

## Increasing the minimum notice period for a 'no fault eviction'

### Consultation Response Form

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#### How would you best describe yourself?

##### A stakeholder or representative group

1. ARLA Propertymark is the UK's foremost professional and regulatory body for letting agents; representing over 9,500 members. ARLA Propertymark agents are professionals working at all levels of letting agency, from business owners to office employees.
2. Our members operate to professional standards far higher than the law demands, hold Client Money Protection and we campaign for greater regulation in this growing and increasingly important sector of the property market. By using an ARLA Propertymark agent, consumers have the peace of mind that they are protected, and their money is safe.

#### Comments on existing procedures

3. Many landlords and letting agents opt to use a Section 21<sup>1</sup> notice for the purpose of regaining a property where a tenant has consistently defaulted on rent payments or due to antisocial behaviour. A recent study by the Residential Landlords Association found that 85 per cent of landlords that have used a Section 21 notice, used this route exclusively due to tenant rent arrears.<sup>2</sup> This route is taken due to it often being a quicker method of possession than it would be if a ground for eviction was used. This is because, the current Section 8 notice for eviction

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<sup>1</sup> Up until the Renting Homes (Wales) Act 2016 comes into force, the Housing Act 1988 still applies. This response may reference interchangeably between Section 21 and Section 8 of the Housing Act and Section 173 and Section 186 of the Renting Homes Act.

<sup>2</sup> <https://research.rla.org.uk/wp-content/uploads/RLA-Section-21-review-July-2019.pdf>

under the Housing Act 1988,<sup>3</sup> requires a court hearing therefore lengthening the eviction process whereas a Section 21 eviction via the Accelerated Possession route will typically not unless the tenant brings forward important information before a Possession Order is granted.

4. We are concerned that by introducing the proposals contained within this consultation, landlords will have no viable option of evicting problem tenants quickly and efficiently due to current court procedures. Although the Renting Homes (Wales) Act 2016<sup>4</sup> contains grounds for eviction based on a breach of contract and for serious rent arrears, both can be at the discretion of the Judge. Where a ground for eviction has been used, and it goes to a court hearing this stage can be extended through delays, adjournments, and through the actions of the tenant. This is either by making vexatious claims or through playing the court system by making payments at the court in order to remove the mandatory ground for possession for rent arrears, currently via Ground 8 of Schedule 2 of the Housing Act 1988. Most often, landlords make use of a Section 21 notice as they are guaranteed to get possession. Further, where possession has been sought on discretionary grounds, the Judge may adjourn the application for possession where the tenant claims hardship. This can last for either a fixed period of time or indefinitely, providing that the defendant pays their rent and makes regular contribution towards existing arrears, if the tenant defaults again, the landlord or agent will have to wait more time to go to court and request another Possession Order.<sup>5</sup>
5. Furthermore, landlords report difficulty in proving the anti-social behaviour of a tenant in order for them to be evicted. We have heard reports of Police giving evidence on behalf of a landlord, and the court would still not grant possession. The courts consider genuine remorse for actions and previous good character, the result of this being that only a Suspension Order is granted.<sup>6</sup> We believe that without robust reform to the court system, these existing issues will worsen should these proposals be introduced as a standalone modification.

## Questions

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

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

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<sup>3</sup> <https://www.legislation.gov.uk/ukpga/1988/50/contents>

<sup>4</sup> <http://www.legislation.gov.uk/anaw/2016/1/contents/enacted>

<sup>5</sup> <https://www.arla.co.uk/media/1047711/considering-the-case-for-a-housing-court.pdf>

<sup>6</sup> <https://www.arla.co.uk/media/1047267/overcoming-barriers-to-longer-term-tenancies.pdf>

## Question 2: Please tell us why

6. No, ARLA Propertymark does not agree with the proposal to extend the minimum notice period of a Section 173 notice from two months to six. This is because, by changing the notice period from two months to six months there will be the following consequences:

- This will give all tenants, including those who flout the law, a minimum of 12 months security in the tenancy by default.
- In cases of emergency the eviction process will be extended. The proposal ignores issues with problem tenants causing issues to surrounding properties and the landlord or letting agent.
- Adding further time will not only impact the timescale of proceedings but will also make the process more expensive for the landlord.
- Landlords will sell up due to the perceived risk, resulting in a reduction of the sector and contributing to landlords being more selective about who they let their property to.
- This will mean that the private rented sector won't be accessible to the most vulnerable tenants and rents will increase.
- This will create pressure on the Welsh Government to ensure displaced tenants are housed in the social rented sector.

