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Welsh Government

## White Paper

### Renting Homes

A better way for Wales





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## Foreword

Last year, when he was the Minister for Housing, Regeneration and Heritage, my Cabinet colleague Huw Lewis published a White Paper setting out proposals for an ambitious programme of new legislation and other action that this Government will take to help people to meet their housing needs. It has already triggered a wide range of action. For example, to address the shortage of housing, we invested an additional £29 million in 2012-13, which will help deliver our target of 7,500 new affordable homes over the life of this Government. We also invested £10 million as part of action to bring 5,000 long-term empty properties back into use to provide for families in need of a home.

I am pleased to say that in 2013-14, we will be investing even more in housing. A further £20 million will deliver more affordable homes and another £10 million to expand the very successful Houses into Homes scheme, which is tackling the problem of long-term empty properties.

The White Paper explained that, as part of the programme, more detailed proposals would be brought forward to improve the arrangements for renting homes. The vast majority of respondents who referred directly to the proposals were very supportive. Our proposals will affect people who rent their home from a local authority or housing association, or from private landlords, who are becoming an increasingly important part of our housing system. To be effective, and to offer the flexibility that people need at different times of their lives, local authorities, housing associations and private landlords need to work together even more closely.

Wales has a solid track record of co-operation between the different providers of rented homes, and it has improved further in recent years. But underpinning this is the law that applies to renting. Unfortunately, the law is complex. It can be difficult to understand by people who rent their homes as well as their landlords, and can lead to difficulties, some of which end up in court. This leads to unnecessary costs and also, worry.

This document sets out, for public consultation, our proposals to improve the arrangements for renting a home in Wales. Like my predecessor, I am committed to doing as much as possible to improve the whole housing system; in this case, seeking to lay a Bill that draws upon the National Assembly's new powers to make primary legislation wisely and to good effect. I must emphasise this Government's commitment to providing social housing for those whose needs cannot be met by the housing market, and to security in these rental contracts. Our proposals are based on solid ground, namely the work of the Law Commission, which has developed a considerable body of evidence on the improvements needed and the best way of taking this forward.

I will not shy away from taking bold steps to make a difference to people's lives. The proposals will benefit tenants and landlords alike. They will simplify housing law in Wales, helping to make renting easier and less prone to problems. They will provide Wales with a more efficient housing system, underpinned by our values of fairness and social justice; a system that is flexible and which allows people to move more easily between landlords to suit their circumstances. The proposals will also, importantly, help to address issues that cause serious difficulty in people's lives, such as domestic violence and the anti-social behaviour of some households.

This consultation document is the result of a considerable amount of effort, not by the Welsh Government alone, but with the involvement of many different organisations. They have helped shape the proposals and I look forward to their continued involvement.

Whether you rent your home, are a landlord, or work in an organisation in or around the field of housing, I want to know what you think. Information on how you can respond is on page 13.

Together, we can do even more to help people meet their housing needs which, given the central part that a safe, secure, and affordable home plays in the lives of adults and children alike, is so important. I look forward to your comments and suggestions.



Carl Sargeant AM  
Minister for Housing and Regeneration



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## Executive Summary

- 1 In 2011, the National Assembly for Wales was granted the ability to make new primary legislation. This gives the Welsh Government the opportunity to do even more to help people to meet their housing needs. This White Paper reflects our ambitious, forward thinking approach.
- 2 We are setting out proposals for improvements to the law for renting homes. They represent a significant development that will bring benefits to existing tenants, prospective tenants, and landlords alike.
- 3 The document is published for public consultation. It seeks the views of people who currently rent their homes, people who may rent a home in future, landlords, and organisations working in and around the field of housing.

### Why are changes needed?

- 4 The number of people renting their home is increasing. There are many reasons for this, including the economic situation, a slowdown in the number of new homes being built, and tighter lending requirements for mortgages.
- 5 The current arrangements for renting a home have some good points. These include the security of tenure that is a feature of local authority and housing association homes and the flexibility that private renting provides, for example by enabling people to live near to their place of work.
- 6 However, the current differences between renting a home from a local authority, housing association or private landlord contribute to weaknesses in the way the whole housing system works. Renting a home is not always seen as a good choice. Indeed, it is sometimes considered to be the last option.
- 7 Some of the problems that arise cause unnecessary angst and worry for people renting their homes and, in some cases, landlords too. Both sides can be faced with legal costs in order to resolve difficulties that arise.
- 8 The current arrangements also mean that some people are reluctant to move between homes owned by local authorities, housing associations, and private landlords. This reduces the ability of the overall housing system to meet the demand for housing. It can also limit the mobility that can be necessary to enable people to take up job opportunities.
- 9 Many of these problems are due to inconsistencies in the underpinning law and some of the practices that exist around the law. By removing unnecessary differences between tenancy types, we will create a more effective and joined-up rented housing sector.

## What evidence is there of the need for change?

- 10 Over the years, the problems mentioned above have led to many calls for improvements to the law from housing experts, tenants, the judiciary and lawyers. We are responding directly to these calls. We are prepared to take bold steps where the need for change has been identified and where it will result in a housing system that is better able to meet people's needs.
- 11 The foundation for our proposals is a report by the Law Commission. It was the culmination of an extensive five-year programme of work. It provides a solid base of evidence and was itself the subject of extensive consultation. In developing the proposals set out in this document, we asked the Commission to review and update its original proposals, and to identify any changes they consider might better reflect the specific needs of Wales.

## What changes are being proposed?

- 12 Our proposals are based on a new legal framework developed by the Law Commission. It has two types of rental contract:
  - (i) A "secure contract" modelled on the current secure tenancy issued by local authorities.
  - (ii) A "standard contract" modelled on the assured shorthold tenancy that is used mainly in the private rented sector.
- 13 The secure tenancies issued currently by local authorities are generally seen as providing the greatest degree of protection for tenants. Using them as the basis for the new secure contracts will therefore provide a high degree of security of tenure that is protected by law. Secure contracts will also apply consistently to social housing provided by both local authorities and housing associations, thereby creating the much called-for 'single social tenancy'. There will also be nothing to stop private landlords issuing a secure contract if they choose to do so.
- 14 The standard contract will be similar to the current assured shorthold tenancy. It has a lower degree of security of tenure protected under legislation but with nothing to prevent landlords providing greater security. This reflects current practice where landlords are often keen to agree longer terms.
- 15 The Welsh Government remains fully committed to the principles of the secure tenancy and nothing in our proposals undermines that commitment. We also wish to see the development of a sustainable and high quality private rented sector.
- 16 Our proposals will not fundamentally alter the balance of rights and responsibilities of tenants and landlords from those that currently exist. Rather, they are designed to create a simpler, more logical and clearer legal framework to replace the complexity of current law. Our goal is a fair, simple, and effective legal basis for renting a home, making it understandable to both landlords and people who rent a home now and in the future.



## What will be the benefits of the changes?

- 17 Our proposals will remove many of the current distinctions between the different types of rented home, providing a single, much simpler, framework which reflects fairness and equality. They will provide people who rent their home with clearer information about their rights and obligations, what they can expect from their landlords, and the circumstances in which contracts may be brought to an end.
- 18 The changes will also provide more flexibility for local authorities, housing associations and private landlords to operate in different local rental markets and to meet the housing needs of vulnerable people in different circumstances. They will help people to move from supported housing to housing independence, while giving providers of such housing a practical legal framework to achieve this goal.

## How will the changes affect people who rent their home?

- 19 We believe our proposals will benefit tenants in many ways, whether someone rents their home from a local authority, a housing association or a private landlord.
- 20 Rental contracts will be easier to understand. At present, landlords and letting agents frequently draft their own contracts, which means that tenants can be faced with a very different contract when they change landlord. Landlords and letting agents can also add differing and potentially unfair clauses.
- 21 Our proposals will simplify and standardise rental contracts, making them and the terms they include much easier to understand. This will help avoid disagreements and difficulties between tenants and landlords. It will also help to avoid the legal costs that can sometimes be incurred when trying to resolve problems.
- 22 The new arrangements will help in a number of significant ways. Amongst other things, they will:
- (i) Help ensure a more effective response to housing-related anti-social behaviour.
  - (ii) Help in situations involving domestic abuse.
  - (iii) Provide a more flexible approach to joint tenancies.
  - (iv) Make it easier for young people to rent.
  - (v) Standardise succession rights.
  - (vi) Standardise eviction for serious rent arrears from social housing in line with the current position for local authorities.
  - (vii) Increase flexibility to rent short-term by abolishing the six-month moratorium on 'no fault' evictions.
  - (viii) Include landlords' obligations for repairs within the rental contract.
- 23 We believe that the above, taken as a coherent package of measures, will bring many benefits to existing and future tenants. They respond to long-standing calls to standardise tenants' rights across the social rented sector and offer practical solutions to common problems that are reported by tenants.

## How will the changes affect landlords?

- 24 We believe that landlords have much to gain from our proposals. Many of the benefits for tenants, in particular those resulting from having much clearer and easier to understand rental contracts, will also apply to landlords. At the heart of our proposals is the belief that greater clarity on the rights and responsibilities of both tenant and landlord is the key to a successful tenancy and to the well-being of all concerned.
- 25 Amongst the changes, the proposals will:
- (i) Remove confusion over the distinction between leases and licences.
  - (ii) Reduce costs incurred through reducing complexity.
  - (iii) Provide a better way for landlords to deal with abandoned properties.
  - (iv) Enable landlords to remove from the tenancy someone who is no longer living in the premises
  - (v) Provide landlords with certainty regarding contract terms.
  - (vi) Help ensure that tenants understand their responsibilities by requiring all landlords to issue written contracts.
  - (vii) Provide model contracts that landlords can use with confidence.
  - (viii) Require landlords to ensure the property has no serious (Category 1) health and safety hazards.
  - (ix) Make it harder for bad landlords to undercut good ones.

## What happens next?

- 26 All views expressed in response to this consultation will be taken into account in the further development of the proposals. Between now and the planned introduction of the Bill in 2015, work will continue with tenants, tenants groups, landlords and other stakeholders to refine the proposals and to consider how best the changes can be implemented.

## How can I make my views known?

- 27 Your views are important. Chapter 1 and Appendix 2 provide information on how you can let us have your comments. The closing date for comments to be received is 16 August 2013.

# 1. Introduction

- 1.1 Almost 1 in 3 households now live in a home rented from either a local authority, housing association or private landlord<sup>1</sup>. The number has increased steadily over the years. While many people still aim to own their own home, much tighter mortgage markets, challenges in raising the deposit, and issues of affordability more generally mean that this trend is likely to continue.
- 1.2 The rented sector is therefore becoming increasingly important to our supply of homes. This is true for both the more traditional social housing owned by local authorities and housing associations, which plays a significant role in subsidising the cost of a home for people whose needs cannot be met by the housing market, and for new developments by housing associations where rents are above social housing levels but below full market rates.
- 1.3 We recognise that the private rented sector is also making a significant contribution, and are committed to help strengthen the part it plays. We see a future where local authorities, housing associations and private landlords work alongside each other to provide the homes that people need, at rents they can afford.
- 1.4 We want to see much closer working through the development of social lettings agencies and other forms of social and private partnership. Our overall aim is to ensure that the different parts of the rented sector complement one another to form an effective, and much needed part of our whole housing system; a sector that is fair to tenants and landlords alike and which meets the needs of those renting a home.

