefits section below.

Transitional: £10,215,823 - £13,201,756	Recurrent: £0	Total: £10,215,823 - £13,201,756	PV: £9,870,360 - £12,755,319
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Other costs

No other costs have been identified.

Transitional: £0	Recurrent: £0	Total: £0	PV: £0
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Unquantified costs and disbenefits

We are unable to quantify the amount of time a landlord may take to pursue a claim for possession through the court in relation to completing the necessary forms and attending a hearing. This cost is unknown.

The amendments to extend the notice period to six months, and not allow it to be issued in the first six months (previously four) of a new contract, potentially adds an additional six months to the time before a landlord can apply to the court for possession of their property.

This could result in additional arrears of £3822, assuming no rent payments are being made by the contract-holder and a landlord decides to pursue possession under section 173 (landlord's notice). There is no reliable data available on how frequently this will occur in any given year and it is therefore not possible to assess this cost on a Wales basis.

The introduction of the 2016 Act will require an update to the ICT systems of HM Courts and Tribunals Service (HMCTS). This upgrade was already identified as a consequence of the 2016 Act. There are therefore no additional costs to upgrade the ICT systems as this work is ongoing and proposed amendments have been communicated with MOJ colleagues as part of the ICT upgrade.

Benefits

The main benefits of the Bill are to improve security of tenure for contract-holders, who have not breached the terms of their contract, by providing them with a reasonable period of time to source alternative accommodation. In addition to this, where a landlord decides to seek possession for breach of contract, the contract-holder will have the opportunity to mount a defence in court against being evicted.

Other than the direct savings to local authorities in circumstances where a contract-holder is able to source accommodation within the notice period, it is not possible to quantify the overall benefits in respect of wellbeing, impact on health services, etc. Therefore these are unknown.

Total: 0	PV: 0
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Key evidence, assumptions and uncertainties

The assessment presented in this document makes a number of assumptions around levels of outcomes recorded by local authorities in relation to their homelessness duties, and numbers of section 21 notices which have been issued not as a result of a breach of tenancy.

These assumptions are based on the best available data which includes statutory returns from local authority housing teams and one of the largest surveys of private landlords conducted by the Residential Landlord Association in 2019.

We have estimated a range for numbers of staff within the social sector working within housing management for familiarisation following communication with representative bodies on staff employed by RSLs in Wales.

7. Options

7.1 The following options were considered during the policy development process:

1. Do nothing;
2. Introduce an amending Bill to remove the section 173 'no-fault' ground from the 2016 Act and add a further range of possession grounds in its place ('the Scottish model'); or
3. Introduce an amending Bill to extend the section 173 notice period from the current two months to six months, and place further restrictions on the circumstances in which a section 173 notice can be issued.

Option 1: Do Nothing

7.2 Under this option, landlords would continue to rely on existing legislation (the Housing Act 1988) when seeking possession. Once the provisions of the 2016 Act are brought into force, possession claims would be dealt with in accordance with the relevant grounds of that legislation – including section 173 with its current two month notice period.

7.3 This option was discounted on the basis that it would not sufficiently increase security of tenure, notwithstanding the additional protections under the 2016 Act, such as in relation to retaliatory eviction.

Option 2: Remove the section 173 'no-fault' ground from the Renting Homes (Wales) Act 2016 and replace it with an additional range of possession grounds

7.4 Under this option the 2016 Act would be amended to remove the section 173 'landlords' notice' ground, which would be replaced with an additional range of possession grounds. This approach would be similar to the arrangements recently introduced in Scotland under the Private Housing (Tenancies) (Scotland) Act 2016, and those recently consulted on by the UK Government for potential introduction in England.

7.5 The approach taken in Scotland requires a landlord to provide specific grounds for requiring possession of their property (see table 7.1 below). A landlord is required to provide evidence for any ground being used. For example, where a landlord is seeking to refurbish the property, evidence of planning permission may be required. The notice required to be given by a landlord will vary depending on the length of tenancy, for a tenancy of six months or less the notice required is 28 days, for a tenancy of six months or more the notice required is 84 days.

7.6 Whilst this option would, to a certain extent, meet the policy objective of increasing security of tenure, the Welsh Government has a number of concerns with this approach. Whilst it requires a landlord to have a specific ground before possession proceedings can be commenced, it does still allow possession

proceedings to be commenced against a contract-holder who has done nothing wrong. This is because there are six mandatory grounds available to landlords in Scotland where possession can be sought solely because the landlord requires the property for other purposes, for example the landlord wishes to sell the property or refurbish it.

7.7 This potentially could present a confusing picture for contract-holders who will be required to understand which grounds they can be evicted on, even where they have done nothing wrong. In addition the short notice periods, either 28 or 84 days, give insufficient time for a contract-holder, who has not breached their contract, to prepare fully for an eviction. This is compounded by the fact that possession can be sought by a landlord in Scotland at any time, even during the first six months.

7.8 It could of course be argued that the Welsh Government could extend any notice period attached to a specific ground. For example, a landlord wishing to refurbish the property could be required to provide six months' notice. However, this is complicated by the requirement for landlords to provide evidence on the grounds they are seeking to use. Such an evidence base is necessary to ensure that landlords do not seek to abuse the system. Without the need for evidence, a landlord may say they need possession because they wish to sell their property, but actually have no intention to do so. Having obtained possession, the landlord may simply rent the property to another contract-holder for a higher rent. Therefore, it would not be proportionate to require landlords to provide six months' notice in addition to the time required to gather evidence in support of the possession ground being used. Such a requirement, should for example a landlord have to provide evidence in the form of planning permission, would prevent a landlord obtaining possession for a very lengthy period.

7.9 Inevitably there will be situations where, even though a contract-holder has done nothing wrong, landlords will require possession of their property, such as to live in it themselves. In such circumstances the most important factor for a contract-holder is the amount of notice given before possession is required. It is of little comfort to a contract-holder that a landlord has had to spend several months compiling detailed evidence of, say, their intention to sell or to refurbish the property, but still only be provided 28 days' notice of eviction. It is our view that increasing the section 173 period to six months achieves the appropriate balance between the landlord's right to regain possession in circumstances where the contract-holder is not at fault with the contract-holder's need to have sufficient time to find alternative accommodation.

7.10 We have, therefore, ruled-out a legislative approach which on the one hand compels landlords to provide a reason for seeking possession in every case, but on the other still allows possession to be regained in as little as 28 days – even when the contract-holder has done nothing wrong. Rather, we believe that by extending the section 173 notice period to six months, contract-holders will have greater security of tenure and, furthermore, landlords will be unable to seek to abuse any additional grounds which would have had to be created if the section 173 ground was abolished (there is some evidence to suggest that unscrupulous landlords might seek to abuse new grounds). Furthermore, in situations where a contract-holder is actually at fault, we believe that our preferred option will encourage landlords to use the 'breach of contract' ground under the Act, which has a notice period of one

month but which can be defended in court (this is with the exception of a breach of the ASB and prohibited conduct term, in which case a possession claim can be started on the day the notice is served). Additionally, in cases of serious rent arrears, landlords of standard contracts have access to the serious rent arrears ground, which is mandatory and requires only a two week notice to be issued before possession proceedings can commence. This option has not been taken forward for further analysis.

Option 3: Extend the section 173 notice period from two months to six months, and limit the circumstances in which a section 173 notice can be issued

7.11 The amending legislation we propose will ensure that, so long as the contract-holder does not breach the terms of their contract, they will always be entitled to a minimum of six months' notice before being expected to leave the property, and a minimum period of security of 12 months from the start of occupation under the contract. This contrasts with the arrangements in place in Scotland and those previously proposed in England, under which contract-holders not at fault can still be faced with a two month notice to leave – or even less in some circumstances. It also ensures that we deliver the benefits of the 2016 Act at the earliest opportunity and minimise the number of significant changes for the sector to implement. Based on the above reasons **Option 3** is the **preferred option**.

Table 7.1 different routes to regaining possession under the 1988 Act, the 2016 Act and the housing legislation in Scotland.

Scottish PRS Tenancies	England and Wales - Current PRS tenancies	Standard Occupation Contracts in Wales from 2021
The Private Housing (Tenancies) (Scotland) Act 2016	Housing Act 1988 – Assured Shorthold Tenancies	Renting Homes (Wales) Act 2016 (as amended)
Mandatory Grounds	Mandatory Grounds	Mandatory Grounds
<p>Landlord intends to sell the let property</p> <p>Notice period where occupation is six months or less: 28 days</p> <p>Notice period where occupation more than six months: 84 days</p>	<p>Notice under section 21</p> <p>Notice period: two months</p>	<p>Section 173</p> <p>Notice period: six months</p> <p>This can be used by a landlord seeking possession of their property to sell or for personal use</p>
<p>Let property to be sold by lender</p> <p>Notice period where occupation is six months or less: 28 days</p> <p>Notice period where occupation more than six months: 84 days</p>	<p>Landlord intends to live in the let property</p> <p>Notice period: two months</p>	<p>The contract-holder is in serious rent arrears</p> <p>Notice period: 14 days</p>
<p>Landlord intends to refurbish the let property</p> <p>Notice period where occupation is six months or less: 28 days</p>	<p>Let property to be sold by lender</p> <p>Notice period: two months</p>	

Notice period where occupation more than six months: 84 days		
<p>Landlord intends to live in the let property</p> <p>Notice period where occupation is six months or less: 28 days</p> <p>Notice period where occupation more than six months: 84 days</p>	<p>Property occupied as a holiday let</p> <p>Notice period: two months: 2 weeks</p>	
<p>Landlord intends to use the let property for non-residential purpose</p> <p>Notice period where occupation is six months or less: 28 days</p> <p>Notice period where occupation more than six months: 84 days</p>	<p>Property let to a student by an educational institution</p> <p>Notice period: two weeks</p>	
<p>Let property required for religious worker</p> <p>Notice period where occupation is six months or less: 28 days</p> <p>Notice period where occupation more than six months: 84 days</p>	<p>Let property required for religious worker</p> <p>Notice period: two months</p>	
Landlord's family member intends to live in the let property (discretionary)	The property is to be subject to substantial works which cannot be carried out with the tenant in situ	

<p>Notice period where occupation is six months or less: 28 days</p> <p>Notice period where occupation more than six months: 84 days</p>	<p>Notice period: two months</p>	
<p>Grounds for possession relevant to tenant behavior.</p> <p>Notice period: 28 days</p>	<p>Tenant is in serious rent arrears</p> <p>Notice period: two weeks</p>	<p>Discretionary grounds for possession relevant to contract-holder behavior, section 157.</p> <p>Notice period: one month</p>
<p>Tenant no longer needs supported accommodation</p>	<p>The tenancy is a periodic tenancy which was devolved under the will or intestacy of the former tenant</p> <p>Notice period: two months</p>	<p>Available to a landlord where the contract-holder has breached any of the terms of the occupation contract for example, failure to pay rent or take care of the property</p>
	<p>Mandatory grounds for possession relevant to tenant behaviour.</p> <p>Notice period varies allowing landlord to take immediate action on the day notice served</p>	
<p>Tenant has a relevant criminal conviction (mandatory)</p> <p>Notice period: 28 days</p>	<p>Serious anti-social behaviour, relevant criminal conviction or the property is subject to a closure order (mandatory)</p>	

Tenant is no longer occupying the let property (mandatory) Notice period: 28 days	Tenant's immigration status (mandatory)	
Tenant has breached a term of the tenancy agreement Notice period: 28 days	Discretionary grounds Notice period: two weeks (unless indicated)	
Tenant has engaged in relevant antisocial behavior Notice period: 28 days	Suitable alternative accommodation can be provided to the tenant – requires a two month notice period	
Tenant has associated in the let property with someone who has a criminal conviction or is antisocial Notice period: 28 days	1. Rent arrears	
Tenant is in rent arrears over three consecutive months (mandatory) Notice period: 28 days	2. Persistent delay in rent payments	
Tenant has stopped being — or has failed to become — an employee (can be mandatory or discretionary)	3. Breach of tenancy	

Discretionary grounds where there is a reason which prevents occupation.	4. Determination of the property and or any furniture provided because of the actions of the tenant	
<p>Landlord has had their registration refused or revoked</p> <p>Notice period where occupation is six months of less: 28 days</p> <p>Notice period where occupation more than six months: 84 days</p>	Nuisance, annoyance or illegal or immoral use of the property	
<p>Landlord's HMO license has been revoked</p> <p>Notice period where occupation is six months of less: 28 days</p> <p>Notice period where occupation more than six months: 84 days</p>	Domestic violence	
<p>An overcrowding statutory notice has been served on the landlord</p> <p>Notice period where occupation is six months of less: 28 days</p>	Tenant is an employee of the landlord	

Notice period where occupation more than six months: 84 days		
	Recovery of possession where grant is induced by false statement	

8. Costs and benefits

8.1 The assessment of costs and benefits is centred on the five year period 2020-21 to 2024-25. If passed, the Bill is expected to receive Royal Assent in 2020 and consequently it will be during 2020-21 that stakeholders will begin to incur costs. A five year appraisal period has been chosen, since the costs and benefits of the Bill are expected to reach a steady state quickly. All costs have been rounded to the nearest £.

8.2 The RIA presents a best estimate of the costs and benefits of the Bill based upon the available evidence. The analysis has been informed by engagement with key stakeholders. Nevertheless, it has been necessary to make a series of assumptions in order to complete the calculations. Any assumptions made are explained in the narrative.

8.3 The Bill is expected to result in transitional costs for key stakeholders, largely around the need to familiarise themselves with the new requirements. In terms of on-going costs, the assessment focuses on the costs incurred by landlords in trying to regain possession of their property and the cost/cost-saving to Local Authorities from the provision of homelessness services.

8.4 The assessment includes an estimate of applications for help by households threatened with homelessness as a result of receiving notice from their landlord. We have estimated the possible time and cost for landlords to regain possession in situations where the contract-holder has not been meeting their rental liability.

Option 1: Do Nothing

Impact on Landlords

8.5 Costs for landlords occur throughout each stage of the process of regaining possession, ordinarily in the following order:

- Cost to apply for a possession order.
- Cost to apply for possession order to be executed by a bailiff.
- Legal costs will normally be settled following conclusion of the matter or following each stage for work undertaken.

8.6 These costs are the standard costs that landlords incur currently if seeking possession through the courts in England and Wales. These administrative costs for possession will remain unchanged as a result of this Bill.

8.7 Perhaps more difficult to quantify are the costs to a contract-holder when only two months' notice is provided. Such costs can be financial and emotional for a contract-holder and their family, and potentially include having to find a deposit and rent up front for new accommodation in only two months, or having to move jobs or fund additional work travel expenses because of the need to find accommodation quickly, rather than more appropriate accommodation, due to the short notice period.

8.8 Similarly, the potential for children to be forced to move schools or travel increased distances, can result in further costs. Additionally, having to move home and/or school at short notice can lead to adverse childhood experiences (ACEs), the true emotional cost of which may last for many years.

Court activity

8.9 During 2018 there were 783 claims made to the courts of Wales¹⁴ under the accelerated procedure, often referred to as Section 21. The cost to make a claim is £355.

8.10 There were 224 instances where an order made by the court had to be executed by a county court bailiff at a cost of £121 per instance. The initial total cost to landlords was £305,069 (£355 per claim x 783) + (£121 bailiff x 224).

8.11 Landlords are entitled to reclaim their expenses from the contract-holder, but information is not available to show how many times this has occurred or the level of success of regaining these costs.

8.12 Landlords may also incur other costs such as legal fees, which can vary depending on the source of the legal advice. Landlords can also reclaim these costs from the contract-holder via an order from the court.

Mortgage and Landlord Possession Statistics

8.13 Based on 2018 data, the mean time in weeks for landlords to regain possession using the section 21 accelerated procedure is 26.4¹⁵ weeks, excluding the notice period.

8.14 Again, based on 2018 data, the mean time in weeks for private landlords to regain possession using the section 8 procedure is 22.2 weeks, excluding the notice period.

8.15 The Residential Landlords Association, in their consultation response, stated the additional cost to landlords under the current court system is £3,234. This is based on the average monthly rent of £637 cited in their response and based on MOJ data of average time for regaining possession.

