Increasing the minimum notice period for a ‘no fault eviction’

**Consultation Response Form**

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The majority of questions in this consultation are relevant to all respondents but some are specific to whether you are a landlord (either private or social) a letting agent or a ‘contract-holder.’ A contract-holder is the new name for a tenant under the Renting Home (Wales) Act 2016.

**How would you best describe yourself?**

A stakeholder or representative group

Increasing the minimum notice period for a ‘no fault eviction’

TPAS Cymru have been supporting tenants and landlords in Wales for over 30 years and have a strong track in developing effective participation. We have an extensive knowledge of the social housing sector and have recently broadened our expertise of the private rental sector.

We focus on issues from the tenant perspective and for the tenants’ benefit. Across Wales our work improves the quality of tenant participation through promoting good practice. Whilst we do not manage homes, we work in partnership with our members- Registered Social Landlords, Local Authorities, the Registered Landlord Association, Community Housing Cymru, Chartered Institute of Housing Cymru and tenants.

This response is an example of our ongoing work to contribute to policy developments and issues, challenging the experience and needs of tenants and landlords to policy makers.

TPAS Cymru welcomes the opportunity to contribute to the inquiry to increase the minimum notice period for ‘no fault evictions.

This response has been informed by a sample survey of over 100 tenants across both the social housing sector and the private rental sector.

Key messages:

* Security of tenure is crucial for individuals and families to have confidence and thrive and the suggested legislative changes support this.
* Extended time frames enable tenants to find a home that is suitable for their needs
* There is likely to be more fault-based possession orders which is un-timely and costly and therefore a reform of Section 8 must be considered.
* A process must be implemented for the small number of cases where there are risks to the community following a tenant perpetrating dangerous behaviour despite all support avenues being exhausted.

## The Welsh Government’s proposal with regard to extending minimum notice periods for a periodic standard contract

These questions should be answered by **all respondents**

The minimum notice period for a section 173 under the 2016 Act is two months, similar to section 21 notices currently. The Welsh Government proposes extending this period to six months.

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

Yes

**Question 2:** Please tell us why.

This, coupled with increasing the minimum time limit for issuing S.173 notices to six months will give tenants a minimum term off 12 months which increases security. Having a six-month notice period rather than two months will alleviate stress related to moving home. This is likely to be elevated if you’re on a low income, with health conditions, children, caring responsibilities and living in an adapted property. It is well documented that such stresses can contribute to mental health issues and will, in turn put additional pressure on health provision.

TPAS Cymru consulted with over 100 tenants who unanimously agreed with this proposal; emphasising that moving home is extremely disruptive and costly; two months is simply not enough time. One tenant who had been previously evicted, stated that it was extremely stressful. Having two months to find a property resulted in moving into an unsuitable property. Tenants felt that if there was ‘no fault’, then they deserve to be given the sufficient time to find alternative accommodation. The financial implication of these rapid changes leads to significant consequences and families with children are left with the additional burden of finding new schools and childcare providers. This, in turn, not only puts pressure on the parent but also causes unnecessary stress on the child.

There is no dispute that extension of the S.173 notice period will reduce the impact of no-fault evictions through providing additional time for families to secure a new home.

However, TPAS Cymru recognise that these changes are likely to lead to a higher uptake of fault-based possession and feel that there needs to be systems in place to ensure the courts can manage the higher number of possession hearings. In addition to that, it is vital these systems are in place to minimise the lengthy court hearings and financial cost to the tenant as well as the potential risk to communities in cases of dangerous behaviour.

TPAS Cymru, feel that considerations need to be made in cases where support has been offered to tenants perpetrating criminal or dangerous behaviour yet it still continues. The un-timely process of gaining possession through a Section 8 notice could lead to severe negative consequence to the community.

We believe that a revision of Section 8 under the 1988 Act needs to be revised to ensure that repossession of property is achievable on reasonable time scales where there is a need due to prohibited conduct, as defined by the 2016 Act.

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

These questions should be answered by all **respondents**

Under the 2016 Act, a landlord is prevented from issuing a section 173 notice within the first four months of a new occupation contract, starting with the date the contract-holder is allowed to occupy the dwelling. Our proposal is to extend this period from four months to six months, before the Act is implemented.

This, along with an extended notice period of six months, would mean that contract-holders who have started a new contract will have the security of staying in their home for at least 12 months, providing there is no breach of contract.

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

Yes

**Question 2:** Please tell us why.

This would provide tenants with more security and opportunity to recover any potential rent arrears. In our survey, tenants emphasised that it would give them the necessary extra time to relocate, whereas the shorter time scale may result in an inferior property which, in turn could affect their physical and mental health.

Six months, instead of four will enable landlords to work closely with the tenant for a longer period, ensuring every avenue is exhausted before serving a S.173

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

These questions should be answered by all **respondents**

At present, there would be nothing to prevent a landlord or agent from issuing a section 173 notice every six months, so they could evict the tenant should they choose do so in the next six months. This would result in the extended notice period the Welsh Government proposes being circumvented and a contract-holder having little security during the tenancy as an eviction notice would always be hanging over them.