## Meeting people's housing needs

- 1.5 The Welsh Government is committed to doing all it can to meet people's housing needs. The Housing White Paper<sup>2</sup> set out an ambitious programme of legislative and non-legislative action that will make a difference to people's lives. It was well-received. Since its publication a wide range of action has been taken on our three main priorities, which are providing more affordable homes, improving the quality of existing homes, and improving the effectiveness of housing-related services.
- 1.6 The action we are taking includes improving the services and support that are available to some of our most vulnerable people and also helping people cope with the impact of the UK Government's policy on welfare reform. We have already made additional investments of £29 million for new affordable homes and £10 million to bring more empty properties back into use<sup>3</sup>. We will continue to pursue opportunities for more investment and work with other organisations to develop innovative new models for funding more affordable homes.
- 1.7 On a wider, but equally important note, we are concerned about people's quality of life. And for that reason, we are also taking action to tackle issues that are important to people, such as combating the anti-social behaviour of some households and realising the health and well-being benefits of better housing.

- 1.8 As the Government of Wales, we do not control all aspects of the housing system. However, over and above specific elements such as house building for the private markets, we are committed to making the housing system as a whole work for people. Our goal is to ensure it is responsive to people's needs, and to changing times as a result of economic and other factors. We also want the system to be as effective and efficient as possible, meeting people's needs as they change throughout their lives, helping people to live as independently as possible, delivering good quality affordable homes, and making the best use of limited resources. Indeed, we see these as some of our key responsibilities.

## This document

- 1.9 This document sets out the case for changing the arrangements for renting a home in Wales. It explains the evidence for change and the improvements that will result for tenants and landlords alike. It then describes our proposals for new legislation that we intend to bring forward.
- 1.10 This document has been published for consultation. It seeks the views of people who currently rent their homes, people who may rent a home in future, landlords, and organisations working in and around the field of housing.
- 1.11 **Chapter 2** provides the context for the proposals for new legislation; these are grounded in the Welsh Government's vision of a fair, simple and effective legal basis for renting a home in Wales. **Chapter 3** examines the case for change and looks at the practical implications in terms of tenancies that would be affected. It also considers the problems that exist with current arrangements, drawing on lessons from reforms elsewhere. **Chapters 4** and **5** explain the impacts of the proposed changes on tenants and landlords.
- 1.12 **Chapter 6** describes the main elements of the proposals. It also highlights how these link to the Welsh Government's other priorities such as tackling domestic violence and anti-social behaviour. **Chapter 7** outlines our thoughts on how a new Act could be implemented if the proposed Bill is passed by the National Assembly. It includes arrangements to continue the joint working we have already established with those who have an interest in the proposed legislation.
- 1.13 **Appendix 1** provides an outline timetable for the Bill and **Appendix 2** sets out a series of questions on which it would be helpful to have views. Finally, **Appendix 3** lists sources of information that have informed the content of this White Paper.

## Your views

- 1.14 We believe that the proposals set out in this document will improve the housing system by making renting a home fairer, easier and clearer for tenants and landlords alike. In the coming months we will be refining our proposals, considering the detail of how the proposed legislation will work in practice, the impacts of our proposals, and how the legislation would be implemented.

- 1.15 Your views on these proposals are important. It does not matter whether you are someone who currently rents your home, or someone who may rent in the future; we want to hear from you. We also want to hear from landlords and organisations that work in the field of housing or where housing is relevant to their work. **Appendix 2** provides information to help you to respond to the consultation. Comments can be submitted in a number of ways:
- Online: <http://www.wales.gov.uk/consultations>
- E-mail: [rentinghomes@wales.gsi.gov.uk](mailto:rentinghomes@wales.gsi.gov.uk)
- Post: Renting Homes White Paper,  
Housing Policy Division,  
Welsh Government,  
Rhydycar,  
Merthyr Tydfil  
CF48 1UZ
- 1.16 The consultation will close on 16 August 2013.
- 1.17 Any response you send us will be seen in full by Welsh Government staff involved in work associated with this consultation. It may also be seen by other Welsh Government staff to help them plan future consultations.
- 1.18 The Welsh Government will publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published as this helps to demonstrate that the consultation was carried out in a proper manner. If you do not want your name or address published, please tell us in writing when you submit your response and we will block out that information prior to publication.
- 1.19 It is possible that names or addresses we block out could still be published. For example, the Freedom of Information Act 2000 allows the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, it is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would contact the person in advance of disclosing any information and before any decision is made.

## 2. Renting a home

- 2.1 Decent, affordable homes are essential to everyone's ability to live healthy, productive lives in safe, strong, inclusive and fair communities. Whether someone owns their home or rents it should not make a difference to their well-being.
- 2.2 However, at present a significantly greater proportion of people who rent their home don't feel as satisfied with their life as owner-occupiers. In the national well-being survey carried out in 2012, nearly one in three of those who rented reported a low satisfaction with their life compared with one in five owner-occupiers<sup>4</sup>.

### The current arrangements

- 2.3 The current arrangements for renting a home have a number of strengths. These include the security of tenure that is a feature of local authority and housing association homes and the flexibility that private renting provides, for example by enabling people to live near to their place of work.
- 2.4 However, many people see big differences between renting their home from a local authority, a housing association or a private landlord. Some of the differences are real, such as the length of time they are entitled to live in the house. Some differences come to the fore by chance, resulting in people living next door to one another in very similar situations but having quite different terms in their rental contracts. And there can be other differences in respect of, for example, the quality of accommodation. The problems resulting from these differences can cause unnecessary anxiety for people renting their homes and, in some cases, landlords too. Both sides can be faced with legal costs in order to resolve a problem.
- 2.5 Taken together, these differences mean that:
  - (i) Renting a home is not always seen as a good choice.
  - (ii) Renting is sometimes considered to be the last option as opposed to a reasonable option.
  - (iii) Some people are reluctant to move between homes owned by local authorities, housing associations, and private landlords. This reduces the ability of the overall housing system to meet the demand for housing. It can also limit the mobility that can be necessary to enable people to take up job opportunities.
- 2.6 Many of the problems are due to inconsistencies in the underpinning law and some of the practices that exist around the law. By removing unnecessary differences between tenancy types, we aim to create a more effective and joined-up rented housing sector. This is especially important as the number of households renting continues to grow.

### The increasing importance of renting

- 2.7 Around 30 per cent of households in Wales currently rent their home from a private or social landlord (local authority or housing association). However, since 1996-97, the private rented sector has more than doubled in size, growing from 7 to 14 per cent of all



dwellings. There are forecasts of continued rapid growth of the private sector, with some estimating it could account for around 20 per cent of all dwellings in the UK by 2020<sup>5</sup>.

- 2.8 Social housing currently represents an estimated 16 per cent of all dwellings. Since 2001, the number of dwellings rented from local authorities has halved while the number rented from housing associations has more than doubled over the same period. This is due primarily to the large scale voluntary transfer to housing associations of the housing of eleven of Wales' twenty-two local authorities.
- 2.9 At the same time, the proportion of owner-occupied housing has been decreasing. It currently represents around 70 per cent of all dwellings.
- 2.10 From a government perspective, the increasing importance of renting a home, and renting a home from the private sector in particular, justifies the need for action. Renting a home must be, and must be seen to be, an acceptable choice. The arrangements must be clear and understandable, fair to both landlords and tenants, and backed up with modern practices by landlords and lettings agents.

## Our vision

- 2.11 The National Assembly's ability to make primary legislation, which was extended as a result of the referendum in 2011, gives the Welsh Government the opportunity to do even more to help people to meet their housing needs. The proposals set out in this White Paper reflect our ambitious, forward-thinking approach. They are a significant development that will bring benefits to existing tenants, prospective tenants, and landlords alike.
- 2.12 Over the years, there have been many calls for improvements to the law for renting homes. They have come from housing experts, tenants, the judiciary and lawyers. We are responding directly to these calls. We are prepared to take bold steps where the need for change has been identified and where it will result in a more effective housing system.
- 2.13 The changes we propose will improve the way the overall housing system works and its ability to meet people's different housing needs. The Welsh Government remains fully committed to the principles of the secure tenancy and nothing in our proposals undermines that commitment. Unlike some other parts of the UK, we do not propose to introduce ideas such as fixed-term tenancies that limit the time that someone can stay in social housing. We believe that people in social housing, often the most vulnerable, have a much better chance to improve their long-term situation from a position of security rather than one of threat.
- 2.14 We are also fully committed to the development of a sustainable and high quality private rented sector. There are many good private landlords but we also know that a small but significant minority fall below expected standards. The practices of some, and the conditions of some properties, are unacceptable. As a separate but very relevant development, which will be introduced through our Housing Bill later this year, we are proposing to introduce a mandatory registration and licensing scheme for all private landlords, and letting and management agencies. This will help modernise the private rented sector and improve practices and arrangements for landlords and tenants. The

proposals set out in this White Paper will build on these foundations and demonstrate our commitment to do as much as we can to help improve people's lives.

- 2.15 Our proposals will not fundamentally alter the balance of rights and responsibilities of tenants and landlords from those that currently exist. They are designed to create a simpler, more logical and clearer legal framework to replace the complexity of current law. Our goal is a fair, simple, and effective legal basis for renting a home, making it understandable to both landlords and people who rent their home now or in the future.
- 2.16 Due to limits on our devolved powers, we are unable to offer the tax incentives that underpin longer term private renting in other countries<sup>6</sup>. We do, however, wish to encourage investment into private rented housing and, recognising that Wales is part of a larger housing market, do not want to set up barriers to this. Indeed, we consider the simpler legal framework and additional flexibility resulting from these proposals will encourage investment.
- 2.17 We are also keen to encourage the development of social lettings agencies, under which private landlords make their properties available for longer term renting through local authorities and housing associations, as well as the development of other forms of co-operation. We believe the simpler legal framework we are proposing will assist this.
- 2.18 Our proposals will also complement the commitment in the Housing White Paper to promote co-operative housing in Wales. Co-operative housing has the potential to make a significant contribution and we will therefore ensure our new legal framework for renting will support its continued growth.
- 2.19 There have been attempts to improve the arrangements for renting homes elsewhere in the UK, and these are summarised in Chapter 3. In 2006, the Law Commission published "Renting Homes"<sup>7</sup>, a report of a major study into the subject. The proposals were not taken forward by the UK Government at the time but still remain very relevant. In fact, given the growth of the private rented sector and changes in social housing, they are now even more relevant to building an effective and efficient housing system.
- 2.20 As part of our work to improve the way our housing system works, we have given very careful consideration to the Law Commission's work. We came to the conclusion that their proposals provide a solid basis for change that would achieve our vision.

## The foundation for our proposals

- 2.21 The Law Commission's Renting Homes report is the foundation for our proposals. The report was the culmination of an extensive five-year programme of work. It made recommendations to reform the law on renting homes based on sound evidence and extensive consultation.
- 2.22 Volume 1 of the Law Commission's report sets out how the scheme would work in practice. Volume 2 sets out a draft Bill. For ease of reference, both reports can be accessed via links from our website ([www.wales.gov.uk/rentinghomes](http://www.wales.gov.uk/rentinghomes)).
- 2.23 In summary, our proposals are based on the legal framework developed by the Law Commission, which has two types of contract:
- (i) A "secure contract" modelled on the secure tenancy issued by local authorities. This should reassure tenants in social housing that there





are no plans to introduce fixed-term contracts, which has been happened elsewhere in the UK.

- (ii) A “standard contract” modelled on the assured shorthold tenancy that is used mainly in the private rented sector.

