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Welsh Government  
Consultation – summary of response

## 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)

January 2020

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



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# Summary of responses for the consultation on increasing the minimum period for a ‘no fault eviction’

## 1. Introduction

In our [recent consultation](#) on increasing the minimum notice period for a ‘no-fault’ eviction we sought stakeholders’ views on a number of changes the Welsh Government intends to make to the Renting Homes (Wales) Act 2016 through amending legislation, prior to its coming into force later in the current Senedd term.

The proposals we consulted on are designed to provide additional security of tenure for contract-holders who rent their home from a landlord in Wales, whilst also ensuring that landlords are able to regain their property in a predictable and timely manner when they have a legitimate need to do so. Whilst these proposals are likely to have the greatest impact in relation to the private rented sector – where tenancies have historically been less secure – community landlords, and those who rent from them would also be affected by some of these changes.

## 2. Methodology

The consultation document asked 39 questions across nine broad areas on a range of key subjects and issues relevant to increasing the minimum period for a ‘no fault eviction’. It was intended to gain views from a range of stakeholders in order to help inform the best way forward.

The consultation was published on the Welsh Government website and information about it and how to respond was widely distributed and shared via social media and via e-mail. A summary of the key themes to emerge from these engagement events is included in this document.

In addition, during the consultation period, Welsh Government officials met with several key stakeholders to discuss the proposals in more detail. The views expressed during those meetings have also been considered as part of the analysis work that has informed this response report.

## 3. Overview of responses

We received 855 responses to the consultation from across a range of sectors.

The majority of responses received were from individual landlords (82%) or letting agents (6%). This is not unexpected as [Rent Smart Wales](#) hold contact details for all registered landlords and licenced agents in Wales and those records were used to inform the sector of the consultation. In addition, all of the major landlord representative and membership organisations submitted responses, along with a number of registered social landlords and local authorities and related umbrella organisations.

Whilst no equivalent mechanism to RSW exists for contacting individual tenants, both Shelter Cymru and Tenant Participation Advisory Service of Wales (TPAS) Cymru

were able to draw on survey work they had themselves undertaken with their own stakeholders to inform their consultation responses. We are grateful to all individuals and organisations that took the time to respond on this important issue, and Welsh Government looks forward to continuing to work closely and constructively with stakeholders across Wales as we move forward with the next phase of our Renting Homes legislation.

All direct quotations from respondents are shown in italics.

#### **4. Summary of responses to specific questions**

##### **Contract Holders**

**Question 2:** Have you been evicted in the last two years?

**Question 3:** If yes, was a reason given?

**Question 4:** If a reason was given please tell us what it was.

**Question 5:** Please describe the impact being evicted had on you.

- 35% of the 31 tenants who responded have been evicted within the last two years.
- 90% of these tenants were provided with a reason for their eviction.

##### **If a reason was given please tell us what it was.**

Of those tenants who answered this question, the main reason given by the landlord was that they wanted their property back in order to sell. Some tenants stated that they had rent arrears or other problems with their tenancy.

##### **Please describe the impact being evicted had on you.**

The majority of respondents felt that the eviction had a significant and negative effect. The word 'devastating' was used by a number of respondents.

- *I was facing homelessness as I didn't have the income to cover another month's rent plus bond, plus agency fee, plus removal costs (that's before paying bills and having money to live on and eat for the month).*
- *I was devastated as I had lived there for 9 years and had invested money in new floors and other improvements.*
- *This resulted in a lot of viewings (some at short notice) and being given notice with 3 months remaining on our 6 month contract. There was substantial*

*disruption to our personal lives due to the viewings and having to find a new place to rent.*

### **Landlords or letting agents**

**Question 6:** Have you issued a section 21 notice in the last two years?

**Question 7:** If yes, please tell us why

**Question 8:** 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 9:** Please tell us of any challenges you faced in taking possession of the property.

- 34% of the 723 private landlords who responded to this question have issued a Section 21 notice in the last 2 years.
- 60% of the 10 social landlords who responded have issued a Section 21 notice in the last 2 years.
- 86% of the 51 letting agents who responded have issued a Section 21 notice in the last 2 years.

### **Reasons for using a Section 21**

The main reason given for serving a notice was the 'need to remove an unsuitable tenant as quickly as possible.' The most common reasons were that the tenant was seen as unsuitable or that there were issues with the tenancy, such as non-payment of rent or damage to the property. Amongst the private landlord responses, a desire to sell the property was also common.

#### Private landlords

- *Non payment of rent and subsequent confirmation of extensive damage to property by Tenant. The tenant flatly refused to pay rent or enter into any discussions that were aimed at helping them pay the monthly rent - The tenant's regular quote "your rent is not my problem, my only concern is to keep a roof over my head".*
- *The tenant ceased paying rent two months before the end of the tenancy, and was in rent arrears for the previous three months. Section 21 provided an alternative route to gaining possession to the Section 8 procedure. The tenant subsequently abandoned the property, despite stating they would pay the outstanding rent. Section 21 was invaluable in allowing me to regain*

*possession in this situation.*

- *I had to sell the property as a direct result of Section 24 of the Finance Act making it unaffordable to keep it. I had to evict a family of 4 who had been living in the house for 9 years and who had been paying rent that was £100 below market value each month.*

### Social Landlords

- *As a matter of last resort. Despite receiving direct tenancy management the tenants were causing ASB and failed to improve their behaviour. Notices are only served following several warnings and other support attempts. In the majority of cases the tenants failed to engage. The decision was made that the needs of the other residents outweighed the tenants rights to the accommodation.*
- *Persistent arrears and/or ASB*

### Letting Agents

- *To remove a tenant who had not been looking after a property and failing to respond to any communication.*
- *The vast majority of time it's because the tenant was in rent arrears of two months so Notice was served. A smaller percentage was when the landlord wanted possession of the property back, either to sell it or to move back in themselves.*
- *Non payment of rent, damage to property by tenant, property going onto sales market and landlord wanting vacant possession beforehand, property requiring work by landlord and vacant possession required for it to be carried out.*

### **Procedure used to take possession**

The vast majority of responses pointed to using a section 21 to gain possession, there were some responses that pointed to use of either a section 8 or some other form of negotiation with the tenant to secure their removal.

### Private landlords

- *I have been a landlord for 16 years I estimate that in 6% of cases I have used a Section 21 Notice. I have never taken a Section 8 notice to Court (although I have prepared one once). In about 4% of cases I have negotiated closure. The remainder have ended from notice given to me by tenants because for one of a number of reasons their circumstances change. I have approximately 50 testimonials rating both the property and me as a landlord, many of them*

*glowing, returned by tenants as a part of their end of tenancy process.*

- *I had to issue a Section 8 Notice as my tenants were in two month's rent arrears! I worked with them and gave them a year to pay back the arrears whilst paying their current rent.*
- *By negotiation with the tenant. The tenant ... was causing a noise nuisance to neighbours at night time. He had a girlfriend who created noise disturbance to neighbours and was abusive to neighbours who challenged her. I received formal complaints from the building's Management Company and was pressurised into asking them to leave.*

### Social landlords

- *Under the Housing Act for failure to pay rent, in spite of the court order to pay the rent due on the due date, no further rent was paid and in spite of the court order to pay the back rent, only one payment of £10.00 was received.*
- *Section 8 procedure has been used in severe cases of ASB. This was used due to the tenancies being protected. This process is long and drawn out for victims of ASB due to court capacity and labour intensive for social landlords who have to manage the issue. A decision to issue proceedings is only made as a last resort and after warnings and support have failed.*

### Letting Agents

- *I have used Section 8 many times but it only ever works when ground 8 is satisfied, if not the rest can be a complete waste of time as they are discretionary grounds.*
- *We used Section 8 in order to obtain a money judgement as well as possession of the property. We were confident we had enough evidence in order to gain possession at the trial.*
- *No - all ended tenancies have been at the request of the tenant.*

### **Challenges faced in using a Section 21**

There were a wide range of responses to this question. The two common threads that came through respondents' answers were incidents where the tenant refused to leave and frustration with the cost and complications of the court procedure<sup>1</sup>.

