

RHA 02

Bil Rhentu Cartrefi (Diwygio) (Cymru)

Renting Homes (Amendment) (Wales) Bill

Ymateb gan: Dr Tom Simcock

Response from: Dr Tom Simcock

1.1 I welcome this opportunity to inform the ELGC Committee consultation on the Renting Homes (Amendment) (Wales) Bill. The Renting Homes (Wales) Act and this subsequent amendment propose significant changes to the regulation of the Private Rented Sector (PRS) in Wales.

2. General principles of the Renting Homes (Amendment) (Wales) Bill and the need for legislation to deliver the stated policy intention

Improving security for tenants

2.1 The proposed amendments to S.173 or 'no fault' evictions by this bill are significant improvements to the private rented sector in Wales. The private rented sector over the past twenty years has evolved rapidly, the sector is providing housing to a more diverse group, including families, low-income households and over-65s¹. The sector is a major source of long-term housing for these groups, and it is important to ensure that the regulatory framework of the private rented sector reflects these developments.

2.2 Currently, once tenants are past the initial 6 or 12 month tenancy period (unless they renew their tenancy, which previously required a fee and a higher rent), they face insecure periodic tenancies, where landlords are able to serve a Section 21 notice requiring the tenant to move out with just 2 months' notice without any reason needing to be provided or for the tenant to be at fault. This may pose difficulties for families, for example if they are served a S.21 during term time, to secure housing in a suitable location near their children's school(s) and could have an impact on the future outcomes of their children.

2.3 There is a growing body of research on the private rented sector, with findings highlighting the negative impact of the insecure nature of private renting on health and wellbeing², being able to feel at home in their rented property and being able to put down roots in their communities³. Recent research identified an association between private renting and higher levels of biomarker C-reactive protein (CRP), which is indicative of chronic stress/infection⁴. Further research has found that insecure housing and in particular private renting can have a negative effect on psychological well-being, with private renters experiencing anxiety and finding it difficult to 'settle down'⁵.

¹ Cole, I., Powell, R., & Sanderson, E. (2016). Putting the squeeze on 'Generation Rent': Housing Benefit claimants in the private rented sector- transitions, marginality and stigmatisation. *Sociological Research Online*, 21(2), 1-14. doi:<https://doi.org/10.5153/sro.3909>

² McKee K, Soaita A & Hoolachan J (2019) 'Generation Rent' and the Emotions of Private Renting: self-worth, status and insecurity amongst low-income renters. *Housing Studies*. <https://doi.org/10.1080/02673037.2019.1676400>

³ Soaita AM & McKee K (2019) Assembling a 'kind of' home in the UK private renting sector. *Geoforum*, 103, pp. 148-157. <https://doi.org/10.1016/j.geoforum.2019.04.018>; Hoolachan, J. et al. 2016. '[Generation rent' and the ability to 'settle down': economic and geographical variation in young people's housing transitions](https://doi.org/10.1080/13676261.2016.1184241)'. *Journal of Youth Studies* (10.1080/13676261.2016.1184241)

⁴ Clair A, Hughes A. Housing and health: new evidence using biomarker data. *J Epidemiol Community Health* 2019; **73**:256-262.

⁵ McKee, M., Reeves, A., Clair, A. et al. Living on the edge: precariousness and why it matters for health. *Arch Public Health* **75**, 13 (2017) doi:10.1186/s13690-017-0183-y

- 2.4 The amendments proposed in this bill to S.173 notices, with the increase of the minimum notice period to six months and the restriction of issuing a S.173 notice until six months after the occupation date, will provide private renters with a minimum of 12 month security, unless there is a fundamental breach of contract by the tenant.
- 2.5 This is an important step to improve the lives of renters in Wales, while we learn from the lessons of reforms in Scotland, and the Bill strikes a fair balance in the PRS between tenants and landlords. Tenants will know that they will have at least a minimum of 12 months in their home, as long as they continue to pay the rent and fulfil their duties, and landlords will still be able to regain possession of the property if the tenant breaches the terms of the tenancy, such as in the case of rent arrears or anti-social behaviour.
- 2.6 The sector does provide much-needed housing for those looking for short-term/flexible housing, such as when moving for employment. There may be concerns that the proposed Bill could negatively affect the flexibility the sector provides some groups of renters. Yet, private renters will still have the option to sign six-month tenancies and would be able to end the tenancies at the end of the six-month period by vacating the property. The proposed bill, however, does provide greater security for these renters, with the changes to fixed-term contracts to become periodic contracts and would provide a further six months security if the tenant needed this. Nevertheless, there is a potential unintended consequence through the amendment to the use of break clauses that could trap tenants in longer-term contracts.