2.24 In developing our proposals, we have worked closely with many different organisations inside and outside the field of housing. Our interest in using the Law Commission’s recommendations as a basis for our own proposals was first outlined in a consultation document published in December 2011<sup>8</sup>. The majority of respondents agreed that reforming tenancy law was a priority and some referred directly to the Law Commission’s work:

“We are strongly in favour of a radical simplification of tenancy law and have been closely involved with the Law Commission’s work in this area over the last ten years. In our view, adopting the Law Commission’s proposals in Wales would have a transformative effect on the efficiency of the housing system as a whole” (Shelter Cymru and Citizens Advice Bureaux)

“The focus on tenure reform is particularly welcomed. The Chartered Institute for Housing Cymru has called for a more flexible approach to housing tenure in Wales and the Housing Bill presents a real opportunity to take this forward in practical terms. We particularly advocate the reform of social and private sector tenancies in line with that of the Law Commission in its 2006 Renting Homes proposals.” (Chartered Institute for Housing Cymru)

“We propose that the Housing Bill should incorporate the Law Commission’s proposals for tenure reform.” (Tenant Participation Advisory Service)

2.25 Our proposals for tenancy reform were outlined in the Housing White Paper<sup>2</sup>, which was published in May 2012. Our work leading up to this identified the benefits of taking a longer term approach to tenancy reform. First, the law has evolved since the Law Commission’s Renting Homes proposals were published in 2006. It is important therefore to take the time to ensure that our proposals take account of those changes; for example, in relation to recent developments in housing law as a result of challenges to evictions on human rights grounds. Second, the proposals will directly affect nearly all people who rent a home in Wales, which is a significant proportion of the population. The longer timescale will enable maximum engagement with all relevant stakeholders.

2.26 The Welsh Government decided that, in light of the above, a longer timescale for development of the Bill was appropriate. As a result, space was found in the Welsh Government’s legislative programme for a second Bill dedicated to arrangements for renting homes. Once again, the responses to the White Paper indicated strong support for the approach being proposed<sup>2</sup>.

2.27 Given the time that has elapsed since the Law Commission published its report, we asked the Commission to review and update its proposals. The review process was collaborative and benefited from meetings with many different organisations representing a wide range of housing interests. The Commission has published a report on the analysis and conclusions of its work<sup>9</sup>. The report can be accessed via our website: [www.wales.gov.uk/rentinghomes](http://www.wales.gov.uk/rentinghomes).

- 2.28 The analysis and conclusions of that report are those of the Law Commission. The Welsh Government is free to accept or modify these. Decisions on the final shape of legislation will be informed by further consideration of the findings and the responses to this White Paper.
- 2.29 More detailed information on our proposals for new legislation can be found in Chapter 6.

## Responding to other challenges

- 2.30 While we are committed to improving the whole housing system, some challenges are outside the direct control of the Welsh Government.
- 2.31 The UK Government's Welfare Reform policies, which include changes to Housing Benefit and the introduction of Universal Credit, are having a significant impact on the housing system and will continue to do so. We are taking these into account. Some elements of our proposals, for example making it easier to start and end joint tenancies, will help the housing system and individual tenants to cope with the challenges ahead.
- 2.32 In addition to Welfare Reform, the economic climate, tighter public finances, and increasing costs of living could well lead to a significant increase in the number of people at risk of homelessness. Doing as much as we can to prevent homelessness in the first place, and dealing with it effectively if it does occur, is one of our priorities. Proposals for new legislation which will be taken forward through our Housing Bill will strengthen our actions. It will allow local authorities to meet their duty to house homeless people by finding them accommodation in the private rented sector. The proposals set out in this White Paper are also relevant since they will help to ensure the effective use of the private rented sector. Our proposals will ensure that the rental contract is fair and transparent and will help protect people at a particularly vulnerable time in their lives.
- 2.33 Our proposals will also help to tackle two other matters of huge significance in terms of the negative impact they can have on people's lives. These are tackling the anti-social behaviour of some households, to ensure their neighbours can enjoy living in their homes, and helping the victims of domestic violence. More information on these issues is provided later in this document.



## 3. The case for change

- 3.1 The law is a critical element of the housing system and its efficiency. Currently the law is complex, with many different tenancy types applying to social housing and the private rented sector. This situation has come about as a result of successive changes to housing law over the years. The law is often difficult to understand and can lead to landlords and tenants being confused over their rights and responsibilities<sup>10</sup>.
- 3.2 Disputes between tenants and landlords, which frequently end up in court, often arise as a result of confusion on tenancy terms or obligations on each side. They can also arise as a result of the condition of the property or the behaviour of some landlords or tenants.
- 3.3 As indicated earlier, the various forms of tenancy which apply to different sectors can make people reluctant to move between landlords, which limits their choice of a home. The current law on joint tenancies can also present difficulties in cases of domestic abuse or when couples split up. In some instances, for example in situations of relationship breakdown, the law can put individuals at risk of becoming homeless rather than being able to support a more sensible solution. With the demand, and indeed need, for subsidised homes far exceeding supply, the private rented sector is an increasingly important part of the solution and the law needs to support this. We want to make the best use of existing housing but, at the same time, provide reasonable assurance to people who rent their homes.
- 3.4 Current housing law has tended to focus on who the landlord is instead of focusing on important common ground; that is, the relationship between the landlord and the tenant. This has made matters much more complicated than they need be, with different legal arrangements applying to each type of landlord.
- 3.5 In reality, there are only two forms of rental contract currently operating: a secure agreement designed for long-term occupation; and a shorter term agreement which can be ended relatively easily. Local authorities, housing associations and private landlords use both types in one way or another. We think the law should reflect this fact. We also think a single legal framework will encourage closer working between social and private landlords and that this will benefit tenants.
- 3.6 Discussion with many different organisations has also highlighted the need to change the laws that govern rented housing. We believe it is time to tackle this problem by simplifying the laws that apply to renting a home. We also believe that the legal requirements for rental contracts should be strengthened, be more consistent across all forms of rented homes and should include all the information needed by landlords and tenants alike.
- 3.7 In light of the above, we have considered very carefully the need for tenancy reform. We have revisited the Law Commission's proposals, which were the culmination of five years' work. They were based on simplifying the law, leading to clarity for tenants and landlords alike, and flexibility. Flexibility is particularly important to a achieving more effective housing system.

## Current arrangements are complex

- 3.8 The current underpinning law for renting a home is very complicated. There are many different possible tenancy types. The following list of statutory tenancies, which has been adapted from information in the Law Commission's consultation report<sup>11</sup>, describes the main ones:
- (i) **Secure Tenancies:** This form of tenancy<sup>12</sup> provides long-term security of tenure and can now only be offered by a local authority. Tenancies created by housing associations between 1980 and 1989 have a dual legal status, being both secure tenancies and Rent Act tenancies (for rent regulation purposes). Additionally, a licence given by a local authority can also be a secure tenancy (or, if applicable, an introductory tenancy).
  - (ii) **Introductory Tenancies:** Introductory tenancies are also specific to local authorities. Once adopted by an authority, all new tenancies must be introductory, irrespective of whether such a tenancy is really appropriate for a particular tenant. Introductory tenancies usually last for a year, after which they become secure tenancies. During the introductory period the tenant is at risk of mandatory eviction if they do not meet certain conditions<sup>13</sup>.
  - (iii) **Demoted Tenancies:** These were introduced by the Anti-Social Behaviour Act 2003 and apply only to local authority tenants. They are created by a court order changing a secure tenancy to a demoted tenancy. During the demotion period, which usually lasts a year, the tenant is at risk of mandatory eviction.
  - (iv) **Assured Tenancies:** Assured tenancies were introduced by the Housing Act 1988. They give tenants a high degree of security of tenure and are similar, but not identical, to secure tenancies. They are mainly used by housing associations, but also by some private landlords.
  - (v) **Assured Shorthold Tenancies:** A type of assured tenancy, but with much less security. They are now the "default" tenancy for the private rented sector. Housing associations also use them as the equivalent to introductory and demoted tenancies.
  - (vi) **Family Intervention Tenancies:** These tenancies were introduced by the Housing and Regeneration Act 2008 and relate to the provision of anti-social behaviour support services. They are designed to be used where households have been relocated to enable intensive support to be provided. As with demoted tenancies, the tenants are at risk of mandatory eviction. Family intervention tenancies have not, to date, been introduced in Wales but it is proposed that they are included within the scope of the Renting Homes Bill.
  - (vii) **Rent Act Tenancies:** These are tenancies created before the Housing Act 1988 came into force on 15 January 1989. As with secure and assured tenants, Rent Act tenants have security of tenure. Housing association tenancies created before 1989 are treated as Rent Act tenancies for the purpose of fair rent regulation.



- 3.9 The above are the more common forms of tenancy and, as a result, are often the focus of discussion. But even these reflect the current complexity which contributes to the difficulty people have in understanding the arrangements for renting a home. The different tenancies, and their associated conditions, also make people reluctant to move between renting a home from a local authority, housing association or private landlord.
- 3.10 However, the full picture is even more complex, as indicated below by the other types of tenancy that exist (though not all would fall within the scope of our proposals as they are not residential or are covered by other statutory schemes):
- (i) Business lettings (covered by the Landlord and Tenant Act 1954).
  - (ii) Agricultural holdings (covered by the Agricultural Holdings Act 1986).
  - (iii) Dwellings let with a substantial quantity of other land (an exception under s6 of the Rent Act 1977).
  - (iv) Long leases (of more than 21 years).
  - (v) Mobile homes (covered by covered by Mobile Homes Act 1983).
  - (vi) Lettings by educational institutions to students.
  - (vii) Holiday lettings.
  - (viii) Tied accommodation.
  - (ix) Licensed premises.
  - (x) Lettings of accommodation required by a minister of religion.
  - (xi) Properties above certain rateable value levels.
  - (xii) Properties above certain rental levels.
  - (xiii) Properties below certain rental levels at no or low rents (these are usually the subject of leasehold arrangements rather than shorter rental contracts).
  - (xiv) Almshouse licences.
  - (xv) Dwellings on land acquired for development.
  - (xvi) Accommodation provided for temporary purposes, including housing for the homeless, for asylum seekers, persons taking up employment, certain other accommodation provided on a short-term basis and temporary accommodation provided during the carrying out of works.
  - (xvii) Crown tenancies.
- 3.11 In summary, the legal framework underpinning tenancies is extremely complicated. This causes problems for tenants and for landlords. Legal opinion and action is often needed to resolve problems, with significant associated costs. Those whom the law is designed to protect – tenants and landlords – are not always able to benefit from that protection, while those whose behaviour is sought to be regulated are not influenced by what they cannot understand<sup>11</sup>. Many disputes over rental contracts arise out of ignorance of the law. Significant time and money is spent drawing up contracts or resolving problems.

The situation is further complicated by the fact that in law there is no requirement to have a written contract. While a poorly drafted contract creates difficulties, the lack of any written contract can lead to even more fundamental problems.

## Problems people encounter

3.12 Our prime aim is to make the arrangements for renting a home better for both tenants and landlords. Introducing new primary legislation is not something we take lightly. It requires substantial time and effort. However, we are prepared to do that to bring about improvements. The following examples illustrate some of the difficulties people encounter as a result of the complexity of current housing law.

**Case study A:** An individual was served with a possession notice from his landlord on the basis that he was an assured shorthold tenant. He had actually signed an assured shorthold rental contract in 1999. However, because he had continuously occupied the property since 1988 he had protection under the Rent Act 1977. His defence was successful but the absence of any written rental contract, other than the one signed in 1999, added to the confusion for the current landlord, the tenant and the court. Such confusion would be minimised by the introduction of a simplified tenancy regime and compulsory written contracts with standard terms.

**Case study B:** Shelter Cymru defended successfully a possession claim made by a housing association that sought to evict an assured shorthold tenant under section 21 of the Housing Act 1988. The rental contract drafted by the association contained a clause on how the tenancy could be ended, which meant that the association had erroneously contracted out of the provisions of section 21, invalidating the possession claim. This outcome could have been avoided if standard terms were utilised in rental contracts. The association has since updated its assured shorthold contract to reinstate the provisions of section 21, meaning that new tenants are subject to section 21 while existing assured shorthold tenants are exempt.

