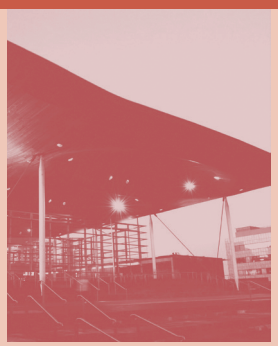
Law Commission
Reforming the law

Renting Homes in Wales



Law Com No 337

TSO
information & publishing solutions

Published by TSO (The Stationery Office) and available from:

Online
www.tsoshop.co.uk

Mail, Telephone, Fax & E-mail
TSO
PO Box 29, Norwich NR3 1GN
Telephone orders/General enquiries: 0870 600 5522
Order through the Parliamentary Hotline Lo-Call: 0845 7 023474
Fax orders: 0870 600 5533
Email: customer.services@tso.co.uk
Textphone: 0870 240 3701

The Houses of Parliament Shop
12 Bridge Street, Parliament Square
London SW1A 2JX
Telephone orders: 020 7219 3890/General enquiries: 020 7219 3890
Fax orders: 020 7219 3866
Email: shop@parliament.uk
Internet: http://www.shop.parliament.uk

TSO@Blackwell and other accredited agents

ISBN 978-0-10-185782-6

9 780101 857826

The Law Commission

(LAW COM No 337)

RENTING HOMES IN WALES

Presented to the Parliament of the United Kingdom by the Lord Chancellor and Secretary of State for Justice
by Command of Her Majesty

April 2013

Cm 8578 £17.00

Any enquiries regarding this publication should be sent to us at The Law Commission, Steel House, Tothill Street, London SW1H 8LJ

ISBN: 9780101857826

Printed in the UK for The Stationery Office Limited
on behalf of the Controller of Her Majesty's Stationery Office

ID 2551466 04/13 28839 19585

Printed on paper containing 75% recycled fibre content minimum

THE LAW COMMISSION

The Law Commission was set up by the Law Commissions Act 1965 for the purpose of promoting the reform of the law.

The Law Commissioners are:

The Right Honourable Lord Justice Lloyd Jones, *Chairman*
Professor Elizabeth Cooke
Mr David Hertzell
Professor David Ormerod QC
Miss Frances Patterson QC

The Chief Executive of the Law Commission is Mrs Elaine Lorimer.

The Law Commission is located at Steel House, 11 Tothill Street, London SW1H 9LJ.

The terms of this report were agreed on 27 March 2013.

The text of this report is available on the Law Commission's website at http://lawcommission.justice.gov.uk/areas/renting-homes.htm.

THE LAW COMMISSION

RENTING HOMES IN WALES

CONTENTS

THE LAW COMMISSION

RENTING HOMES IN WALES

To the Right Honourable Chris Grayling MP, Lord Chancellor and Secretary of State for Justice

PART 1
INTRODUCTION

1.1 The Law Commission has been asked by the Welsh Government to review and update its recommendations for the reform of housing law. This is in light of that Government's commitment to introduce, during the lifetime of the current assembly, a housing bill that is modelled closely on the Law Commission proposals.[1]

1.2 The review process has been collaborative. In particular, we have benefited from a number of meetings with stakeholders representing a wide range of housing interests. The full list of meetings and the attendees is attached at Appendix A.

1.3 The analysis and conclusions presented in this report are those of the Law Commission. They are presented here for the benefit of the Welsh Government which is, of course, free to accept, modify or reject them.

BACKGROUND

1.4 Renting Homes: The Final Report, published in 2006, set out the Law Commission's detailed recommendations for the reform of the law relating to residential rented housing.[2] Volume 2 of that report was a draft Bill putting those recommendations into statutory form.[3]

1.5 The report was the culmination of a major project which also saw the publication of two consultation papers: Renting Homes 1: Status and Security[4] and Renting Homes 2: Co-occupation, Transfer and Succession.[5] The consultation process

1 See *Homes for Wales: a white paper for better lives and communities* (21 May 2012), http://wales.gov.uk/docs/desh/consultation/120521whitepaperen.pdf (last visited 6 February 2013) para 21 of the Executive Summary.

2 Renting Homes: the Final Report (1) (2006) Law Com No 297, http://lawcommission.justice.gov.uk/docs/lc297_Renting_Homes_Final_Report_Vol1.pdf (last visited 6 February 2013).

3 Renting Homes: the Final Report (2) (2006) Law Com No 297, http://lawcommission.justice.gov.uk/docs/lc297_Renting_Homes_Final_Report_Vol2.pdf (last visited 6 February 2013).

4 (2002) Law Commission Consultation Paper No 162, http://lawcommission.justice.gov.uk/docs/cp162_Renting_Homes_Consultation1_Status_and_Security.pdf (last visited 6 February 2013).

5 (2002) Law Commission Consultation Paper No 168, http://lawcommission.justice.gov.uk/docs/cp168_Renting_Homes_Consultation2_Co-occupation.pdf (last visited 6 February 2013).

included presentations of the proposals at more than 100 public events, a significant proportion of which took place in Wales.

1.6 At the core of the recommendations is the creation of a straightforward and simplified statutory framework which:

(1) reduces the number of available forms of rental occupation of residential property to two – the secure contract and the standard contract; and

(2) provides model contracts which set out the basis on which occupiers occupy rented housing in clear terms.

1.7 There was little enthusiasm for implementation of the recommendations from the Westminster Government.[6] Its housing policy priorities at that stage were focused on extending owner occupation rather than reforming residential renting. Moreover, the Housing Act 2004, which had only recently implemented major changes in the regulation of rented housing, had required extensive government resources. The Law Commission's proposals relating to anti-social behaviour by the occupiers of rented housing, made in the first consultation paper, had largely been accepted and implemented in the Anti-Social Behaviour Act 2003. The Government eventually (in May 2009) formally rejected the recommendations for England.[7]

1.8 There was more interest from the Welsh Assembly Government. In November 2007, the then Minister for Housing accepted the recommendations in principle, for implementation in Wales if the legislative competence necessary to do so became available.[8] At that time, the operative devolution settlement was that contained in Part 3 of the Government of Wales Act 2006, which provided for the incremental addition of "matters" conferring legislative competence, within broadly defined "fields".[9]

RENTING HOMES AND WELSH LEGISLATIVE COMPETENCE

1.9 The final report was published in May 2006, during the passage of what was to become the Government of Wales Act 2006. The draft Renting Homes Bill had been drafted on the basis of the Government of Wales Act 1998, and included an important provision designed to give the National Assembly a power to amend the statute that was not made available to Ministers in Whitehall in respect of England.

1.10 The report also anticipated the introduction of Part 3 of the 2006 Act, and made specific recommendations for implementation in Wales if the recommendations

6 See the contrast drawn between the approach from the Westminster Government and the Welsh Assembly Government in Law Commission Annual Report 2007-2008, Law Com No 210, para 3.44.

7 Department for Communities and Local Government, *The Private Rented Sector: Professionalism and Quality: the Government Response to the Rugg Review* (May 2009), http://www.propertydrum.com/downloads/20090513/download (last visited 6 February 2013).

8 Law Commission Annual Report 2007-2008, Law Com No 210, para 3.44.

9 Government of Wales Act 2006, sch 5.

were rejected or given a low priority in England. At the time, it was not envisaged that Part 4 of the 2006 Act would be implemented as quickly as turned out to be the case.

1.11 In July 2010, a legislative competence order under Part 3 of the 2006 Act was passed, one of the provisions of which would have allowed for an Assembly measure to partly implement Renting Homes for social housing only.[10] However, following the referendum in March 2011, the provisions of Part 4 of the 2006 Act were brought into force, greatly extending the legislative competence of the National Assembly.

1.12 The details of the devolution arrangements will be discussed in detail later when the legislative competence of the National Assembly in connection with the implementation of the Renting Homes Wales Bill is considered.

THE CHANGING LEGAL ENVIRONMENT OF HOUSING

1.13 Housing law has not stood still since the publication of Renting Homes. In particular, there have been developments in the legal understanding of the relationship between article 8 of the European Convention on Human Rights and the mandatory eviction of social tenants. There have also been relevant statutory developments, particularly in provisions relating to housing related anti-social behaviour. Legislation such as the Equality Act 2010 also impacts upon the provision of rented housing. This report reviews these changes and ensures they can be accommodated within the Renting Homes recommendations.

1.14 One of the purposes of Renting Homes was to provide a legal framework for housing which would be responsive to changing policy priorities without the need for further legislation. The Welsh Government has identified a number of policy priorities which are related to housing or have housing implications, such as improving responses to domestic violence, facilitating landlord responses to anti-social behaviour and developing effective homelessness and supported housing strategies for Wales. One of the tasks of this review is to ensure that there are no inconsistencies between those policy priorities and the Renting Homes scheme.

1.15 In addition, whilst the Renting Homes recommendations were designed as far as possible to maintain the current balance of rights and responsibilities between landlords and occupiers, the development of the proposals inevitably involved some modifications to the status quo. This review highlights the most significant of these modifications, and, where these have proved controversial, explains our reasoning.

1.16 The report is structured as follows:

(1) Part 2 provides a summary of the Renting Homes recommendations. It will highlight those provisions which we consider to be of particular relevance to the Welsh Government and other stakeholders in Wales, revisit our reasoning for those recommendations which generated most controversy, and draw upon any learning from similar legislative

[10] Government of Wales Act 2006, sch 5, matter 11.4, in respect of social housing.

initiatives elsewhere, in particular Scotland.

(2) Part 3 considers the legislative competence of the National Assembly to implement Renting Homes.

(3) Part 4 updates the Renting Homes recommendations considering:

(a) developments in Human Rights;

(b) developments in statutory provisions relating to anti-social behaviour;

(c) other relevant developments; and

(4) Part 5 focuses on the Welsh context, in particular our proposals in relation to supported housing, domestic violence and anti-social behaviour.

PART 2
SUMMARY OF RECOMMENDATIONS

INTRODUCTION

2.1 The current legal framework for residential renting is complex, detailed and often obscure. Rights and responsibilities depend, amongst other things, on the lease/licence distinction, the status of the provider and the commencement date of the agreement. There is no statutory requirement for full written contracts and no requirement that any contract that is provided accurately reflects the occupier's legal position.[1] Some forms of renting are excluded from statutory schemes, and regulated only by the common law and unlawful eviction legislation. Others, such as supported housing, sit uneasily within the current framework, meaning that some everyday practices of providers put them at risk of legal action.

2.2 The complexity of the legal framework is a contributory factor to the poor reputation of the rented sector, as many landlord and tenant disputes result from ignorance of the law. It also means that compliance costs are high and the outcomes of litigation unpredictable, which particularly affects the providers of social housing.

2.3 At the heart of the Renting Homes recommendations is the replacement of dense statutory provisions, obscure common law rules and multiple tenancy types with statutorily regulated contracts to be used by all rental providers. Model contracts, underpinned by statute, will set out the basis upon which accommodation is rented, provide clear and accurate statements of the rights and responsibilities of the parties, and explain the circumstances in which rights to occupy may be brought to an end. The contracts will be easily available and easily understood.

2.4 Under the Renting Homes scheme, all tenancies and licences that enable occupation as a home are occupation contracts, unless the arrangements are specifically excluded by the Bill. "Tenancies" here includes both fixed term leases and periodic tenancies. Exclusions include long tenancies (over 21 years), business tenancies which include some residential accommodation, agricultural tenancies and Rent Act tenancies.[2] It therefore replaces the two main existing statutory regimes, the secure tenancy in the Housing Act 1985 and the assured regime in the Housing Act 1988,[3] along with ancillary statutory tenancy types like introductory and demoted tenancies.[4] Common law tenancies that come within the definition are included, such as those excluded from the other two regimes, including "tied" accommodation for employees of local authorities and private

[1] It should be noted that a written contract is required for landlords to take advantage of the accelerated possession procedure and the Office of Fair Trading's guidance on Unfair Tenancy Terms indicates that, for tenancy terms to comply with the Unfair Terms in Consumer Contract Regulations 1999, they should be in writing.

[2] The exclusions are set out in full in Part 2 of Schedule 1 to the draft Bill.

[3] Except for assured or assured shorthold tenancies with a fixed term of over 21 years.

[4] Housing Act 1996, Part 5, Chapters 1 and 1A .

sector tenancies with low ground rents.[5] The result is that the vast majority of residential lettings would be covered.

2.5 The scope of the scheme recommended by Renting Homes is more comprehensive than current provisions and eliminates the out-dated distinctions between local authority and housing association providers. Most significantly, it provides a unified and streamlined legal framework for renting which will not require the invention of new tenancy types in order to achieve new policy objectives.

2.6 The replacement of the current legal framework with the Renting Homes recommendations will not in itself transform the reputation of renting. However, the recommendations will assist in making rational and well-informed decisions to rent rather than purchase a home. Clearly expressed and fair contracts will contribute to the legal security of the occupier as well as enabling occupiers to understand the expectations that a rental contract places upon the parties to it.

2.7 The full details of the Renting Homes recommendations are set out in the final report.[6] However here we outline the key recommendations to facilitate subsequent discussion.

THE CONTRACTS

2.8 Although there is increasing convergence and overlap between providers of rental housing, which is recognised by our scheme, it remains appropriate to recognise two paradigms of provision – market provision and social provision.[7] The Law Commission therefore recommended two types of model contracts based upon the current assured shorthold tenancy and the secure tenancy.[8]

2.9 In the first contract type, the standard contract, the security of the contract holder is determined by the contract – a pre-requisite of a market system. Once any fixed term granted by the contract has expired, the landlord can evict the contract holder provided the landlord has given two month's notice. There is no need to prove fault.

[5] Occupation contracts are capable of being sold and can be inherited: see generally Renting Homes volume 2, Part 5, chapters 1 and 2.

[6] Renting Homes: the Final Report (1) (2006) Law Com No 297, http://lawcommission.justice.gov.uk/docs/lc297_Renting_Homes_Final_Report_Vol1.pdf (last visited 6 February 2013).

[7] It was put to us during our discussions that the proposals were insufficiently radical and that there should only be one contract type. However, the level of demand in the private rented sector and the nature of providers and provision mean that it is inappropriate for the statute to impose the type of social obligations upon private landlords that characterise social housing. The outcomes would be too uncertain and could result in a rapid decline in private provision. That is not to say that appropriate policy tools should not be utilised to achieve similar ends.

[8] The "lifetime" security offered by the secure tenancy is likely to become more conditional in the future. The Westminster Government's White Paper proposes a new mandatory ground for eviction where there has been serious housing related anti-social behaviour. This development is discussed at paras 4.25 to 4.33 below.

2.10 The second contract type, the secure contract, offers greater security to the contract holder. The landlord can generally only terminate the contract if the contract holder is found by a court to be in breach of the terms of the agreement, and eviction is determined by the court to be reasonable and proportionate.[9] Security is further enhanced by the possibility of succession to family members or carers.[10]

2.11 Landlords are required to provide written contracts which comply with statutory requirements. The contracts will contain four types of terms – key terms, fundamental terms, supplementary terms and additional terms. Many of these terms, other than those relating to termination, are identical across the contract types.

2.12 Key terms are those terms, such as the rent and the address of the property, which are unique to that contract. Whilst they cannot be statutorily prescribed, the draft Bill provides that such terms must appear in the contract.[11]

2.13 Fundamental terms set out the essential rights and obligations of landlords and contract holders. They include grounds for possession and the requirement that the landlord provide his or her name and address. Many fundamental terms are updated restatements of current statutory provisions, such as the repairing obligations contained in section 11 of the Landlord and Tenant Act 1985. For the first time, however, it will be a legal requirement that these rights and obligations are set out in the contract. Most fundamental terms can be modified or varied, but only in favour of the contract holder.[12]

2.14 Supplementary terms deal with the practical matters needed to make the contract work, so, for instance, they cover the payment of rent and the maintenance of the premises. Supplementary terms will be provided for within secondary legislation following consultation.

2.15 Additional terms deal with specific issues that parties want covered by the contract, but in relation to which there is no statutory provision. Supplementary and additional terms are significant in determining the extent to which the rented property feels like a home, relating for instance to the keeping of pets. It is therefore very important that such terms are fair and transparent.

2.16 Model contracts will be prescribed by statute. These will be easily available and written in user-friendly language. Whilst a written contract is a mandatory requirement, and must include the prescribed terms, landlords will not be forced

[9] There is one mandatory ground which applies to all types of occupation contracts. This is where the contract holder gives the landlord notice to terminate the contract but fails to give up possession of the premises at the due date.

[10] Our proposals for succession rights to secure contracts are one of the few occasions when the proposals adjust the pre-existing balance of rights and responsibilities between landlord and occupier. They are discussed more fully at paras 2.36 to 2.41 below.

[11] Renting Homes: the Final Report (2) (2006) Law Com No 297, http://lawcommission.justice.gov.uk/docs/lc297_Renting_Homes_Final_Report_Vol2.pdf (last visited 6 February 2013).

[12] A notable exception is the prohibited conduct term. This fundamental term cannot be modified. Prohibited conduct is discussed further at paras 5.8 to 5.29 below.

to use the model contracts. However, any modified supplementary or additional terms may be scrutinised by the courts for fairness and transparency.

LANDLORD NEUTRALITY

2.17 One important feature of the Renting Homes scheme is that the nature of the landlord is no longer part of the definition of the tenancy. This integrates market and social rental housing provision in one legal framework, unlike the current framework.[13] Although the draft Bill provides for circumstances in which social landlords are required to use secure contracts, such requirements will not necessarily apply to all of a social landlord's provision.

2.18 This will enable, for instance, social landlords to provide rented housing in circumstances where the social benefit of additional security is not necessary, such as lettings to key workers. Social landlords will also be able to use the standard contract for trial periods when housing policy determines that this is appropriate. The scheme also enables private landlords to provide rental housing with the enhanced security of the social sector.

2.19 The scheme is designed to encourage flexibility. One fault of previous housing legislation is that statutory provision was developed to solve the particular rental problems of the moment. This meant that when conditions changed, the statutory framework acted as a brake on providers' responses. We seek to avoid this outcome. At the moment, it is difficult to imagine anything other than excessive demand, high rents and falling incomes. However, we know from housing history that situations change and there may come a time when private landlords will be competing with social landlords for rental business. The statutory scheme is robust enough to accommodate such changes.

CONTROVERSIES

2.20 It was not part of our remit to question the existing balance of rights and responsibilities within the provision of rented housing. Rent regulation, for instance, fell outside of the scope of our project, as did security of tenure in the private rented sector. However, in the course of integrating local authority and housing association provision and extending, simplifying and modernising the scope of the scheme, we have inevitably recommended changes that alter the status quo.

2.21 Some of the changes are only a matter of tidying up statutory provisions. It made sense, for instance, to make notice periods consistent, even if that results in changes that benefit the landlord or the contract holder. However, some of the changes are more substantial and have proved controversial, both during our consultations prior to the publication of the final report, and during our meetings with housing stakeholders in Wales during 2012 and 2013.

[13] The significance of integration is noted in K Hulse et al., *Secure occupancy in rental housing: conceptual foundations and comparative perspectives* (Australian Housing and Urban Research Institute Final Report No 170) (2011).

.

The recommended abolition of ground 8 in the social rented sector

2.22 The crafting of the secure contract involved the abolition of ground 8, which is the mandatory ground of possession available in the assured tenancy. This entitles a landlord to a mandatory possession order when serious arrears of rent (two months or more) have accumulated. We decided it was inappropriate to reduce the rights of many thousands of local authority tenants and those whose secure status was protected as a condition of transfer from local authority to housing association management. Some registered social landlords and the Council of Mortgage Lenders expressed concern at the loss of this ground during our original consultations.[14]

2.23 At our meetings in Wales, some attendees from the housing association sector repeated concerns about the abolition of ground 8.[15] The uncertainty over housing benefit income continues to be a problem. The argument was put to us that the introduction of the universal credit, under which housing benefit is paid to the tenant rather than direct to the landlord, means that rent arrears are likely to rise. In addition, many tenants have had their housing benefit cut as a result of new rules on under-occupation. Ground 8 was supported as a tool to prevent occupiers getting into serious debt. It was said that it is better for the tenant to end the contract sooner and move into affordable accommodation, rather than putting off what is inevitable with serious financial consequences for both provider and occupier.

2.24 Concerns about the reliability of judges in granting possession orders were also repeated. We were told that some judges had refused to make mandatory orders and were sometimes reluctant to exercise their discretion and grant outright possession even when rent arrears were at serious levels.

2.25 Despite further reflection, we stand by our recommendation to abolish ground 8. This is for a number of reasons:

(1) security is a hallmark of social lettings and it is entirely appropriate that there should be judicial oversight of evictions from the social sector. The lack of mandatory grounds distinguishes the social contract from the standard contract;

(2) providing scope for judicial oversight of evictions where the landlord is a public body is essential in the light of the developing jurisprudence in connection with article 8 of the European Convention on Human Rights (discussed further in Part 4 of this Report);

(3) ground 8 is available only in a small proportion of social housing in Wales. It also appears from the relevant statistics that there is very little use of ground 8 by those landlords; and

[14] Renting Homes: the Final Report (1) (2006) Law Com No 297, http://lawcommission.justice.gov.uk/docs/lc297_Renting_Homes_Final_Report_Vol1.pdf (last visited 6 February 2013), paras 1.43 to 1.50.

[15] This was not a concern raised at our meeting with the Council for Mortgage Lenders.

(4) compliance with the pre-action protocol on rent arrears in social housing,[16] together with our recommendations for structured discretion and the judicial training which will accompany the new regime, should mean that outcomes of possession proceedings based upon rent arrears become more predictable.

2.26 We applaud the desire of social landlords to prevent their tenants getting into excessive debt. We consider however that using ground 8 as a tool to achieve that end is disproportionate and potentially counter-productive, as tenants will also have to bear the costs of court proceedings.

The recommended abolition of the six-month moratorium

2.27 Our recommendations abolish the rule that forbids a court from ordering possession of a private sector assured shorthold tenancy on the notice only (no fault) ground before the end of the first six months of the agreement.

2.28 The primary reason for abolishing the six-month moratorium on possession is to enable our proposed scheme to cover as many existing tenancy types as possible. Extensive coverage considerably assists simplification, and the scope for insecurity is greatest within those lettings which fall outside the current statutory control. Service occupancies, for instance, fall outside of the current statutory framework, meaning that people who live in tied accommodation have little security beyond that provided by protection from eviction legislation. Without the six-month moratorium, the standard contract becomes available for circumstances such as service occupancies, student accommodation and supported housing. In addition, the abolition of the six-month moratorium opens up new business opportunities for the private sector in short term lettings.

2.29 This proposal understandably raised many concerns during the original consultation from those interested in the rights of private tenants. It was apparent during our meetings in Wales that this concern has not gone away. Indeed, if anything, it has intensified with the increasing use of the private sector by local authorities to house homeless applicants and the evidence that private renting is becoming a long-term housing solution for many people. The argument is that everyone, and vulnerable people and families in particular, requires security in order to access services such as schools and doctors, and build stable lives.

2.30 We agree that security is an appropriate policy aim. However, we do not consider that security is enhanced by the six-month moratorium. There are three basic reasons for this.

2.31 Firstly, six months in a dwelling does not enable a stable life. We think that tenants' representatives want to defend the six months security as a remnant of the permanence previously offered by the Rent Act 1977 in the private rented sector. In reality what tenants' representatives want is fixed terms of two years or more.

[16] Pre-action Protocol for Possession Claims based on rent arrears, http://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_rent (last visited 6 February 2013).

2.32 Secondly, landlords have an interest in long term occupancy which is why many use fixed term contracts of 12 months or more. They wish to avoid voids and the transaction costs involved in new lettings. Of course, if rents are rising there is some incentive for landlords to evict occupiers, although this is offset by the ability of landlords to raise rents to market levels on an annual basis.

2.33 Achieving rent stability is arguably the best way to ensure that occupiers remain in a particular property for as long as they wish. History shows us that trying to achieve this through statutory means results in avoidance (with which potential occupiers often collude out of necessity), diminution of supply and excessive resources being devoted to policing the statutory boundaries.

2.34 This accords with the findings of Hulse et al who argue in a comprehensive and comparative study of renting that security is "a product of the interrelationship between market, policy and legal factors".[17] This suggests that security requires careful management of market, policy and legal factors. It cannot be achieved by imposing legal requirements on the private sector in isolation. We would argue that it is more likely to be achieved by creating those market conditions in which landlords choose to rent long term. Moreover, we consider that local authorities should use their market position to ensure longer term contracts for families they are placing in the private rented sector.[18]

2.35 Our third reason for considering that security will not be diminished by the abolition of the six-month moratorium is pragmatic. Landlords are highly unlikely to issue proceedings to terminate a contract in the first few weeks of a rental agreement, particularly when they have received one or two months rent in advance. Furthermore, the timescale once proceedings have been issued is likely to mean that orders for possession are unlikely to be made much earlier than six months after the commencement of the rental contract.

2.36 We therefore stand by our original recommendation to abolish the six-month moratorium. We do not consider that it enhances security in the private rented sector, and its abolition enables us to make our scheme wide ranging in its scope and avoids complexities and boundary issues.

Succession provisions in secure contracts

2.37 Our recommendations to extend succession rights were not as controversial as those discussed above. However, we consider it appropriate to discuss them in this section of the report as they represent a potential enhancement of the rights of current social tenants.

2.38 Succession provisions for tenants of social housing are relatively limited and there are technical differences between providers. The surviving spouses or civil

[17] K Hulse et al., *Secure occupancy in rental housing: conceptual foundations and comparative perspectives* (Australian Housing and Urban Research Institute Final Report No 170) (2011).

[18] For example, Shelter has produced proposals for five year fixed term tenancies, see Shelter, *A better deal: towards more stable private renting* (2012), http://england.shelter.org.uk/__data/assets/pdf_file/0009/587178/A_better_deal_report.pdf (last visited 6 February 2013).

partners of assured tenants of registered social landlords are entitled to succeed to the assured tenancy. There can only be one succession.[19] The legal provisions are different for local authority secure tenants – there is one succession which may be to a surviving spouse or civil partner or to a member of the deceased tenant's family (which includes those living together as husband or wife or living together as civil partners).[20] In practice, the outcomes are similar. A succession as a consequence of the death of a joint tenant counts as a succession for the purposes of the statute,[21] so it is rare that a member of a secure tenant's family succeeds to the tenancy even in secure tenancies.

