

Renting Homes (Amendment) (Wales) Bill Bill Summary

October 2020



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1. Overview of the Bill

The *Renting Homes (Amendment) (Wales) Bill* ('the Bill') seeks to provide people who rent their homes with greater security of tenure. It addresses the use of 'no-fault' evictions, which are frequently used in the private rented sector.

The Bill was introduced to the National Assembly for Wales on Monday, 10 February 2020. It amends the ***Renting Homes (Wales) Act 2016*** ('the 2016 Act'). The 2016 Act has not yet been fully commenced. Reasons for this are outlined in part 3 of this briefing.

On 11 February 2020, the Minister for Housing and Local Government ***made a legislative statement in the Senedd*** that outlined the purpose of the Bill. The Minister noted:

This Bill will amend the 2016 Act to provide greater security of tenure for contract holders who rent their homes in Wales, in particular those who live in the private rented sector and who will, when the provisions of the 2016 Act come into force, do so under standard occupation contracts with their landlord.

The main amendments made by the Bill to the 2016 Act are:

- For periodic standard occupation contracts, extending the period of notice a landlord must give a contract-holder of a periodic standard contract under Section 173 of the 2016 Act from two months to six months. Additionally, the notice may not be given until at least six months after the occupation date. This means a contract-holder will be able to stay in the dwelling for 12 months unless they breach the terms of the contract;
- For fixed term standard occupation contracts, preventing landlords giving notice during the fixed term of the contract that they require possession, unless the contract contains a break clause. The Bill prevents a break clause from being included in fixed term contracts that are less than 24 months' long. A landlord's break clause can only be activated from month 18 of the contract. Where a fixed term contract is less than 24 months duration, or there is no break clause, the landlord will have to wait for the occupation contract to become periodic at the end of the fixed term before they can serve six months' notice under Section 173.

Much of the Bill is concerned with ensuring that it is not possible for landlords

to avoid complying with the new requirement to give six months' notice. The Bill therefore contains a range of amendments to address any attempts to avoid complying with the new requirements.

The Bill makes a number of exceptions to the new notice provisions for certain types of standard occupation contract. This means, it will still be possible to bring certain standard occupation contracts to an end by giving two months' notice. Certain fixed-term standard contracts will also not be subject to the new restrictions on giving notice during any fixed term, or on inserting break clauses in fixed term contracts. This will benefit social landlords and employers who provide accommodation, amongst others.

The Bill also proposes a number of miscellaneous amendments to the 2016 Act, as well as minor and consequential amendments.

Scrutiny of the Bill has been undertaken by the Senedd's Equality, Local Government and Communities Committee which has published its **Stage 1 report**. The Senedd's **Finance Committee** and **Legislation, Justice and Constitution Committee** also considered the Bill.

Temporary changes have been made to eviction notice periods in Wales using powers in the *Coronavirus Act 2020*. Further information on these changes is available in a **blog post** by Senedd Research.

1.1. Legislative competence of the Bill

The Llywydd **wrote** (PDF, 106KB) to the Chair of the Equality, Local Government and Communities Committee and Legislation, Justice and Constitution Committee on 4 March 2020 to confirm that, in her view, the Bill was within the competence of the Assembly. However, that conclusion was qualified. The Llywydd noted:

... the Bill engages with Article 1 of Protocol 1 (Protection of Property) of the European Convention on Human Rights. In considering the legislative competence of the Bill, I came to the assessment that while it engages Article 1 of Protocol 1 it does not breach it.

The Welsh Government's Explanatory Memorandum states that it "considers that the provisions strike a fair and proportionate balance between these rights."

1.2. Section by section guide to the Bill

The *Renting Homes (Amendment) (Wales) Bill* as introduced to the Assembly has

18 sections and six schedules. The long title of the Bill is:

An Act of the National Assembly for Wales to make provision about security of occupation under the Renting Homes (Wales) Act 2016; to make miscellaneous provision relating to occupation contracts; and for connected purposes.

1.2.a Sections 1 to 3: Landlord's notice: minimum notice periods

Section 1 amends the 2016 Act and increases the minimum period of notice required from a landlord to terminate a periodic standard contract under section 173 of the 2016 Act. The notice period increases from two to six months. Section 1 also inserts a new section, 174A, into the 2016 Act which provides for certain periodic standard contracts to continue to be subject to two months' notice. These periodic standard contracts are listed in Schedule 1 to the Bill which inserts new Schedule 8A into the 2016 Act.

Section 2 provides that a landlord must provide a minimum of 6 months' notice and the contract-holder must give up the dwelling on a specified date when activating a landlord's break clause during a fixed term standard contract. However those types of standard contracts listed in Schedule 1 (new Schedule 8A to the 2016 Act) to the Bill can still be ended by giving two months' notice.

Section 3 introduces Schedule 1 to the Bill which inserts new Schedule 8A to the 2016 Act. It lists a range of standard contracts that can be terminated on two months' notice. Those types of contract are:

- Prohibited conduct standard contracts. This is where the contract-holder of a community landlord has had a secure contract ended and replaced by a standard contract by order of the court because of prohibited conduct. This is broadly equivalent to a demoted tenancy under existing legislation;
- Tenancies and licences which are occupation contracts because of notice given under Part 2 of Schedule 2 to the 2016 Act. That relates to contracts that would not be an occupation contract but for a notice given by the landlord. This includes holiday accommodation, accommodation in a care institution, accommodation that is a temporary expedient to a trespasser (which is a short term arrangement between the landlord and a person who is not a contract-holder) or accommodation that is shared with the landlord - for example, where the landlord takes on a lodger;
- Standard contracts for students in higher education, but only where the landlord is a higher education institution and the contract-holder is pursuing a course of study at that, or another, higher education institution;

- A supported standard contract;
- A standard contract that provides accommodation for asylum seekers;
- Accommodation for displaced persons which relates to people with a grant of temporary protection under Part 11A of the Immigration Rules;
- Accommodation for homeless persons either provided or arranged by a local authority in discharge of its housing functions;
- Service occupancies where a contract-holder is required by their contract of employment to occupy the dwelling;
- Service occupancies for the police and fire and rescue services; and
- A range of temporary accommodation arrangements.

