Increasing the minimum notice period for a ‘no fault eviction’

A consultation on increasing the notice that a landlord must give when seeking to end a contract under s173 of the Renting Homes (Wales) Act 2016.

Date of issue: 11 July 2019
Action required: Responses by 05 September 2019
Overview

This is a consultation on the proposal of increasing the minimum notice period given by landlords to contract-holders (tenants) for no-fault evictions from two months to six months, and for increasing the period at the beginning of a contract whereby a landlord cannot give notice from four months to six months.

How to respond

You can respond by using the questionnaire at the back of this document, or by completing an online form [https://gov.wales/increasing-minimum-notice-period-no-fault-eviction](https://gov.wales/increasing-minimum-notice-period-no-fault-eviction)

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

Contact details

For further information:

Address: Housing Policy Division
Welsh Government
2nd Floor
Cathays Park Office
Cardiff
CF10 3NQ

email: [PrivateSectorHousingMailbox@Gov.Wales](mailto:PrivateSectorHousingMailbox@Gov.Wales)

telephone: 03000 628155
General Data Protection Regulation (GDPR)

The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government’s standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data. In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing. You should also be aware of our responsibilities under Freedom of Information legislation. If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

Your rights

Under the data protection legislation, you have the right:
- to be informed of the personal data held about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be ‘erased’
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner’s Office (ICO) who is our independent regulator for data protection.

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the GDPR, please see contact details below:
Data Protection Officer: Welsh Government Cathays Park CARDIFF CF10 3NQ
e-mail: Data ProtecionOfficer@gov.wales

The contact details for the Information Commissioner’s Office are:
Wycliffe House Water Lane Wilmslow Cheshire SK9 5AF
Tel: 01625 545 745 or 0303 123 1113
Website: https://ico.org.uk/
Ministerial Foreword

The Welsh Government wants everyone to live in a home that meets their needs and supports a healthy, successful and prosperous life. Good quality homes are the bedrock of good communities, and form the basis for individuals and families to flourish in all aspects of their lives.

The rented sector is an important part of helping us meet that ambition. As a Government we have made clear our commitment to building social housing at pace and scale to meet growing demand. But we also recognise the importance of a vibrant, well managed private rented sector in meeting housing need in Wales.

The rented sector is growing and the demographics of those opting to rent is changing, particularly with more and more families with children renting. However, the basis of tenancies does not always provide the security needed for families to feel secure in their rented home and to thrive.

We have already done a lot to ensure the private rented sector is well regulated and able to offer high quality homes to those who choose to rent. We have a well established landlord licensing scheme and have legislated to restrict fees for entering, continuing or ending a tenancy. But, there is more that can, and should, be done. That is why we have made a commitment to provide greater security for tenants in the private sector. This consultation document seeks views on our proposals to do just that.

The Renting Homes (Wales) Act 2016 provides a new, streamlined and reformed basis for residential tenancies in Wales, it makes significant provisions to the benefit of tenants and forms the cornerstone of our work to increase tenant security. It provides a range of protections and rights that support tenants, provide clarity and transparency, and aim to improve housing standards and safety.

The benefits delivered through Renting Homes will improve security for anyone who rents a home in Wales, irrespective of the tenure and of their personal circumstances. It is a key step in making renting a positive choice and why I am delighted that we are now pressing ahead with implementation of this important legislation. I remain committed to providing at least six months’ notice of the formal implementation date, which will be announced in due course.

However, these improvements – significant as they are – do not fully address the concerns raised by some individuals and representative bodies about the use of ‘no fault evictions’. Section 173 of the Act, in its current form, will still allow a landlord to seek possession with only two months’ notice, without any breach of contract having been committed in the same way as Section 21 notices are currently used.

There are legitimate reasons that a landlord may need possession of their property. It is, therefore, incumbent on us to ensure any changes to the law in this area balance the rights of both tenants and landlords. Getting this balance right is both a legal and a moral imperative.

This consultation seeks views on my proposals to amend the Renting Homes Act to;
- Extend the **minimum notice period** required under a section 173 notice **from two months to six months**, and
- **Restrict the issue of such a notice until six months after the date of issue** of a contract (as opposed to four months as currently set out in the Act).

Subject to the outcome of this consultation and the availability of legislative time, this proposal will realise the full benefits envisaged by Renting Homes, enhanced by a longer notice period in the event of a landlord needing to seek possession of their property where no breach of contract has taken place.