Impact on homelessness functions of local authorities

8.16 The loss of rented or tied accommodation is a major contributor to people seeking homelessness assistance from their local authority.

¹⁴ <https://www.gov.uk/government/statistics/mortgage-and-landlord-possession-statistics-july-to-september-2019>

¹⁵ Based on the mean of the 4 quarter means of 2018 MOJ data

8.17 In 2018-19 Welsh Government statistics¹⁶, as reported by local authorities, show **3,441** cases where homelessness within 56 days was threatened due to the landlord issuing a notice in respect of 'rented and tied' accommodation. The number of cases which were recorded as threatened with homelessness due to rent arrears from a private sector landlord was **741**.

8.18 There were **1,980** cases where the local authority was satisfied the household was homeless, within the definition contained in section 55 of the Housing (Wales) Act 2014, where the cause of homelessness was due to their landlord issuing notice in respect of rented or tied accommodation. There were **216** cases where the cause of homelessness was rent arrears owing to a private landlord.

8.19 Final duty acceptances (s.75), where the applicant received an outcome due to their landlord issuing notice from rented or tied accommodation, was **573**, and there were **45** cases where the cause of homelessness was rent arrears owed to a private landlord.

Table 8.1 2018/19 estimated cost for Local Authority Statutory Homelessness Services (Main cause of homelessness rental sector)

	2018/19	Unit cost to LA homelessness	£
Number of threatened homelessness cases due to notice on rented / tied accommodation S.66	3,441	£961	£3,306,801
Number of homeless cases due notice on rented / tied accommodation S.73	1,980	£961	£1,902,780
Rent arrears cases PRS Threatened Homelessness S.66	741	£961	£712,101
Rent arrears cases PRS Homeless S.73	216	£961	£207,576
Number of homelessness cases due to notice on rented / tied accommodation and were owed the Final Duty S.75	573	£2,457	£1,407,861
Number of homelessness cases due to notice on	45	£2,457	£110,565

¹⁶ <https://gov.wales/homelessness-april-2018-march-2019>

rented / tied accommodation due to rent arrears Final Duty S.75			
Total			£7,647,684

8.20 The unit cost is based on the calculations within the study “Value for Money in Housing options and homelessness services” (2010) by Acclaim consulting and Shelter¹⁷. Costs have been uprated for inflation.

8.21 The following table contains an estimate of the number of cases recorded by cause of homelessness and costs, these figures are based on the average annual data from the past three years 2016/17, 2017/18 and 2018/19¹⁸. The annual cost of providing homelessness services in respect of these cases is estimated to be £7.25 million per annum.

Table 8.2 Estimated outcomes and costs per annum

	2020-2024 Outcomes	2020-2024 Estimated costs
Number of threatened homelessness cases due to notice on rented / tied accommodation	3,332	£3,202,052
Number of homeless cases due notice on rented / tied accommodation	1,898	£1,823,978
Rent arrears cases PRS Threatened	630	£605,430
Rent arrears cases PRS Homeless	199	£191,239

¹⁷

https://england.shelter.org.uk/__data/assets/pdf_file/0008/297224/VFM_in_housing_options_and_homelessness_services_full_report_Oct_2010.pdf

¹⁸ Source: Statutory homelessness data

Final Duty cases for loss of PRS / Tied	539	£1,324,323
Final Duty cases Rent arrears PRS landlord	42	£103,194
		£7,250,216

Benefits

8.22 There are no particular benefits accruing from this option. The weaknesses in the current legislation would remain. Landlords would be able to continue to issue two month section 173 notices outside of any fixed term, as long as four months' occupation has been completed.

Option 2: Remove the section 173 'no-fault' ground from the Renting Homes (Wales) Act 2016 and replace it with an additional range of possession grounds

8.23 As mentioned at paragraph 7.10 above, this option has not been taken forward for further analysis.

Option 3: Introduce a six month minimum notice period and make other related changes

Landlord costs

8.24 83% of Residential Landlords Association members who responded to a recent survey stated they had used section 21 in the past for rent arrears¹⁹, however the frequency of use is unknown.

8.25 Using the 2018 MOJ figure of 783 claims under the accelerated procedure, and using the landlord survey as proxy for cases, 83% of landlords who have used this route may now decide to seek possession via an alternative ground, specifically section 157 (breach of contract) or section 181 (serious rent arrears) within the 2016 Act. This gives us a potential 650 cases/claims under those other sections.

8.26 We will make an informed assumption that 20% of landlords will still use the section 173 route, and that 80% will seek possession using the alternative grounds.

¹⁹ <https://research.rla.org.uk/wp-content/uploads/Possession-Reform-in-the-PRS-July-2019-1.pdf>

8.27 This provides us with a potential number of 520 claims (80% of 650) that may require a hearing as possession is being sought on a ground to which the accelerated procedure does not apply.

8.28 520 claims for possession would be filed at a cost of either £355 or £325, (the costs for making a claim for possession will not be changed as a result of the Bill depending on the reasons for possession if not following the mandatory section 173 route (average cost to apply to the court for a possession claim £340).

Claim on breach including rent arrears	520 x £340 = £176,800
Section 173 claim	263 x £355 = £93,365
Estimated Bailiff costs	224 x £121 = £27,104
	Total £297,269

8.29 This represents a small cost-saving of approximately £8,000 per annum overall compared to the baseline option of within option 1 (paragraph 8.10). However, there are potential additional costs to landlords associated with seeking to regain possession of their property via an alternative ground (e.g. section 157 or section 181). For example, there would be a cost if the landlord were required to attend a court hearing. These additional costs are unknown at this stage.

Impact of proposals on potential rent arrears.

8.30 Concern has been raised by landlords relating to increased rent arrears, should that be the reason for pursuing a possession claim; in particular that the restriction on issuing the increased six-month notice after the first six months of occupation could result in landlords experiencing significant rental losses should they not pursue possession through section 157 or 181.

8.31 Due to the number of routes to gain possession at the disposal of the landlord, it is difficult to predict additional administrative costs as these are likely to depend upon choices made by individual landlords and their agents. Therefore these costs are unknown other than the costs for applying for possession as highlighted in the examples below.

8.32 We have considered the situation as it relates to contract holders in rent arrears. A contract-holder, after occupying the dwelling having paid one month's rent up-front to start the tenancy, makes no further payment for the next two months. The landlord has three options.

A: To issue a six month section 173 notice at the end of the initial six months of occupation;

B: To issue a notice under section 181 for serious rent arrears; or

C: To issue a notice under section 157 for a breach of tenancy.

Potential costs

Option A: The contract-holder does not pay further rent for the duration of the tenancy and notice period (11 months). The landlord applies for an accelerated procedure (£355), which results in an order and the contract holder leaves only after intervention from the Bailiff (£121).

Based on MOJ data for 2018, the average time from claim to repossession was 26.4 weeks. This is just over six months. The total arrears, assuming no further payments were made, would be 17 months.

The average rent in Wales is £637, so from notice to repossession, the rent liability is $£637 \times 17 \text{ months} = £10,829$.

Total cost to the landlord including court fees and Bailiff fees, but excluding legal fees, is **£11,305**

In this scenario a landlord may end up being owed an additional six months' rent, in comparison to the current two month notice period which can be issued at month four.

Option B: The landlord can issue a notice under Section 181. This notice will be for two weeks.

The landlord can file a claim for possession via Possession Claims Online (PCOL) at a cost of £325. The average time for this type of claim to repossession is 22.2 weeks which is just over five months and will include a hearing.

The average rent in Wales is £637, from notice to repossession, the rent liability is $£637 \times 5.5 \text{ months} = £3503.50$.

Total cost to the landlord including court fees and Bailiff fees, but excluding legal fees, is **£3,949.50**.

It is possible the contract-holder could pay off the arrears before the hearing and this would result in possession not being granted. For the purpose of this example we are assuming no payments have been made.

Option C: The landlord can issue a notice under section 157 for breach of contract, citing the non-payment of rent. The notice period before commencing proceedings is one month.

The landlord can file a claim for possession via the court at a cost of £355. The average time for this type of claim to repossession is 22.2 weeks which is just over five months and will include a hearing.

The average rent in Wales is £637, from notice to repossession the rent liability is £637 x 6 months = £3,822.00

Total cost to the landlord including court fees and Bailiff fees, but excluding legal fees, is **£4,298.00**

It is possible the contract holder could mount a defence at the hearing, which may result in possession not being granted. For the purpose of this example we are assuming no payments or credible defence have been made. Making a possession claim in such circumstances is subject to the discretion of the court.

8.33 Whilst the figures above may appear to be concerning, option B contains the same notice period as currently in place under Ground 8 of Housing Act 1988, whilst option C provides a one month notice for breaches of tenancy under the 2016 Act.

Impact on Ministry of Justice

8.34 Unlike Section 21, the alternative grounds landlords may use to seek to regain possession of their property typically involve a court hearing. There may therefore be an additional cost to the Ministry of Justice as a result of this Bill. This cost is unknown at this stage.

Impact on Social Landlords.

8.35 The proposal to extend the minimum notice period to six months for section 173 will have some impact on social landlords. Under the 2016 Act currently, social landlords are able to grant a new contract holder an 'introductory standard contract' which will ordinarily convert into a secure contract after 12 months. However, if the contract-holder breaches the contract in some way during the initial 12 month period, the landlord is able to seek a mandatory possession order by issuing a two month section 173 notice, or can seek to extend the introductory period for up to a further six months. This reflects current legislative arrangements relating to social tenancies - local authorities are able to issue introductory tenancies and housing associations can issue assured shorthold tenancies.

8.36 Typically, instances where housing associations have used section 21 under the Housing Act 1988 to regain possession include rent arrears and antisocial

behaviour. However, the MOJ data for possession claims in England and Wales does not distinguish between landlord type for the accelerated procedure due to the presentation of the statistics. Therefore we are unable to quantify its use by the social sector and these costs are unknown. We are committed to ensuring those living in the social rented sector do not have lesser security of tenure than those living in the PRS. Therefore, under our proposals, whilst social landlords will still be able to issue introductory standard contracts, these will also be subject to the six month notice period relating to a section 173 notice.

8.37 A sample of social landlords who took part in an in-depth interview²⁰ said that their organisation usually serves a section 8 notice (under the 1988 Act) when terms of the tenancy have been breached (primarily for rent arrears), rather than a section 21 notice. In fact, it was reported that section 21 notices are very rarely used and, if they are, the decision 'is not taken lightly.' Therefore, we do not anticipate this Bill having a significant impact on social landlords.

Impact on Local Authority Statutory Homelessness Services

8.38 The option to increase the notice period to six months will allow the contract-holder a reasonable period of time to source and move to alternative accommodation. This may require seeking advice from the local authority. The local authority is currently subject to a duty to provide information, advice and assistance in accessing help to prevent homelessness, as set out in section 60 of the Housing (Wales) Act 2014.

8.39 During 2018-19, the "Loss of rented or tied accommodation" continued to be given as the main reason for homelessness, accounting for just under one-third (32%) of all cases where households were assessed as threatened with homelessness within 56 days.²¹

8.40 Of those who progressed through to the final section 75 duty during 2018-19, the 'Loss of rented or tied accommodation' accounted for 22% of cases.²² The vast majority of these cases would have been provided temporary accommodation whilst the local authority was securing more permanent accommodation to end the duty.

8.41 Local Authorities provide reports to the Welsh Government on the outcomes relating to their performance of homelessness duties under Part 2 of the Housing (Wales) Act 2014. Outcomes are recorded against the main reason for homelessness. In relation to notice from rented accommodation, these are broken down by notice from tied or rented accommodation, and notice due to rent arrears in the private rented sector or social sector.

²⁰ <https://gov.wales/sites/default/files/statistics-and-research/2019-07/understanding-social-housing-evictions-in-wales.pdf>

²¹ <https://gov.wales/sites/default/files/statistics-and-research/2019-07/homelessness-april-2018-march-2019-993.pdf>

²² <https://gov.wales/sites/default/files/statistics-and-research/2019-07/homelessness-april-2018-march-2019-993.pdf>

8.42 The category ‘notice from rented or tied accommodation’ can include social landlords and private landlords for reasons other than section 8 rent arrears.

8.43 It is not possible to identify how many households receive a section 21 notice due to a breach of tenancy or the nature of that breach, however, it is likely that many section 21 notices are recorded by the local authority under the ‘notice from rented or tied accommodation’ category, which we estimate to be **3,332** cases, based on the average of data over the past three years. The local authority may make enquiries into the cause of homelessness but, anecdotally, we are aware that when local authorities contact landlords to discuss options for prevention, landlords are reluctant to discuss rent arrears for fear of not regaining their property back swiftly. They are concerned that any negative feedback would result in the contract-holder not leaving the accommodation relatively quickly, and so require the landlord to make an application to the court for a possession order.

8.44 The RLA conducted a survey of landlords across England and Wales (whilst the sample was large it received relatively few responses from Wales, and it is not clear whether the sample is representative of landlords in Wales). Table 3.1 of the RLA report stated the following in relation to landlords’ experience of using notices under the Housing Act 1988.

- 317 respondents used section 8 only;
- 1,668 used section 21 only;
- 1,137 used both;
- 3,243 neither.

8.45 Therefore, of those PRS landlords with experience of gaining possession through a court process, approximately 84% used section 21. If we use landlords as a proxy for cases, we can estimate that 84% of the predicted 3,332 cases could be due to section 21 (2,799).

8.46 Using the RLA data (Table 3.3 of the report) as a broad indication only, the top four reasons that landlords reported for seeking possession with section 21 are:

- Rent Arrears
- Damage to property
- Anti- social behaviour
- illegal behaviour by tenants²³

RLA data Reasons for	Responses

²³²³ ‘tenant’ (rather than ‘contract-holder’) has been used in this paragraph and the accompanying table on the basis that this was the term used in the survey

using section 21²⁴	
Rent Arrears	1,400
Damage to property	936
Anti-social behaviour	850
illegal behaviour by tenants	507
Served notice to help tenant gain social housing	437
Landlord selling property	310
Landlord wishes to make substantial renovations	257
Landlord wishes family to move in	135
Tenant unreasonable demands for property improvement	88
Tenant refuses to pay higher rate when landlord tried to increase rents	86
Wish to move property into short term rental market	24
Other	111
	5,141

²⁴ <https://research.rla.org.uk/wp-content/uploads/Possession-Reform-in-the-PRS-July-2019-1.pdf>

8.47 Whilst this table is not weighted, as landlords could only provide the circumstances under which they have issued section 21 and not the number of times they have against each reason, we estimate, based on this data that approximately 75% of section 21 notices could be due to a breach/fault.

8.48 We can therefore assume that the remaining 25% (700) have not breached the tenancy and are being asked to leave due to some other reason, such as the landlord wishing to live in the property.

8.49 The six month notice period being proposed in the Bill will provide more time for contract-holders to source alternative accommodation before the need for an application to the court, or requiring the help of a local authority homelessness service. We have referred to this as “self resolving” in the tables below. There is no data available on the proportion of contract-holders (who would otherwise be made homeless) who would be able to source alternative accommodation as a result of the notice period being extended from two months to six months. For the purposes of this RIA we have considered a range of percentages from 0% to 40%. Our best estimate is that 10% of contract-holders will source alternative accommodation during the extended notice period where they have been issued notice in circumstances where they have not breached their contract.

8.50 Overall, the following cost savings for local authorities’ homelessness functions are anticipated:

- A homelessness prevention case costs the local authority approximately £961
- Assuming 10% of the 700 are able to resolve their situation before the need for statutory intervention, this could result in a saving of £67,270 per annum on the estimated expenditure of £7,250,216 for cases receiving notice from rented accommodation.

Future projections from anticipated commencement 2021/22

Table 8. 1 - Anticipated cases with no change

Projections	2021/2012	2022/2023	2023/2024	2024/2025
Number of threatened homelessness cases due to notice on rented / tied accom	3,332	3,332	3,332	3,332

Number of homeless cases due notice on rented / tied accom	1,898	1,898	1,898	1,898
Rent arrears cases PRS Threatened	630	630	630	630
Rent arrears cases PRS Homeless	199	199	199	199
Final Duty cases for loss of PRS / Tied	539	539	539	539
Final Duty cases Rent arrears PRS landlord	42	42	42	42

Table 8.2 - Potential savings due to the six month notice period

The following table shows the potential saving to local authorities in Wales based on the unit costs as above broken down by year and percentage of notice cases with a longer notice period who self-resolve their potential homelessness without statutory LA involvement.