New Schedule 8A provides that Welsh Ministers may amend the Schedule by regulations. The types of occupation contract listed in that new schedule replicate those in Schedule 9 to the 2016 Act, with the addition of accommodation for students in higher education – but only where the landlord is a Higher Education Institution. That exception would, for example, cover halls of residence, but not privately owned student accommodation.

1.2.b Sections 4-5: When landlord's notice may be given

Section 4 increases the period during which a landlord may not give notice under section 173 at the beginning of a periodic standard occupation contract from four to six months.

Section 5 increases the period during which a landlord may not give notice under section 196 (where there is a landlord's break clause in a fixed term occupation contract) from four months to 18 months.

In a [letter](#) (PDF, 1MB) to the Senedd's Equality, Local Government and Communities Committee dated 10 July 2020, the Minister detailed the rationale behind the amendment:

The aim of the Bill provisions which increase the period of time before which a landlord may exercise a break clause under a fixed term standard contract is to ensure that the policy of increasing security of tenure in respect of periodic standard contracts is not undermined.

[..]

Given the Bill provisions which increase the moratorium and notice period in respect of notices served under section 173 of the 2016 Act, some landlords may choose to offer only long-term fixed-term contracts from the outset. Making break clauses available as early as

the 12 month point may not be a sufficient deterrent to discourage landlords from only offering longer term fixed-term contracts. Some landlords may accept having to wait an extra 6 months to regain possession of their property in the shorter term (as compared with a periodic standard contract), in order to buy certainty of income and to lock contract-holders in for the long term. The combined effect of these factors indicates that this provision is an appropriate and proportionate means of addressing these issues.

1.2.c Sections 6 to 9: Giving and withdrawing landlord's notice

Section 6 places restrictions on when a landlord can issue no-fault possession notices. It is consolidating rather than changing existing law.

Currently, landlords cannot serve no fault notices when they have failed to comply with certain statutory requirements. These include:

- breaches of Rent Smart Wales registration and licensing requirements;
- not complying with deposit protection requirements; and
- charging prohibited fees to tenants.

These restrictions are currently contained in various Acts. Schedule 2 introduces new Schedule 9A to the 2016 Act and brings the various restrictions together into a single new schedule to the 2016 Act.

Section 7 places further restrictions on giving notice under Section 173 and effectively establishes a 14 day 'cooling off' period that allows a landlord to issue another Section 173 notice without having to wait 6 months from withdrawing the first one. If the landlord withdraws a notice given under Section 173, no further notice under Section 173 may be given for a period of six months unless it is given during that cooling off period - starting with the day on which the first notice was given. This would allow, for example, a landlord to correct a defective notice.

Section 8 amends section 180 of the 2016 Act. Section 180 outlines when a contract will end following withdrawal of a notice given under section 173 and when a notice given under Section 173 ceases to have effect. Section 180 is amended to reflect the changes made in Section 7 of the Bill and means that the landlord can withdraw a notice during the 14 day cooling off period without requiring the contract-holder's consent.

Section 9 inserts new Section 177A into the 2016 Act. It places restrictions on a landlord serving a Section 173 notice where the court has found a possession claim to be retaliatory. The amendments mean a landlord may not issue another

notice under Section 173 for six months after the court refused to make an order for possession because it found the claim to be retaliatory. A retaliatory claim for possession is one that has been made so a landlord can avoid their obligations to repair the property or comply with requirements to ensure the property is fit for human habitation.

Section 9 also substitutes Section 198 of the 2016 Act with new text. It places a six month restriction on serving a no fault notice under a landlord's break clause where the court found the claim for possession to be retaliatory. As noted in a [letter](#) dated 10 July 2020 from the Minister to the Senedd's Equality, Local Government and Communities Committee, this restriction does not prevent a landlord from serving notice under any other ground. The subject matter of the existing Section 198, which relates to security and deposit requirements is moved by the Bill to new Schedule 9A to the 2016 Act (which is inserted by Schedule 2 to this Bill).

1.2.d Sections 10 to 11: Further provision about termination of fixed term standard contracts

Section 10 limits the ability of a landlord to end fixed term standard contracts at the end of any fixed term by giving a notice under Section 186 of the 2016 Act. A notice under Section 186 will now only have effect in relation to those types of occupation contracts listed in new Schedule 9B (which is inserted by Schedule 3 to this Bill). The notice period will remain at two months.

New Schedule 9B lists types of contract that the Welsh Government considers is reasonable for the landlord to have greater certainty over the ability to regain possession. This includes contracts that are only occupation contracts because the landlord has chosen to provide that additional security to the occupiers, accommodation for homeless people and service occupancies where the contract-holder is required by their contract of employment to occupy the dwelling. Welsh Ministers may amend new Schedule 9B by regulations. Schedule 9B largely replicates Schedule 9 to the 2016 Act (which prevents a landlords notice being served during the first six months of occupation), but does not include prohibited conduct standard contracts because they are always periodic – they cannot last for a fixed term.

Section 11 of the Bill restricts the use of landlord break clauses so they may only be incorporated into fixed term standard contracts that are for a term of at least 2 years. However, a break clause may also be incorporated into an occupation contract listed in new Schedule 9C, which is inserted by Schedule 4 to the Bill,

even if it is for a term of less than two years; it replicates new Schedule 9B and may be amended by regulations.