Where you live determines so much about the rest of your life. A good quality, engaged private rented sector is a vital part of addressing the housing challenges we face in Wales. I believe that the proposals set out in this consultation strike a good balance between the need for security of tenure and the rights of landlords to be able to regain their property should they need to do so.

If these proposals become part of an amended Renting Homes Act, their impact will be kept under review. In this way we will be able to reflect on whether the changes have sufficiently improved security for tenants or if there is more we need to do in the future.

I am resolute in my intention to make renting a positive choice, and encourage tenants and landlords alike to engage actively with us during the consultation process to help us shape this proposal.
What is this consultation about?

The rental sector in Wales is a core part of the housing landscape, providing over 400,000 homes\(^1\). Renting is increasingly becoming a longer-term proposition for an increasingly wide range of people. The Welsh Government recognises the role of good quality, affordable and accessible homes in providing a springboard from which individuals and families can create secure and successful futures and meet their full potential. Having a safe, secure and stable home can bring a wide range of benefits to health, learning and prosperity for individuals and families, whilst also providing the foundation for cohesive communities.

The Welsh Government is committed to providing the right balance of support and regulation to the rented sector and to ensuring that renting a home is an option which provides for greater security; where tenants understand their rights and responsibilities and are supported to access them and where they will have peace of mind that the landlords they rent from will treat them fairly.

The Welsh Government has already taken steps to meet these aims, including through:

- Introducing legislation to ensure every tenancy of every privately-rented home is managed by a licensed landlord or agent. Licensing, which takes place via Rent Smart Wales ensures that a landlord or agent is both “fit and proper” to hold a licence and that they have completed training about their roles and responsibilities as landlords.

- Introducing legislation, in the form of the Renting Homes (Fees etc.) (Wales) Act 2019, which will improve access to and the affordability of renting in the private sector by making it an offence to charge a contract-holder (tenant) any payment that is not specified as a ‘permitted payment’ in the Act. This means contract-holders cannot be charged for such things as an accompanied viewing, receiving an inventory, signing a contract, or renewing a tenancy.

- When implemented, the Renting Homes (Wales) Act 2016 (‘the 2016 Act’) will make the process of renting a home much easier. The new arrangements redraw the housing law relating to renting, giving significantly greater protection to both tenants and licensees, referred to as ‘contact-holders’ under the 2016 Act. Among the many improvements to the current law, written contracts will clearly set out all the relevant rights and responsibilities and the new arrangements for joint contracts will stop one joint contract-holder acting alone to end the contract, thereby preventing unintentional homelessness. More information on the 2016 Act can be found later in this consultation.

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Ensuring everyone who rents in Wales will benefit from the 2016 Act is a priority for the Welsh Government. The Welsh Government is therefore committed to seeing full implementation of the Act as soon as possible.

No Fault Evictions

Implementation of the 2016 Act will not, however, remove the ability under current law of a landlord to issue a two-month notice to end the contract, even though the tenant may not be at fault. Such a notice can currently be issued under section 21 of the Housing Act 1988 (‘the 1988 Act’).

To use the section 21 notice procedure, a landlord issues a two-month notice to the tenant that possession is being sought. Once this notice has expired, and if the tenant has not left, the landlord may make a possession claim to the court to seek an eviction order. A landlord is not required to cite any fault on the part of the tenants as to why possession is being sought, and so this process is often referred to as a ‘no fault eviction’. As this is a mandatory ground, meaning the court has no discretion to consider whether or not to grant possession, then providing the landlord has followed the correct procedure, and no relevant restrictions apply, the court is required to make a possession order for the property.

Section 21 notices are used to bring an assured shorthold tenancy (AST) to an end. This includes both a periodic and fixed term AST. A ‘periodic tenancy’ is a contract which runs from rental period to rental period, usually monthly, and continues until it is brought to an end either by the landlord or contract-holder. A ‘fixed term contract’ is a contract which runs for a defined period of time, agreed by the contract-holder and landlord at the outset of the contract. Neither party can end the contract until it expires, unless there is mutual agreement to do so, a break clause (if included) is employed, or there has been a breach by one of the parties.