2.39 The Localism Act 2011 simplified and reduced succession rights created after 1 April 2012 in England, but does not apply in Wales.[22]

2.40 We concluded in our final report that the rules on succession were too restrictive.[23]

2.41 Our recommendations therefore extend succession rights. We allow a succession to a priority successor, a class which includes a spouse or partner of the contract holder who occupied the home as their only or principal home at the time of their death. There is one significant limit on priority successors – no-one can succeed as a priority successor if the contract holder had himself or herself been in occupation by virtue of *a* priority succession.

2.42 Following the death of a contract holder who was a priority successor, we allow succession to a reserve successor. This class includes family members and carers. In order to be a reserve successor, the person must occupy the home as their only or principal home at the time of the contract holder's death, and must have done so through the period of 12 months ending with the contract holder's death. In addition, in order for a carer to succeed, the carer cannot be entitled to occupy any other premises as a home.

2.43 During the course of our meetings in Wales, it was suggested that someone who is or has been subject to an anti-social behaviour order or an anti-social behaviour injunction should be disqualified from being a reserve successor. If such a rule was agreed it would be a simple amendment to our recommended statutory rules.

2.44 We consider that these rules mitigate the hardship of current succession provisions and promote a key policy objective in protecting carers. We are mindful, however, of the need for stock to be managed properly and so have

[19] Housing Act 1988, s17.

[20] The succession provisions for local authority tenants are set out in the Housing Act 1985, ss 87 and 88.

[21] Housing Act 1985, s 88(1)(b).

[22] Sections 160 and 161. For a full discussion of succession provisions for social tenants see House of Commons Library Standard Note, *Succession rights and social housing SN/SP/1998* (26 November 2012).

[23] Renting Homes: the Final Report (1) (2006) Law Com No 297, http://lawcommission.justice.gov.uk/docs/lc297_Renting_Homes_Final_Report_Vol1.pdf (last visited 6 February 2013), paras 7.8 – 7.35.

included a ground for possession based upon the current ground 16 of Schedule 2 to the Housing Act 1985. This would be available where a reserve successor is under-occupying a property following the death of the contract holder. The ground could only be used within a limited time frame, and would be subject to reasonableness and the offer of suitable alternative accommodation.

LEARNING FROM SCOTLAND

2.45 Some of the changes we recommend in connection with social housing are similar to, or derived from, changes that have already been implemented in Scotland. The Housing (Scotland) Act 2001 introduced a single tenancy for the vast majority of its public sector tenants regardless of whether the landlord was a local authority or a housing association.

2.46 Reforms to tenancy terms in Scotland have so far been limited to the social sector. Nonetheless, although narrower than the Renting Homes recommendations, the experience of the reforms in Scotland provides useful material to inform the implementation of our proposals. We are very grateful to colleagues in Scotland who, in a series of meetings, reflected upon the successes and failures of their own housing law reform process.

Introducing the Scottish secure tenancy

2.47 The introduction of the Scottish secure tenancy was generally welcomed. It was seen as a commonsense solution, which reflected the reality of social housing provision. It was clear that ensuring all tenants signed the Scottish secure tenancy was the most challenging aspect of the reform process. It may be that the time scale imposed by the regulator was overly onerous. The Welsh Government may wish to reflect upon how stringently they would wish sign-up to be enforced.

2.48 It should be noted that several social landlords reflected upon the introduction of the Scottish single tenancy as an opportunity to have a conversation with their tenants about rights and responsibilities. It was observed that this may prove particularly useful in the context of the end of direct rent payments to landlords for those on housing benefit. The benefits of a tenancy agreement written in plain English were also noted; it was considered that there had been a de-mystification of the tenancy agreement for both tenants and staff.

Abandonment

2.49 The Renting Homes recommendations include a procedure to enable the landlord to regain possession without going to court when a property has been abandoned. This procedure was modelled on section 18 of the Housing (Scotland) Act 2001.

2.50 No-one with whom we met had anything adverse to say about this procedure. It was clear that some housing associations used the procedure alongside standard possession proceedings, but that was due to cautious legal advice rather than uncertainty about the legal effectiveness of the procedure.

Succession to carers

2.51 Schedule 3 of the Housing (Scotland) Act 2001 includes carers as qualified persons under the succession provisions. If no spouse or qualifying family member is available to succeed to the tenancy then a resident carer who has no other home is able to succeed. There is no minimum residence period required before a carer can succeed. As part of a consultation exercise on allocation of social housing, the Scots are considering introducing a 12-month residence requirement for succession to carers. There did not appear to be any demand for the repeal of carers' succession rights.

2.52 The Renting Homes recommendations, as outlined above, include a succession right for carers in certain circumstances. They also contain a 12-month residence requirement and a ground for possession for under-occupation following succession to a reserve successor. We consider that the recommendations already contain the safeguards that the Scots are now considering.

Joint tenants

2.53 In Scottish law, one joint tenant can terminate their tenancy without it operating to terminate the tenancy of any other joint tenants. The Housing (Scotland) Act 2001 provided a statutory procedure to terminate the tenancy of a joint tenant who has abandoned the tenancy.

2.54 The operation of the law in Scotland as regards joint tenants was treated as a matter of common sense and caused no problems.

Possession for rent arrears

2.55 There is no mandatory ground for eviction for rent arrears in the Scottish secure tenancy. In the course of our meetings we asked about the implications of the loss of the equivalent of ground 8. Whilst housing association landlords expressed some regret at the loss of mandatory eviction for serious arrears, and frustration at the difficulties in obtaining possession orders for rent arrears, there was no evidence of any increase in rent arrears following the implementation of the Act.

2.56 We also note that the Housing (Scotland) Act 2010, which came into force in August 2012, imposes pre-action requirements on landlords and tenants to do all that they can to resolve the arrears before landlords take action to evict onto a statutory footing. One aim was to reduce the mismatch between the relatively high number of possession proceedings issued, compared with the low number of orders granted.

PART 3
DEVOLUTION

3.1 Following the implementation of Part 4 of the Government of Wales Act 2006, the Welsh Government is able to consider housing law reform independently of Westminster. This Part of the report considers the current extent of the legislative competence of the National Assembly, and explains why the Renting Homes recommendations fall within those powers.

THE GOVERNMENT OF WALES ACT 2006

3.2 The Government of Wales Act 2006 provides the National Assembly with powers to make primary legislation in particular subjects. Those subjects are set out in Schedule 7, Part 1.

3.3 Section 108 of the Act specifies the additional tests that statutory provisions must satisfy if they are to be within the Assembly's legislative competence. In particular, they must relate solely to Wales and not fall within any of the exceptions in that Part. Restrictions on the use of the Assembly's powers, within the scope of its general area of legislative competence, are set out in Part 2 of Schedule 7.

3.4 Part 1 of Schedule 7 includes the following at paragraph 11:

(1) housing;

(2) housing finance except schemes supported from central or local funds which provide assistance for social security purposes to or in respect of individuals by way of benefits;

(3) encouragement of home energy efficiency and conservation, otherwise than by prohibition or regulation;

(4) regulation of rent;

(5) homelessness; and

(6) residential caravans and mobile homes.

3.5 This provides a broad statement of competence to legislate on housing matters with very little further elaboration.

The purpose of legislative provisions

3.6 Further assistance in answering the question whether a particular provision of an Assembly Act relates to a subject is provided by section 108 of the Government of Wales Act 2006. It "is to be determined by reference to its purpose, having regard (among other things) to its effect in all the circumstances" (section 108(7)). Subject to these, and the other tests, being satisfied, an Assembly Act may make any provision that could be made by Act of Parliament.

3.7 The significance of purpose in answering questions about legislative competence is reinforced by the decision of the Supreme Court in *Imperial Tobacco Limited v*

The Lord Advocate (Scotland).[1] In deciding that the provisions of the Tobacco and Primary Medical Services (Scotland) Act 2010 fell within the legislative competence of the Scottish Parliament, the Supreme Court provided an analytical approach which can be applied generally to questions about the scope of legislative competence.

3.8 Lord Hope, who gave the only judgment, set out a three stage approach to questions of legislative competence. The first stage requires that the purpose of the relevant provisions is identified. The second stage is to examine the relevant rules in the statute which sets out the scope of legislative competence (here the Government of Wales Act 2006) to identify the tests to be applied. The final stage is to draw stages one and two together to reach a conclusion on legislative competence.

3.9 The starting point, therefore, for a consideration of the legislative competence of the National Assembly to enact the Renting Homes recommendations is to demonstrate that they are for the purposes of housing. Our recommendations are concerned with the reform of housing law and the creation of a statutory framework that facilitates housing policy. In this context, the scope of housing law and housing policy merit consideration.

HOUSING POLICY AND HOUSING LAW

3.10 Housing policy, in broad terms, is concerned with government interventions to meet housing need and promote the delivery of better quality and affordable homes.[2] It emerged as a policy field in the early years of the twentieth century as part of government responses to the housing problems caused by urbanisation and industrialisation. Following the Second World War, housing policy was largely concerned with meeting demand through large scale public housing building programmes. From the 1980s, there were moves against the provision of state housing and towards the private sector and housing association provision, and the promotion of owner occupation.

3.11 In recent years, housing policy has become more sophisticated, recognising the role of housing policy within economic development and in the creation of sustainable communities.[3] The previous focus on the nature and role of the provider has shifted towards effective outcomes. As Maclennan puts it, "housing is a complex commodity and housing outcomes affect environmental well-being, social justice, good governance and, of course, the economy".[4]

3.12 Housing law is a relatively recent specialisation growing out of the welfare rights and law centre movements of the 1960s and 1970s, and the concomitant

1 [2012] UKSC 61, [2013] Scots Law Times 2.

2 See D Cowan, *Housing Law and Policy* (2011) ch 1 for a discussion of the complexity, incoherence and contestation inherent in these policy objectives.

3 The Barker Review of Housing Supply published by the Treasury in 2004 provides an excellent example of this broader understanding of the role of housing in the economy.

4 D Maclennan, *Housing policies: New times, New foundations* (Joseph Rowntree Foundation, 2005), http://www.jrf.org.uk/sites/files/jrf/1859353622.pdf (last visited 6 February 2013) p 25.

development of statutory regulation.[5] It was articulated as a specialist area by Andrew Arden and Martin Partington, and developed beyond a conventional public housing focus in articles for the Legal Action Bulletin and in ground breaking publications including Landlord and Tenant Law,[6] Quiet Enjoyment[7] and Housing Law Cases and Materials.[8]

3.13 The work championed the individual rights of tenants against the state and property owners. As Arden puts it:

> More generally, what practitioners were doing was to seek to persuade courts to move away from deciding issues relating to rented homes on the basis of a clinical and narrow assessment of proprietorial rights, but instead to address them from the perspective that what they were deciding was how people lived. In like vein, practitioners were also challenging the traditional protectionist approach to local authority decision-making (whether in relation to access to housing or to housing conditions, rents, eviction or otherwise) to be found in the courts.[9]

3.14 Arden explains what was distinct about this new specialism:

> In terms of housing law, the very purpose of the initial exercise was to seek to establish the proposition that what it was dealing with was not property, but accommodation - the notion that to own housing was not a pure exercise in investment but about places where people lived, to which the essential corollary is that no one should be turned out of a home without very good cause….Another parameter related to housing conditions - what is tolerable in housing is very different from what may be tolerable in commercial or industrial property, and ought not to be determined by an abstract construction of the balance of responsibilities indiscriminately applicable to all lettings.[10]

3.15 At the centre of housing law as Arden and Partington understood it lay the regulation of the rights and responsibilities of those who provide and occupy rented housing. It included the regulation of access to rental housing, the regulation of rent and the regulation of housing conditions.

5 For a reflective account of the development of housing law as legal practice and scholarship see A Arden and M Partington, "Housing Law Past and Present" in S Bright (ed.), *Landlord and Tenant Law: Past, Present and Future* (2006).

6 M Partington, *Landlord and Tenant Law* (1975).

7 A Arden and M Partington, *Quiet Enjoyment* (1982).

8 M Partington and J Hill, *Housing Law Cases and Materials* (1991).

9 A Arden and M Partington, "Housing Law Past and Present" in S Bright (ed.), *Landlord and Tenant Law: Past, Present and Future* (2006), p 196.

10 A Arden, "Origins of Housing Law" (2008) 30(4) *Journal of Social Welfare and Family Law* 287, p 291.

3.16 Cowan explains their analytical approach, saying that they "begin with an outline of the different types of legal relationships, or statuses, which occur in housing, followed by a 'function' or 'problem' based approach".[11] So once it is established, for instance, that someone is protected under the Rent Act 1977 then he or she can be advised on succession rights; once it is established that someone is an assured shorthold tenant then he or she can be advised to be cautious in enforcing a landlord's responsibilities for disrepair.

3.17 The energy of those who developed the specialism and the scope of the subject, which crosses traditional legal boundaries of public/private, property and contract, have given it a tendency to grow. In addition, it has responded to housing policy developments so that housing related anti-social behaviour and discrimination issues now form part of its terrain.

3.18 In Housing Law and Policy, published in 2011, Cowan updates the Arden/Partington approach. He draws upon a sophisticated understanding of contemporary housing policy to suggest a three part analytical framework for housing law - *regulation* of housing systems; *access* to housing; and individual *rights and responsibilities* in housing. This enables him to move beyond tenancy status to consider how different forms of occupation are constructed and promoted, and then to include owner-occupation in his close analysis of access, rights and responsibilities.

3.19 Cowan's work highlights the complex relationship between housing law and housing policy. In one sense, housing law and housing policy are distinct; an expertise for instance in housing law does not denote an expertise in housing policy or vice versa. In certain circumstances, housing law acts as a constraint upon housing policy. The constraints can be rights-based, like security of tenure or Article 8 of the European Convention on Human Rights. More significantly housing law is a key tool of housing policy, as the means through which housing policy is put into effect. Law is arguably a slow and cumbersome tool through which to put policy into effect. Reliance on law as a policy tool leads to the statutory complexity which has become a hallmark of housing law.

3.20 A major advantage of our recommendations is that they provide a simplified legal framework, so that policy can develop without the need to legislate for new forms of tenancy. Their purpose is to modernise, simplify and clarify the rights and responsibilities of the providers and occupiers of rental housing. They follow the shift in housing policy away from the regulation of providers towards the regulation of outcomes.

RELATIONSHIP OF RENTING HOMES AND CONSUMER PROTECTION LAW

3.21 Renting Homes draws upon the law on unfair contract terms which had been extended to housing contracts via the Unfair Terms in Consumer Contracts Regulations 1999. The impact of the Regulations is that if a court finds a term to be unfair then it will not be binding on the occupier and the landlord will not be able to rely on it.

[11] D Cowan, Housing Law and Policy (2011) p 7.

3.22 The Regulations provide important protections for occupiers but can leave landlords uncertain about the status of terms within their contracts. Moreover it is not easy for occupiers to enforce their rights under the Regulations, particularly because of the lack of security in the private rented sector.

3.23 The Renting Homes solution is to integrate the Regulations into the statutory scheme. By making the fundamental terms and those supplementary terms which incorporate supplementary provisions without modification statutorily protected from challenge under the Regulations, landlords are provided with certainty about the legality of the terms. The guarantee of fairness for the occupiers comes from the careful scrutiny of the provisions as part of the legislative process. In essence the Renting Homes recommendations utilise consumer protection law to achieve housing law purposes.

3.24 The Unfair Terms in Consumer Contract Regulations contain key limitations on their scope. These are:

(1) limitation to cases where landlords are "suppliers" and occupiers are "consumers";

(2) limitation to cases where terms are not individually negotiated; and

(3) exclusion of "core" terms.

3.25 All three limitations are relevant to the Renting Homes recommendations. The first two merit further consideration.

3.26 For the purposes of the Regulations a landlord is a supplier when he or she is "acting for purposes relating to his trade, business or profession, whether publicly owned or privately owned".[12] There is a lack of clarity as to the scope of the term "supplier" in the context of renting. One view is that all landlords are suppliers since they are in the business of renting homes. Alternatively it could be argued that a small number of landlords who are not making their living out of letting but are letting their property temporarily because they cannot sell, or those who let out property which has been left to them pending sale, may be excluded. These landlords are referred to as "hobby" or "accidental" landlords.

3.27 Guidance provided by the Office of Fair Trading on the operation of the Regulations in the context of tenancy agreement assumes that, in general, landlords can be considered "suppliers". In the event of a dispute as to whether an individual small landlord is a supplier, it will be for a court to decide whether the Regulations apply in that case.[13] As far as we are aware there have been no court decisions on this point.

3.28 In order to resolve any doubt on this issue, the recommendations and the draft Bill provide that the Regulations apply to all landlords and occupiers. What this

[12] Unfair Terms in Consumer Contract Regulations 1999, reg 3(1).

[13] Office of Fair Trading *Guidance on unfair terms in tenancy agreements* (September 2005) OFT 356.

means is that there is no need to consider whether a landlord is dealing as a business or not.

3.29 This seems the right solution as it avoids uncertainty about the status of, we think, a small number of landlords. It serves a housing law purpose, but equally significantly, has nothing more than a housing law purpose. It is a means to an end, and not an end in itself. Its purpose is to ensure that all landlords operate within the same legal framework, to provide an incentive for the use of model contracts, and to remove unnecessary boundaries.

3.30 The second limitation, relating to the exclusion of terms which have been individually negotiated, has recently been scrutinised by the Court of Appeal. This is relevant to our recommendations as the Renting Homes scheme enables landlords to insert additional terms that are not statutorily provided into the contract. Such terms can be scrutinised for fairness as they are not covered by the exception to the Regulations discussed above, that is they do not reflect mandatory statutory provisions.

3.31 The problem arises that if terms have been individually negotiated, the occupier would cease to have the protection of the Regulations.

3.32 The Regulations define negotiated terms narrowly:

> a term shall always be regarded as not having been individually negotiated where it has been drafted in advance and the consumer has therefore not been able to influence the substance of the term.[14]

3.33 As the Law Commission has recently pointed out, the mere fact that the consumer has had the opportunity of influencing the content of terms is insufficient.[15] This is borne out by the Court of Appeal decision, *UK Housing Alliance (North West) Ltd v Francis*, which held that the fact that a consumer had instructed solicitors who had the opportunity to consider and negotiate terms did not mean that the terms were individually negotiated.[16]

3.34 It is therefore highly unlikely that any rental agreement would include individually negotiated terms that fall outside the Regulations, and we consider that there is no practical need to deal specifically with this limitation in the legislation. If, however, the Welsh Government decided to remove any uncertainty by deeming that all additional and supplementary terms of rental contracts fall within the scope of the regulations, we are confident that such legislation would be for housing purposes and within legislative competence.

ENFORCEMENT AND INCIDENTAL PROVISIONS

3.35 Although we are confident that our recommendations fall into the area of housing it should be noted that the Government of Wales Act 2006 provides some

[14] Unfair Terms in Consumer Contract Regulations 1999, reg 5(2).

[15] Unfair Terms in Consumer Contracts: a new approach? (2012) Law Commission Issues Paper.

[16] [2010] EWCA Civ 117, [2010] 3 All ER 519.

supplemental legislative competence. Section 108(5) provides that a provision of an Act of the Assembly will be law even if it does not fall under one of the headings in Part 1 of Schedule 7 if it either provides for the enforcement of a provision which falls within legislative competence or it is otherwise incidental to, or consequential on, such a provision.

3.36 The purpose of clarifying the definition of supplier is to improve the enforcement of our scheme, by ensuring that the incentive of compliance with the Regulations applies to all landlords.

3.37 Our recommendations to structure the discretion of judges when making decisions about possession orders can also be understood both as housing provisions and as provisions designed to enforce the Renting Homes scheme.

3.38 The provisions on structured discretion were designed in response to comments about judicial inconsistency made during the consultation process for Renting Homes and repeated to us during our work on this current report. In deciding whether it is reasonable to make an order or decision, the Bill requires that a court must have regard to relevant circumstances. Relevant circumstances are broad in scope. The Bill provides judges with a check-list of relevant circumstances, including those relating to breach, the circumstances of the contract holder, those of the landlord and other persons (such as those on the waiting list).

3.39 The housing purpose behind the provisions is to achieve greater clarity and consistency in court decisions. The provisions also ensure that the judges implement the housing policy enshrined in the Bill.

3.40 *Local Government Byelaws (Wales) Bill 2012 – reference by the Attorney General for England and Wales* provides some guidance on the meaning of "incidental to, or consequential on" in the context of paragraph 6(1)(b) of part 3 of schedule 7 to the 2006 Act.[17]

3.41 For Lord Neuberger

> The answer to the question whether a particular provision in an enactment is "incidental to, or consequential on" another provision, obviously turns on the facts of the particular case. The answer may to some extent be a question of fact and degree, and it should turn on substance rather than form, although of course, in any well drafted Bill, the substance will be reflected in the form, at least in relation to that sort of question.[18]

3.42 Lord Neuberger refers to the reasoning in *Martin v Most*[19] in connection with a similar provision with the Scotland Act 1998. In a brief passage at [2010] UKSC

[17] *Attorney General v National Assembly for Wales Commission* [2012] UKSC 53, [2012] 3 WLR 1294.

[18] *Attorney General v National Assembly for Wales Commission* [2012] UKSC 53, [2012] 3 WLR 1294 at [49].

[19] [2010] UKSC 10, [2010] Scots Law Times 412.

paragraph 40, Lord Hope described a point as "important" in explaining why it was not "incidental or consequential on provisions found elsewhere in the enactment". Lord Rodger described certain amendments as falling within paragraph 3(1)(a) of Schedule 4 to the Scotland Act 1998 , if they "raise[d] no separate issue of principle", and were "safely stowed away in a schedule" in paragraph 93. He referred back to that observation at paragraph 128, where he described paragraph 3(1)(a) of Schedule 4 to the Scotland Act 1998 as "intended to cover the kinds of minor modifications which are obviously necessary to give effect to a piece of devolved legislation, but which raise no separate issue of principle". He contrasted them with other provisions which were "independent and deal with distinct aspects of the situation".

3.43 In the *Byelaws* case Lord Hope adds some clarity, saying at paragraph 83,

> The words 'incidental to, or consequential on, any other provision contained in the Act of the Assembly' make it clear that the interpretative exercise to which it points is one of comparison…. . How significant [is the provision] when it is seen in the context of the Act as a whole? If the removal has an end and purpose of its own, that will be one thing. It will be outside competence. If its purpose or effect is merely subsidiary to something else in the Act, and its consequence when it is put into effect can be seen to be minor or unimportant in the context of the Act as a whole, that will be another. It can then be regarded as merely incidental to, or consequential on, the purpose that the Bill seeks to achieve.

3.44 As we argue above, the clarification that "suppliers" applies to all landlords has no end and purpose of its own but is subsidiary to the purpose of reforming rental contracts. Thus it is incidental to, or consequential on the main purpose of the Bill - a housing purpose.

3.45 We consider that this approach to legislative competence is in line with the recent decisions from the Supreme Court. In both *Imperial Tobacco*[20] and in the *Byelaws* case[21] there is evidence of a certain resistance from the judiciary to interfering in the devolved Governments' understandings of their powers, and a positive approach to legislative competence which focuses on making devolution work.

[20] *Imperial Tobacco Ltd v The Lord Advocate (Scotland)* [2012] UKSC 61; [2013] Scots Law Times 2.

[21] *Attorney General v National Assembly for Wales Commission* [2012] UKSC 53, [2012] 3 WLR 1294.

PART 4
UPDATING RENTING HOMES

4.1 The purpose of this part of the report is to update the Renting Homes recommendations in light of developments in the law since the publication of the final report in 2006. We consider developments in human rights and developments in statutory provisions relating to anti-social behaviour.

DEVELOPMENTS IN HUMAN RIGHTS

4.2 It is in the interaction between housing law and human rights that the most extensive developments have taken place since the publication of the final report. Our recommendations were informed by the Supreme Court decision of *Qazi v Harrow LBC*[1] described by Cowan et al as "the zenith of the supremacy of property rights over the interposer's human rights"[2] and as a result we took a relatively robust approach to the relevance of article 8 to the eviction of insecure tenants.

4.3 However in a series of cases in the European Court of Human Rights, the Court made it clear that a person at risk of eviction is entitled to have the question of whether the eviction is a proportionate means of achieving a legitimate aim considered by an independent tribunal.

4.4 The Supreme Court resolved the inconsistency between its approach and Strasbourg in two recent and significant cases, Manchester *City Council v Pinnock (Secretary of State for Communities and Local Government intervening)*[3] and *Hounslow London Borough Council v Powell (Secretary of State for Communities and Local Government intervening)*.[4]

4.5 In *Pinnock*, the Supreme Court decided that the jurisprudence of the European Court of Human Rights requires that a domestic court should be able to consider the proportionality of evicting that person from his home under article 8 and, in the process of doing so, to resolve any relevant factual disputes between the parties. It also decided that it was possible to interpret the demoted tenancy regime in a way which was compatible with the European Convention. [5]

4.6 Lord Neuberger took a pragmatic approach to the implications of article 8 being potentially in play in possession proceedings. Acknowledging that this introduces a potential obstacle in those cases where a local authority is seeking possession of a person's home in circumstances in which domestic law imposes no requirement of reasonableness and gives an unqualified right to an order for

1 [2003] UKHL 43, [2004] 1 AC 983.

2 D Cowan, L Fox O'Mahony and N Cobb, *Great Debates in Property Law* (2012), p 148.

3 [2010] UKSC 45, [2010] 3 WLR 1441.

4 [2011] UKSC 8, [2011] 2 AC 186.

5 Demoted tenancies are insecure tenancies which are created following court orders that "demote" the previously secure or assured tenancy because of anti-social behaviour.

possession he suggests "this is best left to the good sense and experience of judges sitting in the county court".[6]

4.7 A further steer on the significance of article 8 was given by the Supreme Court in *Powell*. Here the court considered three evictions by local authorities where the relevant legislation provided no discretion to the court

4.8 Applying *Pinnock* the Supreme Court decided that:

(1) in all cases where a local authority sought possession of a property which constituted someone's home, for the purposes of article 8, the court asked to order possession had the power to consider whether the order would be proportionate;

(2) where a local authority was intending to apply for an order for possession the person in lawful occupation had to be informed of the reason for the authority's action so that he could attempt to raise a proportionality challenge; and

(3) the court would only have to consider whether the making of a possession order was proportionate if the issue had been raised by the occupier and it crossed the high threshold of being seriously arguable. In such a case the court would have to give a reasoned decision as to whether or not a fair balance would be struck for making the order.

4.9 In the overwhelming majority of cases there would be no need for the local authority to explain and justify its reasons for seeking a possession order, as it could be assumed that the authority was entitled to possession. The court need only be concerned with the occupier's personal circumstances, any factual objections raised and whether making the order for possession would be lawful and proportionate.

