



promoting equality in housing
hybu cydraddoldeb ym maes tai

Tai Pawb

Response to:

Increasing the minimum notice period for a 'no fault eviction' **Welsh Government**

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Who we are

Tai Pawb (housing for all) is a registered charity and a company limited by guarantee. The organisation's mission is, "To promote equality and social justice in housing in Wales". It operates a membership system which is open to local authorities, registered social landlords, third (voluntary) sector organisations, other housing interests and individuals.

What we do

Tai Pawb works closely with the Welsh Government and other key partners on national housing strategies and key working groups, to ensure that equality is an inherent consideration in national strategic development and implementation. The organisation also provides practical advice and assistance to its members on a range of equality and diversity issues in housing and related services.

Tai Pawb's purpose is to Inspire Wales to be a Fairer Place to Live

For further information visit: www.taipawb.org // [@TaiPawb](https://twitter.com/TaiPawb)

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Summary

We broadly welcome the proposals outlined in the consultation paper. In our view, the longer notice period goes some way towards further fulfilling and progressing tenants' right to adequate housing, contained in the International Covenant on Social, Economic and Cultural Rights, which has been ratified by the UK government and is binding on the Welsh Government. One of the crucial elements of adequate housing, as defined by the UN, is security of tenure. In our view, current arrangements under section 21 as well as forthcoming section 173 and 186 are not consistent with the right to housing.

In our view this proposal goes a long way towards achieving greater security of tenure although the next step, if the right was to be more fully realised, would be abolishing no fault evictions altogether, whilst extending, proportionally, the grounds for eviction, in a way which can be verified in a court or a tribunal. Whilst the current proposal, as well as other Renting Homes Act provisions would make housing for tenants more secure, they still do not address the issue of retaliatory evictions fully, as there is no mechanism for providing and perhaps verifying the reason for eviction.

1) The minimum notice period for a section 173 under the 2016 Act is two months, similar to section 21 notices currently. The Welsh Government proposes to extend this period to six months.

In our view, the proposal will have a significantly positive impact on PRS tenants with a particularly positive impact on those tenants where lack of security of tenure and the resulting threat of homelessness can have a particularly disruptive effect on their lives. We would support the consultation paper focusing on tenants such as those with families or those with a disability including mental health problems and the disruption caused by no fault evictions, and in particular the short notice period.

16% of households threatened with homelessness last year were households with dependent children who faced homelessness due to loss of rented or tied accommodation (Stats Wales 2018). This statistic is particularly worrying in light of the rights of children espoused by Welsh legislation, in particular the Wales Children and Young People measure. According to Article 27 of the UNCRC, as incorporated by the measure, children have the right to a good standard of living, including housing.

It is not difficult to imagine the difficulty of finding a new home within a 2 months period, especially when that home has to be safe and secure, of appropriate size, in close proximity

to schools, especially when the child is disabled and attends specialist school or needs specialist support and advice within that area.

Tyfu Tai research conducted by Tai Pawb in 2019, *Private Renting and PRS, a Way Forward (CIH Cymru 2019)* also demonstrates issues experienced by tenants with mental health problems who are trying to access PRS accommodation. For example, the research shows 90 per cent of the people who responded from support organisations thought that people with mental health problems trying to access accommodation in the private rented sector face discrimination from letting agents or landlords always, most of the time or sometimes. Over a third (37.4 per cent) of people from support organisations felt this was the case always or most times. Consequently, people with mental health problems who are given 2 months' notice to leave their home face not only the likelihood of their mental health worsening due to the anxiety each of us would experience in this situation, but they also face enormous barriers when trying to access new accommodation in that period. The research also shows that the support available for tenants is insufficient, especially in terms of early intervention.

We would support the evidence contained in Shelter Cymru briefing (2018) which is based on their 2017 PRS tenants research and which describes the changing nature of PRS and the impact no fault evictions have on tenants, in particular families
<https://sheltercymru.org.uk/wp-content/uploads/2018/02/End-s21-policy-briefing-Nov-17-FINAL-1.pdf>.