At the end of the fixed term period of the contract, if the tenant remains in occupation, it can be replaced by another fixed term contract or by a periodic contract. A landlord is able to issue a section 21 notice to the tenant two months before the fixed term period expires, meaning that possession could be sought on the expiry of the fixed term period. However, it is more usual for a section 21 notice to be issued during a periodic AST. Periodic ASTs can be issued at the start of occupation but, as indicated above, can also arise after the expiry of any initial fixed term period. A section 21 notice can be issued at any time during a periodic contract, although the court will not make a possession order that takes effect within the first six months of a new tenancy.

Section 21 notices are also often used when there has been a breach of contract, because landlords say the process can be quicker than if they were to bring a claim on one of the other grounds under the 1988 Act, and there is a certainty of outcome that may not otherwise be the case. It is worth noting that, according to the Residential Landlords
Association, 85% of their members who participated in research stated that the removal of no-fault evictions would lead to them being more selective in their tenant choices.

The 2016 Act will replace section 21 of the 1988 Act with a new provision under section 173, which will apply to the new periodic standard occupation contracts. In so doing it will place additional restrictions in respect of ‘retaliatory evictions’ where the landlord issues the notice to avoid carrying out a repair.

However, possession under section 173 will still be available to a landlord without the need to cite a specific reason relating to a breach of the contract. The two-month notice period applicable to a section 173 notice is specified in section 174 of the Act.

The 2016 Act provides for a separate mechanism to end a fixed term standard contract (the equivalent of a fixed term AST). This is set out in section 186 of the Act and, whilst it also requires the issuing of a two-month notice to end a contract, it cannot require the contract holder to give up possession before the fixed term has ended, or within 6 months of the occupation date (the day on which the contract-holder was entitled to start occupying the property).

Notwithstanding the additional protections under the 2016 Act, the Welsh Government recognises that a landlord being able to end a contract with only two months’ notice, undermines security of tenure and can cause difficulty, hardship and even lead to homelessness in some cases.

| This consultation seeks views on the potential benefits and risks of extending the minimum notice period for a notice given under section 173 from two months to six months, and also on restricting the issue of such a notice until six months after the ‘occupation date’ of the contract. The Act currently sets this at four months.

This would improve security of tenure by effectively doubling the length of time before a landlord can seek possession from six months to one year as long as there is no breach of contract. It will also ensure that, in the event of a section 173 notice being served, contract-holders will always have six months, rather than two, to find a new home.

Views are also sought on removing the ability to serve a section 173 notice within the six month period following expiry of any previous section 173 notice which the landlord has served on the contract-holder, (to avoid the practice whereby some landlords issue a section 173 notice ‘just in case’ they wish to use it).

Views are also sought on removing a landlord’s ability to issue a notice, under section 186, during a fixed term standard contract (seeking possession after the fixed term has ended), and the use of break clauses in fixed term standard contracts. |
The importance of the rental sector in Wales

According to Annual Population Survey estimates, the proportion of households in the private rented sector (PRS) in Wales has increased from 9 percent (118,000 households) in 2007 to 13 percent (176,000 households) in 2017. Rent Smart Wales figures are even higher, with over 200,000 properties being recorded on the register kept by them. When combined with the social rented sector, which in 2017 stood at 15 percent (230,000 households), we can see that almost a third of households in Wales rent their home. The PRS is the only tenure to have grown over this period (by 4 percent).

The Welsh Government is committed to meeting the challenges of ensuring that every citizen has access to suitable housing, and is taking action on a number of fronts which go far wider than the private rented sector. This includes continued investment in delivery of social housing, with a commitment to build 20,000 more affordable homes by 2021.

Demography of the private rented sector

In the past, the private rented sector was seen primarily as providing flexible accommodation, easily accessible to students and young mainly single person households for whom flexibility was important. More recently, however, there is evidence to suggest the sector is becoming a more mainstream housing option for a wider range of household types. The PRS now provides housing for a broad range of ages. The Annual Population Survey (APS) showed that the highest number of households in the private rented sector was in the age band 25 to 34 years (57,000), followed by 35 to 44 years (36,000), while the lowest was 75 years and over (8,000)\(^2\). The number of families with children living in rented accommodation in the UK has also risen by 94% in the last decade, with approximately half of children being born to families who are renting privately in 2016-17\(^3\). This means that many children will now spend a number of their formative years in private rented accommodation.

