

The Renting Homes Bill and the private rented sector: myths and facts

January 2015

Overview

The Renting Homes Bill introduced by Welsh Government aims to reform and simplify tenancy law in Wales. All existing tenancies will convert to either a ‘*standard contract*’ or a ‘*secure contract*’, both of which will explain in clear terms to landlords and tenants what their rights and responsibilities are. We welcome this as it will ensure standard practice and promote greater clarity for both landlords and tenants.

The Welsh Government states that private renters will have a similar level of security under the standard contract as they do now under the Assured Shorthold Tenancy (AST). However, one major change is that the Bill proposes to remove the ‘six month moratorium’ which currently protects tenants from eviction during the first six months of their tenancy. This will enable private landlords to offer tenancies with no fixed term at all – **giving tenants in Wales a level of security of tenure that is lower than in any other country in Western Europe.**

This paper outlines our concerns about the impacts of this proposal.

Myth	Fact
Removing the moratorium will make it easier to let short-term	Housing Act 1996 already allows fixed term tenancies to be for any length of time including less than six months
The removal of the moratorium is an integral part of the Renting Homes scheme	Supported and tied accommodation may still be covered by contract arrangements regardless of the moratorium
Removing the moratorium will encourage more landlords to let to vulnerable tenants	There are better ways of working with landlords to house vulnerable people than by eroding tenants’ rights
Removing the moratorium will not affect the likelihood of landlords offering fixed terms	Demand outstrips supply in the private rented sector, putting landlords in a strong position already to offer their preferred terms
The removal of the moratorium will increase private rented sector supply	There is no evidence that removing the moratorium will have an impact on supply
In practice it takes nearly six months to get a tenant out anyway	Most tenants voluntarily leave before a court order is made
The moratorium does not in itself enhance security in the private rented sector	It is true that six months does not represent real security for tenants, however does that mean we should abandon the idea of security entirely?

Private renters do not want more secure tenancies	More secure tenancies is a key ask of the majority of private tenant action groups in the UK
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The situation

As highlighted in the overview, the Renting Homes Bill aims to reform and simplify tenancy law in Wales. All existing tenancies will convert to either a '*standard contract*' or a '*secure contract*', both of which will explain in clear terms to landlords and tenants what their rights and responsibilities are. We welcome this as it will ensure standard practice and promote greater clarity for both landlords and tenants.

The one major change in the Bill which we are concerned about proposes to remove the 'six month moratorium' which currently protects tenants from eviction during the first six months of their tenancy. This will enable private landlords in Wales to offer tenancies with no fixed term at all – giving tenants a level of security of tenure that is **lower than in any other country in Western Europe**.

The pressures on our housing market mean that the private rented sector (PRS) is the only realistic housing option for increasing numbers of people who previously would have been able to buy a house or access social housing. The PRS is being increasingly relied upon to house some of Wales' most vulnerable people including homeless households.

Our overarching concern is that removing the moratorium will lead to a two-tier PRS. Better-off renters will be able to negotiate fixed-term tenancies while tenants on low incomes will be forced through lack of options to accept monthly periodic contracts which will leave them liable to eviction within two months at any time. This puts renters in an extremely weak bargaining position with their landlords due to the continual risk of homelessness. It is impossible for families in these circumstances to put down roots and find stability.

Below, this paper outlines our concerns in more detail by examining the myths and facts surrounding the Renting Homes Bill current proposals. While we are supportive of many aspects of the Renting Homes scheme, we foresee considerable negative impacts on private tenants due to the loss of the moratorium.

Myth

Removing the moratorium will make it easier to let short-term

Fact

Landlords are already free to let short-term. The Housing Act 1996 already allows fixed term tenancies to be for any length of time including less than six months.

The nature of the PRS is changing, and short-term flexibility is not valued to the same extent it once was. Data from the 2011 Census shows that families with dependent children now comprise one-third of all households renting privately in Wales¹. Households with children in the PRS have risen by 62 per cent in the last ten years².

In January 2014 Shelter Cymru and British Gas carried out a bespoke Wales-wide survey of private tenants³ which asked respondents whether it would suit them to have a short-term tenancy of less than six

¹ Census 2011 data table DC4101EW, 'Tenure by household composition', available at <http://www.nomisweb.co.uk/census/2011/dc4101ew>

² From 38,517 to 62,430 (Census 2001; Census 2011)

³ We commissioned YouGov Plc to carry out a Wales-wide survey of PRS tenants. Total sample size was 602 adults. Fieldwork was undertaken between 11th December 2013 and 16th January 2014. The survey was carried out online. Figures were weighted to be representative of all private renters in Wales (aged 18+).

months. Only 13 per cent said it would suit them to have a short-term tenancy – while 58 per cent said that it would not suit their needs.

It is important that the scheme provides for short-term tenancies that are less than six months for those who want them. However, we should be able to do this without having to compromise security for the majority.

Myth

The removal of the moratorium is an integral part of the Renting Homes scheme

Fact

The Welsh Government proposes that removing the moratorium would enable the standard contract to apply across forms of tenancy not currently covered by ASTs such as supported and tied accommodation. However, the reality is that these types of tenancy may still be covered by contract arrangements under Renting Homes regardless of whether the moratorium is in place.

