



Policy Briefing: Improving the stability of privately rented homes

Introduction

This paper sets out the case for increasing private renters' security of tenure by ending landlords' ability to evict tenants using 'no fault' grounds.

At Shelter Cymru we believe that private renters should have the security of knowing they can't be evicted without a fair reason. A recent Welsh study found that one in three private renters in Wales don't feel they have enough control over how long their family can remain in their home¹.

Since 2001 the private rented sector (PRS) has more than doubled in every local authority across Wales². The introduction of the Housing (Wales) Act and the accompanying powers granted to local authorities to discharge their homelessness duties by placing people in the PRS has led to an increase in the number of people accommodated in the sector.

During the second half of the 20th century the PRS became the sector of flexibility for young single professionals or childless couples³. But in recent years there has been

¹ Shelter Cymru (2017) [Living Home Standard](#)

² Whitehead, C. and Scanlon, K. 2015. *The Potential Role of the Private Rented Sector in Wales*. London School of Economics and Public Policy Institute Wales

³ Lund, B. 2006. *Understanding Housing Policy*. Bristol: Policy Press

an increase in families with children, older people and people with vulnerabilities living within the sector as a long-term housing solution⁴. However the legislative framework has not kept pace, and tenants' security of tenure is still designed for young professionals and transient workers.

What is a 'section 21 no fault eviction'?

Section 21 of the Housing Act 1988 gives landlords the power to evict their tenants without having to prove a reason – hence 'no fault'. Section 21 powers apply where a tenant has an Assured Shorthold Tenancy which is not within a fixed term agreement or during the first four months of the tenancy.

Once a tenant has received a section 21 notice, they have two months to move out. If they haven't left in that time, the landlord can apply to the court for a possession order, for which there are only limited defences mainly of a technical nature.

In addition to section 21 powers, landlords can also gain possession through section 8. This applies in cases where there's been alleged anti-social behaviour or rent arrears, and can be used during a fixed term as well as outside it. However, because landlords need to provide evidence to demonstrate why they are seeking possession under section 8, many prefer to use section 21 as the quicker option.

In this way section 21 masks the true extent of problems in the PRS. The fact that section 21 is so readily available is a disincentive for landlords to use possession grounds appropriately and denies tenants a chance to defend themselves in court.

What is the problem?

- **Current tenancies are creating insecurity, which is not good for tenants or landlords.** We recently carried out a survey with tenants living in the Welsh PRS⁵. We found that at least 42% of tenants surveyed were on rolling contracts, making them vulnerable to section 21. Other tenants didn't know what their tenancy status was, meaning that the true figure is likely to be much higher.

⁴ Wilson, W., Baxter, J., Berry, K. and Murphy, E. 2016. *Comparing Private Rented Sector Policies in England, Scotland, Wales and Northern Ireland*. Briefing Paper Number 07624. House of Commons library. <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7624>

⁵ All figures, unless otherwise stated, are from YouGov Plc. Total sample size was 334 Welsh adults. Fieldwork was undertaken between 19th July – 23rd August 2017. The survey was carried out online.

- **Tenants end up having to move when they don't want to.** We found that more than one in five tenants who've moved at least once in the last five years (21%) would have preferred to stay in their previous privately rented home.
- **Moving home is costly to tenants.** More than one in four tenants surveyed (27%) said their last move in the PRS strained their finances, and more than one in five (22%) had to go into debt (i.e. credit card, overdraft, payday loan, bank loan). The average cost of moving was found to be more than £1,100.
- **Low security of tenure is undermining efforts to improve housing quality.** Every day at Shelter Cymru we meet private renters who are living in appalling conditions. And the harsh reality is that they have few rights to get their situation improved. Tenants know that if they try to take their landlord on, it is a battle they will ultimately lose due to section 21. In our survey, 7% of tenants who'd moved at least once in the last five years said the main reason they moved from their last home was to escape poor conditions, and a further 11% said this was among the reasons they moved.
- **Low security of tenure means tenants don't get a fair hearing in court.** If there is a reason why a landlord wants to evict, such as alleged anti-social behaviour (ASB), then the facts should be established by a court. However, many landlords use the 'no fault' procedure instead due to its convenience. This means tenants end up being evicted without having the right to defend themselves.
- **Low security of tenure is undermining other Welsh legislation.** For example, because tenants can't be evicted if their landlord is unlicensed under Rent Smart Wales, some tenants are being advised by Housing Options or other agencies not to report their unlicensed landlord because this gives them a more secure tenancy.
- **Tenants want more security.** Three in four tenants (73%) said they would support the introduction of tenancy laws similar to Scotland's, where tenants can stay in their homes for as long as they need to unless there are rent arrears, damage to the property or the landlord needs to sell up.

