



Llywodraeth Cymru
Welsh Government

Justice System Impact Identification

Form

1. Bill Title

1.1. Working title of Bill

Renting Homes (Amendment) (Wales) Bill

1.2. In brief, what is your proposal? (no more than half a page) (*This information is provided to help MoJ officials to understand the intent of the proposed change in order to be able to comment as fully as possible on its potential impacts*).

The Renting Homes (Amendment) (Wales) Bill (“the Bill”) will amend the Renting Homes (Wales) Act 2016 (“the 2016 Act”) prior to its coming into force to provide greater security for people who rent their homes in Wales, in particular those who live in the Private Rented Sector (“PRS”).

The Bill will increase security of tenure by amending the 2016 Act to:

- extend the minimum notice period for a notice given under section 173 from two months to six months;
- restrict the issuing of such a notice until six months after the occupation date of the contract (the 2016 Act currently sets this at four months);
- remove a landlord’s ability to serve a section 173 notice until six months after the expiry of any previous section 173 notice which the landlord has served, to avoid the practice whereby some landlords issue a section 173 notice ‘just in case’ they wish to use it;
- remove a landlord’s ability to issue a notice during a fixed term standard contract to end the contract at the expiry of the fixed term (meaning that 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 periodic standard contract which will automatically arise at the end of the fixed term to an end). This would be subject to the extended six month notice period and guarantee a minimum twelve months’ security at the beginning of a contract, regardless of the initial fixed term contract length; and
- prevent the inclusion of break clauses in contracts of less than 24 months, and prevent the activation of any break clause until at least month 18 of a fixed term contract.

Possession claims will continue to be administered by HM Courts and Tribunals Service.

1.3. Is this legislative proposal similar in any way to legislation being brought forward in England? If so, please name that legislation and identify below any ways in which the legislation brought forward in Wales will differ.

If the legislation has no substantive difference from that in England, there may be no need to complete all parts of the JSII form.

Earlier in the year the Ministry of Housing, Communities & Local Government [consulted on proposed reforms to tenancy arrangements in England](#). However, these proposals differed significantly from the approach set out in the Renting Homes (Amendment) (Wales) Bill: the MHCLG consultation proposed replacing section 21 of the 1988 Housing Act (commonly known as the ‘no-fault’ possession ground) with a range of additional grounds under which landlords may seek possession, whereas the Welsh Government Bill will retain a section 21 equivalent (section 173), but limit its use and lengthen its notice period from the current two months to six months.

MHCLG have not yet published a response to the consultation, nor has any further information been published on whether legislation is to follow. Welsh Government will seek to confirm the UK Government’s position following the Queen’s Speech for the forthcoming parliamentary term.

1.4. Please specify the name of any other related legislation. How do you expect the relevant provisions of this (new) legislation to be enacted?

The Bill will amend the Renting Homes (Wales) Act 2016.

The Bill will be commenced by order, which will be prepared in due course.

- 1.5. Please indicate the anticipated date when a) the legislative changes are expected to come into force and b) the date when the first anticipated impact on the justice system will arise.

a) 01 April 2021

b) 01 April 2021 (immediately after the Bill comes into force)

- 1.6. If altering or introducing an offence, sanction or penalty, which of the following groups will the proposal affect and in what circumstances? (Tick all that apply)

- Individuals
 Private Institutions (e.g. Businesses)
 Public Institutions (e.g. Government Departments)

No current offences, sanctions or penalties applied by the court are being significantly affected by the Bill.

- 1.7. Does your legislation only have impact in Wales or are you working jointly with other administrations? Tick all that apply and provide brief details as appropriate, including whether your proposal will create different laws in Wales compared to England, Scotland and / or Northern Ireland.

Please note that, with the exception of the devolved tribunals, the MoJ administers the justice system in England and Wales only. Please talk directly to the MoJ devolution unit if you anticipate your proposal could have an impact on courts or prisons in Scotland or Northern Ireland.

- Wales only
 England
 Scotland
 Northern Ireland
 Other (Please Specify)

The Bill will apply to properties within Wales, meaning that any landlord based outside of Wales who owns a rental property in Wales will be affected.

The Bill amends the termination provisions in connection with the residential occupancy regime (i.e. standard occupation contracts) created by the 2016 Act. The 2016 Act creates a different form of residential housing occupancy from the tenancy regime from that which applies in England. Scotland and Northern Ireland also have their own distinct legislative arrangements which also differ from one another in several ways.

Possession proceedings in Wales under the new arrangements brought in by the Bill will continue to be administered by HMCTS through the courts system.