	No reduction	10% self-resolve	20% self-resolve	40% self-resolve
2021/2022	£0.00	£67,270	£134,540	£269,080
2022/2023	£0.00	£67,270	£134,540	£269,080
2023/2024	£0.00	£67,270	£134,540	£269,080
2024/2025	£0.00	£67,270	£134,540	£269,080
Total saving over period	£0.00	£269,080	£538,160	£1,076,320

8.51 This may have a knock-on effect on the number of cases that may have progressed through the Welsh homelessness legislation to the point of being owed a duty for housing to be secured. Unfortunately this is difficult to predict, as the data available does not allow tracking of individual cases through the system. As a minimum the saving on a 10% reduction of section 173 cases is between £67,270 and £171,990 (unit cost for full duty is £2,457).

Table 8.3 - Potential savings if all cases not self-resolved were owed a duty to secure

	No reduction	10% self resolve	20% self resolve	40% self resolve
2021/2022	£0.00	£171,990	£343,980	£687,960
2022/2023	£0.00	£171,990	£343,980	£687,960
2023/2024	£0.00	£171,990	£343,980	£687,960
2024/2025	£0.00	£171,990	£343,980	£687,960
Total saving over period	£0.00	£687,960	£1,375,920	£2,751,840

Transitional costs

Costs to Welsh Government

8.52 There will be minimal transitional costs to the Welsh Government associated with informing local authorities and the general public about the proposed changes to the 2016 Act.

8.53 The Bill would not generate extra costs over and above those set out in the Explanatory Memorandum prepared in relation to 2016 Act. There is a £0.5 million capital cost associated with the necessary upgrade to the HMCTS ICT system. However, this cost is required as a result of the 2016 Act and not as a consequence of this amending bill.

8.54 There would be an opportunity cost to utilise existing communications and policy staff on work to support the introduction of the new legislation. Based on an estimated 0.2 of a typical full time media and policy post, this is equivalent to £9,000 per annum. The cost will be incurred in 20-21 and 2021-22 and will be funded from existing DRC resource.

Legal professionals

8.55 Private landlords may, at some point, obtain legal advice on matters related to their landlord functions. Typically, this occurs when problems occur, when cases are being taken against a contract-holder or alternatively, the defence of a case brought by a contract-holder.

8.56 Legal cases would occur irrespective of the system in place. Legal professionals will wish to devote time to familiarising themselves with current legislation as a core part of their business. The time required for this will be relatively short under this option, as there would be only minor changes to the 2016 Act as a result of the Bill. Consequently, a day is considered to be a reasonable estimate of

the time required for legal professionals at various levels to become familiar with the new arrangements.

8.57 The following estimate draws on Law Society statistics²⁵ and additional research around salary levels: there are 522 solicitor firms in Wales, employing approximately 2,600 solicitors. Earnings can vary widely depending on seniority, role and experience. The estimates are based on figures provided by the Law Society and additional research into solicitors' pay bands.

8.58 Legal professionals update their knowledge of changes in law as part of their day to day business and through continuing professional development activity. The cost in the table below is based on one day per solicitor based on the familiarisation of the entire Renting Homes (Wales) Act 2016.

8.59 It is a fair assumption to consider that any amendments brought forward as a result of the Bill would require a similar level of familiarisation. The one-off familiarisation cost to lawyers is therefore estimated to be approximately £428,000. This cost is expected to be incurred in 2020-21.

Table 8.4 Estimated Familiarisation Costs for Legal Professionals

Familiarisation costs	Median Hourly Salary ²⁶	Hours for Familiarisation	Number of employees	2020/2021
Legal Services	20.58	8	2600	£428,064.00

Third sector organisations

8.60 Advice and information on renting a property is delivered in numerous ways. It is dominated by online provision, of which there is a considerable volume. Services include third sector organisations, which deliver personal advice and information by telephone, or in person at advice centres. Citizens Advice and Shelter Cymru are two prominent providers. Representative bodies, such as private landlord representative organisations, also update their members as part of their day-to-day functions.

8.61 There are numerous providers but, for the purposes of this exercise, the assessment of costs focuses on the prominent providers, which provide assistance to people who rent their homes from local authorities, housing associations and private landlords. Advice and information often comes to the fore when things go wrong and the contract-holder is seeking help.

²⁵ The Law Society (2013) *Private practice solicitor's salaries 2013 – The Law Society's PC Holder Survey 2013*. Available online at: <http://www.lawsociety.org.uk/representation/research-trends/annual-%20statistical-reports/>

²⁶ <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/regularisationbyoccupation4digitsoct2010ashetable15>

8.62 A general point to emerge during the Bill's development was that stakeholders providing advice, information and assistance/guidance, or representative services, did not consider that the proposals in option 3 would carry significant additional costs. The majority considered that such changes would be similar to, and absorbable into, their normal operating costs. They regularly update their information for their services as and when the law changes, whether as a result of legislative changes, or case law.

8.63 Costs considered include changes stakeholders would need to make to adjust, including staff training, new advice documents, and updated information on the information systems used by advisers. Although stakeholders did not indicate any significant impacts with the original Renting Homes (Wales) Act 2016, efforts had been made to try and assess notional costs.

8.64 There are 19 Citizens Advice offices in Wales delivering services from over 300 community locations, face-to-face, as well as offering services over the phone and online, including web chat. In 2018-19, they helped over 92,000 people with 450,000 problems. Housing related-enquiries were 3% of the total enquiries.

8.65 The Citizens Advice online public resource "Adviceguide" is continuously updated to ensure content is current, as is "Advisor.net", the online tool for advisors. Content is created remotely by writers working in specialist areas of advice and guidance, with specific workers ensuring content is appropriate for the devolved nations.

8.66 Citizens Advice estimated that the cost of updating its information for the Renting Homes (Wales) Act 2016 was a one-off cost of approximately £45,000, inclusive of translation. . As the Act has not commenced, it is unlikely that this work has been completed and as such the amendments within this Bill would fall within that initial cost. If a cost were to be associated with this Bill for updating websites, documents etc., we estimate this to be no more than £10,000, based on the previous one-off cost. This cost would be incurred in 2020-21.

Contract-holders

8.67 With a change in law will come the need to understand the impact at an individual level. The Renting Homes (Wales) Act 2016 had previously been costed prior to its passage through the Assembly, in relation to guidance documents and publicity.

8.68 It has therefore not been possible to estimate any costs attributed to contract-holders directly in becoming aware of the possible changes. This cost is therefore unknown. The costs are not considered to be actual costs to the individual but a nominal cost attached to the period of time they would devote to reading information.

Landlords' familiarisation

8.69 Data from Rent Smart Wales shows approximately 102,600 landlords and a little over 1,000 letting agents registered in Wales. Specific salary information for landlords and letting agents and so proxy salary information has been drawn from the ONS Annual Survey of Hours and Earnings (ASHE) based on the best possible proxy included in the Wales specific data.²⁷ Provisional data from 2019, shows a median gross salary for “estate agents and auctioneers” in Wales was £8.84 per hour and for “managers and directors in retail and wholesale” was £11.48 per hour, based on a 40 hour week, or eight hours per day. Assuming an estimated 30% uplift for on costs gives us an hourly rate ranging from £11.49 to £14.92.

8.70 Assuming familiarisation takes eight hours, the total cost to landlords and letting agents is estimated to be between £9.53 million and £12.38 million. This cost is expected to be incurred in 2020-21.

		Cost range in 2019/20	
Familiarisation based on 8 hours	No. registered 30/11/ 2019	£11.49 per hour	£14.92 per hour
Landlords operating in Wales	102,618	£9,432,646.56	£12,248,484.48
Agents in Wales	1,067	£98,078.64	£127,357.12
	Total cost	£9,530,725.20	£12,375,841.60

Local Authority Housing Advice Teams

8.71 Based on information collected by the Welsh Housing Networks who work with local authorities across Wales, we can estimate the familiarisation costs to housing advice teams.

8.72 Based on information relating to 15 of the 22 local authorities in Wales, the average number of employees working in housing advice teams is 11.3 posts (this is rounded to 12 as a part time post will require an equal amount of familiarisation as a FTE). Assuming eight hours will be required for familiarisation and an average hourly salary of £16.90 (including on-costs), the cost to housing advice teams is estimated to be around £36000. This cost is expected to be incurred in 2020-21.

Familiarisation costs	Median Hourly Salary ²⁸ with on-costs	Hours for Familiarisation	Number of employees	2020/2021
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²⁷

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/regionbyoccupation4digitsoc2010ashtable15>

²⁸

Housing Advice Teams (Local Authority)	£16.90	8	264	£35,693
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Community Landlords

8.73 We estimate that there are approximately 1500-2500 members of staff performing roles within Community Landlord organisations which will be required to understand the Renting Homes (Wales) Act 2016 and the amendments proposed by this bill, we estimate familiarisation costs for this would range between £211,000 and £353,000.

Familiarisation costs	Median Hourly Salary ²⁹ with on-costs	Hours for Familiarisation	Number of employees	2020/2021
Community Landlord Housing Management	£17.60	8	1500-2500	£211,224 - £352,040

Benefits

8.74 Under this option, contract-holders will, in all circumstances, receive six months' notice to find alternative accommodation if served a section 173 notice. In addition, this option also prevents the landlord from issuing a section 173 notice within the first six months. Therefore, in addition to the longer notice period applying throughout the contract, this option improves security of tenure from the start of the contract by doubling the length of time before a landlord can regain possession from six months to one year, as long as there is no breach of contract.

8.75 Landlords' rights regarding their property, for example to move into or sell the property, will be protected, albeit that they will need to wait six months to exercise such rights, rather than the current two months (provided that the contract has already run for six months).

8.76 Contract-holders will have a more realistic prospect of sourcing suitable alternative accommodation, preparing for a move, raising funds for removals costs and deposits. For the contract-holder, the longer notice period would help not only prepare for a move, it would significantly mitigate the most difficult aspect of moving: having to prepare logistically and financially for a move following only two months' notice.

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/regionbyoccupation4digitsoc2010ashtable15>

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<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/regionbyoccupation4digitsoc2010ashtable15>

8.77 An additional impact of the extended notice period is that section 173 would no longer be a faster alternative to the other possession grounds. This would mean landlords who desired possession more quickly in cases of a breach of contract would have to rely on a more specific ground, for example in relation to rent arrears. This would provide an opportunity for the contract-holder to mount a defence to these proceedings, unlike the current position where a section 21 notice is used in relation to breaches.

8.78 However, where a landlord had no other grounds to seek possession, but needs certainty in regaining possession, for example to sell the property, under our proposals they could still rely on a section 173 notice. In doing so, the contract-holder would have six months' notice of this possession, which provides a better opportunity to secure alternative arrangements and seek help if required. In reality, the contract-holder is likely to look for alternative accommodation and, where possible, move, before the notice period expires. However, this would be without the stress of having to find a property unreasonably quickly or having to accept an unsuitable property.

8.79 The minimum period of security of tenure of 12 months will encourage lower levels of residential turnover. This will have a number of benefits for the wider community, such as better integration into the community, which can promote active citizenship and lead to increased community cohesion.

8.80 This option also supports the goals of the homelessness provisions within the Housing (Wales) Act 2014. Homelessness presentations due to the loss of a PRS tenancy would likely reduce, due to contract-holders having a better opportunity to source alternative accommodation.

8.81 This option will additionally improve stability for future generations. The focus upon ACEs has identified that homelessness can often be a significant contributor to ACEs. Housing, and particularly stable housing, can play a role in repairing and mitigating some of the damage caused to children. Furthermore, increasing security of tenure should reduce the number of children who have to experience homelessness and housing instability, and the associated emotional, financial and psychological effects.

8.82 Shelter Cymru produced a briefing in November 2017³⁰ highlighting the costs of moving home at short notice. These were estimated at being more than £1,100, this amount could include the need to raise a deposit, removal costs, and potentially loss of earnings. A longer notice period would allow people time to source accommodation that is right for their household, in a location that minimises disruption to education, caring responsibilities and employment.

8.83 The ability to plan for a move will also result in fewer people needing to take out short term loans, such as pay day loans, to bridge the costs of moving.

³⁰ <https://sheltercymru.org.uk/wp-content/uploads/2018/02/End-s21-policy-briefing-Nov-17-FINAL-1.pdf>

8.84 A further significant benefit for the contract-holder is the opportunity to defend their position should the landlord seek to evict on specific grounds, such as alleged anti-social behaviour. In such a case, the facts would be considered by the court at the appropriate time.

9. Competition Assessment

9.1 The changes proposed by the Bill are being applied to all landlords that rent out a property as a home. The broad application of the proposals means that no changes to the overall structure or size of the private rented sector are expected. Furthermore, the provisions will apply to all landlords. No change is expected in terms of competitiveness for businesses, the voluntary sector and charities. There is therefore no risk of a detrimental effect on competition.

9.2 Increasing the section 173 notice period would, if landlords continue to use section 173 in the same way as they currently use section 21, make it more costly for landlords to evict contract-holders who are not paying rent, are committing antisocial behaviour, or otherwise breaching the terms of their tenancy. However, there are, and will remain, more relevant grounds under which a landlord could pursue possession more quickly in such circumstances. We therefore expect landlords to use these more relevant grounds more frequently in future.

9.3 There has been a suggestion that extending the 'moratorium' on issuing a section 173 notice at the start of the contract to six months, as well as extending the notice period to six months, will lead to landlords becoming more selective about the types of individuals they let to, or leaving the market altogether. This could result in higher rents in the private rented sector as private landlords become more risk-averse, and greater demands – and costs – being placed on community landlords, leading to longer housing lists and increased waiting times for individuals seeking accommodation in the social rented sector.

9.4 The Welsh Government is keen to encourage landlords to let good quality homes to vulnerable households and to support them, and contract holders, to ensure successful tenancies. To this end, the Welsh Government is trialling a Private Rented Sector Leasing Scheme as an alternative letting option for some landlords.

9.5 A longer section 173 notice period could result in a greater volume of possession orders reaching the courts if landlords turn to other more specific grounds to end contracts. This increase in the courts' caseload would lead to landlords having to wait longer for hearings to take place, and diminish the certainty of outcome they currently enjoy under section 21.

9.6 These two factors, it has been suggested, could further deter private landlords - particularly small-scale (or 'hobby') landlords - from entering or remaining in the market. Preventing such delays from occurring would require a significant increase in capacity in the court service, some stakeholders have argued, and have questioned whether additional funding would be made available to support such an expansion.

9.7 Furthermore, in relation to the court service, some consultation respondents suggested that the current court system was 'not fit for purpose' and should be replaced by a dedicated housing court or tribunal similar to that in place in Scotland. We have considered these points, and concluded that – given that in Wales, around

two thirds of possession cases currently relate to social landlords - our policy of working with the sector to significantly reduce social landlord repossessions is expected to free up sufficient court time to address any increase in PRS cases.

9.8 Overall, the market situation remains unclear. Landlords may decide to leave the market, as was predicted during the introduction of Rent Smart Wales. However, there is no evidence to suggest the market has contracted in Wales following the introduction of these arrangements.

10. Impact Assessments

Equal opportunities

10.1 The Bill's provisions do not discriminate against persons sharing any of the "protected characteristics" as set out in the Equality Act 2010. It is envisaged that provisions on security of tenure will be particularly beneficial to some vulnerable groups who may have previously found it difficult to gain suitable alternative housing when they have been issued a two month notice.

Children's rights

10.2 The results of this assessment demonstrate that there are no potentially negative impacts arising from our proposals. This is because they not only comply with the UN Convention of the Rights of the Child, but have the potential to advance the realisation of children's rights and wellbeing.

