

National Assembly for Wales Equality, Local Government and Communities Committee
consultation on the Renting Homes (Amendment) (Wales) Bill
Response from ARLA Propertymark - March 2020

Background

1. ARLA Propertymark is the UK's foremost professional and regulatory body for letting agents; representing over 9,500 members. ARLA Propertymark agents are professionals working at all levels of letting agency, from business owners to office employees.

General Principles

Extension of the minimum notice period

2. ARLA Propertymark does not agree with the proposal to amend the Renting Homes (Wales) Act 2016 to extend the minimum notice period of a Section 173 notice from two months to six, and to restrict the issuing of such a notice until six months after the occupation date of the contract. By changing the notice and issuing period there will be six main consequences. Firstly, it will give all tenants, including those who flout the law, a minimum of 12 months security in the tenancy by default. Secondly, the proposal ignores issues with problem tenants and the impact on surrounding properties and the landlord or letting agent. This will effectively reward these tenants for their poor behaviour. Thirdly, adding further time will not only impact the timescale of proceedings but will also make the process more expensive for the landlord. Fourthly, landlords will sell up due to the perceived risk, resulting in a reduction of the sector and contributing to landlords being more selective about who they let their property to. Fifthly, this will mean that the private rented sector won't be accessible to the most vulnerable tenants and rents will increase. Finally, this will create pressure on the Welsh Government to ensure displaced tenants are housed in the social rented sector. Taking the above into consideration, we do not agree with this proposal and would urge Members of the Welsh Parliament to reconsider extending the minimum notice period of a Section 173 notice and restrictions on issuing such a notice.

Changes to fixed term standard contracts

3. ARLA Propertymark does not agree with the proposal to remove a landlord's ability to end a fixed term standard contract under Section 186 of the Renting Homes (Wales) Act 2016. This is because landlords using fixed term contracts will be left with little option to regain possession of their property at the end of the term unless the court decides that the tenant has breached terms of their contract. This change will unfairly balance power towards tenants, meaning that landlords will have little protection should they need to regain their property. This will have serious consequences on the private rented sector in Wales, as it will essentially make the use of fixed term contracts obsolete. Landlords will choose to issue Periodic contracts by default because there are greater protections attached should the landlord wish to regain the property. Consequently, tenants will have less security in their length of tenure beyond the initial 12 months.

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

4. ARLA Propertymark does not agree with the proposal for landlords having to wait six months before re-issuing a Section 173 notice following expiry of a previous notice. This proposal ignores emergency situations where the landlord may be required to regain possession of their property at short notice and places further restriction on the already limited Section 173 procedure. For instance, the original notice may have timed out due to the landlord no longer

needing possession of the property, or genuine change of character for the tenant where the landlord had issued the notice for this reason. An example of this could be the tenant was in rent arrears, so the landlord issued the tenant with a Section 21 notice. However, this was the first instance and the tenant paid back the money owed and consequently the landlord did not go forward with the eviction process. The landlord then needs to move into the property a couple of months later but cannot evict the tenant as there is no ground of eviction to do so. In this circumstance the landlord would need to wait a further six months after the expiry of the first notice, which does not account for an emergency. Landlords need to be able to regain their property suddenly or unexpectedly, and therefore if this proposal is to be introduced, further mandatory grounds for possession must be added to the Renting Homes (Wales) Act 2016.

The use of break clauses in fixed term contracts

5. We are concerned that ensuring a break clause cannot be used in contracts of duration of less than 24 months, and cannot be activated until month 18, as well as landlords being required to serve a six month notice in relation to a break clause will create less flexibility and provide less protection for landlords. Taking into consideration the proposed removal of the Section 186 notice for eviction, the continued use of break clauses will be increasingly useful for both landlords or agents and tenants. By removing this added level of flexibility, tenants may feel stuck in a fixed term tenancy that may limit where they work, where they want to live and where their children go to school. For this reason, we would expect many tenants who want flexibility to be hesitant to sign up to extended fixed terms without the option for a break clause. This in turn, will provide landlords with less security against void periods as tenants who want flexibility would likely prefer short fixed terms of six months or to sign a Periodic tenancy, which can be ended any time at the tenant's request. Limiting the use of break clauses will provide landlords with less protection against rogue tenants, and will therefore, negatively impact landlord confidence in the private rented sector. Landlords need protections in place to ensure that they can regain possession of their properties when and if needed and to also limit any damage caused by replacing problem tenants. Instead of limiting the use of break clauses the Welsh Government must provide clear guidance to landlords and letting agents on drafting correct break clause wording. Currently, the use of a break clause relies heavily on the specific wording. If a break clause contains complicated wording that is difficult to interpret, either party may face issues when trying to exercise their right to terminate the fixed term early.