Maintaining balance and fairness in repossessions and the private rented sector

- 2.7 The Bill further removes the ability for the landlord to serve a S.173 notice within a six-month period following the expiration of a previous notice. This amendment is welcome, and I anticipate that this should reduce anxiety and worry for private renters through providing greater certainty and control over their home lives. This amendment is unlikely to have any negative effect for private landlords per se. If the landlord has made an error in the S.173 notice, the bill contains measures for allowing the landlord to fix any errors in the first S.173 notice within a fourteen-day period. Furthermore, if the landlord had a genuine reason to utilise the S.173 notice where the tenant is not at fault, for example, the landlord wishes to sell the property with vacant possession, it is anticipated that the landlord would then act upon the notice given. There may be occasions where the landlord's timeframe changes (for example with selling the property), however, this has to be balanced against the uncertainty and insecurity the tenant would face in this situation.
- 2.8 Where there is a breach of tenancy by the tenant (such as Rent Arrears, Anti-Social Behaviour, or damage to the property) the landlord would still be able to seek possession using Section 157 or Section 181 under the 2016 Act. This would be more favourable for the landlord to proceed under these grounds even without the amendment in the proposed Bill due to the shorter notice periods needed. These two routes do require a court hearing and require the landlord to provide evidence that the tenant is in breach. However, the loss of one's home is not trivial or a simple contractual matter. A home is a person's shelter, their space to be themselves, their space to escape, their space to cry, to love and to be happy⁶. For someone to be evicted from

⁶ Gurney, C., (2000). *Accommodating Bodies. The organisation of corporeal dirt in the embodied home*. In Mckie, L., and Watson, N., (EDS) *Organising Bodies. Policy, Institutions and work*. Basingstoke. Macmillan. Pp 55-80.

their home, this is a significant life event, and the legal process needs balance and must be fair. If the tenant has breached the terms of the contract, then they should be able to provide a defence against said breach. For example, if someone is being accused of anti-social behaviour, it should be up to the courts to decide whether the tenant has engaged in this behaviour or not rather than the landlord being judge and jury.

2.9 There is limited evidence on the potential impact of the proposed amendments set out in this Bill on private landlords. The Welsh Government in the Regulatory Impact Assessment (RIA) and Explanatory Memorandum have greatly depended on one particular survey from the Residential Landlords Association. This survey identifies that 49% of landlords had sought to regain possession and 83% of these had used a Section 21 notice due to rent arrears. However, I believe there is a need to be cautious in the use of these figures as I have concerns over potential sampling bias. Firstly, there is limited demographic data provided in the report which limits our ability to gauge whether the responses are representable of the wider landlord population. While the sample of landlords is very large, if there are sampling issues, this could lead to errors in the findings.

2.10 The English Private Landlord Survey 2019⁷, which used a different methodology for sampling, identified that only 7% of landlords had needed to regain possession of a property, with 58% of landlords citing rent arrears as being a major factor. In comparison, my own research⁸ identified that 25% of landlords had needed to regain possession of a property in the past 12 months, with 69% of respondents reporting rent arrears being a major reason. While all of these surveys have identified rent arrears as being a significant reason (albeit at a much lower prevalence than the RLA survey used to inform the RIA), these surveys look at landlord experience in a multi-response format and do not examine the number of tenancies ended and for what reason. One study that has examined this was undertaken by Dr Chris O'Leary and colleagues at Manchester Metropolitan University⁹. In figure 7 on page 28 of their report, the report authors identify the number of tenancies ended by through both S21 and S8 routes and the reasons for the tenancy being ended by the landlord. Based on the data in the figure, we can identify that 54% of Section 21s were served due to the tenant being at fault (37% were due to rent arrears).

2.11 If this Bill is enacted, it is anticipated that landlords would serve a section 157 or section 181 notice if the tenant is in breach of contract rather than using a Section 173 notice. However, based on the research identified above, the number of landlords who would need to utilise a S.157 or S.181 due to a breach of contract by the tenant is likely to be lower than estimated in the RIA. This may have an effect on private landlords when they are selling the property or seeking possession for alternative reasons and utilising the Section 173 notice. However, the increase of the minimum notice period to six-months would provide a more suitable period of time for the tenant to find alternative accommodation over the current two-month period.

3. Unintended consequences arising from the Bill

⁷ MHCLG. (2019). *English Private Landlord Survey 2018: Main Report*. London, UK: Ministry for Housing, Communities & Local Government.

⁸ Simcock, T., & Kaehne, A. (2019). *State of the PRS (Q1 2019): A survey of private landlords and the impact of welfare reforms*. Ormskirk, UK: Edge Hill University.