Taking the above into consideration, we do not agree with this proposal and would urge the Welsh Government to reconsider extending the minimum notice period of a Section 173 notice from two months to six.

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

7. A longer notice period for a Section 173 notice will negatively impact the private rented sector significantly. Firstly, it will extend the time taken during the eviction process, which is already a slow procedure. Consequently, extended timescales will increase the associated costs for landlords going through the eviction process. Importantly, we believe that the perceived risks of an increased notice period could result in less homes available for private rent. This in turn, will contribute to an increase in rents and cause remaining landlords to be more selective with tenants. Overall, the Welsh Government and the public sector will be responsible for housing misplaced tenants as an unintended consequence of the proposals.

## Time

8. Extending the minimum notice period will cause further delays in the eviction process. The eviction procedure, even under the Accelerated Possession<sup>7</sup> route, is already a lengthy process. Via Accelerated Possession, after issuing a Section 21 notice, landlords are generally not required to have a court hearing meaning the process should be less susceptible to delays. Despite this, ARLA Propertymark members cite delays at every stage of the possession action process in the County Court, beginning from the initial claim up to the eventual possession by instruction of a County Court Bailiff.
9. Shelter reports that the full eviction process for a private tenant takes on average seven to eight months or 28-32 weeks<sup>8</sup> including the two-month notice period. In addition, statistics from the Ministry of Justice in March 2019 indicate that the time taken for landlord possession action across England and Wales is continuing to increase.<sup>9</sup> If the policy proposed by the Welsh Government is implemented to increase the notice period to six months, and court processes remained the same, the full eviction process will take approximately 12 months from the date the notice is issued.

## Cost

10. A longer notice period will result in further loss of income for landlords through the length of court proceedings and accruing rent arrears. Despite the tenant still having a legal requirement to pay their rent once they have been issued a notice for eviction, many choose not to and the likelihood of this increases when the eviction has arisen from rent arrears.
11. All time associated with eviction proceedings often results in further loss of rental income for the landlord, and the timing associated with each stage adds further frustration. Research conducted by StudentTenant.com in 2017, showed that when using High Court Enforcement Officers (known to execute a Possession Order notably quicker than through County Court Bailiffs) landlords pay around £1,981 and wait around nine months to evict a tenant.<sup>10</sup> This waiting time would be increased should a longer notice period be introduced. Average rent across Wales currently stands at £625 a month,<sup>11</sup> if a landlord was hypothetically losing this

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<sup>7</sup> <https://www.gov.uk/evicting-tenants/accelerated-possession-orders>

<sup>8</sup> [https://england.shelter.org.uk/housing\\_advice/eviction/section\\_21\\_eviction/how\\_long\\_a\\_section\\_21\\_eviction\\_takes](https://england.shelter.org.uk/housing_advice/eviction/section_21_eviction/how_long_a_section_21_eviction_takes)

<sup>9</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/800283/Mortgage\\_and\\_Landlord\\_Possession\\_Statistics\\_Jan-Mar\\_19.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/800283/Mortgage_and_Landlord_Possession_Statistics_Jan-Mar_19.pdf)

<sup>10</sup> <https://www.studenttenant.com/news/tenant-evictions-2000-eviction-fees>

<sup>11</sup> <https://homelet.co.uk/homelet-rental-index/wales>

amount of rent for 12 months, as a consequence of this proposal, this would be £8,125 (625 x (6 + 7)) not including added interest in arrears – totalling £10,106 including court costs. This figure does not include associated cost where a problem tenant has left the property in poor condition, meaning that the landlord would also have to fund repairs in order to let the property again. Furthermore, via Accelerated Possession, landlords cannot recoup lost rent. To do this landlord must submit a separate claim for monies owed which if the order is granted there is no guarantee that they will receive this money back.