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<sup>1</sup> There were no comments from Social landlords to this question.

## Private Landlords

- *I have a tenant who recently moved in into the property just over two months ago already default in rent payment. It is becoming increasingly difficult to evict tenants from the property with increasing legal obstacles. This will directly or indirectly increases cost of renting and discourages property investors increasing their portfolio*
- *Tenant ignored section 21 directive and only vacated once bailiffs attended to enforce eviction.*
- *Loss of monies, can't pay the mortgage, Tenants advised not to leave by local council or agencies. Have to wait for court orders and court proceedings are complex, cost money and always seem to veer on the side of the tenant.*

## Letting Agents

- *Very often we would rather give tenants a final chance and have a suspended possession order. quite often sense and sensibility goes out of the window as tenants start making accusations against the landlord... which makes any sensible negotiation nearly impossible*
- *Even with a section 21 more often than not tenants do not move out on possession date increasing arrears and causing more damage. Courts are too slow with large case loads. It also costs the landlord more money to take them to court even when costs are awarded it is near impossible to get that back from the tenants. The only benefit of a section 21 is that there is no defence and possession has to be granted. Shelter often advise tenants with section 21 to stay in the house and wait for the bailiffs to actually evict them again increasing the costs to landlords*
- *It's long drawn out process, that some abuse to remain in possession even when at fault.*

**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 10:** Do you agree with this proposal?

**Question 11:** Please tell us why.

**Question 12:** How do you think a longer notice period will affect you? Please consider both positive and negative impacts.

- 88% of all respondents disagreed with extending the minimum notice periods. 12% were for the proposal.

- 94% of landlords and 98% of letting agents who responded are against the proposal.
- 70% of private tenants<sup>2</sup>, and 50% of social tenants who responded are supportive of the proposal.
- 73% of local authorities who responded were behind the proposal.
- 56% of social landlords who responded disagreed with the proposal.

### **Respondents who agreed with the proposal**

Of the majority of respondents who agreed with the proposals, there was a common theme around the benefit of allowing the tenant longer to find alternative accommodation and that good tenants deserved such added consideration:

#### Landlords

- *It's the responsible thing to do. Give tenants sufficient notice to be able to find new accommodation.*
- *A two month period for a family to provide themselves alternative accommodation is too short a time period. A six month period would be more appropriate considering the problems in obtaining rented accommodation.*
- *Happy to allow tenants time to find alternative accommodation providing they adhere to their side of contract, long term tenants are beneficial.*

Some respondents noted that an issue with the proposals was circumstances where the landlord wanted their property back in a hurry:

- *I hope that I am never in such a financial situation that I need to access the equity from my property in a hurry. It may be that my daughter may need a place to live but I hope that 12 months would be long enough to sort things out.*
- *It would slow down my speculative options. If I saw an opportunity to buy a farm house in Tuscany that required that I sell property I may need a bridging loan.*

#### Agents

Only one agent supported extending the minimum notice period and this respondent stated their reason as:

- *I believe that landlords should still have the right to end a tenancy through using such as tool as the Section 21 notice, but increasing the notice period to*

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<sup>2</sup> The tenants who disagreed were also landlords.

*six months feels like a good compromise, and gives tenants more time to find alternative accommodation.*

## Tenants

As the most supportive group for the proposals, tenants particularly noted the increased security that this would provide:

- *As much time as possible should be given to tenants thrown into this situation through no fault of their own.*
- *It isn't always possible to find other suitable accommodation in such a short time and not always easy to move from one house to another in only two months. For disabled tenants, or those with young children, having to move so quickly could be very difficult.*
- *2 months is no time at all with social housing almost impossible to get and private housing so expensive compared with LHA. Not to mention bond, months rent in advance, agency fees, removal costs.*

## **Respondents who disagreed with the proposal**

Most respondents disagreed with the proposal, however, these were primarily contained to the responses from landlords and letting agents. The overwhelming trend was that 6 months was too long and that this would potentially harm the property owner financially and risk further damage to the property in the case of 'bad' tenants. The current system of 2 months was noted as striking the right balance between retrieving the property and giving a tenant sufficient time to find new accommodation.

## Landlords

- *In reality section 21 is often mistakenly seen as a 'no fault eviction' when in truth it is a response to rent arrears and damage to property. Whilst in theory, a section 21 notice should take 2 months, the reality is more like +6 months (should the tenant fail to quit at the end of the notice period and the court/bailiffs become involved. Moreover, it is often used as section 8 takes longer still.*
- *When I have issued a section 21 the tenant has had months of warning before I do this to try and rectify any issues to save the tenancy. I have never issued a section 21 without good reason.*
- *Two months can be a long time if you have a really bad tenant, six months could be a nightmare and very expensive for the landlord with loss of rent etc.*
- *If we have tenants misbehaving or causing distress to adjoining tenants or neighbours we need to evict them asap and 2 months should be the notice*

Some suggested that a shorter notice period might find more approval:

- *I think 3 or 4 months would be enough for a reasonable tenant to find another property whereas a bad tenant will not find one anyway.*
- *One could wait 6 months and the tenants do not move out. It probably should be 3 months with a voluntary/negotiable option to leave sooner if the tenants wish and/or make it 4, 5 or 6 months.*
- *This is far too long from the landlord's standpoint. If we need to sell the property due to our own financial situations, 6 months is far too long. 3 months is more than reasonable.*

An oft cited result of extending minimum notice periods was that landlords would be 'compelled' to sell their properties:

- *It will mean that I lose money. Which means that I will have to consider selling problem properties.*
- *I would consider selling the property despite having an excellent tenant.*
- *I won't plan to rent out my property after the current tenants leave, I'm likely to sell and exit the sector.*

Or, that landlords would have to be a lot more selective when renting their property:

- *This will make me reconsider renting my property out certainly affect who I rent to in future if I have to commit to 1 year tenancy less likely to let to low income families who are most in need.*
- *This will make me think twice about letting to tenants on benefits and those without adequate references or full bonds.*
- *Extending the minimum notice period applicable to 6 months would mean we definitely would take more time in considering tenants, as if tenants can't pay, 6 months of non-payment could mean the house being repossessed.*

Some respondents felt that such measures evidenced a growing pro-tenant and anti-landlord trend:

- *This once again adds more rights to tenants and nothing for landlords.*
- *Together with more onerous income tax and stamp duty terms this may lead to a reduction of homes available via the PRS which the government social housing sector seems unwilling to fill. Considering the current pressure on local authority budget, I don't see this situation improving anytime soon. The proposal tars responsible and disreputable landlords with the same brush.*
- *Can you please do something for the landlord rather than increase the difficulty of eviction.*

## Agents

The comments provided by agents followed a similar trend to the landlords:

