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Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation – summary of responses

Renting Homes (Wales) Act 2016 – Guidance relating to Supported Accommodation

July 2017

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Introduction

The [Renting Homes \(Wales\) Act](#) passed into law in January 2016 and will impact on virtually all existing Welsh tenancies. The Act will affect more than one million people who currently live in rented accommodation in Wales, and the housing professionals who work in the industry.

The new legislation aims to make it simpler and easier to rent a home, replacing the various and complex pieces of existing tenancy legislation with one clear legal framework. The Act applies to all rented housing in Wales, with a limited number of exceptions, such as properties let under the Rent Act 1977.

The Act takes forward the recommendations of the Law Commission's 2006 report 'Renting Homes' and was included as a commitment in the Homes for Wales White Paper published in May 2012.

Renting Homes will require all landlords, for the first time, to issue a written statement of the occupation contract to the tenant or licensee (termed 'contract-holders' in the Act). The statement will clearly set out the rights and responsibilities of landlords and contract-holders.

In terms of supported accommodation, the landlord may issue a licence or a tenancy for the first six months of occupation (referred to in the Act as the "relevant period", which can be extended in certain circumstances). However, after six months of occupation, landlords will be required to issue, as a minimum, a supported standard contract (unless an application is made to extend the relevant period). The supported standard contract is based on the standard contract with the addition of a statutory power to temporarily exclude a contract-holder and, if the landlord chooses, a mobility clause enabling a contract-holder to be re-located within the premises.

Consultation

On 6 February 2017 the Cabinet Secretary for Communities and Children published, for consultation, draft guidance relating to supported accommodation. The guidance is intended to provide advice and support to landlords, local authorities, supported accommodation users and organisations that support users.

The purpose of the consultation was to gather views and feedback on:

- draft statutory guidance to which landlords must have regard when temporarily excluding a contract-holder under a supported standard contract; and
- draft non-statutory guidance to assist landlords and local authorities in carrying out their functions relating to extending the relevant period before a tenancy or licence which relates to supported accommodation becomes an occupation contract.

A 12 week consultation began on 6 February 2017 and was open for responses until 28 April 2017. Six questions were asked, with options to respond to those questions by email, online or by post. The consultation document was available on the Welsh Government website.

The consultation specifically invited views on:

Statutory Guidance on Temporary Exclusions

1. The suggested level of seniority for the person making an exclusion decision;
2. The proposed actions a landlord could take to avoid homelessness;
3. The procedure for carrying out the lessons learnt review;
4. Whether the lessons learnt review form is easy to understand and fit for purpose.

Guidance on obtaining local authority consent to extend the relevant period

5. Whether the procedure the landlord should follow to extend the relevant period is clearly described;
6. Whether the role of the local housing authority in considering an extension request is clearly described.

The Welsh Government received 31 responses to the consultation from the following organisations and individuals:

Rhondda Cynon Taff Council	Supported Housing for War Veterans
Torfaen Council	United Welsh Housing
The Law Society of England & Wales	Cardiff Council
Bron Afon Community Housing	Caerphilly Council
Age Cymru	Family Housing Association (Wales) Ltd
Swansea Young Single Homelessness Project	Taff Housing
Merthyr Tydfil Supporting People Planning Group	Solas Cymru
Shelter Cymru	Tai Pawb
Welsh Women's Aid	Action on Hearing Loss
The Wallich Centre	Dewis Housing
Caer Las Cymru	Newport Council
Coastal Housing	Llamau
Cymorth Cymru	Community Housing Cymru
Garden Court Chambers	Powys Council
Ynys Mon Council	Welsh Local Government Association
One private individual also responded	

The Welsh Government welcomes the responses to the consultation and would like to thank all those who responded. All responses to the consultation have been considered and have informed the development of the guidance documents.

This document summarises the responses to the six consultation questions. It cannot capture every comment. However, it tries to capture recurring themes and issues. Several issues were raised that did not have a direct bearing on the matter on which we have consulted. We have noted these issues but not considered them in any detail as part of this response. Nearly all consultation replies were received from people or organisations based in Wales.

Responses to consultation questions

Question 1 – The decision maker: do you agree with the suggested level of seniority for the person making the exclusion decision?

Of the responses received:

4 (13%) did not answer the question

17 (55%) answered 'yes'

10 (32%) answered 'no'

Of those that answered the question, 63% answered 'yes' and 37% said 'no'.

The majority of responses to this question were favourable. Most of those that answered 'no' stated that the decision maker should be at least of director level, although some also suggested that it should be up to the shift worker on site to make the decision.

Other comments received were:

- Temporary exclusions should only be applied by the police or courts;
- The decision should be allowed to be made by the most senior member of staff on duty, to be later reviewed by a senior manager;
- Not always possible to contact an on-call manager;
- It is not so much the seniority of the decision maker that matters, but the expertise.