12. This creates further issue where the property is subject to a buy to let mortgage. If the landlord is reliant on the rent to pay for the mortgage, if the landlord cannot recoup the money owed in rent arrears from elsewhere the property may be repossessed by the lender. This is because, buy to let lenders require only two months' mortgage repayment arrears to issue repossession proceedings.<sup>12</sup> In addition, in some instances where a tenancy is binding on the landlord's mortgage lender, the tenant has the right to remain in the property. This could mean that in some eventualities, a tenant who has consistently defaulted on their rent resulting in the landlord missing mortgage payments, the property has been repossessed by the lender, but the tenant still has the right to remain in the property. This is completely disproportionate considering the possession was at fault of the tenant not paying rent, and the landlord has lost their asset. Further, buy to let mortgages cost more than a residential mortgage due to the associated risk with rent collection and void periods. We believe that should this risk increase, mortgage terms will become less favourable and make letting property less accessible. Ultimately, the opportunity for repossession has the ability to reduce the amount of properties available to privately let and will put prospective landlords off from purchasing properties with a buy to let mortgage due to the perceived risk of tenant's defaulting on rent payments.

### Sectoral impact

13. Proposals contained in this consultation will not achieve in their aims to benefit tenants. Where power in the relationship is overly biased towards the tenant (as in these proposals), letting property becomes less of a viable business asset for landlords. This is because, there is an increased risk in protecting assets (property) where there isn't straightforward means to regain the property quickly when things go wrong. With less landlords, there will be less

<sup>12</sup> <https://www.telegraph.co.uk/finance/personalfinance/2794862/Buy-to-let-landlords-how-to-avoid-repossession.html>

privately rented homes which will ultimately leave tenants with less choice of where to live. A decrease in private rented homes will contribute to three outcomes. Firstly, remaining private rents will increase. Secondly, landlords will become more risk averse and will only choose to house the best tenants. Thirdly, displaced private sector tenants will place additional pressure on local authorities to provide more housing for social rent.

14. We believe that the proposals in the consultation will encourage landlords to exit the market in Wales if court processes are not amended to accommodate for the changes to the eviction process. ARLA Propertymark members are increasingly voicing their opinion that without a simple means to regain possession of their properties, landlords will exit the market and invest elsewhere. With increasing legislation affecting the sector, landlords are already selling their buy to let properties. ARLA Propertymark's Private Rented Sector Report from June 2019 found that on average across the UK four landlords per letting agent branch were selling their properties.<sup>13</sup> However, demand from tenants in Wales is continuing to rise. The result of demand outstripping supply is that rents are experiencing market-led rises. ARLA Propertymark letting agents reported that 55 per cent of tenants experienced rent increases in June 2019. Should the proposals of this consultation be introduced without considering the implementation of a Housing Court, or including additional mandatory grounds for eviction, we will expect more landlords to sell up and as a consequence, private rents will continue to increase as demand for housing grows. This will make the private sector less affordable for many.

15. The proposed changes to the eviction process will make landlords more selective with which tenants they choose. To mitigate risk, landlords will only let their property to the "best" tenants on paper, such as higher earners without dependants. This is because, with a steady income stream these tenants will be less likely to default on rent payments, and therefore the perceived need to regain the property decreases. The consequence of this is that the most vulnerable tenants will be alienated from the private rented sector. Tenants in receipt of benefits will be the most disadvantaged. Subsequently, those out of work such as single parents, people with severe disabilities and pensioners will be deemed as more of a risk for landlords. The vulnerable and low-income people without access to the social rented sector,

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<sup>13</sup> <https://www.arla.co.uk/media/1048158/prs-report-june-2019.pdf>

will need to find an alternative to the private rented sector. This could mean them turning to the rogue and criminal operators, who actively flout their responsibilities, including failing to register with Rent Smart Wales meaning that they are often very difficult to track down.

#### Cost for Welsh Government

16. An unintended consequence of the proposal is the associated cost for the Welsh Government. As the private rented sector will shrink, this will result in increased pressure on the social rented sector to provide more housing for displaced tenants. The private rented sector has grown in size as social stock has depleted, and although previously saturated with working professionals and students, is now increasingly housing families and older people. If the private rented sector decreases, it will be the responsibility of local authorities to house those without access to the private rented sector. This will come at a significant cost to the Welsh Government as more will need to be invested in building and acquiring homes to be socially rented to make up for the shortfall in privately rented housing.
17. Furthermore, it is likely that with less homes available to privately rent and social stock isn't increased to accommodate for this, the public sector will need to increase expenditure on temporary housing. In 2017, a Freedom of Information request found that the Welsh government had spent £8.6 million housing homeless individuals and families in temporary accommodation.<sup>14</sup> Should the proposals of this consultation be introduced without assessing issues with court procedures, we would expect this figure to increase dramatically.