4.10 Whilst we do not want to overstate the significance of proportionality defences to possession proceedings[7] the Supreme Court decisions open up possibilities for challenging what have previously been understood to be automatic grounds for possession.

4.11 By way of illustration, in a recent High Court case, *Southend-on-Sea Borough Council v Armour*,[8] Southend Council was refused a possession order in proceedings against an introductory tenant on the basis of admitted threatening and abusive behaviour.[9] Mr Justice Cranston upheld the decision of the recorder in the county court. He said that the recorder had balanced all the factors weighing for and against it being proportionate to grant possession, and had

6 *Manchester City Council v Pinnock (Secretary of State for Communities and Local Government intervening)* [2010] UKSC 45, [2010] 3 WLR 1441 at [57].

7 See D Cowan and C Hunter's thoughtful analysis in "'Yeah but, no but' – Pinnock and Powell in the Supreme Court" (2012) 75(1) *Modern Law Review* p 78 to 91.

8 [2012] EWHC 3361 (QB).

9 Introductory tenancies are 12 month insecure tenancies which are granted prior to the grant of a secure tenancy.

provided a model judgement showing how these cases should be dealt with. For the recorder what had been of significance was the compliance of the tenant with the terms of his tenancy during the period following the issue of possession proceedings and the hearing. Because of this, and notwithstanding her finding that the council's decision to apply for possession was proportionate even though the tenant was suffering from a mental disability, she concluded that terminating the tenancy was no longer a proportionate decision.

4.12 This appears to have been the first case following the Supreme Court decisions in which a court on appeal has upheld a possession claim dismissal on the basis of the European Convention on Human Rights.[10]

4.13 At this stage it is difficult to predict how many possession claims will be refused because it would be disproportionate to make a possession order. There is no doubt however that any requirement to consider proportionality introduces a degree of uncertainty into mandatory grounds when they are deployed by public bodies.

THE EQUALITY ACT 2012

4.14 Mr Armour's disabilities were clearly relevant to the recorder's decision about the proportionality of the decision to evict. Anti-discrimination legislation places certain responsibilities upon public bodies not only not to behave in a discriminatory manner but also to take account of the need to eliminate discrimination when carrying out their functions.

4.15 Anti-discrimination provisions are now contained in the Equality Act 2010. This brings together into one statute provisions on unlawful discrimination which were previously set out in a number of statutes.

4.16 Section 15 of the Equality Act 2010 provides as follows;

> (1) A person (A) discriminates against a disabled person (B) if –
>
> (a) A treats B unfavourably because of something arising in consequence of B's disability, and
>
> (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
>
> (2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

4.17 Whilst section 15(2) might protect social landlords who are ignorant of a tenant's disabilities, it is likely that public law defences will be run which place an onus on the social landlord to make reasonable enquiries about disability.

4.18 The notion of indirect discrimination, set out in section 19 of the Equality Act 2010, also poses problems. A landlord can only defend itself from claims of indirect discrimination if it demonstrates that its actions are a proportionate

[10] N Dobson "A judicial chink?" (2012) 162(7541) *New Jaw Journal* 1524.

means of achieving a legitimate aim. The problem with the mandatory grounds for possession is that they provide no opportunity for the courts to check the proportionality of actions which impact upon disabled people.

4.19 The public sector equality duty, set out in section 149 of the Equality Act 2010, represents one of the most significant legal advances in combating inequality in recent years. It imposes a duty upon relevant organisations to consider how they could positively contribute to the advancement of equality and good relations. It requires equality considerations to be built into the design of policies and the delivery of services, including internal policies, and for these issues to be kept under review.

4.20 Recent cases on the public sector equality duty indicate its potential scope. In *Pieretti v Enfield*,[11] Mr Pieretti appealed against the decision of the county court to uphold the local authority decision that he was intentionally homeless because he had lost his private sector accommodation as a result of allowing arrears of rent to accumulate. Mr Pieretti produced evidence that he and his wife were suffering from depression. The Court of Appeal held:

(1) that the duty imposed on local authorities by section 49A(1) of the Disability Discrimination Act 1995, the previous manifestation of the public sector equality duty, applies not only to formulation of policies but also to the application of those policies in individual cases;

(2) for disability to play its rightful part in determinations made by authorities, there must be a culture of greater awareness of the existence and consequences of disability;

(3) the carrying out of inquiries and making decisions about statutory homelessness duties are functions of authorities for the purposes of section 49A(1) of the 1995 Act, and an authority must have due regard to the need to take steps to take account of a disabled person's disabilities when making a decision under those duties; and

(4) where an authority is not invited to consider an applicant's disability it is wrong to say that they should only consider the issue of disability if it is obvious, although authorities are not required in every case to make inquiries as to whether an applicant is disabled.

4.21 It therefore allowed the appeal against the decision of the local authority that it owed Mr Pieretti only limited duties under the Housing Act 1996.

4.22 What this indicates is that court scrutiny of decisions to evict disabled people may be required in order to demonstrate compliance with the public sector equality duty.

4.23 Our proposed secure contracts contain no mandatory grounds other than one which applies when the contract-holder gives the landlord notice to terminate the contract, but fails to give up possession of the premises.

[11] [2010] EWCA Civ 1104, [2011] PTSR 565.

4.24 However, the UK Government has proposed the introduction of a mandatory ground for anti-social behaviour into secure and assured tenancies. We argue that the developments in *Pinnock* and *Powell* as well as within equalities legislation cast doubt upon the suggestion that the use of such a ground by public bodies would provide the certainty that is a major objective of the changes. This is discussed further in Part 5 of this report where we consider Welsh housing policy objectives in the context of our recommendations. At this stage we reprise the law in relation to housing related anti-social behaviour and explain current reform proposals.

THE DEVELOPING LEGAL FRAMEWORK IN CONNECTION WITH THE PREVENTION OF ANTI-SOCIAL BEHAVIOUR

4.25 Since the introduction of the Housing Act 1996 and the implementation of the introductory tenancy regime there has been a steady accretion of powers available to social landlords to tackle anti-social behaviour. One significant effect has been to make the security of tenure of the local authority tenant increasingly conditional on the responsible behaviour not only of tenants, but of their family and visitors.

4.26 In addition to creating introductory tenancies, the Housing Act 1996 extended the discretionary grounds for possession, provided for an expedited notice for possession and introduced a free-standing injunction to provide local authorities with the power to restrain anti-social behaviour in connection with local authority housing.

4.27 The Anti-Social Behaviour Act 2003 developed and refined the tools provided in the Housing Act 1996, further reducing security of tenure for anti-social tenants and streamlining the procedures for obtaining injunctions. It is particularly relevant to this review of Renting Homes as it was enacted during the course of the Law Commission project and drew upon some of the proposals discussed in the Consultation Paper.

4.28 The Anti-Social Behaviour Act 2003 provides a mechanism for reducing the security of tenure of the secure tenant by enabling such a tenant to be demoted if he or she is responsible for anti-social behaviour. The Act inserted a new section 82A into the secure tenancy regime set out in the Housing Act 1985 which gives the court the power to make a "demotion order" in respect of a secure tenancy which becomes instead a demoted tenancy.

4.29 The court can only grant the order if the tenant, or another resident of or visitor to the tenant's home, has used the premises for illegal purposes or has behaved in a way which is capable of causing nuisance or annoyance to any other person. The court must also be satisfied that it is reasonable to make the order.

4.30 The Act also developed the injunctive power within the Housing Act 1996. It provides for three different types of injunction to respond to the problem of anti-social behaviour by tenants.[12] The injunctions are:

[12] Anti-Social Behaviour Act 2003 s 13.

(1) the anti-social behaviour injunction;[13]

(2) the injunction against unlawful use of premises;[14] and

(3) the injunction against breach of tenancy agreement.[15]

4.31 Powers of arrest and exclusion orders are available to restrain behaviour which threatens, or involves, violence.

4.32 The Anti-Social Behaviour Act 2003 also introduced closure orders. These enable the police to close residential premises being used for the supply, use or production of Class A drugs where there is a nuisance or disorder associated with the premises. Their scope was extended by the Criminal Justice and Immigration Act 2008 to cover the closure of premises associated with significant and persistent disorder or persistent serious nuisance to members of the public. These later orders are also available to local authorities.

4.33 The final legislative amendment to note is that the Housing and Regeneration Act 2008 introduced family intervention tenancies. This is a form of tenancy which incorporates behavioural support and which can be offered by social landlords to tenants who are at risk of eviction or have been evicted. There will be no difficulty in incorporating this tenancy form into the Renting Homes scheme. Indeed the requirement for support fits closely with the provisions within the Bill.

THE CURRENT UK WHITE PAPER PROPOSALS - PUTTING VICTIMS FIRST

4.34 In May 2012 the UK Government issued the white paper *Putting victims first: More effective responses to anti-social behaviour*.[16] Its aim is to simplify and streamline the legal tools available to the police, social landlords and local authorities to respond to anti-social behaviour.

4.35 The main point of interest in connection with Renting Homes is the development of a new mandatory ground of possession modelled on the process for terminating introductory tenancies. The ground is designed to apply where there is serious housing related anti-social behaviour.

4.36 The proposed possession order will be mandatory if:

(1) a tenant, a member of their household or a visitor to the property has been convicted of a violent or sexual offence, an offence against property, or supplying drugs or production with intent to supply drugs where the offence was indictable and committed in the locality of the property in the previous 12 months;

(2) a court has determined that a crime prevention injunction obtained by or in consultation with the landlord had been breached by a tenant, member

[13] Housing Act 1996 s 153A.

[14] Housing Act 1996 s 153B.

[15] Housing Act 1996 s 153D.

[16] Cm 8367.

of their household or visitor to the property within the previous 12 months;

(3) the property has been closed as a result of a court granting a community protection order (closure) for more than 48 hours; or

(4) a tenant, member of their household or visitor has been convicted by a court for breach of a noise abatement notice in respect of the tenant's property under the statutory nuisance regime.

4.37 The crime prevention injunction referred to above will replace anti-social behaviour injunctions and will be available to a wider range of applicants. The burden of proof for such an injunction (as with anti-social behaviour injunctions) would be civil and breach would be contempt of court and carry serious penalties. One advantage cited is that the crime prevention injunction can include both prohibitions on behaviour and positive requirements to address underlying issues. An example provided in the white paper suggests its use against "nightmare neighbours" in the private rented sector. We understand that there is some concern amongst social landlords about the replacement of the anti-social behaviour injunction. This is a tool they have confidence in, and they are concerned that it will lose its focus on anti-social behaviour.

4.38 The Welsh Government has decided to follow the Westminster lead on this issue, but has also made clear that it will reconsider its position in the light of the Renting Homes recommendations, and in particular having considered the value of our recommendations to structure the discretion of the judges.

4.39 The introduction of a mandatory possession ground to a secure contract would require a substantial change to the principles underpinning the Renting Homes recommendations. What should be noted is that in order to be compliant with human rights and equalities legislation its use would have to be proportionate and its impact upon vulnerable individuals carefully considered. We consider that careful drafting of the structured discretion will mean that the outcomes of discretionary possession proceedings will be more certain than the use of the mandatory ground. This is discussed in Part 5 below.

PART 5
WELSH POLICY PRIORITIES AND RENTING HOMES

5.1 It is important that the Renting Homes recommendations facilitate or at least do not inhibit the Welsh Government in pursuing its housing goals.

5.2 We consider that the modernisation and streamlining we recommend provides a legislative framework which enables a greater integration of housing policy and legal tools and facilitates flexible and responsive policy implementation.

5.3 The following discussion focuses on anti-social behaviour, domestic violence and supported housing. We also consider possible implementation strategies.

ANTI-SOCIAL BEHAVIOUR

The Renting Homes recommendations

5.4 The legal framework set out in the Renting Homes report was designed to meet the following objectives:

(1) speed of response;

(2) predictability of outcomes of legal proceedings;

(3) ability to protect witnesses; and

(4) appropriate protection of the rights of the alleged perpetrator.

5.5 The proposals in the consultation paper, as the final report explains at paragraph 15.5, proved very controversial. There was concern, particularly from lawyers who represent tenants, about adding to the legal powers of social landlords when, in their opinion, local authorities in particular were failing to utilise fully legal powers already available to them. These views were shared by voluntary sector organisations that represent tenants' interests. On the other hand responses from organized tenants' groups and many local authorities expressed great concern about anti-social behaviour.

5.6 Moreover the proposals in the consultation paper were superseded by legislation, in particular the Anti-Social Behaviour Act 2003, which incorporated some of the consultation paper proposals.

5.7 The final recommendations were therefore substantially modified. In brief, what was recommended was that:

(1) all occupation contracts should contain a prohibited conduct term;

(2) breach of the term will justify the institution of possession proceedings in the normal way;

(3) landlords can also seek injunctions for breach of the term;

(4) the granting of an injunction to a community landlord can be linked with

an order excluding the person injuncted from the premises, or from any area specified in the injunction, or requiring the person injuncted to exclude any other person from the premises; similarly a power of arrest may be attached to the injunction;

(5) injunction proceedings and possession proceedings can be dealt with together;

(6) landlords can seek the demotion of a secure contract-holder to a standard contract as an alternative to eviction; and

(7) there should be a target duty placed upon social landlords to respond to anti-social behaviour.[1]

The prohibited conduct term

5.8 The Law Commission recommends that all occupation contracts contain a fundamental term relating to prohibited conduct in and around the locality of rented housing. The term provides the equivalent to what is now a discretionary ground for possession. A judge would only order possession if, in addition to the term being breached, the judge considered it reasonable to do so. As explained above, the discretion would be structured.[2]

5.9 Breach of the term could trigger proceedings in the normal way. But in this case, exceptionally, proceedings could be started on the same day as the landlord gives the possession notice.

5.10 There are four elements to the term:

(1) A contract holder 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.

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

(a) a person living in the locality of the premises; or

(b) a person engaged in lawful activity in, or in the locality of, the premises.

(3) 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.

(4) 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).

[1] A target duty, that is one which is aspirational, was proposed because of the potential resource implications of a specifically enforceable duty.

[2] See para 3.38 above.

5.11 Unlike most other fundamental terms, this one may not be modified or varied by the landlord. The appropriate authority has the power to amend the fundamental provision by order.

5.12 During meetings with Welsh stakeholders it was noted that the term did not use the phrase “anti-social behaviour”. This was seen as potentially problematic as anti-social behaviour is a well understood term that has useful effects. This point could, if it were considered desirable, be addressed by using headings over the relevant clauses, so that clause 1 of the term could be headed violence in the home, clause 2 anti-social behaviour, and clauses 3 and 4 criminal purposes. In this way clear messages about prohibited behaviour can be communicated.

5.13 The term, it will be seen, describes conduct which may also be criminal. Its purpose, however, is not to police or punish crime. The term, rather, has a housing purpose, to deal with the *housing consequences* of the conduct, and relates directly to the provision of the housing in question. It replaces the “illegal or immoral user” clause traditionally included in tenancies, and the current domestic violence ground for possession.

The scope of the term

5.14 The first policy questions to be decided are whether the prohibited conduct term is appropriate in the current context and whether it reflects Welsh policy priorities. The term (unlike the white paper mandatory ground) includes violence perpetrated within the home. The following questions arise.

(1) Should the term include violence within the home?

(2) Should it be expanded to cover other sorts of behaviour?

(3) Should it be redrafted to align more closely with the proposed mandatory ground for possession? In particular should it give the power to evict for breach of the proposed crime prevention injunctions and/or to obtain community protection (closure) orders?

5.15 The inclusion of domestic violence in the prohibited conduct term is more closely integrated into the Renting Homes scheme. The arguments in favour of the term covering domestic violence are three-fold. First, it sends a clear policy message that domestic violence is taken seriously as an issue of community safety. Secondly, it replaces the current rather poorly drafted ground for eviction for domestic violence. Thirdly, it provides a remedy to replace the practice of many social landlords in cases of domestic violence whereby they ask the victim to serve a notice to quit, thus terminating the joint tenancy, and then grant a new sole tenancy of the home to the victim.

5.16 The Renting Homes scheme provides that the service of a notice by a joint occupier should operate to terminate the occupation agreement in relation to that occupier only. As regards the other joint occupier(s), the agreement will be unaffected. Thus, the current method of responding to the continued occupation of the perpetrator of domestic violence will no longer be available to the social landlord. Potentially, therefore, the perpetrator could profit from his or her wrongdoing by gaining occupation of the whole property.

5.17 If the prohibited conduct term includes domestic violence then possession can be obtained on breach against an offending joint tenant. Social landlords will also be able to use the freestanding injunction power with exclusion orders and power of arrest in cases of domestic violence. In either case, social landlords will be able to seek a possession order in proceedings for breach of any injunction. The possession order will operate to terminate the joint tenant's rights and obligations in respect of the rental agreement.

5.18 The landlord will have two options, both of which seem more sensible outcomes than those available under the current domestic violence ground.

(1) If the victim wishes to be re-housed elsewhere, the landlord will be able to re-gain possession of the property following a suitable offer to the victim.

(2) Where the victim wishes to remain in the current home then the landlord will be able to vary the agreement.

5.19 During the course of writing this report we have met with those who are responsible for developing policies to respond to domestic violence in Wales. They welcomed the inclusion of violence perpetrated within the home as part of a prohibited conduct term and considered that the options available to landlords provide appropriate choices for the victims of domestic violence.

5.20 However, there was discussion of the scope of behaviour included in the prohibited conduct term. There was some enthusiasm for widening the prohibited conduct to include economic, psychological, emotional and other abusive behaviour within the home. Whilst we agree that it is appropriate for a wide range of types of abusive behaviour to be included in policy responses to domestic violence, we do not consider that it is appropriate to widen the prohibited conduct term to include such behaviour.

5.21 Whilst a broader definition of domestic violence is a very useful statement of policy aspirations we do not think that failures to live up to such standards, other than where the abuse is physical, should result in termination of the rental contract. Moreover the evidential difficulties inherent in demonstrating for instance psychological or emotional abuse would be significant. We therefore recommend that there be no extension to the prohibited conduct term in relation to behaviour within the home.

A mandatory ground?

5.22 The second policy issue is whether breach of the term should be a mandatory rather than discretionary ground for possession. The approach taken in Renting Homes is to limit the availability of mandatory possession proceedings. In particular courts are required to take into account reasonableness when considering possession proceedings taken by social landlords against secure contract holders. This reflects the social nature of the secure contract.

5.23 As noted above, we are aware that the Welsh Government consulted on a new mandatory ground for serious housing related anti-social behaviour between

November 2011 and February 2012 and has decided to follow the proposals for England and introduce such a ground.[3] It has indicated however that it will reconsider its position when considering the Renting Homes proposals and in particular the use of the structured discretion which the proposals require from the judiciary when making decisions about possession.

5.24 The advantages of a mandatory ground are claimed to be certainty and speed – although the Renting Homes proposals provide for a speedy eviction process by enabling possession proceedings to commence on the same day as notice is served.

5.25 Moreover the consequence of *Pinnock*[4] is that in circumstances where article 8 rights might be raised there is no certainty that the possession order will be granted on a mandatory ground. In addition it is incumbent upon the social landlord to make careful checks when the tenant may be vulnerable. As we pointed out above, if the term includes domestic violence the court's consideration for the arrangement for rehousing the victim are a necessary part of the process.

5.26 Our observation is that, despite the superficial attractiveness of a mandatory ground, a robustly drafted discretionary ground may prove more effective in achieving policy objectives.

5.27 What is required of the judges is that they answer the question whether the interference with article 8 rights is really proportionate to the legitimate aim being pursued. We consider that structured discretion within Renting Homes is more likely to produce robust decisions that a mandatory ground with an unarticulated requirement on judges to consider proportionality. This structured discretion requires a judge to take into account all of the relevant circumstances surrounding the decision to evict, which include the likelihood of a recurrence of the breach and any action to prevent a recurrence of the breach before the application for a possession order was made. The probable effect of making a possession order on the occupier and his or her private or family life must then be balanced against the effects on the landlord and on other persons including neighbours and those on the housing waiting list.

5.28 The use of structured discretion would arguably have prevented, for instance, the district judge in *Thurrock Borough Council v West*[5] from misapplying the proportionality test. Here the Court of Appeal pointed out that there was nothing about the circumstances of a young couple with a child who have limited financial resources which distinguishes them from others on local authority waiting lists. Balancing their needs against those of the landlord to allocate its housing stock appropriately and against those on the housing waiting list, as the use of structured discretion would require, would be more likely to result in a decision in favour of the local authority.

[3] See paras 4.4 to 4.39 above.

[4] *Manchester City Council v Pinnock (Secretary of State for Communities and Local Government intervening)* [2010] UKSC 45, [2010] 3 WLR 1441 at [57].

[5] [2012] EWCA Civ 1435.

5.29 On the other hand the structured discretion provides the necessary opportunity for the court to consider the vulnerability of the occupiers of the home, as required by the Human Rights Act 1998 and equality legislation.

SUPPORTED HOUSING

The Renting Homes recommendations

5.30 The final report of Renting Homes set out our recommendations for a new scheme for the regulation of security within supported housing. We worked closely with supported housing providers, particularly those from Wales, in devising this scheme which is designed to facilitate the stepped progression of supported housing clients from housing dependency towards housing independence. It avoids providers having to choose between legally dubious licences and assured shorthold tenancies which may be inappropriate for supported housing.

5.31 The recommendations are set out in full in Chapter 10 of the final report.

5.32 In summary the recommendations:

(1) define supported housing as housing where there is a direct link between the provision of accommodation and the provision of support services;

(2) exclude short term provision from the statutory scheme, providing a four month period for respite care, or to enable the provider to assess the housing and support needs of the client; and

(3) exclude supported housing accommodation from the requirement to enter into secure contracts for a period described as "the enhanced management period". This exclusion is for a period of two years, which can be extended for further periods in particular circumstances. After the expiry of the enhanced management period the contract becomes a secure or standard contract as appropriate.

5.33 During the enhanced management period the client rents on a supported standard contract, which is a variant of the standard contract. This offers two specific management tools for providers. First, it gives supported housing managers the power to exclude an occupier without the need for any intervention by the court for a maximum period of 48 hours. This could be applied where the occupier has used violence against anyone on the premises, creates a risk of significant harm, or 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. Second, managers are given the power to move occupiers within the accommodation provided.

5.34 Landlords will not be able to use the power to exclude more than three times in six months. If the behaviour persists, the landlord must seek possession.

5.35 Where there is a need for longer or permanent exclusion the landlord will have to go to court to obtain an injunction, which can last up to the length of the notice period for possession proceedings.

5.36 During the drafting of this report we met with supported housing providers. Whilst there was general support for the recommendations it was considered that the details, particularly of the time frames for exclusion and extension of the enhanced management period, needed careful consideration. Particular worries were expressed about the difficulties providers face in locating follow on accommodation within two years. We agree that the time frames need careful thought and consider that any reasonable extension of these periods would be consistent with the aims of our proposals. We therefore propose further public and stakeholder consultation on these details.

IMPLEMENTATION

5.37 The Renting Homes report recommended a "big bang" approach to implementation. On a due date all existing tenancy agreements and licences are to be converted into either secure or standard contracts.

5.38 There is nothing however to prevent model contracts being available prior to the implementation date. Indeed we can see advantages to social landlords in particular in signing up new occupiers to the model contracts in advance of the implementation date and we recommend drafting legislative provisions to accommodate this.

5.39 Rent Act tenants are excluded from the automatic conversion process. Although there is no logical barrier to their conversion to secure contracts there was resistance from private sector Rent Act tenants to the proposals. We concluded that, in the particular circumstances of the relations between Rent Act tenants and landlords, that, alone among tenancy types, Rent Act tenancies should continue to exist (of course, no new tenancies could be created).

5.40 During the writing of this report a suggestion was made that Rent Act tenants who have housing association landlords should be brought within the scheme. It was pointed out that there is an extensive and expensive bureaucracy involved in the fair rent protection given to these tenants which is unnecessary because fair rents are higher than rents charged to housing association tenants. Moreover we can rely on housing association landlords accurately to inform such tenants of their continued security. We therefore think this is a sensible suggestion which could be incorporated into the statutory scheme.

5.41 The Law Commission would like to record its appreciation of the continuing interest of the Welsh Government and Welsh housing stakeholders in the Renting Homes proposals. Their contributions enriched the original proposals and have been extremely useful in this review. We are grateful for the opportunity that their enthusiasm for Renting Homes has provided for us to demonstrate the robustness and flexibility of our proposals and their ability to stand the test of time.

(*Signed)* DAVID LLOYD JONES, *Chairman*
ELIZABETH COOKE
DAVID HERTZELL
DAVID ORMEROD
FRANCES PATTERSON

ELAINE LORIMER, *Chief Executive*
27 March 2013

APPENDIX

The following meetings were held during the preparation of this report.

All-Wales Anti-Social Behaviour Group

Supported housing - organised by Cymorth Cymru

Domestic Abuse - Welsh Government policy leads

Council of Mortgage Lenders:

Registered Social Landlords - organised by Community Housing Cymru

Residential Landlords Association

Scottish Government

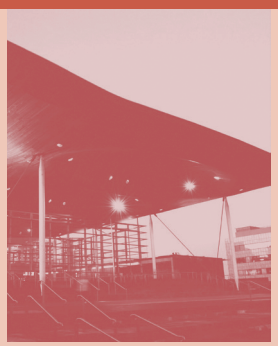
Scottish Federation of Housing Associations

Chartered Institute of Housing, Scotland

Association of Local Authority Chief Housing Officers, Scotland

Law Commission
Reforming the law

Rhentu Cartrefi yng Nghymru



Comisiwn y Gyfraith Rhif 337

TSO
information & publishing solutions

Cyhoeddwyd gan TSO (The Stationery Office) ac ar gael o:

Arlein
www.tsoshop.co.uk

Post, Teleffôn, Ffacs ac E-bost
TSO, PO Box 29, Norwich, NR3 1GN
Archebion teleffôn/Ymholiadau cyffredinol:
0870 600 5522
Archebwch drwy Linell wybodaeth galwad
isel Parliamentary: 0845 702 3474
Archebion Ffacs: 0870 600 5533
E-bostiwch: customer.services@tso.co.uk
Ffôn Destun: 0870 240 3701

Siop Senedd y DU
12 Bridge Street, Parliament Square, London SW1A 2JX
Archebion teleffon/Ymholiadau cyffredinol: 020 7219 3890
Archebion ffacs: 020 7219 3866
Ebostiwch: shop@parliament.uk
Y we: http://www.shop.parliament.uk

TSO@Blackwell ac Asiantwyr Archrededig eraill

ISBN 978-0-10-185782-6

9 780101 857826

Comisiwn y Gyfraith

(COMISIWN Y GYFRAITH Rhif 337)

RHENTU CARTREFI YNG NGHYMRU

Cyflwynwyd i Senedd y Deyrnas Unedig gan yr Arglwydd Ganghellor a'r Ysgrifennydd Gwladol dros Gyfiawnder ar Orchymyn Ei Mawrhydi

Ebrill 2013

Cm 8578 £17.00

Mae'r cyhoeddiad hwn ar gael i'w lawrlwytho yn www.official-documents.gov.uk
ISBN: 9780101857826

Argraffwyd y ddogfen yn y Deyrnas Unedig gan Y Llyfrfa Cyf ar ran Rheolwr Llyfrfa Ei Mawrhydi

ID 2551466 04/13 28839 19585

Argraffwyd y ddogfen ar bapur sy'n cynnwys o leiaf 75% o ffibr a ailgylchwyd.