**Case study C:** A landlord had drafted his own rental contract and had included clauses on ending the tenancy that neither he nor the tenant understood. When the landlord sought possession he lost his case due to the extremely poor way in which he had drafted the contract. This outcome could have been avoided if model contracts were available to landlords.

**Case study D:** A housing association sought to evict an individual on the grounds that he occupied the accommodation under a licence. It was argued, successfully, that the individual was in fact an assured shorthold tenant. Part of the case turned on the provision of services at the property and whether this undermined exclusive possession. This is an issue which is complex and time-consuming for a court to decide, and which would be removed with the introduction of standard rental contracts.

**Case study E:** Current law makes it very difficult to remove a joint tenant's name from a local authority tenancy without that individual's permission and a court order. One individual insisted on her name remaining on the rental contract despite the fact she had ceased living in the property some ten years before. A consequence



of this is that, in the event of the remaining joint tenant's death, his new long-term partner who was living with him in the property would become homeless. A more flexible approach to joint tenancies could have prevented this outcome.

**Case study F:** Cases of domestic abuse can also be made more difficult by current law. A husband was arrested by police following alleged domestic abuse. Subsequently, he refused to give permission for his name to be removed from the tenancy. His ex-wife wished to exchange her property and move elsewhere. However, she could not do so without obtaining a court order. Her only other option was to end the tenancy herself, thereby making herself homeless.

**Case study G:** A client of Shelter Cymru was in a same-sex relationship, living in local authority housing. Her partner left and served notice, and the local authority immediately served a notice to quit on the client, who was vulnerable and suffering with severe depression. Shelter Cymru were unable to challenge the notice to quit because currently, once one tenant serves notice, the wishes of the remaining tenant become irrelevant. Legally the council is entitled to possession. The outcome was that the client had to make a homelessness application.

- 3.13 These examples show why it is widely accepted that the current law on renting a home is unsatisfactory. The law has evolved over more than 150 years and successive changes have not applied retrospectively. This has resulted in a wide range of different legal relationships between landlords and tenants. Tenancies vary greatly according to when they commenced and the status of the landlord concerned<sup>11</sup>.
- 3.14 The situation has been complicated by a piecemeal or sector-focused approach to previous legislation. At times, this has resulted in private sector landlords being required to provide greater security of tenure than local authorities, and housing associations being treated as local authorities for security of tenure purposes but as private landlords in relation to setting rents. Efforts have been made to bring together different pieces of legislation but the overall picture is still fragmented. This results in confusion and unfairness that also hampers the efficiency of the rented sector and the part it plays in our overall housing system.

## Calls for housing law reform

- 3.15 In 1994 Lord Woolf, the then Lord Chief Justice, as part of a far-reaching review he conducted into the rules of civil procedure<sup>14</sup>, focussing on access to justice, cost of litigation and complexity, drew attention to the need for fundamental reform of housing law, stating that procedural reform could have only a limited impact. He went on to say that reform of the substantive law on housing could do more than anything else to reduce cost and delay, the main source of difficulty being the complexity of the substantive law itself.
- 3.16 In 2009, Lord Justice Jackson reported on his review of the costs of civil litigation<sup>15</sup>. He stated that twentieth and twenty-first century legislation, from the Rent and Mortgage Interest (Restrictions) Act 1915 to the Housing and Regeneration Act 2008, had grafted a complex statutory framework onto existing law dating back to feudal times. He went on to say that many of the current Acts of Parliament are long, complicated, and, particularly in recent years, poorly drafted.

- 3.17 Additionally, developments in housing law have meant that decisions of social housing providers to seek repossession may be challenged on grounds of proportionality under Article 8 of the European Convention on Human Rights. This concept of proportionality has become an important issue for courts in considering possession proceedings. Reform of housing tenancy law would also provide an opportunity to take account of these developments.
- 3.18 There have been strong legal arguments for reform. They emphasise the immense complexity of current housing laws, the path through which is known only to the most skilful lawyers<sup>16</sup>. They argue for radical change, drafting in plain language, and the removal of unnecessary technicalities in order to achieve what could be colossal savings in judicial time and legal costs.

## Our goals

- 3.19 We believe that our proposals for the Renting Homes Bill will help us achieve the following objectives:
- (i) Greater flexibility in the operation of the rented sector to provide a wider range of choice for tenants and prospective tenants.
  - (ii) Creating a level playing field within the social sector, and between the social and private sectors, through adopting a 'landlord-neutral' approach.
  - (iii) Making the private rented sector more sustainable and accessible to all tenants.
  - (iv) Balancing the promotion of mixed tenure as a contribution to sustainable communities with safeguarding the social housing stock.
  - (v) Simplification of existing legislation to reduce costs and provide greater certainty for tenants, landlords and housing support services.
  - (vi) Clarification of the contractual relationship between landlords and tenants, to avoid disputes arising through the ignorance of either party.
  - (vii) Ensuring reforms avoid unintended consequences and do not disadvantage those most in need.

## Who would be affected?

- 3.20 Those who have an interest in our proposals will include:
- (i) Existing and future tenants of local authorities and housing associations.
  - (ii) Existing and future tenants of private landlords.
  - (iii) Local authorities.
  - (iv) Registered social landlords and other housing associations.
  - (v) Private landlords.
  - (vi) Independent providers of housing advice and support services.
  - (vii) Other third sector organisations.





- (viii) Lenders.
- (ix) Courts.
- (x) Lawyers.
- (xi) Consultants.
- (xii) Representative bodies.
- (xiii) Professional bodies.

3.21 We are currently working with a wide range of organisations and groups to identify how the Bill could impact on people and organisations. A full impact assessment will accompany the Bill when it is introduced into the National Assembly.

## Reform elsewhere in the UK

3.22 As set out above, the statutory position underpinning tenancies in Wales is based currently on laws applying to England and Wales, principally the Rent Act 1977 and the Housing Acts of 1985, 1988 and 1996. The situation in Northern Ireland and Scotland is quite different. England has also recently introduced changes that won't apply to Wales. The relevant key developments are set out below.

### Northern Ireland

- 3.23 Northern Ireland has a slightly lower proportion of owner-occupied dwellings than Wales and a slightly larger private rented sector. The proportion of social housing is similar. All council tenancies were transferred to the Northern Ireland Housing Executive when it was established in 1971. It currently manages around 90,000 homes. Approximately 30 housing associations manage just over 28,000 homes. Since 1983, and with very few exceptions, all social tenancies have been offered on the same legal basis. Northern Ireland therefore has a single social tenancy regime.
- 3.24 Private sector rent control, with accompanying security of tenure, was introduced in Northern Ireland during the First World War. As with elsewhere in the UK, this was intended as a short-term emergency measure. A series of Rent Restriction Acts continued until 1978 when the Rent (Northern Ireland) Order was introduced. The Order was introduced to deal with a declining private rental stock. Again, as with elsewhere, low levels of rents had led to a lack of repairs and maintenance leading to further deterioration and neglect (half of the stock was deemed to be unfit). Since 1978, the number of Rent Act protected tenancies has been declining rapidly. The Private Sector Tenancies (Northern Ireland) Order 2006 provided a new structure for the private rented sector in Northern Ireland. Key features of this include: a focus on the premises being fit for habitation; abolition of protected tenancies; and a compulsory written contract including the landlord's repairing obligations.

### Scotland

3.25 Compared with Wales, Scotland has a slightly lower level of owner-occupation, a smaller private rented sector and a larger social rented sector. However, the overall trends are similar, particularly the growth of the private rented sector in recent years.



## The case for change

- 3.26 The social housing sector saw major reform a decade ago under the Housing (Scotland) Act 2001. This introduced the Scottish Secure Tenancy as a single social tenancy across local authorities and housing associations. Other changes included alterations to tenants' rights, a power for the Scottish Government to issue model contracts, a statutory statement on landlords' repairing obligations and clearer mechanisms for varying the contract. The Act also established the Short Scottish Secure Tenancy, which is used in a similar way to introductory and demoted tenancies in England and Wales. All existing tenants of local authorities and housing associations converted to the new framework on 30 September 2002.
- 3.27 The Scottish Secure Tenancy includes a succession right for a partner or other family member living in the property. A carer can also qualify if he or she has lived in the property and has given up their own home to do so. There is limit of two successions. Consideration is currently being given to qualifying periods for succession since there is a concern than an individual may move in for a short period in order to succeed to the tenancy.
- 3.28 The private rented sector in Scotland has a similar legal basis to that of England and Wales. The Housing (Scotland) Act 1988 introduced both an assured tenancy and short assured tenancy. However, there are some key differences in how they operate. For example, the landlord is required by law to provide the tenant with a written contract. In England and Wales this only has to be provided if requested by the tenant, and then covers only very limited terms. The Private Rented Housing (Scotland) Act 2011 introduced an additional requirement on landlords to provide an information pack to all new tenants of assured and short assured tenancies. The pack includes information on the tenancy, the house, the landlord and the rights and responsibilities of both tenant and landlord.

## England

- 3.29 The housing provisions of the Localism Act 2011 introduced an additional form of tenancy for social housing tenants, the "flexible tenancy". A flexible tenancy is a fixed term tenancy of not less than two years (landlords can set a longer fixed term if they wish). Introductory and demoted tenancies can also become flexible tenancies at the end of the introductory or demoted period. At the end of the fixed term, the court must make a possession order for the tenant to be removed, so long as it is satisfied that the tenancy has come to an end.
- 3.30 The flexibility that is being introduced in England is therefore flexibility for a social landlord to offer fixed term tenancies, after which, if the landlord believes the tenant's circumstances no longer merit social housing, the tenancy can be ended. The Welsh Government does not propose introducing this form of tenancy.

## Learning from elsewhere

- 3.31 We have considered carefully the approaches of the other home countries and the changes that have taken place. We believe they offer valuable experience from which we can benefit. We have taken them – and the principles behind them – into account when putting together our proposals, combining them with our own values of fairness, equality and social justice, as well as a strong commitment to improve our whole housing system.



## 4. How will tenants be affected?

- 4.1 We believe our proposals will benefit tenants in many ways, whether someone rents their home from a local authority, a housing association or a private landlord. Some of the benefits will come as a direct result of the legislation itself while others will stem from developments that are possible under the new framework.
- 4.2 In 2012, Consumer Focus Wales asked tenants and landlords about making changes to arrangements for renting a home. While the research focused on renting from private landlords, many of the findings are also relevant to people who rent from local authorities or housing associations.
- 4.3 The research captured the views of a wide range of tenants, letting agents and private landlords. It also considered other research that has been undertaken on this subject. The tenants included:
- (i) People on low income or who were unemployed
  - (ii) Lone parents
  - (iii) Older people
  - (iv) People from black and ethnic minority groups, and refugees
  - (v) High income earners
  - (vi) Students
  - (vii) Families with children
  - (viii) Young professionals
- 4.4 One of the key findings from the research was that tenants do not understand their rental contracts. Tenants felt they did not have sufficient time to read the contract before signing, or said that they would just 'skim over it' because it was too long or difficult to understand. As a result, some tenants said they did not understand what they were signing and didn't realise how important it was. Some felt this was their fault.
- 4.5 At present, tenants can be faced with a different contract whenever they change landlord. Landlords and letting agents can also add differing and potentially unfair clauses. An example of this is a tenant who found out his landlord had put restrictions on the amount of energy he could use to heat the home, limiting this to just an hour a day.
- 4.6 Our proposals will simplify and standardise rental contracts, making the overall contract and the specific terms they include much easier to understand.
- 4.7 The Law Commission's report included model contracts and Consumer Focus Wales tested the standard model contract in its research. Tenants and prospective tenants felt the contract was clear and understandable. They also felt they would be getting a fairer deal as the contract terms would have to conform to the legislation. Furthermore, wherever they moved they would know the contract they would be getting before signing up.