Potential barriers to implementation

6. Without reform to the existing courts system for housing cases, including making the eviction process simpler, quicker and more cost-effective, we do not believe that the proposals within the Renting Homes (Amendment) (Wales) Bill will achieve a better eviction process. To ensure that the proposals in the Bill are operable in working practice, ARLA PropertyMark believes that there are two things that must be done to amend court procedures. Firstly, the Renting Homes (Wales) Act must be amended to include additional mandatory grounds for possession in place of the restricted Section 173 and removed Section 186 notices. Secondly, to rectify timing and consistency issues currently faced in the court system, we believe that a specialist Housing Tribunal needs to be introduced.

Reforming Grounds for eviction

7. For the proposed changes to the eviction process to work, additional mandatory grounds for eviction must be included in the Renting Homes (Wales) Act 2016. Should the Bill be

implemented, a landlord issuing a fixed term standard occupation contract would have no means to repossess their property if they needed to move themselves or their family into the property, or if they wanted to sell the property. The landlord would only be able to regain possession of a property under a fixed term contract due to tenant's breach of contract (pre-contract and throughout the duration of the contract) and under estate management grounds (including building works to the property). In these instances, the granting of possession is at the discretion of the court. Consequently, we believe that Bill must be amended to include four mandatory grounds for possession in order to make the proposed changes to the legislation workable. Firstly, landlord intends to sell the property, Secondly, landlord intends to move into the property. Thirdly, landlord intends to move a family member into the property. Fourthly, mortgage lender needs to regain the property.

8. We also believe that existing grounds for possession under the Act need strengthening. For example, under the rent arrears ground, tenants can pay off arrears on the day of the hearing which therefore makes the ground for eviction discretionary. Whilst we appreciate that some tenants would not do this maliciously, others may be inclined to continually play the system. Landlords should not be treated as an interest free lender by tenants who actively flout the responsibilities of their agreement. Thus, where a tenant has been in serious rent arrears of over three months, and has not paid this back consistently, the ground for possession should be absolute.

Considering the case for a Housing Court

9. Without effective court processes, the proposed changes to the eviction process will not be workable. The current court processes are slow and inconsistent. ARLA PropertyMark is advocating for the creation of a specialist Housing Tribunal for England and Wales. The Housing Tribunal should be given the existing powers of both the County Court (claims for possession and disrepair in respect of rented dwellings) and First-tier Tribunal (Property Chamber) to ensure that wherever possible persons bringing proceedings before the Tribunal should be able to have their matters dealt with in a single process. The creation of a Housing Tribunal would make longer contracts by default workable for landlords. The Bill will make contracts a minimum of 12 months in length by default. Without a Housing Tribunal and enhanced grounds for eviction, landlords will be reluctant to offer longer terms where they are faced with the threat of needing to reclaim their properties. For many landlords, long-term contracts do not prove viable due to current procedures. Letting agents want well-maintained tenancies as void periods and renewals reduce agent's fees. Where landlords use a letting agent, landlords will either pay a flat-fee upfront or a percentage of the rent each month for the agent to manage the tenancy. Where a flat fee is paid upfront it is in the letting agents' interest to ensure the contract is well maintained over a long period time because they are not receiving a monthly income from managing the property. For this reason, we would advocate that a Housing Tribunal is essential in making longer-term contracts by default workable. This would benefit landlords as they would have fewer void periods, letting agents for the reasons stated above and ultimately tenants who have a secure home. Without a specialist Housing Tribunal to deal effectively with evictions, it is highly unlikely that landlords will feel able to offer long-term contracts.

Appropriateness of the powers in the Bill

10. A longer notice period for a Section 173 notice will negatively impact the private rented sector in two ways. Firstly, it will extend the time taken during the eviction process, which is already a slow procedure. Secondly, extended timescales will increase the associated costs for

landlords going through the eviction process. Consequently, we believe that the perceived risks of an increased notice period could result in less homes available for private rent.

Time

11. Extending the minimum notice period will cause further delays in the eviction process. The eviction procedure, even under the Accelerated Possession route, is already a lengthy process. Via Accelerated Possession, after issuing a Section 21 notice, landlords are generally not required to have a court hearing meaning the process should be less susceptible to delays. Despite this, ARLA PropertyMark members cite delays at every stage of the possession action process in the County Court, beginning from the initial claim up to the eventual possession by instruction of a County Court Bailiff. Shelter reports that the full eviction process for a private tenant takes on average seven to eight months or 28-32 weeks including the two-month notice period.¹ In addition, statistics from the Ministry of Justice from December 2019 show that from claim to repossession by county court bailiff, the median average time taken to progress to possession for all tenure types was 21.0 weeks.² If the proposals in the Renting Homes (Amendment) (Wales) Bill are implemented, and court processes remain the same, the full eviction process will take approximately 12 months from the date the notice is issued.