Welsh Government response:

The key concern is that the decision maker must be suitably experienced and qualified to make the decision to exclude. It is recognised that the level of seniority of the individual, for example whether that person is a manager, senior manager or director, will differ between individual organisations. It is also important to bear in mind that someone needs to be available to participate in reviews of decisions, and that this person needs to be senior to the decision maker. We will, however, consider this matter further in light of operation of the new arrangements and as part of the post implementation evaluation of the Act.

In response to consultation comments, we have amended the guidance to state that the decision maker should be suitably experienced as well as senior, and that the landlord's exclusion policy should clearly set out the procedure for deciding on a temporary exclusion.

Question 2 – Preventing Homelessness: do you agree with the proposed actions a landlord could take to avoid homelessness?

Of the responses received:

3 (10%) did not answer the question

14 (45%) answered 'yes'

14 (45%) answered 'no'

Of those that answered the question, 50% answered 'yes' and 50% said 'no'.

The responses received to this question were evenly split.

Of the 28 respondents who answered this question, comments received included:

- The number of exclusions should not be limited to just three in a rolling six month period;

- More emphasis needed on developing crisis beds and promoting greater cross partnership working;
- Some accommodation providers are likely to be unwilling to accommodate someone who has been excluded;
- Queries on how housing benefit may be affected;
- Vital that providers capture instances when exclusions lead to street homelessness;
- Written notices should include the length of the exclusion and an accurate list of shelters and sources of legal advice;
- A risk assessment should be completed first before the exclusion power is used – this will frustrate urgent relocations;
- Risk that vulnerable people may fail to return if made temporary homeless;
- Likely to lead to increased demand on other services (e.g. health, social services, police);
- Many areas of Wales do not have sufficient hostel accommodation;
- Allowing the mobility clause could be problematic and also it is unrealistic to expect other landlords to have spare rooms;
- Providers should have an exclusion policy in place before they can use the power;
- Landlords should alert the local housing options team when excluding;
- There should be a duty of care on support providers to assist individuals find alternative accommodation for the exclusion period;
- Support services should continue to be available while an individual is excluded;
- Who is responsible for covering the cost of temporary accommodation;
- Local Authorities do not always operate a 24/7 service;
- There is no route to challenge the temporary exclusion power decision;
- More incidents happen evenings/weekends and there is no guarantee organisations will staff schemes in the same way;
- There should be a duty of care on landlords to notify certain persons of the exclusion, e.g. social worker, support worker, next of kin, GP and/or a probation officer;
- Landlords should provide oral as well as written information about homelessness services, to cater for people with literacy difficulties.

Welsh Government response:

The Welsh Government has a clear policy objective to prevent street homelessness and has frameworks in place to achieve this goal. We are clear that the power to temporarily exclude an individual(s) from his or her home, even if only for up to 48 hours at a time, should be an absolute last resort. We have strengthened the guidance further to reflect this. However, there may be occasions when the exclusion of an individual is the most appropriate option, for example in instances where someone is threatening other residents or members of staff, or is living in a dry hostel but has returned in an intoxicated state and is required to sober up before re-entering. Landlords have informed us that they will often not wish to involve the police in such instances as this could adversely affect the long-term prospects of that individual's progression to independent living.

We have carefully considered the comments made as part of the consultation process. We have strengthened the guidance further to indicate that:

- landlords intending to make use of the temporary exclusion power should have a policy in place regarding its use before the temporary exclusion power can be used;
- the landlord's exclusion policy should contain details of reciprocal arrangements made with other landlords to avoid homelessness, and for these to include whether this will be on an accommodation only basis or that support services will also be provided, as appropriate;
- local housing authorities should work with landlords and providers within their area to

encourage and facilitate reciprocal arrangements;

- landlords should alert the local homelessness service whenever a contract-holder is excluded;
- landlords should inform, as appropriate, an allocated social worker or support worker, the contract-holder's next of kin, and/or probation officer;
- the landlord should advise the contract-holder(s) of the temporary exclusion policy at the start of the supported standard contract.

Question 3 – Lessons Learned Review: do you agree with the procedure for carrying out the lessons learned review?

Of the responses received:

4 (13%) did not answer the question

16 (52%) answered 'yes'

11 (35%) answered 'no'

Of those that answered the question, 59% answered 'yes' and 41% said 'no'.

Most responses to this question were favourable.

The main theme from those organisations that did not agree was that it was unrealistic to require a local authority representative to attend each review meeting. This opinion was in direct contrast to those respondents answering in support of this question, who felt it was essential that the local authority was represented at each review meeting.