Official-level engagement between Welsh Government and Ministry of Justice has been ongoing for some time in anticipation of the coming into force of the 2016 Act which will require a bespoke upgrade to the Court IT system to support the administration of the new legislation by HM Courts & Tribunals Service. Further discussions have also taken place to alert MoJ colleagues to the Welsh Government's plans to introduce an amending Bill.

1.8. If your legislation could directly impact visitors to Wales or other people not normally resident in Wales, or if your legislation is significantly different from elsewhere in England, Scotland or Northern Ireland;-

a) what arrangements have you made to ensure ongoing awareness raising of the different legislative approach on this issue in Wales?

b) what will be the implications on the enforcement agencies of taking forward action against individuals not usually resident in Wales?

As mentioned above, landlords not resident in Wales who own property in Wales will be affected by the Bill.

An awareness-raising campaign will be undertaken in the six months prior to the coming into force of the Bill. In the meantime, during scrutiny of the Bill by the National Assembly, officials will continue to engage with landlords' representative and membership organisations – including through Rent Smart Wales, that is, the licensing authority of landlords and agents under Part 1 of the Housing (Wales) Act 2014 – to ensure the sector is kept informed. There are a number of organisations which represent landlords at a national level, and which have strong relationships with UK-wide and England-based counterparts. These mechanisms will help ensure that landlords based outside of Wales with property in Wales are aware of the different tenancy arrangements in Wales.

Possession proceedings relating to properties within Wales will be dealt with by County Courts in Wales, irrespective of where the landlord is resident.

1.9. What are the options under consideration and how does this change the existing situation?

A range of options were considered during the development of the Bill. The Regulatory Impact Assessment includes an explanation of why the preferred approach was settled on, as well as details for a 'do nothing' and an alternative legislative approach.

1.10. If you are creating a new civil sanction or penalty which court or tribunal, in your opinion, should deal with it?

Possession claims will continue to be dealt with by the County Courts system in Wales, in the same way as at present.

Criminal Offences and Civil Penalties and Sanctions

1.11. Which of the following are you creating / amending? (Tick all that apply)

- Civil Sanctions
 Fixed Penalties

- Civil Orders
- Criminal Sanctions
- Criminal Offences
- Other (Please Specify)

No new civil or criminal sanctions, penalties or offences are being created by the Bill.

1.12. If you are creating a criminal offence, is it:

- Summary Only (heard before a bench of lay magistrates / judge only)
- Triable Either Way
- Indictable Only (heard before a judge and jury)

In cases where the maximum penalty is to be an unlimited fine, and a triable either way offence is warranted, please explain why a summary only offence is not considered appropriate. This is especially relevant if few, if any, cases are anticipated.

N/A

1.13. Who will be responsible for the enforcement of your legislative proposal and how will they take this role forward? Will there be an increased / reduced need for enforcement action?

There is no enforcement per se, albeit possession claims to which the Bill relates will continue to be administered by HMCTS. This will be via the HM Courts and Tribunals Service, with County Courts continuing to hear possession claims. The RIA for the Bill estimates that the overall impact of the new legislation on caseload for HMCTS is likely to be negligible over time. This is based on the fact that around two-thirds of current possession claims are from social landlords and the Welsh Government's policy is to significantly reduce social landlord repossessions. This will free up sufficient court time to offset any increase in claims from private landlords that may result from the longer section 173 notice period incentivising landlords' to use alternative grounds to end contracts.

1.14. What is the anticipated number of cases per year? Please provide details of any evidence of assumptions on which estimates are based.

During 2018, 3,640 possession orders which required a court hearing were granted by the courts in Wales, of which 3,050 were granted to social landlords and 590 to private landlords. In addition, 616 orders were granted under the Section 21 'accelerated procedure' which does not require a court hearing (although it is possible that a hearing was held in relation to some of these orders, no data is available on the actual number)¹. Unfortunately, it is not possible to disaggregate the data for accelerated possessions, but on the basis of the overall split, it is assumed a significant proportion relate to housing association possession claims.

Whilst commonly known as the 'no-fault' ground, a recent Residential Landlords Association survey revealed that a significant number of respondents had used a section 21 procedure in cases where rent arrears, damage or anti-social behaviour had occurred. We also have anecdotal evidence, including from our recent consultation exercise, that social landlords are also routinely using section 21 in similar circumstances.

If we assume as a best-case scenario that the Bill is very successful in encouraging landlords to seek possession (more-appropriately) via the serious rent arrears or breach of contract grounds, which have shorter notice periods but require a court hearing, and that there is an 80% decrease in the use of section 173 as a result (the remaining 20% being used in circumstances where there is genuinely 'no-fault' on the part of the contract-holder), this would add an additional 493 cases requiring a court hearing to the overall total.