1.2.e Section 12: Variation of standard periodic contracts

Section 12 amends Section 125 and omits Section 126 of the 2016 Act.

Section 125 of the 2016 Act allows the fundamental, supplementary and additional terms of a periodic standard contract to be varied by agreement (it does not cover variations in rent). However, it also allows the terms of the contract to be varied by the landlord in accordance with Section 126. This would not require the contract holders agreement. As it currently stands, notice given by a landlord under section 126 may be treated as notice under Section 173 of the 2016 Act.

The effect of the amendments mean that if a contract-holder does not consent to the landlord's proposal to vary the terms of the contract (other than rent) the landlord will not be able to also treat the notice of variation as a notice to terminate the contract.

In **oral evidence** to the Senedd's Equality, Local Government and Communities Committee on 27 February 2020, a Welsh Government lawyer explained the intended purpose of Section 12. She explained that Section 12:

...removes [section 126 of the 2016 Act] because, otherwise, there would be potential for a landlord to use that mechanism to seek possession at two months' notice, which would potentially undermine the Bill provisions that extend that notice period to six months. However, extending a notice period under section 126 to six months, which might have been an alternative, to match the extended notice period under the Bill, would mean that a landlord would have to wait for up to six months to find out whether a contract holder agreed to a variation, which wasn't the favoured approach because it could be a fairly minor variation, and six months is quite a long period to wait to find out whether you can vary.

1.2.f Section 13: Temporary exclusion of contract-holder from dwelling under standard contract

Section 13 of the Bill inserts a regulation making power into sections 121 and 133 of the 2016 Act. Sections 121 and 133 of the 2016 Act allow periodic and fixed term standard contracts to contain provisions that the contract-holder is not entitled to occupy the dwelling for specified periods. The new regulation making powers will allow Welsh Ministers to specify what type of occupation contracts this may or may not apply to. It will also allow Welsh Ministers to specify limits to any exclusion

or circumstances in which exclusions may not apply.

The **statement of policy intent** (PDF, 328KB) issued to accompany the Bill provides the example of where Higher Education Institutions host residential conferences or other events during student vacation periods, and need to make accommodation available for those attending such events.

1.2.g Section 14: Miscellaneous

Section 14 provides for Schedule 5 which contains a range of miscellaneous amendments to the 2016 Act.

1.2.h Sections 15 to 18: General

Section 15 provides interpretation, including the meaning of “standard contract”.

Section 16 provides for minor and consequential amendments.

Section 17 sets out how the provisions of the Act will come into force.

Section 18 gives the short title of the Bill as the *Renting Homes (Amendment) (Wales) Act 2020*.

2. Policy background

No fault evictions are a key feature of assured shorthold tenancies. This chapter explores how and why these notices are used to evict tenants and restrictions on their use.

2.1. Assured shorthold tenancies

The ability to serve a notice under section 21 of the Housing Act 1988 (the 1988 Act) is a key feature of the Assured Shorthold Tenancy (AST). ASTs are the default tenancy in the private rented sector (PRS) and are used to a lesser extent by housing associations.

Creation of the AST was part of the deregulation of the PRS in England and Wales implemented by the 1988 Act. Until commencement of the 1988 Act, the *Rent Act 1977* (the 1977 Act) had provided most private sector tenants with security of tenure. Landlords could not ask the court make an order for possession unless one or more of a number of specified grounds (outlined in Schedule 15 to the 1977 Act) could be proved by the landlord. The 1977 Act also permitted succession to the tenancy by family members, and restricted the level of rent a landlord could charge.

The *Housing Act 1980* had made some moves towards deregulation. Firstly, it introduced the concept of assured tenancies, which retained security of tenure but allowed freely negotiated rents. Secondly, it also created a second new tenure of shorthold tenancies. Those shorthold tenancies provided landlords with certainty that they could recover possession at the end of the fixed term, but were still subject to rent controls.

In 1987, the government published a White Paper on housing, *Housing: The Government's Proposals* (Cm 214, 1987), which outlined proposals for further reform of rented housing in England and Wales. The government said the proposals in the White Paper would both increase the supply of accommodation in the private rented sector and improve its quality. It noted:

As a result of statutory restrictions, there is now very little private investment in providing new rented housing. And when landlords obtain vacant possession of dwellings at the end of tenancies they often prefer to sell outright into owner-occupation rather than to re-let. Owners who do not want to sell their property sometimes keep their houses vacant rather than let to a tenant because of the inadequate

returns, and the difficulty of regaining possession when they need it. Many of the remaining private landlords also have difficulty in finding sufficient resources to keep their property in good repair.

It was the Act that followed the White Paper, the 1988 Act, that deregulated the private rented sector in England and Wales ending rent controls for new tenants. It also established assured tenancies and ASTs along with new procedures and grounds for landlords to recover possession. This included, for ASTs, a no fault ground for possession under section 21 of the 1988 Act. That system, subject to some amendments, remains in place to this day.

As noted earlier, section 21 of the 1988 Act provides landlords with a no-fault ground for possession where no reason needs be given why they want possession of a dwelling. Providing a landlord follows the correct procedure, they will be able to recover possession using a section 21 notice. The minimum notice period for a notice served under section 21 is two calendar months, after which time a claim for possession can be issued in the courts. If the landlord has complied with the legislative requirements, they will be able to obtain a possession order from the county court and the tenant can be evicted.

ASTs are the most common type of tenancy in the private rented sector, but are also used to a more limited extent by housing associations where new tenants are often given “starter” tenancies which are ASTs and may also be used in certain types of supported accommodation.

