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Housing Law in Wales:
Where we are and where we're going…

Jamie Saunders
Solicitor
Coastal Housing Group

Background

"In Wales around a third of the population of Wales lives in rented accommodation."

Community Housing Cymru 2016

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- Schedule 7 to the Government of Wales Act 2006 defines the scope of the Assembly's legislative competence to make Assembly Acts, within areas where the Welsh Ministers exercise executive functions. Number 11/20 is Housing.
- The result of this is that the Housing Law situation is currently governed by a variety of both English and Welsh statutes and some Welsh specific statutes.
- The following is a non-exhaustive list of statutes that can currently directly affect the working practices and legal responsibilities of housing associations in Wales.

The Current Position

Housing Act 1980	**Housing Act 1985**	**Housing Act 1988**
Housing Act 1996	Housing Act 2004	Housing (Wales) Act 2014
Anti-Social Behaviour Crime and Policing Act 2014	Equality Act 2010	Co-operative and Community Benefit Societies Act 2014
Rent Act 1977	Protection from Eviction Act 1977	Commonhold Leasehold Reform Act 2002
Defective Premises Act 1972	Human Rights Act 1998	Law of Property Act 1925
Environmental Protection Act 1990	Government of Wales Act 2006	Renting Homes (Wales) Act 2016*

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In addition…

- Organisation's own policies and where applicable, procedure guides
- Multiple matter specific pre-action protocols
- Welsh Government guidance, circulars etc.
- Proportionality under Article 8 ECHR
- Public Law obligations
- Common Law

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Proportionality and Article 8

- Following a number of *recent* developments in case law, you will always need to consider the proportionality of any eviction you are seeking.
- Where you are seeking to evict an assured / secure tenant, the court will undertake a similar exercise when considering the overall reasonableness of the application.
- However where you are evicting a demoted tenant, an assured shorthold tenant and licensee, common law tenant or even potentially a trespasser, you need to ensure you have considered your proportionality and public law position.

This is because even when a tenant has no legal right to remain in a property they can still question:

- Whether pursuing eviction is a proportionate means of achieving a legitimate aim and

- That you have acted fairly, honestly and transparently throughout.

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Potential Article 8 Points:

- The tenant is vulnerable and the landlord has not proposed to offer alternative accommodation
- Where an eviction would require a tenant's family to move at a critical time of schooling
- Claims brought against non-secure tenants for rent arrears when reason for the delay is HB ? UC maladministration
- Where a joint tenant moves to end the tenancy and leaves the other previously joint tenant as a trespasser.
- Any other case where there may be a question mark over the fairness of the eviction.

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Potential Public Law Challenges

- Questioning whether public bodies have acted fairly in reaching the decision to evict
- Questioning whether a public body has exceeded their delegated powers
- Has the landlord properly considered all relevant considerations and discounted all irrelevant considerations
- Ensuring that the landlord has not acted in bad faith, unlawfully or corruptly
- Failure of a public body to correctly apply the law
- Failure of a public body to properly exercise its discretion
- Failure of a public body to properly comply with its own policy and procedure.

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The Equality Act 2010

- The Equality Act 2010 was brought in to harmonise the law on discrimination and also to strengthen and extend powers and duties.
- The Act defines 9 protected characteristics namely: age, sex, race, gender reassignment, marriage and civil partnership, pregnancy and maternity, religion or belief, sexual orientation and disability.
- It prohibits in respect of these characteristics any act that would constitute: Direct Discrimination, Indirect Discrimination*, Harassment, Victimisation

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The Call for Reform

"…The main source of difficulty is the complexity of the substantive law itself…Questions whether someone is a licensee, a tenant or a sub-tenant raise issues of law which in some cases have had to be decided by the Court of Appeal or the House of Lords [Now Supreme Court]. A tenant whose home is in a state of disrepair may have a claim against his or her landlord in contract or in tort, under the Landlord and Tenant Act 1985 or the Defective Premises Act 1972 or the Environmental Protection Act 1990. It is difficult, if not impossible for tenants to decide these questions without advice. The complexity of housing law makes it a particularly difficult area for advice workers who are not legally qualified. When lawyers do become involved, the complexity of the issues increases…"

Lord Woolf, M.R. 1996

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"..simplifying substantive housing law would considerably reduce the costs of litigation in that area and improve access to justice. I recommend that the government should reconsider undertaking proposals such as a process of simplification, as proposed by the Law Commission in its papers of November 2003, May 2006 and August 2008.

Lord Justice Jackson 2009

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The Future…

- Welsh Government claim that the Renting Homes (Wales) Act 2016 will make it simpler and easier to rent a home in Wales, by replacing various and complex pieces of existing legislation with one clear legal framework.

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- At the heart of the act are the new 'occupation contracts'. With a limited number of exceptions, the act replaces all current tenancies and licenses with just two types of occupation contract:

- Secure contract - modelled on the current secure tenancy issued by Local Authorities

- Standard contract - modelled on the current assured shorthold tenancy used mainly in the private rented sector.

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Contract Terms

- Key terms (such as rent, address of property – i.e. things that are unique to the occupation contract).
- Fundamental terms (essential rights and obligations of landlord and tenant. Certain terms can be left out or modified but only if the outcome of this is to the advantage of the contract-holder).
- Supplementary terms (maintenance of property etc.) – these can be left out or modified either in favour of the contract-holder or the landlord.
- Additional terms (specific issues the parties want covered by the contract to which there are no statutory provisions, for example, the keeping of pets at the property).

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What will change

- Not everything, so don’t worry.
- The Act will also help protect people from being evicted simply for complaining about the condition of a property.
- The Act will help to prevent current homelessness situations where a joint tenant leaves the tenancy, thereby ending the tenancy for everyone else.

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What will change

- The new approach to joint contracts will also help victims of domestic abuse by enabling the person carrying out domestic abuse to be targeted for eviction.
- Inequalities in how someone can succeed to a tenancy are also addressed, with a new succession right for carers created.
- The Act will enable landlords to repossess an abandoned property without needing a court order.

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What will not change

- A minimum six-month occupation period will be maintained by the Act and landlords will have to ensure the property is fit for human habitation.

- Organisation own policies and where applicable, procedure guides

- Multiple matter specific pre-action protocols

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What will not change

- Welsh Government guidance, circulars etc.
- Proportionality under Article 8 ECHR
- Public Law obligations

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Conclusion

- It will not be the one stop shop for housing professionals or tenants
- Don’t be too worried about the changes of name and sections; a lot of the substance remains the same.
- It’s still quite complicated.
- Appears as though Art 8 and Public Law challenges will remain in place.
- A firm move away from the *English Model*