1. REMOVAL OF RENT PROTECTION: S.13/22 HOUSING ACT 1988

The Act proposes Occupation Contracts which in the Community Sector will generally be Secure Contracts and in the Private Sector will be Standard Contracts. Whilst the Act provides for a mechanism prescribed by Welsh Ministers to protect existing Assured and Assured Shorthold Tenants there is no such protection for Occupiers under new contracts.

Existing Local Authority Tenants were excluded from protection in any event under Schedule 1 of the HA 1988. This Act will put all Housing Association Occupiers on the same footing. This will encompass some 16% of the Housing stock (2013).

It has been argued that the Rents in the Community Sector are in any event subsidised and therefore artificially below Market Rents under the HA 1988 in any event.

Is that a good reason for removing the protection of the Act in both the Community and Private Rented Sector? The Right to apply to RPT is in itself a brake on Rent increases. If one of the intentions of the Act is to provide secure accommodation for tenants in both the Community and Private Rented Sectors to remove the protection of Section 13 means that tenants may be forced by

large increases in Rent demanded to move on after relatively short periods because they cannot afford proposed rent increases. The instability which this creates in people's lives could be partially checked by retaining the ability of tenants to apply to a RPT to assess a Market Rent in the Private Sector. This change would potentially affect 14% of all property in Wales (2013) in this Sector over time.

Applications under Section 22 are very rare (in the first 6 months of an Assured Shorthold Tenancy). In 2013/14 there were 12 under Section 13. In 2014/15 there were 17.

Often however, as will be seen from the number of cases dismissed or withdrawn (5 in 2013/14 and 8 in 2014/15) cases are brought based on a misconception as to the Tribunal's powers particularly in the Community (Housing Association) Sector. Tenants do not understand that Housing Association rents are less than Market Rents and that we can only set a Market Rent. Removing the right to Appeal in that sector may not therefore make a material difference

However where a Tenant can often be protected is where they are Assured and Assured Shorthold Tenants in the Private Sector and it is assumed this protection would continue under the mechanism prescribed for existing Tenants. There will however be no protection for either Secure or Standard

contract holders in the future. I question whether this a judicious move in the currant climate where there is huge pressure on housing and restrictions on borrowing.

2. VARIATION OF RENT: SECTION 104 AND SECTION 123

The procedure outlined in the Act does not prescribe a minimum period before a notice varying the rent can be served on the first occasion. S104(3) says the Notice may prescribe "any date". One can envisage a situation where an unscrupulous landlord sets a low rent to get the Tenants "hooked" and then when the Tenant has gone to all the expense of moving in, serves a Notice increasing the rent. At that point there is no protection and the Tenants only recourse may be to move out. I would suggest the minimum should be six months at least.

3. VARIATION OF "OTHER CONSIDERATION"

"Other consideration" presumably encompasses what one would now refer to as a "variable service charge". Again the first Notice can be served specifying any date with no minimum period required.

More widely Tenants currently paying a variable service charge have the protection of the Landlord and Tenant Act 1985. Presumably it is not intended that the effect of this legislation is to remove that protection.

4. RENT ACT SUCCESSION/S186 AND Sch 10 LOCAL GOVERNMENT AND HOUSING ACT 1988

On a second succession under the Rent Act 1977 and under the LGHA on the expiry of a long lease the current law prescribes that the Tenant becomes an Assured Tenant under a Market Rent. The RPT has the power to determine that Rent and under Sch 10 the Terms and conditions of the Tenancy. Neither a Rent Act Tenancy or a long tenancy will become an occupation contract. Some provision needs to be made to cover these albeit rare situations.

5. RIGHTS OF APPEAL

The Act gives "Tenants" generally a wide range of rights to make an application to a Court to enforce their rights. It is questionable whether in certain circumstances it would be more appropriate that the Tribunal were given jurisdiction. Some examples might include:-

- Review of a Notice by a Community Landlord that a contract is **NOT** a secure contract.
- Failure to supply/incorrect written statements.
- Succession Disputes
- Applications for Consent

- Determination of whether a property is fit for human habitation given the particular reference to the Housing Health and Safety Rating System in Section 94(2).

6. HOUSING WALES ACT

What is the inter play between this legislation and the licensing regime provided for by Part 1 of the Housing (Wales) Act?

Would a failure to supply a written statement within the required period be deemed to be a contravention which would fall into paragraph 3(c) of Section 20 re: the fit and proper person test?

Would a failure to supply a written statement be sufficient for a licensing authority to revoke a license under S.25(i)?

Would a licensing Authority make compliance with the new Bill an automatic condition of all Licenses?

Given that the Tribunal has jurisdiction to deal with Appeals in relation to Licensing and given that the Tenant is entitled to deduct any compensation awarded for breach of this requirement from the Rent would it make more sense for the Tribunal to deal with such breaches rather than a Court?

As no criminal offence is created (a failure to comply merely attracts compensation) how would a licensing authority be made aware of such a

breach? Where a case is successfully pursued by a Tenant in a Court/Tribunal should there be a duty on the Court/Tribunal to notify the Licensing Authority?

APPEALS

It should be noted that in so far as the RPT were to be given jurisdiction to deal with cases under the Act, Appeal would be to the Upper Tribunal Lands Chamber.

GENERALLY

The Act perceives that Landlord and Tenant enter into a negotiation regarding the form of the Contract. In my experience this is highly unlikely. In circumstances where pressure on the rental market is high and stock turns over very quickly it is highly probable that a Tenant will take what he is given.

The protection of the Act in prescribing certain conditions which cannot be altered offers some protection as does the condition that others cannot be altered to the detriment of the tenant but it is unrealistic to suppose that in most circumstances there will be any “negotiation” at all.

From a personal point of view having seen a draft of the proposed contract I think it highly unlikely that it will be read by an average tenant before it is signed. The report published on the Welsh Government Website contains a huge amount of information. Whilst the principle that all Occupiers should be

provided with a written contract is in principle a good idea a 26-30 page document which presumably will need to be provided bilingually is unmanageable. I appreciate that not all contracts will have to contain all that is in the proposed draft standard document.