COMISIWN Y GYFRAITH

Sefydlwyd Comisiwn y Gyfraith gan Ddeddf Comisiynau'r Gyfraith 1965 er mwyn hybu diwygio'r gyfraith.

Comisiynwyr y Gyfraith yw:

Y Gwir Anrhydeddus Arglwydd Ustus Lloyd Jones, *Cadeirydd*
Yr Athro Elizabeth Cooke
Mr David Hertzell
Yr Athro David Ormerod CF
Miss Frances Patterson CF

Prif Weithredwr Comisiwn y Gyfraith yw Mrs Elaine Lorimer.

Lleolir Comisiwn y Gyfraith yn Steel House, 11 Tothill Street, Llundain SW1H 9LJ.

Cytunwyd ar delerau'r adroddiad hwn ar 27 Mawrth 2013.

Mae testun yr adroddiad hwn i'w weld ar wefan Comisiwn y Gyfraith ar http://lawcommission.justice.gov.uk/areas/renting-homes.htm.

COMISIWN Y GYFRAITH

RHENTU CARTREFI YNG NGHYMRU

CYNNWYS

RHAN 1
CYFLWYNIAD

1.1 Mae Llywodraeth Cymru wedi gofyn i Gomisiwn y Gyfraith adolygu a diweddaru ei argymhellion ar gyfer diwygio cyfraith tai. Gwnaed hynny yng ngoleuni ymrwymiad y Llywodraeth honno i gyflwyno, yn ystod oes y cynulliad presennol, bil tai a fydd wedi ei fodelu'n glòs ar argymhellion Comisiwn y Gyfraith.[1]

1.2 Bu'r broses adolygu'n un gydweithredol. Yn benodol, cawsom fudd o nifer o gyfarfodydd a gynhaliwyd gyda chynrychiolwyr ystod eang o fuddiannau tai. Rhoddir rhestr lawn o'r cyfarfodydd a'r rhai fu'n bresennol ynddynt yn Atodiad A.

1.3 Comisiwn y Gyfraith piau'r dadansoddiad a'r casgliadau a gyflwynir yn yr adroddiad hwn. Cyflwynir hwy yma er budd Llywodraeth Cymru, sydd, wrth gwrs, yn rhydd i'w derbyn, eu haddasu neu'u gwrthod.

Y CEFNDIR

1.4 Roedd yr adroddiad, Renting Homes: The Final Report, a gyhoeddwyd yn 2006, yn nodi argymhellion manwl Comisiwn y Gyfraith ar gyfer diwygio'r gyfraith sy'n ymwneud â thai preswyl ar rent.[2] Roedd Cyfrol 2 o'r adroddiad hwnnw yn cynnwys Bil drafft, a oedd yn mynegi'r argymhellion hynny mewn ffurf statudol.[3]

1.5 Roedd yr adroddiad hwnnw yn ganlyniad prosiect enfawr a oedd hefyd wedi arwain at gyhoeddi dau bapur ymgynghori, sef Renting Homes 1: Status and Security[4] a Renting Homes 2: Co-occupation, Transfer and Succession.[5] Yn ystod y broses ymgynghori rhoddwyd cyflwyniadau ar y cynigion mewn dros 100 o ddigwyddiadau cyhoeddus, cyfran sylweddol ohonynt yng Nghymru.

1.6 Craidd yr argymhellion yw creu fframwaith statudol uniongyrchol a symlach, sydd:

1 Gweler *Cartrefi i Gymru: Papur Gwyn ar gyfer bywyd gwell a chymunedau gwell* (21 Mai 2012), http://cymru.gov.uk/docs/desh/consultation/120521whitepapercy.pdf (ymwelwyd ddiwethaf 6 Chwefror 2013), paragraff 21 o'r Crynodeb Gweithredol.

2 Renting Homes: the Final Report (1) (2006) Comisiwn y Gyfraith Rhif 297, http://lawcommission.justice.gov.uk/docs/lc297_Renting_Homes_Final_Report_Vol1.pdf (ymwelwyd ddiwethaf 6 Chwefror 2013).

3 Renting Homes: the Final Report (2) (2006) Comisiwn y Gyfraith Rhif 297, http://lawcommission.justice.gov.uk/docs/lc297_Renting_Homes_Final_Report_Vol2.pdf (ymwelwyd ddiwethaf 6 Chwefror 2013).

4 (2002) Papur Ymgynghori Comisiwn y Gyfraith Rhif 162, http://lawcommission.justice.gov.uk/docs/cp162_Renting_Homes_Consultation1_Status_and_Security.pdf (ymwelwyd ddiwethaf 6 Chwefror 2013).

5 (2002) Papur Ymgynghori Comisiwn y Gyfraith Rhif 168, http://lawcommission.justice.gov.uk/docs/cp168_Renting_Homes_Consultation2_Co-occupation.pdf (ymwelwyd ddiwethaf 6 Chwefror 2013).

(1) yn lleihau nifer y mathau o feddiannaeth eiddo rhent preswyl sydd ar gael i ddau fath – y contract diogel a'r contract safonol; a

(2) yn darparu contractau enghreifftiol sy'n nodi'n eglur ar ba sail y mae meddianwyr yn meddiannu tai rhent.

1.7 Ychydig o frwdfrydedd dros weithredu'r argymhellion a amlygwyd gan Lywodraeth San Steffan.[6] Yn y cyfnod hwnnw, roedd blaenoriaethau ei pholisi tai yn canolbwyntio ar estyn perchen-feddiannaeth yn hytrach na diwygio rhentu preswyl. Ar ben hynny, roedd Deddf Tai 2004, yn ddiweddar iawn, wedi hawlio dogn helaeth o adnoddau'r llywodraeth i wneud newidiadau mawr yn y modd y rheoleiddid tai rhent. I raddau helaeth, roedd argymhellion Comisiwn y Gyfraith ynghylch ymddygiad gwrthgymdeithasol gan feddianwyr tai rhent, a wnaed yn y papur ymgynghori cyntaf, wedi eu derbyn a'u cyflawni yn Neddf Ymddygiad Gwrthgymdeithasol 2003. Yn y diwedd (ym Mai 2009) gwrthododd y Llywodraeth yr argymhellion yn ffurfiol ar gyfer Lloegr.[7]

1.8 Amlygwyd mwy o ddiddordeb gan Lywodraeth Cynulliad Cymru. Ym mis Tachwedd 2007, derbyniwyd yr argymhellion mewn egwyddor gan y Gweinidog Tai ar y pryd, ar gyfer eu gweithredu yng Nghymru pe deuai'r cymhwysedd deddfwriaethol ar gael ar gyfer gwneud hynny.[8] Y pryd hwnnw, y setliad datganoli a oedd yn weithredol oedd y setliad yn Rhan 3 o Ddeddf Llywodraeth Cymru 2006, a oedd yn darparu ar gyfer ychwanegu, fesul tipyn, "faterion" a oedd yn rhoi cymhwysedd deddfwriaethol o fewn "meysydd" a ddiffinnid yn eang.[9]

RHENTU CARTREFI A CHYMHWYSEDD DEDDFWRIAETHOL I GYMRU

1.9 Cyhoeddwyd yr adroddiad terfynol ym Mai 2006, yn ystod cyfnod pan oedd y bil a ddaeth wedyn yn Ddeddf Llywodraeth Cymru 2006 ar ei hynt drwy'r Senedd. Roedd y Bil Rhentu Cartrefi drafft wedi ei ddrafftio ar sail Deddf Llywodraeth Cymru 1998, ac yn cynnwys darpariaeth bwysig a fyddai wedi rhoi i'r Cynulliad Cenedlaethol bŵer i ddiwygio'r statud sef pŵer na roddwyd ar gael i Weinidogion yn Whitehall mewn perthynas â Lloegr.

1.10 Roedd yr adroddiad hefyd yn rhagweld cyflwyno Rhan 3 o Ddeddf 2006, ac yn gwneud argymhellion penodol ar gyfer eu cyflawni yng Nghymru pe gwrthodid yr argymhellion yn Lloegr neu pe rhoddid blaenoriaeth isel iddynt yno. Ar y pryd, ni

[6] Gweler y gwrthgyferbyniad a dynnir rhwng ymagwedd Llywodraeth San Steffan ac ymagwedd Llywodraeth Cynulliad Cymru yn Law Commission Annual Report 2007-2008, Comisiwn y Gyfraith Rhif 210, paragraff 3.44.

[7] Yr Adran Cymunedau a Llywodraeth Leol, *The Private Rented Sector: Professionalism and Quality: the Government Response to the Rugg Review* (Mai 2009), http://www.propertydrum.com/downloads/20090513/download (ymwelwyd ddiwethaf 6 Chwefror 2013).

[8] Adroddiad Blynyddol Comisiwn y Gyfraith 2007-2008, Comisiwn y Gyfraith Rhif 210, paragraff 3.44.

[9] Deddf Llywodraeth Cymru 2006, Atodlen 5.

ragwelid y byddai Rhan 4 o'r Ddeddf wedi ei gweithredu mor gynnar ag y'i gweithredwyd mewn gwirionedd.

1.11 Yn ystod Gorffennaf 2010, pasiwyd gorchymyn cymhwysedd deddfwriaethol o dan Ran 3 o Ddeddf 2006, a byddai un o ddarpariaethau'r gorchymyn hwnnw wedi caniatáu i Fesur Cynulliad weithredu Rhentu Cartrefi yn rhannol, ar gyfer tai cymdeithasol yn unig.[10] Fodd bynnag, yn dilyn y refferendwm ym Mawrth 2011, daethpwyd â darpariaethau Rhan 4 o Ddeddf 2006 i rym, gan estyn cymhwysedd deddfwriaethol y Cynulliad Cenedlaethol yn sylweddol.

1.12 Trafodir y trefniadau datganoli yn fanylach isod, pan ystyrir cymhwysedd deddfwriaethol y Cynulliad Cenedlaethol mewn cysylltiad â gweithredu Bil Rhentu Cartrefi Cymru.

YR AMGYLCHEDD CYFREITHIOL CYFNEWIDIOL YN Y MAES TAI

1.13 Nid yw cyfraith tai wedi aros yn ei hunfan er pan gyhoeddwyd Rhentu Cartrefi. Yn benodol, datblygwyd y ddealltwriaeth gyfreithiol o'r berthynas rhwng erthygl 8 o'r Confensiwn Ewropeaidd ar Hawliau Dynol a dadfeddiannu tenantiaid cymdeithasol yn orfodol. Digwyddodd datblygiadau statudol perthnasol yn ogystal, yn enwedig mewn darpariaethau sy'n ymwneud ag ymddygiad gwrthgymdeithasol ynglŷn â thai. Yn ogystal, mae deddfwriaeth megis Deddf Cydraddoldeb 2010 yn effeithio ar y modd y darperir tai rhent. Mae'r adroddiad hwn yn adolygu'r newidiadau hyn ac yn sicrhau y gellir darparu ar eu cyfer yn argymhellion Rhentu Cartrefi.

1.14 Un o ddibenion Rhentu Cartrefi oedd darparu fframwaith cyfreithiol ar gyfer tai a allai ymateb i newid yn y blaenoriaethau polisi heb yr angen i ddeddfu ymhellach. Mae Llywodraeth Cymru wedi pennu nifer o flaenoriaethau polisi sy'n ymwneud â thai, neu sydd â goblygiadau ynglŷn â thai, megis gwella'r ymatebion i drais domestig, hwyluso ymatebion gan landlordiaid i ymddygiad gwrthgymdeithasol a datblygu strategaethau effeithiol ar gyfer digartrefedd a thai â chymorth yng Nghymru. Un o dasgau'r adolygiad hwn yw sicrhau nad oes anghysondebau rhwng y blaenoriaethau polisi hynny a'r cynllun Rhentu Cartrefi.

1.15 Yn ychwanegol, er bod argymhellion Rhentu Cartrefi wedi eu cynllunio, i'r graddau y gellid, gyda'r nod o gynnal y cydbwysedd hawliau a chyfrifoldebau presennol rhwng landlordiaid a meddianwyr, roedd yn anochel bod datblygu'r cynigion yn cynnwys rhai addasiadau i'r status quo. Mae'r adolygiad hwn yn rhoi sylw i'r rhai mwyaf arwyddocaol o'r addasiadau hynny, ac yn esbonio'n rhesymu ynglŷn â'r rhai a fu'n destun dadlau.

1.16 Strwythurwyd yr adroddiad fel a ganlyn:

[10] Deddf Llywodraeth Cymru 2006, Atodlen 5, mater 11.4, mewn perthynas â thai cymdeithasol.

(1) Mae Rhan 2 yn darparu crynodeb o argymhellion Rhentu Cartrefi. Mae'n amlygu'r darpariaethau y tybiwn sy'n arbennig o berthnasol i Lywodraeth Cymru ac i randdeiliaid eraill yng Nghymru, yn ailedrych ar ein rhesymu ynglŷn â'r argymhellion a ysgogodd fwyaf o ddadlau, ac yn manteisio ar yr hyn sydd i'w ddysgu gan fentrau deddfwriaethol cyffelyb mewn mannau eraill, yn enwedig yr Alban.

(2) Mae Rhan 3 yn ystyried cymhwysedd deddfwriaethol y Cynulliad Cenedlaethol i weithredu Rhentu Cartrefi.

(3) Mae Rhan 4 yn diweddaru argymhellion Rhentu Cartrefi gan ystyried:

(a) datblygiadau o ran Hawliau Dynol;

(b) datblygiadau yn y darpariaethau statudol ynglŷn ag ymddygiad gwrthgymdeithasol;

(c) datblygiadau perthnasol eraill; a

(4) Mae Rhan 5 yn canolbwyntio ar y cyd-destun Cymreig, yn enwedig ein hargymhellion ar gyfer tai â chymorth, trais domestig ac ymddygiad gwrthgymdeithasol.

RHAN 2
CRYNODEB O'R CYNIGION

CYFLWYNIAD

2.1 Mae'r fframwaith cyfredol ar gyfer rhentu preswyl yn gymhleth, yn fanwl, ac yn aml yn aneglur. Mae hawliau a chyfrifoldebau yn dibynnu, ymhlith materion eraill, ar y gwahaniaethu rhwng les a thrwydded, ar statws y darparwr ac ar ddyddiad cychwyn y cytundeb. Nid oes gofyniad statudol am gontractau ysgrifenedig llawn, nac ychwaith ofyniad bod unrhyw gontract a ddarperir yn adlewyrchu'n gywir sefyllfa gyfreithiol y meddiannydd.[1] Mae rhai mathau o rentu wedi eu hepgor o'r cynlluniau statudol, ac yn cael eu rheoleiddio'n unig gan y gyfraith gyffredin a'r ddeddfwriaeth ar ddadfeddiannu yn anghyfreithlon. Mae mathau eraill, megis tai â chymorth, yn gorwedd yn anesmwyth o fewn y fframwaith cyfredol, gyda'r canlyniad bod rhai o arferion beunyddiol y darparwyr yn eu rhoi mewn perygl o gael eu herlyn.

2.2 Cymhlethdod y fframwaith cyfreithiol yw un o'r ffactorau sy'n cyfrannu at enw gwael y sector rhentu, gan fod llawer o'r anghydfodau rhwng landlord a thenant yn deillio o anwybodaeth o'r gyfraith. Canlyniad arall y cymhlethdod hwnnw, sy'n effeithio'n arbennig ar ddarparwyr tai cymdeithasol, yw fod costau cydymffurfio'n uchel a chanlyniadau ymgyfreitha'n anodd i'w rhagweld.

2.3 Bwriad canolog argymhellion Rhentu Cartrefi yw disodli'r darpariaethau statudol dyrys, y rheolau cyfraith gwlad aneglur a'r mathau lluosog o denantiaethau, gan gontractau a reoleiddir drwy statud ac a ddefnyddir gan bob darparwr tai rhent. Bydd contractau enghreifftiol, a seilir ar statud, yn pennu ar ba sail y rhentir llety, yn darparu datganiadau eglur a manwl gywir o hawliau a chyfrifoldebau'r partïon ac yn esbonio o dan ba amgylchiadau y ceir terfynu hawliau meddiannu. Bydd y contractau'n hawdd i'w cael ac i'w deall.

2.4 O dan y cynllun Rhentu Cartrefi, bydd yr holl denantiaethau a thrwyddedau sy'n galluogi meddiannu eiddo fel cartref yn gontractau meddiannu, oni fydd y trefniadau dan sylw wedi eu heithrio'n benodol gan y Bil. Mae "tenantiaethau" yma yn cynnwys lesoedd cyfnod penodedig a thenantiaethau cyfnodol. Bydd yr eithriadau yn cynnwys tenantiaethau hir (dros 21 mlynedd), tenantiaethau busnes sy'n cynnwys rhywfaint o lety preswyl, tenantiaethau amaethyddol a thenantiaethau Deddf Rhenti.[2] Mae'r cynllun, felly, yn cymryd lle'r ddwy brif gyfundrefn statudol bresennol, sef y "denantiaeth ddiogel" ("secure tenancy") yn

[1] Dylid nodi bod contract ysgrifenedig yn ofynnol er mwyn i landlordiaid fanteisio ar y weithdrefn meddiannu cyflym; a bod canllawiau'r Swyddfa Masnachu Teg ar Delerau Tenantiaeth Annheg yn dynodi bod rhaid i delerau tenantiaeth fod yn ysgrifenedig er mwyn cydymffurfio â Rheoliadau Telerau Annheg mewn Cytundebau Defnyddwyr 1999.

[2] Rhoddir rhestr lawn o'r eithriadau yn Rhan 2 o Atodlen 1 i'r Bil drafft.

Neddf Tai 1985 a'r gyfundrefn "sicr" ("assured") yn Neddf Tai 1988,[3] ynghyd â mathau atodol o denantiaethau statudol megis tenantiaethau rhagarweiniol ("introductory") ac isradd ("demoted")[4]. Cynhwysir y tenantiaethau cyfraith gyffredin sy'n dod o fewn y diffiniad, megis y rheini a hepgorir o'r ddwy gyfundrefn arall, gan gynnwys llety "clwm" ("tied") ar gyfer cyflogeion awdurdodau lleol a thenantiaethau sector preifat sydd â rhenti tir isel.[5] O ganlyniad, byddai mwyafrif llethol y tai preswyl a osodir ar rent yn gynwysedig.

2.5 Mae cwmpas y cynllun a argymhellir gan Rhentu Cartrefi yn fwy cynhwysfawr na'r darpariaethau cyfredol, ac yn dileu'r gwahaniaethau anghyfoes rhwng darparwyr awdurdodau lleol a chymdeithasau tai. Yn fwyaf arwyddocaol, mae'n darparu fframwaith cyfreithiol unedig, syml a hwylus ar gyfer rhentu, ac yn golygu na fydd angen dyfeisio mathau newydd o denantiaeth er mwyn cyflawni unrhyw amcanion polisi newydd.

2.6 Ynddo'i hun, ni fydd disodli'r fframwaith cyfreithiol cyfredol gan argymhellion Rhentu Cartrefi yn gweddnewid enw da'r sector rhentu. Fodd bynnag, bydd yr argymhellion yn gymorth i wneud penderfyniadau rhesymegol a gwybodus i rentu yn hytrach na phrynu cartref. Bydd contractau teg, wedi eu mynegi'n eglur, yn cyfrannu at ddiogelwch cyfreithiol y meddiannydd a hefyd yn galluogi meddianwyr i ddeall y disgwyliadau y mae contract rhentu yn eu gosod ar y partïon.

2.7 Mae manylion llawn argymhellion Rhentu Cartrefi i'w cael yn yr adroddiad terfynol.[6] Fodd bynnag, rhoddwn amlinelliad o'r argymhellion allweddol isod, i hwyluso'r drafodaeth sy'n dilyn.

Y CONTRACTAU

2.8 Er gwaethaf y cydgyfeirio a'r gorgyffwrdd cynyddol ymysg darparwyr tai rhent, a gydnabyddir yn ein cynllun ni, mae'n parhau'n briodol gwahaniaethu rhwng y ddau batrwm darparu sylfaenol, sef darpariaeth y farchnad a darpariaeth gymdeithasol.[7] O ganlyniad, roedd Comisiwn y Gyfraith yn argymell dau fath o

[3] Ac eithrio tenantiaethau sicr neu denantiaethau byrddaliol sicr sydd â'u cyfnod penodedig yn hwy nag 21 mlynedd.

[4] Deddf Tai 1996, Rhan 5, Penodau 1 ac 1A.

[5] Mae modd gwerthu contractau meddiannu, a gellir eu hetifeddu: gweler, yn gyffredinol, Renting Homes cyfrol 2, Rhan 5, penodau 1 a 2.

[6] Renting Homes: the Final Report (1) (2006) Comisiwn y Gyfraith Rhif 297, http://lawcommission.justice.gov.uk/docs/lc297_Renting_Homes_Final_Report_Vol1.pdf (ymwelwyd ddiwethaf 6 Chwefror 2013).

[7] Awgrymwyd wrthym, yn ystod ein trafodaethau, nad oedd y cynigion yn ddigon radical, ac na ddylid cael mwy nag un math o gontract. Fodd bynnag, oherwydd lefel y galw yn y sector rhentu preifat a natur y darparwyr a'r ddarpariaeth, byddai'n amhriodol i'r statud osod ar landlordiaid preifat y math o rwymedigaethau cymdeithasol sy'n nodweddiadol o dai cymdeithasol. Byddai'r canlyniadau'n rhy ansicr, a gallai achosi i'r ddarpariaeth breifat grebachu'n gyflym. Nid yw hyn yn golygu na ddylid defnyddio offer polisi priodol i gyrraedd nod cyffelyb.

gontract enghreifftiol, yn seiliedig ar y denantiaeth fyrddaliol sicr a'r denantiaeth ddiogel gyfredol.[8]

2.9 Yn y math cyntaf o gontract, sef y contract safonol, y contract ei hunan sy'n penderfynu diogelwch deiliad y contract.– mae hynny'n un o ragofynion system y farchnad. Unwaith y bydd unrhyw gyfnod penodedig a ganiateir gan y contract wedi dod i ben, caiff y landlord ddadfeddiannu deiliad y contract ar yr amod bod y landlord wedi rhoi dau fis o rybudd i'r deiliad. Nid oes angen profi unrhyw fai.

2.10 Mae'r ail fath o gontract, sef y contract diogel, yn cynnig mwy o ddiogelwch i ddeiliad y contract. Yn gyffredinol, ni chaiff y landlord derfynu'r contract oni fydd llys wedi canfod bod y deiliad wedi torri telerau'r cytundeb, a'r llys wedi penderfynu y byddai'n rhesymol a chymesur ei ddadfeddiannu.[9] Mae'r posibilrwydd o olyniaeth gan aelodau o'r teulu neu gan ofalwyr yn ychwanegiad pellach at y diogelwch hwnnw.[10]

2.11 Gwneir yn ofynnol bod landlordiaid yn darparu contractau ysgrifenedig sy'n cydymffurfio â'r gofynion statudol. Bydd y contractau'n cynnwys pedwar math o delerau – telerau allweddol, telerau sylfaenol, telerau atodol a thelerau ychwanegol. Yr un rhai yn union fydd llawer o'r telerau hyn ar draws y mathau o gontract, ac eithrio'r telerau sy'n ymwneud â therfynu.

2.12 Telerau allweddol yw'r telerau megis y rhent a chyfeiriad yr eiddo, sy'n unigryw i'r contract hwnnw. Er na ellir eu rhagnodi drwy statud, mae'r Bil drafft yn darparu bod rhaid i delerau o'r fath ymddangos yn y contract.[11]

2.13 Mae'r telerau sylfaenol yn pennu hawliau a rhwymedigaethau hanfodol landlordiaid a deiliaid contract. Maent yn cynnwys y seiliau ar gyfer meddiannu a'r gofyniad bod y landlord yn darparu ei enw a'i gyfeiriad. Ailddatganiadau o'r darpariaethau statudol cyfredol wedi eu diweddaru yw llawer o'r telerau sylfaenol, megis y rhwymedigaethau atgyweirio a gynhwysir yn adran 11 o Ddeddf Landlord a Thenant 1985. Am y tro cyntaf, fodd bynnag, bydd yn ofyniad cyfreithiol nodi'r hawliau a'r rhwymedigaethau hyn mewn ysgrifen yn y contract. Caniateir addasu

[8] Mae'r sicrwydd "oes gyfan" a ddarperir gan y denantiaeth ddiogel yn debygol o gael ei wneud yn fwy amodol yn y dyfodol. Ym Mhapur Gwyn Llywodraeth San Steffan, cynigir sail orfodol newydd dros ddadfeddiannu mewn achos o ymddygiad gwrthgymdeithasol difrifol ynglŷn â thai. Trafodir y datblygiad hwn ym mharagraffau 4.25 i 4.33 isod.

[9] Mae un sail orfodol sy'n gymwys i bob math o gontract meddiannu, sef pan fo deiliad y contract wedi rhoi hysbysiad i'r landlord i derfynu'r contract, ac yna'n peidio ag ildio meddiant o'r fangre ar y dyddiad dyladwy.

[10] Mae'n cynigion ar gyfer hawliau olynu mewn contractau diogel yn un o'r achlysuron prin lle mae'r cynigion yn addasu'r cydbwysedd hawliau a chyfrifoldebau rhwng y landlord a'r meddiannydd. Trafodir y rhain yn fanylach ym mharagraffau 2.36 i 2.41 isod.