Human rights

10.3 The Welsh Government has considered the impact of the Bill provisions on human rights and has concluded that the Bill is compatible with the European Convention on Human Rights (ECHR). The new provisions engage the rights of landlords under Article 1 Protocol 1 ECHR (which protects the right to peaceful enjoyment of property) and the rights of contract-holders under Article 8 ECHR (right to a home and family life). The Welsh Government considers that the provisions strike a fair and proportionate balance between these rights. Some provisions (the restriction on serving further notices under a standard periodic contract; and the restrictions on serving notices following a retaliatory possession claim) apply to pre-existing contracts but are not truly retrospective as they apply only to future actions by the landlord. The Welsh Government considers that they are compatible with Article 1, Protocol 1 ECHR.

Local Government

10.4 The Bill will have an effect on local authorities, especially those with a landlord function. We expect demands on crisis homelessness services emanating from the private sector housing market to reduce as contract-holders will benefit from the increased notice period, but this may result in further demands on preventative housing options provision.

Social effects

10.5 Contract-holders will feel more secure in their homes, which could lead to them becoming more actively engaged in the life of their community. There is also evidence to suggest that unstable housing, particularly when it arises from moves which are not consciously chosen, result in very negative outcomes for children and young people³¹. Provisions which improve security have the potential to address this.

Economic effects

³¹ https://england.shelter.org.uk/__data/assets/pdf_file/0005/1343390/unsettled_and_insecure.pdf

10.6 It has been suggested by some stakeholders that landlords may withdraw their properties from the private rented sector and market them for sale. Others have suggested that the provisions of the Bill may deter investment in housing and reduce the supply of new rented housing, or investment in improving the quality of existing housing.

10.7 While the changes this Bill will introduce may result in some reduction in the flexibility that a landlord currently has, the Bill will not significantly affect the most important driver for investment in the private rented sector: the rate of return on investment. Landlords will still be able to recover possession if the contract-holder fails to pay rent, or if they wish to realise their capital investment by selling the property (or in the case of individual landlords, if they require the house for themselves or their families).

10.8 Lenders will still be able to recover possession in the event of the landlord defaulting on the mortgage, albeit subject to a longer notice period, so the availability of finance is not expected to alter significantly.

Impact on Privacy

10.9 The Bill does not produce any new requirements relating to privacy or the sharing of information. The privacy impact assessment undertaken has found that there will be no impact as a consequence of this legislation.

Rural proofing

10.10 The rural proofing screening assessment has shown there is no negative impact as a result of this legislation. The Bill aims to improve security of tenure. This is equally relevant to homes which are rented by people in rural areas. As such, the impacts – and benefits – will be no different for rural areas to those in urban areas.

Health and wellbeing

10.11 Housing is a significant determinant of people's health and well-being. It affects people in many different ways, both direct and indirect. The provisions in the Bill that are relevant to people's health and well-being are those relating to the sense of spatial security of a home and the relationship between landlord and contract-holder.

Justice Impact Assessment Statement

10.12 In accordance with requirements of Senedd Standing Orders that the person in charge of a Bill must make a written statement setting out the potential impact (if any) on the justice system in England and Wales of the provisions of the Bill, a justice impact assessment has been undertaken. That assessment concluded that the net effect of changes resulting from this legislation, alongside the Welsh Government's policy on reducing social landlord possession claims, is expected to be neutral.

11. Post implementation review

11.1 The 2016 Act, and this amending Bill, are part of the Welsh Government's commitment to do more to help people meet their housing needs. Subject to the Bill being passed by the Senedd, the implementation of the legislation will be subject to monitoring and evaluation as set out originally in relation to the 2016 Act

11.2 The Explanatory Memorandum for the 2016 Act proposed that an independent evaluation project will be commissioned for a two or possibly three year period. It will commence prior to the new legislation coming into effect, which will allow relevant baseline information to be collated and future information needs identified. This will allow arrangements to be made to collect the required information from stakeholders in a systematic way throughout the evaluation study, and for additional research exercises e.g. sample surveys, to be undertaken.

11.3 The effectiveness of the legislation will be evaluated in a number of ways. The evaluation will include both process and impact evaluation. The process evaluation, which will be a more frequent element in the study, will consider the way in which landlords are implementing the legislation, identifying examples of good practice and what is working well. It will also consider any problems and difficulties encountered by all stakeholders so that action may be taken to resolve them at an early stage. The findings would be used to improve the adoption of the new legislation including, importantly, the use of the model contracts.

11.4 The impact evaluation will consider the impact(s) of the new legislation against the desired effects of the 2016 Act, as amended, which include simpler and clearer arrangements for renting a home, greater understanding of contract rights and responsibilities for both landlords and contract-holders, and whether this leads through to fewer disputes that require legal action to resolve.

11.5 The research design for the post-implementation evaluation will combine a variety of research methods most suited to assessing its implementation and measuring the overall impacts of the legislation and specific elements of it. A programme of monitoring and evaluation activity will be developed to allow reporting one year after the legislation has been commenced and at appropriate points thereafter.

11.6 The evaluation will use both qualitative and quantitative methods. By way of some examples, the quantitative indicators may include the following:

- (i) Use of web-based information on the new legislation.
- (ii) Downloads of model contracts for use by landlords.
- (iii) Landlords' knowledge of their rights and obligations (sample survey).
- (iv) Contract-holders' knowledge of their rights and obligations (sample survey).
- (v) Landlords' views and experiences of the new legislation (survey similar to that undertaken during the development of the Bill).
- (vi) Contract-holders' views and experiences of the new legislation (survey similar to that undertaken during the development of the Bill)
- (vii) Level of requests for advice from agencies.

(viii) Nature of requests for advice from agencies.

(ix) Number of court cases.

(x) Reason(s) for cases proceeding to court.

11.7 The precise data requirements would be determined after the Bill is passed as part of the arrangements for implementation. The above Information, and other information identified as relevant to the evaluation, would be compared and contrasted with the baseline data collected prior to the commencement of the new legislation.

RENTING HOMES (AMENDMENT) (WALES) BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes are for the Renting Homes (Amendment) (Wales) Bill which was introduced into Senedd Cymru on 10 February 2020. They have been prepared by the Education and Public Services Department of the Welsh Government in order to assist the reader of the Bill. The Explanatory Notes should be read in conjunction with the Bill but are not part of it.

SUMMARY OF BILL

2. The Bill increases security of tenure in relation to standard occupation contracts, primarily by increasing the minimum period of notice that a landlord must give before making a claim for possession under section 173 of the Renting Homes (Wales) Act 2016 (“the 2016 Act”) from two to six months. This is commonly referred to as a ‘no fault’ possession claim. The period before which a notice under section 173 can be issued following the occupation date of the contract is also increased from four months to six months. Other associated changes are also made to the 2016 Act, primarily with a view to ensuring the increased security arrangements cannot be undermined. This includes the removal of the ability of a landlord to issue a notice to end fixed term standard contracts (other than contracts of a type listed in new Schedule 9B).
3. A “standard occupation contract” in this context means a standard contract as provided for in the Renting Homes (Wales) Act 2016. The effect of that Act is to convert pre-existing assured shorthold tenancies into standard contracts; all new tenancies or licences granted by private landlords, once the 2016 Act is in force, will be standard occupation contracts.

COMMENTARY ON SECTIONS

Section 1 – Landlord’s notice under periodic standard contract: minimum notice period

4. The notice period applicable to a section 173 notice is set out in section 174 of the 2016 Act. Section 1 of the Bill provides for the minimum notice period to be increased from two months to six months. Section 1 also inserts new section 174A into the 2016 Act, which provides for certain contracts to be subject to two months’ notice. These contracts are those set out in new Schedule 8A, being inserted under Section 3.

Section 2 - Landlord's break clause under fixed term standard contract: minimum notice period

5. This section amends the minimum notice period applicable to a landlord's break clause from two months to six months, to be consistent with the notice period in respect of periodic standard contracts under section 174. The section also inserts new Section 195A into the 2016 Act, to provide that the landlord's notice period in relation to a fixed term standard contract of a type set out in Schedule 8A may be no less than two months.

Section 3 – Standard contracts with minimum notice period of two months

6. Section 3 provides for Schedule 1 to the Bill, which in turn inserts new Schedule 8A into the 2016 Act.

Schedule 1 - New Schedule 8A to the 2016 Act

7. New Schedule 8A lists those standard occupation contracts to which two months' notice applies, rather than six months. These are types of contracts under which it is considered reasonable for a landlord to be able to obtain possession within a shorter timeframe than the new six months' notice period that will apply generally. These contract types include: prohibited conduct standard contracts (which can be imposed in response to a breach of section 55 of the 2016 Act (antisocial behaviour and other prohibited conduct); accommodation for students in higher education, where their landlord is a higher education institution; a supported standard contract (in relation to supported accommodation - see section 143 of the 2016 Act); temporary accommodation for homeless persons; and service occupancies (where the contract-holder is required to occupy the dwelling under his or her contract of employment).
8. Schedule 8A may be amended by regulations by virtue of paragraph 14 of that Schedule. This will allow for other types of contracts to be added to the schedule if there is evidence to support such additions.

Section 4 - Landlord's notice under periodic standard contract: when notice may be given

9. Section 4 provides for the restriction on giving notice to be amended from four months to six months after the occupation date of the contract, that is, the date upon which the contract-holder is entitled to begin occupying the dwelling.

Section 5 - Landlord's break clause under fixed term standard contract: when notice may be given

10. Section 5 provides for the restriction on giving notice, under a landlord's break clause, to be amended from four months to 18 months after the occupation date, that is, the date upon which the contract-holder is entitled to begin occupying the dwelling. It

also removes all references to ‘substitute’ and ‘original’ occupation contracts from section 196 of the 2016 Act. This has the effect of applying the same 18 month restriction to any subsequent fixed term standard contract that the landlord and contract-holder may enter into.

Section 6 - Restrictions on giving notice under section 173 or 186 or under a landlord’s break clause: breaches of statutory obligations

11. Section 6 moves certain restrictions on a landlord issuing a possession notice, set out in the body of the 2016 Act, into new Schedule 9A. New Schedule 9A is inserted by Schedule 2 to the Bill.
12. Section 6 also amends section 44 of the Housing (Wales) Act 2014, such that the section in the 2014 Act makes reference to the landlords’ notice provisions within the 2016 Act, as amended by the Bill, rather than the provisions under section 21 of the Housing Act 1988, as well as referencing the restrictions on issuing notices under new Schedule 9A. The section also amends the Renting Homes (Fees etc.) (Wales) Act 2019 (“the 2019 Act”), and omits Schedule 3 to the 2019 Act, in recognition of new Schedule 9A.

Schedule 2 - New Schedule 9A to the 2016 Act

13. New Schedule 9A lists certain restrictions on a landlord issuing a possession notice under section 173 (Landlord’s notice), section 186 (Landlord’s notice in connection with end of term) or section 194 (Landlord’s break clause). These include the restrictions formerly set out in sections 176 (breach of information requirements), 177 (breach of security and deposit requirements) and 177A (prohibited payments and holding deposits). Schedule 9A can be amended by regulations.

Section 7 - Restrictions on giving further landlord’s notices under periodic standard contract

14. Section 7 places an additional restriction on the issuing of a landlord’s notice under section 173. Where a landlord has issued a notice under section 173 and the period during which the landlord may make a possession claim has expired, the landlord may not issue a further section 173 notice until six months have elapsed since of the date upon which that period expired. The section creates the same restriction where a landlord issues and then withdraws a section 173 notice. A further section 173 notice may not be issued until six months after the previous notice was withdrawn

Section 8 - Withdrawal of landlord’s notice under section 173 by landlord

15. Section 8 amends section 180 (Termination of contract on landlord’s notice) of the 2016 Act, to allow a landlord to withdraw a section 173 notice within 28 days of issuing it, by giving further notice to the contract-holder. Section 8 also amends Section 201 (termination of contract under landlord’s break clause) of the 2016 Act to ensure that

a landlord has a 28 day window of opportunity during which a notice given under a landlord's break clause can be withdrawn both with and without the contract-holder's consent.

Section 9 - Restriction on giving notice under section 173 and under a landlord's break clause following retaliatory possession claim

16. Section 9 inserts new section 177A into the 2016 Act, which provides for a further restriction of the issuing of a notice under section 173. A landlord may not issue a further notice for six months following the date on which the court refused to make an order for possession because it considered the claim to be retaliatory (see section 217 of the 2016 Act). The section also makes a similar amendment in respect of a claim made in relation to a landlord's break clause (by substituting current section 198 (Restrictions on use of landlord's break clause: security and deposit requirements)).

Section 10 - Notice in connection with end of term of fixed term standard contracts restricted to certain occupation contracts

17. This section limits the ability to end fixed term standard contracts, through the issuing of a landlord's notice under section 186 of the 2016 Act, to those types of contracts listed at Schedule 9B. Section 10 also provides for Schedule 3 to the Bill, which inserts new Schedule 9B into the 2016 Act.

Schedule 3 - New Schedule 9B to the 2016 Act

18. New Schedule 9B lists those fixed term standard contracts that can be ended by giving notice under section 186 of the 2016 Act. These are types of contracts under which is considered reasonable for a landlord to have greater certainty over the ability to regain possession, in comparison to fixed term contracts generally. These contract types include: a supported standard contract (in relation to supported accommodation - see section 143 of the 2016 Act); temporary accommodation for homeless persons; and service occupancies (where the contract-holder is required to occupy the dwelling under his or her contract of employment).
19. Schedule 9B may be amended by regulations by virtue of paragraph 12 of that Schedule.

Section 11 - Landlord's break clause restricted to certain fixed term standard contracts

20. This section inserts a restriction on the use of break clauses, such that they may only be incorporated in a fixed term standard contract of at least two years' duration or a fixed term standard contract of a type listed in new Schedule 9C (to which the two-year restriction does not apply). The section also provides for Schedule 4 to the Bill, which inserts new Schedule 9C into the 2016 Act.

Schedule 4 - New Schedule 9C to the 2016 Act

21. New Schedule 9C lists those fixed term standard contracts to which the restriction against the inclusion of break clauses in contracts of less than two years does not apply. These are types of contracts under which is considered reasonable for a landlord to exercise a break clause earlier, should the landlord chose to issue a fixed term contract for such a contract type. The contract types include: a supported standard contract (in relation to supported accommodation - see section 143 of the 2016 Act); temporary accommodation for homeless persons; and service occupancies (where the contract-holder is required to occupy the dwelling under his or her contract of employment).
22. Schedule 9C may be amended by regulations by virtue of paragraph 12 of that Schedule.

Section 12 - Landlord's request to vary periodic standard contract terms: removal of additional notice procedure

23. This section removes the provision in the 2016 Act which allows a landlord to treat a notice to vary terms in the contract, other than terms relating to rent or other consideration, as a notice under section 173 (where an occupation contract allows such a notice to be given), such that the landlord may rely on the notice of variation, if not consented to by the contract-holder, as a notice for possession.

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

24. Section 13 inserts a regulation-making power into sections 121 and 133 of the 2016 Act. Subsection (1) of these sections allow for periodic standard contracts and fixed term standard contracts, respectively, to contain provision that the contract-holder is not entitled to occupy the dwelling as a home for specified periods. Regulations may amend the 2016 Act so as to provide that subsection (1) of sections 121 or 133, as the case may be, do not apply, or apply only, to contracts of a particular description, as well as for the purpose of specifying limits to such exclusions or circumstances in which such exclusions may not apply.

Section 14 - Miscellaneous amendments to the 2016 Act

25. Section 14 provides for Schedule 5, which makes various miscellaneous amendments to the 2016 Act, as summarised below.

Schedule 5 - Miscellaneous amendments to the 2016 Act

26. The following amendments are included in Schedule 5:
 - provisions relating to the modification and variation of fundamental terms are amended to omit the subjective test to be met for omissions or variations to be

made. The test is no longer subject to ‘the contract-holder’s opinion’, but rather that the omission would improve his or her position;

- references to “the relevant date” in sections 110, 129 and 137 are amended;
- provisions to ensure that secure tenancies which are housing association tenancies can become occupation contracts;
- to add a regulation making power to Schedule 5 to the Bill to allow the Welsh Ministers to make provision about tenancies and licences that are abolished by section 239 of the 2016 Act and to allow the Welsh Ministers to make provision in relation to the end of the term of a long tenancy;
- the word ‘wholly’ is omitted from the definition of dwelling, in order that the definition of dwellings in the 2016 Act is consistent with other housing legislation applying in relation to dwellings in Wales or dwellings in England;
- the power to make consequential and other amendments in respect of the 2016 Act is broadened to include legislation made following the day on which the 2016 Act received Royal Assent; and
- the Schedule also makes minor amendment to the Welsh text of the 2016 Act.