Cost

12. A longer notice period will result in further loss of income for landlords through the length of court proceedings and accruing rent arrears. Despite the tenant still having a legal requirement to pay their rent once they have been issued a notice for eviction, many choose not to and the likelihood of this increases when the eviction has arisen from rent arrears. All time associated with eviction proceedings often results in further loss of rental income for the landlord, and the timing associated with each stage adds further frustration. Research conducted by StudentTenant.com in 2017, showed that when using High Court Enforcement Officers (known to execute a Possession Order notably quicker than through County Court Bailiffs) landlords pay around £1,981 and wait around nine months to evict a tenant.³ This waiting time would be increased should a longer notice period be introduced. Average rent across Wales currently stands at £650 a month⁴, if a landlord was hypothetically losing this amount of rent for 12 months, as a consequence of this proposal, this would be £8,450 (650 x (6 + 7)) not including added interest in arrears – totalling £10,431 including court costs. This figure does not include associated cost where a problem tenant has left the property in poor condition, meaning that the landlord would also have to fund repairs in order to let the property again. Furthermore, via Accelerated Possession, landlords cannot recoup lost rent. To do this landlord must submit a separate claim for monies owed which if the order is granted there is no guarantee that they will receive this money back.

Potential barriers to implementation

13. We are concerned that by introducing the proposals contained within the Bill, landlords will have no viable option of evicting problem tenants quickly and efficiently due to current court procedures. Although the Renting Homes (Wales) Act 2016 contains grounds for eviction based on a breach of contract and for serious rent arrears, both can be at the discretion of the Judge. Where a ground for eviction has been used, and it goes to a court hearing this stage can be extended through delays, adjournments, and through the actions of the tenant. This is

¹ https://england.shelter.org.uk/housing_advice/eviction/section_21_eviction/how_long_a_section_21_eviction_takes

² <https://www.gov.uk/government/statistics/mortgage-and-landlord-possession-statistics-october-to-december-2019>

³ <https://www.studenttenant.com/news/tenant-evictions-2000-eviction-fees>

⁴ <https://homelet.co.uk/homelet-rental-index/wales>

either by making vexatious claims or through playing the court system by making payments at the court in order to remove the mandatory ground for possession for rent arrears, currently via Ground 8 of Schedule 2 of the Housing Act 1988. Most often, landlords make use of a Section 21 notice as they are guaranteed to get possession. For instance, a recent survey shows that 57% of ARLA Propertymark members have issued less than ten Section 21 notices in the past two years and 39% haven't issued any Section 8 notices in the past two years. Further, where possession has been sought on discretionary grounds, the Judge may adjourn the application for possession where the tenant claims hardship. This can last for either a fixed period of time or indefinitely, providing that the defendant pays their rent and makes regular contribution towards existing arrears, if the tenant defaults again, the landlord or agent will have to wait more time to go to court and request another Possession Order.

14. Furthermore, landlords report difficulty in proving the anti-social behaviour of a tenant in order for them to be evicted. We have heard reports of Police giving evidence on behalf of a landlord, and the court would still not grant possession. The courts consider genuine remorse for actions and previous good character, the result of this being that only a Suspension Order is granted. We believe that without robust reform to the court system, these existing issues will worsen should these proposals be introduced as a standalone modification.

Unintended consequences

15. The Renting Homes (Amendment) (Wales) Bill will not improve security of tenure for those who rent their home in Wales. The proposals are overly biased towards the tenant and as such letting property becomes less of a viable business asset for landlords. This is because there is an increased risk in protecting assets (property) where there isn't straightforward means to regain the property quickly when things go wrong. With less landlords there will be less privately rented homes which will ultimately leave tenants with less choice of where to live. A decrease in private rented homes will create two unintended consequences. Firstly, remaining private rents will increase. Secondly, landlords will become more risk averse and will only choose to house the best tenants.

Financial implications

16. The private rented sector will shrink because of the Renting Homes (Amendment) (Wales) Bill. This will have two significant financial implications. Firstly, it will mean increased pressure on the social rented sector to provide more housing for displaced tenants. Secondly, it will cost the Welsh Government money to invest in additional property to be socially rented. The private rented sector has grown as social stock has depleted, and although previously saturated with working professionals and students, is now increasingly housing families and older people. If the private rented sector decreases, it will be the responsibility of local authorities to house those without access to the private rented sector. This will come at a significant cost to the Welsh Government as more will need to be invested in building and acquiring homes to be socially rented to make up for the shortfall in privately rented housing. Furthermore, it is likely that with less homes available to privately rent and social stock isn't increased to accommodate for this, the public sector will need to increase expenditure on temporary housing. In 2017, a Freedom of Information request found that the Welsh government had spent £8.6 million housing homeless individuals and families in temporary accommodation.⁵ Should the proposals of this consultation be introduced without assessing issues with court procedures, we would expect this figure to increase dramatically.

⁵ <https://www.walesonline.co.uk/news/wales-news/wales-housing-crisis-leaves-councils-14370392>