## How will tenants be affected?

- 4.8 They also welcomed the visual prompts in the model contracts, such as ‘smiley faces’, and the ability to add clauses, such as allowing pets. Consumer Focus Wales did note that it would be important to consult thoroughly on the model contracts to ensure that tenants understood their rights and responsibilities. They also felt it would be helpful for the model contracts to include a summary page of key information and to clearly identify where additional clauses had been added.
- 4.9 Poor quality accommodation in the private rented sector is also a problem; in particular, problems associated with excess cold, damp and mould. As part of our proposals, all landlords will be required, as a condition of the rental contract, to ensure that there are no Category 1 health and safety hazards present in the property. This will complement the current powers that local authorities have under the Housing Health and Safety Rating System to take action when they identify properties with a Category 1 hazard.
- 4.10 A further issue identified in the Consumer Focus Wales research was that tenants often experience difficulty in getting the right support and advice if they have a problem with their tenancy. One of our proposals in the ‘Homes for Wales’ White Paper was to work towards a nationally branded, locally delivered, housing advisory service. We believe that having a much clearer and easily understood legal framework for renting a home will be an important contributor to this, since it will greatly assist housing advice services in addressing tenants’ queries. We intend to develop a suite of supporting advice and guidance to complement our Renting Homes proposals and, based on the experience of Scotland in introducing similar reforms, believe this will contribute significantly to improving understanding and reducing bureaucracy and legal costs.
- 4.11 In addition, we believe our proposals will bring a number of other benefits to tenants and, in some cases, to others who live nearby. These include:
- a. **A more effective response to the anti-social behaviour of some tenants.** We propose to introduce a standard “prohibited conduct” term in every rental contract. This will ensure tenants are aware of their responsibilities to their landlord and to neighbours. Breaching this term could trigger possession proceedings. Our discussions with stakeholders have indicated strong support for this approach.
  - b. **Dealing with domestic abuse.** The “prohibited conduct” term mentioned above would also cover domestic abuse. Currently, the victim of abuse usually has to end the tenancy for the landlord to evict the perpetrator, thereby risking homelessness. Our proposals will reverse this situation. This approach complements our proposals for legislation to end violence against women and domestic abuse<sup>17</sup>.
  - c. **A more flexible approach to joint tenancies.** Current law on joint tenancies is rigid and can be difficult to understand. If a joint tenant notifies the landlord he or she is leaving the tenancy, this automatically brings to an end the tenancy for the other joint tenant(s). This can place the remaining tenants in a very vulnerable situation, as the landlord may refuse to give them another tenancy, thereby putting them at risk of becoming homeless. Our proposals will address this and, at the same time, will further strengthen our commitment to prevent homelessness. We propose that a joint tenant



should be able to give notice to the landlord and to the other tenants, stating their intention to withdraw, which allows the remaining tenants time to find a replacement.

- d. **Renting by young people.** Currently, people aged 16 and 17 are unable to rent a property on the same basis as those aged 18 and older. This can disadvantage them in trying to find a home. We plan to achieve equality for young people by enabling them to rent on the same basis as adults.
- e. **Standardising succession rights.** We propose to standardise the arrangements for succeeding to a housing association or local authority tenancy following the death of the tenant. We are also proposing to give carers who have lived in the property for at least 12 months a succession right. We believe this is sensible in an ageing society where we need to encourage care and support for independent living.
- f. **Removing mandatory eviction for serious rent arrears from housing association tenants (known in the housing field as “ground 8”).** We believe in equality. Housing association and local authority tenants should have the same rights and responsibilities. At present, a court is obliged to evict housing association tenants if the landlord can prove that they owe rent arrears of eight weeks or more. Many housing associations do not use this as a ground for eviction and the ground is not available at all to local authority landlords. We believe the evidence shows that removing “Ground 8” need not present a significant problem.
- g. **Abolishing the “six-month moratorium” on evictions.** At present, the courts are unable to order a ‘no fault’ possession of a private sector tenancy during the first six months. Because most private landlords require tenants to commit to a six or twelve month minimum contract, under which the ‘no fault’ procedure is in any case not available, abolishing the moratorium will have less impact than might first appear. We believe removing it will benefit tenants looking only for a short-term let, which sometimes people need. Where appropriate, such as providing security for homeless people in the private sector, it will still be possible to set a minimum contract period for the tenancy.
- h. **Including landlords’ obligations on repairs within the rental contract.** While these obligations, which come from the Landlord and Tenant Act 1985, are not new, we will require them to be written into all rental contracts. Combined with the requirement for landlords to ensure there are no serious health and safety hazards, this will help tenants to assert their right to live in a safe home that is in a reasonable state of repair. This will support a general improvement in the quality of rented accommodation as well as benefitting people’s health and well-being.

4.12 We believe that the above, taken as a coherent package of measures, will bring many benefits to existing and future tenants. The proposals respond to long-standing calls to standardise tenants’ rights across the social rented sector and are practical solutions to common problems that are reported by tenants.

## 5. How will landlords be affected?

- 5.1 We believe that landlords have much to gain from our proposals. Many of the benefits for tenants, in particular those resulting from having much clearer and easier to understand rental contracts, will also apply to landlords. At the heart of our proposals is the belief that greater clarity on the rights and responsibilities of tenant and landlord is the key to a successful tenancy and to the well-being of all concerned.
- 5.2 Our views are supported by independent research<sup>18</sup> involving a range of private landlords with varying numbers of properties and years of experience. They rented their properties to a variety of people, including those on housing benefit, young professionals, young families and students. A number of letting agents also took part in the research.
- 5.3 While the landlords and letting agents generally felt they had a good understanding of their current contracts, concerns were raised regarding 'accidental landlords' e.g. a person who has inherited a property and decided to rent it out instead of selling it. These landlords often had a poor understanding of rental contracts.
- 5.4 The study also found that landlords benefit from having knowledgeable tenants. Letting agents said that a tenant not understanding their contract can cause problems, especially at the end of a tenancy. We believe this supports our case for clearly worded model contracts. Landlords and letting agents were also shown the illustrative model contracts developed by the Law Commission. Notwithstanding comments on satisfaction with their current contracts, there was good support for the model contract approach. Comments included:

'It would be brilliant, there are so many [contracts] out there, as long as it is fair and unbiased' (landlord with properties in Wales, Essex and Spain, Welsh National Landlords Association member).

'Yes, I would use it, it's easy to follow, it's just there and you can download and print it off and you can say to tenants "this is a standard approved contract"' (landlord, Cardiff, three properties).

'Having a standardised national contract, the agency would know the content of all contracts. It would benefit the tenant and the landlords because it will all be standard and official (letting agent, all-Wales, 1,300 properties let per year, member of various industry bodies).

'I think it's sensible to have a tenancy agreement for both sides that is agreed and there's plenty of legislation to tell you what can and what can't go in it' (letting agent, Cardiff, 200 properties let per year, member of various industry bodies).

- 5.5 In addition to the findings of the research, we believe that landlords will benefit from:
  - a. **Removing confusion over the lease/licence distinction.** Current law has been proven to present difficulties to landlords. Frequently, some have believed that they were giving a licence to occupy accommodation whereas, because the nature of the occupation fulfilled certain conditions, the courts have deemed it was in fact a lease that applied, with far greater tenancy rights resulting. Our proposals will remove this common area of misunderstanding for landlords.



- b. **Reduced costs through reduced complexity.** The simpler, more transparent legal framework we propose will, over time, reduce costs to landlords. We believe these reductions will result from two things. First, by avoiding the cost of drawing up bespoke rental contracts and seeking legal advice to confirm compliance of those contracts with current law. Second, greater clarity of rights and responsibilities should reduce the incidence of disputes that incur legal costs. Including all important information in the model contract will enable landlords to understand and follow the correct procedures and reduce the risk of legal challenge.
- c. **Dealing with abandonment.** Unfortunately, on occasions, tenants abandon their home without notice, leaving the landlord in a very difficult situation. At present, landlords have to go to court to regain possession of the property. Our proposals will make it easier for the landlord to regain possession while at the same time balancing the interests of the tenant. The landlord will be able to secure the premises and give four weeks' notice of their intention to end the tenancy without having to seek a court order to do so.
- d. **Enabling landlords to remove a departed joint tenant from the tenancy.** Landlords will be able to remove a joint tenant from the tenancy if they believe the individual no longer lives there. Again, as with abandonment, it would be subject to four weeks' notice, but it should provide a sensible solution to some of the problems illustrated above.
- e. **Providing landlords with certainty regarding contract terms.** Our proposals provide for the setting out of certain contractual terms within the proposed Bill. This means that, providing landlords adhere to those terms, they will be in compliance with the law and will not be subject to challenge under the Unfair Terms in Consumer Contracts Regulations 1999. Previously, such challenges have caused significant confusion and uncertainty so we believe landlords will welcome the clarity our proposals will bring.
- f. **Requiring landlords to issue written contracts.** While most landlords issue written contracts, not all do. We believe that having clarity on the rights and responsibilities of both tenants and landlords is key to successful renting. Landlords will therefore be required to issue a written contract within two weeks of the start of occupation. The statutory model contracts we will provide will assist greatly with this. Failure to comply could lead to the landlord being required to compensate the tenant. The amount of compensation is a payment equivalent to each day's rent, starting from the date of occupation until the date the written contract is provided (subject to a maximum equivalent to two months' rent).
- g. **Ensuring no serious health and safety hazards are present.** All landlords will be required, as a condition of the rental contract, to ensure that there are no Category 1 health and safety hazards in the property, as defined under the Housing Health and Safety Rating System. This complements the current duty that local authorities to take action when they identify properties with a Category 1 hazard. Examples of Category 1 hazards include excess cold, damp and mould growth, carbon monoxide and fire risks.

## 6. Better arrangements for renting homes

- 6.1 Our research into the need for change, and our discussions with the many different organisations and groups that have an interest in the arrangements for renting a home, have highlighted key issues that are important to people. These are summarised below, together with an overview of our proposals.

### Overview

- 6.2 Our proposals are based on the new legal framework developed by the Law Commission which has two contract types:
- (i) A “secure contract” modelled on the current secure tenancy issued by local authorities. This should reassure tenants in social housing that there are no plans to introduce fixed-term tenancies, which have been introduced elsewhere in the UK.
  - (ii) A “standard contract” modelled on the assured shorthold tenancy which is used mainly in the private rented sector.
- 6.3 Local authorities and housing associations would be required to enter into secure contracts. They would only be able to provide standard contracts in the same circumstances as at present, for example, for probationary purposes or following a court order if an anti-social behaviour term has been breached. We believe that having the same legal framework will enable the interface between local authorities and other social landlords – whether registered or unregistered – to become much more permeable. Bringing private landlords within the same framework should also facilitate the development of new partnerships between social and private sector landlords in the provision of social rented housing.
- 6.4 The Law Commission’s approach also offers much greater scope for the development of new housing policy initiatives. For example, providing opportunities for social landlords to enter new sectors of the housing market. The proposed model contracts could also be used in combination with equity-sharing schemes.
- 6.5 The Law Commission’s approach focused closely on the landlord and tenant relationship, ensuring that the rights and obligations of both parties are set out in a clear written contract. It was envisaged that this would support greater professionalism amongst private landlords and their agents; not only those with substantial property portfolios but also small ‘hobby’ or ‘accidental’ landlords. By emphasising the mutual recognition of each party’s rights and responsibilities, the proposals provide a foundation for improving relationships between tenants and landlords. While it was accepted that there may be some initial start-up costs, it was felt that overall costs should quickly reduce and there should be significantly reduced legal and compliance costs.
- 6.6 The Law Commission also made specific recommendations for supported housing. These were developed in partnership with the supported housing sector, including many organisations in Wales. The proposals were seen as providing a legal framework to help people move towards independent living.