The Renting Homes scheme provides for tenants in supported accommodation to have a special contract (the ‘supported standard contract’) in order to include provisions that are not in the standard contract such as exclusion powers. It would therefore be possible to include the moratorium in the standard contract, and not in the supported standard contract.

As far as tied accommodation is concerned, the Renting Homes Bill is not proposing to alter current arrangements: people living in service occupancies will remain on licence unless the employer and employee establish a tenancy. The existence of the moratorium is unlikely to affect these arrangements one way or another.

Myth

Removing the moratorium will encourage more landlords to let to vulnerable tenants

Fact

It is true that the PRS is being increasingly relied upon to house vulnerable people. Social housing may be a more appropriate setting in many cases where people have support needs, but a historic pattern of underinvestment in the social sector means that today the PRS is often the only realistic option.

We argue that there are better ways of working with landlords to house vulnerable people than by eroding tenants’ rights. For example, many Welsh local authorities are currently working with private landlords in their areas to put packages of incentives and support in place so that where households are provided with PRS accommodation via the homelessness route, both landlords and tenants know where to turn if something goes wrong.

Where tenants have some kind of vulnerability it is incredibly important that their landlord is an experienced professional who is in it for the long term. The types of marginal or ‘accidental’ landlords who might be persuaded by this proposal are not the types of landlord who should rightly be trusted with this level of responsibility.

A further negative consequence is that once the moratorium is abolished, local authorities will be able to discharge their homelessness prevention duty not with a six-month tenancy but with a one-month contract, backed up with a legally meaningless informal agreement with the landlord to extend further if they choose to do so. Given that this will apply to some of Wales’ most vulnerable priority need households – who currently qualify for secure, affordable accommodation for life via a social housing tenancy – this is a significant reduction in housing rights.

The Welsh Government intends to retain the requirement for a minimum six-month tenancy for priority need households who are accommodated under the full homelessness duty. The trouble with this is that it only applies to households who have gone through the prevention stage first. Only if prevention work is deemed to have failed will priority need households have the right to make a 'full' application.

By contrast, in England homeless households are guaranteed a minimum 12-month tenancy under the full duty, and a six-month tenancy under prevention.

We disagree that a one-month tenancy is sufficient to provide the stability that households that have been through homelessness tell us is so essential. The prospect of families with children, care leavers, disabled people, vulnerable young people and pregnant women having their housing security undermined to this degree should make us all uncomfortable.

Myth

Removing the moratorium will not affect the likelihood of landlords offering fixed terms

Fact

This argument conflicts with the argument that removing the moratorium will encourage more landlords to let to vulnerable tenants, but has also been advocated⁴. The fact that both arguments are being advanced tends to reinforce our view that the eventual outcome will be a two-tier PRS with low-income tenants bearing the brunt.

The reality is that the PRS is a market where demand outstrips supply, putting landlords in a strong position to offer whatever terms are most favourable to them.

There are distinct advantages for landlords to start arrangements off on a periodic basis: it gives them a chance to allocate tenants a probationary period during which they have swift recourse to possession proceedings if the tenants prove themselves in any way undesirable.

While it is true that landlords favour the security of guaranteed income, it is also true that they favour the security of flexible arrangements that allow them to eject 'bad' tenants quickly. Long-term voids are not a significant risk when demand for housing outstrips supply. According to ARLA the average void period in the Welsh PRS in the second quarter of 2014 was only 3.4 weeks⁵.

Our view is that the Renting Homes Bill as currently drafted is very likely to reduce the proportion of tenants who are offered fixed term contracts.

Myth

In practice it takes nearly six months to get a tenant out anyway

Fact

This is only the case if tenants know their rights, can afford the court fees and are willing to hold on until the bitter end. Unfortunately, Shelter Cymru casework demonstrates that many tenants do not know their rights and will often leave as soon as they receive a notice to quit, even if that notice has not been issued lawfully.

Ministry of Justice statistics show that only a small minority of PRS possession cases get as far as bailiff action. In 2013/14 only 230 private tenant households were evicted by bailiffs across the whole of Wales⁶. This represents only 17 per cent of the 1,386 possession claims lodged in the court by landlords over the

⁴ Welsh Government (2013) Renting Homes: a better way for Wales p41 par 6.49

⁵ <http://www.arla.co.uk/media/610889/arla-prs-report-q214.pdf>

⁶ <https://www.gov.uk/government/collections/mortgage-and-landlord-possession-statistics>

same period⁷. Of course, this figure does not include the many tenants who are illegally evicted in Wales every year.

Myth

The moratorium does not in itself enhance security in the private rented sector

Fact

It is certainly true that six months does not represent real security for tenants. What is at stake here though is the principle of security – just because tenants only have six months at the moment, does that mean we should abandon the idea of security entirely?