### **Proposal regarding when a section 173 notice can be issued under a periodic contract**

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

**Question 2: Please tell us why**

18. No, ARLA Propertymark does not agree with increasing the period in which a section 173 notice cannot be issued from four months to six. This is because, when combined with other proposals of this consultation, it will give tenants a minimum of 12 months tenancy security by default from the date the contract begins. In addition to the proposed increase of the minimum notice period, this proposal ignores the situations where problem tenants are

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<sup>14</sup> <https://www.walesonline.co.uk/news/wales-news/wales-housing-crisis-leaves-councils-14370392>

causing issues with the landlord and surrounding properties and will effectively reward these tenants for their poor behaviour.

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

19. Please refer to Paragraphs 7 to 17 of this response to further understand the impact this proposal will have on the Welsh private rented sector.

**Proposal to set further time limits on issuing a section 173 notice under a periodic contract**

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

**Question 2: Please tell us why**

20. No, ARLA Propertymark does not agree with the proposal for landlords having to wait six months before re-issuing a Section 173 notice following expiry. We don't believe that landlords will continually serve a Section 173 notice as a precautionary matter. This proposal ignores emergency situations where the landlord may be required to regain possession of their property at short notice and places further restriction on the already limited Section 173 notice.

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

21. We believe that this proposal will place landlords in situations where they are unable to regain their property within a reasonable period of time in emergency situations. The original notice may have timed out due to the landlord no longer needing possession of the property, or genuine change of character for the tenant where the landlord had issued the notice for this reason. An example of this could be the tenant was in rent arrears, so the landlord issued the tenant with a Section 21 notice. However, this was the first instance and the tenant paid back the money owed and consequently the landlord did not go forward with the eviction process. The landlord then needs to move into the property a couple of months later but cannot evict the tenant as there is no ground of eviction to do so. In this circumstance the landlord would need to wait a further six months after the expiry of the first notice, which does not account for an emergency. Landlords need to be able to regain their property in an emergency, and therefore if this proposal is to be introduced, further mandatory grounds for possession must be added to the Renting Homes Wales Act 2016.

## Removal of a landlord's ability to end a fixed term standard contract under section 186

Question 1: Do you agree with this proposal?

Question 2: Please tell us why

22. No, ARLA Propertymark does not agree with the proposal to remove a landlord's ability to end a fixed term standard contract under Section 186 of the Renting Homes (Wales) Act 2016. This is because landlords using Fixed Term contracts will be left with little option to regain possession of their property at the end of the term unless the court decides that the tenant has breached terms of their contract.

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

23. This change will unfairly balance power towards tenants, meaning that landlords will have little protection should they need to regain their property. This will have serious consequences on the private rented sector in Wales, as it will essentially make the use of Fixed Term contracts obsolete. Landlords will choose to issue Periodic contracts by default, as there are greater protections attached should the landlord wish to regain the property. Due to this, tenants will actually have less security in their length of tenure beyond the initial 12 months.

### Periodic vs. Fixed Term Contracts

24. The result of removing a landlord's ability to end a Fixed Term standard contract will be that landlords will choose to only issue short Fixed Term contracts (i.e. four to six months) that will rollover onto a Periodic term, or initiate the contract as Periodic because they will have a simpler process of evicting a tenant if needed. By doing this, there will be less perceived risks for landlords who will want an option to regain possession of their property should they need to.

25. By removing the Section 173 notice for Fixed Term contracts, the landlord would not have the guarantee that they would get their property back at the end of the term. The alternative would be the contract becoming Periodic at the end of the fixed term, meaning that the landlord could issue as Section 173 notice and therefore will fall under the requirement of the six-month notice period. If the initial fixed term was for six months, the landlord would still have to give the tenant a further six months for the required notice period from the date of occupation.