At the same time, current available figures for Wales show a trend towards households in the private rented sector getting older with the proportion of households aged under 45 years having fallen by 8% between 2013 and 2017 and the 45 to 64 and 65 to 74 households both having increased by 1% over the same period\(^4\). This suggests that many people are now either staying in the sector for longer or spending periods of time within the sector later in life. This does not mean however, that people spend that time in one property - the National Survey for Wales 2016-17 results showed 33% of


households within the PRS had resided in their current property for less than 12 months and 19% between one and two years.\(^5\)

A significant proportion of households within the PRS are also ‘low income households’ with 37% having a net annual income of £15,000 or less (compared with 30% in Scotland and 21% in England)\(^6\). The National Survey for Wales 2018 found that 22% of private renters received housing benefit\(^7\). In addition, 36% of households presenting as at risk of homelessness and seeking support under the Housing (Wales) Act 2014 cited the loss of rented accommodation as the main reason for doing so\(^8\).

The sector, therefore, provides a home for a wide range of people, including some who may be vulnerable and, increasingly, for families with children. In light of this, providing people who live in the PRS with adequate security whilst they rent is a key part of ensuring the sector plays its full role in the housing ambitions we have in Wales: secure and stable homes that allow people to reach their full potential.

**Implementation of the Renting Homes (Wales) Act 2016**

The Renting Homes (Wales) Act 2016 will replace the current complex areas of housing law with a fairer and simpler legal framework. It will require landlords to issue a written statement of their occupation contract, which clearly sets out the rights and responsibilities of landlords and those renting from them (‘contract-holders’).

The 2016 Act will improve security of tenure and will rebalance rights and responsibilities between landlord and contract-holder, helping to meet the challenges of the demographics in the PRS as set out above. The Act will also help provide the following benefits for everyone who rents in Wales:

**The requirement to provide a written statement of contract** – Renting in Wales will be simplified. The Act will ensure that a landlord issues a written statement of the occupation contract to the contract-holder. Model contracts will be available for anyone to access online. The new occupation contracts under the 2016 Act will replace the current confusing mixture of tenancy and licence agreements, and mean that some contract-holders will receive a written contract for the first time.

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\(^7\) [https://www.ons.gov.uk/economy/inflationandpriceindices/articles/ukprivaterentedsector/2018#tenants](https://www.ons.gov.uk/economy/inflationandpriceindices/articles/ukprivaterentedsector/2018#tenants)

Improvements for joint contracts – It will be possible to add or remove a joint contract-holder without the need to end the contract for everyone who is a party to it, as is the case with current joint tenancies. Also, it will no longer be possible for one contract-holder, acting alone, to end the contract. This will greatly help in avoiding homelessness cases. This will also help the victims of domestic abuse, by enabling the perpetrator to be targeted for eviction, without ending the contract for the victim.

Enhanced succession rights – This will make it easier for the contract-holder’s family and dependents to stay in their home should the contract-holder die, transfer or surrender the contract. Succession under the Act will allow up to two successions to the contract. The ‘priority successor’ can be a spouse, civil-partner or those living as such. Following this, a further family member can succeed to the contract if they meet the family member condition. A new succession right for carers is also created which will provide increased security for many of the 370,000 unpaid carers in Wales⁹.

Fitness for human habitation – Landlords will have to ensure that the dwelling is fit for human habitation (FFHH). This will mean that the landlord will have to consider a broader range of things when determining whether a property is FFHH including three specific requirements being placed on landlords through regulations:

- The presence of smoke alarms
- The presence of carbon monoxide alarms
- An electrical safety test conducted at least every five years.

A new abandonment procedure – This will mean that landlords will be able to repossess an abandoned property without a court order, which means that properties will not be empty for as long.

Supported accommodation – Those in supported accommodation will, for the first time, have a clearly defined set of terms underpinning their occupation, helping them to understand and better enforce their rights.

Section 21 of the Housing Act 1988 and Section 173 of the Renting Homes (Wales) Act

The Welsh Government wishes to ensure those renting their home have an adequate level of security, and recognise that the current two-month notice period for a no fault eviction significantly undermines this. The issues currently faced by tenants include a feeling of insecurity, no right to challenge or ‘defend’ the eviction, knowing a forced move within two months is possible, the cost to the tenant in having to move and the limited time it provides to find a new home and to prepare for a house move.