However, this will be offset by a reduction in the number of possession claims from social landlords we expect to see in future as a result of their not having to go to court in cases of possession linked to abandonment (see section 220 of the 2016 Act), and also as new Welsh Government housing policy - under which social landlords will not evict tenants into homelessness - takes effect. Given that possession claims from social landlords currently account for 84% of court hearings, we anticipate that the reduction in claims from social landlords will free-up sufficient capacity within the courts system to accommodate any increase in claims under the breach of contract or rent arrears grounds from private landlords, without causing them undue delay or inconvenience.

1.15. Do you expect proceedings to be heard in the Magistrates' Court, the Crown Court, or a Civil Court? What will the proportions be?

All proceedings will be heard in the County Court, as is currently the case.

1.16. Please state the maximum associated fine and/or custodial penalties. In the case of offences involving penalties of a fine or custody, please indicate and explain the circumstances which would result in a custodial sentence upon conviction and the proportion of custodial penalties which will be at the maximum level.

N/A

1.17. Please provide details of any proxy or current offences and / or penalties on which the proposed penalties are based. If mirroring / comparing existing legislation, ensure that reference is made to the most recent versions of the legislation (via Westlaw, the online legal research service) as this is not always available online.

N/A

- 1.18. Please provide details of the relevant legislation (where appropriate) and confirm whether the creation or amendment of criminal offences and penalties has been agreed in line with the guidance available at <https://www.gov.uk/government/publications/making-new-criminal-offences>.

N/A

- 1.19. What will be the short, medium and lifelong implications for an individual found guilty of this offence, and how is this proportionate to the offence created?

N/A

- 1.20. Does this legislation impose any duty on the public sector? If so, please provide your assessment of the likelihood of individuals or businesses taking action against the public sector for non-compliance with this legislation.

N/A

2. HM Courts & Tribunals Service and the Welsh Tribunals Service

Estimating the change to caseload of the Courts and Tribunals Service (including devolved tribunals)

- 2.1. Do you expect there to be a change in Court or Tribunals process or an increase / decrease in applications / cases to HM Courts and Tribunals Service and / or the Welsh Tribunals through the creation or amendment of this law? Please provide an estimate of the change to volumes of cases going through the court system as a whole, explain any changes in process and outline the evidence and sources that support these estimates.

The net effect of changes resulting from this legislation and the Welsh Government's policy on reducing social landlord possession claims is expected to be neutral (see 4.15 above).

- 2.2. Please confirm if the courts / tribunals would be under any duty to inform any regulatory authorities of any convictions made under this offence.

- No
 Yes (please provide details)

N/A

Appeal Rights

- 2.3. Does your proposal create a new right of appeal or expand an existing jurisdiction in the Unified Tribunals System or route to judicial review? If so, how do you expect these to be handled (i.e. administered by HM Courts & Tribunals Service or Welsh Tribunals)?

N/A

- 2.4. Do you expect to establish a new tribunal jurisdiction? If so, has this been discussed with the Welsh Tribunals Unit / Ministry of Justice?

N/A

Alternative Dispute Resolution

- 2.5. To what extent could the use of alternative dispute resolution (ADR) procedures (including mediation) be appropriate? How will success in ADR be measured?

N/A – the legislation does not provide for ADR (in line with current arrangements)

Prosecution and Enforcement

- 2.6. If the proposal is to add a new offence, will the Crown Prosecution Service act to prosecute defendants? If not, please identify who will prosecute.

N/A

- 2.7. Will the proposal require enforcement mechanisms for civil debts, civil sanctions or criminal penalties? If yes, who do you expect to enforce these?

No. Possession claims will continue to be dealt with the court as they are at present, notwithstanding the changes being brought about by the 2016 Act.

HMCTS Procedural Rules, Sentencing and Penalty Guidelines

- 2.8. Do you anticipate that Court and/or Tribunal procedural rules will have to be amended? If so, when is the likely date for the changes?

Changes to the CPRs or Practice Directions have already been identified as a result of the Renting Homes (Wales) Act 2016, some minor modification will be required to these as a result of the changes to termination of fixed term contracts. The revisions to the CPRs and Practice Directions arising from the 2016 Act have yet to be made.

- 2.9. Will the proposals require sentencing and / or penalty guidelines to be amended?

N/A

3. Legal Aid and Court Fees

3.1. What evidence is there that individuals affected by your proposal will be able to secure and afford:

- a) legal representation and legal advice in order to secure a fair hearing of their case
- b) associated court fees

What legal costs for a typical case could each party bear and what provisions exist for a party found innocent to recover all or any of their legal costs?