⁹ O'Leary, C., O'Shea, S., & Albertson, K. (2018). *Homelessness and the Private Rented Sector*. Manchester, UK: Manchester Metropolitan University.

- 3.1 There are a number of potential unintended consequences that could arise with the implementation of this bill. However, on balance, the Bill would provide greater security for private renters across Wales and these potential issues while important should not distract from the potential benefit the Bill could bring to families and households.
- 3.2 One potential unintended consequence could be landlord investment decisions based on differing legal framework across Great Britain. The implementation of this bill would introduce differing routes for possession and would be in contrast to possession routes in England, where Section 21 notices currently remain unchanged. The Westminster Government has announced intentions to completely remove the Section 21 route, however, no timeframe is currently available on this. However, after this reform is implemented in England, this could mean that Wales would be the only country in Great Britain to retain a 'no fault' possession route and therefore, could be more favourable to investors.
- 3.3 A further consequence of this bill could be that landlords decide to move their property into the short-term let market, such as by using Airbnb. For landlords, this would be a much more unregulated market, with potential tax advantages and higher returns. The UK Government have phased in tax changes to private landlords' ability to claim finance interest relief on mortgage costs, which would reduce the profitability of private landlords. However, in certain circumstances this is available for short-term holiday let operators, which along with the higher returns could make this more financially attractive for landlords. Nevertheless, this is unlikely to be desirable for all landlords and properties. There is considerably more work needed to be undertaken on a day-to-day basis for a short-term let, and only properties in high condition that are fully furnished and in a favourable location are likely to be fully suitable for the short-term let market. It is likely that a good proportion of these properties have already moved over to the short-term let market.
- 3.4 One potential negative impact is the amendments to the break-clauses within longer-term tenancies. While the Bill makes important amendments to the Renting Homes (Wales) Act that will improve the lives of renting households. I have concerns that an unintended consequence of the break-clause amendment may remove flexibility for renters. If the renter is offered a new role or employment in another part of the country, they would still be stuck in the rental contract, with a potential negative impact on employment and mobility. My preference would be for indefinite tenancies rather than time-limited tenancies, as these provide the long-term security and flexibility renters would need, however, this is out of the scope of this Bill.

4. Financial implications of the Bill

- 4.1 While the RIA has considered costs to local government homelessness services, there are potential further cost savings and benefits to employers and healthcare providers. Research has found that private renting is associated with anxiety and stress, with factors including the insecure nature of renting. The proposed amendments are anticipated to be linked to positive long-term health impacts due to potential improvements in psychological well-being from more secure housing. It would be conceivable that this could lead to reduced health costs and improved productivity in the workplace, which could potentially lead to improved economic performance. Further research is required in this area to help determine the cost benefits of this improved security of tenure on these factors.

4.2A further positive impact of this Bill through improving security of tenure and enabling families to stay longer in their properties is that this could improve child outcomes. The improved security of tenure could reduce the disruption faced by children during school terms and lead to improved child outcomes. This is likely to have long-lasting economic and social outcomes. Further research is required to develop a deeper understanding of child outcomes and tenure and likely long-term impacts.

5. Final comments

5.1 I would like to thank the Committee for this opportunity to provide evidence and input into the scrutiny of the Renting Homes (Amendment) (Wales) Bill. This is a welcome first step to modernising the private renting sector and increasing the security private tenants have in their property. As I have highlighted above, I believe that this amendment is moving the Welsh PRS to a more fair regulatory landscape, providing tenants with the knowledge that they will have at least 12 months in the property, while landlords will still be able to regain possession if there is a breach of contract.

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About Dr Tom Simcock

Dr Tom Simcock is a Research Fellow in the Unit for Evaluation and Policy Analysis (EPA) at Edge Hill University. Tom has extensive experience of undertaking both quantitative and qualitative research across a diverse spectrum of policy areas including education, health, housing, and public-sector reform. Tom is currently a member of the Housing Studies Association (HSA) Executive Committee and is the Chair of the Evidence Network for Renting (EN4R), a knowledge-exchange initiative which brings together academics, stakeholders and policymakers to share research on renting to support evidence-informed policymaking and practice. Tom's most recent research has focussed on housing policy and the private rented sector; including examining the impact of welfare reforms such as Universal Credit, regulation and longer-term tenancies, and the growth in popularity of Airbnb. Tom's research on housing has received national and international media coverage, has influenced Government policy-making, including being cited in national Government consultations on the private rented sector, and his research has been widely cited in debates in the House of Commons, House of Lords, and by the London Mayor.