In written evidence to the Equality, Communities and Local Government Committee, Community Housing Cymru note the circumstances where a housing association would use a section 21 notice, and additional constraints on their use within the sector:

Under the current tenancy regime, housing associations utilise Section 21 to end starter tenancies where seriously dangerous or criminal behaviour has been perpetrated by the tenant and is having an impact on the safety of the surrounding community. This situation would continue under the introductory standard contract and Section 173. In the current regime, the pre-action protocol, regulation of the use of Section 21, and appeals processes put in place by housing associations ensure that tenants are robustly protected from being unjustly evicted using the Section 21 process. Furthermore, the court must be satisfied that the housing association is acting reasonably when applying for a possession order under Section 21.

Some tenants in the private rented sector, and most who rent from housing associations, will have assured tenancies which provide long-term security of tenure. Landlords must always give a reason (a ground for possession) if they want

to serve notice and recover possession of a property let on an assured tenancy. Section 21 notices cannot be used. Housing association assured tenancies may be 'demoted' to an AST by a court where there has been anti-social behaviour.

2.2. Why landlords use no fault notices?

Using a section 21 notice provides landlords with certainty that they will recover possession of their property. Landlords may use Section 21 notices for a variety of reasons where the tenant is at fault, for example because there are rent arrears or the tenant has been involved in anti-social behaviour. They may also use a section 21 notice for other reasons, for example because they want to sell the property. It is likely that only a minority of Section 21 notices are ever brought before the courts as many tenants will leave before the notice expires. Court data does not record the reason why a section 21 notice has been served.

In the PRS, there has been some research by the largest landlords' association into the use of Section 21 notices. The Residential Landlords' Association (RLA) commissioned research from Manchester Metropolitan University, **Homelessness and the private rented sector** (November 2018). The research, which focused on England, found that; "Where landlords ended tenancies under 'no fault' routes, rent arrears was the most common reason cited by landlords for terminations."

The RLA undertook a survey of stakeholders as part of its response to the UK Government's consultation on section 21 reform in England. It subsequently published **Possession Reform in the Private Rented Sector: Ensuring Landlord Confidence** in July 2019. Amongst other issues, the survey sought to understand why Section 21 notices are used. The RLA research indicates that where a section 21 notice was served by respondents to the survey, it was most commonly because the tenant had broken the terms of the tenancy (Table 3.3 of the RLA's publication).

The research suggested that the most common reasons for serving a section 21 notice were rent arrears, damage to the property, anti-social behaviour and illegal behaviour by the tenants. However, it was not always the case that there was fault on the tenants' part. The fourth most common reason for serving a section 21 notice was so the tenants could get accepted for social housing, while the sixth most common reason was that the landlord was selling the property.

The RLA research also highlights that many landlords (78% of single property landlords who responded to the RLA's survey) have never used a section 21 notice, or the alternative, fault based, procedure (where a specific reason is given for seeking possession of the property) under section 8 of the 1988 Act which is discussed below.

While the number of respondents to the RLA survey was significant (over 6,300 responses), properties let or managed in Wales accounted for only 4.6% of responses, with 91.7% of being in England.

Where a Section 21 notice has been issued, and the tenant does not leave the dwelling by the expiry of the notice, a landlord may be able to use the Accelerated Possession Procedure (APP) to recover possession through the courts. APP can normally be completed without the need for a court hearing so a landlord may not need to instruct a solicitor. Using the APP was intended to be quicker and less costly than using the standard possession procedure although this is not always the case. The Welsh Government's [Explanatory Memorandum](#) (PDF, 1MB) to the Bill notes that:

Based on 2018 data, the mean time in weeks for landlords to regain possession using the section 21 accelerated procedure is 26.4 weeks, excluding the notice period.

Again, based on 2018 data, the mean time in weeks for private landlords to regain possession using the section 8 procedure is 22.2 weeks, excluding the notice period.

2.3. Alternatives to 'no fault' notices

Section 8 of the 1988 Act allows landlords to serve a Notice Seeking Possession of their property on a specific ground or grounds listed in Schedule 2 to the 1988 Act.

The section 8 procedure can be used in respect of both assured and assured shorthold tenancies. Schedule 2 is divided into four parts with Part 1 containing mandatory grounds for possession and Part 2 a number of discretionary grounds.

Where a mandatory ground is proved, the court must order possession. Mandatory grounds include grounds that relate to breaches of the terms of the tenancy, such as substantial arrears of rent. However, mandatory grounds also include grounds where there is no fault on the part of the tenant. Discretionary grounds primarily relate to breaches of the tenancy including rent arrears, damage to the property and anti-social behaviour.

The notice period before a landlord can apply for a possession order varies depending on the ground for possession being relied upon. It is generally two weeks where there has been a breach of the tenancy and two months in other cases. In possession claims involving anti-social behaviour, court proceedings can commence as soon as the notice has been served.

For mandatory grounds, the court must award possession if the ground is proved.

Where a discretionary ground is proved to the court, an order for possession can be made if the court considers it reasonable to do so.

The RLA's research referred to above suggested very few of the respondents to its survey had relied solely on section 8 to regain possession.

Some landlords may choose to serve notices under section 8 and section 21 at the same time. Court proceedings can then be issued on the basis of either notice.

2.4. Restrictions on the use of no fault notices

The use of Section 21 no-fault notices is restricted in some circumstances as a sanction for failure to comply with legal requirements.