- *It takes long enough to remove a tenant as it is and as soon as a notice is served the tenants normally stops payments*
- *This proposal greatly prejudices Landlords. A bad Tenant will be able to remain for a further 4 months while not paying rent*
- *Some Landlords would move their portfolios from the Private Rental Sector into the holiday sector, or Airbnb, so it would reduce stock for tenants and consequently increase rental values. Landlords would be less likely to let to tenants in receipt of social benefits - reducing stock for vulnerable people.*
- *It is our experience that if you want to evict a tenant it is for a good reason, no landlord will want to evict a good tenant. When you enter into a tenancy no one can be absolutely sure that the tenant is going to fulfil their obligations under the tenancy. Despite other options to evict the process is too slow, too costly and it's why landlords are selling up.*
- *The 2 month period is already adequate, providing sufficient time for the tenant to find alternative accommodation, whilst at the same time giving some protection to the owner of the property. To extend this period will make it yet more unattractive for private landlords to offer their properties for rent, with a resulting drop in the availability of private rented accommodation. This is at the very time when we need as a nation to secure increasing numbers of rented properties to accommodate population growth.*

## **Other matters which should be considered for inclusion in this provision**

- *I believe the root cause of the problem is not the 2 month notice period but the low limit put on housing benefit payments which doesn't come close to market rates in some areas, the bedroom tax, over zealous use of sanctions for benefits claimants and the shortage of social housing.*
- *I can totally sympathise with tenants who desire more security and more notice if they are going to have to move house. But it would be very rare for a landlord to serve notice on a good tenant who is paying the rent. Why would you want to do that? Unless you urgently needed the house back for yourself or to sell it.*
- *If a tenant is behaving badly then it means that I would more probably go through a Section 8 procedure for possession under the Housing Act 1988, which would make the process more confrontational with the tenant. If the tenant was paying rent and was not upsetting neighbours there would be no reason to be requesting possession of the premises, unless either I wanted to*

*live in the premises myself or I needed to sell them.*

- *I think longer evictions would decrease the number of long term tenancies and landlords would stick to 6 months at a time. Meaning that tenants would constantly be having 6 month renewals. The likelihood of longer tenancies would diminish as landlords will be factoring a potential 6 month notice period at the end.*
- *The Scottish approach to ending “no fault” evictions included the creation of the Short Scottish Secure Tenancy (SSST). This tenancy replaced the starter and demoted tenancies used by housing associations, when the AST was deleted from the tenancy regime. The SSST is far more restrictive in its use as a starter tenancy, and can only be issued to tenants with prior serious rent arrears or recent ASB issues. Its issue can be challenged by the tenant through the courts, protecting tenants from its misuse. It can also be used as a demoted tenancy, in a similar way to the current use of an AST. When using SSST’s Scottish landlords must make support available to a tenant to help them maintain their tenancy. Tenants accepting and engaging with this support can be a condition for it converting to a secure tenancy. This is positive as it helps to engage and address the core reasons for ASB/ rent arrears... The SSST therefore provides a balanced approach between the landlord and tenant, widening access to social housing through its use as a starter tenancy and reducing evictions through its use as a demoted tenancy.*

**Under the 2016 Act, a landlord is prevented from issuing a section 173 notice within the first four months of a new occupation contract, starting with the date the contract-holder is allowed to occupy the dwelling. Our proposal is to extend this period from four months to six months, 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, providing there is no breach of contract.**

**Question 13:** Do you agree with our proposal to increase the period in which a section 173 notice cannot be issued from four months to six?

**Question 14:** Please tell us why.

**Question 15:** How would this change affect you? Please consider both positive and negative impacts.

- 78% of all respondents disagreed with extending the periods a section 173 notice period cannot be issued. 22% were for the proposal.
- 83% of landlords and 92% of letting agents who responded are against of the proposal.

- 78% of private tenants, and 40% of social tenants who responded are supportive of the proposal<sup>3</sup>.
- 82% of local authorities who responded were behind the proposal.
- 60% of social landlords who responded disagreed with the proposal.

### **Respondents who agreed with the proposal**

As with responses to the previous question, of the majority of respondents who agreed with the proposal, there was a common trend with this being a reasonable proposal that provided tenants with greater security:

#### Landlords

- *I think this is reasonable because a tenant normally goes into a property thinking he is secure for 6 months.*
- *It is a reasonable proposal that will allow tenants security of tenure for a decent period. No good landlord could object.*
- *Families, also individuals, need security of tenure.*

Again, the main caveat from the landlord respondents who agreed with the proposal was the circumstance when they required their property to be returned quickly:

- *This is fair, people should be allowed to stay for the duration of fixed term tenancy, unless there are exceptional circumstances e.g. a landlord needs to sell because of ill health or he or she dies...*
- *It's fine if genuinely there is no fault. If the landlord had a really difficult tenant I assume there would still be some procedure to evict the tenant*

#### Agents

- *Its already enacted in England and so far I have not had a single problem with it - largely because I vet tenants rigorously beforehand ( both social tenants and privately funded tenants - everyone is treated the same)*
- *This will provide the tenants with absolute certainty in their first 6 months and also ensures that the Government can demonstrate that tenants are being supported, whilst not causing systemic damage to the PRS.*

#### Tenants

Tenants emphasised the increased security that this would provide.

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<sup>3</sup> The tenants who disagreed also included landlords.

- *The contract terms should apply to both parties equally and should aim to provide security of housing for the tenant, rather than as currently is the case, make it too easy for landlords to break the contract.*
- *Most people want to have more stability when renting, rather than being moved on when they have just settled in.*
- *This will provide security of tenure and reduce uncertainty. It would allow tenants to contribute to their local community, build links and relationships and put down roots.*

## **Respondents who disagreed with the proposal**

A number of the respondents commented by referring to their previous answer, and this set a trend as there was a significant overlap and reiteration of the points made previously. There was general disapproval of the proposal from landlords and letting agents who felt that this further undermined the ability of landlords to quickly evict 'problem' tenants. Some respondents indicated that the proposals weren't needed for the 'good' tenants but helped keep 'bad' tenants in a property, generating further rent arrears and damage. Again, the current system, was felt to strike the right balance for a number of respondents.

### Landlords

- *Tenants potentially provided with a longer period of occupying a property without having to concern themselves on ensuring their rent is up to date.*
- *Why should tenants be allowed 12 months to absolutely wreck a property as well as not pay rent not all tenants are good people. You will be protecting bad tenants.*
- *I see no problem with the current arrangements. Where I have good tenants I am happy now to issue 12 month contracts now.*
- *As before, in order for landlords to offer affordable housing, they need flexibility to deal with non-paying and anti-social tenants.*
- *4 months is long enough to determine whether your working relationship with a new tenant is positive and any impact they may have on neighbours.*

Some of the landlords indicated that this would be less likely to make them rent at all, and would certainly result in more stringent checks on potential tenants.

- *As a landlord this change will affect me because it will mean I am stuck with a tenant for a minimum of 6 months at any time. As a knock on effect I will be reluctant to take on DSS tenants or low income tenants - this will have a negative impact on low socioeconomic tenants. I am already reluctant to take on these kinds of tenants because of the decrease in bond.*

- *This will not change my current position as I am not expecting to evict my tenants. In the event that they leave, I will advertise the property at a higher rent to compensate for the increased tax liabilities.*
- *Extending the minimum notice period applicable to 6 months would mean we definitely would take more time in considering tenants, as if tenants can't pay, 12 months of non-payment could mean the house being repossessed. It could also mean months of headache if there are tenants are anti-social or being a neighbour nuisance.*

A few of the respondents argued that there could be a system of opting out of these arrangements if it suited the landlord and the tenant.