Section 15 – Interpretation

27. Section 15 defines the meaning of “standard contract” and “the 2016 Act”.

Section 16 – Minor and consequential amendments

28. Section 16 provides for Schedule 6, which makes minor and consequential amendments relating to the 2016 Act and other legislation.

Schedule 6 – Miscellaneous amendments to the 2016 Act

29. Schedule 6 provides for amendments which are consequential on the changes being made by the Bill, or which make minor technical amendments to the 2016 Act; in the case of the Renting Homes (Fees etc.) (Wales) Act 2019, the amendments are in preparation for implementation.

Section 17 – Coming into force

30. This section sets out how the provisions of the Act will come into force.

Section 18 – Short title

31. This section establishes the Act’s title as the [‘Renting Homes (Amendment) (Wales) Act 2020’].

Annex 1

Index of Standing Order requirements

Standing order		Section	pages/ paragraphs
26.6(i)	Statement the provisions of the Bill would be within the legislative competence of the Senedd	Member's declaration	Page 2
26.6(ii)	Set out the policy objectives of the Bill	Chapter 3 - Purpose and intended effect of the legislation	Page 6-16
26.6(iii)	Set out whether alternative ways of achieving the policy objectives were considered and, if so, why the approach taken in the Bill was adopted	Part 2 – impact assessment	Page 29-37
26.6(iv)	Set out the consultation, if any, which was undertaken on: <ol style="list-style-type: none"> 1. the policy objectives of the Bill and the ways of meeting them; 2. the detail of the Bill, and 3. a draft Bill, either in full or in part (and if in part, which parts) 	Chapter 4 – Consultation	Page 17 Paragraph 4.1
26.6(v)	Set out a summary of the outcome of that consultation, including how and why any draft Bill has been amended	Chapter 4 – Consultation	Page 17 Paragraph 4.2
26.6(vi)	If the bill, or part of the Bill, was not previously published as a draft, state the reasons for that decision	Chapter 4 – Consultation	Page 17
26.6(vii)	Summarise objectively what each of the provisions of the Bill is intended to do (to the extent that it requires explanation or comment) and give other	Appendix 1 – Explanatory Notes	Page 63

Standing order	Section	pages/ paragraphs
	information necessary to explain the effect of the Bill	
26.6(viii)	<p>Set out the best estimates of:</p> <ol style="list-style-type: none"> 1. the gross administrative, compliance and other costs to which the provisions of the Bill would give rise; 2. the administrative savings arising from the Bill; 3. net administrative costs of the Bill's provisions; 4. the timescales over which such costs and savings would be expected to arise; and 5. on whom the costs would fall 	<p>Part 2 – impact assessment</p> <p>Page 25 - 28</p>
26.6(ix)	Any environmental and social benefits and dis-benefits arising from the Bill that cannot be quantified financially	<p>Part 2 – impact assessment</p> <p>Page 59-60</p>
26.6(x)	<p>Where the Bill contains any provision conferring power to make subordinate legislation, set out, in relation to each such provision:</p> <ol style="list-style-type: none"> 1. the person upon whom, or the body upon which, the power is conferred and the form in which the power is to be exercised; 2. why it is considered appropriate to delegate the power; and 	<p>Chapter 5 - Power to make subordinate legislation</p> <p>Page 21-24</p>

Standing order	Section	pages/ paragraphs
	3. the Senedd procedure (if any) to which the subordinate legislation made or to be made in the exercise of the power is to be subject, and why it was considered appropriate to make it subject to that procedure (and not to make it subject to any other procedure);	
26.6(xi)	Where the Bill contains any provision charging expenditure on the Welsh Consolidated Fund, incorporate a report of the Auditor General setting out his or her views on whether the charge is appropriate	The requirement of Standing Order 26.6(xi) does not apply to this Bill Page 25 Paragraph 6.2
26.6B	Where provisions of the Bill are derived from existing primary legislation, whether for the purposes of amendment or consolidation, the Explanatory Memorandum must be accompanied by a table of derivations that explain clearly how the Bill relates to the existing legal framework.	The requirement in Standing Order 26.6B for a Table of Derivations is not applicable to this Bill as the Bill is a standalone piece of legislation and does not derive from existing primary legislation for the purposes of amendment or consolidation
26.6C	Where the Bill proposes to significantly amend existing primary legislation, the Explanatory Memorandum must be accompanied by a schedule setting out the wording of existing legislation amended by the Bill, and setting out clearly how that wording is amended by the Bill.	Annex 2 – Schedule of Amendments Page 72

Standing order		Section	pages/ paragraphs

Annex 2 - Schedule of amendments

Renting Homes (Wales) Act 2016

AMENDMENTS TO BE MADE BY THE RENTING HOMES (AMENDMENT) (WALES) BILL

This document is intended to show how the provisions of the Renting Homes (Wales) Act 2016 would look, as amended by the Renting Homes (Amendment) (Wales) Bill (if enacted following amendments made during Stage 2 of Senedd scrutiny).

Material to be deleted by the Renting Homes (Amendment) (Wales) Bill is in strikethrough, e.g. ~~omitted material looks like this~~. Material to be added by the Renting Homes (Amendment) (Wales) Bill is underlined, e.g. added material looks like this. References to the relevant amending provisions of the Bill are provided in the right hand column on each page.

A number of related provisions from the Act, although not being amended, are included to aid understanding of the proposed amendments. Minor and consequential amendments, as provided for by Schedule 6 to the Bill, are not included.

Warning

This text has been prepared by officials of the Department for Education and Public Services of the Welsh Government. Although efforts have been taken to ensure that it is accurate, it should not be relied on as a definitive text of the Act or the Bill.

It has been produced solely to help people understand the effect of the Renting Homes (Amendment) (Wales) Bill. It is not intended for use in any other context.

Renting Homes (Wales) Act 2016	<i>Amending section of the Renting Homes (Amendment) Bill</i>
<p>174 Minimum notice period</p> <p>(1) The date specified in a notice under section 173 may not be less than two months <u>six months</u> after the day on which the notice is given to the contract-holder.</p> <p>(2) This section is a fundamental provision which is incorporated as a term of all periodic standard contracts.</p> <p>(2) This section is a fundamental provision which is <u>incorporated as a term of all periodic standard contracts, except periodic standard contracts which—</u></p> <p style="padding-left: 40px;">(a) <u>do not incorporate section 173 as a term of the contract, or</u></p> <p style="padding-left: 40px;">(b) <u>are within Schedule 8A (whether or not they incorporate section 173 as a term of the contract).</u></p>	<p>1(2)(a)</p> <p>1(2)(b)</p>
<p><u>174A Minimum notice period: periodic standard contracts within Schedule 8A</u></p> <p>(1) <u>If a periodic standard contract is within Schedule 8A, the date specified in a notice under section 173 may not be less than two months after the day on which the notice is given to the contract-holder.</u></p> <p>(2) <u>This section is a fundamental provision which is incorporated as a term of all periodic standard contracts which—</u></p> <p style="padding-left: 40px;">(a) <u>Incorporate section 173 as a term of the contract, and</u></p> <p style="padding-left: 40px;">(b) <u>are within Schedule 8A.</u></p>	<p>1(3)</p>
<p>195 Minimum notice period</p> <p>(1) The date specified in a notice under a landlord's break clause may not be less than two months <u>six months</u> after the day on which the notice is given to the contract-holder.</p>	<p>2(2)(a)</p>

<p>(2) This section is a fundamental provision which is incorporated as a term of all fixed term standard contracts with a landlord's break clause.</p> <p><u>(2) This section is a fundamental provision which is incorporated as a term of all fixed term standard contracts, except fixed term standard contracts which—</u></p> <p style="padding-left: 40px;"><u>(a) do not have a landlord's break clause,</u> <u>or</u></p> <p style="padding-left: 40px;"><u>(b) are within Schedule 8A (whether or not they have a landlord's break clause).</u></p>	<p>2(2)(b)</p>
<p>195A Minimum notice period: fixed term standard contracts within Schedule 8A</p> <p><u>(1) If a fixed term standard contract is within Schedule 8A, the date specified in a notice given under a landlord's break clause may not be less than two months after the day on which the notice is given to the contract-holder.</u></p> <p><u>(2) This section is a fundamental provision which is incorporated as a term of all fixed term standard contracts which—</u></p> <p style="padding-left: 40px;"><u>(a) have a landlord's break clause, and</u></p> <p style="padding-left: 40px;"><u>(b) are within Schedule 8A.</u></p>	<p>2(3)</p>
<p>175 Restrictions on section 173: notice may not be given in first four months <u>six months</u> of occupation</p> <p>(1) The landlord may not give notice under section 173 before the end of the period of four months <u>six months</u> starting with the occupation date of the contract.</p> <p>(2) If the contract is a substitute occupation contract, the landlord may not give notice under section 173 before the end of the period of four months <u>six months</u> starting with the occupation date of the original contract.</p> <p>(3) For the purposes of subsection (2)—</p>	<p>4</p>

<p>(a) an occupation contract is a substitute occupation contract if—</p> <ul style="list-style-type: none"> (i) the occupation date of the contract falls immediately after the end of a preceding occupation contract, (ii) immediately before the occupation date of the contract a contract-holder under the contract was a contract-holder under the preceding contract and a landlord under the contract was a landlord under the preceding contract, and (iii) the contract relates to the same (or substantially the same) dwelling as the preceding contract, and <p>(b) “original contract” means—</p> <ul style="list-style-type: none"> (i) where the substitute occupation contract has an occupation date falling immediately after the end of a contract which is not a substitute occupation contract, the occupation contract which precedes the substitute occupation contract; (ii) where there have been successive substitute occupation contracts, the occupation contract which preceded the first of the substitute occupation contracts. <p>(4) This section is a fundamental provision which is incorporated as a term of all periodic standard contracts, except periodic standard contracts which—</p> <ul style="list-style-type: none"> (a) do not incorporate section 173 as a term of the contract, or 	
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<p>(b) are within Schedule 9 (whether or not they incorporate section 173 as a term of the contract),</p> <p>and section 20 provides that this section must be incorporated, and must not be incorporated with modifications.</p>	
<p>196 Restrictions on use of landlord's break clause: first four months <u>18 months</u> of occupation</p> <p>(1) The landlord may not give notice under a landlord's break clause before the end of the period of four months <u>18 months</u> starting with the occupation date of the contract.</p> <p>(2) If the contract is a substitute occupation contract, the landlord may not give notice under a landlord's break clause before the end of the period of four months <u>18 months</u> starting with the occupation date of the original contract.</p> <p>(3) For the purposes of subsection (2) —</p> <p style="padding-left: 40px;">— (a) an occupation contract is a substitute occupation contract if —</p> <p style="padding-left: 80px;">— (i) the occupation date of the contract falls immediately after the end of a preceding occupation contract,</p> <p style="padding-left: 80px;">— (ii) immediately before the occupation date of the contract a contract holder under the contract was a contract holder under the preceding contract and a landlord under the contract was a landlord under the preceding contract, and</p> <p style="padding-left: 80px;">— (iii) the contract relates to the same (or substantially the same) dwelling as the preceding contract, and</p> <p style="padding-left: 40px;">— (b) “original contract” means —</p> <p style="padding-left: 80px;">— (i) where the substitute occupation contract has an</p>	<p>5</p>

<p>occupation date falling immediately after the end of a contract which is not a substitute occupation contract, the occupation contract which precedes the substitute occupation contract;</p> <p>(ii) where there have been successive substitute occupation contracts, the occupation contract which preceded the first of the substitute occupation contracts.</p> <p>(4) This section is a fundamental provision which is incorporated as a term of all fixed term standard contracts, except fixed term standard contracts which—</p> <p style="padding-left: 40px;">(a) do not have a landlord's break clause, or</p> <p style="padding-left: 40px;">(b) are within Schedule 9 (whether or not they have a landlord's break clause),</p> <p>and section 20 provides that this section must be incorporated, and must not be incorporated with modifications.</p>	
<p>176 — Restrictions on section 173: breach of information requirements</p> <p>(1) If the landlord does not comply with section 31(1) or (2) (duty to provide written statement of contract), the landlord may not give notice under section 173 before the end of the restricted period.</p> <p>(2) The restricted period is six months starting with the day on which the landlord gives a written statement of the contract to the contract holder.</p> <p>(3) The landlord may not give the contract holder notice under section 173 at any time when the landlord has not provided a notice required under section 39 (duty to provide information).</p>	<p>6(2)</p>

<p>(4) This section is a fundamental provision which is incorporated as a term of all periodic standard contracts.</p> <p><u>176 Restrictions on giving notice under section 173: breaches of statutory obligations</u></p> <p><u>Schedule 9A imposes restrictions on the giving of notice under section 173, related to breaches of certain statutory obligations.</u></p>	
<p><u>186A Restrictions on giving notice under section 186: breaches of statutory obligations</u></p> <p><u>Schedule 9A imposes restrictions on the giving of notice under section 186, related to breaches of certain statutory obligations.</u></p>	6(3)
<p><u>197 Restrictions on use of landlord's break clause: breach of information requirements</u></p> <p>(1) If the landlord does not comply with section 31(1) or (2) (duty to provide written statement of contract), the landlord may not give notice under a landlord's break clause before the end of the restricted period.</p> <p>(2) The restricted period is six months starting with the day on which the landlord gives a written statement of the contract to the contract holder.</p> <p>(3) The landlord may not give notice under a landlord's break clause at any time when the landlord has not provided a notice required under section 39 (duty to provide information).</p> <p>(4) This section is a fundamental provision which is incorporated as a term of all fixed term standard contracts with a landlord's break clause.</p> <p><u>197 Restrictions on use of landlord's break clause: breaches of statutory obligations</u></p> <p><u>Schedule 9A imposes restrictions on the giving of notice under a landlord's break clause, related to breaches of certain statutory obligations.</u></p>	6(4)
<p><u>177 Restrictions on section 173: breach of security and deposit requirements</u></p>	7

<p>(1) The landlord may not give notice under section 173 at a time when security required by the landlord in a form not permitted by section 43 has not been returned to the person by whom it was given.</p> <p>(2) The landlord may not give notice under section 173 at a time when any of subsections (3) to (5) apply unless—</p> <p style="padding-left: 40px;">(a) a deposit paid in connection with the contract has been returned to the contract holder (or any person who paid the deposit on his or her behalf) either in full or with such deductions as may have been agreed, or</p> <p style="padding-left: 40px;">(b) an application to the county court has been made under paragraph 2 of Schedule 5 and has been determined by the county court, withdrawn, or settled by agreement between the parties.</p> <p>(3) A deposit has been paid in connection with the contract but the initial requirements of an authorised deposit scheme have not been complied with.</p> <p>(4) A deposit has been paid in connection with the contract but the landlord has not provided the information required by section 45(2)(b).</p> <p>(5) A deposit paid in connection with the contract is not being held in accordance with an authorised deposit scheme.</p> <p>(6) This section is a fundamental provision which is incorporated as a term of all periodic standard contracts which incorporate section 173 as a term of the contract; section 20 provides that this section—</p> <p style="padding-left: 40px;">(a) must be incorporated, and</p> <p style="padding-left: 40px;">(b) must not be incorporated with modifications.</p>	
<p>177 <u>Restrictions on giving further notices under section 173</u></p>	