Other comments received included:

- Two organisations stated that the review should be held within 7 days of the exclusion, not 14;
- A query as to how someone from within the same organisation can be classed as an "independent" panel member;
- Statistical returns to local authorities should be quarterly not annual;
- For larger projects with a high turnover the review could be impractical and difficult due to the procedures and the number of people that need to be involved;
- Review panels should be held quarterly to review all exclusions in that period rather than after each exclusion;
- Concerned about the administrative burden and cost of holding review panels;
- There is no route for the contract-holder to challenge the decision to exercise the temporary exclusion power;
- The review panel should include, wherever possible, representation from organisations representing the interests of the contract-holder including homelessness or drug and alcohol charities.

Question 4 – Lessons Learned Review Form: do you agree the review form is easy to understand and fit for purpose?

Of the responses received:

4 (13%) did not answer the question

15 (48%) answered 'yes'

12 (39%) answered 'no'

Of those that answered the question, 56% answered 'yes' and 44% said 'no'.

Most responses to this question were favourable. The main reason given by those that answered 'no' was that the form did not include all the protected characteristics under section 7 of the form (equality and diversity monitoring) as required under the Equality Act 2010.

Other comments received were:

- The form does not ask about the person's dependents;
- The form should summarise the links/actions to their personal development plan;
- The form and review process should place a greater emphasis on the impact of exclusion on the contract-holder;
- In instances of previous exclusions, it would be beneficial to include a review of the implementation and effectiveness of lessons learned from previous reviews;
- The form will only be as good as each organisation's exclusion policy and training and additional support will be needed for staff and managers;
- The complexity of the form may be disproportionate if the exclusion period is only for a few hours;
- The form is easy to understand and fit for purpose;
- The form is not fit for purpose as should include measures taken to avoid street homelessness and the impact of the exclusion on the individual and the wider community;
- A copy of the completed form should be provided to the contract-holder;
- The form allows for multiple contract-holders to be excluded but this is not addressed in the guidance
- No requirement to capture what efforts were made to provide the contract-holder with an advocate;
- The meaning of "evidence of the review" (section 4) is unclear and it should be clarified that this is only evidence put forward by the landlord.

Welsh Government response to questions 3 & 4:

The purpose of the review meeting is to ensure that the temporary exclusion was proportionate and undertaken in line with the landlord's exclusion policy. The review should also identify any lessons learnt that can improve the policy and otherwise inform best practice. The review is not an appeals process, and the temporary exclusion cannot be removed from a contract-holder's file once it has taken effect. We have strengthened the wording of the guidance document to make this clearer, as there appeared to be some confusion as to the purpose of the review.

We have considered the responses concerning the timing of the review meeting. The majority of responses agreed that holding the review within 14 days is the correct time-frame, although some organisations stated it should be held within 7 days. Others suggested reviews should only be held quarterly, with all cases within that period being considered. We believe that *up to* 14 days remains the most appropriate period of time within which to hold the review meeting. There is nothing to prevent the review being held within 7 days, if all parties are content with this. However, the longer period of up to 14 days should allow sufficient time for emotions to settle and for the landlord to be able to contact relevant personnel and set up the review panel. It will also allow time for the contract-holder to seek the support of an advocate to attend the meeting, if applicable.

Most respondents agreed that local authorities should attend each review meeting, and some suggested that the local authority representative should be a senior manager. Some

organisations, mainly local authorities, stated that it would be too burdensome on local authorities to attend each review meeting. We have reflected on the comments and believe that the position as set out in the consultation is appropriate. It is important that local authorities are fully aware of the exclusions that take place, and why. Although it is appreciated that there will be a resource implication, we believe this should not be unmanageable and the intelligence gained will be beneficial to the authority in performing its commissioning role. We do not believe, however, that it is appropriate to specify the seniority of the local authority officer that attends the review meeting. This is a matter for individual authorities to determine.

Regarding the query about the independence of the review panel members, these should be people unconnected with the exclusion decision.

We have expanded the guidance regarding the role of the local authority in monitoring exclusions based on the information returns from landlords. This will help to ensure local authorities are in a position to take action if they have concerns that temporary exclusions are unjustified. We have amended the frequency for landlords to submit information returns to the local authority from annually to quarterly, to assist this monitoring. Local authorities should also use the information returns to inform their commissioning of supported housing.

We have also added to the guidance that a copy of the review form should also be issued to the contract-holder, and that the outcome of the review meeting should be followed up in future support sessions. This will help to ensure that individuals are supported to address the behaviour that resulted in the temporary exclusion, and so reduce the likelihood of further exclusions.

Regarding the review form, we have added the three remaining protected characteristics under the Equalities Act 2010. We have also added additional fields to record: where any dependants were placed during the exclusion period (if applicable); the date the written notice was issued to the contract-holder; the date the local authority was notified of the exclusion; details of what homelessness prevention advice or information was provided to the contract-holder; details of other measures taken to avoid street homelessness; a summary of measures taken following previous exclusions (if applicable); and to record details of specific advocacy services to which the contract-holder was referred.