The consultation rightly draws attention to the changing nature of PRS tenants and renting, with more vulnerable people and families now occupying PRS for longer periods of time. No longer is the PRS associated only with mobile young professionals and students but is now home to tenants from a wide variety of backgrounds, ethnicities and household compositions, (Census, 2011). For instance, we know that there are:

- Much higher numbers of younger people than older people living in the PRS: 60% of those aged 24 and under live in the sector compared to 6% of those aged 64-74. However more older and middle aged people now live in the sector. (Census 2011)
- High numbers of migrants, particularly new migrants (those that have been in the UK for five years or less) living in the PRS. 38% of those born outside of the UK live within the sector compared to 15% of those who born in the UK. This figure rises to 61% when considering migrants to have arrived in the UK since 2001. (Census 2011)
- Every BAME group is more than White British people to live in the PRS in Wales, (35.6% BAME vs. 14.9% White). (Census, 2011).

- The PRS in Wales, now represents a lifetime tenure for 40% of its tenants (Dawson, 2017).

During the second half of the 20th century the PRS became the sector of flexibility for young single professionals or childless couples (Lund 2006). As such, the sector is now also being accessed by tenants with needs that would have traditionally been met by social landlords. The PRS is in a critical position where diverse ranges of people are accessing the sector; some of whom with vulnerabilities which the sector needs to be able to meet the needs of.

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Awareness

If the proposed changes to legislation are brought in, it is vitally important that resources are committed to raising tenants' awareness of the new legislation and their rights. We would note, that whilst Rent Smart Wales is a fantastic mechanism to engage with landlords, the mechanisms to engage with PRS tenants in Wales are lacking. Even Generation Rent, a relatively high profile campaign, has only five staff¹, of which none are based in Wales.

Although organisations like Let Down Wales or Shelter Cymru make a valued and positive contribution to policy, there is no appropriately resourced organisation or group which would allow for continuous engagement with private tenants, who constitute a group of ca 200,000 people in Wales.

Whilst this has been a welcome intervention in improving the standards in the PRS, independent evaluation has evidenced that the majority of tenants surveyed are still unaware of Rent Smart Wales and how the scheme is of any direct benefit to them, (RSM, 2018). This is particularly worrying for the sector as any positive intervention made is limited if tenants are not aware of how the changes impact them. One of the ways in ensuring that tenants are aware of changes and how they affect them, would be to ensure that debates around legislative changes include PRS tenants as key stakeholders. The findings from the independent review of Rent Smart Wales suggests that there is still significant progress to be made in engaging PRS tenants in Wales.

Having spoken to a group of PRS or former PRS tenants, it is also crucial that, when announcing any changes, Welsh government re-emphasizes the rights of tenants to give notice. As the current consultation only describes the rights and responsibilities of landlords to give notice, it could be misconstrued by many tenants as changing the minimum notice period for tenants to 6 months.

In addition to the above, we are also aware of the confusion as to whether currently tenants have to give notice to end a fixed term contract. This could be addressed in the forthcoming communication.

Wording

One of our members brought our attention to the current wording of parts of sections 173 and 186 relating to the possession notice required from a landlord in the Renting Homes Act:

*S 173: (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.*

*S 186: 1)The landlord under a fixed term standard contract may, before or on the last day of the term for which the contract was made, give the **contract-holder notice that he or she must give up possession of the dwelling on a date** specified in the notice.*

(emphasis ours)

The wording of an equivalent part under Section 21 of the Housing Act 1988:

(1)Without prejudice to any right of the landlord under an assured shorthold tenancy to recover possession of the dwelling-house let on the tenancy in accordance with Chapter I above, on or after the coming to an end of an assured shorthold tenancy which was a fixed term tenancy, a court shall make an order for possession of the dwelling-house if it is satisfied—

(a)that the assured shorthold tenancy has come to an end and no further assured tenancy (whether shorthold or not) is for the time being in existence, other than [F1an assured shorthold periodic tenancy (whether statutory or not)]; and

*(b)the landlord or, in the case of joint landlords, at least one of them has given to the tenant not less than two months' **notice** in writing **stating that he requires possession of the dwelling-house***

(emphasis ours)

There is a difference in emphasis in the wording, i.e. RHA 2016 wording of 'must give up possession' gives the impression that the tenant does not have rights which they can seek to establish in a court of law and they must give up possession at the end of the period.