In Wales, no Section 21 notice may be given where:

- The requirements relating to the protection of tenancy deposits have not been complied with (s.215, *Housing Act 2004*);
- A House in Multiple Occupation (HMO) is unlicensed. A similar restriction applies where a local authority has introduced a selective licensing scheme (s.75, s.98 *Housing Act 2004*);
- A landlord is not registered in respect of the dwelling and is not licensed (or has not appointed a licensed agent) (s.44, *Housing (Wales) Act 2014*); and
- Where a prohibited fee has been taken, or a holding deposit has not been dealt with appropriately (*Regulation 3, Renting Homes (Fees etc.) (Wales) Act 2019 (Transitional Provision for Assured Shorthold Tenancies) Regulations 2019*);
- In July 2020, the Court of Appeal held in ***Jarvis v Evans*** that an unlicensed landlord could not serve a section 8 notice. However, a licensed agent or solicitor could still serve such a notice on behalf of an unlicensed landlord.

2.5. No fault notices and social landlords

Local authorities cannot grant assured shorthold tenancies so may not issue section 21 'no-fault' notices. Housing associations can grant assured shorthold tenancies, and do use section 21 notices to some extent.

The Welsh Government published ***Understanding Social Housing Evictions in Wales*** in July 2019. That research, undertaken by Opinion Research Services, highlighted that Section 8 notices were used far more frequently than Section 21 notices by 25 out of 33 respondents.

It was noted in the research that:

...Section 21 notices are very rarely used and if they are the decision ‘is not taken lightly.’

However, some housing associations were concerned at the prospect of Section 21 notices being abolished, the research notes:

...there was concern among a handful of in-depth interviewees about Section 21 notices potentially being abolished within Welsh social housing. Specifically, having the option of serving a Section 21 was reported as being useful for dealing with serious ASB issues, which, it was explained, often involve long, drawn out court cases, resulting in victims facing months of difficulties.

The same research also highlighted concerns from Shelter Cymru about the use of section 21 notices by housing associations. Shelter Cymru said it was concerned they were being used:

...because they are cheap, an easy solution for the landlord and masks bad practice, and as such Shelter Cymru are campaigning for them to be abolished in social housing.

2.6. No fault evictions and human rights

The Bill engages the rights of landlords under Article 1 Protocol 1 of the European Convention on Human Rights (ECHR) which protects the right to peaceful enjoyment of property. It also engages the rights of contract-holders under Article 8 ECHR (the right to a home and family life). There is an ongoing campaign in Wales, led by CIH Cymru, Tai Pawb and Shelter Cymru for a **right to adequate housing** (PDF, 9.6MB) to be enshrined in Welsh law.

2.6.a Social landlords and evictions

Given eviction is interference with Article 8 (which requires that an occupier is given ‘respect’ for his or her home) a social landlord must consider whether evicting a tenant is necessary and proportionate.

The Equality and Human Rights Commission provides **guidance for social housing providers** to ensure they comply with the Human Rights Act when evicting tenants. The guidance notes:

To avoid an eviction which is unlawful under the HRA, where a social housing provider which is subject to the Act is seeking to terminate a tenancy (or other form of occupation) and thereafter evict the occupier, it should be able to show that it is acting in accordance with the law, that its actions are in pursuit of a legitimate aim, and that they are both necessary and proportionate.

Social landlords should also follow the ***Pre-Action Protocol for Possession Claims by Social Landlords*** before they ask a court for a possession order. Part 3 of that protocol applies to mandatory grounds for possession where the court must make an order for possession. The protocol notes that it:

...seeks to ensure that, in cases where human rights, public law or equality law matters are or may be raised, the necessary information is before the Court at the first hearing so that issues of proportionality may be dealt with summarily, if appropriate, or that appropriate directions for trial may be given.

Given the purpose of the ECHR is to protect citizens from having their rights infringed by the state, social landlords owe their residential tenants an Article 8 duty. Therefore a section 21 notice could potentially be challenged in court on the basis of proportionality.

2.6.b Human Rights Act challenges in the Private rented sector

Section 21 notices have been challenged by private sector tenants on the basis of proportionality. However, in ***McDonald v McDonald*** (2016) the Supreme Court held that when hearing a claim for possession by a private sector landlord against a residential occupier, the court was not entitled to consider the proportionality of eviction in the light of the *Human Rights Act 1998*.

The judgement observed that “there are legislative provisions which the democratically elected legislature has decided properly balance the competing interests of private sector landlords and residential tenants”.

Lord Neuberger and Lady Hale noted in their decision, with whom the other justices agreed, that:

...it would be unsatisfactory if a domestic legislature could not impose a general set of rules protecting residential tenants in the private sector without thereby forcing the state to accept a super-added requirement of addressing the issue of proportionality in each case where possession is sought. In the field of proprietary rights between parties neither of whom is a public authority, the state should be allowed to lay down rules which are of general application, with a view to ensuring consistency of application and certainty of outcome. Those are two essential ingredients of the rule of law, and accepting the appellant’s argument in this case would involve diluting those rules in relation to possession actions in the private rented sector.

2.7. Renting Homes (Wales) Act 2016

The 2016 Act will eventually replace existing secure and assured tenancies

(including assured shorthold tenancies) with an entirely new system of secure and standard occupation contracts. Occupiers with limited statutory protection at the moment, like some licensees, will also be brought within the new system as contract-holders.

The 2016 Act will implement many of the proposals originally made by the Law Commission in its 2006 **Renting Homes report** (applicable to both England and Wales) and a follow-up report, ***Renting Homes in Wales (PDF, 130KB)***, which was commissioned by the Welsh Government and published in 2013.

