

Prevention before cure: a review of Welsh housing law

Calum Higgins reviews the new approach to homelessness contained in two key Welsh Acts, the Housing (Wales) Act 2014 and the Renting Homes (Wales) Act 2016, including provisions to deal with homelessness indirectly by improving conditions in the private rented sector.



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The charity Crisis recently published an independent review of the legal duties owed to homeless people in England (see June 2016 *Legal Action* 3 and page 5 of this issue). *The homelessness legislation: an independent review of the legal duties owed to homeless people* (April 2016) advocates that English homelessness legislation should follow the example set by Wales in the Housing (Wales) Act 2014 (H(W)A), which puts a more preventative approach to homelessness on a statutory footing. Although the Crisis report's focus was on homelessness, there is much more going on in Welsh housing law that can be studied for the benefit of housing legislation in England. Not only does the H(W)A focus on individual homelessness, it also seeks to address some of the wider causes of homelessness by considering sector-wide issues.

Housing (Wales) Act: a holistic approach to homelessness

In what the Crisis report noted as the 'key change' brought in by the H(W)A, stronger homelessness prevention and relief duties for local authorities are the backbone of the homelessness legislation. In short, the Act focuses on prevention before cure, by placing a duty on local authorities to prevent someone becoming homeless regardless of priority need status (s66). This duty extends to all persons threatened with homelessness in the next 56 days, an increase from the previous 28 days (s55). This dual approach of looking further ahead for threats of homelessness and extending the duty to everyone has resulted in a reduction of formally homeless persons presenting themselves to local authorities.

In particular, Crisis focused on the preventative approach being accessible to single people, who have previously found it very difficult to get help as they do not fit into the priority need criteria. The report cites Welsh government statistics, covering the period July to December 2015, which show a 67 per cent decrease in formal homelessness since the legislation came into effect. While welcome,

the homelessness legislation is only one part of the H(W)A, which makes a raft of changes to the housing sector in Wales. There is potential for further improvement as other changes to housing law in Wales take effect.

As the Crisis report notes, one major cause of homelessness is a tenant leaving the private rented sector. One of the more significant elements of the H(W)A is the introduction of compulsory licensing of landlords and agents, intended to regulate the practice of landlords and improve conditions in the private rented housing market. The context is a 42 per cent increase in private sector tenants over 10 years in Wales (according to the 2001 and 2011 census data). As Shelter Cymru highlighted in its response to the consultation on the then Housing (Wales) Bill, a 'disproportionate amount of [its] casework' was from 'problems [that] are caused by a lack of understanding among landlords and tenants about the nature of their rights and obligations ...'.

The Welsh government scheme introduces a compulsory regime with two main elements: registration and licensing. The first new legal requirement is for landlords with property in Wales, who will have to register their property address with the new licence authority, Rent Smart Wales, run by Cardiff Council and covering the whole of Wales. Landlords will then be faced with a choice of appointing a licenced agent to run the property or becoming a 'self managing' landlord and attending training to become a licence holder in their own right. This licence will be additional to licences that are already required under houses in multiple occupation (HMO) legislation or any local selective scheme currently underway.

The purpose of this new licence is to regulate behaviour within the private rented sector across Wales, and there is therefore a set of standard conditions on the award of a licence that are an important aspect of the regulations. To be issued a licence, the holders must attend an accredited training course and pass the 'fit and proper persons' test. Licence applications can be refused for not meeting the fit and proper persons criteria, which include previously breaching housing law, and being

convicted of firearms, drugs, or registered sex offences. All licences are granted on condition of compliance with the Code of Practice for Landlords and Agents Licensed under Part 1 of the Housing (Wales) Act 2014 (October 2015), which is split into legally binding and best practice elements. The legally binding aspects are mainly a codification of existing housing law and referenced legislation such as the Equality Act 2010. Crucially, the code is enforceable against the licence and a breach of the code could result in a revoking of the licence.

