

Julie James AM  
Minister for Housing and Local Government

9 March 2020

Dear Julie

Thank you for accepting our invitation to attend the meeting of the Legislation, Justice and Constitution Committee on 20 April 2020 for the purpose of Stage 1 scrutiny of the Renting Homes (Amendment) (Wales) Bill.

In advance of that evidence session, we would be grateful to receive your response to the questions set out below, by Friday 3 April 2020.

#### General

1. Why is this legislation necessary? The responses to the Welsh Government's consultation have not all been positive, with a number of responses highlighting some difficulties that this legislation could create in the rented sector in Wales. Further, in your evidence session with the Equality, Local Government and Communities Committee on 27 February 2020, you indicated that you are relying on an anecdotal evidence base.
2. Many Welsh citizens will need to be able to access and understand the provisions contained in this Bill within the context of the existing Renting Homes (Wales) Act 2016. Without access to commercial subscription services, such as Westlaw and LexisNexis, this may prove difficult. Did you consider bringing forward a single Bill that would restate the provisions of the Renting Homes (Wales) Act 2016 with the necessary modifications and additions that you wish to see made to that legislation? Will your decision not to do so affect the accessibility of this important legislation? Why have you chosen to amend an Act of the Assembly which is not yet in force?

#### Subordinate legislation

3. The Bill contains a number of Henry VIII powers to amend primary legislation. What is the justification for the inclusion of these powers? Why is it not preferable to include in the Bill a regulation making power to include, for example, certain classes of contract which will not be subject to some or all of the changes the Bill will introduce?



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4. In the Statement of Policy Intent, the reason given for including regulation making powers in Schedules 1 to 4 is to “reflect changes in the provision of housing”. In relation to Schedule 2, which sets out new Schedule 9A to the 2016 Act listing restrictions on a landlord giving notice, there is an additional reason included for including a regulation making power; to reflect “legislative changes”. Can you explain what is meant by this and why a different approach has been taken?

### Human Rights

5. What will the impact of the Bill be on the Human Rights of both tenants and landlords, and how have you assessed these impacts?
6. Sections 5 and 11 of the Bill introduce a restriction on the use of break clauses in fixed term contracts so they cannot be used in contracts of less than 24 months and cannot be activated by the landlord until 18 months into the contract. How do you justify, in terms of human rights, and specifically the landlord’s A1P1 rights, restricting a break clause to 18 months when the contract holder has, at that point, had more than the minimum 12 months’ security of tenure envisaged by the Bill?
7. Section 7 of the Bill allows a landlord to issue a second section 173 notice without having to wait for six months to pass after the expiry of the first one, provided the second notice is given within 14 days of the first. Outside this 14 day window, landlords who make a mistake in a section 173 notice have to wait another six months before they can issue another notice. How is this justified on human rights grounds where there is only a minor error which does not lead to any confusion or any detriment to the contract-holder? Is a 14 day ‘cooling off period’ long enough to justify restricting a landlord’s access to their property for an additional six months in such circumstances?
8. As drafted, the Bill requires the landlord to give six months’ notice at the end of a fixed term contract. Does this place a landlord at a distinct disadvantage when trying to make future plans for the property, and how do you justify this provision on human rights grounds? For example, the requirement to provide six months’ notice applies even if the contract has run for three years, by which point the contract holder will have had more than the 12 months’ security of tenure that you say is the policy aim of the Bill?
9. How do you justify, on human rights grounds, the landlord being prevented from obtaining possession of their property after six months, in circumstances where the parties to a tenancy may have originally agreed that the tenancy would only be for six months?
10. Are there any provisions in the Bill that you envisage acting retrospectively? Paragraph 10.3 of the Explanatory Memorandum to the Bill states that the restrictions on serving certain notices in respect of some pre-existing contracts will not be “truly retrospective”; what does this mean?
11. What impact will the commencement of the 2016 Act, and the amendments to it made by this Bill, have on tenancies made before the date the 2016 Act, as amended, comes into force?



12. What transitional provisions will need to be in place to ensure that the Bill does not apply retrospectively to tenants and landlords who enter into contracts based on the current legal framework?
13. Can you explain the effect of paragraph 24 of Schedule 6 and the interaction between this Bill and the Renting Homes (Fees etc.) (Wales) Act 2019?

#### Commencement and implementation

14. When do you intend that this Bill, if it is approved by the Assembly, and the 2016 Act would come into force?
15. When will the secondary legislation that is necessary to implement the 2016 Act be made, particularly the regulations containing supplementary terms and model contracts?
16. The order making power in section 17(2) enables the Welsh Ministers to provide for commencement of section 6(5) and paragraph 24 of Schedule 6 of the Bill. The commencement order will not be subject to an Assembly scrutiny procedure. This Committee's previous recommendations on this matter on other Bills have been that commencement orders that include 'transitory, transitional or saving provision' should be subject to the negative procedure. What assessment was undertaken before it was decided that an order made under section 17(2) would not follow a formal Assembly scrutiny procedure?

#### Impact on Courts

17. Have you explored whether the courts will have the necessary capacity to deal with the potential for an increased number of claims, particularly if there is an increase in the use of breach of contract claims, rather than a continued use of no fault eviction grounds?

#### Crown consent

18. The First Minister, in his letter dated 10 January 2020 to the Llywydd, indicated that the Bill may affect the prerogative, private interests or hereditary revenues of the Queen or the Duke of Cornwall, and that Crown consent may be required. Has the Minister sought and received the necessary consent?

Yours sincerely



**Mick Antoniw AM**  
**Chair**

Croesewir gohebiaeth yn Gymraeg neu Saesneg.  
We welcome correspondence in Welsh or English.