26. Should a landlord continue issuing longer Fixed Term contracts, without a break clause as the consultation paper suggests, landlords will be more at risk of not being able to regain their property should an issue arise. Landlords would not be able to regain possession unless there is a breach of contract (and some other grounds) during this time. Therefore, we would not expect many landlords to offer longer Fixed Term contracts due to the perceived risk. We do not currently have enough evidence for how evictions due to fault of the tenant will work when the Renting Homes (Wales) Act 2016 comes into force. However, we would like to note that the current grounds for eviction under the Act are not sufficient when compared with existing legislation to correspond with the removal and restrictions on notices for eviction without reason.
27. Periodic contracts by default also have issues that could be detrimental to letting agency businesses. For letting agents, fixed terms are an integral part of business as they can charge landlords for issuing tenancy renewals when the tenant signs a new Fixed Term contract at the end of the previous. If the landlord chooses for the Fixed Term to roll onto a Periodic contract, which runs from one period to the next (for example: month to month) there will be less of a need for tenancy renewals. Whilst commission earned on renewals is typically lower than a fee charged for the initial let, this is still an income stream that will be impacted should shorter Fixed-Terms rolling on to Periodic contracts become the preferential tenancy by default. Letting agents are already facing major impacts on their businesses with the Renting Homes (Fees etc.) (Wales) Act 2019 due to come into force on 1 September. This legislation will ban letting agents and landlords from charging most fees to tenants. In 2017, ARLA PropertyMark research indicated that a ban on fees will result in a reduction of around one fifth of letting agency revenue.<sup>15</sup> The impact of this legislation on letting agency business must be reviewed first, before further change is introduced.

## Use of break clauses

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

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<sup>15</sup> <https://www.arla.co.uk/media/1045728/letting-the-market-down-assessing-the-economic-impacts-of-the-proposed-ban-on-letting-agents-fees.pdf>

28. Taking into consideration the proposed removal of the Section 186 notice for eviction, the continued use of break clauses will be increasingly useful for both landlords or agents and tenants. This is because, break clauses provide flexibility for tenants, give landlords added protections based on circumstances and are not typically a measure that give preferential rights to the landlord. For this reason, we do not see a need to limit or remove the use of break clauses.
29. Break clauses are beneficial as they typically provide flexibility for both parties within a tenancy and allow the landlord or tenant to end the tenancy agreement early during a fixed term. Many people use the private rented sector as a temporary measure while they save up deposits for their first home or renting property is often a choice for families who are likely to move due to job availability or education opportunities. Tenants need the flexibility and control of being able to move on short notice and not everyone wants to be tied down to a fixed term. Both landlords and tenants want and need flexibility, this can be evidenced by the ARLA Propertymark Private Rented Sector Report from June 2019 showing an average tenancy length of 18 months.<sup>16</sup> This is despite a push across the UK to promote longer term tenancies and greater security of tenure. Notably, it has been highlighted that almost 90 per cent of tenancies are ended by the tenant, not the landlord.<sup>17</sup> This suggests that the continued use of break clauses will be would be initiated by the tenant more so than the landlord.
30. Landlords are given extra protection for their assets by the use of break clauses. The use of break clauses depends entirely on circumstance and will likely only be instigated by the landlord where an issue arises. If the landlord deems that the tenant is not suitable, for example, the tenant hasn't honoured terms of their tenancy agreement, the landlord can use the break clause before any further issue is caused later in the tenancy. Landlords would not instigate a break clause if the tenant remained suitable. Therefore, we do not see any legitimate reason to limit the use of break clauses where they will only ever have repercussions for bad tenants. For landlords, longer tenancies are preferable due to the income security of less void periods. However, the use of break clauses allows both the landlord and tenant to assess the suitability of the agreement during the fixed term and ultimately either party has an additional level of protection should the tenancy not work out.