- *Tenants like 6 month contracts, they request them for flexibility and to see if they like their new home, or because they have short term work contracts. Personally I prefer to give a 12 month tenancy, however I will issue a 6 month tenancy on request.*
- *Most Landlords like their tenants to pay their rent and stay for as long as possible. They generally only ever give notice out of necessity! So it's just making life more difficult/costly for Landlords by drawing the process out. Tenants are normally granted a 12 month tenancy in first instance anyway. 6 month tenancies generally only granted because tenants do not want to commit for long period of time.*
- *There have been times when a property is only available for 6 months, for example a student HMO. I might have a contract signed for a group of students to start their tenancy from September. At present I can offer a 6 month tenancy from March, knowing that the occupants would leave on time for the new tenancy in September.*

### Agents

The comments provided by agents followed a similar trend to the landlords:

- *Giving tenants a 6 month tenancy first gives landlords and agents an opportunity to give tenants a trial period to see if they are prepared to keep them long term. Getting landlords tied into 12 months from the start could cause huge issues. With all the greatest reference checks being taken at the start you can never be sure that the tenants will be suitable.*
- *As per previous reply. No landlord wants a tenant to leave. To give someone notice you already have a damn good reason to do so. Tying us up in a potentially ruinous long time period is not a valid reason.*
- *Landlords want long term tenants who pay their rent, if a tenant is being served notice within a short period of time, it is probably because they are not*

*behaving appropriately - if you extend the notice period, all you are doing is exacerbating a problem.*

- *There are NO positives in this new law. As stated, the tenants on many occasions stop paying their rent as they're having to leave. Many will trash the house. Many refuse to leave at all, so the 6 months, would extend to 12 months. Massive financial and emotional impact on a landlord. The result would be landlords selling which would impact on already massive housing shortage.*
- *Landlords could stop taking Housing benefit tenants as the risk of major issues are far higher with these types of tenants. The damage they could do in 12 months is a huge amount more than they could do in 6 months. Landlords who would consider a short term let would not do so now and would rather leave their properties empty ... From a tenants point of view they can guarantee at least 12 months in a property, but if they wanted to do that they could simply sign up for a 12 month contract from the start, something that is possible in today's current legislation anyway.*

#### **Other matters which should be considered for inclusion in this provision**

- *There would ... be need for the court process to be reviewed as these can take considerable time. Although the first hearing must currently take place within 8 weeks, this time constraint doesn't apply to second and subsequent hearings. The procedure will have to be considered to make sure landlords are not left considerably out of pocket by a slow court process. Clearly as this is not devolved to the Welsh Government these changes should not be considered until there are devolved responsibilities.*

**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 16:** Do you agree with this proposal?

**Question 17:** Please tell us why.

**Question 18:** How would this change affect you? Please consider both positive and negative impacts.

- 73% of all respondents disagreed with placing a six-month restriction on the re-issuing of a section 173 notice after the previous one has expired. 26% were for the proposal.

- 78% of landlords and 90% of letting agents who responded are against the proposal.
- 78% of private tenants, and 50% of social tenants who responded are supportive of the proposal<sup>4</sup>.
- 80% of local authorities who responded were in support the proposal.
- 60% of social landlords who responded disagreed with the proposal.

### **Respondents who agreed with the proposal**

Similarly to responses to the previous questions, a significant number of respondents who agreed with the proposal cited the fairness that this provided, including the increased security for tenants:

#### Landlords

- *This sounds a fair proposal and reassures the tenant.*
- *It is wrong that a landlord should be able to issues section 173 periodically just to be able to evict when they want. This is not the case with most good landlords.*
- *It seems unfair to expect tenants to live with this hanging over them. However there must be an option to end tenancies for unreasonable behaviour by tenants or an unexpected change in lifestyle for the landlord.*
- *This may help keep tenants stay in there for home longer which should benefit all parties*

#### Agents

- *As before, this seems like a sensible suggestion to give the tenant greater security whilst maintaining the landlord's control over their own property.*
- *Serving notice time and time again could give a tenant a false sense of security, if notice has been served previously and then was not acted upon. Just because a notice has been served and the landlord didn't enforce it the last time, how do they know that they definitely need to leave this time.*

#### Tenants

A number of tenant responses pointed towards the decreased 'stress' this would cause:

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<sup>4</sup> The tenants who disagreed also included landlords.

- *If you know you're going to get one after the 1st six months it's a lot of stress worrying you're going to be kicked out and stops unscrupulous landlords evicting you for no good reason. If you keep up with rent etc the landlord should have no reason to evict you unless there's a plausible reason behind it*
- *Would give the tenant some "breathing room" to consider all options and make arrangements*
- *This allows people to challenge the validity of an eviction. If the landlord has acted inappropriately then the tenant has the opportunity to now find a new place.*

### **Respondents who disagreed with the proposal**

Some of the respondents referred to the flexibility that the current proposals provided and that it allowed landlords to get their properties back in a timely manner. There was a general theme that suggested that the legislative changes as a whole would lead to a large number of landlords leaving the sector. Again, landlords wanted the ability to remove tenants at short notice and that landlords would not evict tenants who paid on time and did no damage.

#### Landlords

- *As a landlord, it is in my interest to look after good tenants that pay rent on time and look after their home. I would never serve notice to a good tenant as it would undermine their confidence in their tenure and increase the likelihood of them seeking alternative. TAs a responsible landlord, the section 173 notice is used as a means of evicting tenants that do not pay rent and/or damage (as section 8 can take longer).*
- *Proper landlords don't want to evict proper tenants. They want decent tenants to permanently reside in their properties and look after them with the rent coming in regularly.*
- *Landlords need a quick mechanism to be able to gain possession of their property. The property is not the tenant's property and they should not be given more rights to stay there longer if they prove to be awkward or bad tenants. It is always assumed that the landlord is the bad person in the equation but tenants can be worse.*
- *It must surely be rare that good tenants face eviction orders. Good tenants are what we landlords want. No fault evictions should of course be monitored to see that everyone is playing fair, but they are a valuable tool at times.*

Some of the landlords indicated that this would harm their ability to manage a property:

- *Sometimes managing a property requires a Landlord to issue a notice in this way in order to keep the peace and the tenant orderly. Removing this would give an unruly tenant free reign to again cause mayhem with nothing that a*

*Landlord could do to curb the problem. It is a licence for anarchy. Whereas in the current system a Landlord can lay the warning of eviction, but then decide not to follow-it through if the tenants progress has been satisfactory.*

- *I need to evict non paying tenant most of my tenants have been in my properties for years. Landlords will only evict bad non paying tenants for a reason.*
- *Again, you're taking away the ability for a landlord to manage their own property. Circumstances of a landlord can change very quickly and you need to consider small landlords who may only have one or two properties and may need to have that property back. This change would mean that they would not be able to adapt and change with their needs.*

### Agents

The comments provided by agents followed a similar trend to those provided by landlords:

- *Same reasons as before, we need to be able to keep control and be able to evict tenants for the right reasons.*
- *The current system works so why change it. Circumstances can change for landlords and tenants and not being able to regain your property if, for example you lose your job, suffer illness etc would have a negative impact on the PRS. Often landlords are not "professional" landlords but renting out their family home whilst they fulfil work commitments elsewhere.*
- *You are playing into the hands of rogue tenants and organisations who have learnt to scam the system. Stop calling it "no fault eviction". If the tenant is good, they have nothing to fear from the landlord, as now, period. There are more than sufficient rules and regulations to control rogue landlords. With rogue tenants, you are making things worse by extending the process. Many tenants will not wish to be locked into this time frame, only too pleased to use the one month rule to leave!*
- *Councils / charities encourage tenants to ignore notices if there is trouble moving out and this costs the landlords thousands to employ a solicitor*
- *Landlords health, social, financial or personal circumstances could change from one period to the next making it harder to obtain possession when needed for these reasons. This would have a significant effect on the supply of properties available in the PRS and therefore push up rents.*