- 6.7 It was also proposed that, when the provisions of the Bill come into force, existing rental contracts and licences be converted into the appropriate secure or standard contract. This would prevent the ever-increasing accumulation of different types of tenancy as has happened in the past.
- 6.8 In summary, our proposals would:
- (i) Remove current distinctions between the different types of rented home thus providing a single, much simpler, framework which reflects fairness and equality.
  - (ii) Provide people who rent their home with clearer information about their rights and obligations, what they can expect from their landlords, and the circumstances in which contracts may be brought to an end.
  - (iii) Give more flexibility for local authorities, housing associations and private landlords to operate in different local rental markets, and to meet the housing needs of people in different circumstances, including those in need of key worker housing.
  - (iv) Help vulnerable people to move from supported housing to housing independence, while giving the providers of such housing a practical legal framework to achieve this goal.
  - (v) Increase the options available for ensuring that the rental sector plays its proper role in creating and maintaining sustainable communities.
- 6.9 The case for tenancy reform is a long-standing one. There is broad recognition amongst organisations active in the field of housing that the objectives that underpin the Law Commission's proposals are right for Wales.
- 6.10 Views are mixed on how quickly such changes should be introduced. We recognise this and wish to consider it very carefully. We are therefore keen to listen to people's views on how changes could be implemented in addition to views on the proposals themselves.

## The "Secure Contract"

- 6.11 The secure contract is modelled closely on the secure tenancies that, at present, can only be issued by local authorities. Secure contracts will have a high degree of security of tenure which is protected by law. They will provide the 'gold standard' of security and will apply consistently across local authorities and housing associations. In addition, there will be nothing to prevent private landlords from entering into secure contracts with tenants if they choose to do so. This is important because, at present, roughly 1 in 10 private tenancies are assured tenancies which provide a high level of security, and this is something we want to encourage.
- 6.12 We are proposing this approach for a number of reasons. First, we believe that tenants of local authorities and housing associations should be able to rent their homes on a fair and equal basis. Second, we want to remove any barriers that might prevent people choosing to move between different landlords, for example to live closer to work or schools. Third, having statutory contract terms that apply on an all-Wales basis will enable clearer and more consistent guidance to be developed to address common issues of concern, like housing-related anti-social behaviour.

## The “Standard Contract”

- 6.13 The standard contract is similar to the current assured shorthold tenancy, with a low degree of security of tenure protected under legislation but with nothing to prevent landlords providing greater security. This reflects current practice where landlords are often keen to agree longer terms because it reduces void periods. However, it will also provide additional flexibility, for example in the case of someone moving to a new area to work or study and only wanting short-term accommodation.
- 6.14 The standard contract will also be used by local authorities and housing associations for short-term agreements, such as a probationary period at the start of a tenancy or where a secure contract is demoted to a standard contract due to anti-social behaviour.
- 6.15 Standard contracts can be either for a fixed term or periodic, rolling over from one rental period to the next. For standard contracts only, it will also be possible to agree specified periods where the premises cannot be occupied; this is to enable, for example, universities to agree occupation contracts for the whole academic year but to allow for the accommodation to be used in vacation periods for conferences.
- 6.16 We are proposing this approach for the following reasons. First, it meets the needs of what is a diverse and dynamic sector of the rental market, while at the same time providing statutory model terms to ensure fairness and transparency. Second, it will enable the broadest range of existing tenancies to be incorporated into the scheme, thereby maximising the benefits. Third, as with secure contracts, the consistency that model standard contracts will bring will enable much clearer guidance to be developed on what the terms mean. This will also assist those who provide advice and support services to tenants and landlords.

## Addressing anti-social behaviour

- 6.17 Sadly, the anti-social behaviour of a few individual tenants or households can cause significant stress and misery for many. The Welsh Government is committed to making sure there are effective ways of discouraging such behaviour in the first place, and then tackling it effectively if it does occur, in order to ensure that people are able to live in their homes without fear of nuisance or harassment. At present, local authorities, housing associations and private landlords all deal with anti-social behaviour in different ways, with some being more effective than others. In developing our proposals, we asked the Law Commission to consider how they would fit with the UK Government’s proposed anti-social behaviour legislation<sup>9</sup>.
- 6.18 One of the benefits of implementing the Law Commission’s proposals is that all tenancies, whether in the public or private sector, would include a defined ‘Prohibited Conduct’ term. As well as anti-social behaviour and hate crime, prohibited conduct would include domestic violence, which is discussed in more depth below. The proposed prohibited conduct term is as follows:



**“Prohibited Conduct”:**

A contract-holder [tenant] may not use or threaten to use violence against a person lawfully living in the premises, or do anything which creates a risk of significant harm to such a person.

A contract-holder may not engage or threaten to engage in conduct that is capable of causing nuisance or annoyance to:

- a person living in the locality of the premises; or
- a person engaged in lawful activity in, or in the locality of, the premises.

A contract-holder may not use or threaten to use the premises, or any common parts that they are entitled to use under the contract, for criminal purposes.

The contract-holder may not allow, incite or encourage others who are residing in or visiting the premises to act in these ways or allow, incite or encourage any person to act as mentioned above.

- 6.19 Discussions held with representatives of the All-Wales Anti-Social Behaviour Group indicated strong support for the adoption of a consistent approach to tackling anti-social behaviour across all rented housing. In finalising the term, it will be necessary to strike a balance between a wording that is sufficient to encompass the wide range of anti-social behaviour which can occur, while at the same time ensuring its meaning is clear to tenants and landlords.
- 6.20 Of course, one benefit of having the same Prohibited Conduct term in all contracts is that it will be possible to develop all-Wales guidance on what it means and how it can be enforced effectively.
- 6.21 Breach of the Prohibited Conduct term would trigger proceedings for possession by the landlord. However, in this case, exceptionally, it is proposed that proceedings could be started on the same day as the landlord gives the possession notice. The landlord would also be able to apply to the court for an injunction prohibiting further breach of the term and a power of arrest could be attached to the injunction. In addition, a social landlord or registered charity could also apply for an exclusion order.
- 6.22 It has been suggested that as a deterrent to anti-social behaviour, someone who is, or has been, subject to an anti-social behaviour order or injunction should be disqualified from being a reserve successor; that is, they would not be able to take over the tenancy when the current tenant died. We would be interested to receive comments on this suggestion, including whether such a sanction should be time-limited and, if so, for how long.
- 6.23 A further matter for consideration is whether breaching the Prohibited Conduct term should lead to mandatory or discretionary eviction by a court. As mentioned previously, recent case law and the Equality Act 2010 mean that, at least in the area of social housing, a mandatory eviction order can be challenged on the basis that taking away

the individual's home is not a proportionate response. This situation means that while mandatory eviction on grounds of anti-social behaviour appears in theory to be the strongest possible response, in practice it can lead to a more drawn out process which helps no-one, not least those suffering from the effects of the behaviour.

- 6.24 Instead of mandatory eviction, the Law Commission proposed a very tightly structured discretionary approach. This is designed to provide the scope to the court to make a decision on any defence raised under Article 8 of the European Convention on Human Rights or the Equality Act 2010, but no more. This would mean that when there are proceedings for breach of the prohibited conduct term, then, as long as the facts are made out, a possession order would have to be granted unless it was not proportionate to do so. Proportionality would be an issue to be decided at the date of the possession hearing, so conduct subsequent to the issue of proceedings would be relevant. It would take into account the personal circumstances of the tenant, thus addressing both the Article 8 and Equality Act dimensions. We believe that adopting such an approach will, in fact, lead to swifter and more certain outcomes than adopting a mandatory ground, but we welcome your views.

## Dealing with domestic abuse

- 6.25 As mentioned above, a Prohibited Conduct term would also cover domestic violence. The Welsh Government is committed to tackling domestic violence, as set out in the White Paper on Legislation to end Violence Against Women and Domestic Abuse<sup>17</sup>. This was informed by a stakeholder task and finish group which made the following recommendation in relation to housing:

“Implement robust eviction and removal-from-tenancy procedures for perpetrators, using the civil standard of proof. New tenancies should state clearly that any form of violence against women or domestic abuse constitutes a breach of tenancy by the perpetrator so that, in the case of joint tenancies, one party can be evicted”.

- 6.26 Our proposals provide an effective response to this recommendation. Firstly, any breach of the Prohibited Conduct term focuses action on the perpetrator and not the victim. Under current housing law, the victim is usually forced to end the tenancy in order for the perpetrator to be evicted. Secondly, it is the civil standard of proof that will apply to Renting Homes. Thirdly, the term refers specifically to violence committed against someone who lives in the property. This would replace the current ground for eviction for domestic violence, which some consider to be poorly drafted.

## A more flexible approach to joint tenancies

- 6.27 Current housing law is particularly inflexible in the treatment of joint tenants. For example, one joint tenant serving a notice to quit will end the contract for all other joint tenants. Currently, not least as a result of the UK government's welfare reforms, joint tenancies are expected to increase. We therefore want to make it easier to add and remove individuals from a joint tenancy.



- 6.28 Our proposals achieve this by, as far as possible, treating each joint tenant as an individual. We propose that under either a secure or standard contract a joint tenant would be able to give notice to the landlord, and to the other joint tenants, stating that they intend to withdraw. The notice period is to allow the remaining joint tenants (who would be liable for the whole of the rent) the opportunity to find a replacement.
- 6.29 Another feature of our proposals is that they would allow a landlord to terminate the tenancy of one joint tenant without ending the tenancy for all. This could be required if one of the joint tenants has permanently left the premises but the remaining tenant wants to continue the tenancy. The landlord would be required to serve notice of the intention to remove the individual from the tenancy and, once satisfied that the individual will not be returning, can end their occupation. Where a joint tenant is believed to have permanently left the property, it would also be possible for the remaining joint tenant to serve notice of their intention to apply to have them removed from the tenancy.
- 6.30 This more flexible approach to joint tenancies also underpins the proposed approach to dealing with anti-social behaviour and domestic violence. Taken together, we believe they offer a much more practical means of achieving important policy objectives and providing a flexibility that reflects the needs of society.

## Dealing with abandonment

- 6.31 A common problem experienced by landlords is that of abandonment. This is when a tenant simply walks away from the property and their contractual obligations. However, it is important that making it easier for landlords to retake possession of an abandoned property does not enable unscrupulous landlords to take advantage.
- 6.32 Our proposals would enable a landlord to secure the premises and establish a procedure, with in-built notice periods, for the landlord to legally recover possession without needing to go to court.

## Renting by young people

- 6.33 Recent changes in housing benefit regulations introduced by the UK Government mean that young people face particular challenges in the rental market. This compounds existing problems caused by the legal prohibition for 16 and 17 years olds to hold a tenancy of the same nature as those aged 18 and over, which means that many landlords currently refuse to rent to this age group.
- 6.34 The law relating to joint tenancies also makes it difficult for young people to share a house or flat. Of particular concern are the rules around terminating tenancies referred to in the examples quoted above. Currently one joint tenant can terminate the whole rental contract, which means a new tenancy has to be agreed whenever a tenant leaves. This therefore endangers the security of tenure of the remaining tenants since the landlord is not obliged to offer a new tenancy.
- 6.35 The Renting Homes proposals would overcome these problems by treating 16 and 17 year olds in exactly the same way as those 18 and above, and treating each tenant on an individual basis.