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<sup>16</sup> <https://www.arla.co.uk/media/1048158/prs-report-june-2019.pdf>

<sup>17</sup> <https://www.arla.co.uk/media/1047267/overcoming-barriers-to-longer-term-tenancies.pdf>

31. We would like to highlight that most break clauses are not unduly unfair on 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.<sup>18</sup> There are associated risks for both the landlord and the tenant, meaning that no one party benefits over the other, it is an equal relationship. For landlords, the use of break clauses increases the risk of void periods which in turn means the associated costs for empty properties and loss of income. For tenants, the risk is security of tenure. However, we would argue that tenants would be fully aware of included break clauses upon signing a tenancy agreement and they too will often have the ability to end the contract early. Where break clauses are used, landlords do not have a guaranteed right for possession during the first six months of the tenancy, as they can only be enforced after a minimum of six months. Further, where a landlord uses the break clause, but the tenant does not vacate the property, the landlord would then be required to issue eviction proceedings to get possession. This in itself provides an extra level of security for the tenant.

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

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

32. 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. Further, we expect that this measure would affect landlord's confidence in the sector. Instead, we believe that the Welsh Government should provide clear guidance on drafting correct, fair and binding break clauses to benefit both the tenant and landlord.

33. We believe that by removing or limiting the use of break clauses, the private rented sector will be a less flexible tenure. As discussed in paragraph 29, break clauses provide flexibility to the private rented sector but they also allow tenants an option to renegotiate their contract with the landlord. Without this added level of flexibility, tenants may feel stuck in a fixed term that may limit where they work, where they want to live and where their children go to school. For this reason, we would expect many tenants who want flexibility to be hesitant to sign up to extended fixed terms without the option for a break clause. This in turn, will provide

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<sup>18</sup> <https://www.legislation.gov.uk/ukpga/1977/50>

landlords with less security against void periods as tenants who want flexibility would likely prefer short Fixed Terms of six months or to sign a Periodic tenancy, which can be ended any time at the tenant's request.

34. 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. As an asset, landlords need protections in place to ensure that they can regain possession of their properties when and if needed and to also limit any damage caused by replacing problem tenants. As we have discussed throughout this response, increased pressure from legislative change is changing landlord opinion on investing in the private rented sector. Taking away many of the protections which have allowed the private rented sector to grow since the late 1980s will dissuade many landlords from reinvesting or deter new entrants into the market. This in turn increases pressure on the Welsh Government to house displaced tenants and will cost the public funds significantly from losses associated with landlord taxes.

35. 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. Currently, the use of a break clause relies heavily on the specific wording. If a break clause contains complicated wording that is difficult to interpret, either party may face issues when trying to exercise their right to terminate the fixed term early. A consequence of this is that they can often lead to disputes. Often, tenants are required to comply with certain pre-conditions before successfully exercising their right to end the tenancy. These can be difficult to prove but could be avoided by the use of clearly worded break clauses. For this reason, we believe that instead of removing or limiting break clauses they should instead be made clearer and detail the rights and obligations of all parties involved.

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

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

**Question 2: Please tell us why**

36. Yes, ARLA Propertymark agrees with the proposal to prohibit landlords from issuing a further Section 173 notice for six months after a notice has been issued in retaliatory fashion.

Landlords who circumvent the rules should not be permitted to use the eviction process in the same way in which compliant landlords do. We believe that most landlords take pride in being responsible and like to be notified of issues arising with their property so that they can protect their asset and ensure that they are providing decent quality housing for their tenants. Therefore, it makes sense for non-compliant landlords to not be able to issue a notice for eviction via Section 173 where they have not acted on their duty as a landlord to fix an issue with the property.

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

37. We believe that this change would have little effect on ARLA Propertymark letting agents or the landlords that use their services. By stipulating that a Section 173 notice cannot be issued for a further six months after one has been issued in a retaliatory fashion, this would not impact law abiding landlords and agents. It will only ever affect the rogue operators who flout their existing legal responsibilities by ignoring minimum property standards and evicting tenants in retaliation, once they make a complaint.
38. In addition to this, we would like to note that we believe that retaliatory evictions are not as a widespread issue as is often reported. For example, in 2013/14 Shelter estimated that there were around 213,000 tenants that were evicted or served with a notice.<sup>19</sup> Disputing this, official Government figures show that there were 6,049 private landlord repossessions by County Court Bailiffs in England and Wales using a Section 21 notice in 2013, and 6,321 in 2014.<sup>20</sup> These vastly different figures indicate that the number of Section 21 notices that follow through to repossession do not equate to the level of retaliatory evictions via Section 21, as is indicated by some groups. This must be considered as current Ministry of Justice figures show that in the last five years, around 25 per cent of claims progressed to repossession.<sup>21</sup> Considering this, we would expect the proposal to give tenants further protection against retaliatory eviction to have little impact on the private rented sector in Wales as a whole.