**Other matters which respondents believed should be considered for inclusion in this provision**

- *I agree that an eviction notice should not be used routinely. It is a last resort when other measures have failed. The only reservation would be where technical shortcomings or challenges to an original notice may have to be overcome by the re-issue of a notice. Measures should cater for the correction of original notices if required.*
- *This will have serious implications on the homelessness prevention agenda. A landlord serves a notice on a tenant for persistent rent arrears or other breach of tenancy. The landlord agrees to work with a council and retracts the notice because they clear the arrears or the breach of tenancy is addressed. The council closes the case and take the credit for preventing homelessness. The tenant then repeats the breach of tenancy. This is a scenario that would undermine the credibility of the council and any opportunity to engage with landlords in the prevention of homelessness. The ability to serve notice due to breach of tenancy is a binding principle of a contract. To have a blanket policy imposed on the supposition that landlords are trying to circumvent or exploit loopholes is in itself discriminatory as it implies that landlords are incapable of acting honestly and as such the ability to manage the terms of the contract should be restricted and effectively taken away from them.*

**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 19:** Do you agree with this proposal?

**Question 20:** Please tell us why.

**Question 21:** How would this change affect you? Please consider both positive and negative impacts.

- 80% of all respondents were against this proposal; 19% were in favour.
- 86% of all landlords and 90% of agents who responded were against this proposal, with 14% of landlords and 10% of agents in favour.
- 84% of tenants who responded were in agreement with the proposal, with 16% against.

### **Respondents who disagreed with the proposals:**

#### Landlords

The majority of comments focused on landlords' concerns with being unable to regain possession of their property when they want to, and also about the perceived complexity of the proposal:

- *The whole thing is too complicated, most of my tenants don't read their contracts (AST). When they want to end it early I have to explain clause 2, telling them how to terminate early.*
- *What's the point in a fixed term contract if in effect it's not a fixed term?*
- *It is unfair to penalise landlords in this way when their personal situations could suddenly change and you are forcing them to be tied in to extended periods of time. A landlord could, for example, suddenly need to move into their rental property themselves - or they may need to quickly sell the property to release funds for something urgent.*

Specific issues were raised about student lets in particular:

- *Students look for houses 6 to 8 months before the summer each year to secure a preferred property in time. This would mean they may be at risk of having no property whatsoever if the current tenant decides to stay on.*
- *How will this work for students in HMO's? How can a landlord align next tenants if there is no real fixed end date?*

## Agents

The majority of comments focused on the perception that the rights of the landlord would be deteriorated, and the challenges that it could cause:

- *This could cause problems for landlords who require possession. It may result in tenants occupying properties without paying rent for longer periods. It will pose an increased risk of damage to properties.*
- *Landlords should be able to dictate how long their property is available for.*
- *This is ridiculous and... may mean that landlords who let their family home because they are working away either don't take jobs or will leave their property empty which will impact on the number of properties available in the PRS.*

As with landlords, some agents also raised concerns with student accommodation in particular:

- *For example, a student HMO where a lease might have been granted to students in March, with a start date of September, the start of their term. The landlord would most likely choose to keep his property empty for the next 6 months (assuming it is vacant already) rather than risk putting in tenants with a fixed term until September as they might not leave in time for the students to take residence.*

## **Respondents who agreed with the proposals:**

### Landlords

The majority of landlords who agreed with the proposals cited that it was fairer on tenants, and that it reflected their desire to keep tenants in their homes as long as possible.

- *It has to be fair for both parties. Tenant who look after our homes deserve to feel secure in the home. We have to remember though that their home is our home as well, we want the property taken care off.*
- *You are merely closing a loophole with this provision, and bringing fixed-term contracts under the same umbrella of protections.*
- *I would have no problem with that, again, the landlords would prefer to keep good tenants in their property for a long period. As long as there is an eviction process, if there is a breach of contract, I can't disagree with this proposal.*

### Agents

A minority of agents who supported the proposal did so as it seemed fairer for tenants:

- *Possibly a better way, however still concerns over the 6 months notice being too long.*

## Tenants

The majority of tenants saw this proposal as bolstering their security of tenure:

- *It is common sense to ensure that new rules and regulations are not easily circumvented and good to see that this is being properly considered.*
- *This change would move Welsh housing law in the direction of treating secure housing as a right and seeing tenants as those who need protecting, rather than treating property as an investment vehicle and seeing landlords as those who need protecting, in circumstances where the tenant has met their contract obligations.*
- *In cases where a tenant has done nothing wrong, it seems unfair that they should face having to move before the fixed term on their contract is up. Putting a stop to this practice would mean the tenant could feel safe in their home, as they would then know when they are due to either move or re-negotiate the contract.*

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

**Question 23:** If yes, was the clause agreed with your landlord or was it required as part of the contract?

**Question 24:** Have you previously been required to leave a property due to a break clause being activated by the landlord or agent?

**Question 25:** Have you previously made use of a break clause yourself to end a tenancy agreement?

**Question 26:** If yes, please explain a little of the circumstances that caused you to use it.

**Question 27:** 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 28:** How often do you include break clauses in your contracts?

**Question 29:** If you do include break clauses, have you activated one within the last two years?

**Question 30:** If yes, please explain a little of the circumstances that caused you to use it.

**Question 31:** Overall, how beneficial do you consider the continued use of break clauses to be?

**Question 32:** What issues would the limitation of the use of break clauses cause?

**Question 33:** What issues would the removal break clauses cause?

- Only 12% of private tenants, 11% of private landlords and 28% of letting agents who responded currently have a break clause in a tenancy agreement, or have had one in the last two years.
- Social tenants and social landlords who responded do not use break clauses in a contract.
- Only 5% of private landlords who responded have ever exercised a break clause to end a tenancy agreement, with the same percentage having done so in the last year.
- Only 17% of agents who responded have ever exercised a break clause, although 22% of those answering question 29 said that they had done so in the last two years.
- Only 8% of private tenants who responded have ever exercised a break clause, although 14% of those answering question 29 said that they had done so in the last two years.
- 76% of private landlords and 61% of agents who responded said that they never include break clauses in tenancy agreements.
- 15% of private landlords and 33% of agents who responded said that they only sometimes include break clauses in tenancy agreements.

- 6% of private landlords and 14% of agents who responded said that they often include break clauses in tenancy agreements.

## How beneficial are break clauses?

### Agents

Although agents are the main users of break clauses, their responses to the question about their usefulness were mixed.