The 2016 Act will make significant changes in a number of areas when it is commenced, including:

- A common “secure” occupation contract will apply across social housing. At present local authorities issue secure contracts and housing associations issue assured contracts. While similar, there are differences;
- Assured shorthold tenancies will be replaced by standard occupation contracts and these will be the default contract in the private sector and may be used by social landlords (called community landlords by the 2016 Act) in some circumstances;
- A variation of a standard occupation contract for supported accommodation that will be provided to people in need of particular kinds of help or assistance;
- A range of fundamental provisions, which are generally sections of the 2016 Act, will automatically become terms of all secure and standard contracts unless (subject to limitations) both parties agree not to incorporate a fundamental term or agree to modify it. Supplementary provisions are also automatically incorporated subject to negotiation between the parties. Additional terms can be added to an occupation contract as appropriate;
- There will be a right to a written contract, and standard model contracts will be available for landlords to use;
- The law relating to joint contracts will be modernised and it will be possible to add or remove contract holders without the need to end the contract for all contract-holders first;
- Landlords will be required to ensure the dwelling is fit for human habitation throughout the term of the contract;
- The courts will be given powers to address retaliatory evictions. This is where a landlord is seeking to avoid their repairing obligation or the requirement to ensure the dwelling is fit for human habitation by evicting the tenant; and

- A landlord will only be able to issue court proceedings on the basis of a no-fault notice within a period of two months after its expiry. Currently, section 21 notices issued under the 1988 Act in Wales do not expire.

David Smith of Anthony Gold solicitors, who acted as expert adviser to the Senedd's Communities, Equality and Local Government Committee when it scrutinised the legislation, has written an overview of the 2016 Act which is available on the Welsh Government's [Law Wales website](#).

2.7.a Why has the Renting Homes (Wales) Act 2016 not been commenced?

The Welsh Government has stated that the reason for the delay relates to discussions with the Ministry of Justice and the cost of changes to the court IT system as well as changes to the Civil Procedures Rules.

On 17 September 2019 in **plenary**, the Minister for Housing and Local Government elaborated on the difficulties relating to the court IT system, and commencement of the 2016 Act:

...there were severe difficulties with the court's IT system, which we've been discussing with [the UK Government]. The proposal across England and Wales is that the whole of the IT system will be renewed. It was due to be renewed 'within two years' about three years ago, and we were waiting on that renewal. But we've decided not to wait and to actually implement the IT changes at our own expense ourselves in advance of the whole court system being changed, as I think it seems pretty clear that it's going to take a lot longer than was originally planned, for a variety of reasons that I won't rehearse.

Additionally, in **evidence** to the Equality, Local Government and Communities Committee on 27 February 2020, the Minister noted that there were over 20 sets of regulations that needed to be made to bring the 2016 Act into force. These were not all ready to be laid before the Senedd. Specifically, she noted work was still needed on regulations relating to supplementary terms and model contracts.

On **20 July 2020**, in evidence to the Senedd's Equality, Local Government and Communities Committee, a Welsh Government official indicated that the 2016 Act was now not likely to be fully commenced before the autumn of 2021.

2.7.b No fault evictions under the Renting Homes (Wales) Act 2016 unamended

No fault evictions in the 2016 Act are called 'landlord's notice'. The notice period for no-fault evictions in the 2016 Act as passed remains at 2 months, as with a section

21 notice under the 1988 Act. Restrictions on circumstances when a no fault notice cannot be served (such as failure to comply with deposit protection requirements) are also retained by the 2016 Act. However, there are also some significant changes to the system that is currently in place under the 1988 Act.

2.7.c Periodic standard contracts (i.e. no fixed term)

Section 173 allows a landlord to end a periodic standard contract by giving the contract-holder notice, but without giving any reasons. The minimum period of notice is two months (Section 174).

Under the 2016 Act, notice may not be given under Section 173:

- During the first four months of occupation (Section 175);
- Where the landlord is a social landlord (what the 2016 Act calls community landlords), the contract-holder may request that the landlord carries out a review of the decision to give notice under Section 173 (under Section 202);
- Any notice given under Section 173 expires two months after the date given in the notice (Section 179);
- Where the court considers the claim for possession is retaliatory to avoid obligations to repair etc, the court may refuse to make an order for possession. (Section 217).

2.7.d Fixed term standard contracts

Section 186 provides an equivalent “no-fault” ground for possession for fixed term standard contracts. The notice period under section 186 is two months, and it cannot take effect until six months after the “occupation date” of the original contract or before the end of any fixed term. Where there is a landlord’s break clause (Sections 194 to 196) the notice must still be two months, and notice under a break clause cannot be given during the first four months of occupation.

A break clause is a provision of a contract that allows one party to terminate the agreement earlier than the time at which it would otherwise come to an end.¹

2.8. Alternatives to no fault evictions under the 2016 Act

The possession procedure under Section 8 of the 1988 Act (where a specified ground or grounds for possession must be given) will be replaced when the 2016 Act is commenced.

¹ *Jowitt’s Dictionary of English Law 5th Ed.*

The 2016 Act replaces the list of grounds for possession in Schedule 2 to the 1988 Act with terms in the contract itself. Including the 'landlord's notice' no fault grounds for periodic and fixed term contracts, there will be only six grounds for possession:

- Breach of contract;
- Estate management grounds (these do not relate to wrongdoing by the contract-holder and will generally be used by community landlords);
- Contract-holder's notice (under secure and periodic standard contracts);
- Landlord's notice under a periodic standard contract (no fault);
- Landlord's notice under a fixed term standard contract (no fault); and
- Serious rent arrears.

2.9. Consultation on reform to no-fault evictions

The Welsh Government **consulted** on proposals to increase the minimum notice period for a no fault eviction between July and September 2019.