<p><u>(1) Subsections (2) and (3) apply where—</u></p> <p><u>(a) a landlord has given a contract-holder a notice under section 173 (“the first notice”), and</u></p> <p><u>(b) the landlord has subsequently withdrawn the notice (see section 180(3)).</u></p> <p><u>(2) The landlord may not give another notice under section 173 to the contract-holder before the end of the period of six months starting with the day on which the first notice was withdrawn, other than in accordance with subsection (3).</u></p> <p><u>(3) The landlord may give one more notice under section 173 to the contract-holder during the period of 1428 days starting with the day on which the first notice was given.</u></p> <p><u>(4) Subsection (5) applies where—</u></p> <p><u>(a) a landlord has given a contract-holder a notice under section 173, and</u></p> <p><u>(b) the period for making a possession claim on the ground in section 178 has ended without the landlord having made a claim.</u></p> <p><u>(5) The landlord may not give another notice under section 173 to the contract-holder before the end of the period of six months starting with the last day of the period before the end of which the landlord could have made the claim (see section 179(1)(b)).</u></p> <p><u>(6) This section is a fundamental provision which is incorporated as a term of all periodic standard contracts which incorporate section 173 as a term of the contract.</u></p>	
<p><u>180 Termination of contract on landlord's notice</u></p> <p><u>(1) If the contract-holder gives up possession of the dwelling on or before the date specified in a notice under section 173, the contract ends on the date specified in the notice.</u></p>	<p>8(2)</p>

<p>(2) If the contract-holder gives up possession of the dwelling after that date but in connection with the notice, the contract ends—</p> <ul style="list-style-type: none"> (a) on the day on which the contract-holder gives up possession of the dwelling, or (b) if an order for possession is made, on the date determined in accordance with section 206. <p>(3) The notice ceases to have effect if —</p> <p>, before the contract ends—</p> <p>(a) the landlord withdraws the notice by further notice to the contract holder, and</p> <p>(b) the contract holder does not object to the withdrawal in writing before the end of a reasonable period.</p> <p><u>(a) before the contract ends, and during the period of 28 days starting with day on which the notice was given, the landlord withdraws the notice by giving further notice to the contract-holder, or</u></p> <p><u>(b) before the contract ends, and after the end of the period of 28 days starting with day on which the notice was given—</u></p> <ul style="list-style-type: none"> <u>(i) the landlord withdraws the notice by giving further notice to the contract-holder, and</u> <u>(ii) the contract-holder does not object to the withdrawal in writing before the end of a reasonable period.</u> <p>(4) This section is a fundamental provision which is incorporated as a term of all periodic standard contracts.</p>	
<p>201 Termination of contract under landlord's break clause</p>	<p>8(3)</p>

<ol style="list-style-type: none"> 1. If the contract-holder gives up possession of the dwelling on or before the date specified in a notice under the landlord's break clause, the contract ends on the date specified in the notice. 2. If the contract-holder gives up possession of the dwelling after that date but in connection with the notice, the contract ends— <ol style="list-style-type: none"> 1. on the day on which the contract-holder gives up possession of the dwelling, or 2. if an order for possession is made, on the date determined in accordance with section 206. 3. The notice ceases to have effect if, before the contract ends— <ol style="list-style-type: none"> 1. the landlord withdraws the notice by further notice to the contract-holder, and 2. the contract-holder does not object to the withdrawal in writing before the end of a reasonable period. <ol style="list-style-type: none"> <u>(a) before the contract ends, and during the period of 28 days starting with the day on which the notice was given, the landlord withdraws the notice by giving further notice to the contract-holder, or</u> <u>(b) before the contract ends, and after the end of the period of 28 days starting with the day on which the notice was given—</u> <ol style="list-style-type: none"> <u>(i) the landlord withdraws the notice by giving further notice to the contract-holder, and</u> <u>(ii) the contract-holder does not object to the withdrawal in writing before the end of a reasonable period."</u> 3. This section is a fundamental provision which is incorporated as a term of all fixed term standard contracts with a landlord's break clause. 	
<p><u>177A</u> <u>Restriction on giving notice under section 173 following retaliatory possession claim</u></p>	<p>9(2)</p>

<p><u>(1) Subsection (2) applies where—</u></p> <p><u>(a) a landlord (having given a contract-holder a notice under section 173) has made a possession claim on the ground in section 178, and</u></p> <p><u>(b) the court has refused to make an order for possession because it considered the claim to be a retaliatory claim (see section 217).</u></p> <p><u>(2) The landlord may not give another notice under section 173 to the contract-holder before the end of the period of six months starting with the day on which the court refused to make an order for possession.</u></p> <p><u>(3) This section is a fundamental provision which is incorporated as a term of all periodic standard contracts.</u></p>	
<p>198 Restrictions on use of landlord's break clause: security and deposit requirements</p> <p>(1) The landlord may not give notice under a landlord's break clause at a time when security required by the landlord in a form not permitted by section 43 has not been returned to the person by whom it was given.</p> <p>(2) The landlord may not give notice under a landlord's break clause at a time when any of subsections (3) to (5) apply unless—</p> <p>(a) a deposit paid in connection with the contract has been returned to the contract-holder (or any person who paid the deposit on his or her behalf) either in full or with such deductions as may have been agreed, or</p> <p>(b) an application to the county court has been made under paragraph 2 of Schedule 5 and has been determined by the county court, withdrawn, or settled by agreement between the parties.</p> <p>(3) A deposit has been paid in connection with the contract but the initial requirements of an</p>	<p>9(3)</p>

<p>authorised deposit scheme have not been complied with.</p> <p>(4) A deposit has been paid in connection with the contract but the landlord has not provided the information required by section 45(2)(b).</p> <p>(5) A deposit paid in connection with the contract is not being held in accordance with an authorised deposit scheme.</p> <p>(6) This section is a fundamental provision which is incorporated as a term of all fixed term standard contracts with a landlord's break clause; section 20 provides that this section—</p> <p style="padding-left: 40px;">(a) must be incorporated, and</p> <p style="padding-left: 40px;">(b) must not be incorporated with modifications.</p> <p><u>198 Restriction on use of landlord's break clause following retaliatory possession claim</u></p> <p><u>(1) Subsection (2) applies where—</u></p> <p style="padding-left: 20px;"><u>(a) a landlord (having given a contract-holder a notice under a landlord's break clause) has made a possession claim on the ground in section 199, and</u></p> <p style="padding-left: 20px;"><u>(b) the court has refused to make an order for possession because it considered the claim to be a retaliatory claim (see section 217).</u></p> <p><u>(2) The landlord may not give another notice under a landlord's break clause to the contract-holder before the end of the period of six months starting with the day on which the court refused to make an order for possession.</u></p> <p><u>(3) This section is a fundamental provision which is incorporated as a term of all fixed term standard contracts with a landlord's break clause.</u></p>	
<p>186 Landlord's notice in connection with end of term of contract within Schedule 9B</p> <p>(1) The landlord under a fixed term standard contract which is within Schedule 9B may, before or on the last day of the term for which the contract was made, give the contract-holder</p>	<p>10(2)</p> <p>10(1)</p>

<p>notice that he or she must give up possession of the dwelling on a date specified in the notice.</p> <p>(2) The specified date may not be less than six months after—</p> <p style="padding-left: 40px;">(a) the occupation date of the contract, or</p> <p style="padding-left: 40px;">(b) if the contract is a substitute contract, the occupation date of the original contract.</p> <p>(3) Subject to subsection (2), the <u>The</u> specified date—</p> <p style="padding-left: 40px;">(a) may not be before the last day of the term for which the contract was made, and</p> <p style="padding-left: 40px;">(b) may not be less than two months after the day on which the notice is given to the contract-holder.</p> <p>(4) For the purposes of subsection (2)—</p> <p style="padding-left: 40px;">(a) an occupation contract is a substitute occupation contract if—</p> <p style="padding-left: 80px;">(i) the occupation date of the contract falls immediately after the end of a preceding occupation contract,</p> <p style="padding-left: 80px;">(ii) immediately before the occupation date of the contract a contract holder under the contract was a contract holder under the preceding contract and a landlord under the contract was a landlord under the preceding contract, and</p> <p style="padding-left: 80px;">(iii) the contract relates to the same (or substantially the same) dwelling as the preceding contract, and</p> <p style="padding-left: 40px;">(b) “original contract” means—</p> <p style="padding-left: 80px;">(i) where the substitute occupation contract has an occupation date falling</p>	
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<p>immediately after the end of a contract which is not a substitute occupation contract, the occupation contract which precedes the substitute occupation contract;</p> <p>(ii) where there have been successive substitute occupation contracts, the occupation contract which preceded the first of the substitute occupation contracts.</p> <p>(5) If the landlord gives the contract-holder a notice under subsection (1), the landlord may on that ground make a possession claim.</p> <p>(6) Section 215 provides that if the court is satisfied that the ground is made out, it must make an order for possession of the dwelling (subject to any available defence based on the contract-holder's Convention rights).</p> <p>(7) The landlord may not make a possession claim on that ground before the end of the fixed term standard contract.</p> <p>(8) This section is a fundamental provision which is incorporated as a term of all fixed term standard contracts <u>which are within Schedule 9B;</u> subsections (2) and (4) are fundamental provisions which are incorporated as a term of all fixed term standard contracts, except fixed term standard contracts which —</p> <p>(a) do not incorporate subsection (1) as a term of the contract, or</p> <p>(b) are within Schedule 9 (whether or not they incorporate subsection (1) as a term of the contract),</p> <p>and section 20 provides that those subsections must be incorporated, and must not be incorporated with modifications.</p>	
<p>194 Landlord's break clause</p>	<p><i>11(1)</i></p>

<p>(1) A fixed term standard contract <u>which is within subsection (1A)</u> may contain a term enabling the landlord to end the contract before the end of the fixed term by giving the contract-holder notice that he or she must give up possession of the dwelling on a date specified in the notice.</p> <p><u>(1A) A fixed term standard contract is within this subsection if—</u></p> <p style="padding-left: 40px;">(a) <u>it is made for a term of two years or more, or</u></p> <p style="padding-left: 40px;">(b) <u>it is within Schedule 9C (whether or not it is made for a term of two years or more</u></p> <p>(2) References in this Act to a landlord's break clause, in relation to a fixed term standard contract, are to the term mentioned in subsection (1).</p>	
<p>125 Variation of other terms</p> <p>(1) The fundamental terms, supplementary terms and additional terms of a periodic standard contract may be varied (subject to section 127)— <u>127) by agreement between the landlord and the contract-holder.</u></p> <p style="padding-left: 40px;">(a) by agreement between the landlord and the contract-holder, or</p> <p style="padding-left: 40px;">(b) by the landlord in accordance with section 126.</p> <p>(2) This section is a fundamental provision which is incorporated as a term of all periodic standard contracts; but subsection (1)(b) is not incorporated as a term of a periodic standard contract which does not incorporate section 173 (landlord's notice to end contract</p>	<p>12(2)</p>
<p>126 Variation by landlord of other terms: notice procedure</p> <p>1. The landlord may give the contract-holder notice that unless the contract-holder consents to a variation of the contract under section 125, the landlord will make a possession claim on the</p>	<p>12(3)</p>

<p>ground in section 178 (landlord's notice).</p> <p>2. But the landlord may not give notice under subsection (1) at any time when the landlord is prevented from giving the contract holder notice under section 173 (landlord's notice to end contract) by section 175 (notice may not be given during first four months of occupation), section 176 (breach of information requirements) or section 177 (breach of security or deposit requirements).</p> <p>3. A notice under subsection (1) must—</p> <p style="padding-left: 40px;">(a) specify the nature of the variation and the date on which the variation is to take effect, and</p> <p style="padding-left: 40px;">(b) inform the contract holder that the notice also has effect as a notice under section 173 (landlord's notice to end contract).</p> <p>4. The date specified as the date on which the variation is to take effect may not be less than two months after the day on which the notice is given to the contract holder.</p> <p>5. If the contract holder does not give written consent to the variation on or before the date on which it is to take effect, the landlord may make a possession claim on the ground in section 178 (landlord's notice).</p> <p>6. If the landlord satisfies the requirements of this section, the landlord is to be treated for the purposes of making the possession claim as having given notice to end the contract under section 173 (and section 179(1)(a) is to be read as if it referred to the date specified in the notice in accordance with subsection (3)(a) of this section).</p> <p>7. This section is a fundamental provision which is incorporated as a term of all periodic standard contracts, except periodic standard contracts which do not incorporate section 173 (landlord's notice to end contract).</p>	
<p>173 Landlord's notice</p>	<p>12(4)</p>

<p>(1) The landlord under a periodic standard contract may end the contract by giving the contract-holder notice that he or she must give up possession of the dwelling on a date specified in the notice.</p> <p>(2) This section is a fundamental provision which is incorporated as a term of all periodic standard contracts.</p> <p>(3) If this section is not incorporated as a term of a periodic standard contract, the landlord may not vary the terms of the contract in accordance with sections 125(1)(b) and 126 (variation by landlord's notice).</p>	
<p>121 Exclusion of contract-holder from dwelling for specified periods</p> <p>1. A periodic standard contract may provide that the contract-holder is not entitled to occupy the dwelling as a home for such periods as are specified in the contract.</p> <p>2. The contract may specify periods for the purpose of subsection (1) by reference to any matters reasonably ascertainable by the contract-holder (as well as by reference to specified dates).</p> <p>3. <u>The Welsh Ministers may by regulations amend this Act for the purpose of—</u></p> <p><u>(a) providing that subsection (1) does not apply in relation to periodic standard contracts of a particular description;</u></p> <p><u>(b) providing that subsection (1) applies only in relation to periodic standard contracts of a particular description;</u></p> <p><u>(c) changing, or imposing limits on, what may be provided for or specified in a periodic standard contract under subsection (1) or (2) (either generally or in relation to periodic standard contracts of a particular description);</u></p> <p><u>(d) specifying circumstances (either generally or in relation to periodic standard contracts of a particular description) in which a periodic</u></p>	<p>13(2)</p>

<p><u>standard contract may or may not include provision under subsection (1);</u></p> <p><u>e) imposing requirements on a landlord in relation to the inclusion in a periodic standard contract of provision under subsection (1)."</u></p>	
<p>133 Exclusion of contract-holder from dwelling for specified periods</p> <p>(1) A fixed term standard contract may provide that the contract-holder is not entitled to occupy the dwelling as a home for such periods as are specified in the contract.</p> <p>(2) The contract may specify periods for the purpose of subsection (1) by reference to any matters reasonably ascertainable by the contract-holder (as well as by reference to specified dates).</p> <p><u>(3) The Welsh Ministers may by regulations amend this Act for the purpose of—</u></p> <p><u>(a) providing that subsection (1) does not apply in relation to fixed term standard contracts of a particular description;</u></p> <p><u>(b) providing that subsection (1) applies only in relation to fixed term standard contracts of a particular description;</u></p> <p><u>(c) changing, or imposing limits on, what may be provided for or specified in a fixed term standard contract under subsection (1) or (2) (either generally or in relation to fixed term standard contracts of a particular description);</u></p> <p><u>(d) specifying circumstances (either generally or in relation to fixed term standard contracts of a particular description) in which a fixed term standard contract may or may not include provision under subsection (1);</u></p> <p><u>(e) imposing requirements on a landlord in relation to the inclusion in a fixed term standard contract of provision under subsection (1).</u></p>	<p>13(3)</p>
<p>20 Incorporation and modification of fundamental provisions</p>	<p><i>Schedule 5, Paragraph 2(1)</i></p>

<p>(1) A fundamental provision is not incorporated as a term of an occupation contract if—</p> <ul style="list-style-type: none"> (a) the landlord and the contract-holder agree that it should not be incorporated, and (b) in the contract-holder's opinion, the effect of its not being incorporated is that the position of the contract-holder is improved. <p>(2) A fundamental provision is incorporated as a term of an occupation contract with modifications if—</p> <ul style="list-style-type: none"> (a) the landlord and the contract-holder agree that it should be incorporated with those modifications, and (b) in the contract-holder's opinion, the effect of its being incorporated with those modifications is that the position of the contract-holder is improved. <p>(3) Subsections (1) and (2) do not apply to the following fundamental provisions—</p> <ul style="list-style-type: none"> (a) section 45 (requirement to use deposit scheme), (b) section 52 (joint contract-holder ceasing to be a party to the occupation contract), (c) section 55 (anti-social behaviour and other prohibited conduct), (d) sections 103(1)(b) and (2) and 108 (variation of secure contracts), (e) sections 122(1)(b) and (2) and 127 (variation of periodic standard contracts), (f) section 134(1)(b) and (2) and 135 (variation of fixed term standard contracts), 	
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<p>(g) section 148 (permissible termination),</p> <p>(h) section 149 (possession claims),</p> <p>(i) section 155 (death of sole contract-holder),</p> <p>(j) section 158 (securing contract by use of false statement),</p> <p>(k) section 175 (restriction on giving landlord's notice under a periodic standard contract during first four months of occupation),</p> <p>(l) section 177 (breach of deposit requirements: periodic standard contracts),</p> <p>(m) section 186(2) and (4) (restriction on ending fixed term standard contract during first six months of occupation),</p> <p>(ma) section 186B (breach of deposit requirements: restriction on giving notice in connection with end of fixed term standard contracts),</p> <p>(n) section 196 (restriction on use of landlord's break clause in a fixed term standard contract during first four months of occupation),</p> <p>(o) section 198 (breach of deposit requirements: fixed term standard contracts with landlord's break clause), and</p> <p>(p) paragraph 7 of Schedule 4 (variation of secure contract addressed in written statement of introductory standard contract).</p> <p>(4) Subsections (1) and (2) are subject to section 34 (landlord's failure to provide written statement of contract) and section 36 (incomplete statement of contract).</p>	
<p>108 Limitation on variation</p>	<p><i>Schedule 5, Paragraph 2(2)</i></p>