The majority of respondents did not see much of a benefit to break clauses:

- *As things are at present they are very rarely used so their removal would not impact.*
- *I would remove break clauses as they only cause confusion to most landlords and tenants. They never truly understand the effect of these clauses. Much easier and straight forward to simply sign up an AST with the length between the break clauses.*

Some outlined the detriment that break clauses could cause:

- *There is no security for the tenant, the property becomes like a hotel.*

Some outlined the reasons why break clauses were included in some tenancy agreements:

- *Only break clauses we've issued in the past have been at the tenants request.*
- *Very beneficial especially when tenants are in new relationships (these often break down in early stages of tenancy) or when tenants are starting a new job on some form of probationary contract.*
- *It's more just there to offer reassurance for either Landlords/Tenants. We rarely use them*

Agent representative bodies were generally in favour of break clauses as it could affect a landlord's ability to rent to more vulnerable tenants. But they were clear that guidance should be given to control their use:

- *Limiting or removing break clauses in addition to other proposals in this consultation will make the private rented sector in Wales an altogether less flexible means of housing for tenants.*
- *More than often break clauses favour either both the landlord and tenant or just the tenant. This is because, break clauses that only give rights to the landlord can quite often be deemed as an unfair contract term under the Unfair Contract Terms Act 1977*

- *Removing or limiting the use of break clauses will provide landlords with less protection against rogue tenants, and will therefore, negatively impact landlord confidence in the private rented sector.*
- *Instead of removing or limiting the use of break clauses the Welsh Government must provide clear guidance to landlords and letting agents on drafting correct break clause wording.*

## Landlords

Most landlords had never seen the need to use break clauses, and in several cases had never even heard of them:

- *Dont use Break clauses but know I know about them Think I might just introduce them to my Rental Agreements*
- *Apologies, but in view of my never having used 'break clauses', I don't know how beneficial (or not) their continuation, or drawbacks to their being used, would be.*

A large proportion of landlords found them, or the idea of them, beneficial:

- *For landlords and tenants, break clauses allow both to decide if the property and the tenant/landlord relationship and requirements are workable. I can see no downside to break-clauses.*
- *I think they should be there for both sides. Any life changes can happen in a year and people in both parties need to be sure they can have the flexiability if needed.*
- *If both parties agree to the inclusion of break clauses then there is not reason to change the legislation.*

Several landlords questioned their usefulness:

- *What is the point of break clauses? Surely they give the tenant no long-term security.*
- *they are a cunning abuse of the system*
- *I think it's a pointless clause. Why have a contract for 3 years if either party can use the clause to release them from the contract.*

Landlord representatives were supportive of break clauses, but with caveats depending on how break clauses were to be used in the future in terms of parity of terms between both parties in the tenancy agreement:

- (The landlord association) ...*supports the retention of flexibility and choice in contracts. However, it is unlikely that landlords will use break clauses if all of the proposed changes are implemented.*
- *At present a break clause allows both parties to bring the tenancy to an end. If only the tenant can access the break clause landlords would likely see no reason to incorporate these clauses in their agreements.*

## Tenants

The majority of tenants declined to respond, or responded that they could not provide a meaningful response as their knowledge of break clauses was minimal.

Of those tenants who commented, opinions were split about how beneficial break clauses were.

Some were supportive of break clauses, depending on how they were used:

- *I think they are a way of making contracts more flexible for both tenant and landlord.*
- *If they are negotiated then fine, they can be useful for both parties if they need the security of tenure but then to allow the tenant to leave early if needed.*
- *No benefits unless a tenant has a job where they move around a lot, but this could be overcome with six month tenancy agreement.*
- *I have never had a contract where the landlord or agent allowed me to change any part of it. In my view it would be better to provide them fairly and equally in legislation rather than allow landlords and agents to dictate to tenants what they want.*

Others found them to be a tool that is used by a landlord to the detriment of the tenant:

- *No use at all, just another way for a landlord to get rid of the tenant. They are greatly to the advantage of owners and not tenants*
- *They are almost always in the favour of the landlord as are longer tenancies currently...*

Tenant representative organisations were supportive of some sort of break clause usage, but with heavy caveats:

- *We are in favour of contract-holders' break clauses and opposed to landlords' break clauses...Contract-holders' break clauses carry distinct advantages as situations do arise when tenants have genuine reasons for leaving mid-fixed term, such as to take up an offer of social housing. However, offering equivalent break clauses to landlords would undermine security of tenure.*

- *If landlords are permitted a break clause it must allow a six-month notice period and not be issued during the first six months, in order not to weaken the effect of the legislation.*
- *We would consider that break clauses are only allowed in very specific circumstances as there is some concern about the unequal bargaining power of a landlord and potential contract holder. We think that should a landlord wish to include a break clause that they clearly advise the potential contract holder to seek independent advice and assist the potential contract holder in obtaining that advice.*

### **What effect would limiting / removing the use of break clauses have?**

#### Agent representatives

- *Limiting or removing break clauses in addition to other proposals in this consultation will make the private rented sector in Wales an altogether less flexible means of housing for tenants.*
- *Removing or limiting the use of break clauses will provide landlords with less protection against rogue tenants, and will therefore, negatively impact landlord confidence in the private rented sector.*

#### Landlord representatives

- *At present a break clause allows both parties to bring the tenancy to an end. If only the tenant can access the break clause landlords would likely see no reason to incorporate these clauses in their agreements.*

#### Tenant Representatives

- *Contract-holders' break clauses carry distinct advantages as situations do arise when tenants have genuine reasons for leaving mid-fixed term, such as to take up an offer of social housing.*
- *We think that there could be a role for break clauses in longer fixed term tenancies so that contract holders who have experienced a change of circumstances and can no longer afford the tenancy or who have experience of hate crime, domestic abuse or other incident means the property is no longer suitable can leave the property.*

**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 34:** Do you agree with this proposal?

**Question 35:** Please tell us why.

**Question 36:** How would this change affect you? Please consider both positive and negative impacts.

- 51% of all respondents were against the proposal to restrict possession rights for landlords who had been found to have tried to evict someone in a retaliatory manner.
- 48% of all respondents were supportive of the proposals, but support varied widely among different groups.
- 55% of private landlords who responded were against, while 45% were for the proposals.
- 71% of private letting agents who responded were against, with only 29% for the proposals.
- 84% of private tenants who responded were for the proposals, while 16% were against.
- 100% of local authorities who responded supported the proposal.

### **Respondents who disagreed with the proposals:**

#### Landlords

The majority of landlords who were against the proposal were of the view that they should be able to evict a tenant regardless of having had a previous eviction turned down for being retaliatory in nature:

- *A landlord should be able to serve notice whenever they feel it is necessary*
- *...a landlords circumstances can change and be difficult. We need options.*
- *Lets remember, the property is owned by the landlord if he wants is back he has the right to get is back, it is his property, lets remember that, if a tenants does not like the property for any reason they can leave.*

Some landlords, possibly misunderstanding the proposals, saw issues with tenants potentially using this to avoid eviction, and believed that the decision should lie with the courts:

- *There might be good reason next time. This should be subject to the Courts discretion on particular grounds of case*
- *I am aware of quite a few cases where tenants have complained about 'damp' when really the problem is black mould that the tenant has caused by not ventilating the property adequately. It is a lifestyle problem.*

- *Tenants can make things up or cause damage to allege landlords not doing repairs*
- *Who is going to decide what is retaliatory?*

The proposal was clear that the delay on the ability to serve a section 173 notice would only apply where a landlord has been previously found to have tried to evict someone in a retaliatory manner by a court.