## Consistent succession rights across Wales

- 6.36 One of the key objectives of Renting Homes is to seek to remove unnecessary differences between the rental contracts of people living in substantially similar circumstances. One such difference is in the ability that partners and other family members have to take over a local authority or housing association tenancy following the death of the tenant. This ability is known as a succession right.
- 6.37 Currently, a family member can succeed to a local authority secure tenancy if he or she has been living in the property for at least a year. However, under the Housing Act 1988, the equivalent succession right for housing association tenants is more limited, extending only to the spouse or civil partner of the tenant. We do not believe there is a sound reason why the succession rights of local authority and housing association tenants should not be the same.
- 6.38 The Renting Homes proposals would standardise succession rights and also bring within the scope of a succession a long term carer who had been living in the property for at least 12 months and had no other home. It is worth noting that, under the Localism Act 2011, succession rights in England have also been standardised, but by limiting succession to a spouse or civil partner only<sup>19</sup>.
- 6.39 Under our proposals, where there is a surviving joint tenant then, as currently, the tenancy contract would remain with that person under the principle of survivorship. Subject to survivorship, there would be two types of successor. The first of these is called a 'priority successor' and is defined as the spouse or civil partner of the tenant who has occupied the premises as their only home prior to the tenant's death. There can be only one priority successor.
- 6.40 The second type of successor is called a 'reserve successor'. This is a family member or partner who has been living in the premises for at least 12 months prior to the death of the contract-holder (the qualifying period would not apply to a spouse or civil partner). Additionally, someone who had been living in the premises, as their only home, to care for the deceased contract-holder during the 12 months prior to their death would qualify. Introducing the ability for a carer to succeed to a tenancy is, we believe, appropriate at a time when the population is ageing and we want to encourage sensible care arrangements. The proposals do recognise, though, the importance of social landlords being able to manage their housing stock and so, in the case of reserve successors only, landlords would be able to seek repossession of the property due to under-occupation; that is, where the house has more bedrooms than the household requires. A landlord would have to take such action between six and twelve months following the death of the contract holder.
- 6.41 The following examples illustrate how these succession arrangements would work in practice<sup>7</sup>:



### Example 1

Alan was the original sole contract holder, married to Barbara. Barbara was living in the premises at the time of Alan's death. Barbara would be the priority successor and becomes the contract-holder.

Charles subsequently moves in with Barbara and lives with her as if they were husband and wife. On Barbara's death, Charles could not be a priority successor, because Barbara had been a priority successor in relation to the occupation contract.

Instead, Charles would be a reserve successor on Barbara's death. Charles would become the new contract-holder, even if he had not lived with Barbara or at the premises for as long as 12 months when Barbara died, as long as he was living there on Barbara's death. On Charles's death, there could be no more successions in respect of the contract.

### Example 2

Debbie is the original contract-holder, living with her civil partner Emma, and Emma's grown-up daughter Fiona. On Debbie's death, Emma would be a priority successor, and become the contract-holder. When Emma dies, Fiona had been living with Debbie and Emma throughout the period of 12 months ending with Emma's death. Thus, Fiona would be a reserve successor, and become the contract-holder. There could be no more successions in respect of the contract on Fiona's death.

### Example 3

George is an elderly and frail sole contract-holder of a housing association flat. Henry, his neighbour, moves in with George to care for him. On doing so, Henry has to give up the flat he had been renting from the housing association (as the occupation contract contained a term requiring Henry to occupy it as his only or principal home). On George's death, 15 months later, Henry is a reserve successor to the contract of George's flat. There could be no more successions to the contract on Henry's death.

## Removing mandatory eviction for serious rent arrears from housing association tenants

- 6.42 Another area of significant difference between housing association and local authority tenancies is the grounds on which tenants can be evicted for arrears amounting to 8 weeks' or 2 months' rent. In the field of housing, this is more commonly known as "ground 8". We propose that, in order to ensure parity across secure contracts within the social housing sector, ground 8 should be removed.
- 6.43 Currently, in the case of a local authority tenant, a court is not required by law to make an order evicting a tenant simply because the arrears have been proven to exist. Instead, the court has the discretion to consider any mitigating factors, such as difficulties in receiving housing benefit, and to decide whether the eviction is properly justified.

However, in a similar situation for a housing association tenant, a court does not have the discretion to consider whether the eviction is properly justified but is obliged to order the eviction of the tenant where the ground for possession is proven. This is known as a 'mandatory ground' for possession.

- 6.44 The impact of evolving case law within housing, mentioned earlier in relation to eviction on grounds of anti-social behaviour, also applies here. This is because any mandatory ground whereby the state (including social landlords) can evict someone from their home is potentially incompatible with an individual's right to have a court consider whether their eviction would be proportionate.
- 6.45 We recognise that some housing associations and their lenders will be concerned that, in light of the current financial climate and the UK Government's Welfare Reform policies, losing the ability to seek mandatory evictions for serious rent arrears will make it more difficult for them to manage their finances. However, only a proportion of housing associations in Wales currently use this mandatory ground and, in 2010-11, only 17 of the 1,340 possession orders made for housing association assured tenancies in arrears were on a mandatory ground. It is also clear that housing associations that do not currently use ground 8 are still able to keep arrears at manageable levels. Therefore, while we are mindful of the additional problems caused by Welfare Reform, we do not consider that removing this mandatory ground need have a significant impact.
- 6.46 Comparing the rent arrears figures of local authorities and housing associations is also informative. As at 31 March 2012, the percentage of local authority tenancies in arrears for less than 13 weeks stood at 29 per cent (as it has done since 2008-09) while the equivalent figure for housing association tenancies was 31 per cent. The figures for rent arrears of 13 weeks or more were identical, standing at 2 per cent. These figures indicate that the lack of a mandatory eviction ground has certainly not disadvantaged local authorities in managing tenants' rent arrears. It is also notable that evidence from Scotland shows that making the same change through the introduction of the Scottish Secure Tenancy did not lead to an increase in arrears there.
- 6.47 Therefore, in order to achieve equality in the terms under which tenants of social landlords might be evicted for rent arrears, and to ensure compliance with human rights law, we believe it is appropriate to remove the ability for housing associations to seek mandatory eviction of their tenants on the ground of serious rent arrears.

## Abolishing the six-month moratorium on "no fault" evictions

- 6.48 In their 2006 recommendations, the Law Commission proposed abolishing a rule relating to "no-fault" evictions, which they described as the 'six-month moratorium'. This currently prevents courts ending a private sector assured shorthold tenancy before the end of the first six-months of the contract. This change was proposed to enable the Renting Homes scheme to apply as broadly as possible and to allow additional flexibility where individuals want to rent privately for short periods.





- 6.49 A key argument for this approach is that the Law Commission found that, in practice, landlords generally let for minimum periods of six or twelve months. Under such a situation the moratorium is not relevant and they saw no reason for landlords not wishing to continue to let on such a basis. This is because most private landlords want to keep their tenants for as long as possible, in order to avoid loss of income from periods when the property is empty.
- 6.50 The private rented sector is also very diverse in terms of those it houses, many of which are looking only for short-term accommodation in any case. The Rugg review of 2007<sup>20</sup> highlighted that “households in the highest income quartiles are more likely to have been at their current address for two years or less, reflecting the incidence of job-related moves. For the lowest quartile income group, residence at the same address was often for longer periods: 36 per cent in this group had stayed at their current address for five or more years compared with only 12 per cent in the highest income group.” More recent figures produced by the Association of Residential Letting Agents show that the average length of stay in a private tenancy in the UK is increasing, from around 15 months in 2005 to over 19 months in 2012, with the strongest increases since 2010.
- 6.51 As well as pointing out that the majority of tenancies are ended by the tenants themselves, the Rugg report also argued that, in those cases where a tenancy did end against the wishes of the tenant, this was usually “for specific reasons, such as rent arrears, poor quality property making a tenancy unsustainable and issues relating to anti-social behaviour.”
- 6.52 The Law Commission acknowledged that security of tenure was an important issue but felt it was best addressed by focusing on the contractual rights of the tenant and landlord rather than statutory rights. They pointed to the development of social lettings agencies by local authorities and others, through which agreements are being made to house individuals for longer contractual periods.
- 6.53 This would also apply in relation to the proposal in the Housing White Paper to enable local authorities to discharge their duty to house homeless individuals by finding them a private tenancy. A six-month (or potentially longer) contractual period associated with the discharge of the duty would therefore protect the individual from no-fault eviction.
- 6.54 These proposals therefore create an ability to tailor contractual terms to meet specific policy objectives for protecting the vulnerable, while not creating barriers to the private sector in providing the flexibility that many others seek.

## Improving the legal framework for supported housing

- 6.55 We are also proposing to make special provision for supported housing. Supported housing accommodates some of the most disadvantaged and excluded members of society, but the current legal framework doesn't recognise the particular challenges that can arise in these settings.
- 6.56 The changes would give some additional tools to help providers of supported housing (including charities) to safely manage those they assist during the first two years of their tenancy. This two year period is referred to as the 'enhanced management period'.

During the enhanced management period, supported housing providers would have the ability to use two specific management tools: exclusion and mobility.

- 6.57 The exclusion tool would allow a provider of supported housing to exclude an occupier, without needing to seek a court injunction, for a period of up to 48 hours. Such an exclusion could take place no more than three times in any six month period. An exclusion of more than 48 hours would require the provider to obtain a court injunction. The situations which would justify a temporary exclusion are:
- (i) where the occupier has used violence against anyone on the premises;
  - (ii) where the occupier does something on the premises which creates a risk of significant harm to anyone; or
  - (iii) where the occupier behaves in a way which seriously impedes the ability of another resident of supported accommodation provided by the landlord to benefit from the support provided.
- 6.58 The other new tool would be 'mobility'. This tool would allow providers to move an occupier to alternative accommodation within the building. This would enable, for example, a room near the resident manager's room to be used to keep an eye on new arrivals, who can later be moved. Similarly, it would allow for residents in conflict with one another to be relocated in order to avoid potential exclusion or eviction.
- 6.59 The enhanced management period of two years may also be extended in certain circumstances.
- 6.60 Accommodation which is intended to be provided for four months or less would continue to operate under current arrangements, but once the four months was exceeded then the Renting Homes provisions would apply.
- 6.61 When the Law Commission's supported housing proposals were published in 2006 they received substantial support from stakeholders in Wales familiar with this area. We have discussed the proposals with stakeholders again more recently and it would appear that they continue to have strong support. However, there are issues on which views would be welcome. For example: whether the 48 hour temporary exclusion is of sufficient length (recognising that longer exclusions are possible by obtaining an injunction); whether the limit of three exclusions in six months is appropriate; whether the particular vulnerabilities of young people should be taken into account in the development of the proposals; and whether the lack of suitable alternative accommodation would be an additional reason to extend the enhanced management period. In reaching a final view on these issues a balance will, of course, need to be struck between the rights of the individual occupier and the ability of the provider to manage the accommodation effectively.

## Treatment of Rent Act Tenancies

- 6.62 Rent Act tenancies are tenancies that pre-date the introduction of the assured and assured shorthold tenancy regime in 1989. As well as applying to the private rented sector there is a substantial number of Rent Act tenancies managed by housing associations. As described above, they provide similar security of tenure to secure and assured tenancies and the rent charged is subject to fair rent regulation.