Our proposal

We believe the best option for Wales would be the complete removal of 'no fault' eviction powers, via amendments to the Renting Homes (Wales) Act. Landlords would still be able to get possession if they had a good reason for it. They would simply need to provide evidence to the court to justify their course of action.

If landlords didn't have access to 'no fault' powers, we agree it would be reasonable to create some new possession grounds to cover situations not currently included in section 8 – such as needing possession in order to sell, or in order to carry out substantial refurbishment. Some of these grounds could potentially be made mandatory in order to give the landlord certainty that they'll get the outcome they want.

However, if tenants are being evicted through no fault of their own, landlords should be required to compensate them for the inconvenience and substantial expense of moving.

Benefits for tenants

- **Security and stability.** Tenants would feel safer and more secure in their home and this stability would enable them to plan for the future, providing a level of consistency so that they can focus on other areas of their lives such as work, education and wellbeing.
- **Ability to create a home.** Stable housing is fundamental to improving an individual's well-being, relationships and development of self⁶. It is recognised as providing an opportunity for an individual to integrate and become part of a community, build social relationships, build a sense of identity and plan and envision their future. This could be achieved by simply decorating a child's bedroom and can be hugely beneficial to tenants and particularly those with children.
- **Better relationship with landlord, resulting in less conflict.** Providing a more equal relationship between both tenant and landlord which facilitates open communication and allows a professional relationship to form.

⁶ See: Leith, K. 2006. "Home Is Where the Heart Is... Or Is It?" A Phenomenological Exploration of the Meaning of Home for Older Women in Congregate Housing'. *Journal of Aging Studies* 20(4) pp. 317–33; Parsell, C and Parsell, M. 2012. Homelessness as a Choice. *Housing, theory and society*, 29(4), pp. 420-434; Tsemberis, S., Kent, D., & Respress, C. 2012. Housing stability and recovery among chronically homeless persons with co-occurring disorders in Washington, DC. *American Journal of Public Health*, 102(1), pp. 13–16; Dunn, J. R. 2013. Security, meaning, and the home: Conceptualizing multi-scalar resilience in a neoliberal era. In P. A. Hall & M. Lamont (Eds.), *Social resilience in the neo-liberal era*. Cambridge: Cambridge University Press; Woodhall-Melnik, J; Hamilton-Wright, S; Daoud, N; Matheson, F; Dunn, J. and O'Campo, P. 2016. *Establishing stability: exploring the meaning of 'home' for women who have experienced intimate partner violence*.

Benefits for Landlords

- **Secure and regular income.** As the Residential Landlords' Association has noted: 'Landlords themselves do not want to see tenancies end as empty properties mean lost rent and increased costs for themselves.'
- **Encourages tenants to take responsibility for the home.** Evidence shows that tenants are willing to carry out maintenance and decorate their long-term rental property. In our recent survey nearly two in three tenants (64%) felt that if they were staying in a property for up to five years they would be more likely to carry out decorating or home improvements themselves.
- **Opportunity to build relationship with tenant, resulting in less conflict.** Secure tenancies promote a more equal relationship between both tenant and landlord which facilitates open communication and allows a professional relationship to form. Research has found that the type of relationship between landlord and tenant can be significant to the level of satisfaction and feelings towards the property by tenants⁷.