A further concern is that section 21 notices may be used in cases of ‘retaliatory eviction’, whereby a landlord might evict, or threaten to do so, in response to tenants seeking to enforce the landlord’s repairing obligations. The Welsh Government has recognised this issue, and others, though the following safeguards relating to the use of section 173 notices under the 2016 Act:

⁹ [https://www.carersuk.org/wales/about-us/facts-and-figures]
Protection against retaliatory evictions: No fault eviction will be subject to the retaliatory eviction safeguards. This means a court will be able to refuse to grant possession to a landlord if it considers the possession claim is retaliatory, i.e. the landlord is seeking possession in order to avoid having to take steps to repair or improve the property as a result of the contract-holder making a complaint or repair request in respect of a disrepair / fitness for human habitation issue.

Time limits on notices: Unlike section 21 notices under the 1988 Act, section 173 notices are not open ended. A landlord, having served the required two months’ notice on the contract-holder to end the contract, has two months from the intended end date to make a possession claim to the court. Should the landlord take no action following the intended end date set out in the section 173 notice, a new section 173 notice would need to be issued. This directly addresses the current situation where a tenant can feel they have a section 21 notice ‘hanging over their heads’.

Restrictions on issuing a notice: A landlord cannot issue a section 173 notice if they have failed to provide a written statement of contract to the contract-holder or before the end of the restricted period (6 months), starting from when that written statement was eventually served. There are also other existing restrictions on issuing a section 173 notice, such as where the security deposit has not been protected.

These additional restrictions placed on the use of ‘no fault’ evictions under 2016 Act will address many of the concerns certain stakeholders currently have, such as landlords evicting just because a tenant has made a complaint, and the ‘speculative’ use of such notices by landlords as an ‘insurance policy’.

Amending the notice period applying to a section 173 notice

Any changes to possession arrangements must also take account of the landlord’s property rights. Landlords may need to regain possession of their property for a range of reasons, such as the need to live in it themselves or to house a family member.

A right to regain possession in the event of a breach of a contract, for example due to rent arrears or damage to the property by the contract-holder also need to be considered. Under the 2016 Act, a possession claim to address such matters can be made in the form of a notice under section 157 for breach of contract (which, broadly, replaces a section 8 possession notice under the Housing Act 1988) or section 181 in the case of serious rent arrears’.

However, even under the improved arrangements under section 173 in its current form, contract-holders will continue to be in a position where they could be subject to a ‘no fault’ two-month possession notice.

If they do receive a section 173 possession notice, they would be expected to move home before the two-month notice period expires. This is a life event that needs to be planned
for and is known to be stressful. Where you live determines much about the rest of your life, and it is important that people are given time to exercise a choice based on what is in their best interests, not just what is available at short notice.

The Welsh Government proposes to re-balance these rights and responsibilities in a way that improves security of tenure but retains the certainty of a landlord being able to obtain possession of the property. This will help ensure the efficient operation of the rental market, which can provide good and convenient housing for a large portion of the population.

The Welsh Government believes that changes to how section 173 operates can help achieve this balance.

Extending the notice period will not affect a mortgage lender’s ability to regain possession of a property where the landlord has defaulted on a mortgage, albeit, as with landlords generally, this will be subject to a longer notice period than currently applies. It is not considered that this will be fundamentally detrimental to the operation of the buy-to-let element of the rental market.
Proposal: Longer minimum notice periods under section 174

The 2016 Act, once implemented, will provide for a rebalancing of landlord and contract-holder rights, with greater security of tenure for contract Holders. However, the Welsh Government wants to provide for even greater security.

We are therefore seeking views on our proposal to:

Proposals with regards to periodic contracts:

- *Extend the minimum notice period, as prescribed under section 174, applicable to a section 173 notice in order to regain possession of their property from two months to six months.*

- *Restrict the landlord from serving a section 173 notice within the first six months of a periodic standard contract. The Act currently sets this at four months.*

- *Place a six-month time limit on issuing a section 173 notice following the expiry of a previous notice.*

Proposals with regards to fixed term contracts:

- *Remove a landlord’s ability to end a fixed term standard contract under section 186.*

- *Place restrictions on the use of break clauses.*

**Extending the minimum notice period from two months to six months**

This change is being proposed as it is the Welsh Government’s view that two months’ notice is currently too short a time for a contract-holder to be able to find an alternative home when subject to eviction. This is especially the case when an individual may be facing circumstances such as illness or where the family needs to make arrangements for a change of schools for their children.