The scheme is currently in the registration of landlords phase and licences will be enforceable from 23 November this year, with many sanctions available, ranging from fixed penalties, through large fines in the magistrates' court for non-compliance with the rules to licence revocation. The ultimate punishment would be revocation, where a licence holder who loses their licence would have to appoint a licensed person to manage the property in their stead. A joint enforcement approach is being taken between the local authorities across Wales and Rent Smart Wales to identify those landlords in their areas and raise awareness of the scheme. When in force, the H(W)A allows for local authorities and Rent Smart Wales to prosecute offending landlords and agents, a point that is only a few months away.

Only when the scheme moves into its enforcement phase will we know if it will raise standards, bring bad landlords into line, and have a positive knock-on effect on issues such as homelessness and improvement of the housing stock available. It is hoped that increasing the standard of rental properties and behaviour of landlords will ultimately reduce the number of people who become homeless due to their property becoming uninhabitable or due to their landlord's behaviour. It is this kind of holistic approach to dealing with the issues that cause homelessness that will be interesting to analyse in the near future.

Renting Homes (Wales) Act: improving conditions for tenants

While it is the H(W)A that has received attention in the Crisis report, another major housing law has been passed more recently by the Welsh Assembly. The Renting Homes (Wales) Act 2016 (RH(W)A) is based on the Law Commission's 2006 *Renting homes* report, and is intended to make renting a home simpler and easier. It will replace tenancies and licences under existing legislation with a more

standardised legal framework, which should be more understandable for the public. The Act is described by the Welsh government as one of the most significant pieces of legislation to be passed by the Welsh Assembly. Together with the changes in the H(W)A, the RH(W)A should have a positive effect on homelessness and rented sector improvement.

Through secondary legislation, the RH(W)A will replace the majority of current tenancies and licences with a simplified occupation contract – one for the private rented sector and one for social housing. It will also require landlords to issue a written statement of the contract, containing the basic contract clauses, to tenants within two weeks of the beginning of the tenancy (s31). There will be two types of occupation contract – a standard contract (fixed or periodic) and a secure contract – with three types of terms classed as key matters, fundamental terms and standard terms. The RH(W)A provides fundamental contract terms for both types of occupation contract, which cannot be omitted or altered by the contracting parties. Therefore, across the sector there will be contract terms upon which tenants are able to rely that cannot be changed by landlords operating bad practice (s3).

Ultimately, like the licensing scheme, it is hoped that these changes will assist those using the private rented sector and help bring down the number of people made homeless due to confusion over their tenancy or rights. The Act is on the statute book; however, the Welsh government will implement most of these changes by secondary legislation in the near future. Once in force, contraventions of the RH(W)A will count against licence holders under the H(W)A, as a breach of the Code of Practice, demonstrating a large crossover between the Acts and their enforcement. As with the licensing scheme, we can only wait to see the evidence of better regulation when the legislation has been implemented.

Some other changes worth noting in the RH(W)A will have a direct effect on homelessness. Unlike in England, there will be the introduction of a requirement that landlords ensure rental properties are fit for human habitation (s91), which should assist people in staying in their rental property. The Act also addresses domestic abuse homelessness, by creating a fundamental contract term preventing the termination of a tenancy when a joint tenant leaves (s52); specifically, this will do more to help victims of domestic abuse by enabling perpetrators to be targeted for eviction and victims to maintain their tenancies. These provisions should tie in with the H(W)A duty to prevent homelessness,

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and allow local authorities a mechanism to avoid many situations that previously would have resulted in someone leaving their private rented tenancy and seeking emergency accommodation.

A period of wait and see

The next two years will be an interesting period to watch in Welsh housing law, for practitioners and other governments. It will provide a case study on how to take a different approach to homelessness, standards in the private rented sector, and the crossover between the two issues. As is often the case after legislative change, the success of these changes is reliant on implementation and enforcement by the public bodies given the tasks, and these changes are not yet fully in force to be able to assess their impact. It is also important to note that at this point the data evidence needed to analyse the impact of these sector-wide changes as a whole will not be available for some time. This is despite early figures showing the reduction in formal homelessness in Wales following the introduction of the H(W)A cited earlier. Following the Crisis report, it seems the devolved nations' housing policies will be worth future study when further impact evidence is available to assess. ■