[11] Renting Homes: the Final Report (2) (2006) Comisiwn y Gyfraith Rhif 297, http://lawcommission.justice.gov.uk/docs/lc297_Renting_Homes_Final_Report_Vol2.pdf (ymwelwyd ddiwethaf 6 Chwefror 2013).

neu amrywio'r rhan fwyaf o'r telerau sylfaenol, ond er budd deiliad y contract yn unig.[12]

2.14 Mae'r telerau atodol yn ymdrin â'r materion ymarferol sy'n angenrheidiol er mwyn gweithredu'r contract, er enghraifft, trefniadau ar gyfer talu'r rhent neu gynnal a chadw'r fangre. Darperir ar gyfer telerau atodol mewn is-ddeddfwriaeth, ar ôl ymgynghori.

2.15 Mae'r telerau ychwanegol yn ymdrin â materion penodol y mae'r partïon yn dymuno'u cynnwys yn y contract, ond na wneir unrhyw ddarpariaeth statudol mewn perthynas â hwy. Mae'r telerau atodol ac ychwanegol yn arwyddocaol wrth benderfynu i ba raddau y bydd yr eiddo a rentir yn teimlo'n gartrefol. Gallant ymwneud, er enghraifft â chadw anifeiliaid anwes. O ganlyniad, mae'n bwysig iawn bod telerau o'r fath yn deg a thryloyw.

2.16 Bydd contractau enghreifftiol yn cael eu rhagnodi drwy statud. Bydd y rhain ar gael yn hwylus, ac wedi eu hysgrifennu mewn iaith sy'n hawdd i'w deall. Er bod contract ysgrifenedig yn orfodol, ac er bod rhaid iddo gynnwys y telerau rhagnodedig, ni orfodir landlordiaid i ddefnyddio'r contractau enghreifftiol. Fodd bynnag, caiff y llysoedd graffu ar unrhyw delerau atodol neu ychwanegol a fydd wedi eu haddasu, er mwyn sicrhau eu bod yn deg a thryloyw.

NIWTRALIAETH LANDLORDIAID

2.17 Un o nodweddion pwysig y cynllun Rhentu Cartrefi yw nad yw natur y landlord bellach yn rhan o'r modd y diffinnir y denantiaeth. Yn wahanol i'r fframwaith presennol, mae hyn yn dwyn at ei gilydd, mewn un fframwaith cyfreithiol, y ddarpariaeth o dai cymdeithasol a thai a rentir ar y farchnad.[13] Er bod y Bil drafft yn darparu ar gyfer amgylchiadau pan yw'n ofynnol bod landlordiaid cymdeithasol yn defnyddio contractau diogel, ni fydd gofynion o'r fath, o anghenraid, yn gymwys i bob rhan o ddarpariaeth landlord cymdeithasol.

2.18 Bydd hyn yn galluogi, er enghraifft, landlordiaid cymdeithasol i ddarparu tai rhent mewn amgylchiadau pan nad oes angen y budd cymdeithasol o ddiogelwch ychwanegol, megis wrth osod llety i weithwyr allweddol. Bydd modd hefyd i landlordiaid cymdeithasol ddefnyddio'r contract safonol am gyfnodau arbrofol pan fo'r polisi tai'n pennu bod hynny'n briodol. Mae'r cynllun hefyd yn galluogi landlordiaid preifat i ddarparu tai rhent ynghyd â diogelwch uwch y sector cymdeithasol.

[12] Un eithriad nodedig yw'r teler ymddygiad gwaharddedig. Ni cheir addasu'r teler sylfaenol hwn. Trafodir ymddygiad gwaharddedig ymhellach ym mharagraffau 5.8 i 5.29 isod.

[13] Cyfeirir at arwyddocâd integreiddio yn K Hulse et al., *Secure occupancy in rental housing: conceptual foundations and comparative perspectives* (Australian Housing and Urban Research Institute, Adroddiad Terfynol Rhif 170) (2011).

.

2.19 Bwriad y cynllun yw annog hyblygrwydd. Un o wendidau'r ddeddfwriaeth tai flaenorol oedd fod y ddarpariaeth statudol wedi ei datblygu i ddatrys problemau rhentu penodol a oedd yn codi ar y pryd. Golygai hynny fod y fframwaith statudol, wrth i'r amodau newid, yn gweithredu fel llyffethair, a oedd yn arafu ymatebion y darparwyr. Rydym yn ceisio osgoi'r canlyniad hwnnw. Ar hyn o bryd, anodd yw dychmygu dim ac eithrio galw gormodol, rhenti uchel ac incymau sy'n gostwng. Mae hanes y sector tai, fodd bynnag, yn dangos bod modd i sefyllfaoedd newid, a hwyrach y daw amser yn y dyfodol pan fydd landlordiaid preifat yn cystadlu â landlordiaid cymdeithasol am fusnes rhentu. Mae'r cynllun statudol a argymhellir yn ddigon gwydn i ymdopi â newidiadau o'r fath.

MATERION DADLEUOL

2.20 Nid rhan o'n cylch gwaith ni oedd cwestiynu'r cydbwysedd hawliau a chyfrifoldebau presennol yn y maes rhentu tai. Roedd rheoleiddio rhenti, er enghraifft, yn ogystal â sicrwydd deiliadaeth yn y sector rhentu preifat, y tu allan i faes ein prosiect. Fodd bynnag, drwy integreiddio darpariaethau'r awdurdodau lleol a'r cymdeithasau tai a thrwy ehangu, symleiddio a moderneiddio cwmpas y cynllun, roedd yn anochel y byddem yn argymell rhai newidiadau yn y *status quo*.

2.21 Mater o dacluso'r darpariaethau statudol yn unig oedd rhai o'r newidiadau. Roedd yn synhwyrol, er enghraifft, cysoni'r cyfnodau o rybudd, hyd yn oed os oedd hynny'n peri newidiadau a oedd o fudd i'r landlord neu'r deiliad contract. Fodd bynnag, mae rhai o'r newidiadau'n fwy sylweddol ac wedi ennyn dadlau, yn ystod ein hymgyngoriadau cyn cyhoeddi'r adroddiad terfynol a hefyd mewn cyfarfodydd gyda rhanddeiliaid tai yng Nghymru yn ystod 2012 a 2013.

Yr argymhelliad i ddiddymu sail 8 yn y sector rhentu cymdeithasol

2.22 Roedd llunio'r contract diogel yn golygu diddymu sail 8, sef y sail orfodol ar gyfer meddiannu sydd ar gael yn y denantiaeth sicr. Mae'r sail honno'n rhoi'r hawl i landlord gael gorchymyn meddiant gorfodol pan fo ôl-ddyled ddifrifol o rent (sef 2 fis neu ragor) wedi cronni. Penderfynasom y byddai'n amhriodol lleihau hawliau'r miloedd lawer o denantiaid awdurdod lleol a'r rhai y diogelwyd eu statws diogel fel amod trosglwyddo o reolaeth awdurdod lleol i reolaeth cymdeithas tai. Yn ystod ein hymgyngoriadau gwreiddiol, mynegwyd pryder gan rai landlordiaid cymdeithasol cofrestredig a chan y Cyngor Benthycwyr Morgeisi ynghylch colli'r sail hon.[14]

2.23 Ategwyd y pryderon ynghylch diddymu sail 8 gan rai cynrychiolwyr o'r sector cymdeithasau tai, a oedd yn bresennol yn ein cyfarfodydd yng Nghymru.[15] Mae'r ansicrwydd ynghylch incwm o fudd-dal tai yn parhau'n broblem. Dadleuwyd y

[14] Renting Homes: the Final Report (1) (2006) Comisiwn y Gyfraith Rhif 297, http://lawcommission.justice.gov.uk/docs/lc297_Renting_Homes_Final_Report_Vol1.pdf (ymwelwyd ddiwethaf 6 Chwefror 2013), paragraffau 1.43 i 1.50.

[15] Ni chodwyd y pryder hwn yn ein cyfarfod gyda'r Cyngor Benthycwyr Morgeisi.

byddai cyflwyno'r credyd cynhwysol yn peri bod budd-dal tai'n cael ei dalu'n uniongyrchol i'r tenant yn hytrach nag i'r landlord, a bod ôl-ddyledion rhent yn debygol o gynyddu o ganlyniad. Yn ychwanegol, torrwyd y budd-dal tai a delir i lawer o'r tenantiaid o ganlyniad i reolau newydd ynghylch tanfeddiannu. Cefnogid sail 8 fel offeryn i atal meddianwyr rhag mynd i ddyled ddifrifol. Dywedwyd ei bod yn well i'r tenant derfynu ei gontract yn gynnar a symud i lety fforddiadwy, yn hytrach na gohirio'r hyn sy'n anochel, gyda chanlyniadau difrifol i'r darparwr a'r meddiannydd.

2.24 Ailfynegwyd hefyd y pryderon na ellir dibynnu ar farnwyr i ganiatáu gorchmynion meddiannu. Dywedwyd wrthym fod rhai barnwyr wedi gwrthod gwneud gorchmynion gorfodol, ac weithiau'n amharod i arfer eu disgresiwn i ganiatáu meddiant llawn, hyd yn oed pan oedd ôl-ddyledion rhent wedi cyrraedd lefelau difrifol.

2.25 Er gwaethaf ein hystyriaeth bellach, rydym yn parhau i argymell diddymu sail 8, a hynny am nifer o resymau:

(1) diogelwch yw un o nodweddion penodol rhentu yn y sector cymdeithasol, ac y mae goruchwyliaeth farnwrol o achosion o ddadfeddiannu yn y sector hwnnw yn gwbl briodol. Absenoldeb seiliau gorfodol sy'n gwahaniaethu rhwng y contract cymdeithasol a'r contract safonol;

(2) mae'n hanfodol rhoi lle i oruchwyliaeth farnwrol mewn achosion o ddadfeddiannu pan fo'r landlord yn corff cyhoeddus, o ystyried y gyfreitheg sy'n datblygu mewn cysylltiad ag erthygl 8 o'r Confensiwn Ewropeaidd ar Hawliau Dynol (a drafodir ymhellach yn Rhan 4 o'r Adroddiad hwn);

(3) nid yw sail 8 ar gael ac eithrio mewn cyfran fach o'r tai cymdeithasol yng Nghymru. Mae'n ymddangos hefyd, o edrych ar yr ystadegau perthnasol, mai ychydig o ddefnydd o'r sail honno a wneir gan landlordiaid y tai cymdeithasol hynny; a

(4) dylai cydymffurfio â'r protocol cyn-gweithredu ar ôl-ddyledion rhent mewn tai cymdeithasol[16] ynghyd â'n hargymhellion ni ar gyfer disgresiwn strwythuredig a'r hyfforddiant barnwrol a fydd yn cyd-fynd â'r drefn newydd, wneud canlyniadau achosion meddiant ar sail ôl-ddyledion rhent yn fwy rhagweladwy.

2.26 Rydym yn cymeradwyo awydd y landlordiaid cymdeithasol i rwystro'u tenantiaid rhag mynd i ormod o ddyled. Yn ein barn ni, fodd bynnag, byddai defnyddio sail 8 i gyrraedd y nod hwnnw yn anghymesur a hwyrach yn wrthgynhyrchiol gan mai'r tenantiaid hefyd fyddai'n wynebu cost yr achos llys.

[16] Pre-action Protocol for Possession Claims based on rent arrears, http://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_rent (ymwelwyd ddiwethaf 6 Chwefror 2013).

Yr argymhelliad i ddiddymu'r moratoriwm chwe mis

2.27 Mae'n hargymhellion yn diddymu'r rheol sy'n gwahardd llys rhag gorchymyn meddiannu tenantiaeth fyrddaliol sicr yn y sector preifat ar sail hysbysiad yn unig (dim bai) cyn diwedd chwe mis cyntaf y cytundeb.

2.28 Y prif reswm dros ddiddymu'r moratoriwm o chwe mis ar feddiannu yw galluogi ein cynllun arfaethedig i gynnwys cynifer o'r mathau presennol o denantiaethau ag y bo modd. Drwy ehangu'r cwmpas hwylusir y gwaith o symleiddio, ac yn y gosodiadau hynny sydd y tu allan i reolaeth statudol gyfredol y mae anniogelwch yn fwyaf tebygol o ddigwydd. Mae eiddo a feddiennir yn rhinwedd swydd y meddiannydd (*"service occupancies"*), er enghraifft, y tu allan i'r fframwaith statudol cyfredol, ac o ganlyniad, ychydig o ddiogelwch sydd gan y bobl sy'n byw mewn llety clwm ac eithrio'r hyn a ddarperir gan y ddeddfwriaeth ar ddiogelu rhag dadfeddiannu. Heb y moratoriwm chwe mis, mae'r contract safonol yn dod ar gael ar gyfer eiddo a feddiennir yn rhinwedd swydd, llety myfyrwyr a thai â chymorth. Yn ychwanegol, mae diddymu'r moratoriwm chwe mis yn darparu cyfleoedd busnes newydd yn y sector preifat ar gyfer gosodiadau byrdymor.

2.29 Roedd yn ddealladwy bod y cynnig hwn, yn ystod yr ymgynghoriad gwreiddiol, wedi ysgogi llawer o bryderon ymhlith rhai a oedd yn ymddiddori mewn gwarchod hawliau tenantiaid preifat. Yn ystod ein cyfarfodydd yng Nghymru daeth yn amlwg nad oedd y pryderon hynny wedi diflannu. Os rhywbeth, roeddent wedi dwysáu wrth i'r awdurdodau lleol ddibynnu fwyfwy ar y sector preifat i letya ceiswyr digartref, ac oherwydd tystiolaeth bod rhentu preifat yn datblygu'n ddull lletya hirdymor i lawer o bobl. Y ddadl yw fod angen sicrwydd ar bawb, yn enwedig teuluoedd a phobl sy'n agored i niwed, er mwyn manteisio ar wasanaethau megis ysgolion a meddygon, ac er mwyn adeiladu bywydau sefydlog.

2.30 Rydym yn cytuno bod sicrwydd yn nod polisi priodol. Fodd bynnag, nid ydym o'r farn bod y moratoriwm chwe mis yn ychwanegu at sicrwydd. Mae tri rheswm sylfaenol am hynny.

2.31 Yn gyntaf, nid yw chwe mis yn yr un annedd yn galluogi neb i fyw bywyd sefydlog. Credwn fod cynrychiolwyr y tenantiaid yn awyddus i amddiffyn y chwe mis o sicrwydd fel yr hyn sy'n weddill o'r sefydlogrwydd a ddarperid gynt yn y sector rhentu preifat gan Ddeddf Rhenti 1977. Mewn gwirionedd, yr hyn yr hoffai cynrychiolwyr y tenantiaid ei gael yw cyfnodau penodedig o ddwy flynedd neu ragor.

2.32 Yn ail, mae meddiannaeth hirdymor o fudd hefyd i'r landlordiaid. Dyna pam y mae cynifer ohonynt yn defnyddio contractau 12 mis neu fwy. Maent yn dymuno osgoi unedau gwag a'r costau sy'n gysylltiedig â gosod o'r newydd. Mewn cyfnod pan fo rhenti'n codi, mae hynny, wrth gwrs, yn rhywfaint o gymhelliad i landlordiaid droi meddianwyr allan, ond mae gallu landlordiaid i godi rhenti yn flynyddol i lefel y farchnad yn gwrthbwyso hynny.

2.33 Gellir dadlau mai llwyddo i sefydlogi rhenti fyddai'r ffordd orau o sicrhau y caiff meddianwyr aros mewn eiddo penodol cyhyd ag y dymunant. Gwyddom o brofiad fod ceisio gwneud hynny drwy ddulliau statudol yn arwain at gynllwynio i osgoi'r darpariaethau (gyda'r darpar feddianwyr anghenus yn aml yn cydgynllwynio), at leihau'r cyflenwad, ac at ddefnyddio gormod o adnoddau yn plismona'r ffiniau statudol.

2.34 Mae hyn yn cytuno â chanfyddiadau astudiaeth gymharol gynhwysfawr gan Hulse *et al* sy'n dadlau bod sicrwydd yn tarddu o'r gydberthynas rhwng y farchnad, polisi a ffactorau cyfreithiol.[17] Awgrymir bod sicrwydd, felly, yn dibynnu ar reoli'r farchnad, polisi a ffactorau cyfreithiol yn ofalus. Ni ellir cyrraedd y nod drwy osod gofynion cyfreithiol, ar eu pen eu hunain, ar y sector preifat. Byddem yn dadlau ein bod yn fwy tebygol o gyrraedd y nod drwy greu amodau yn y farchnad sy'n cymell landlordiaid i ddewis rhentu am dymor hir. Yn ogystal, rydym o'r farn y dylai awdurdodau lleol ddefnyddio'u safle yn y farchnad i sicrhau contractau hirdymor ar gyfer y teuluoedd a leolir yn y sector rhentu preifat.[18]

2.35 Rheswm pragmatig yw'n trydydd reswm dros gredu na fydd diddymu'r moratoriwm chwe mis yn lleihau sicrwydd. Mae landlordiaid yn dra annhebygol o gychwyn achos i derfynu contract yn ystod wythnosau cyntaf cytundeb rhentu, yn enwedig pan fônt wedi derbyn un neu ddau fis o rent ymlaen llaw. Yn ychwanegol, unwaith y cychwynnid unrhyw achos, mae'n annhebygol y byddai'r amserlen yn caniatáu gwneud gorchymyn meddiant lawer yn gynharach na chwe mis ar ôl cychwyn y contract rhentu.

2.36 Rydym felly yn parhau i argymell diddymu'r moratoriwm chwe mis. Nid ydym o'r farn ei fod yn gwella sicrwydd yn y sector rhentu preifat, a byddai ei ddiddymu yn ein galluogi i ehangu cwmpas ein cynllun ac osgoi cymhlethdodau ac anawsterau ffiniol.

Darpariaethau olyniaeth mewn contractau diogel

2.37 Nid oedd ein hargymhellion i estyn hawliau olynu mor ddadleuol â'r materion a drafodir uchod. Fodd bynnag, tybiwn ei bod yn briodol eu trafod yn yr adran hon o'r adroddiad gan eu bod yn welliant posibl yn hawliau tenantiaid cymdeithasol presennol.

2.38 Cymharol gyfyng yw'r darpariaethau olynu ar gyfer tenantiaid tai cymdeithasol, ac y mae gwahaniaethau technegol yn bodoli rhwng darparwyr. Mae hawl gan briod neu bartner sifil sy'n goroesi person sy'n denant sicr landlord cymdeithasol cofrestredig i olynu'r person hwnnw fel y tenant sicr. Un olyniaeth yn unig a ganiateir.[19] Mae'r darpariaethau cyfreithiol yn wahanol ar gyfer tenantiaid diogel awdurdod lleol – caniateir un olyniaeth, naill ai i briod neu bartner sifil sy'n

[17] "a product of the interrelationship between market, policy and legal factors"

K Hulse et al., *Secure occupancy in rental housing: conceptual foundations and comparative perspectives* (Australian Housing and Urban Research Institute, Adroddiad Terfynol Rhif 170) (2011).

[18] Er enghraifft, mae Shelter wedi paratoi cynigion ar gyfer tenantiaethau am gyfnod penodedig o bum mlynedd. Gweler Shelter, *A better deal: towards more stable private renting* (2012), http://england.shelter.org.uk/__data/assets/pdf_file/0009/587178/A_better_deal_report.pdf (ymwelwyd ddiwethaf 6 Chwefror 2013).

[19] Deddf Tai 1988, adran17.

goroesi neu i aelod o deulu'r tenant ymadawedig (gan gynnwys rhai sy'n byw gyda'i gilydd fel gŵr a gwraig neu fel partneriaid sifil).[20] Yn ymarferol, tebyg yw'r canlyniadau. Mae olyniaeth o ganlyniad i farwolaeth tenant ar y cyd yn cyfrif fel olyniaeth at ddibenion y statud,[21] ac felly mae olynu unrhyw denant gan aelod o'i deulu yn ddigwyddiad prin, hyd yn oed mewn tenantiaethau diogel.

2.39 Roedd Deddf Lleoliaeth 2011 yn symleiddio ac yn lleihau'r hawliau olynu a grëwyd ar ôl 1 Ebrill 2012 yn Lloegr, ond nid yw hynny'n gymwys o ran Cymru.[22]

2.40 Yn ein hadroddiad terfynol, daethom i'r casgliad bod y rheolau ynglŷn ag olynu yn rhy gaeth.[23]

2.41 Mae ein hargymhellion, felly, yn estyn yr hawliau olynu. Rydym yn caniatáu olyniaeth i olynwyr blaenoriaeth, sef dosbarth sy'n cynnwys priod neu bartner deiliad y contractos oedd y priod neu bartner yn preswylio yn y cartref fel ei unig, neu ei brif gartref ar yr adeg y bu farw deiliad y contract. Mae un cyfyngiad arwyddocaol ar olynwyr blaenoriaeth – ni chaiff neb olynu fel olynydd blaenoriaeth os oedd y deiliad contract ei hunan wedi cael meddiant o'r eiddo fel olynydd blaenoriaeth

2.42 Yn dilyn marwolaeth deiliad contract a oedd ei hunan yn olynydd blaenoriaeth, rydym yn caniatáu olyniaeth i olynydd wrth gefn. Mae'r dosbarth hwn yn cynnwys aelodau o'r teulu a gofalwyr. Er mwyn bod yn olynydd wrth gefn, rhaid i'r person dan sylw fod yn preswylio yn y cartref fel ei unig neu ei brif gartref ar yr adeg y bu deiliad y contract farw, a rhaid iddo fod wedi bod yn preswylio yno drwy gydol y cyfnod o ddeuddeng mis a oedd yn diweddu gyda marwolaeth deiliad y contract. Yn ychwanegol, ni chaiff gofalwr olynu os oes hawl gan y gofalwr i feddiannu unrhyw fangre arall fel ei gartref.

2.43 Yn ystod ein cyfarfodydd yng Nghymru, awgrymwyd y dylid gwahardd, rhag bod yn olynydd wrth gefn, unrhyw berson sydd, neu a fu, yn destun gorchymyn ymddygiad gwrthgymdeithasol neu waharddeb ymddygiad gwrthgymdeithasol. Pe cytunid ar reol o'r fath, mater syml fyddai cynnwys diwygiad i'r perwyl hwnnw yn y rheolau statudol a argymhellir gennym.

2.44 Rydym o'r farn bod y rheolau hyn yn lliniaru caledi sy'n tarddu o'r darpariaethau olynu cyfredol ac yn hyrwyddo'r amcan polisi allweddol o ddiogelu gofalwyr. Ar yr

[20] Pennir y darpariaethau olynu ar gyfer tenantiaid awdurdod lleol yn Neddf Tai 1985, adrannau 87 ac 88.

[21] Deddf Tai 1985, adran 88(1)(b).

[22] Adrannau 160 a 161. Am drafodaeth lawn ar y darpariaethau olynu ar gyfer tenantiaid cymdeithasol, gweler Nodyn Safonol Llyfrgell Tŷ'r Cyffredin, *Succession rights and social housing SN/SP/1998* (26 Tachwedd 2012).

[23] Renting Homes: the Final Report (1) (2006) Comisiwn y Gyfraith Rhif 297, http://lawcommission.justice.gov.uk/docs/lc297_Renting_Homes_Final_Report_Vol1.pdf (ymwelwyd ddiwethaf 6 Chwefror 2013), paragraffau 7.8 – 7.35.

un pryd, rydym yn ymwybodol o'r angen i reoli'r stoc tai yn briodol, ac felly wedi cynnwys sail ar gyfer meddiannu, sy'n efelychu'r sail 16 bresennol yn Atodlen 2 i Ddeddf Tai 1985. Byddai'r sail hon ar gael pe bai olynydd wrth gefn yn tanfeddiannu eiddo ar ôl marwolaeth deiliad y contract. O fewn terfyn amser cyfyngedig yn unig y gellid defnyddio'r sail honno, a byddai'n ddarostyngedig i resymoldeb a chynnig o lety amgen addas.

DYSGU GAN YR ALBAN

2.45 Mae rhai o'r newidiadau a argymhellir gennym mewn perthynas â thai cymdeithasol yn debyg i newidiadau, neu'n deillio o newidiadau, a weithredwyd eisoes yn yr Alban. Roedd Deddf Tai (Yr Alban) 2001 yn cyflwyno math sengl o denantiaeth ar gyfer mwyafrif llethol tenantiaid sector cyhoeddus yr Alban, boed y landlord yn awdurdod lleol neu'n gymdeithas dai.

2.46 Hyd yma, mae diwygiadau i delerau tenantiaeth yn yr Alban wedi eu cyfyngu i'r sector cymdeithasol. Er hynny, ac er eu bod yn fwy cyfyng nag argymhellion Rhentu Cartrefi, mae'r profiad a enillwyd drwy weithredu'r diwygiadau yn yr Alban yn werthfawr, ac yn goleuo'r modd y dylid gweithredu ein cynigion ni. Rydym yn ddiolchgar iawn i'n cydweithwyr o'r Alban a fu'n adrodd wrthym, mewn cyfres o gyfarfodydd, am y llwyddiannau a'r methiannau yn eu proses o ddiwygio cyfraith tai.

Cyflwyno tenantiaeth ddiogel yr Alban

2.47 Roedd cyflwyno tenantiaeth ddiogel yr Alban yn ddatblygiad a groesawyd yn gyffredinol. Ystyrid mai mater o synnwyr cyffredin oedd ei weithredu a'i fod yn adlewyrchu realiti'r ddarpariaeth o dai cymdeithasol. Daeth yn amlwg mai'r her fwyaf i'r broses o ddiwygio oedd sicrhau bod pob un o'r tenantiaid yn llofnodi tenantiaeth ddiogel yr Alban. Mae'n bosibl bod y terfyn amser a osodwyd gan y rheoleiddiwr wedi creu gormod o faich. Hwyrach y dylai Llywodraeth Cymru ystyried pa mor llym y dylid bod wrth orfodi'r llofnodi.

2.48 Dylid nodi bod nifer o landlordiaid cymdeithasol wedi manteisio ar y broses o gyflwyno tenantiaeth sengl yr Alban fel cyfle i gynnal trafodaeth gyda'u tenantiaid ynghylch hawliau a chyfrifoldebau. Gwnaed y sylw y gallai hynny fod yn arbennig o fuddiol yn wyneb y bwriad i roi'r gorau i wneud taliadau uniongyrchol i landlordiaid ar gyfer tenantiaid sy'n derbyn budd-daliadau. Cyfeiriwyd hefyd at fanteision cytundeb tenantiaeth mewn iaith syml ac eglur. Credid bod y cytundeb newydd wedi cael gwared â'r dirgeledd diangen a oedd yn peri tramgwydd i'r tenantiaid ac i'r staff.