Extending the notice period will not remove a landlord’s right to possession of their property and contract Holders will continue to be liable for rent for the notice period, so landlords would not lose out financially on that basis. The landlord would not be required to continue to rent to a contract-holder who has breached the contract in some way, such as not paying their rent, because possession can be sought by other means. In particular, a possession claim could be made under section 157 (breach of contract) and section 181 (serious rent arrears).
Increasing the length of the minimum notice period to six months would give contract-holders the time and opportunity needed to do the following:

- **Find suitable alternative accommodation within the same community or area should they wish to do so.** Having only two months to make such arrangements increases the likelihood of having to find ‘any’ accommodation, rather than optimal alternative accommodation. This unnecessarily contributes to people having to leave not just the property, but the community as well.

- **Arrange for changes to existing care packages where an individual or someone they live with may be in ill health or require care and support and a move to a different local authority or health board area is required.**

- **Make arrangements to try to avoid having to change their child’s school, or to be given enough time to make arrangements for the change where it is necessary or desirable.**

- **Save up to pay for the cost of the move and complete all necessary administrative tasks, including making contact with housing support or benefit agencies where appropriate.**

- **Generally plan for the move around their everyday lives, including employment and family commitments, in a manner more similar to those who are selling their home.**

**Extending the restriction which prevents a landlord serving a section 173 notice within the first four months of an occupation contract**

At present, section 175 of the 2016 Act prevents a landlord from serving a section 173 notice during the first four months of the contract. The Welsh Government believes that four months is too short a time at a beginning of a contract for the contract-holders to enjoy living in their new home without the possibility of being issued with a notice, even in the case of the notice period itself being extended to six months. Extending the initial period of restriction from four months to six months is therefore proposed.

This, combined with the extended six month notice period, would provide a contract-holder with a minimum twelve months’ security of tenure under a new contract, and the Welsh Government believes that a minimum of one year of security of tenure is important for contract-holders. It is also a useful minimum period of occupation in order for the contract-holder to be confidently able to enter into contracts for utilities or other services which typically involve one-year contracts.

**Further time limits on issuing a section 173 notice under a periodic standard contract**
At present, under the 2016 Act, any section 173 notice issued by a landlord, and not acted upon within two months of the notice date will expire. The notice will have to be re-served by a landlord should they wish to evict the contract-holder. With a notice period of just two months there is little incentive for a landlord to continually renew this notice. However, if the notice period is extended to six months, there could be an increased potential for a landlord to issue a notice every six months as a precautionary measure, so that a possession claim could be pursued within a potentially shorter timeframe if required. Such a practice would result in a contract-holder having a notice for eviction permanently hanging over them.

The Welsh Government believes a landlord should only make a possession notice to a contract-holder when they actually intend to pursue possession. Therefore, it is proposed that a landlord who issues a section 173 notice, and then does not bring a claim within the relevant period should be prevented from issuing a further section 173 notice for six months after the date of expiry of the previous notice.

Placing a six month restriction on the re-issuing of a section 173 notice when the previous one has expired would ensure landlords only issue a notice when it is required, enhancing the security felt by contract-holders.

**Removal of a landlord’s ability to end a fixed term standard contract under section 186.**

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

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

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

One possible alternative would be to extend the notice period under section 186 to six months, to provide the same notice period proposed for a section 173 notice. However, whilst this would provide a contract-holder with the benefit of an extended notice period, it could lead to unintended consequences regarding security. This is because a landlord may consider offering a fixed term contract of only six months’ duration to be a preferable option, as it would allow them to issue a six-month notice.
to end the contract immediately after the contract begins. Whilst a landlord may, in fact, not act to evict the contract-holder upon the expiry of the fixed term, but instead grant another six-month fixed term contract, this would nevertheless undermine the contract-holder’s perceived security.

Therefore, it is proposed to remove a landlord’s ability to issue a notice to end the fixed term contract under section 186. This will mean that, if a contract-holder chooses not to vacate the property at the end of the fixed term, the contract will automatically be replaced by a periodic standard contract (under section 184).

Except in the case of a breach of contract, a landlord who wishes to remove a contract-holder who remains in occupation at the end of the fixed term, will be required to serve a section 173 notice to bring the new periodic standard contract to an end, which would be subject to the amended six-month notice period.