To avoid this, the Welsh Government proposes placing a six-month restriction on the re-issuing of a section 173 notice after the previous one has expired.

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

Yes

**Question 2:** Please tell us why.

The issuing of a S.173 notice should be taken very seriously due to the high levels of stress that this places on tenants. Tenants should be able to feel secure in their homes without worrying that they may have to leave. The current literature emphasises numerous mental health and psycho social benefits of a ‘quality home’. In addition to that, there is an emphasis on the landlord and tenant relationship and how this makes a difference to the perception of a quality home.

A landlord that continuously issues a S.173 notice immediately becomes untrustworthy to a tenant, leading them to feel uncertain instead of having improved well-being.

TPAS Cymru believe that restricting the re issuing of a S.173 will minimise uncertainty amongst tenants and enable them to thrive.

**Proposal to remove a landlord’s ability to end a fixed term standard contract under section 186.**

Currently, under section 186 of the 2016 Act, a landlord may issue a minimum two months’ notice that the contract-holder must give up possession of the property. But the notice cannot require the contract-holder to give up possession before the end of the fixed term period, or within six months of the occupation date (the day on which the contract-holder would have been entitled to enter the property). If the contract-holder does not leave on the date specified in the notice (which will usually be the date on which the fixed term period ends, but could be later), the landlord may make a possession claim to the court.

Leaving this provision in place, whilst extending the required notice period for a section 173 notice to six months, would create a situation where a landlord could circumvent the protections offered for periodic standard contracts.

This is because, with the notice period applicable to a periodic standard contract extended to six months, a landlord may consider short fixed term contracts a preferable option. This could significantly reduce, or indeed negate, the benefits to contract-holders of extending the notice period under section 173. A contract-holder would not get the benefit of the increased security or of the extended notice periods where a landlord chose to offer a short fixed term contract that could be ended (after the end of the fixed term) by giving two months’ notice.

Therefore, it is proposed to remove a landlord’s ability to issue a notice to end the fixed term contract under section 186. This will mean that, if a contract-holder chooses not to vacate the property at the end of the fixed term, the contract will automatically be replaced by a periodic standard contract (under section 184).

Except in the case of a breach of contract, a landlord who wishes to remove a contract-holder who remains in occupation at the end of the fixed term, will be required to serve a section 173 notice to bring the new periodic standard contract to an end, which would be subject to the amended six-month notice period.

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

Yes

**Question 2:** Please tell us why.

TPAS Cymru agree with the Welsh Governments expectation that the continuation of the use of S. 186 will render the measures put in place to increase protection for tenants invalid. We therefore agree with this proposal.

## Use of break clauses

Break clauses allow a landlord or a contract-holder to end a fixed term contract at an agreed point. Whilst they do not automatically form part of every fixed term contract, they can be requested for inclusion by either party. The inclusion of regular break clauses by a landlord could circumvent the proposals being made in relation to extending security of tenure. For example a three year fixed term contract could be issued which included a term enabling the landlord to issue a possession notice every six months.

There is, therefore, a need to consider the future use of break clauses under the 2016 Homes Act. Three potential ways of doing so are:

* To limit the permitted number and/or frequency of break clauses under a fixed term contract.
* To set a minimum period before a break clause can be exercised.
* To prevent the use of break clauses.

## Proposal with regards to further protection against retaliatory evictions

These questions should be answered by all **respondents**

The Welsh Government proposes that, where a court has deemed a notice under section 173 of the 2016 Act to have been issued in a retaliatory fashion (e.g. to avoid undertaking repairs reported by the contract-holder) a landlord will be prevented from issuing a further notice under section 173 for six months.

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

Yes

**Question 2:** Please tell us why.

Tenants in the PRS have told TPAS Cymru that they already feel that renting is insecure without the threat of eviction; and that vulnerable families need to be protected. Tenants commented that many landlords ignore their responsibilities when it comes to repairs and that this change would act as a disincentive to the current behaviour and as a protection for tenants. Ultimately tenants felt that they should not be penalised or feel anxious about reporting a necessary repair and that it is immoral that this practice exists. These changes put tenants in a stronger position to challenge poor conditions.

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

These questions should be answered by all **respondents**

The Welsh Government is considering additional restrictions to any landlord seeking to issue a notice where they have failed to comply with relevant legislation. This will help drive up standards in the sector and ensure contract-holders live in properties of a safe and suitable standard. Key

areas for consideration here are compliance with Gas Safety Certificates and Energy Performance Certificates

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

Yes

**Question 2:** Please tell us why.

When the PRS is the only viable option for many individuals, it is essential that the homes that are being offered are good quality and enable communities to thrive. TPAS Cymru believe that providing information that is required by law should be taken very seriously. Landlords should be accountable for the services they provide and where failure to supply items as important as Gas Safety Certificates additional restrictions are beyond reasonable.

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| Responses to consultations are likely to be made public, on the internet or in a report.  If you would prefer your response to remain anonymous, please tick here: |

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