### Letting Agents

The primary concern that letting agents had with the proposal was the potential for misuse by the tenant:

- *This will be abused by tenants. It is happening already where tenants make up spurious allegation of disrepair without even ever reporting issues. But they all start as soon as a notice is given.*
- *Sometimes Tenants only report faults (and in some cases inflict damage to a property) after they have got into arrears on their rent or they make a complaint to Environmental Health in order to try to get up the Housing Ladder for a new Council / Housing Association House.*

Some agents also raised the issue of major repairs which may need to be carried out to the property:

- *What if the landlord genuinely cant afford to undertake the repairs and now needs to sell, extending the time the landlord has to keep the property only exacerbates the problems with the tenant living longer in a property with maintenance issues that the landlord cannot help with.*
- *If the work is too extensive to be conducted during a tenancy, what is the procedure? Without a section 21, the work would never get done.*

### **Respondents who agreed with the proposals:**

#### Landlords

Most landlords who were in agreement with the proposal saw this as a justified response to retaliatory behaviour:

- *landlords need to held accountable for providing good accommodation and carry out repair in a timely manner... there is no excuse for the landlord retaliating...*
- *On the face of it this seems fair enough. If the courts have scrutinised the circumstances and third party oversight with evidence of wrong-doing established.*

- *Retaliatory evictions are only made by bad landlords. Good ones don't evict good tenants. We evict bad tenants.*

### Letting agents

Much the same as landlords who supported the proposals, agents saw this as justifiable for attempting to evict someone in a retaliatory manner:

- *This should never be the case, I have had landlords in the past ask me to serve a notice on a tenant who has asked for certain works to be carried, I have refused to do it.*
- *Retaliatory notice is extremely bad practice and should not be tolerated*
- *This is a reasonable protection for tenants and equally importantly, is a strong deterrent to property owners.*

### Tenants

Respondents were mainly concerned with the fairness of how tenants were treated in some cases, where reasonable repairs or maintenance had been requested:

- *Will increase the state of some properties and improve housing stock as tenants will not be living in fear of reporting faults (even though their Tenancy Agreement states they have a duty to).*
- *Retaliatory eviction is petty, childish, unprofessional and has no place in this society. Rented accommodation isn't just a property income for the landlord, it's somebody's home...*
- *Retaliation for asking them to live up to their obligations as a landlord is totally unfair*

## **Effects of the legislation**

### Landlords

Most landlords in support of the proposal, and a large number of landlords who were against the proposal were actually in agreement; that its introduction would actually have no effect on them:

- *As a responsible landlord, I always deal with any concerns raised by a tenant promptly, and frankly the idea of a retaliatory eviction would simply not have crossed my mind.*
- *I would not evict a tenant for requesting reasonable repairs, so I would not expect this to affect me.*

- *I would not do this so it does not affect me. On a positive note it would provide you with the reputation of being a good and honest landlord*

Landlords against the proposal cited issues caused by losing the ability to evict:

- *The proposal would allow the tenant to remain even if causing a nuisance to neighbouring properties.*
- *It would mean having to do dirty and disruptive work in a tenants home. This is unacceptable for both parties.*
- *If there's a tenant in there who plays this card, and then doesn't let us into the property to make repairs (of issues they've caused usually), then this will then oproclude me from taking further action - likelihood is that if it got to this then they'd stop paying rent at this point.*

### Agents

Agents in support of the proposal didn't see that the change would affect them in any way, and some even saw positives in terms of the sector as a whole, and reducing cases of dubious eviction that landlords may ask them to carry out on their behalf:

- *The only effect it would have on me is that in future if I was asked to serve such a notice I would have legal grounds on which to refuse.*
- *It will not affect good landlords with decent properties.*
- *It would promote better practice within the industry and drive accommodation standards up, if landlords have to carry out essential works and are unable to evict tenants until such works are addressed etc.*

Agents against the proposal saw a few problems, again mainly with tenants potentially "gaming" the system, or more widespread additional regulation affecting the sector as a whole:

- *we have never issued a notice in retaliation for anything (our flats are immaculately maintained), but I'm sure a disgruntled tenant would try and use such legislation if it suited them.*
- *(It would) Shrink the private sector rental market as Landlords and agents are already over burdened by regulation*
- *It would make me a sitting duck. It should be enough to kill the private sector and end investment in housing in the UK. Buy a caravan.*

### Tenants

Tenants saw the effects of the proposals on their tenancies as overwhelmingly positive:

- *May also stop landlords taking tenants to court (default position when a Section 21 Notice is served as the Court has no choice but to grant possession back to the landlord as long as the Section 21 Notice has been served correctly even though tenant has done nothing wrong) and these Court costs are then also passed on to the Tenant also (in effect, paying for their own eviction!).*
- *I currently do not report faults in case I am evicted. I do think that this is a difficult area to police. It would be difficult to prove that an eviction is retaliatory.*
- *It may help prevent landlords from dodging repairs, however, my current landlords are very reasonable and would be unlikely to do this anyway.*

**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 37:** Do you agree with this proposal in principle?

**Question 38:** Please tell us why.

**Question 39:** Are there any other matters which you think should be included within this provision?

- 69% of all respondents agree with further restrictions on issuing notices for landlords who have breached other housing legislation. 30% were against the proposal.
- 67% of landlords and 68% of letting agents who responded were supportive of the proposal.
- 93% of private tenants<sup>5</sup>, and 100% of social tenants who responded were supportive of the proposal.
- Local authorities who responded were 100% in agreement with the proposal.
- 80% of social landlords who responded backed the proposal.

### **Respondents who agreed with the proposal**

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<sup>5</sup> The tenants who disagreed were also landlords.

Of the majority of respondents who agreed with the proposals, there was a common trend around the importance of the restrictions on serving notices for breaches of other housing legislation

### Landlords

- *There seems to be a real need for rental properties to be safe and of a certain standard. Any landlords not complying with current legislation need to be penalised.*
- *Morally wrong where safety is concerned.*
- *No one should live in dangerous conditions*

Some were unaware that this wasn't already the case:

- *I thought you had to have all certificates in place before you could issue a notice already.*

Others suggested ways which Welsh Government / Rent Smart Wales could help landlords:

- *It might work better for Rent Smart Wales to have an archive on their website where tenants can look up relevant safety certificates.*

### Agents

- *Landlords should be complying with all of this legislation anyway so this seems very sensible.*
- *This is something we are very diligent on and it should be the same across the industry currently I am aware that some agents do not comply with this*

### Tenants

- *I gave been in this situation very recently and this is why my landlord decided to sell his house because I reported him for breaking these safety requirements.*
- *They are in control of housing stock and in a stronger position than tenants. Safe, secure housing should be a basic right.*

### **Respondents who disagreed with the proposal**

Most respondents who disagreed were either against further restrictions for breaches of legislation for which sanctions already existed, or they believed that legislation was too weighted in favour of tenants already. There was also some criticism of Energy Performance Certificates in general.

## Landlords

- *I do agree with the need for gas certificates and the benefits of EPCs. However, I feel that some landlords will be penalised due to their ignorance of the regulations, especially considering how frequently the Welsh Government seek to change them.*
- *It will not drive up standards, it will benefit cheating tenants*
- *Sufficient legislation is already in place to deal with such negligence of landlords*

## Agents

- *As far as I'm aware there are already restrictions applied to this.*
- *Issuing notice means an end to a tenancy. Gas and energy certificates will be irrelevant as the tenancy is ending.*

## **Other matters which should be considered for inclusion in this provision**

### Landlords

The majority of landlord comments dealt with the issues in evicting a tenant who is at fault. Many believed that the current "section 8" process was not fit for purpose.

- *Smooth and rapid eviction if tenant is breaching any of terms of tenancy. This should be a free service offered to landlord. Tenants often get free help from local authorities and shelter, where is the free help for landlords. Where is the fairness, small landlord against local authorities, unfair*

Landlords also raised issues about tenants who refuse entry for property repairs and safety inspections, which could have a detrimental effect on the landlord when they come to seek possession.