It should be noted that, by ensuring a contract-holder would be committed for a set period through the use of a fixed term standard contract, a landlord would still be able to benefit from the security of income a fixed term contract can bring.

Should an initial short fixed term period be agreed with a contract-holder, for example four months, a landlord would still be required to wait a minimum period of six months from the occupation date before a section 173 notice could be issued. This ensures a contract-holder will be provided a minimum twelve months’ security, regardless of the initial fixed term contract length.

**Break Clauses**

Break clauses allow a landlord or a contract-holder to end a fixed term contract at an agreed period. The use of a break clause to end a fixed term occupation contract raises similar concerns to those described in ending a fixed term occupation contract by issuing a section 173 notice. Whilst they do not automatically form part of every fixed term contract they can be requested for inclusion by either party. The setting of regular break clauses by a landlord could circumvent the proposed changes made with respect to ending a fixed term contract. For example a three year fixed term contract could be issued which included a term enabling the landlord to issue a possession notice every six months. There is, therefore a need to consider the future use of break clauses under the 2016 Homes Act and this consultation seeks views on this matter.

**Specific sectors**

Whereas this consultation document concentrates on the private rented sector, as the sector that will be most affected by any changes, consideration must be given to the social rented sector and to specific sub-sectors of the private rented sector during this consultation process and in developing detailed proposals.

While the social rented sector will be largely unaffected by these proposals, there are specific tenancy types where no-fault evictions are relevant (introductory/starter
tenancies and demoted tenancies). It is therefore important to understanding and considering the impact on this sector of any changes in no-fault eviction arrangements.

A sub-sector of the private rented sector that is likely to have particular concerns is that comprising university-owned accommodation. We will need to know how any changes will impact in this area and any other areas with particular needs.

Further considerations

This consultation therefore also seeks views on the following matters:

- **Further protection from retaliatory eviction:** Where a landlord has attempted to use a notice, and this has been challenged by the contract-holder and a court has decided that the landlord has acted in a retaliatory manner, a further restriction is proposed. This would stop the landlord from issuing a new section 173 notice for a period of six months from the date of the court’s decision. This would decrease the risk that the landlord, who has been found to have acted in a retaliatory manner, would simply undertake repairs and then issue another section 173 notice shortly afterwards.

- **Failure to comply with existing legislation:** The Welsh Government believes that it is important that landlords comply with legislation and are considering the possibility of restricting the issue of a section 173 notice where a landlord hasn’t complied with particular relevant legislation. This is an opportunity to further drive up standards in the sector and to ensure that both the current and any future contract-holder live in properties of a safe and suitable standard. Key areas for consideration here are compliance with Gas Safety Certificates and Energy Performance Certificates. Such an approach may also be of benefit in helping ensure that some other standards are also complied with fully.

Review

Should these proposals become included in any amending legislation, and ultimately be incorporated within 2016 Act, their impact on the private and social rented sectors will be kept under review so that we can identify the impacts of the policy on the rental market, whether it has improved security for contract-holders and whether more needs to be done.
Consultation questions

The majority of questions in this consultation are relevant to all respondents but some are specific to whether you are a landlord (either private or social) a letting agent or a ‘contract-holder.’ A contract-holder is the new name for a tenant under the Renting Home (Wales) Act 2016.

How would you best describe yourself?

A contract-holder (tenant) in the private rented sector
A contract-holder (tenant) in the social rented sector
A private landlord
A social landlord
A letting agent
A stakeholder or representative group
A local authority
Other (please describe)

Your experience of the current eviction process

Contract Holders

Question 1: Have you been evicted in the last two years?
YES / NO

Question 2: If yes, was a reason given?
YES / NO

Question 3: If a reason was given please tell us what it was.

Question 4: Please describe the impact being evicted had on you.

Landlords or letting agents

Question 1: Have you issued a section 21 notice in the last two years?
YES / NO
**Question 2:** If yes, please tell us why

**Question 3:** If no, please tell us if you have taken possession of a property over that period using another procedure and if so, what it was and why you took that approach.

**Question 4:** Please tell us of any challenges you faced in taking possession of the property.

The Welsh Government's proposal with regard to extending minimum notice periods

These questions should be answered by all respondents

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

**Question 1:** Do you agree with this proposal?

Yes / No / Don’t know

**Question 2:** Please tell us why.

**Question 3:** How do you think a longer notice period will affect you? Please consider both positive and negative impacts.