Cefnu ar eiddo

2.49 Mae argymhellion Rhentu Cartrefi yn cynnwys gweithdrefn sy'n galluogi landlord i adennill meddiant heb fynd i'r llys, pan fo tenant wedi cefnu ar yr eiddo. Mae'r weithdrefn hon wedi ei modelu ar adran 18 o Ddeddf Tai (Yr Alban) 2001.

2.50 Nid oedd gan neb a holwyd air i'w ddweud yn erbyn y weithdrefn hon. Roedd yn amlwg bod rhai cymdeithasau tai wedi defnyddio'r weithdrefn ochr yn ochr ag achosion meddiant safonol, ond roedd hynny i'w briodoli i gyngor cyfreithiol gochelgar, yn hytrach nag unrhyw ansicrwydd ynghylch effeithiolrwydd cyfreithiol y weithdrefn.

Olynu gan ofalwyr

2.51 Yn Atodlen 3 i Ddeddf Tai (Yr Alban) 2001 cynhwysir gofalwyr ymhlith y personau cymwys o dan y darpariaethau olynu. Os nad oes priod neu aelod cymwys o'r teulu ar gael yn olynydd i'r denantiaeth, caiff gofalwr olynu os yw'n preswylio yn yr eiddo ac nad oes ganddo gartref arall. Ni phennir bod unrhyw gyfnod preswylio'n ofynnol cyn y gall gofalwr olynu. Yn rhan o ymgynghoriad ynglŷn â dyrannu tai cymdeithasol, mae'r Albanwyr yn ystyried cyflwyno gofyniad preswylio o 12 mis ar gyfer cymhwystra i olynu fel gofalwr. Nid oedd yn ymddangos bod neb wedi galw am ddiddymu hawliau olynu'r gofalwyr.

2.52 Mae argymhellion Rhentu Cartrefi, fel y'u hamlinellir uchod, yn cynnwys hawl olynu ar gyfer gofalwyr mewn rhai amgylchiadau. Maent hefyd yn cynnwys gofyniad preswylio 12 mis, yn ogystal â sail ar gyfer meddiannu am danddefnyddio'r eiddo yn dilyn olyniaeth gan olynydd wrth gefn. Rydym o'r farn bod yr argymhellion eisoes yn cynnwys y rhagofalon y mae'r Albanwyr yn eu hystyried ar hyn o bryd.

Tenantiaid ar y cyd

2.53 O dan gyfraith yr Alban, caiff un cyd-denant derfynu ei denantiaeth heb i hynny derfynu tenantiaeth unrhyw un o'r cyd-dentantiaid eraill. Roedd Deddf Tai (Yr Alban) 2001 yn darparu gweithdrefn statudol i derfynu tenantiaeth cyd-denant sydd wedi cefnu ar y denantiaeth.

2.54 Ystyrid mai mater o synnwyr cyffredin oedd y modd y gweithredid y gyfraith yn yr Alban mewn perthynas â thenantiaid ar y cyd, ac nid oedd hynny wedi achosi unrhyw broblemau.

Meddiannu am ôl-ddyledion rhent

2.55 Nid oes sail orfodol ar gyfer dadfeddiannu am ôl-ddyledion rhent yn nhenantiaeth ddiogel yr Alban. Yn ein cyfarfodydd buom yn holi ynghylch goblygiadau colli'r hyn a oedd yn cyfateb i sail 8. Er bod landlordiaid cymdeithasau tai wedi mynegi peth gofid ynghylch colli'r sail orfodol ar gyfer dadfeddiannu am ôl-ddyledion rhent difrifol, a rhwystredigaeth oherwydd yr anhawster o gael gorchmynion meddiannu am ôl-ddyledion o'r fath, nid oedd tystiolaeth bod ôl-ddyledion rhent wedi cynyddu ar ôl gweithredu'r Ddeddf.

2.56 Sylwn hefyd fod Deddf Tai (Yr Alban) 2010, a ddaeth i rym yn Awst 2012, yn gosod gofynion ar landlordiaid a thenantiaid i wneud popeth posibl i ddatrys problem yr ôl-ddyled yn gyntaf oll, cyn bo'r landlordiaid yn dwyn achos i ddadfeddiannu ar sail statudol. Y nod oedd lleihau'r anghysondeb rhwng y nifer uchel o achosion meddiant a gychwynnid a'r nifer isel o orchmynion a ganiateid.

RHAN 3
DATGANOLI

3.1 Gan fod Rhan 4 o Ddeddf Llywodraeth Cymru 2006 bellach yn weithredol, gall Llywodraeth Cymru ystyried diwygio cyfraith tai yn annibynnol ar San Steffan. Yn y Rhan hon o'r adroddiad, edrychir ar gwmpas presennol cymhwysedd deddfwriaethol y Cynulliad Cenedlaethol, ac esbonnir pam y mae argymhellion Rhentu Cartrefi yn dod o fewn y pwerau hynny.

DEDDF LLYWODRAETH CYMRU 2006

3.2 Mae Deddf Llywodraeth Cymru 2006 yn darparu pwerau i'r Cynulliad Cenedlaethol wneud deddfwriaeth sylfaenol ar bynciau penodol. Nodir y pynciau hynny yn Rhan 1 o Atodlen 7.

3.3 Mae adran 108 o'r Ddeddf yn pennu'r profion ychwanegol y mae'n rhaid i'r darpariaethau statudol eu bodloni er mwyn bod o fewn cymhwysedd deddfwriaethol y Cynulliad. Yn benodol, rhaid iddynt fod yn ymwneud â Chymru yn unig, a pheidio â dod o fewn unrhyw un o'r eithriadau yn y Rhan honno. Nodir cyfyngiadau ar ddefnyddio pwerau'r Cynulliad, o fewn cwmpas ei chymhwysedd deddfwriaethol cyffredinol, yn Rhan 2 o Atodlen 7.

3.4 Mae Rhan 1 o Atodlen 7 yn cynnwys y canlynol ym mharagraff 11:

(1) tai;

(2) cyllido tai ac eithrio cynlluniau a gynorthwyir o gronfeydd canolog neu leol sy'n darparu cymorth at ddibenion nawdd cymdeithasol neu mewn perthynas ag unigolion ar ffurf budd-daliadau;

(3) annog effeithlonrwydd a chadwraeth ynni yn y cartref, ac eithrio drwy wahardd neu reoleiddio;

(4) rheoleiddio rhent;

(5) digartrefedd; a

(6) carafannau preswyl a chartrefi symudol.

3.5 Mae hyn yn darparu datganiad eang o'r cymhwysedd i ddeddfu ar faterion tai, gydag ychydig iawn o fanylu pellach.

Diben darpariaethau deddfwriaethol

3.6 Darperir cymorth pellach, i ateb y cwestiwn a yw darpariaeth benodol mewn Deddf Cynulliad yn ymwneud â phwnc ai peidio, yn adran 108 o Ddeddf Llywodraeth Cymru 2006. Mae'r cwestiwn i'w benderfynu, meddir, drwy gyfeirio at ddiben y ddarpariaeth, gan roi sylw (ymhlith pethau eraill) i'w heffaith yn yr holl amgylchiadau (adran 108(7)). Ar yr amod y bodlonir y profion hyn a phrofion eraill, caiff Deddf Cynulliad wneud unrhyw ddarpariaeth y gellid ei gwneud gan Ddeddf Seneddol.

3.7 Mae arwyddocâd y diben wrth ateb cwestiynau ynghylch cymhwysedd

deddfwriaethol wedi ei atgyfnerthu gan benderfyniad y Goruchaf Lys yn *Imperial Tobacco Limited v Yr Arglwydd Adfocad (Yr Alban)*.[1] Wrth benderfynu bod darpariaethau Deddf Tybaco a Gwasanaethau Meddygol Sylfaenol (Yr Alban) 2010 yn dod o fewn cymhwysedd deddfwriaethol Senedd yr Alban, mae'r Goruchaf Lys wedi darparu dull dadansoddol y gellir ei gymhwyso yn gyffredinol i gwestiynau ynghylch cwmpas cymhwysedd deddfwriaethol.

3.8 Gan yr Arglwydd Hope, a roddodd yr unig ddyfarniad yn yr achos, pennwyd dull o ymdrin â chwestiynau cymhwysedd deddfwriaethol a oedd yn cynnwys tri cham. Yn y cam cyntaf, mae'n ofynnol adnabod diben y darpariaethau perthnasol. Yr ail gam yw archwilio'r rheolau perthnasol yn y statud sy'n nodi cwmpas y cymhwysedd deddfwriaethol (sef, yn yr achos presennol, Deddf Llywodraeth Cymru 2006) er mwyn canfod pa brofion sydd i'w cymhwyso. Y cam olaf yw dwyn ynghyd y camau un a dau er mwyn cyrraedd casgliad ynglŷn â chymhwysedd deddfwriaethol.

3.9 Y man cychwyn, felly, wrth ystyried cymhwysedd deddfwriaethol y Cynulliad Cenedlaethol i ddeddfu ar argymhellion Rhentu Cartrefi, yw dangos bod yr argymhellion at ddibenion tai. Mae'n hargymhellion ni yn ymwneud â diwygio cyfraith tai a chreu fframwaith statudol sy'n hwyluso polisi tai. Yn y cyd-destun hwn mae'n briodol ystyried cwmpas cyfraith tai a pholisi tai.

POLISI TAI A CHYFRAITH TAI

3.10 Yn fras, mae polisi tai yn ymwneud ag ymyriadau gan lywodraeth i gwrdd â'r angen am dai ac i hyrwyddo cyflenwi tai sy'n fforddiadwy ac o ansawdd gwell.[2] Daeth y maes polisi hwn i'r amlwg gyntaf yn ystod blynyddoedd cynnar yr ugeinfed ganrif, fel rhan o ymateb y llywodraeth i'r problemau tai a achoswyd gan drefoli a diwydiannu. Yn y cyfnod ar ôl yr Ail Ryfel Byd, prif ganolbwynt polisi tai oedd bodloni'r galw am dai drwy gyfrwng rhaglenni adeiladu cyhoeddus enfawr. O'r 1980au ymlaen gwelwyd tuedd i godi llai o dai 'gwladwriaethol', gan symud i gyfeiriad darpariaeth gan gymdeithasau tai a'r sector preifat a hyrwyddo perchen-feddiannaeth.

3.11 Dros y blynyddoedd diweddar, mae polisi tai mwy soffistigedig wedi datblygu, sy'n cydnabod cyfraniad polisi tai i ddatblygiad yr economi ac i'r broses o greu cymunedau cynaliadwy.[3] Rhoddir mwy o bwyslais ar sicrhau canlyniadau effeithiol, yn hytrach na chanolbwyntio ar natur a rôl y darparwr. Yn ôl Maclennan, math cymhleth o nwydd yw tai, a gall canlyniadau tai effeithio ar lesiant amgylcheddol, cyfiawnder cymdeithasol, ac ansawdd llywodraethu, heb

[1] [2012] UKSC 61, [2013] Scots Law Times 2.

[2] Gweler D Cowan, *Housing Law and Policy* (2011), pennod 1, am drafodaeth ar y cymhlethdod, yr anghysylltiad a'r gwrth-haeru sy'n nodweddion cynhenid yr amcanion polisi hyn.

sôn am yr economi.[4]

3.12 Pwnc arbenigol cymharol ddiweddar yw cyfraith tai, a dyfodd allan o'r mudiadau hawliau lles a'r mudiadau canolfannau cyfraith yn y 1960au a'r 1970au a'r twf cydredol mewn rheoleiddio statudol.[5] Rhoddwyd mynegiant iddo fel maes arbenigol gan Andrew Arden a Martin Partington, a datblygwyd y pwnc i fod i fod yn fwy na ffocws cyhoeddus confensiynol ar gyfer tai drwy gyfrwng erthyglau yn y *Legal Action Bulletin* a chyhoeddiadau arloesol megis *Landlord and Tenant Law*,[6] *Quiet Enjoyment*[7] a *Housing Law Cases and Materials*.[8]

3.13 Cenhadaeth y gwaith oedd amddiffyn hawliau tenantiaid unigol yn erbyn y wladwriaeth a pherchnogion eiddo. Yn ôl Arden:

> Yn gyffredinol, yr hyn a wnâi'r ymarferwyr oedd ceisio darbwyllo'r llysoedd i beidio â phenderfynu materion ynglŷn â thai rhent ar sail asesiad clinigol a chul o'r hawliau perchnogion, ond yn hytrach eu hystyried o'r safbwynt mai'r hyn yr oeddent yn ei benderfynu oedd sut byddai pobl yn byw. Yn yr un modd, roedd ymarferwyr yn herio'r agwedd amddiffynnol draddodiadol y llysoedd at benderfyniadau awdurdodau lleol (boed mewn perthynas â mynediad i dai, amodau lletya, rhenti, dadfeddiannu, neu faterion eraill).[9]

3.14 Esboniodd Arden yr hyn oedd yn wahanol yn yr arbenigedd newydd hon:

> Yn nhermau cyfraith tai, diben sylfaenol yr ymarferiad dechreuol oedd ceisio sefydlu'r honiad nad eiddo oedd hyn yr ymdrinnid ag ef, ond llety – y syniad nad ymarferiad buddsoddi pur oedd bod yn berchen ar dai, ond yn hytrach fod a wnelo hynny â'r lleoedd yr oedd pobl yn byw ynddynt. Canlyniad hanfodol hynny oedd na ddylai neb gael ei droi allan o gartref heb reswm da iawn... Roedd paramedr arall yn ymwneud ag amodau lletya – sef bod yr hyn sy'n oddefadwy ynglŷn â

[3] Mae adolygiad Barker o'r cyflenwad tai, a gyhoeddwyd gan y Trysorlys yn 2004, yn darparu enghraifft ragorol o'r ddealltwriaeth ehangach hon o rôl tai o fewn yr economi.

[4] D Maclennan, *Housing policies: New times, New foundations* (Joseph Rowntree Foundation, 2005), http://www.jrf.org.uk/sites/files/jrf/1859353622.pdf (ymwelwyd ddiwethaf 6 Chwefror 2013) t 25.

[5] Rhoddir hanes datblygiad cyfraith tai, fel math penodol o ymarfer cyfreithiol ac fel maes ysgolheigaidd, gan A Arden ac M Partington, "Housing Law Past and Present" in S Bright (gol.), *Landlord and Tenant Law: Past, Present and Future* (2006).

[6] M Partington, *Landlord and Tenant Law* (1975).

[7] A Arden ac M Partington, *Quiet Enjoyment* (1982).

[8] M Partington a J Hill, Housing Law Cases and Materials (1991).

[9] A Arden ac M Partington, "Housing Law Past and Present" in S Bright (ed.), *Landlord and Tenant Law: Past, Present and Future* (2006), t 196.

> thai yn dra gwahanol i'r hyn sydd hwyrach yn oddefadwy ynglŷn ag eiddo masnachol neu ddiwydiannol, ac na ddylid ei benderfynu ar sail dehongliad haniaethol o'r cydbwysedd cyfrifoldebau, a gymhwysir yn ddiwahaniaeth i bob math o osodiadau.[10]

3.15 Yr elfen ganolog mewn cyfraith tai, yn ôl dealltwriaeth Arden a Partington, oedd rheoleiddio hawliau a chyfrifoldebau'r rhai sy'n darparu ac yn meddiannu tai rhent. Roedd hyn yn cynnwys rheoleiddio mynediad i dai rhent, rheoleiddio rhenti a rheoleiddio amodau lletya.

3.16 Mae Cowan yn esbonio'u dull dadansoddol drwy ddweud eu bod yn cychwyn gydag amlinelliad o'r mathau gwahanol o berthnasau cyfreithiol, neu fathau o statws, sy'n bodoli yn y maes tai, ac yn dilyn hynny drwy fabwysiadu dull sy'n seiliedig ar 'swyddogaeth' neu 'broblem'.[11] Felly, unwaith y ceir sicrwydd, er enghraifft, fod rhywun wedi ei ddiogelu o dan Ddeddf Rhenti 1977, gellir ei gynghori ynglŷn â hawliau olynu; unwaith y canfyddir bod rhywun yn denant byrddaliol sicr, gellir ei gynghori i fod yn ochelgar ynglŷn â gorfodi cyfrifoldeb landlord ynghylch diffyg atgyweirio.

3.17 Mae egni a brwdfrydedd y rhai a ddatblygodd arbenigedd a chwmpas y pwnc, sy'n croesi'r ffiniau cyfreithiol traddodiadol rhwng cyhoeddus a phreifat, eiddo a chontract, wedi rhoi iddo'r duedd i dyfu. Yn ychwanegol, gan fod y pwnc wedi ymateb i'r datblygiadau diweddar mewn polisi tai, mae materion ymddygiad gwrthgymdeithasol ynglŷn â thai a materion gwahaniaethu bellach yn rhan o'i diriogaeth.

3.18 Yn *Housing Law and Policy*, a gyhoeddwyd yn 2011, mae Cowan yn diweddaru'r dull Arden/Partington. Gan fanteisio ar ei ddealltwriaeth soffistigedig o bolisi tai cyfoes, mae'n awgrymu fframwaith dadansoddol ag iddo dri rhan ar gyfer cyfraith tai – *rheoleiddio* systemau tai; *mynediad* i dai; a *hawliau a chyfrifoldebau* unigolion ynglŷn â thai. Mae hyn yn ei alluogi i edrych y tu hwnt i statws tenantiaeth, er mwyn ystyried y modd y dehonglir ac yr hyrwyddir y gwahanol fathau o feddiannaeth, ac yna mynd ymlaen i gynnwys perchen-feddiannaeth yn ei ddadansoddiad manwl o fynediad, hawliau a chyfrifoldebau.

3.19 Mae gwaith Cowan yn amlygu'r berthynas gymhleth sy'n bodoli rhwng cyfraith tai a pholisi tai. Ar un olwg, mae cyfraith a pholisi tai yn feysydd ar wahân; nid yw arbenigedd mewn cyfraith tai yn dynodi arbenigedd mewn polisi, nac i'r gwrthwyneb. Mewn amgylchiadau penodol, gall cyfraith tai fod yn llyffethair i bolisi tai. Gall y llyffethair fod yn seiliedig ar hawliau, megis sicrwydd deiliadaeth, neu Erthygl 8 o'r Confensiwn Ewropeaidd ar Hawliau Dynol. Ond yn fwy arwyddocaol, mae cyfraith tai hefyd yn offeryn allweddol at ddefnydd polisi tai, fel

[10] A Arden, "Origins of Housing Law" (2008) 30(4) *Journal of Social Welfare and Family Law* 287, t 291.

[11] D Cowan, Housing Law and Policy (2011) t 7.

dull a ddefnyddir i roi polisi tai ar waith. Gellir dadlau bod y gyfraith yn offeryn araf a thrwsgl at y diben o roi polisi ar waith. Y ddibyniaeth ar y gyfraith fel offeryn polisi sydd wedi arwain at y cymhlethdod statudol a ddaeth bellach yn un o nodweddion cyfraith tai.

3.20 Un o brif fanteision ein hargymhellion ni yw eu bod yn darparu fframwaith cyfreithiol symlach, sy'n caniatáu i bolisi ddatblygu heb fod angen deddfu ar gyfer ffurfiau newydd o denantiaeth. Pwrpas yr argymhellion yw moderneiddio, symleiddio ac egluro hawliau a chyfrifoldebau darparwyr a meddianwyr tai rhent. Maent yn dilyn y symudiad a ddigwyddodd mewn polisi tai, oddi wrth reoleiddio'r darparwyr ac i gyfeiriad rheoleiddio'r canlyniadau.

Y BERTHYNAS RHWNG RHENTU TAI A CHYFRAITH DIOGELU DEFNYDDWYR

3.21 Mae Rhentu Cartrefi yn defnyddio'r gyfraith ar delerau contract annheg, sydd wedi ei hestyn i gynnwys contractau tai drwy gyfrwng Rheoliadau Telerau Annheg mewn Contractau Defnyddwyr 1999. Effaith y Rheoliadau hyn yw'r canlynol: os bydd llys yn cael bod un o'r telerau mewn contract yn annheg, ni fydd y teler hwnnw'n rhwymo'r meddiannydd, ac ni fydd modd i'r landlord ddibynnu arno.

3.22 Mae'r Rheoliadau'n darparu mathau pwysig o ddiogelwch i feddianwyr, ond gallant adael y landlordiaid mewn ansicrwydd ynghylch statws y telerau yn eu contractau. Ar ben hynny, nid gwaith hawdd i'r meddianwyr fydd gorfodi eu hawliau o dan y Rheoliadau, yn enwedig oherwydd y diffyg diogelwch yn y sector rhentu preifat.

3.23 Ateb Rhentu Cartrefi i'r broblem hon yw integreiddio'r rheoliadau yn rhan o'r cynllun statudol. Drwy ddiogelu yn statudol y telerau sylfaenol, a'r telerau atodol hynny sy'n cynnwys darpariaethau atodol nas addaswyd, rhag eu herio o dan y Rheoliadau, darperir sicrwydd i'r landlordiaid ynghylch cyfreithlondeb y telerau. Gwarentir tegwch i'r meddianwyr drwy graffu'n ofalus ar y darpariaethau yn ystod y broses o ddeddfu. Yn eu hanfod, mae argymhellion Rhentu Cartrefi yn defnyddio'r gyfraith ar ddiogelu defnyddwyr at ddibenion cyfraith tai.

3.24 Mae'r Rheoliadau Telerau Annheg mewn Contractau Defnyddwyr yn cynnwys rhai cyfyngiadau allweddol ar gwmpas y Rheoliadau, sef:

(1) cyfyngiad i achosion lle mae'r landlordiaid yn "gyflenwyr" (*"suppliers"*) a'r meddianwyr yn "ddefnyddwyr" (*"consumers"*);

(2) cyfyngiad i achosion pan nad yw'r telerau wedi eu negodi'n unigol; a

(3) mae telerau "craidd" wedi eu heithrio.

3.25 Mae'r tri chyfyngiad hyn yn berthnasol i argymhellion Rhentu Cartrefi. Mae'r ddau gyntaf yn teilyngu eu hystyried ymhellach.

3.26 At ddibenion y Rheoliadau, mae landlord yn gyflenwr os yw'n gweithredu at ddibenion ei fasnach, busnes neu broffesiwn, boed mewn perchnogaeth gyhoeddus neu berchnogaeth breifat.[12] Nid yw cwmpas y term "supplier" yn eglur yng nghyd-destun rhentu. Yn ôl un farn, mae pob landlord yn gyflenwr gan eu bod i gyd yn y busnes o rentu cartrefi. Gellid dadlau hefyd i'r gwrthwyneb y dylid hepgor nifer fach o landlordiaid nad ydynt yn ennill bywoliaeth drwy rentu, ond yn hytrach yn gosod eu heiddo dros dro oherwydd na allant ei werthu, neu rai sy'n gosod eiddo a adawyd iddynt tra'n aros i'w werthu. Cyfeirir at y rhain fel landlordiaid "hobi" neu landlordiaid "achlysurol".

3.27 Mae canllawiau a ddarparwyd gan y Swyddfa Masnachu Teg, ar weithredu'r Rheoliadau yng nghyd-destun cytundeb tenantiaeth, yn rhagdybio y dylid ystyried yn gyffredinol fod landlordiaid yn "gyflenwyr". Pe codai anghydfod ynglŷn ag a yw landlord bach unigol yn gyflenwr ai peidio, mater i lys fyddai penderfynu a yw'r Rheoliadau'n gymwys yn yr achos hwnnw.[13] Hyd y gwyddom, nid oes unrhyw benderfyniad llys wedi ei wneud ar y pwynt hwn.

3.28 Er mwyn datrys unrhyw amheuaeth ynglŷn â'r mater hwn, mae'r argymhellion a'r Bil drafft yn darparu bod y Rheoliadau'n gymwys i bob landlord a phob meddiannydd. Golyga hyn nad oes angen ystyried a yw landlord yn gweithredu fel busnes ai peidio.

3.29 Mae'n ymddangos mai dyna'r ateb cywir, gan ei fod yn osgoi ansicrwydd ynghylch statws yr hyn a dybiwn sy'n nifer fach o landlordiaid. Mae'n cyflawni diben o fewn cyfraith tai; ac nid oes iddo unrhyw ddiben y tu allan i gyfraith tai (sydd yr un mor bwysig). Dull o gyflawni diben ydyw, nid diben ynddo'i hun. Ei bwrpas yw sicrhau bod pob landlord yn gweithredu o fewn yr un fframwaith cyfreithiol, darparu cymhelliad i ddefnyddio'r contractau enghreifftiol, a chwalu unrhyw ffiniau diangen.

3.30 Bu'r ail gyfyngiad, ynglŷn ag eithrio telerau a negodwyd yn unigol, yn destun craffu yn ddiweddar gan y Llys Apêl. Mae hyn yn berthnasol i'n hargymhellion ni, gan fod y cynllun Rhentu Cartrefi yn galluogi landlordiaid i fewnosod telerau ychwanegol yn y contract, nad ydynt wedi eu darparu drwy statud. Gellir craffu ar degwch unrhyw delerau o'r fath, gan nad ydynt yn dod o fewn yr eithriad i'r Rheoliadau a drafodir uchod, hynny yw, nid ydynt yn adlewyrchu darpariaethau statudol gorfodol.

[12] "acting for purposes relating to his trade, business or profession, whether publicly owned or privately owned" Rheoliadau Telerau Annheg mewn Contractau Defnyddwyr 1999, rheoliad 3(1).

[13] Y Swyddfa Masnachu Teg *Guidance on unfair terms in tenancy agreements* (Medi 2005) OFT 356.

3.31 Y broblem sy'n codi, felly, yw y byddai'r meddiannydd yn peidio â chael ei ddiogelu gan y Rheoliadau pe bai telerau wedi eu negodi'n unigol.