Wider benefits

- **Cohesive communities.** Encouraging low levels of residential churn may have a number of benefits for the wider community such as better integration into the community which can promote active citizenship and lead to increased community cohesion.
- **Supports the goals of Housing (Wales) Act.** Homelessness presentations due to the loss of a PRS tenancy would be likely to reduce. Tenants would feel safer reporting unlicensed or otherwise non-compliant landlords.
- **Stability for future generations.** The recent focus upon ACEs (Adverse Childhood Experiences) has identified that homelessness can often be an impact and consequence of ACEs. Housing and particularly stable housing can play a role in repairing and mitigating some of the damage caused to children. Furthermore, increasing security of tenure should reduce the number of children who have to experience homelessness and housing instability and the associated emotional, financial and psychological effects.

⁷ Smith, M., Albanese, F. and Truder, J. 2014. *A Roof Over My Head: the final report of the Sustain project, a longitudinal study of housing outcomes and wellbeing in private rented accommodation.* Shelter and Crisis.

- **Retaining a valuable housing option.** Properties in the PRS receive the largest amount of public money per dwelling, through assistance for housing improvement. As the recipient of major public subsidy it is only right that the private rented sector meets Wales's wider policy objectives including providing stable, decent homes for current and future generations.

What would need to happen?

- **More capacity would be needed in the courts.** Currently many section 21 possessions take place without court involvement. If every possession claim led to a hearing this would create additional burdens on the courts. Shelter Cymru, the Residential Landlords' Association and other agencies have long been calling for a specialist housing court for Wales, similar to the Housing and Property Chamber of the First-Tier Tribunal in Scotland.
- **Social housing allocations would need to be more forgiving of tenants' histories.** A move towards fault-based possession actions could potentially mean more tenants end up with black marks against their name for ASB or rent arrears in the PRS. This isn't a reason to withhold security of tenure from all tenants, but it will need to be anticipated and planned for. Tenants who run into trouble in the PRS are more likely to be properly supported in social housing and it's important that they aren't excluded.
- **Landlords and tenants would need educating about their new rights and responsibilities.** In part this can be achieved via the Rent Smart Wales training requirements and the planned comms strategy to accompany the Renting Homes Act.

Questions and answers

Q: Will this result in landlords being unable to easily regain possession of their property?

A: No, as it doesn't restrict their powers to evict tenants, it just encourages better practice and the use of appropriate grounds rather than a quick fix. They can still evict tenants for issues such as arrears and ASB, but with evidence and in a fairer manner.

Q: Will landlords sell up?

A: It is unlikely, as these proposals are not restricting landlords' ability to earn profit. These concerns were raised with the introduction of Rent Smart Wales: however, since 2013/14 until 2015/16 the sector has grown by almost 7,000 dwellings, suggesting that these changes are having little impact on growth. When private landlords choose to sell, the bricks and mortar don't disappear – and if other landlords buy them up, the PRS doesn't shrink.

Q: Landlords already want tenants to stay long- term, how will this improve that?

A: The current options for long-term tenancies bind tenants into unrealistic and financially restrictive contracts which limit their options for flexibility and adapting to future changes. These new proposals will provide long-term options without expecting tenants to sign up to a financial commitment for years into the future.

Q: How will these proposals affect the ability of landlords to increase the rent?

A: There would need to be some regulation to prevent the use of rent rises to gain possession. There are various options for this, such as capping increases at the level of inflation, or (as in Scotland) restricting the number of increases to one per year and putting in place an effective appeals process. Scotland has also given local authorities the power to designate local 'rent pressure zones' to keep housing affordable in certain areas.

Q: What about an initial probation period?

A: By creating tenancy rights in the PRS that are closer to those in social housing, there's an argument that tenancies should start with a probationary period with access to 'no fault' possession. However, it's worth noting that the new Scottish private residential tenancy does not give landlords additional possession grounds during the first six months – although it does provide for a shorter notice period.

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