- 6.63 The quality of private rented accommodation under Rent Act tenancies is often very poor, due to the lack of an incentive for landlords to invest. However, the Law Commission proposed, on balance, to exclude these tenancies from the Renting Homes framework. This was because it was felt that the tenants, notwithstanding the quality of the accommodation, would rather not see their rents rise. We believe this exclusion remains appropriate in the case of private rented sector tenants.
- 6.64 In discussions with stakeholders, however, it appears there may be benefits in bringing housing association Rent Act tenancies within the scope of the Renting Homes framework. This is because the extensive administrative process arising from the fair rent protection given to these tenants is unnecessary because the fair rents calculated are generally higher than the housing association rent ultimately charged. We would be interested to receive views on this suggestion.

## Conclusion

- 6.65 We believe that our proposals, which are grounded in evidence-based research and which have considered the views of many different organisations and representative groups, will improve the arrangements in Wales for renting a home. They will help improve clarity and choice for those who want to rent, provide equality for people renting in similar circumstances, and increase flexibility to allow people to move to take advantage of new opportunities.
- 6.66 There are benefits for both tenants and landlords. These benefits will come from having a rental contract that sets out, in plain language, the rights and responsibilities of each party. Making the legal framework much clearer will also help to reduce disputes and potential litigation.
- 6.67 As mentioned earlier, we must emphasise that the concept of a secure tenancy in social housing is not being eroded in Wales. Indeed, it will be strengthened by our proposals to align council and housing association tenancies. We are aware, however, that there are some calls for our proposals to go further than this and to extend security in the private rented sector, either by doing away with short-term renting altogether or by introducing a minimum rental period of, say, two or four years.
- 6.68 We understand why such calls are being made but we are also concerned that such a move could have wide-ranging and unforeseen impacts on the housing system that may not, in the end, benefit tenants. For example, we believe there is a risk that, if we were to legally require longer rental terms in the private sector, this may result in properties being withdrawn from the rental market, exacerbating current problems. In areas of high demand for rented housing it could also encourage illegal renting, with the most vulnerable in society being put at greatest risk by unscrupulous landlords as a result. We believe our proposals will do much to improve the position of those renting privately and want to ensure these benefits will apply to all who rent their home. For example, one of the requirements will be for landlords to ensure there are no Category 1 health and safety hazards<sup>21</sup> in the property. Such hazards would include excess cold, damp and mould growth, carbon monoxide and fire risks.

## 7. Implementing the changes

- 7.1 In the interests of simplicity and clarity, the Law Commission proposed a ‘big bang’ approach to implementing the proposals in its original Renting Homes report. On a pre-determined date, all existing tenancies and licences would convert to the appropriate secure or standard contract. It is important to highlight that nothing in these proposals would change a tenant’s “right to buy” or “right to acquire” a property from a local authority or housing association.
- 7.2 We do not consider requiring all tenants to sign up to new rental contracts to be necessary from a legal perspective since all tenancies would automatically convert to the new framework on the set date. It is, of course, good practice to ask tenants to sign new rental contracts and experience in Scotland shows that such action provided opportunities to address other issues with the tenancy at the same time, such as confirming the right tenant was still occupying the property. However, it did place an administrative burden on landlords and we are mindful of that.
- 7.3 While recognising the wider benefits that will come from the sign-up process, we want to ensure the process is managed in such a way as to reduce any unnecessary administrative burden. We will consider a phased approach by making the model contracts available prior to the implementation date and we will take into account the views received from stakeholders on this issue.
- 7.4 Our proposals will have implications for tenants, landlords, providers of support services, lenders and others and we want to ensure that as many as possible are made aware of them, understand how the proposals will affect them, and have the chance to comment.
- 7.5 We recognise there will be short-term impacts, including in some cases costs, from implementing the changes. However, these must be considered alongside the long term benefits to both tenants and landlords, and our whole housing system. Our work with those who have a stake in the proposals will continue during and after the consultation on this document.
- 7.6 At present, we cannot be precise about the timescale for bringing in the new law and thus when changes will need to be implemented as a result. First and foremost, the Bill is subject to scrutiny and passing by the National Assembly for Wales. At the same time, we wish to be as informative as possible to enable people to offer comments and suggestions which could assist with implementation. For that reason, we have included, in Appendix 1, an outline timetable for the Bill.
- 7.7 We look forward to receiving your comments on this consultation and in response to the questions set out in Appendix 2.

## Appendix 1: Outline timetable

20 May 2013	Publication of White Paper on Renting Homes
May – August 2013	Public consultation on proposals
16 August 2013	Consultation period ends
Autumn 2013	Analysis of responses
Winter 2013	Summary of consultation responses published
2014	Further development of proposals and engagement with stakeholders
2015	Renting Homes Bill introduced into the National Assembly for Wales*
2015	Scrutiny of the Bill by the National Assembly*

\* precise timings subject to the Assembly's timetable

## Appendix 2: List of consultation questions

We welcome comments on all aspects of our proposals and are particularly interested in responses to the following questions. The paragraph numbers indicate the start of the relevant section of the White Paper.

Name:							
Organisation (if applicable):							
E-mail address:							
Telephone:							
Address:							
Please tick to indicate if you are:		Tenant:		Landlord:		Other (please specify):	
<b>Question 1</b>						Please tick	
Do you support our proposals for changing the legal framework for renting a home?						Yes	No
Briefly, please explain your answer.							
<b>Question 2</b>						Please tick	
Do you agree that the secure contract should be based on the current local authority secure tenancy (paragraph 6.11)?						Yes	No
<b>Question 3</b>						Please tick	
Do you agree that the standard contract should be based on the current assured shorthold tenancy (paragraph 6.13)?						Yes	No
Briefly, please explain your answer.							



<b>Question 4</b>	Please tick for each	
Do you support the proposals in relation to each of the following issues:		
a) Addressing the anti-social behaviour of some households (paragraph 6.17)	Yes	No
Briefly, please explain your answer.		
b) Dealing with domestic abuse (paragraph 6.25)	Yes	No
Briefly, please explain your answer.		
c) A more flexible approach to joint tenancies (paragraph 6.27).	Yes	No
Briefly, please explain your answer.		
d) Abandonment of the property by a tenant (paragraph 6.31)	Yes	No
Briefly, please explain your answer.		
e) Renting by young people (paragraph 6.33)	Yes	No
Briefly, please explain your answer.		

f) Standardising succession rights (paragraph 6.36)	Yes	No
Briefly, please explain your answer.		
g) Standardising eviction for rent arrears (paragraph 6.42)	Yes	No
Briefly, please explain your answer.		
h) Requiring landlords to ensure there are no Category 1 hazards under the Housing Health & Safety Rating System (paragraph 5.5(g))	Yes	No
Briefly, please explain your answer.		
i) Abolishing the six-month moratorium on 'no fault' evictions (paragraph 6.48)	Yes	No
Briefly, please explain your answer.		
j) Establishing a legal framework for supported housing (paragraph 6.55)	Yes	No
Briefly, please explain your answer.		





k) Bringing housing association Rent Act tenancies within the Renting Homes framework (paragraph (6.62))	Yes	No
Briefly, why have you answered in this way?		
<b>Question 5</b>		
What do you consider to be the most significant elements listed in Question 4 for people who rent their home?		
<b>The box below is provided for any additional comments you may have.</b>		
Responses to consultations may be made public – on the internet or in a report. If you would prefer your name to be kept confidential, please tick the box:		
If you are responding on behalf of your organisation, please tick the box		
Please tick if you are prepared to be contacted in relation to the development of the Renting Homes Bill?		

## Appendix 3: References

- 1 Office for National Statistics (2012) *2011 Census Table QS403EW: Tenure - People, unitary authorities in Wales*. Available at: [www.ons.gov.uk/ons/rel/census/2011-census/key-statistics-and-quick-statistics-for-electoral-divisions-and-output-areas-in-wales/rft---qs403ew.xls](http://www.ons.gov.uk/ons/rel/census/2011-census/key-statistics-and-quick-statistics-for-electoral-divisions-and-output-areas-in-wales/rft---qs403ew.xls)
- 2 Welsh Government (2012) *Homes for Wales - A White Paper for Better Lives and Communities*. The White Paper and summary of responses are available online at: [www.wales.gov.uk/consultations/housingcommunity/housewhitepaper](http://www.wales.gov.uk/consultations/housingcommunity/housewhitepaper)
- 3 Welsh Government (2012) *Houses into homes scheme gets into action*. Available online at: [www.wales.gov.uk/newsroom/housingandcommunity/2012/121116hih](http://www.wales.gov.uk/newsroom/housingandcommunity/2012/121116hih)
- 4 Office for National Statistics (2012) *Measuring National Well-being - Where we Live*. Available online at: [www.ons.gov.uk/ons/rel/wellbeing/measuring-national-well-being/where-we-live/art-where-we-live.html#tab-Tenure-and-housing-stock](http://www.ons.gov.uk/ons/rel/wellbeing/measuring-national-well-being/where-we-live/art-where-we-live.html#tab-Tenure-and-housing-stock)
- 5 Pattison B, Diacon D & Vine J (2010) *Tenure Trends in the UK Housing System. Building and Social Housing Foundation*. Available online at: [www.bshf.org/published-information/publication.cfm?thePubID=46C4A5EA-15C5-F4C0-99C662FE48B048B9](http://www.bshf.org/published-information/publication.cfm?thePubID=46C4A5EA-15C5-F4C0-99C662FE48B048B9)
- 6 Scanlon K. & Kochan B. (eds) (2011) *Towards a sustainable private rented sector - the lessons from other countries*. LSE London
- 7 Law Commission (2006) *Renting Homes: The Final Report, Vols. 1 & 2*. Law Com 297. Available online at: <http://lawcommission.justice.gov.uk/areas/renting-homes.htm>
- 8 Welsh Government (2011) *Meeting the Housing Challenge: Building a Consensus for Action*. The consultation document and summary of responses are available online at: [www.wales.gov.uk/consultations/housingcommunity/housingchallenge](http://www.wales.gov.uk/consultations/housingcommunity/housingchallenge)
- 9 Law Commission (2013) *Renting homes in Wales*. Available online at: <http://lawcommission.justice.gov.uk/areas/renting-homes.htm>
- 10 Office of Fair Trading (2013) *The Lettings Market*. OFT1479. Available online at: [www.oft.gov.uk/OFTwork/publications/publication-categories/reports/consumer-protection](http://www.oft.gov.uk/OFTwork/publications/publication-categories/reports/consumer-protection)
- 11 Law Commission (2002) *Renting Homes: Consultation 1 Status and Security*. Law Com 162
- 12 Housing Act 1985
- 13 Housing Act 1996
- 14 Lord Woolf (1996) *Access to Justice*. Available online at: <http://www.dca.gov.uk/civil/final/index.htm>
- 15 Lord Justice Jackson (2009) *Review of Civil Litigation Costs*. TSO Available online at: <http://www.judiciary.gov.uk/publications-and-reports/review-of-civil-litigation-costs/index>
- 16 The Times, Law Section (25 July 2000) Article on tenancy reform by Nic Madge, then district judge at West London County Court and now a Circuit Judge
- 17 Welsh Government (2012) *Consultation on legislation to end violence against women domestic abuse and sexual violence*. Available online at: [www.wales.gov.uk/consultations/housingcommunity/vawwhitepaper](http://www.wales.gov.uk/consultations/housingcommunity/vawwhitepaper)
- 18 Consumer Focus Wales (2012) *Their House, your Home – The private rented sector in Wales*. Available online at: [www.wales.gov.uk/rentinghomes](http://www.wales.gov.uk/rentinghomes)
- 19 Wilson W (2012) *Succession rights and social housing*. House of Commons Library [Available online at: [www.parliament.uk/briefing-papers/SN01998](http://www.parliament.uk/briefing-papers/SN01998)
- 20 Rugg J & Rhodes D (2007) *The private rented sector: its contribution and potential*. University of York
- 21 As defined under the Housing Health and Safety Rating System introduced by the Housing Act 2004