In comparison, the wording in HA 1988 'notice that he (sic!) requires possession' puts the emphasis on the landlord requiring possession, without pre-supposing the outcome.

We agree with our member that the above wording should be looked at and possibly rectified.

Impact on landlords

Whilst Tai Pawb strongly supports the proposal, great care needs to be taken when considering the impact on landlords and the broader housing market, including availability of PRS accommodation. PRS tenancies fill a widening gap in the supply of housing in general, but more specifically social housing, and any unintended consequences of the legislation, especially any potential decrease in availability needs to be balanced against the much needed increase in social housing supply.

For commonly known reasons, no fault evictions are often used by PRS landlords as the relatively easy means of dealing with evictions of tenants who might have committed ASB or who are in rent arrears. Although we understand that court processes, including those pertaining to other possession grounds, are not a devolved area, it is important to take into account some of the difficulties that landlords might experience in relation to possession proceedings relating to those grounds, in particular timescales, IT systems and shortage of administrative resources leading to prolonged processes. RLA's possession reform survey found that in the majority of court cases it took landlords more than 15 weeks to regain possession of their property after applying to court.

We are also aware of potential unintended consequences in terms of the student market, taking into account student tenancy cycles. This has been brought to Welsh Government attention during a policy meeting and should be considered, including analysis of the effect of similar legislation on student housing in Scotland.

It is important that Welsh Government takes landlords views and experiences into account and works closely with the UK government on improving court possession proceedings.

The same pertains to analysing the response of buy to let lenders. We know that some lenders required landlords not to rent to tenants in receipt of benefits. It is absolutely crucial to monitor the effect of the above proposals on lender behaviour, mortgage prices and, going forward impact on the size of the PRS, especially in areas where it is desperately needed due to other housing shortages.

Going forward, in our view, Welsh Government should consider establishing a housing ombudsman office as well as a separate housing tribunal system – both of which would go a long way to speeding up possession and other processes for both tenants and landlords alike. A Welsh housing tribunal would certainly make housing fairer for all in Wales.

We would also like to draw attention to the paragraph referring to landlords' property rights and that they will be taken into account. It would be difficult to comment on this impact without knowledge of what and how the consideration has been given. For example it would be possible to imagine a situation where a landlord is threatened with homelessness themselves and requires the property to avoid homelessness and secure their property as well as housing rights (especially as in the situation of so called accidental landlords, people who might have inherited a property or landlords with one property, who rely on the income from the property). The current proposal, as we understand it, does not take into account any extenuating circumstances that the landlord might find themselves in, including financial difficulty.

In light of the above, there is a question as to whether the Scottish model of ending no fault evictions but extending grounds for eviction to prescribed grounds, verifiable by court, should be the model considered.

Local Authorities

Important point to consider is the impact of the proposed changes on the duties and behaviour of local authority homelessness departments. The change does not constitute a change in the statutory homelessness prevention period of 56 days. To what extent and in what way would local authority use evidence of tenants actions in terms of finding new accommodation before the 56 days period is reached (i.e. in the first 4 months of the notice period)? Would it lead to using intentionality clauses more frequently? How would this affect the consideration of tenants circumstances? What assistance could and would be provided to those who have been given 6 months notice, at the beginning of this period? These are all important questions and scenario's to consider.

2) Under the 2016 Act, a section 173 notice cannot be issued within the first four months of a fixed term contract. Welsh Government proposal is to extend this period from four months to six before the Act is implemented. This will effectively double the length of time before a landlord can seek possession from six months to one year as long as there is no breach of contract.