<p>(1) A fundamental term of a secure contract incorporating any of the fundamental provisions to which subsection (2) applies may not be varied (except by or as a result of an enactment).</p> <p>(2) This subsection applies to the following fundamental provisions—</p> <ul style="list-style-type: none"> (a) section 103(1)(b) and (2) and this section, (b) section 45 (requirement to use deposit scheme), (c) section 52 (joint contract-holder ceasing to be a party to the occupation contract), (d) section 55 (anti-social behaviour and other prohibited conduct), (e) section 148 (permissible termination), (f) section 149 (possession claims), (g) section 155 (death of sole contract-holder), and (h) section 158 (securing contract by use of false statement). <p>(3) A variation of any other fundamental term (other than by or as a result of an enactment) is of no effect—</p> <ul style="list-style-type: none"> (a) unless as a result of the variation— <ul style="list-style-type: none"> (i) the fundamental provision which the term incorporates would be incorporated without modification, or (ii) the fundamental provision which the term incorporates would not be incorporated or would be incorporated with modification, but in the contract-holder's opinion the effect of this would be that 	
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<p style="text-align: center;">the position of the contract-holder is improved;</p> <p>(b) if the variation (regardless of whether it is within paragraph (a)) would render the fundamental term incompatible with a fundamental term which incorporates a fundamental provision to which sub-section (2) applies.</p> <p>(4) A variation of a term of a secure contract is of no effect if it would render any term of the contract incompatible with a fundamental term (unless that fundamental term is also varied in accordance with this section in a way that would avoid the incompatibility).</p> <p>(5) Subsection (4) does not apply to a variation made by or as a result of an enactment.</p> <p>(6) This section is a fundamental provision which is incorporated as a term of all secure contracts; section 20 provides that this section—</p> <p style="padding-left: 40px;">(a) must be incorporated, and</p> <p style="padding-left: 40px;">(b) must not be incorporated with modifications.</p>	
<p>127 Limitation on variation</p> <p>(1) A fundamental term of a periodic standard contract incorporating any of the fundamental provisions to which subsection (2) applies may not be varied (except by or as a result of an enactment).</p> <p>(2) This subsection applies to the following fundamental provisions—</p> <p style="padding-left: 40px;">(a) section 122(1)(b) and (2) and this section,</p> <p style="padding-left: 40px;">(b) section 45 (requirement to use deposit scheme) and section 177 (breach of deposit requirements),</p>	<p><i>Schedule 5, Paragraph 2(3)</i></p>

<ul style="list-style-type: none"> (c) section 52 (joint contract-holder ceasing to be a party to the occupation contract), (d) section 55 (anti-social behaviour and other prohibited conduct), (e) section 148 (permissible termination), (f) section 149 (possession claims), (g) section 155 (death of sole contract-holder), (h) section 158 (securing contract by use of false statement), (i) section 175 (restriction on giving landlord's notice under a periodic standard contract during first four months of occupation), and (j) paragraph 7 of Schedule 4 (variation of secure contract addressed in written statement of introductory standard contract). 	
<p>(3) A variation of any other fundamental term (other than by or as a result of an enactment) is of no effect—</p> <ul style="list-style-type: none"> (a) unless as a result of the variation— <ul style="list-style-type: none"> (i) the fundamental provision which the term incorporates would be incorporated without modification, or (ii) the fundamental provision which the term incorporates would not be incorporated or would be incorporated with modification, but in the contract-holder's opinion the effect of this would be that the position of the contract-holder is improved; (b) if the variation (regardless of whether it is within paragraph (a)) 	

<p>would render the fundamental term incompatible with a fundamental term which incorporates a fundamental provision to which sub-section (2) applies.</p> <p>(4) A variation of a term of a periodic standard contract is of no effect if it would render a term of the contract incompatible with a fundamental term (unless that fundamental term is also varied in accordance with this section in a way that would avoid the incompatibility).</p> <p>(5) Subsection (4) does not apply to a variation made by or as a result of an enactment.</p> <p>(6) This section is a fundamental provision which is incorporated as a term of all periodic standard contracts; section 20 provides that this section—</p> <ul style="list-style-type: none"> (a) must be incorporated, and (b) must not be incorporated with modifications. 	
<p>135 Limitation on variation</p> <p>(1) A fundamental term of a fixed term standard contract incorporating any of the fundamental provisions to which subsection (2) applies may not be varied (except by or as a result of an enactment).</p> <p>(2) This subsection applies to the following fundamental provisions—</p> <ul style="list-style-type: none"> (a) section 134(1)(b) and (2) and this section, (b) section 45 (requirement to use deposit scheme), (c) section 52 (joint contract-holder ceasing to be a party to the occupation contract), (d) section 55 (anti-social behaviour and other prohibited conduct), (e) section 148 (permissible termination), 	<p><i>Schedule 5, Paragraph 2(4)</i></p>

<p>(f) section 149 (possession claims),</p> <p>(g) section 155 (death of sole contract-holder),</p> <p>(h) section 158 (securing contract by use of false statement),</p> <p>(i) section 186(2) and (4) (restriction on ending fixed term standard contract during first six months of occupation),</p> <p>(ia) section 186B (breach of deposit requirements: restriction on giving notice in connection with end of fixed term standard contracts),</p> <p>(j) section 196 (restriction on use of landlord's break clause in a fixed term standard contract during first four months of occupation), and</p> <p>(k) section 198 (breach of deposit requirements: contracts with a landlord's break clause).</p> <p>(3) A variation of any other fundamental term (other than by or as a result of an enactment) is of no effect—</p> <p>(a) unless as a result of the variation—</p> <p>(i) the fundamental provision which the term incorporates would be incorporated without modification, or</p> <p>(ii) the fundamental provision which the term incorporates would not be incorporated or would be incorporated with modification, but in the contract-holder's opinion the effect of this would be that the position of the contract-holder is improved;</p> <p>(b) if the variation (regardless of whether it is within paragraph (a)) would render the fundamental</p>	
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<p>term incompatible with a fundamental term which incorporates a fundamental provision to which sub-section (2) applies.</p> <p>(4) A variation of a term of a fixed term standard contract is of no effect if it would render a term of the contract incompatible with a fundamental term (unless that fundamental term is also varied in accordance with this section in a way that would avoid the incompatibility).</p> <p>(5) Subsection (4) does not apply to a variation made by or as a result of an enactment.</p> <p>(6) This section is a fundamental provision which is incorporated as a term of all fixed term standard contracts but subsection (2)(k) is not incorporated as a term of a contract which does not have a contract-holder's break clause; section 20 provides that this section—</p> <p style="padding-left: 40px;">(a) must be incorporated, and</p> <p style="padding-left: 40px;">(b) must not be incorporated with modifications.</p>	
<p>110 Failure to provide written statement etc</p> <p>(1) If the landlord fails to comply with a requirement under section 109 the landlord is liable to pay the contract-holder compensation under section 87.</p> <p>(2) The compensation is payable in respect of the relevant date and every day after the relevant date until—</p> <p style="padding-left: 40px;">(a) the day on which the landlord gives the contract-holder a written statement of the term or terms varied, or of the contract as varied, or</p> <p style="padding-left: 40px;">(b) if earlier, the last day of the period of two months starting with the relevant date.</p> <p>(3) Interest on the compensation is payable if the landlord fails to give the contract-holder a</p>	<p><i>Schedule 5, Paragraph 3(a)</i></p>

<p>written statement on or before the day referred to in subsection (2)(b).</p> <p>(4) The interest starts to run on the day referred to in subsection (2)(b) at the rate prevailing under section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 (c 20) at the end of that day.</p> <p>(5) The relevant date is the day on which the contract was varied.</p> <p>(6) Subsections (1) to (5) do not apply if the landlord's failure to comply with the requirement is attributable to an act or omission of the contract-holder.</p> <p>(7) If under section 109 the landlord gives the contract-holder a written statement of the contract as varied, sections 36 and 37 (incomplete and incorrect statements) apply to the statement as if <u>references in those sections to the relevant date were to the day on which the contract was varied in subsection (3) of both of those sections, for the words from "starting" to the end there were substituted "starting with the day on which the contract was varied"</u>.</p>	
<p>129 Failure to provide written statement etc</p> <p>(1) If the landlord under a periodic standard contract fails to comply with a requirement under section 128 the landlord is liable to pay the contract-holder compensation under section 87.</p> <p>(2) The compensation is payable in respect of the relevant date and every day after the relevant date until—</p> <p style="padding-left: 40px;">(a) the day on which the landlord gives the contract-holder a written statement of the term or terms varied, or of the contract as varied, or</p> <p style="padding-left: 40px;">(b) if earlier, the last day of the period of two months starting with the relevant date.</p> <p>(3) Interest on the compensation is payable if the landlord fails to give the contract-holder a</p>	<p><i>Schedule 5, Paragraph 39(b)</i></p>

<p>written statement on or before the day referred to in subsection (2)(b).</p> <p>(4) The interest starts to run on the day referred to in subsection (2)(b) at the rate prevailing under section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 (c 20) at the end of that day.</p> <p>(5) The relevant date is the day on which the contract was varied.</p> <p>(6) Subsections (1) to (5) do not apply if the landlord's failure to comply with the requirement is attributable to an act or omission of the contract-holder.</p> <p>(7) If under section 128 the landlord gives the contract-holder a written statement of the contract as varied, sections 36 and 37 (incomplete and incorrect statements) apply to the statement as if, <u>in subsection (3) of both of those sections, for the words from "starting" to the end there were substituted "starting with the day on which the contract was varied."</u> references in those sections to the relevant date were to the day on which the contract was varied.</p>	
<p>137 Failure to provide written statement etc</p> <p>(1) If the landlord under a fixed term standard contract fails to comply with a requirement under section 136 the landlord is liable to pay the contract-holder compensation under section 87.</p> <p>(2) The compensation is payable in respect of the relevant date and every day after the relevant date until—</p> <p style="padding-left: 40px;">(a) the day on which the landlord gives the contract-holder a written statement of the term or terms varied, or of the contract as varied, or</p> <p style="padding-left: 40px;">(b) if earlier, the last day of the period of two months starting with the relevant date.</p>	<p><i>Schedule 5, Paragraph 39(c)</i></p>

<p>(3) Interest on the compensation is payable if the landlord fails to give the contract-holder a written statement on or before the day referred to in subsection (2)(b).</p> <p>(4) The interest starts to run on the day referred to in subsection (2)(b) at the rate prevailing under section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 (c 20) at the end of that day.</p> <p>(5) The relevant date is the day on which the contract was varied.</p> <p>(6) Subsections (1) to (5) do not apply if the landlord's failure to comply with the requirement is attributable to an act or omission of the contract-holder.</p> <p>(7) If under section 136 the landlord gives the contract-holder a written statement of the contract as varied, sections 36 and 37 (incomplete and incorrect statements) apply to the statement as if, <u>in subsection (3) of both of those sections, for the words from "starting" to the end there were substituted "starting with the day on which the contract was varied."</u> references in those sections to the relevant date were to the day on which the contract was varied.</p>	
<p>242 Interpretation of Chapter</p> <p>In this Chapter—</p> <p>“the appointed day” (“<i>y diwrnod penodedig</i>”) is the day appointed under section 257 as the day on which section 239 comes into force;</p> <p>“assured shorthold tenancy” (“<i>tenantiaeth fyrddaliol sicr</i>”) has the same meaning as in the Housing Act 1988 (c. 50);</p> <p>“assured tenancy” (“<i>tenantiaeth sicr</i>”) has the same meaning as in the Housing Act 1988 (and includes an assured shorthold tenancy);</p> <p>“demoted tenancy” (“<i>tenantiaeth isradd</i>”) means a tenancy to which section 143A of the Housing Act 1996 (c. 52) applies;</p>	<p><i>Schedule 5, Paragraph 4(1)</i></p>

<p>“introductory tenancy” (“<i>tenantiaeth ragarweinio</i>”) has the same meaning as in the Housing Act 1996;</p> <p>“protected shorthold tenancy” (“<i>tenantiaeth fyrddaliol warchodedig</i>”), “protected tenancy” (“<i>tenantiaeth warchodedig</i>”), “restricted contract” (“<i>contract cyfyngedig</i>”) and “statutory tenancy” (“<i>tenantiaeth statudol</i>”) have the same meaning as in the Rent Act 1977 (c. 42);</p> <p>“secure tenancy” (“<i>tenantiaeth ddiogel</i>”) has the same meaning as in the Housing Act 1985 (c. 68), but it does not include a housing association tenancy within the meaning of section 86 of the Rent Act 1977.</p>	
<p>SCHEDULE 2</p> <p>PART 3</p> <p>TENANCIES AND LICENCES THAT ARE NEVER OCCUPATION CONTRACTS</p> <p>7 (1) A tenancy or licence is not an occupation contract at any time when this paragraph applies to it.</p> <p>(2) This paragraph applies to a tenancy or licence if all the persons with whom it is made are excluded from being contract-holders by section 7(6) (individuals who have not reached the age of 18).</p> <p>(3) This paragraph also applies to—</p> <p>(a) a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) (business tenancies) applies;</p> <p>(b) a protected occupancy or a statutory tenancy within the meaning of the Rent (Agriculture) Act 1976 (c. 80);</p> <p>(c) a protected tenancy or a statutory tenancy within the meaning of the Rent Act 1977 (c.42);</p> <p>(d) a secure tenancy that is a housing association tenancy, within the meaning of section 86 of the Rent Act 1977;</p>	<p><i>Schedule 5, Paragraph 4(2)</i></p>

<p>(e) a tenancy of an agricultural holding within the meaning of the Agricultural Holdings Act 1986 (c. 5);</p> <p>(f) a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995 (c. 8);</p> <p>(g) a long tenancy (see paragraph 8);</p> <p>(h) a tenancy or licence which relates to armed forces accommodation (see paragraph 9);</p> <p>(i) a tenancy or licence which relates to direct access accommodation (see paragraph 10).</p>	
<p><u>239A Power to make provision about certain tenancies and licences</u></p> <p><u>(1) The Welsh Ministers may by regulations amend this Act for the purpose of—</u></p> <p><u>(a) providing that certain provisions do not apply in relation to a tenancy or licence to which subsection (2) applies;</u></p> <p><u>(b) making new provision which only applies to a tenancy or licence to which subsection (2) applies;</u></p> <p><u>(c) making provision in relation to the end of the term of a long tenancy (within the meaning of paragraph 8 of Schedule 2).</u></p> <p><u>(2) This subsection applies to any tenancy or licence which would, but for section 239, have been a tenancy or licence of the kind listed in subsection (1) of that section, or would have been treated as a tenancy or licence of that kind.</u></p> <p><u>(3) Regulations under this section may make provision about tenancies or licences which are not, and cannot be, occupation contracts.</u></p>	<p><i>Schedule 5, Paragraph 5(1)</i></p>
<p>256 Regulations</p> <p>(1) Any power to make regulations under this Act—</p> <p>(a) is exercisable by statutory instrument,</p> <p>(b) may be exercised so as to make different provision for different cases or descriptions of case or different purposes or areas,</p>	<p><i>Schedule 5, paragraph 5(2)</i></p>