- *consideration needs to be given to the fact tenants in arrears tend to refuse entry for gas safety certificate due to the belief the courts will not issue a possession order on a property without a gas safety certificate*

### Agents

Several agents called for mandatory electrical safety testing.

- *I would like electrical condition reports included. there would need to be some basic framework for this.*
- *electrical certification*

- *Electrical certificates are more important than an EPC yet the law remains vague on this*

Agents also raised the problems caused by tenants refusing access for repairs and inspections.

There were also issues raised with the current procedures for removing problem tenants.

- *Section 8 of the housing act needs to also be amended as part of this process...If no fault evictions are being extended then fault evictions should be reduced and more routes created to add balance to the changes being made.*
- *Introduce new legislation to help Landlords deal with defaulting tenants*

They also cited tenants who refuse entry for repairs and inspections.

- *where a tenant is the cause of the problem I cannot do the jobs if we are not given access*
- *tenants been disruptive and not allowing access to do works*

## Tenants

Most tenant comments dealt with the condition of the property as a priority.

- *Rental properties should be issued with a certificate of lawful condition by the council, which again is available on Rent Smart Wales so that tenants can check. The Food Safety Rating stickers are very good for restaurants, why not have a similar sticker system for properties? Good advertising and a positive way to deal with it, rather than legal stuff.*
- *Maybe damp inspections? The amount of houses I have moved in that are already damp and then I get blamed for it when I move out is absurd.*

## **Conclusion**

As is clear from the preceding sections of this report, strongly held, well-articulated views were expressed both in favour and against the legislative proposal in relation to its stated purpose and potential impact. The most contentious areas of consultation were relating to notice periods and the issuing of possession notices, whilst there was a good degree of consensus across the stakeholder community regarding our proposals relating to property standards and retaliatory evictions.

The majority of tenants, and organisations that represent or support tenants, were largely supportive of the latter. Whilst landlords, letting agents, and their

representative bodies – including a number of community landlords – expressed concerns or opposition to our proposed changes in this regard.

Given the current widespread use of section 21 possession notices, the Welsh Government had anticipated that there would be some opposition to the proposal to extend the Renting Homes (Wales) Act section 173 notice period and to limit its use in certain circumstances. The evidence submitted by a range of stakeholders from across the landlord sector; including community landlords, confirmed that section 21 is routinely being used to regain possession in situations where other more appropriate section 8 possession grounds exist, most commonly for rent arrears and antisocial behaviour.

In contrast to this, of the consultation respondents who responded positively to our proposals, a number felt that extending the section 173 notice period to six months would encourage landlords to use other more appropriate possession grounds and that this would be a positive step, not least in ensuring greater judicial oversight of evictions. Many also agreed that in cases where section 173 was the appropriate ground for possession, six months' notice would provide contract-holders with a better chance of finding *appropriate* alternative accommodation (rather than *any* alternative accommodation, as can currently be the case with the two month section 21 notice period). It would also allow organisations which assist individuals with housing needs more time to help find somewhere else to live - although several local authority respondents pointed out that current homelessness duties in the Housing (Wales) Act 2014 are based on a 56 day timeframe and questioned whether this would be extended to six months to avoid unintended consequences.

One respondent also suggested that revised guidance should be issued to local authorities in support of these changes to ensure that they provide homelessness advice and assistance as soon as a valid notice has been received. This, in turn, would enable them to support the individual into suitable alternative accommodation at the earliest opportunity.

There was some optimism from the social rented sector that the creation of a de facto 12 month initial minimum rental period, combined with a longer section 173 notice period, would help make the private rented sector “a more attractive housing option for people who often cite the current lack of security as the main reason for not wanting to consider privately renting”, and in doing so help alleviate some of the pressures currently experienced by social housing providers.

Where stakeholders did not agree with our proposals, their concerns tended to fall into the following categories:

- Increasing the section 173 notice period would make it more difficult and costly for landlords to evict tenants who are not paying rent, are committing antisocial behaviour, or otherwise breaching the terms of their tenancy.
- Extending the ‘moratorium’ and the ‘no-fault’ possession ground to six months will lead to landlords becoming more selective about the types of tenants they let to,

or leaving the market altogether. This would result in higher rents in the private rented sector as the PRS contracts and private landlords become more risk-averse, and greater demands – and costs – being placed on community landlords, leading to longer housing lists and increased waiting times for tenants seeking accommodation in the social rented sector.

- A longer s173 notice period would result in a greater volume of possession orders reaching the courts as landlords turn to other alternative grounds to end contracts. This increase in the courts' caseload would lead to landlords having to wait longer for hearings to take place, and greatly diminish the certainty of outcome they currently enjoy under Section 21. These two factors, it is contended, would further deter private landlords - particularly small-scale (or 'hobby') landlords - from entering or remaining in the market. Preventing such delays from occurring would require a significant increase in capacity in the courts service, some stakeholders argued, and asked whether additional funding would be made available to support such an expansion. Also in relation to the courts service, some respondents went further, suggesting that the current system was 'not fit for purpose' and should be replaced by a dedicated housing court or tribunal similar to that in place in Scotland.

Other issues raised by respondents included:

- Concerns that, if these changes were introduced, private landlords may be reluctant to invest in Wales, and lenders less inclined to offer buy-to-let mortgages to landlords with properties in Wales if the section 173 notice period were extended without a mandatory possession ground for rent arrears or a lenders' possession ground also being made available.
- A number of stakeholders, predominantly organisations which support or represent tenants, expressed disappointment that Welsh Government was not proposing to remove the section 173 possession ground altogether, and urged that this be reconsidered. Some, however, recognised that simply removing section 173 and replacing it with other possession grounds would not necessarily bring to an end situations where contract-holders can face eviction having done nothing wrong, with one respondent stating; "we are pleased that the Welsh Government recognises that security of tenure is broader and more complex than simply no-fault evictions", and another adding "this is a better way forward than ending no fault evictions in totality".
- Many respondents also felt that it would be extremely important for the Welsh Government to ensure that comprehensive communication and awareness-raising activities were undertaken if/when these changes are implemented, to ensure that contract-holders and landlords are aware of the extended notice period and their rights/responsibilities under the Renting Homes regime. The importance of meaningful enforcement of repair and safety obligations was also stressed.

- Stakeholders from the Higher Education sector and those who predominantly let to students raised concerns about how the new notice periods were likely to impact on current practice whereby lets were often agreed for periods of less than 12 months, and questioned how they would be able to continue to ensure that properties were let for appropriate periods of time to facilitate turnarounds based on the academic year.
- Those representing landlords in the agricultural sector and church-owned properties also highlighted specific issues and concerns in relation to these two sectors. In particular, Welsh Government was asked to be mindful of circumstances in which an agricultural landlord may need to regain possession of a tenanted property on an agricultural holding for legitimate business reasons, such as a necessary farm worker, and it was suggested that an exemption for the sector, or a variation in the arrangements, be considered (for example, a break clause inserted into a contract, triggered on cessation of employment with two months' notice). We were also told by several representatives of religious bodies in Wales that a six month notice period would cause difficulties in the case of housing for ministers of religion, and that churches often require possession of properties within shorter timescales.
- Finally, a number of stakeholders also suggested alternatives to the changes we proposed, these included increasing the notice period to three or four months rather than six; excluding Introductory and Prohibited Conduct contracts from the proposed changes, or adoption of the 'London Model'.