3.32 Mae diffiniad y Rheoliadau o delerau a negodir yn un cyfyng:

> rhaid ystyried bob amser nad yw teler wedi ei negodi'n unigol os yw wedi ei ddrafftio ymlaen llaw ac nad oedd modd, o ganlyniad, i'r defnyddiwr ddylanwadu ar sylwedd y teler *("a term shall always be regarded as not having been individually negotiated where it has been drafted in advance and the consumer has therefore not been able to influence the substance of the term"*).[14]

3.33 Fel mae Comisiwn y Gyfraith wedi nodi yn ddiweddar, nid yw'r ffaith bod y defnyddiwr wedi cael cyfle i ddylanwadu ar gynnwys telerau yn ddigonol ynddo'i hun.[15] Ategir hyn gan benderfyniad y Llys Apêl, *UK Housing Alliance (North West) Ltd v Francis*, i'r perwyl nad oedd y ffaith bod defnyddiwr wedi cyfarwyddo cyfreithwyr, a gafodd y cyfle i ystyried a negodi telerau, yn golygu bod y telerau wedi eu negodi'n unigol.[16]

3.34 Mae'n dra annhebygol, felly, y byddai unrhyw gytundeb rhentu yn cynnwys telerau wedi eu negodi'n unigol a fyddai'n dod y tu allan i gwmpas y Rheoliadau, ac yr ydym o'r farn nad oes angen, yn ymarferol, ymdrin yn benodol â'r cyfyngiad hwn yn y ddeddfwriaeth. Pe bai Llywodraeth Cymru, fodd bynnag, yn penderfynu dileu unrhyw ansicrwydd drwy dybio bod yr holl delerau ychwanegol ac atodol mewn contractau rhentu yn dod o fewn cwmpas y Rheoliadau, rydym yn hyderus y byddai'r cyfryw ddeddfwriaeth at ddibenion tai, ac y byddai o fewn y cymhwysedd deddfwriaethol.

DARPARIAETHAU GORFODI AC ATODOL

3.35 Er ein bod yn hyderus bod ein hargymhellion yn dod o fewn y maes tai, dylid nodi bod Deddf Llywodraeth Cymru 2006 hefyd yn darparu rhywfaint o gymhwysedd deddfwriaethol atodol. Yn adran 108(5), darperir y bydd darpariaeth mewn Deddf Cynulliad yn gyfraith, hyd yn oed pan nad yw'n dod o dan un o'r penawdau yn Rhan 1 o Atodlen 7, os yw'n darparu ar gyfer gorfodi darpariaeth sy'n dod o fewn y cymhwysedd deddfwriaethol, neu sydd rywfodd arall yn atodol, neu'n ganlyniadol, i ddarpariaeth o'r fath.

3.36 Pwrpas egluro'r diffiniad o gyflenwr yw gwella'r modd y gorfodir ein cynllun, drwy sicrhau bod y cymhelliad i gydymffurfio â'r Rheoliadau yn gymwys i bob landlord.

3.37 Mae'n hargymhellion i strwythuro disgresiwn barnwyr wrth wneud penderfyniadau

[14] Rheoliadau Telerau Annheg mewn Contractau Defnyddwyr 1999, rheoliad 5(2).

[15] Unfair Terms in Consumer Contracts: a new approach? (2012) Law Commission Issues Paper.

ynghylch gorchmynion meddiannu yn rhai y gellir eu deall fel darpariaethau tai a hefyd fel darpariaethau i orfodi'r cynllun Rhentu Cartrefi.

3.38 Cynlluniwyd y darpariaethau ar strwythuro disgresiwn fel ymateb i'r sylwadau ynghylch anghysondeb barnwrol, a wnaed yn ystod yr ymgynghoriad ar gyfer Rhentu Cartrefi, ac a ailfynegwyd wrthym yn ystod ein gwaith ar yr adroddiad presennol. Wrth benderfynu a yw'n rhesymol gwneud gorchymyn neu benderfyniad, mae'r Bil yn gwneud yn ofynnol bod llys yn rhoi sylw i amgylchiadau perthnasol. Mae cwmpas yr amgylchiadau perthnasol yn eang. At ddefnydd y barnwyr, mae'r Bil yn darparu rhestr gyfeirio o'r amgylchiadau perthnasol, gan gynnwys y rhai sy'n ymwneud â thorri telerau, amgylchiadau deiliad y contract, ac amgylchiadau'r landlord a phersonau eraill (megis y rhai sydd ar y rhestr aros).

3.39 Y diben mewn perthynas â thai, sydd y tu ôl i'r darpariaethau, yw sicrhau gwell eglurder a chysondeb ym mhenderfyniadau'r llysoedd. Mae'r darpariaethau hefyd yn sicrhau bod y barnwyr yn gweithredu'r polisi tai a ymgorfforwyd yn y Bil.

3.40 Yn *Local Government Byelaws (Wales) Bill 2012 – reference by the Attorney General for England and Wales*, darperir rhywfaint o arweiniad ynglŷn ag ystyr "incidental to, or consequential on" yng nghyd-destun paragraff 6(1)(b) o Ran 3 o Atodlen 7 i Ddeddf 2006.[17]

3.41 Yn ôl yr Arglwydd Neuberger

> mae'r ateb i'r cwestiwn a yw darpariaeth benodol mewn deddfiad yn "atodol neu'n ganlyniadol i" ddarpariaeth arall, yn amlwg yn dibynnu ar ffeithiau'r achos penodol. I ryw raddau, gall yr ateb fod yn fater o ffaith a gradd, a dylai ddibynnu ar sylwedd yn hytrach na ffurf, er wrth gwrs, mewn unrhyw Fil sydd wedi ei ddrafftio'n dda, bydd y sylwedd wedi ei adlewyrchu yn y ffurf, o leiaf mewn perthynas â'r math hwn o gwestiwn.[18]

3.42 Mae'r Arglwydd Neuberger yn cyfeirio at y rhesymu yn *Martin v Most*[19] mewn perthynas â darpariaeth gyffelyb yn Neddf yr Alban 1998. Mewn darn byr yn [2010] UKSC 10, paragraff 40, cyfeiriodd yr Arglwydd Hope at bwynt fel un "pwysig" o ran esbonio "pam nad oedd yn atodol neu'n ganlyniadol i ddarpariaethau a oedd i'w cael mewn man arall yn y deddfiad". Ym mharagraff 93

[16] [2010] EWCA Civ 117, [2010] 3 All ER 519.

[17] *Attorney General v National Assembly for Wales Commission* [2012] UKSC 53, [2012] 3 WLR 1294.

[18] *Attorney General v National Assembly for Wales Commission* [2012] UKSC 53, [2012] 3 WLR 1294 at [49].

[19] [2010] UKSC 10, [2010 Scots Law Times 412.

disgrifiodd yr Arglwydd Rodger ddiwygiadau penodol fel rhai a oedd yn dod o fewn paragraff 3(1)(a) o Atodlen 4 i Ddeddf yr Alban 1998, os nad oeddent yn "codi unrhyw fater o egwyddor ar wahân", ac os oeddent "wedi eu rhoi o'r neilltu yn ddiogel mewn atodlen". Cyfeiriodd yn ôl at y sylw hwnnw ym mharagraff 128, lle y disgrifiodd baragraff 3(1)(a) o Ddeddf yr Alban 1998 fel un y "bwriedid iddo ymdrin â'r mathau o fân ddiwygiadau sy'n amlwg yn angenrheidiol er mwyn rhoi effaith i ddarn o ddeddfwriaeth ddatganoledig, ond nad ydynt yn codi unrhyw fater ar wahân sy'n ymwneud ag egwyddor". Cyferbynnodd hwy â darpariaethau eraill a oedd yn "annibynnol ac yn ymdrin ag agweddau penodol ar y sefyllfa".[20]

3.43 Yn yr achos *Is-ddeddfau* y cyfeirir ato uchod, mae'r Arglwydd Hope yn ychwanegu rhywfaint o eglurder drwy ddweud, ym mharagraff 83,

> Mae'r geiriau 'incidental to, or consequential on, any other provision contained in the Act of the Assembly' yn ei gwneud yn eglur mai ymarferiad cymharu yw'r ymarferiad dehongli y cyfeirir ato ….. Pa mor arwyddocaol [yw'r ddarpariaeth] pan edrychir arni yng nghyd-destun y Ddeddf gyfan? Os oes gan y diddymiad ei ddiben a'i bwrpas ei hunan, un peth fydd hynny. Bydd y tu allan i gymhwysedd. Os yw ei bwrpas neu ei effaith yn atodol, yn unig, i rywbeth arall sydd yn y Ddeddf, ac os gellir gweld bod canlyniad rhoi effaith iddo yn fach neu'n ddibwys yng nghyd-destun y Ddeddf gyfan, rhywbeth gwahanol fydd hynny. Gellir ei ystyried wedyn yn rhywbeth atodol neu ganlyniadol, yn unig, i'r diben y mae'r Bil yn ceisio'i gyflawni.

3.44 Fel y dadleuwn uchod, nid oes bwriad na diben ei hunan gan yr eglurhad bod "cyflenwyr" yn gymwys i bob landlord; yn hytrach, mae'n atodol i'r diben o ddiwygio contractau rhentu. Felly, mae'n atodol neu'n ganlyniadol i brif ddiben y Bil – sef diben tai.

[20] *Attorney General v National Assembly for Wales Commission* [2012] UKSC 53, [2012] 3 WLR 1294. at [50].

3.45 Rydym o'r farn bod y dull hwn o ymdrin â chymhwysedd deddfwriaethol yn gyson â phenderfyniadau diweddar gan y Goruchaf Lys. Yn achos *Imperial Tobacco*[21] yn ogystal â'r achos *Is-ddeddfau*[22] canfyddir tystiolaeth o amharodrwydd y farnwriaeth i ymyrryd â dealltwriaeth y Llywodraethau datganoledig o'u pwerau, ac o agwedd gadarnhaol at gymhwysedd deddfwriaethol sy'n canolbwyntio ar wneud i ddatganoli weithio.

[21] *Imperial Tobacco Ltd v The Lord Advocate (Scotland)* [2012] UKSC 61; [2013] Scots Law Times 2.

[22] *Attorney General v National Assembly for Wales Commission* [2012] UKSC 53, [2012] 3 WLR 1294.

RHAN 4
DIWEDDARU RHENTU CARTREFI

4.1 Diben y rhan hon o'r adroddiad yw diweddaru argymhellion Rhentu Cartrefi yng ngoleuni datblygiadau yn y gyfraith ers cyhoeddi'r adroddiad terfynol yn 2006. Byddwn yn ystyried datblygiadau o ran hawliau dynol a darpariaethau statudol ynglŷn ag ymddygiad gwrthgymdeithasol.

DATBLYGIADAU O RAN HAWLIAU DYNOL

4.2 Yn y rhyngweithio rhwng cyfraith tai a hawliau dynol y digwyddodd y datblygiadau ehangaf ers cyhoeddi'r adroddiad terfynol. Gwnaed ein hargymhellion yng ngoleuni penderfyniad y Goruchaf Lys yn achos *Qazi v Harrow LBC*[1] a ddisgrifiwyd gan Cowan *et al* fel "anterth goruchafiaeth hawliau eiddo dros hawliau dynol yr ymyrrwr"[2] ac oherwydd hynny y cymerwyd agwedd gymharol gadarn gennym at berthnasedd erthygl 8 i'r mater o ddadfeddiannu tenantiaid sydd heb ddiogelwch.

4.3 Fodd bynnag, mewn cyfres o achosion yn Llys Hawliau Dynol Ewrop, gwnaeth y Llys yn eglur fod gan berson sydd mewn perygl o'i ddadfeddiannu yr hawl i gael ystyried, gan dribiwnlys annibynnol, y cwestiwn a fyddai ei ddadfeddiannu yn ddull cymesur o gyrraedd nod cyfreithlon.

4.4 Mae'r Goruchaf Lys wedi datrys yr anghysondeb rhyngddo a Strasbourg mewn dau achos diweddar ac arwyddocaol, sef Manchester City Council v Pinnock (Secretary of State for Communities and Local Government intervening)[3] a Hounslow London Borough Council v Powell (Secretary of State for Communities and Local Government intervening).[4]

4.5 Yn *Pinnock*, penderfynodd y Goruchaf Lys fod cyfreitheg Llys Hawliau Dynol Ewrop yn gwneud yn ofynnol bod modd i lys domestig ystyried cymesuredd troi'r person hwnnw allan o'i gartref o dan erthygl 8, a thra'n gwneud hynny, datrys unrhyw anghydfodau ffeithiol perthnasol rhwng y partïon. Penderfynwyd hefyd bod modd dehongli'r drefn tenantiaethau isradd mewn ffordd a oedd yn gydnaws â'r Confensiwn Ewropeaidd.[5]

4.6 Agwedd bragmatig a gymerwyd gan yr Arglwydd Neuberger at oblygiadau'r

[1] [2003] UKHL 43, [2004] 1 AC 983.

[2] D Cowan, L Fox O'Mahony ac N Cobb, *Great Debates in Property Law* (2012), p 148.

[3] [2010] UKSC 45, [2010] 3 WLR 1441.

[4] [2011] UKSC 8, [2011] 2 AC 186.

[5] Tenantiaeth isradd yw tenantiaeth heb ddiogelwch, a grëwyd yn dilyn gorchymyn llys a 'israddiodd' denantiaeth ddiogel neu denantiaeth sicr flaenorol, oherwydd ymddygiad gwrthgymdeithasol.

posibilrwydd y gall erthygl 8 chwarae rhan mewn achosion meddiant. Gan gydnabod bod hyn yn achosi rhwystr posibl mewn achosion pan fo awdurdod lleol yn ceisio meddiannu cartref person, mewn amgylchiadau pan nad yw'r gyfraith ddomestig yn gosod unrhyw ofyniad o resymoldeb ac yn rhoi hawl ddiamod i gael gorchymyn meddiant, mae'n awgrymu mai'r dewis gorau fyddai "gadael y mater i synnwyr da a phrofiad y barnwyr sy'n eistedd yn y llys sirol".[6]

4.7 Yn *Powell* gwnaed awgrym pellach gan y Goruchaf Lys ynglŷn ag arwyddocâd erthygl 8. Roedd y llys yn ystyried tri digwyddiad o ddadfeddiannu gan awdurdodau lleol lle nad oedd y ddeddfwriaeth berthnasol yn caniatáu unrhyw ddisgresiwn i'r llys.

4.8 Gan gymhwyso *Pinnock* penderfynodd y Goruchaf Lys:

(1) ym mhob achos pan fo awdurdod lleol yn ceisio cael meddiant o eiddo sy'n gyfystyr â chartref rhywun at ddibenion erthygl 8, bod gan y llys y gofynnir iddo orchymyn meddiannu y pŵer i ystyried a fyddai'r gorchymyn yn gymesur;

(2) pan fo llys yn bwriadu gofyn am orchymyn meddiant, rhaid hysbysu'r person sydd â meddiant cyfreithlon o'r eiddo o'r rheswm pam y mae'r awdurdod yn gweithredu felly, fel y gall y person hwnnw geisio herio cymesuredd y bwriad; a

(3) ni fyddai rhaid i'r llys ystyried a oedd gwneud gorchymyn meddiant yn gymesur ai peidio oni fyddai'r meddiannydd wedi codi'r cwestiwn, ac oni fyddai'r mater yn croesi'r trothwy uchel o fod yn ddadleuadwy o ddifrif. Mewn achos o'r fath byddai'n rhaid i'r llys benderfynu, gan roi rhesymau, a fyddai gwneud y gorchymyn yn deg a chytbwys ai peidio.

4.9 Yn y mwyafrif llethol o achosion, ni fyddai angen i'r awdurdod lleol esbonio a chyfiawnhau ei resymau dros ofyn am orchymyn meddiant, oherwydd gellid rhagdybio bod hawl gan yr awdurdod i feddiannu. Ni fyddai angen i'r llys ystyried mwy nag amgylchiadau personol y meddiannydd, unrhyw wrthwynebiadau ffeithiol a godir, ac a fyddai gwneud y gorchymyn meddiant yn gyfreithlon ac yn gymesur.

4.10 Er nad ydym yn dymuno gorbwysleisio arwyddocâd amddiffyniadau ar sail cymesuredd mewn achosion meddiant[7] mae penderfyniadau'r Goruchaf Lys yn creu posibiliadau ar gyfer herio'r hyn a ystyrid gynt yn seiliau awtomatig ar gyfer meddiannu.

[6] *Manchester City Council v Pinnock (Secretary of State for Communities and Local Government intervening)* [2010] UKSC 45, [2010] 3 WLR 1441 at [57].

[7] Gweler y dadansoddiad ystyriol gan D Cowan ac C Hunter yn "Yeah but, no but" – Pinnock and Powell in the Supreme Court (2012) 75(1) *Modern Law Review* tt 78 i 91.

4.11 Fel enghraifft o hyn, mewn achos Uchel Lys diweddar, *Southend-on-Sea Borough Council v Armour*,[8] gwrthodwyd gorchymyn meddiant i Gyngor Southend mewn achos yn erbyn tenant rhagarweiniol ar sail cyfaddefiad o ymddygiad bygythiol a difrïol.[9] Cadarnhaodd Mr Ustus Cranston benderfyniad cofiadur y llys sirol. Dywedodd fod y cofiadur wedi cydbwyso'r holl ffactorau a oedd yn dylanwadu o blaid ac yn erbyn cymesuredd caniatáu meddiant, ac wedi rhoi dyfarniad a oedd yn esiampl o'r modd y dylid ymdrin ag achosion o'r fath. Yn ôl y cofiadur, yr hyn a oedd yn arwyddocaol oedd y modd y cydymffurfiodd y tenant â thelerau ei denantiaeth yn ystod y cyfnod ar ôl cychwyn yr achos meddiant ac yn ystod y gwrandawiad. Oherwydd hynny, ac er gwaethaf ei chanfyddiad bod cais y Cyngor i ofyn am feddiant yn gymesur, a hynny er bod y tenant yn dioddef o anabledd meddyliol, daeth i'r casgliad nad oedd terfynu'r denantiaeth, erbyn hynny, yn benderfyniad cymesur.

4.12 Mae'n ymddangos mai hwn oedd yr achos cyntaf, yn dilyn penderfyniadau'r Goruchaf Lys, lle y cadarnhawyd mewn apêl benderfyniad i wrthod hawliad meddiannu ar sail y Confensiwn Ewropeaidd ar Hawliau Dynol.[10]

4.13 Ar hyn o bryd, anodd yw rhagweld faint o hawliadau meddiannu a wrthodir oherwydd y byddai gwneud gorchymyn meddiant yn anghymesur. Yn ddiamau, fodd bynnag, bydd unrhyw ofyniad i ystyried cymesuredd yn creu elfen o ansicrwydd ynghylch seiliau gorfodol pan ddefnyddir hwy gan gyrff cyhoeddus.

DEDDF CYDRADDOLDEB 2010

4.14 Roedd anableddau Mr Armour yn amlwg yn berthnasol i benderfyniad y cofiadur ynghylch cymesuredd unrhyw benderfyniad i'w ddadfeddiannu. Mae'r ddeddfwriaeth ar wahaniaethu yn gosod cyfrifoldebau penodol ar gyrff cyhoeddus, nid yn unig i beidio ag ymddwyn mewn ffordd sy'n gwahaniaethu, ond hefyd i roi sylw i'r angen i ddileu gwahaniaethu wrth ymgymryd â'u swyddogaethau.

4.15 Mae'r darpariaethau gwrth-wahaniaethu wedi eu cynnwys bellach yn Neddf Cydraddoldeb 2010, sy'n casglu at ei gilydd, mewn un statud, y darpariaethau ar wahaniaethu anghyfreithlon a oedd gynt wedi eu cynnwys mewn nifer o statudau.

4.16 Mae adran 15 o Ddeddf Cydraddoldeb 2010 yn darparu fel a ganlyn;

> (1) Mae person (A) yn gwahaniaethu yn erbyn person anabl (B) os yw—
>
> (a) A yn trin B yn anffafriol oherwydd rhywbeth sy'n codi o ganlyniad i anabledd B, a

[8] [2012] EWHC 3361 (QB).

[9] Tenantiaethau rhagarweiniol yw tenantiaethau 12 mis heb sicrwydd, a roddir cyn caniatáu tenantiaeth ddiogel.

(b) Ni all A ddangos bod y driniaeth honno yn ffordd gymesur o gyrraedd nod cyfreithlon.

(2) Nid yw is-adran (1) yn gymwys os yw A yn dangos nad oedd A yn gwybod, ac na ellid yn rhesymol fod wedi disgwyl iddo wybod, bod gan B yr anabledd.

4.17 Er y gallai adran 15(2) ddiogelu landlordiaid cymdeithasol na wyddant am anableddau tenant, mae'n debygol y rhoddir amddiffyniadau cyfraith gyhoeddus gerbron, a fydd yn gosod y baich o wneud ymholiadau rhesymol ynghylch anabledd ar y landlord cymdeithasol.

4.18 Mae'r cysyniad o wahaniaethu anuniongyrchol, a nodir yn adran 19 o Ddeddf Cydraddoldeb 2010, hefyd yn achosi problemau. Ni all landlord amddiffyn ei hun rhag honiadau o wahaniaethu anuniongyrchol, ac eithrio drwy ddangos bod ei weithredoedd yn ddull cymesur o gyrraedd nod cyfreithlon. Y broblem gyda'r seiliau gorfodol ar gyfer meddiannu yw nad ydynt yn rhoi cyfle i'r llysoedd wirio cymesuredd y gweithredoedd sy'n effeithio ar bobl anabl.

4.19 Dyletswydd cydraddoldeb y sector cyhoeddus, a nodir yn adran 149 o Ddeddf Cydraddoldeb 2010, yw un o'r camau cyfreithiol mwyaf arwyddocaol a gymerwyd tuag at ymladd anghydraddoldeb yn ystod y blynyddoedd diwethaf. Mae'n gosod dyletswydd ar sefydliadau perthnasol i ystyried sut y gallant gyfrannu'n rhagweithiol at wella cydraddoldeb a chysylltiadau da. Mae'n gwneud yn ofynnol cynnwys ystyriaethau cydraddoldeb fel rhan annatod o'r modd y cyflenwir gwasanaethau ac y cynllunnir polisïau, gan gynnwys polisïau mewnol y sefydliadau, a rhaid cadw'r materion hynny dan arolwg.

4.20 Mae achosion diweddar ynglŷn â dyletswydd cydraddoldeb y sector cyhoeddus yn dangos ei chwmpas a'i photensial. Yn *Pieretti v Enfield*,[11] apeliodd Mr Pieretti yn erbyn penderfyniad y llys sirol i gadarnhau penderfyniad yr awdurdod lleol ei fod yn fwriadol ddigartref wedi iddo golli ei lety yn y sector preifat, oherwydd ei fod wedi caniatáu i ôl-ddyledion rhent gronni. Cyflwynwyd tystiolaeth gan Mr Pieretti i'r perwyl ei fod ef a'i wraig yn dioddef o iselder. Canfu'r Llys Apêl fel ganlyn:

(1) bod y ddyletswydd a osodir ar awdurdodau lleol gan adran 49A(1) o Ddeddf Gwahaniaethu ar Sail Anabledd 1995, sef y mynegiant blaenorol o ddyletswydd cydraddoldeb y sector cyhoeddus, yn gymwys nid yn unig i'r modd y llunnir polisïau ond hefyd i'r modd y cymhwysir y polisïau hynny mewn achosion unigol;

[10] N Dobson "A judicial chink?" (2012) 162(7541) *New Law Journal* 1524.

[11] [2010] EWCA Civ 1104, [2011] PTSR 565.

(2) er mwyn i anabledd chwarae'i ran briodol yn y penderfyniadau a wneir gan awdurdodau lleol, rhaid creu diwylliant sy'n fwy ymwybodol o fodolaeth chanlyniadau anabledd;

(3) bod cynnal ymchwiliadau a gwneud penderfyniadau ynglŷn â dyletswyddau digartrefedd statudol yn swyddogaethau awdurdodau at ddibenion adran 49A(1) o Ddeddf 1995, a rhaid i awdurdod roi sylw priodol i'r angen i gymryd camau a fydd yn rhoi ystyriaeth briodol i anableddau person anabl wrth wneud penderfyniad o dan y dyletswyddau hynny; a

(4) pan nad yw awdurdod wedi ei wahodd i ystyried anabledd y ceisydd, anghywir yw dweud na ddylai'r awdurdod ystyried y mater o anabledd onid yw'r anabledd hwnnw yn amlwg, er nad yw'n ofynnol bod awdurdodau yn gwneud ymchwiliadau ym mhob achos er mwyn gwybod a yw ceisydd yn anabl ai peidio.

4.21 Felly, caniataodd y llys yr apêl yn erbyn penderfyniad yr awdurdod lleol, mai dyletswyddau cyfyngedig yn unig oedd yn ddyledus ganddo i Mr Pieretti o dan Ddeddf Tai 1996.

4.22 Mae hyn yn dynodi y gall fod yn angenrheidiol, er mwyn profi cydymffurfiaeth â dyletswydd cydraddoldeb y sector cyhoeddus, fod llys yn craffu ar benderfyniadau i ddadfeddiannu pobl anabl.

4.23 Nid yw ein contractau diogel arfaethedig ni yn cynnwys unrhyw seiliau gorfodol ac eithrio un, sy'n gymwys pan fo deiliad contract wedi rhoi hysbysiad i'r landlord i derfynu'r contract, ond wedyn yn peidio ag ildio meddiant o'r fangre.

4.24 Fodd bynnag, mae Llywodraeth y DU wedi cynnig y dylid cyflwyno sail orfodol mewn cysylltiad ag ymddygiad gwrthgymdeithasol, mewn tenantiaethau diogel yn ogystal â thenantiaethau sicr. Yn ein barn i, mae'r datblygiadau yn *Pinnock* a *Powell* ac o fewn y ddeddfwriaeth cydraddoldeb yn codi amheuaeth ynghylch yr awgrym y byddai defnyddio sail o'r fath gan gyrff cyhoeddus yn darparu'r sicrwydd sy'n un o brif amcanion y newidiadau. Trafodir hyn ymhellach ym mhennod 5 o'r adroddiad hwn wrth ystyried amcanion polisi tai Cymru yng nghyd-destun ein hargymhellion ni. Yn gyntaf yma, rydym yn ailedrych ar y gyfraith ynglŷn ag ymddygiad gwrthgymdeithasol mewn cysylltiad â thai, ac yn esbonio'r cynigion cyfredol i'w diwygio.

Y FFRAMWAITH CYFREITHIOL SY'N DATBLYGU MEWN CYSYLLTIAD AG ATAL YMDDYGIAD GWRTHGYMDEITHASOL

4.25 Byth ers cyflwyno Deddf Tai 1996 a gweithredu'r drefn tenantiaethau rhagarweiniol, mae'r casgliad o bwerau sydd ar gael i landlordiaid cymdeithasol i fynd i'r afael ag ymddygiad gwrthgymdeithasol wedi cynyddu'n gyson. Un o effeithiau arwyddocaol hynny oedd gwneud sicrwydd deiliadaeth tenant awdurdod lleol yn fwyfwy dibynnol, nid yn unig ar ymddygiad cyfrifol y tenant ei hunan, ond ymddygiad ei deulu a'i ymwelwyr yn ogystal.

