

## THE REPRESENTATIVE BODY OF THE CHURCH IN WALES

### POSITION PAPER – RENTING HOMES (WALES) ACT 2016

#### PARSONAGES AND MINISTERS OF RELIGION

##### Introduction

1. If and when brought into force, the *Renting Homes (Wales) Act 2016* (“the Act”) will replace the vast majority of current residential tenancies and licences in Wales. They will be replaced by one of just two types of ‘occupation contract’ – either a ‘secure contract’ (based on the secure tenancy as presently found in the Housing Act 1985) or a ‘standard contract’ (based on the assured shorthold tenancy as presently found in the Housing Act 1988).
2. The Representative Body of the Church in Wales provides housing, on behalf of the Church in Wales, to enable its ministers to live within the communities they serve and undertake a wide variety of work for the benefit of the community. These ministers of religion occupy these properties (known as parsonages) as service occupants to enable the better performance of their ministry.
3. The Church in Wales recognizes that one of the quite deliberate effects of the Act is to bring most service occupancies within the framework of a standard contract, and to provide service occupants with a number of protections (most particularly, enhanced protection from eviction) which they do not currently enjoy.

##### The Position of the Church in Wales

4. However, the Church’s view is that Church in Wales ministers occupying parsonage properties do not fall within the scope of the Act. As set out in Section 7(1)(b), a licence is only an ‘occupation contract’ within the meaning of the Act if “*rent or other consideration is payable under it*”. Church in Wales ministers do not pay any rent, licence fee or other payment to the Representative Body or to any other Church in Wales body.
5. As to whether ‘other consideration’ is payable, the decision of the Supreme Court in *Preston v President of the Methodist Conference*<sup>1</sup> is relevant. Paragraph 19 of *Preston* sets out the position of the Methodist Church on the provision of accommodation for ministers:

*...Neither the stipend nor the manse are regarded by the Methodist Church as the consideration for the services of its ministers. They regard them as a method of providing the material support to the minister without which he or she could not serve God. In the Church’s view, the sale of a minister’s services in a labour market would be objectionable, as being incompatible with the spiritual character of their ministry...*

6. In paragraph 20 Lord Sumption states:

---

<sup>1</sup> [2013] UKSC 29; [2013] 2 AC 163

*If the arrangements governing the ministry described in the Deed of Union and the standing orders are a contract between the minister in that capacity and the Methodist Church, then it seems to me inevitable that they must be classified as a contract of employment...*

7. The Supreme Court held, by a majority of 4 to 1, that the relationship between the Methodist Church and the minister in question was not a contract of employment (and that the relationship described by Lord Sumption in paragraph 20 is not contractual).
8. The Church in Wales considers that its engagement of ministers is of sufficient equivalence to the Methodist Church (including in particular its provision of accommodation) that the principles set out in *Preston* would apply equally to it. Most particularly for these purposes, the provision of accommodation by the Representative Body is not in return for rent or other consideration.
9. Welsh Government's January 2020 integrated impact assessment for the *Renting Homes (Amendment) (Wales) Bill* appears to support the analysis that such arrangements are not caught by the Act, as it defines a service occupancy (in relation to the Act) as an arrangement where "someone is required to occupy a dwelling by their contract of employment" (emphasis added).<sup>2</sup>

#### **Our Ecumenical and Inter-Faith Partners**

10. Whilst, we believe, the Church in Wales is not affected by the Act (in providing parsonages to its ministers), we consider it inequitable that some denominations and faith groups will be subject to the provisions of the Act and some will not, depending almost entirely on the happenstance of how denominations and faith groups modelled their constitutions decades (if not centuries) ago.
11. Some of the particular issues to faith communities have been highlighted in recent consultation responses. These include being unable to rotate clergy on an annual basis between ministry roles (a 12 month minimum occupancy does not allow for a void period between occupancies and thus prevents new cleric starting on a coordinated national annual date, such as 1 September).
12. Others have not perhaps been fully articulated to Welsh Government or to Senedd members. These include the problems with a lengthy notice period before securing possession of a parsonage if a minister is removed due to a serious disciplinary issue. This could include, for example, an issue involving the safeguarding of children or vulnerable adults, where securing the removal of the minister from the parsonage quickly may be critical - either for the minister's own safety, or for the safety of a child or vulnerable adult.
13. It is highly unusual for the Senedd to have passed legislation that will adversely affect some faith groups to such a huge extent, whilst leaving others entirely unaffected. We cannot see that any consideration at all was given to this point in any of the Equality Impact Assessments undertaken to date, and we consider that there is a real risk of discriminatory policy impact.