It is important that new tenancies start off with a probationary period. Potentially, this period could be fixed term or monthly periodic. What is unacceptable, though, is the prospect of households languishing with no fixed term indefinitely – a situation which in our view the Renting Homes Bill, as currently drafted, actively encourages by providing for contracts to be periodic from the outset.

We would not oppose the removal of the moratorium if the Renting Homes Bill ensured that any initial probationary period would end after a specific length of time – ideally six months. Landlords should be required at that time to offer a fixed term, which tenants would have the right to accept or not. We also argue that the length of that fixed term needs to be established in statute, as is the case in many European countries – three years in France; four years in Ireland; three or four years in Spain. Within that period tenants should be able to end the tenancy with two months' notice.

Myth

Private renters do not want more secure tenancies

Fact

Unfortunately in Wales we have no strong private tenant voice and there is no organisation that can claim to directly represent private tenants. This is something that has held back debate on how to improve the sector. However, we know that more secure tenancies is a key policy ask of the vast majority of private tenants' groups elsewhere in the UK. Examples include:

- Hackney Digs – campaigns to highlight the impact of insecurity of tenure, posting mock Section 21 eviction notices to new councillors
- Organisation of Private Tenants (Scarborough) – campaigns for landlords to provide Assured Tenancies or longer term, renewable fixed term Shorthold Tenancies with break clauses for tenants
- Edinburgh Private Tenants Action Group – runs the 'Home to Stay' campaign which strives to ensure security of tenure by abolishing the Scottish Short Assured Tenancy
- Haringey Housing Action Group – lists 'secure tenancies for all – for as long as you want to stay' as a key demand.

The UK's growing PRS tenant voice is clear: the Assured Shorthold Tenancy does not offer what renters want. Even current security of tenure is too little, let alone the reduced security created by the removal of the moratorium under Renting Homes.

⁷ The actual number of PRS tenants who lost their home due to repossession is unknown. Not all claims result in an order being made. Landlords may withdraw their claim if they reach agreement with the tenant, or tenants may voluntarily leave before the order is made. Additionally, not all repossessions go through the courts.

In the 2014 survey jointly carried out by Shelter Cymru and British Gas, the numbers of people saying they were in the PRS because they had no other choice outnumbered those who said they wanted to be there by four to one.

The majority (61 per cent) said they were in the PRS due to a lack of other options, either because they could not afford to own a home (44 per cent), could not access social housing (3 per cent) or because the PRS was the only option available to them (13 per cent). Only 15 per cent said they were in the PRS because they had chosen to be there, either because they liked the freedom and flexibility (6 per cent) or because it is their preferred choice of housing (9 per cent). More than half of tenants (56 per cent) agreed that they would like to buy their own home but didn't think they would ever afford it. This reflects previous findings from in-depth focus group work with PRS tenants by Consumer Focus Wales in ['Their house, your home'](#).

The same survey asked people about their attitudes towards the moratorium. More than three in five tenants (62 per cent) agreed that it is very important to them to have six months' protection from eviction at the start of a new tenancy, with only eight per cent disagreeing. More than half (52 per cent) disagreed that they would be happy living on a monthly tenancy contract with no fixed term, with only 20 per cent agreeing.

The PRS is continuing to grow and private renters are becoming an increasingly vocal part of the electorate. At some point, public policy will need to address the fundamental reasons why the sector is seen so widely as a poor second choice.

Conclusion

While many other European countries have taken steps to bring the privately rented housing market more in line with what people need, the UK's private rented sector still stands out in Europe as characterised by insecure, short-term tenancies and a strong sense that most people are only renting because they have no other option.

Adequate housing is a human right under article 11 of the UN International Covenant on Economic, Social and Cultural Rights. Non-retrogression is an important principle in human rights law, stating that governments may not engage in policies, programmes or laws that hold back progress towards the realisation of human rights. Our concern is that removing the moratorium may constitute a retrogressive measure – a violation of international human rights law.

As a coalition of organisations working in housing, homelessness and poverty, we do not wish for Wales to earn the distinction of having the most insecure PRS in Western Europe. As a small nation we ought to be better able than others to engage in reasoned debate about the most effective ways of providing housing, a basic human need.

There is much we could do in Wales to further improve the PRS in ways that would benefit both tenants and landlords. The Housing (Wales) Act and the Renting Homes Bill are already changing the shape of PRS in Wales. We would welcome further debate in order to educate all parties about the consequences of reform, for example to counter the widely held belief that greater security of tenure would trap tenants, and to consider options that might potentially be welcomed by landlords and tenants, such as giving tenants greater rights and responsibilities for upkeep.

What we are calling for

- As an immediate short term measure, the Renting Homes Bill should retain the six month moratorium that protects renters from eviction at the start of a tenancy.
- If the moratorium is removed, then the Renting Homes Bill must ensure that an initial probationary

period ends after six months. Landlords should be required to offer a fixed term tenancy at the end of the probationary period which tenants would have the right to accept or not.

- To work with the Welsh Government on a review of options to improve the private rented sector, looking at what we can do in Wales to improve vital aspects such as supply, conditions, access to housing justice, and security of tenure; including direct engagement with renters as well as landlords.