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<sup>19</sup> <http://researchbriefings.files.parliament.uk/documents/SN07015/SN07015.pdf>

<sup>20</sup> <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2019-05-21/257138/>

<sup>21</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/800283/Mortgage\\_and\\_Landlord\\_Possession\\_Statistics\\_Jan-Mar\\_19.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/800283/Mortgage_and_Landlord_Possession_Statistics_Jan-Mar_19.pdf)

## Proposal with regards to failure to comply with existing legislation

Question 1: Do you agree with this proposal in principle?

Question 2: Please tell us why

39. No, ARLA Propertymark does not agree with the proposal to require landlords to comply with existing legislation in order to issue a Section 173 notice. The consultation document provides no evidence in order to back up this significant proposal. Reason must be provided on the basis of evidence to suggest that implementing this proposal is necessary in reforming the eviction process.

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

40. No, in addition to our comments in the paragraph above, we do not think there are any further matters in which should be included in this provision.

## Additional reform

41. ARLA Propertymark supports a reform of the courts system for housing cases, including making the eviction process simpler, quicker and more cost-effective. However, we do not believe that the proposals within this consultation will achieve a better eviction process without addressing other issues with the system itself. To ensure that the proposals in this consultation are operable in working practice, ARLA Propertymark believes that there are two things that must be done to amend court procedures. Firstly, the Renting Homes (Wales) Act must be amended to include additional mandatory grounds for possession in place of the restricted Section 173 and removed Section 187 notices. Secondly, to rectify timing and consistency issues currently faced in the court system, we believe that a specialist Housing Court needs to be introduced.

## Reforming Grounds for eviction

42. For the proposed changes to the eviction process to work, additional mandatory grounds for eviction must be included in the Renting Homes (Wales) Act 2016. Should the proposals of this consultation be implemented, a landlord issuing a Fixed Term standard occupation contract would have no means to repossess their property if they needed to move themselves or their family into the property, or if they wanted to sell the property.

43. In its current form and taking into account the proposals of this consultation, the landlord would only be able to regain possession of a property under a Fixed Term contract due to tenant's breach of contract (pre-contract and throughout the duration of the contract) and under estate management grounds (including building works to the property). In these instances, the granting of possession is at the discretion of the court. Consequently, we believe that the Renting Homes (Wales) Act 2016 must be amended to include the following mandatory grounds for possession in order to make the proposed changes to the legislation in the consultation paper workable:

- a) Landlord intends to sell the property
- b) Landlord intends to move into the property
- c) Landlord intends to move a family member into the property
- d) Mortgage lender needs to regain the property

44. We also believe that existing grounds for possession under the Act need strengthening. For example, under the rent arrears ground, tenants are able to pay off arrears on the day of the hearing which therefore makes the ground for eviction discretionary. Whilst we appreciate that some tenants would not do this maliciously, others may be inclined to continually play the system. Landlords should not be treated as an interest free lender by tenants who actively flout the responsibilities of their agreement. Thus, where a tenant has been in serious rent arrears of over three months, and has not paid this back consistently, the ground for possession should be absolute.

45. The Welsh Government must ensure that they do not inadvertently create a two-tier system, whereby letting property in Wales is riskier for landlords than it is elsewhere in the UK. Unlike similar legislation in Scotland, and proposed changes to the eviction process in England, the Welsh equivalent is missing vital grounds for eviction in the place of a Section 8 eviction under the Housing Act 1988. These grounds are either present or being proposed in both Scotland and England. By not addressing this discrepancy, it is likely that landlords will instead choose to invest across the border, reducing investment in the Welsh economy.

#### Considering the case for a Housing Court

46. Without effective court processes, the proposed changes to the eviction process will not be workable. The current court processes are slow and inconsistent and can be attributed to the

preferential use of Section 21 notices for eviction over notices due to tenant fault (please see Paragraph 3 of this response). This is why, ARLA Propertymark is advocating for the creation of a specialist Housing Court for England and Wales.