The consultation proposed:

- extending the minimum notice period from 2 months to 6 months
- increasing the period at the beginning of a contract during which a landlord cannot give notice from 4 months to 6 months
- placing a 6 month restriction on issuing a notice following the expiry of a previous notice
- removing a landlord's ability to end a fixed term standard contract (under section 186)

The consultation also sought views on the use of break clauses to end a fixed-term occupation contract; further restrictions on issuing Section 173 notices that seek to prevent retaliatory eviction; and restrictions on serving notice when a landlord has failed to comply with other legislative requirements, such as not carrying out an annual gas safety check.

On 17 September 2019, shortly after the consultation closed, the Minister for Housing and Local Government made an **oral statement** in the Senedd that provided an update on the Welsh Government's intentions. The Minister made it clear that, while responses to the consultation were still being considered, she

intended to proceed with the proposals in the consultation document.

In her statement, the Minister highlighted differences in the approach being taken in Wales from that taken in Scotland and England. The Minister noted:

In Scotland currently, and under the proposals being consulted on for England, there are grounds where tenants who are not at fault can still be evicted with only two months' notice, such as when the landlord wishes to sell the property or move into it themselves. Under our proposals, in all circumstances, other than when the landlord is seeking possession for a specified breach of the contract, the tenant or contract holder will be entitled to a minimum notice period of six months.

A **summary of responses** (PDF, 427KB) to the consultation was published on 28 January 2020. 855 responses were received, with 82% from individual landlords and 6% from letting agents. The consultation summary made clear that the establishment of Rent Smart Wales had ensured that it was more straightforward to consult with the sector. There appears to have been limited direct engagement with tenants, with the Welsh Government relying on the views/work of Shelter Cymru and TPAS Cymru.

The consultation found that 35% of the 31 tenants who responded to the questions on Section 21 notices had been evicted within the last two years, and 90% were provided with a reason for their eviction. The main reason given to tenants was that the landlord wanted to sell their property.

34% of the 723 landlords who responded to the questions on Section 21 notices had issued a Section 21 notice in the past two years. 60% of the 10 social landlords who responded had issued a Section 21 notice in the previous two years and 86% of the 51 letting agents who responded had done the same.

Questions 10 to 12 of the consultation addressed the proposals to extend the minimum notice period for no fault evictions. 88% of all respondents disagreed with the proposals in the consultation to extend it to 6 months. 94% of landlords and 98% of letting agents were against the proposal. 70% of private tenants and 50% of social tenants who responded were supportive. The private tenants who disagreed were also landlords.

3. Reaction to the Bill from stakeholders

Stakeholders from organisations that advise and support tenants have been broadly supportive of the Bill. Organisations representing landlords and agents have expressed significant concerns.

Shelter Cymru has [stated](#) (PDF, 303KB) that:

The Bill will make the Renting Homes (Wales) Act more effective by helping to ensure that grounds are used as they are designed to be used. If there has genuinely been no fault on the part of the contract-holder then it is right to recognise the difficulty that having to move home inevitably causes: one way of doing that is by allowing a more realistic notice period of six months to help people to forward-plan and budget.

However, they also highlight some concerns, and call for a complete ban to no-fault evictions and comment in [written evidence](#) (PDF, 303KB) to a Senedd Committee:

We still believe that a complete end to the no-fault route to possession, together with an end to fixed terms, is necessary to deliver tenants the legal certainty that they can stay in their home for as long as they need. Ideally we would aim to end the use of mandatory possession altogether, so that every eviction is treated as discretionary and therefore has independent oversight to ensure that it is justified and that steps have been taken to avoid eviction into homelessness. However there are distinct benefits to the model proposed in the Bill, 2 notably that there will be no new grounds created that could be used inappropriately to form new de facto no-fault routes, a trend that appears to be emerging in Scotland.

Crisis welcomed the Bill, but in their [evidence](#) (PDF, 283KB) to the Senedd called for open ended tenancies (rather than fixed terms) as is the case in Scotland.

Citizens Advice Cymru also welcome the Bill, but echo Shelter Cymru's calls for no-fault evictions to be abolished. They stated in [written evidence](#) (PDF, 357KB) provided to a Senedd Committee that:

Ideally, it would be preferable for tenants not to be forced to leave their home if they have done nothing wrong but in the absence of the abolition of no fault notices the minimum requirement should be for a notice period of at least 6 months

Citizens Advice Cymru cite their own unpublished research which found 10% of

respondents took more than 3 months to find their last property to rent in the private rented sector.

The **Chartered Institute of Housing Cymru** (PDF, 2MB) broadly welcomes the Bill which it believes supports the aims of its campaign to see the right to adequate housing enshrined in Welsh law. CIH Cymru highlight the importance of ensuring that the Bill does not have any unintended consequences. In particular, they highlight the importance of landlords being able to act swiftly in cases of anti-social behaviour and the pressures faced by the courts in dealing with possession claims.

The RLA (now the National Residential Landlords Association) welcomed the fact that no fault evictions will be retained, but called for reform of the grounds for possession. On publication of the Bill, the RLA Wales [website](#) noted:

Douglas Haig, RLA vice chair and director for Wales said: “While we acknowledge the minister has recognised the complete removal of Section 21 would be bad for the sector, we are disappointed with today’s proposals.

“It is absolutely essential that landlords with a legitimate reason to repossess their property are able to do so.

“If they do not many could opt to leave the market altogether – leaving renters with fewer options and potentially pushing rents up.

In [written evidence](#) (PDF, 953KB) to the Senedd, the RLA commented:

The RLA strongly believes in both a landlord’s ability to take possession of their own property and in providing security of tenure for a tenant. Therefore, we welcome the Welsh Government’s retention of Section 173. However, there are significant issues with the proposals as they stand. Landlords do not go to court without good reason and prefer to keep good tenants in their homes. Indeed, landlords would like to have a tenant in their property for an extended period. The issue with the proposal is the ability of a landlord to efficiently take possession from a bad tenant or ensure they can take possession of the property in exceptional circumstances, such as needing to move in themselves in a timely manner to avoid becoming homeless. Contrary to the myths around ‘no fault evictions’, landlords usually only use a S21 notice (soon to be S173) where the tenant is at fault.