Current Legal Aid arrangements will continue to apply. In addition, several third sector organisations support individuals faced with possession proceedings – including Shelter Cymru and Citizens Advice, whilst County Courts provide duty solicitors who are able to advise defendants when proceedings reach a court hearing.

For landlords seeking possession, the current court fees will remain unchanged.

3.2. Once implemented, is your proposal likely to require individuals to seek legal advice and to apply for legal aid in any of the following areas? In each case please provide supporting evidence.

- Criminal
- Civil (including Family)
- Asylum
- Legal aid not available (please provide supporting evidence)

Current arrangements regarding legal aid for housing cases are expected to continue to apply.

3.3. If legal aid may be affected, would legal aid costs increase or be reduced (and by what margin)?

N/A

4. Prisons and Offender Management Services

Impact on HM Prison Services

4.1. Will the proposals result in a change in the number of offenders being committed to custody (including on remand) or probation (including community sentences)? If so, please provide an estimate and reasoning behind it, an estimated timeframe to reach this number of sentences, what evidence this is based on, and the source for your information.

N/A

4.2. Does the proposal create, remove or change an existing offence with a custodial or probationary sentence, or change the way offenders go through the prison / probation service? If so, please provide details, including the expected impact on probationary services.

N/A



5. Main Justice System Impacts Identified

5.1. Volumes and Costs or Savings (please lengthen if necessary):-

NB in all cases, assume an average annual figure or make clear if a different timespan is being considered. Where there may be significance variance from average in the first years of implementation, please add additional information in the notes below.

Identify the court or tribunal or MoJ service that will be affected by this proposal?	Volumes (please provide both numeric estimates and min-max ranges)	Type (e.g. prison place, tribunal hearing, fixed penalty, etc.)	Estimated recurring annual costs or savings (both numeric estimate and min-max range) (£)	Estimated initial set up costs (£)	Additional Information
Criminal Offences and Sanctions					
Civil Penalties					

Identify the court or tribunal or MoJ service that will be affected by this proposal?	Volumes (please provide both numeric estimates and min-max ranges)	Type (e.g. prison place, tribunal hearing, fixed penalty, etc.)	Estimated recurring annual costs or savings (both numeric estimate and min-max range) (£)	Estimated initial set up costs (£)	Additional Information
HM Courts & Tribunals Services	<p>During 2018 there were 783 claims made to the courts of Wales under the accelerated procedure, often referred to as Section 21.</p> <p>A longer section 173 notice period could result in a greater volume of possession orders reaching the courts if landlords turn to other alternative more specified grounds to end contracts.</p> <p>However, given that in Wales, around two thirds of possession cases currently relate to social landlords our forthcoming policy of working with the sector to significantly reducing social landlord repossessions should be expected to free up sufficient court time to address any increase in PRS cases.</p>		We anticipate that the Bill will be cost-neutral as far as HMCTS in Wales is concerned.	The introduction of the Renting Homes (Wales) Act 2016 will require an update to the ICT systems of HMCTS. This upgrade was already identified as a consequence of the Renting Homes Act 2016. The Act has not yet been implemented and these amendments will amend the Act before commencement. There are no additional costs to upgrade the ICT as this work is ongoing and proposed amendments have been communicated with MOJ colleagues as part of the ICT upgrade.	

Identify the court or tribunal or MoJ service that will be affected by this proposal?	Volumes (please provide both numeric estimates and min-max ranges)	Type (e.g. prison place, tribunal hearing, fixed penalty, etc.)	Estimated recurring annual costs or savings (both numeric estimate and min-max range) (£)	Estimated initial set up costs (£)	Additional Information
Welsh Tribunals					
Legal Aid					
Notes:-					

5.2. Prisons and Offender Management Services (lengthen if necessary, only complete if maximum penalty is something other than a fine):

Offence	Maximum Penalty	No. of prosecutions brought per annum (numeric estimate and min-max range)	Likely proportion sentenced to immediate custody	Likely average custodial sentence length given	Estimated costs or savings p.a. (£) ² (please provide numeric estimate and min-max range)

² The MoJ publish statistics on "Prison cost per place and cost per prisoner:" - see <https://www.gov.uk/government/statistics/announcements/prison-cost-per-place-and-cost-per-prisoner-2017-to-2018>

Offence	Maximum Penalty	No. of prosecutions brought per annum (numeric estimate and min-max range)	Likely proportion sentenced to immediate custody	Likely average custodial sentence length given	Estimated costs or savings p.a. (£) ² (please provide numeric estimate and min-max range)
Notes:					

Please be aware that any costs or savings identified as a result of any changes to the justice system /additional work must be factored in to the financial assessment of your legislation.