Proposal regarding when a section 173 notice can be issued under a fixed term contract

These questions should be answered by all respondents

Under the 2016 Act, a section 173 notice cannot be issued within the first four months of a fixed term contract. Our proposal is to extend this period from four months to six before the Act is implemented.

This, along with an extended notice period of six months, would mean that contract-holders who have started a new contract will have the security of staying in their home for at least 12 months.

**Question 1:** Do you agree with our proposal to increase the period in which a section 173 notice cannot be issued from four months to six?

Yes / No / Don’t know

**Question 2:** Please tell us why.

**Question 3:** How would this change affect you? Please consider both positive and negative impacts.
Proposal to set further time limits on issuing a section 173 notice under a periodic contract

These questions should be answered by all respondents

At present, there would be nothing to prevent a landlord or agent from issuing a section 173 notice every six months, so they could evict the tenant should they choose do so in the next six months. This would result in the extended notice period the Welsh Government proposes being circumvented and a contract-holder having little security during the tenancy as an eviction notice would always be hanging over them.

To avoid this, the Welsh Government proposes placing a six-month restriction on the re-issuing of a section 173 notice after the previous one has expired.

Question 1: Do you agree with this proposal?

Yes / No / Don’t know

Question 2: Please tell us why.

Question 3: How would this change affect you? Please consider both positive and negative impacts.

Removal of a landlord’s ability to end a fixed term standard contract under section 186.

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

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

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

Therefore, it is proposed to remove a landlord’s ability to issue a notice to end the fixed term contract under section 186. This will mean that, if a contract-holder chooses not to
vacate the property at the end of the fixed term, the contract will automatically be replaced by a periodic standard contract (under section 184).

Except in the case of a breach of contract, a landlord who wishes to remove a contract-holder who remains in occupation at the end of the fixed term, will be required to serve a section 173 notice to bring the new periodic standard contract to an end, which would be subject to the amended six-month notice period.

**Question 1:** Do you agree with this proposal?

Yes / No / Don’t know

**Question 2:** Please tell us why.

**Question 3:** How would this change affect you? Please consider both positive and negative impacts.

**Use of break clauses**

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

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

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

These questions are for **Contract-holders**

**Question 1:** Do you have a break clause in your current contract or have you had one in any contract in the last two years?

Yes / No / Don’t know

**Question 2:** If yes, was the clause agreed with your landlord or was it required as part of the contract?

**Question 3:** Have you previously been required to leave a property due to a break clause being activated by the landlord or agent?
**Question 4:** Have you previously made use of a break clause yourself to end a tenancy agreement?

Yes / No

**Question 5:** If yes, please explain a little of the circumstances that caused you to use it.

**Question 6:** Overall, how beneficial do you consider the continued use of break clauses to be? What are the drawbacks?

These questions are for **Landlords and Letting Agents**

**Question 1:** How often do you include break clauses in your contracts?

Never / Sometimes / Often / Always

**Question 2:** If you do include break clauses, have you activated one within the last two years?

Yes / No

**Question 3:** If yes, please explain a little of the circumstances that caused you to use it.

**Question 4:** Overall, how beneficial do you consider the continued use of break clauses to be?

**Question 5:** What issues would the limitation of the use of break clauses cause?

**Question 6:** What issues would the removal break clauses cause?

**Proposal with regards to further protection against retaliatory evictions**

These questions should be answered by all **respondents**

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

**Question 1:** Do you agree with this proposal?

Yes / No / Don’t know

**Question 2:** Please tell us why.

**Question 3:** How would this change affect you? Please consider both positive and negative impacts.
Proposal with regards to failure to comply with existing legislation

These questions should be answered by all respondents

The Welsh Government is considering additional restrictions to any landlord seeking to issue a notice where they have failed to comply with relevant legislation. This will help drive up standards in the sector and ensure contract-holders live in properties of a safe and suitable standard. Key areas for consideration here are compliance with Gas Safety Certificates and Energy Performance Certificates

**Question 1:** Do you agree with this proposal in principle?
Yes / No / Don’t know

**Question 2:** Please tell us why.

**Question 3:** Are there any other matters which you think should be included within this provision?