Agree. See above.

3) At present, there would be nothing to prevent a landlord or agent from issuing a section 173 notice every six months, so they could evict the tenant should they choose to do so in the next six months. This would result in the extended notice period the Welsh Government proposes being circumvented and a contract-holder having little security during the tenancy as an eviction notice would always be hanging over them. To avoid this, the Welsh Government proposes placing a six-month restriction on the re-issuing of a section 173 notice after the previous one has expired.

We would urge caution in relation to this provision, especially that there may be a valid reason why an eviction notice was not used. On the other hand, it seems a reasonable provision, considering the intended aims of increasing the security of tenure for tenants.

4) Currently, under section 186 of the 2016 Act, a landlord may issue a minimum two months' notice that the contract-holder must give up possession of the property. But the notice cannot require the contract-holder to give up possession before the end of the fixed term period, or within six months of the occupation date (the day on which the contract-holder would have been entitled to enter the property). If the contract-holder does not leave on the date specified in the notice (which will usually be the date on which the fixed term period ends, but could be later), the landlord may make a possession claim to the court.

Leaving this provision in place, whilst extending the required notice period for a section 173 notice to six months, would create a situation where a landlord could circumvent the protections offered for periodic standard contracts.

This is because, with the notice period applicable to a periodic standard contract extended to six months, a landlord may consider short fixed term contracts a preferable option. This could significantly reduce, or indeed negate, the benefits to contract-holders of extending the notice period under section 173. A contract-holder would not get the benefit of the increased security or of the extended notice periods where a landlord chose to offer a short fixed term contract that could be ended (after the end of the fixed term) by giving two months' notice.

Therefore, it is proposed to remove a landlord's ability to issue a notice to end the fixed term contract under section 186. 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, which would be subject to the amended six-month notice period.

We are unsure as to the possible impacts of this provision and we would urge more research. We think the impact of this provision will be very different depending on the provision relating to break clauses. Some groups of tenants require tenancies shorter than six months, if the only option from the landlord is a fixed term 6 month tenancy (as there is no incentive to have shorter fixed term tenancies) – would this mean the groups of tenants requiring flexibility will be at a disadvantage? It is difficult to predict the impact in this case.

5) Break clauses allow a landlord or a contract-holder to end a fixed term contract at an agreed point. Whilst they do not automatically form part of every fixed term contract, they can be requested for inclusion by either party. The inclusion of regular break clauses by a landlord could circumvent the proposals being made in relation to extending security of tenure. For example a three year fixed term contract could be issued which included a term enabling the landlord to issue a possession notice every six months.

There is, therefore, a need to consider the future use of break clauses under the 2016 Homes Act. Three potential ways of doing so are:

- ***To limit the permitted number and/or frequency of break clauses under a fixed term contract.***
- ***To set a minimum period before a break clause can be exercised.***
- ***To prevent the use of break clauses.***

We would support setting a minimum period before a break clause can be exercised. This would provide for security of tenure but would also allow flexibility for both tenant and landlord. However, this needs to be carefully considered in relation to the needs of various groups of tenants. For example, many single refugees who are awaiting for their family to be reunited with them, require short term tenancies and flexibility, often shorter than 6 months. It would need to be considered how either of the three options would affect such groups and balance it against the needs of others and landlords property rights.

6) The Welsh Government proposes that, where a court has deemed a notice under section 173 of the 2016 Act to have been issued in a retaliatory fashion (e.g. to avoid undertaking repairs reported by the contract-holder) a landlord will be prevented from issuing a further notice under section 173 for six months.

The proposal would enable property standards to be enforced and provide a sanction for landlords not complying with the required property management standards.

This would improve environmental health's ability to act proactively to raise property standards. Currently, housing enforcement officers respond to complaints, but until the Renting Homes Act comes into force, there is always a risk a tenant will receive a s21 notice. The proposal would mean enforcement could be initiated by an officer, not a complaint, without such a high risk for the tenant. This could result in wholesale improvements in blocks or localities in a strategic manner.