Question 5 – Role of the landlord: Do you agree the procedure the landlord should follow in order to extend the relevant period is clearly described?

Of the responses received:

5 (16%) did not answer the question

21 (68%) answered 'yes'

5 (16%) answered 'no'

Of those that answered the question, 81% answered 'yes' and 19% said 'no'.

The majority of respondents were in agreement. Comments received included:

- Roles are clearly described;
- Unclear how anti-social behaviour is defined;

- Four weeks' processing time does not allow for potential relapse, disengagement from health services etc, where previously stable behaviour may deteriorate and an extension is required outside at short notice to allow re-stabilisation to occur;
- Application for an extension six weeks in advance is not practical and should be much shorter;
- There is no clarity on the number of times that the relevant period can be extended;
- The extension request should be for a variety of reasons including avoiding issuing a standard contract if the licence holder will have a viable move-on solution in the very near future, i.e. not just due to poor behaviour.

Question 6 – Role of the local housing authority – do you agree the role of the local housing authority in considering an extension request is clearly described?

Of the responses received:

5 (16%) did not answer the question

21 (68%) answered 'yes'

5 (16%) answered 'no'

Of those that answered the question, 81% answered 'yes' and 19% said 'no'.

The majority of respondents were in agreement. Comments received included:

- Guidance does not cover who in the local authority is envisaged to be involved or the level of seniority required to make the decision;
- Extension reasons should not only be limited to anti-social behaviour and should also include matters such as rent arrears and other breaches of contract;
- Greater clarity is needed on the number of times an extension can be given;
- There needs to be clear demarcation of roles where the local authority has been involved in the placement of the licensee;
- The process is too onerous upon the local authority;
- Timescales are too short;
- What actions could/would be taken in instances where the landlord submitted the extension request in time but the local authority took longer than two weeks to make a decision;
- The landlord cannot appeal if they disagree with the local authority's decision;
- One organisation commented that it did not support the local authority being involved in the decision making process.

Welsh Government response to questions 5 & 6:

Paragraph 15(8) of Part 5 of Schedule 2 to the Act states that in making a decision to extend the relevant period, the landlord may take into account the conduct of the tenant or licensee or any other person who appears to the landlord to live in the dwelling. The Act does not further define "conduct", and it would be for each landlord to determine whether the behaviour of the tenant or licensee is such that an extension of the relevant period is required. As the reasons to extend the relevant period relate to conduct matters, we have added to the guidance to state that this would include conduct relating to non payment of rent. It would not be appropriate to include lack of, or delays with, move-on accommodation as a reason to extend the relevant period. To do so would effectively penalise the individual through no fault of their own.

We have also clarified in the guidance that there is no limit on the number of times that the relevant period can be extended.

The involvement of the local authority in the decision to extend the relevant period is specified at paragraph 15(5) of Part 5 of Schedule 2 to the Act. This provision ensures local authorities, as the commissioners of supported housing, will be aware of the number of extensions and the reasons for them.

Regarding when the notice to extend the relevant period must be issued to the tenant or licensee, the Act requires this to be at least four weeks before the date on which the relevant period would otherwise end (paragraph 15(3) of Part 5 of Schedule 2 to the Act). We note comments received that this timescale is inflexible and does not allow for instances of behaviour that would warrant an extension occurring within the last few weeks of the relevant period. We do not propose to change the primary legislation concerning the four week notice period at this stage. However, we will be undertaking a post implementation evaluation of the Act and this will include particular consideration of the supported accommodation arrangements.

We do not propose to specify the level of seniority of the local authority officer that can determine an application to extend the relevant period. This is a matter for each local authority to determine. However, in response to comments received during the consultation, we have added that there should be a clear separation of roles between an officer who placed an individual into the accommodation and the officer deciding on an extension of the relevant period.

We have also amended the guidance to require landlords to send an annual statistical return to the local authority setting out the total number of extended relevant periods, the reasons for them and equality information relevant to each extension. The local authority is responsible for monitoring trends from the information provided and taking action as and when deemed appropriate. The guidance does not specify what actions should be taken as this would be a matter for each authority to determine in line with its contractual management responsibilities.

Regarding the comment that the landlord cannot appeal if it disagrees with the local authority's decision not to extend the relevant period, it is the intention of the guidance that the local authority's decision is final. However, there should be an open and honest dialogue between both parties throughout the period of the supported housing contract and this will help to ensure landlords and support providers understand the authority's approach to extending the relevant period. We will, however, consider this matter further as part of the evaluation of the Act.

Conclusion

The Welsh Government is grateful for the responses to the consultation and has used them to amend the guidance documents. The final versions of the guidance will be published alongside other documentation relating to the Act.