The RLA also highlight dissatisfaction with the court possession process:

Landlords face significant delays in regaining possession of their property once the notice period has ended. Recent statistics show it takes landlords over 22 weeks to regain possession of their property after applying to court. It is little surprise then that 78% of respondents were dissatisfied with the courts. However, there is no mention of

improving the court process. It is why we were disappointed to see the Welsh Government in the explanatory memorandum reject advocating for a dedicated housing court. The RLA still maintains a housing court is essential if possession reform is being designed to push more landlords to use legal procedures to regain their property. We were encouraged to see the majority of respondents to the Government's consultation agree with that very sentiment.

On publication of the Bill the ALRA PropertyMark (which represents letting agents) [website](#) quoted its Chief Executive David Cox's views on the proposals:

Extending notice periods to six months is absurd. It means that landlords will have to wait half a year before they can start court proceedings, which then takes 22 weeks on average before the tenant is actually evicted. Therefore, this means that tenants could build up almost a year in rent arrears before a Possession Order is enforced; potentially causing landlords to be repossessed by their mortgage lender.

4. Possession reform in England and Scotland

Reforms have already been made to private sector tenancies in Scotland, including changes to the possession process. The UK Government has announced plans to make changes to the possession process in England.

Temporary changes to eviction notice periods are currently in place in England and Scotland as a result of the coronavirus pandemic. These are not discussed below.

4.1. Reform in England

In the Queen's Speech in December 2019, the UK Government included a proposed *Renters' Reform Bill* as one of the Bills it will take forward in this parliamentary session. This Bill would apply to England if it became law, as housing policy is devolved to Wales, Scotland and Northern Ireland. Some information on this is set out in the [background paper](#) the UK Government published alongside the Queen's Speech, including the main elements which are:

- Abolishing the use of 'no fault' evictions by removing section 21 of the *Housing Act 1988* and reforming the grounds for possession.
- Reforming current legislation to give landlords more rights to gain possession of their property where there is a legitimate need for them to do so, and making the courts process quicker and easier to do this.
- Introducing a new 'lifetime deposit' for private rented sector tenants.
- Widen access to, and scope of, the database of rogue landlords and property agencies.

The policy to abolish no fault evictions was [announced by the UK Government](#) in April 2019. The UK Government stated that landlords will have to provide a concrete, evidenced reason already specified in law for bringing tenancies to an end. However, landlords will be able to regain their property where they wish to move into it or sell it and the UK Government will amend section 8 of the *Housing Act 1988* to facilitate this.

The UK Government [consulted on this policy](#) from July to October 2019, and is currently analysing the feedback received. The consultation asked questions

around the impact of removing section 21;

- whether reforms should relate to the private and social rented sectors;
- ways existing grounds for possession can be reformed;
- how new grounds for possession can be added to cover a landlord selling or moving into a property; and
- how courts could consider applications for possession under section 8 of the *Housing Act 1998* more quickly.

If the proposals in the consultation are taken forward there will be no need for assured shorthold tenancies, and future tenancies in England would be either fixed term or periodic assured tenancies.

In response to a previous consultation by the UK Government held in 2018, **Overcoming the barriers to longer tenancies in the private rented sector**, private rented sector tenants have stated that they have been left feeling “insecure by short fixed-term tenancies, unable to plan for the future or call where they live a home”. The same consultation highlighted a demand from landlords that any reforms of the possession process must provide new grounds for possession which reflect the reasons they may need to ask a tenant to leave.

On 24 July 2020, the Minister of State at the Ministry for Housing, Communities and Local Government confirmed in answer to a **written question** in the House of Commons that the government would “...bring forward the Renters Reform Bill as a priority once the urgencies of responding to the pandemic have passed.”

4.2. Reform in Scotland

The **Private Housing (Tenancies) (Scotland) Act 2016** created a new type of private rental tenancy in Scotland, which came into operation in Scotland on 1 December 2017. This ended no fault evictions in Scotland, and created 18 grounds under which a landlord can end a tenancy.

Tenancies are now open-ended, and **the aim of the legislation** is to “improve security of tenure for tenants and provide appropriate safeguards for landlords, lenders and investors”. Landlords must give 84 days’ notice to the tenant, unless it is within the first six months of the tenancy, or the reason for ending the tenancy relates to the tenant’s behaviour. In these cases there is a 28 day notice period.

Schedule 1 to the 2016 Act sets out a number of exemptions to the new private residential tenancy, including student lets and temporary accommodation.

Shelter has **evaluated the impact of the Scottish legislation**. In 2019, it found that:

- Although implementation of the new private rented tenancy is at an early stage, “the signs point to a positive change for renters in Scotland”.
- Suggestions that the changes introduced would cause a considerable reduction in housing supply, consequently leading to increased rents and homelessness, have not occurred.
- Renters in Scotland who responded to a survey undertaken by YouGov for Shelter appear to feel more secure in their tenancies, and less anxious about becoming homeless.
- The main difficulty raised was the lack of awareness of renters as to whether they are on the old or new contracts. While Shelter felt this was likely to improve with time, they suggested that additional investment in information and advertising campaigns may be needed.

Since 1 December 2017, possession claims from private landlords in Scotland have been dealt with by a dedicated housing tribunal, the First-tier Tribunal for Scotland (Housing and Property Chamber), rather than the courts.