<p>(c) may be exercised so as to make different provision for different kinds or descriptions of occupation contract, unless the power applies only in relation to particular kinds or descriptions of occupation contract, and</p> <p>(d) includes power to make incidental, supplementary, consequential, transitory, transitional or saving provision.</p> <p>(2) Regulations under this Act may make consequential amendments to, and modifications, repeals and revocations of, an enactment other than a provision of this Act.</p> <p>(3) Regulations to which this subsection applies may not be made unless a draft of the statutory instrument containing the regulations (whether alone or with regulations to which this subsection does not apply) has been laid before, and approved by a resolution of, the National Assembly for Wales.</p> <p>(4) Subsection (3) applies to regulations under—</p> <p>(a) section 9 (power to amend that section),</p> <p>(b) section 22 (powers in relation to fundamental provisions),</p> <p>(c) section 56 (power to amend section 55),</p> <p>(d) section 68 (power to amend sections 66 and 67),</p> <p>(e) section 217 (power to amend that section),</p> <p>(f) section 223 (power to amend sections 220 and 222),</p> <p>(g) section 229 (power to amend sections 225 to 228),</p> <p><u>(ga) section 239A (power to make provision about certain tenancies and licences).</u></p> <p>(h) paragraph 17 of Schedule 2 (power to amend that Schedule),</p> <p>(i) paragraph 17 of Schedule 3 (power to amend that Schedule),</p>	
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<p>(j) paragraph 3 of Schedule 4 (power to change time limit for giving notice of extension of introductory period),</p> <p>(k) paragraph 5 of Schedule 5 (power to amend that Schedule),</p> <p>(l) paragraph 4 of Schedule 7 (power to change time limit for giving notice of extension of probationary period),</p> <p>(m) paragraph 13 of Schedule 9 (power to amend that Schedule), and</p> <p>(n) paragraph 33 of Schedule 12 (power to amend that Schedule).</p> <p>(5) Subsection (3) also applies to any other regulations under this Act which amend, modify or repeal any provision of an Act of Parliament or a Measure or Act of the National Assembly for Wales.</p> <p>(6) A statutory instrument containing regulations made under a provision of this Act to which subsection (3) does not apply is subject to annulment in pursuance of a resolution of the National Assembly for Wales.</p>	
<p>246 Dwelling</p> <p>(1) For the purposes of this Act “dwelling” means a dwelling which is wholly in Wales, and—</p> <p style="padding-left: 40px;">(a) does not include any structure or vehicle which is capable of being moved from one place to another, but</p> <p style="padding-left: 40px;">(b) includes any land occupied together with the dwelling, unless the land is agricultural land exceeding 0.809 hectares.</p> <p>(2) “Agricultural land” means—</p> <p style="padding-left: 40px;">(a) land used as arable, meadow or pasture ground only;</p> <p style="padding-left: 40px;">(b) land used for a plantation or a wood or for the growth of saleable underwood;</p>	<p><i>Schedule 5, Paragraph 6</i></p>

<p>(c) land used for the purpose of poultry farming, market gardens, nursery grounds, orchards or allotments, including allotment gardens within the meaning of the Allotments Act 1922 (c 51),</p> <p>but does not include land occupied together with a house as a park, gardens (other than as mentioned in paragraph (c)) or pleasure grounds, land used mainly or exclusively for purposes of sport or recreation or land used as a racecourse.</p> <p>(3) Dwelling, in relation to an occupation contract, means the dwelling subject to the contract.</p>	
<p>255 Power to make consequential and transitional provision etc</p> <p>(1) If the Welsh Ministers consider it necessary or expedient for the purpose of giving full effect to any provision of this Act, or in consequence of any such provision, they may by regulations make—</p> <p>(a) any supplemental, incidental, or consequential provision, and</p> <p>(b) any transitory, transitional or saving provision.</p> <p>(2) Regulations under subsection (1) may amend, repeal, revoke or modify any enactment (including a provision of this Act) enacted or made on or before the day on which this Act receives Royal Assent.</p>	<p><i>Schedule 5, Paragraph 7</i></p>
<p>147 Overview of Part</p> <p>The following table provides an overview of this Part—</p> <p>TABLE 1</p> <p>row 1, column 3</p> <p>(a) Ways in which occupation contracts may be ended,</p>	<p><i>Schedule 6, paragraph 12</i></p>

<p>(b) circumstances in which landlords may make a claim to the court for recovery of possession of a dwelling, and</p> <p>(c) “possession notices”, which are notices landlords must give to contract-holders before making a possession claim under section 157 (breach of contract), section 161160 (in relation to estate management grounds), sections 165 or 170 (recovery of possession after contract-holder’s notice), section 181 or 187 (serious rent arrears) or section 191 (recovery of possession after use of contract-holder’s break clause).</p>	
<p>181 Serious rent arrears</p> <p>(1) If the contract-holder under a periodic standard contract is in serious rent arrears, <u>seriously in arrears with his or her rent</u>, the landlord may on that ground make a possession claim.</p> <p>(2) The contract-holder is seriously in arrears with his or her rent—</p> <p>(a) where the rental period is a week, a fortnight or four weeks, if at least eight weeks’ rent is unpaid;</p> <p>(b) where the rental period is a month, if at least two months’ rent is unpaid;</p> <p>(c) where the rental period is a quarter, if at least one quarter’s rent is more than three months in arrears;</p> <p>(d) where the rental period is a year, if at least 25% of the rent is more than three months in arrears.</p> <p>(3) Section 216 provides that the court must (subject to any available defence based on the contract-holder’s Convention rights) make an order for possession of the dwelling if it is satisfied that the contract-holder—</p> <p>(a) was seriously in arrears with his or her rent on the day on which the landlord gave the contract-holder the possession notice, and</p> <p>(b) is seriously in arrears with his or her rent on the day on which the court hears the possession</p>	<p><i>Schedule 6, paragraph 15</i></p>

<p>claim.</p> <p>(4) This section is a fundamental provision which is incorporated as a term of all periodic standard contracts.</p>	
<p>Schedule 1</p> <p>Table 4</p> <p>Row 12, column 3</p> <p>Sections 122(1)(a)(b) and (2) and 127 must be incorporated without modification.</p> <p>Section 123 applies only to contracts under which rent is payable, and section 124 applies only to contracts under which consideration other than rent is payable.</p> <p>Sections 125(1)(b) and 126 are not incorporated into contracts that do not incorporate section 173 (L's notice).</p>	<p><i>Schedule 6, paragraph 21(2)(a)(i)</i></p>
<p>Schedule 12, paragraph 25</p> <p>(5) After paragraph 25C (inserted by sub-paragraph (4)) insert—</p> <p>“25D(1) This paragraph applies to a fixed term standard contract which, immediately before the appointed day, was a tenancy or licence for a fixed term containing a landlord’s break clause.</p> <p>(2) This Act applies as if—</p> <p>(a) in section 194 (landlord’s break clause)—</p> <p>(i) in subsection (1), the words “which is within subsection (1A)” were omitted, and</p> <p>(ii) subsection (1A) were omitted,</p> <p>(b) in section 195 (minimum notice period), the reference in subsection (1) to “six months” were a reference to “two months”,</p> <p>(c) in section 196 (landlord’s notice: notice may not be given in first 18</p>	<p><i>Schedule 6, paragraph 25(5)</i></p>

<p>months of occupation), the references in subsections (1) and (2) (and the heading) to “18 months” were references <u>reference in subsection (1) (and the heading) to “18 months” were a reference</u> to “four months”, and</p> <p>(d) Schedule 9C were omitted.”</p>	
<p>Housing (Wales) Act 2014</p>	
<p>44 — Restriction on terminating tenancies</p> <p>(1) A section 21 notice may not be given in relation to a dwelling subject to a domestic tenancy which is an assured shorthold tenancy if—</p> <p style="padding-left: 40px;">(a) the landlord is not registered in respect of the dwelling, or</p> <p style="padding-left: 40px;">(b) the landlord is not licensed under this Part for the area in which the dwelling is located and the landlord has not appointed a person who is licensed under this Part to carry out all property management work in respect of the dwelling on the landlord's behalf.</p> <p>(2) But subsection (1) does not apply for the period of 28 days beginning with the day on which the landlord's interest in the dwelling is assigned to the landlord.</p> <p>(3) In this section, a “section 21 notice” means a notice under section 21(1)(b) or (4)(a) of the Housing Act 1988.</p> <p><u>44 Restrictions on terminating standard occupation contracts</u></p> <p><u>Schedule 9A to the Renting Homes (Wales) Act 2016 (anaw 1) makes provision relating to standard occupation contracts (within the meaning of that Act), preventing a landlord from giving a notice under section 173 or 186 of that Act, or under a landlord’s break clause (notices that contract-holder must give up possession) if—</u></p>	<p>6(5)</p>

Please note: this document has been prepared solely to assist people in understanding the Renting Homes (Amendment) (Wales) Bill. It should not be relied on for any other purpose.

<p>(a) <u>the landlord is not registered in respect of the dwelling, or</u></p> <p>(b) <u>the landlord is not licensed under this Part for the area in which the dwelling is located and the landlord has not appointed a person who is licensed under this Part to carry out all property management work in respect of the dwelling on the landlord's behalf.</u></p>	
<p>Renting Homes (Fees etc.) (Wales) Act 2019</p>	
<p>20 — Amendment of Renting Homes (Wales) Act 2016: restrictions on terminating contracts</p> <p>Schedule 3 amends the Renting Homes (Wales) Act 2016 (anaw 1) to make provision in connection with prohibited payments and retained holding deposits, and makes further associated amendments.</p> <p>20 <u>Restrictions on terminating standard occupation contracts</u></p> <p><u>Schedule 9A to the Renting Homes (Wales) Act 2016 (anaw 1) makes provision relating to standard occupation contracts, preventing a landlord from giving a notice under section 173 or 186 of that Act, or under a landlord's break clause (notices that contract-holder must give up possession) if the landlord has not complied with provisions of this Act relating to prohibited payments and retained holding deposits.</u></p>	<p>6(6)(a)</p>

Appendix 2

Grounds for possession section 8 Housing Act 1988

Mandatory grounds³².

The grounds are as follows:

Ground 1 allows the landlord to repossess the property if -

- a. The landlord has lived in the property previously. This does not require the landlord to want to move back into the property, or
- b. The landlord wishes to move into the property to use it as their main home (or for the landlord's spouse or civil partner to do so) and they were the owner of the property prior to the tenant moving in. This does not require the landlord to have lived in the property beforehand.

For this ground to be successful the landlord must have notified the tenant, in writing before the tenancy started, that he intended one day to ask for the property back on this ground.

Ground 2 relates to a mortgage lender's right to possession, where the property is subject to a mortgage granted before the beginning of the tenancy. Notice is required, as per Ground 1 above.

Ground 3 requires that the fixed term is less than eight months and the property was let as a holiday home within the 12 months preceding the tenancy. The tenant must have received notice that possession may be sought on this ground, no later than the beginning of the tenancy.

Ground 4 relates to further and higher education providers.

Ground 5 is where the dwelling is held only for the purposes of being available for occupation by a minister of religion from which he/she can perform their duties. Notice must have been given by no later than the beginning of the tenancy that possession may be sought on this ground and the court must be satisfied that the property is required for occupation by a Minister of religion as such a residence.

Ground 6 relates to recovery of possession when the landlord needs to carry out substantial building / renovation works. Various conditions are attached to this ground.

³² <https://www.rla.org.uk/landlord/guides/grounds-for-possession.shtml>

Ground 7 can be used to recover possession after the death of the tenant where the tenancy has devolved under their will or intestacy and the tenancy was periodic.

Ground 7A relates to anti-social behaviour committed by the tenant or any other person living with the tenant or visiting the property. The landlord may seek possession if, after October 20th 2014, that person has –

- i. Committed and been convicted of a serious offence.
- ii. Breached an Anti-Social Behaviour Injunction obtained under the Anti-Social Behaviour Crime and Policing Act 2014
- iii. Breached a Criminal Behaviour Order obtained under the Anti-Social Behaviour Crime and Policing Act 2014
- iv. Convicted of a breach of a notice or order to reduce their noise in relation to the tenant's property under the Environmental Protection Act 1990
- v. The tenant's property has been closed under a closure order obtained under the Anti-Social Behaviour Crime and Policing Act 2014 and closure is continuous for at least 48 hours.

Ground 7B relates to the tenant's right to rent status in the UK and is only available in England.

A landlord may receive a notice from the Home Secretary. This notice should inform them that there are one or more occupiers, aged 18 or over, in the property with no right to rent in the UK at this time.

Ground 8 relates to serious rent arrears and is the main ground used by landlords of Housing Act 1988 tenancies seeking possession for rent arrears.

The amount of arrears should be at both the date of the service of the notice and at the date of the hearing:

- if rent is payable weekly or fortnightly, at least eight weeks' rent is unpaid;
- if rent is payable monthly, at least two months' rent is unpaid;
- if rent is payable quarterly, at least one quarters' rent is more than three months in arrears; and
- if rent is payable yearly, at least three months' rent is more than three months in arrears.

Discretionary grounds

Ground 9 can be used where suitable alternative accommodation is available for the tenant or will be available for him when the order for possession takes effect.

Ground 10 can be used where some rent that is lawfully due from the tenant:

- is unpaid on the date on which the proceedings for possession are begun; and
- except where subsection (1)(b) of section 8 of the Housing Act 1988 applies, was in arrears at the date of the service of the notice under that section relating to those proceedings.

Ground 11 can be used in cases where the tenant has persistently delayed paying rent which has become lawfully due. This applies whether or not any rent is in arrears on the date on which proceedings for possession are begun.

Ground 12 can be used where any obligation of the tenancy (other than one related to the payment of rent) has been broken or not performed.

Ground 13 is for use where the condition of the dwelling-house (or any of the common parts if the dwelling is part of a larger building) has deteriorated owing to acts of waste by, or the neglect or default of, the tenant or any other person residing in the dwelling-house. In the case of an act of waste by, or the neglect or default of, a person lodging with the tenant or a sub-tenant of his, the ground can also be used if the tenant has not taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant.

Ground 14 can be used in cases of anti-social behaviour committed by the tenant or any other person living with the tenant or visiting the property if that person:

- has been guilty of conduct causing or likely to cause a nuisance or annoyance to a person residing, visiting or otherwise engaging in a lawful activity in the locality; or
- has been convicted of :
 - using the dwelling-house or allowing it to be used for immoral or illegal purposes; or
 - an arrestable (Crown Court) offence committed in, or in the locality of, the dwelling house.

Ground 14A relates to domestic violence and is only available to registered social landlords or charitable housing trusts.

Ground 14ZA is for use where the tenant or an adult residing in the property has been convicted of an indictable offence at the scene of a riot.

Ground 15 can be used where the condition of any furniture provided for use under the tenancy has, in the opinion of the court, deteriorated owing to ill-treatment by the tenant or any other person residing in the dwellinghouse.

In the case of ill-treatment by a person lodging with the tenant or by the tenant's sub-tenant, the tenant has not taken reasonable steps for the removal of the lodger or sub-tenant.

Ground 16 relates to where the dwelling-house was let to the tenant in consequence of his employment by the landlord seeking possession or a previous landlord under the tenancy and the tenant has ceased to be in that employment.

Ground 17 can be used where the tenant is the person, or one of the persons, to whom the tenancy was granted and the landlord was induced to grant the tenancy by a false statement made knowingly or recklessly by either the tenant or a person acting on the tenant's instigation.

The notice period for each of the grounds can vary:

- If ground 7A is used, the notice period must be at least a **month**.
- If ground 14 is used, and ground 7A is not, then the notice period is **24 hours**.
- If the landlord uses grounds 1, 2, 5 to 7, 9 or 16 (without ground 7A or 14) then the notice period must be at least **2 months** long and cannot end before the fixed term expires (or a break clause can be activated)
- If none of the above grounds are used, then where the landlord uses 3, 4, 7B, 8, 10 to 13, 14ZA, 14A, 15 or 17, the notice period should be at least **2 weeks long**.³³

³³ https://www.rla.org.uk/landlord/documents/rent_arrears/section8.shtml