47. The Housing Court should be given the existing powers of both the County Court and First-tier Tribunal (Property Chamber) to ensure that wherever possible persons bringing proceedings (whether before Court or Tribunal) should be able to have their matters dealt with in a single process. Appeals could then go to the Upper Tribunal and then the Court of Appeal. We believe that a specialist Housing Court would allow for an easier and streamlined process for housing claims, which will subsequently provide faster justice, and make the process more cost effective.
48. A specialist Housing Court would be beneficial in three ways. Firstly, it would make the process for housing claims easier and simpler as specialist judges will be better trained and more experienced. Secondly, it has the potential to be a cheaper process than those in existence. Finally, it would allow landlords to take on longer-term default contracts with ease, providing greater security for tenants, landlords and letting agents.
49. In a Housing Court, specialist Judges will be appointed for their knowledge and expertise in the field, as has been witnessed with the First-tier Tribunal (Property Chamber) in Scotland. This will allow judges to expedite cases, as experts in their field they will easily eliminate vexatious claims, and correct minor errors made by landlords during the process. A consequence of this is that both court time and resources will be used effectively and efficiently, and ultimately this will provide a consistent standard of judgments across the court system.
50. Through the creation of a specialist Housing Court, there is potential for housing cases to come at a lesser cost to the claimant. A Housing Court should also have fewer stages in the process of a case. This would not only cost less than existing processes, but it could also ensure that enforcement is completed sooner. Where contested cases are not allocated sufficient time in the County Court, due to its specialist nature, the Housing Court could allocate time more effectively to housing cases to ensure that where necessary cases can be heard in one hearing. This will provide ease to landlords and agents during possession cases where they have evidence they wish to present, as well as the argument from the defendant. This would also allow for counterclaims (vexatious or otherwise) to be heard in a timely manner, rather than

putting the process on hold for significant periods of time. We would also argue that this would provide improved access to justice, as current timescales in the County Court can deter claimants from pursuing lesser claims and using the grounds for eviction.

51. The creation of a Housing Court would make longer contracts by default workable for landlords. The proposals in this consultation will make contracts a minimum of 12 months in length by default. Without a Housing Court and enhanced grounds for eviction, landlords will be reluctant to offer longer terms where they are faced with the threat of needing to reclaim their properties. For many landlords' long-term contracts do not prove viable due to current procedures. Letting agents want well-maintained tenancies as void periods and renewals reduce agent's fees. Where landlords use a letting agent, landlords will either pay a flat-fee upfront or a percentage of the rent each month for the agent to manage the tenancy. Where a flat-fee is paid upfront it is in the letting agents' interest to ensure the contract is well-maintained over a long period time because they are not receiving a monthly income from managing the property.<sup>22</sup> For this reason, we would advocate that a Housing Court is essential in making longer-term contracts by default workable. This would benefit landlords as they would have fewer void periods, letting agents for the reasons stated above and ultimately tenants who have a secure home. Without a specialist Housing Court to deal effectively with evictions, it is highly unlikely that landlords will feel able to offer long-term contracts.

### Further comments

52. Despite proposed reforms predominantly impacting the private rented sector, we would like to note that when compared to the social rented sector, private landlords use the eviction process less frequently. This evidence actually supports the idea that many tenants have greater security of tenure in their privately rented home than those living in the social rented sector. For example, Ministry of Justice figures from January to March 2019 showed that 19,192 or 63 per cent of all landlord possession claims came from social landlords. In comparison, 21 per cent of claims came from private landlords in the period.<sup>23</sup> Considering that around 200,000 dwellings are privately rented in Wales and approximately 225,000

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<sup>22</sup> <http://www.arla.co.uk/media/1047267/overcoming-barriers-to-longer-term-tenancies.pdf>

<sup>23</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/800283/Mortgage\\_and\\_Landlord\\_Possession\\_Statistics\\_Jan-Mar\\_19.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/800283/Mortgage_and_Landlord_Possession_Statistics_Jan-Mar_19.pdf)

dwellings are socially rented, the number of evictions in the social sector are comparatively disproportionate to the private rented sector.<sup>24</sup>

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<sup>24</sup><https://statswales.gov.wales/Catalogue/Housing/Dwelling-Stock-Estimates/dwellingstockestimates-by-localauthority-tenure>