---

<sup>2</sup> <https://gov.wales/sites/default/files/publications/2020-02/renting-homes-amendment-wales-bill-impact-assessments.pdf>, page 9.

14. Indeed, we cannot see that any specific attention was given to the potentially anomalous position of ministers of religion (distinct from service occupants who are employees) by the Law Commission (in 2003, 2006 or 2013) or by Welsh Government in any of the consultations leading up to the Act. The Law Commission, in its defence, had concluded its initial work in 2006 long before the Supreme Court had delivered its judgment in *Preston*. Its March 2013 report *Renting Homes in Wales* was finalised two months before the judgment in *Preston* had been delivered, although after oral arguments had been heard in February.
15. This disparity of treatment can be easily resolved by an order under Schedule 2, Part 6 of the 2016 Act. Such an order could add an exception for “*ministers of religion occupying a property without monetary consideration in furtherance of their ministry*” (or similar). The exception could be added either to Schedule 2, Part 2 or to Schedule 2, Part 3. We would suggest that Schedule 2, Part 2 would be the more appropriate, as this would permit those faith groups who so wished to confer on their ministers the rights contained within the Act.
16. Alternatively, an exception could be inserted by the Senedd, by way of an amendment to the *Renting Homes (Wales) (Amendment) Bill* currently before it.

### **Potential unintended consequences**

17. If we are incorrect in our interpretation of Section 7(1)(b) of the Act (because a minister performing their ecclesiastical and religious functions were considered by the Courts to be ‘other consideration’), then the Representative Body would be required to issue a written statement of the terms of the occupation contract with an occupier (section 31), and this must include certain ‘key matters’ (section 32). Key matters include the amount of ‘rent or other consideration’ due (section 29).
18. Given no rent is paid, this would require the Representative Body to detail the ‘other consideration’ in an occupation contract. This would be a contract between church and minister, detailing the services and functions required from a minister by the church. Following the logic of the Supreme Court in *Preston* (with particular reference to paragraph 20 of the judgment, already quoted above) it seems likely that this would be treated by the Courts as a contract of employment.
19. If this were so, the direct effect of the Act would alter the relationship between church and minister from a relationship which is not an employment relationship to one which is an employment relationship.
20. Employment law is not a devolved matter.
21. Perhaps unsurprisingly, we can find no evidence that this point has been considered at any point in the genesis or passage of the Act, whether by Welsh Government or the Law Commission.
22. For the Church in Wales this would only affect clergy within the territorial boundaries of Wales<sup>3</sup>. For denominations and faith groups operating on both sides of the border (and with clergy engaged to minister on the same basis in England as in Wales), it has the potential to

---

<sup>3</sup> As the name implies, the jurisdiction of the Church in Wales is almost entirely co-terminus with the civil boundaries of Wales.

affect not only the employment status of their clergy in Wales, but, potentially, in England as well.

23. Again, this clearly unintended consequence could be resolved by an order to add the exception set out in paragraph 15.

## **Conclusion**

24. Whether or not the Church in Wales is directly affected by the changes, the commencement of the Act will have very significant adverse impact on a number of faith groups. It has the potential fundamentally to alter the relationship between faith group and minister of religion – including in areas which are reserved matters. Such impacts are clearly not the intention of the legislation, and can be easily remedied through the mechanism in Schedule 2 of the Act. We urge the Senedd, or the Minister, to do so.

**Representative Body of the Church in Wales**

**21 September 2020**