4.26 Yn ychwanegol at greu tenantiaethau rhagarweiniol, roedd Deddf Tai 1996 yn estyn y seiliau disgresiynol ar gyfer meddiannu, yn darparu ar gyfer hysbysiad meddiant brys ac yn cyflwyno math o waharddeb "rhydd-sefyll", a roddai'r pŵer i

awdurdod lleol atal ymddygiad gwrthgymdeithasol mewn cysylltiad â thai'r awdurdod.

4.27 Roedd Deddf Ymddygiad Gwrthgymdeithasol 2003 yn datblygu ac yn mireinio'r offer a ddarparwyd yn Neddf Tai 1996, gan leihau'r sicrwydd deiliadaeth ymhellach i denantiaid gwrthgymdeithasol a chan symleiddio a chyflymu'r broses o gael gwaharddebau. Mae'r Ddeddf hon yn arbennig o berthnasol i'r adolygiad presennol o Rhentu Cartrefi, gan ei bod wedi ei deddfu yn ystod prosiect Comisiwn y Gyfraith, ac wedi manteisio ar rai o'r cynigion a drafodwyd yn y Papur Ymgynghori.

4.28 Mae Deddf Ymddygiad Gwrthgymdeithasol 2003 yn darparu mecanwaith ar gyfer lleihau sicrwydd deiliadaeth y tenant diogel drwy alluogi israddio tenant o'r fath sy'n gyfrifol am ymddygiad gwrthgymdeithasol. Roedd y Ddeddf yn mewnosod adran 82A newydd yn y drefn tenantiaethau diogel a bennir yn Neddf Tai 1985, gan roi pŵer i'r llys wneud gorchymyn israddio ("*demotion order*") mewn perthynas â thenantiaeth ddiogel, a newidir drwy hynny yn denantiaeth isradd.

4.29 Ni chaiff y llys roi'r gorchymyn oni fydd y tenant, neu breswylydd arall yn ei gartref, neu ymwelydd â'i gartref, wedi defnyddio'r fangre at ddibenion anghyfreithlon neu wedi ymddwyn mewn ffordd a allai achosi niwsans neu annifyrrwch i unrhyw berson arall. Rhaid i'r llys hefyd fodloni ei hunan bod gwneud y gorchymyn yn rhesymol.

4.30 Roedd Deddf 2003 hefyd yn datblygu'r pŵer yn Neddf Tai 1996 i wneud gwaharddebau. Mae'n darparu ar gyfer tri math o waharddeb ar gyfer ymateb i broblem ymddygiad gwrthgymdeithasol gan denantiaid.[12] Y gwaharddebau yw:

(1) gwaharddeb ymddygiad gwrthgymdeithasol;[13]

(2) gwaharddeb yn erbyn defnydd anghyfreithlon o fangre;[14] a

(3) gwaharddeb yn erbyn torri'r cytundeb tenantiaeth.[15]

4.31 Mae pwerau arestio a gorchmynion gwahardd ar gael i atal ymddygiad sy'n cynnwys neu sy'n bygwth trais.

4.32 Roedd Deddf Ymddygiad Gwrthgymdeithasol 2003 hefyd yn cyflwyno gorchmynion cau. Mae'r rhain yn galluogi'r heddlu i gau mangre breswyl a ddefnyddir i gyflenwi, cynhyrchu neu ddefnyddio cyffuriau Dosbarth A, os oes niwsans neu anhrefn yn gysylltiedig â'r fangre. Estynnwyd cwmpas y

[12] Deddf Ymddygiad Gwrthgymdeithasol 2003, adran 13.

[13] Deddf Tai 1996, adran 153A.

[14] Deddf Tai 1996, adran 153B.

[15] Deddf Tai 1996, adran 153D.

gorchmynion hyn gan Ddeddf Cyfiawnder Troseddol a Mewnfudo 2008, i gynnwys cau mangreoedd sy'n gysylltiedig ag anhrefn sylweddol neu fynych, neu niwsans difrifol a mynych i aelodau'r cyhoedd. Mae'r gorchmynion olaf hyn ar gael hefyd i awdurdodau lleol.

4.33 Y diwygiad deddfwriaethol olaf i sylwi arno yw'r tenantiaethau ymyriad teuluol a gyflwynwyd gan Ddeddf Tai ac Adfywio 2008. Mae'r ffurf hon o denantiaeth yn cynnwys cymorth ymddygiadol, a gall landlord cymdeithasol gynnig tenantiaeth o'r fath i denant sydd mewn perygl o'i dadfeddiannu neu sydd eisoes wedi ei droi allan. Ni cheir unrhyw anhawster i ymgorffori'r ffurf hon o denantiaeth yn y cynllun Rhentu Cartrefi. Yn wir, mae'r gofyniad i ddarparu cymorth yn cydasio'n glòs â'r darpariaethau sydd yn y Bil.

CYNIGION PAPUR GWYN CYFREDOL Y DU: PUTTING VICTIMS FIRST

4.34 Ym Mai 2012, cyhoeddwyd y papur gwyn *Putting victims first: More effective responses to anti-social behaviour* gan Lywodraeth y DU.[16] Ei nod yw symleiddio a hwyluso'r offer cyfreithiol sydd ar gael i'r heddlu, landlordiaid cymdeithasol ac awdurdodau lleol ar gyfer ymateb i ymddygiad gwrthgymdeithasol.

4.35 Y prif bwynt sydd o ddiddordeb ynddo mewn cysylltiad â Rhentu Cartrefi yw'r datblygiad o sail orfodol newydd ar gyfer meddiannu, a fodelwyd ar y broses o derfynu tenantiaethau rhagarweiniol. Bwriedir i'r sail newydd fod yn gymwys mewn achosion o ymddygiad gwrthgymdeithasol difrifol mewn cysylltiad â thai.

4.36 Bydd y gorchymyn meddiant arfaethedig yn orfodol:

(1) os yw tenant, aelod o'i aelwyd neu ymwelydd â'r eiddo wedi ei gollfarnu am drosedd dreisgar neu rywiol, trosedd yn erbyn eiddo, neu gyflenwi cyffuriau neu gynhyrchu cyffuriau gyda'r bwriad o'u cyflenwi, a'r drosedd yn dditiadwy ac wedi ei chyflawni yng nghyffiniau'r eiddo o fewn y 12 mis blaenorol;

(2) os yw llys wedi penderfynu bod gwaharddeb atal troseddu, a gafwyd gan neu ar ôl ymgynghori â'r landlord, wedi ei thorri gan denant, aelod o aelwyd y tenant neu ymwelydd â'r eiddo o fewn y 12 mis blaenorol;

(3) os yw'r eiddo wedi ei gau am gyfnod hwy na 48 awr o ganlyniad i orchymyn diogelu cymuned (gorchymyn cau) a roddwyd gan lys; neu

(4) os yw tenant, aelod o'i aelwyd neu ymwelydd wedi ei gollfarnu gan lys am dorri hysbysiad lleihau sŵn mewn perthynas ag eiddo'r tenant o dan y drefn niwsans statudol.

4.37 Bydd y waharddeb atal troseddu y cyfeirir ati uchod yn disodli gwaharddebau

[16] Cm 8367.

ymddygiad gwrthgymdeithasol, a bydd ar gael i ystod ehangach o geiswyr. Baich profi sifil a fyddai'n ofynnol ar gyfer gwaharddeb o'r fath (fel sy'n ofynnol ar gyfer gwaharddeb ymddygiad gwrthgymdeithasol). Byddai torri'r waharddeb yn ddirmyg llys ac yn denu cosbau difrifol. Un o fanteision honedig y waharddeb atal troseddu yw y gall gynnwys gwaharddiadau ar ymddygiad yn ogystal â gofynion positif sy'n mynd i'r afael ag achosion gwaelodol. Mae enghraifft a roddir yn y papur gwyn yn awgrymu y gellid ei defnyddio yn erbyn "cymdogion hunllefus" yn y sector rhentu preifat. Deallwn fod landlordiaid cymdeithasol bryderus i raddau ynghylch diflaniad y waharddeb ymddygiad gwrthgymdeithasol. Mae ganddynt ffydd yn y waharddeb bresennol ac yn ofni y collir y ffocws ar ymddygiad gwrthgymdeithasol.

4.38 Mae Llywodraeth Cymru wedi penderfynu dilyn arweiniad San Steffan yn y mater hwn, ond wedi ei gwneud yn eglur hefyd y bydd yn ailystyried ei sefyllfa yng ngoleuni argymhellion Rhentu Cartrefi, yn enwedig ar ôl ystyried gwerth ein hargymhellion ynghylch strwythuro disgresiwn y barnwyr.

4.39 Byddai cynnwys sail meddiannu orfodol mewn contract diogel yn golygu newid sylweddol yn yr egwyddorion sy'n sylfaen i argymhellion Rhentu Cartrefi. Ac er mwyn cydymffurfio â'r ddeddfwriaeth ar hawliau dynol a chydraddoldeb, dylid cadw mewn cof y byddai'n rhaid defnyddio'r sail yn gymesur, ac ystyried yn ofalus ei heffaith ar unigolion sy'n agored i niwed. Yn ein barn ni, gellir gwneud canlyniadau achosion meddiant disgresiynol yn fwy sicr drwy ddrafftio'r disgresiwn strwythuredig yn ofalus, nag y gellir drwy ddefnyddio'r sail orfodol. Trafodir hyn yn Rhan 5 isod.

RHAN 5
BLAENORIAETHAU POLISI CYMRU A RHENTU CARTREFI

5.1 Mae'n bwysig bod argymhellion Rhentu Cartrefi yn hwyluso, neu o leiaf yn peidio â llesteirio amcanion Llywodraeth Cymru ar gyfer tai.

5.2 Rydym o'r farn y bydd y moderneiddio a'r symleiddio a argymhellwn yn darparu fframwaith deddfwriaethol a fydd yn caniatáu integreiddio polisi tai a'r offer cyfreithiol, ac yn hwyluso gweithredu polisi mewn ffordd hyblyg ac ymatebol.

5.3 Mae'r drafodaeth sy'n dilyn yn canolbwyntio ar ymddygiad gwrthgymdeithasol, trais domestig a thai â chymorth. Byddwn hefyd yn ystyried strategaethau posibl ar gyfer cyflawni.

YMDDYGIAD GWRTHGYMDEITHASOL

Argymhellion Rhentu Cartrefi

5.4 Cynlluniwyd y fframwaith cyfreithiol a bennwyd yn yr adroddiad Rhentu Cartrefi er mwyn cyflawni'r amcanion canlynol :

(1) ymateb yn gyflym;

(2) canlyniadau rhagweladwy mewn achosion cyfreithiol;

(3) y gallu i ddiogelu tystion; a

(4) diogelu hawliau tramgwyddwyr honedig yn briodol.

5.5 Roedd y cynigion yn y papur ymgynghori, fel yr esbonnir ym mharagraff 15.5 o'r adroddiad terfynol, yn rhai dadleuol iawn. Mynegwyd pryder, yn enwedig gan gyfreithwyr a oedd yn cynrychioli tenantiaid, ynghylch ychwanegu at bwerau cyfreithiol landlordiaid cymdeithasol, yn enwedig yr awdurdodau lleol, a oedd, ym marn y cyfreithwyr, yn methu â gwneud defnydd llawn o'r pwerau a oedd ganddynt eisoes. Roedd y sefydliadau o'r sector gwirfoddol sy'n cynrychioli buddiannau tenantiaid o'r un farn. Ar y llaw arall, roedd yr ymatebion gan grwpiau trefnedig o denantiaid a nifer o'r awdurdodau lleol yn mynegi pryder mawr ynghylch ymddygiad gwrthgymdeithasol.

5.6 Fodd bynnag, cafodd y cynigion yn y papur ymgynghori eu goddiweddyd gan ddeddfwriaeth newydd, sef yn benodol, Deddf Ymddygiad Gwrthgymdeithasol 2003, a oedd yn cynnwys rhai o gynigion y papur ymgynghori

5.7 O ganlyniad, addaswyd yr argymhellion terfynol yn sylweddol. Gellir crynhoi'r hyn a argymhellwyd fel a ganlyn:

(1) dylai pob contract meddiannu gynnwys teler ymddygiad gwaharddedig;

(2) bydd torri'r teler hwnnw yn cyfiawnhau dwyn achos meddiant yn y ffordd arferol;

(3) caiff landlordiaid wneud cais hefyd am waharddeb am dorri'r teler hwnnw;

(4) ceir cysylltu gwaharddeb a ganiateir i landlord cymunedol â gorchymyn sy'n atal y person a enwir yn y waharddeb rhag mynd i'r fangre neu i unrhyw ardal a bennir yn y waharddeb, neu orchymyn sy'n gwneud yn ofynnol bod y person a enwir yn y waharddeb yn allgáu unrhyw berson arall o'r fangre; yn yr un modd, ceir cysylltu pŵer arestio â'r waharddeb;

(5) ceir ymdrin ag achos gwahardd ar y cyd ag achos meddiant;

(6) caiff landlordiaid wneud cais am israddio deiliad contract diogel yn ddeiliad contract safonol, fel dewis arall, yn hytrach na'i ddadfeddiannu; a

(7) dylid gosod dyletswydd ar landlordiaid cymdeithasol i bennu targed ar gyfer eu hymateb i ymddygiad gwrthgymdeithasol.[1]

Y teler ymddygiad gwaharddedig

5.8 Mae Comisiwn y Gyfraith yn awgrymu y dylai pob contract meddiannu gynnwys teler sylfaenol sy'n ymwneud ag ymddygiad gwaharddedig mewn, o amgylch ac yng nghyffiniau tai rhent. Mae'r teler hwn yn darparu'r hyn sy'n cyfateb i'r sail ddisgresiynol bresennol ar gyfer meddiannu. Ni fyddai barnwr yn gorchymyn meddiannu oni fyddai o'r farn ei bod yn rhesymol gwneud gorchymyn o'r fath, a bod y teler hefyd wedi ei dorri. Fel yr esbonnir uchod, byddai'r disgresiwn wedi ei strwythuro.[2]

5.9 Gallai torri'r teler yn ysgogi yn y ffordd arferol. Ond, yn eithriadol yn yr achos hwn, gellid cychwyn yr achos meddiant ar yr un diwrnod ag y rhoddir yr hysbysiad meddiannu gan y landlord.

5.10 Mae'r teler yn cynnwys pedair elfen:

(1) Ni chaiff deiliad contract ddefnyddio, na bygwth defnyddio trais yn erbyn person sy'n byw yn gyfreithlon yn y fangre, na gwneud dim sy'n peri risg o niwed sylweddol i berson o'r fath.

(2) Ni chaiff deiliad contract ymddwyn, na bygwth ymddwyn, mewn ffordd a allai achosi niwsans neu annifyrrwch:

(a) i berson sy'n byw yng nghyffiniau'r fangre; neu

[1] Awgrymwyd gosod dyletswydd i ymgyrraedd at darged, yn hytrach na dyletswydd orfodadwy benodedig, oherwydd y goblygiadau i adnoddau.

[2] Gweler paragraff 3.38 uchod.

(b) i berson sy'n cymryd rhan mewn gweithgarwch cyfreithlon yn y fangre neu yng nghyffiniau'r fangre.

(3) Ni chaiff deiliad contract ddefnyddio, na bygwth defnyddio'r fangre, nac unrhyw rannau cymunol y mae hawl ganddo i'w defnyddio o dan y contract, at ddibenion troseddol.

(4) Ni chaiff deiliad y contract gymell, annog na chaniatáu i eraill, sy'n preswylio yn y fangre neu sy'n ymweld â hi, weithredu yn y ffyrdd hyn (neu gymell, annog neu ganiatáu i unrhyw berson weithredu fel y crybwyllir uchod).

5.11 Yn wahanol i'r rhan fwyaf o'r telerau sylfaenol eraill, ni chaniateir i'r landlord addasu nac amrywio'r teler hwn. Mae pŵer gan yr awdurdod priodol i ddiwygio'r ddarpariaeth sylfaenol drwy orchymyn.

5.12 Yn ystod y cyfarfodydd gyda rhanddeiliaid yng Nghymru, gwnaed y sylw nad oedd y teler yn defnyddio'r ymadrodd "ymddygiad gwrthgymdeithasol". Tybid y gallai hynny greu problem, gan fod yr ymadrodd yn un defnyddiol, a'i ystyr yn eglur a chyfarwydd. Gellid datrys hyn, pe dymunid, drwy osod penawdau uwchben y cymalau perthnasol. Pennawd cymal 1 wedyn fyddai trais domestig; pennawd cymal 2 fyddai ymddygiad gwrthgymdeithasol; pennawd cymalau 3 a 4 fyddai dibenion troseddol. Drwy wneud hynny gellir cyfleu negeseuon eglur ynghylch ymddygiad gwaharddedig.

5.13 Sylwer bod y teler yn disgrifio ymddygiad a allai hefyd fod yn droseddol. Nid ei bwrpas, fodd bynnag, yw plismona na chosbi troseddu. Yn hytrach, mae iddo ddiben sy'n ymwneud â thai, sef delio â chanlyniadau'r ymddygiad *yn y maes tai*, ac y mae'n ymwneud yn uniongyrchol â'r mater o ddarparu'r tai sydd dan sylw. Mae'n cymryd lle'r cymal "defnydd anghyfreithlon neu anfoesol" a gynhwysir yn draddodiadol mewn cytundebau tenantiaeth, yn ogystal â disodli'r sail bresennol ar gyfer meddiannu oherwydd trais domestig.

Cwmpas y teler

5.14 Y cwestiynau polisi cyntaf y dylid eu gofyn yw: a yw'r teler ymddygiad gwaharddedig yn briodol yn y cyd-destun presennol; ac a yw'n adlewyrchu'r blaenoriaethau polisi yng Nghymru. Yn wahanol i sail orfodol y papur gwyn, mae'r teler yn cynnwys trais a gyflawnir yn y cartref. Mae'r cwestiynu canlynol yn codi:

(1) A ddylai'r teler gynnwys trais o fewn y cartref?

(2) A ddylid ei ehangu i gynnwys mathau eraill o ymddygiad?

(3) A ddylid ei ailddrafftio er mwyn iddo gydweddu'n well â'r sail orfodol arfaethedig ar gyfer meddiannu? Yn benodol, a ddylai roi'r pŵer i ddadfeddiannu am dorri'r gwaharddebau atal troseddu arfaethedig a/neu'r pŵer i gael gorchymyn diogelu cymuned (gorchymyn cau)?

5.15 Mae cynnwys trais domestig yn y teler ymddygiad gwaharddedig yn nodwedd sydd wedi ei hintegreiddio'n fanylach yn y cynllun Rhentu Cartrefi. Mae tair dadl dros gynnwys trais domestig yn y teler. Yn gyntaf, mae'n cyfleu neges eglur i'r perwyl bod trais domestig yn fater difrifol o safbwynt diogelwch cymunedol, Yn

ail, mae'n cymryd lle'r sail bresennol ar gyfer dadfeddiannu am drais domestig (sydd wedi ei drafftio braidd yn anfoddhaol). Yn drydydd, mae'n darparu rhwymedi i gymryd lle arfer presennol nifer o'r landlordiaid cymdeithasol, sef gofyn i'r dioddefwr gyflwyno hysbysiad ymadael a thrwy hynny derfynu'r gyd-denantiaeth, ac yna rhoi tenantiaeth newydd fel unig denant i'r dioddefwr.

5.16 Mae'r cynllun Rhentu Cartrefi yn darparu bod cyflwyno hysbysiad gan gyd-feddiannydd yn terfynu'r cytundeb meddiannu mewn perthynas â'r cyd-feddiannydd hwnnw yn unig. Nid effeithir ar y cytundeb gyda'r cyd-feddiannydd neu'r cyd-feddianwyr eraill. O ganlyniad, ni fydd y dull presennol o ymateb i barhad meddiant person sy'n cyflawni trais domestig ar gael i'r landlord cymdeithasol. Mae'n bosibl, felly, y gallai tramgwyddwr elwa o ganlyniad i'w dramgwydd, drwy gael meddiant o'r eiddo cyfan.

5.17 Os yw'r teler ymddygiad gwaharddedig yn cynnwys trais domestig, yna, yn dilyn toriad, bydd modd cael meddiant yn erbyn y cyd-denant sy'n tramgwyddo. Gall landlordiaid cymdeithasol hefyd ddefnyddio'r pŵer i gael gwaharddeb rydd-sefyll ynghyd â gorchmynion gwahardd a phŵer arestio mewn achosion o drais domestig. Yn y naill achos a'r llall, bydd modd i'r landlord cymdeithasol geisio cael meddiant mewn achos a ddygir am dorri unrhyw waharddeb. Effaith y gorchymyn meddiant fydd terfynu hawliau ac ymrwymiadau'r cyd-denant o dan y cytundeb rhentu

5.18 Bydd dau opsiwn yn agored i'r landlord, y ddau ohonynt yn ymddangos yn ganlyniadau mwy synhwyrol na'r rhai sydd ar gael o dan y sail trais domestig gyfredol.

(1) Os yw'r dioddefwr yn dymuno cael ei ailgartrefu yn rhywle arall, bydd modd i'r landlord ailfeddiannu'r eiddo ar ôl gwneud cynnig addas i'r dioddefwr.

(2) Os yw'r dioddefwr yn dymuno aros yn y cartref presennol, bydd modd i'r landlord amrywio'r cytundeb.

5.19 Tra oeddem yn ysgrifennu'r adroddiad hwn, buom yn cyfarfod â'r rhai sy'n gyfrifol am ddatblygu polisïau i ymateb i drais domestig yng Nghymru. Roeddent yn croesawu'r bwriad i gynnwys trais a gyflawnir yn y cartref yn y teler ymddygiad gwaharddedig, ac o'r farn bod yr opsiynau a fydd ar gael i landlordiaid yn darparu dewisiadau addas i ddioddefwyr trais domestig.

5.20 Cafwyd trafodaeth, fodd bynnag, ynglŷn â chwmpas yr ymddygiad y dylid ei gynnwys yn y teler ymddygiad gwaharddedig. Roedd peth brwdfrydedd o blaid ehangu cwmpas yr ymddygiad gwaharddedig i gynnwys cam-drin economaidd, seicolegol, emosiynol a mathau eraill o ymddygiad camdriniol o fewn y cartref. Er ein bod yn cytuno y byddai'n briodol cynnwys ystod eang o fathau o ymddygiad camdriniol mewn ymatebion polisi ynglŷn â thrais domestig, nid ydym yn credu y byddai'n briodol ehangu'r teler ymddygiad gwaharddedig i gynnwys ymddygiadau o'r fath.

5.21 Er y byddai diffiniad ehangach o drais domestig yn dra defnyddiol mewn datganiad o ddyheadau polisi, nid ydym yn credu y dylai methiant i gyrraedd safon dyheadau o'r fath arwain at derfynu'r contract rhentu, ac eithrio mewn achosion o gam-drin corfforol. Ar ben hynny, byddai'r anawsterau a wynebid wrth

geisio casglu tystiolaeth o gam-drin seicolegol neu emosiynol yn sylweddol iawn. Rydym felly yn argymell na ddylid estyn y teler ymddygiad gwaharddedig ymhellach mewn perthynas ag ymddygiad yn y cartref

Sail orfodol?

5.22 Yr ail gwestiwn polisi yw: a ddylai torri'r teler fod yn sail orfodol ar gyfer meddiannu, ynteu'n sail ddisgresiynol? Y dull a ddilynir yn Rhentu Cartrefi yw cyfyngu ar argaeledd achosion meddiant gorfodol. Yn benodol, gwneir yn ofynnol bod llysoedd yn cymryd rhesymoldeb i ystyriaeth wth ymdrin ag achosion meddiant a ddygir gan landlordiaid cymdeithasol yn erbyn deiliaid contractau diogel. Mae hyn yn adlewyrchu natur gymdeithasol y contract diogel.

5.23 Fel y nodwyd uchod, gwyddom y bu Llywodraeth Cymru, rhwng Tachwedd 2011 a Chwefror 2012, yn ymgynghori ynghylch sail orfodol newydd ar gyfer ymddygiad gwrthgymdeithasol difrifol ynglŷn â thai, ac wedi penderfynu dilyn arweiniad Lloegr drwy gyflwyno sail o'r fath.[3] Fodd bynnag, mae Llywodraeth Cymru, wedi dynodi y bydd yn ailedrych ar y sefyllfa wrth ystyried y cynigion Rhentu Cartrefi, yn enwedig y disgresiwn strwythuredig y bydd yn ofynnol i'r barnwyr ei arfer wrth wneud penderfyniadau ynglŷn â meddiannu.

5.24 Honnir bod sail orfodol yn cynnig manteision o ran sicrwydd a chyflymder. Ond eto, mae'r cynigion Rhentu Cartrefi yn darparu ar gyfer proses gyflym o ddadfeddiannu drwy ganiatáu i'r achos meddiant gychwyn ar yr un diwrnod ag y cyflwynir yr hysbysiad.

5.25 Fodd bynnag, o ganlyniad i *Pinnock*[4]*,* mewn unrhyw achos y gellir codi'r cwestiwn o hawliau erthygl 8 ynddo, nid oes sicrwydd bellach y bydd gorchymyn meddiant yn cael ei roi ar unrhyw sail orfodol. Ar ben hynny, mae dyletswydd ar y landlord cymdeithasol i wirio'n ofalus rhag ofn bod y tenant yn berson sy'n agored i niwed. Ac fel y nodwyd uchod, pan fo'r teler yn cynnwys trais domestig, mae ystyriaeth gan y llys o'r trefniadau ar gyfer ailgartrefu'r dioddefwr yn rhan hanfodol o'r broses.

5.26 Yn ôl yr hyn welsom ni, er mor ddeniadol yw sail orfodol ar yr olwg gyntaf, gall sail ddisgresiynol sydd wedi ei drafftio'n gadarn fod yn ffordd fwy effeithiol o gyflawni'r amcanion polisi.

5.27 Yr hyn y gofynnir i'r barnwyr ei wneud yw ateb y cwestiwn a yw'r ymyrraeth â hawliau erthygl 8 yn gymesur mewn gwirionedd â'r nod cyfreithlon y ceisir ei gyrraedd. Rydym o'r farn bod y disgresiwn strwythuredig o fewn Rhentu Cartrefi yn fwy tebygol o arwain at benderfyniadau cadarn nag ydyw sail orfodol ynghyd â gofyniad amhenodol bod barnwyr yn ystyried cymesuredd. Mae'r disgresiwn

[3] Gweler paragraffau 4.4 i 4.39 uchod.

[4] *Manchester City Council v Pinnock (Secretary of State for Communities and Local Government intervening)* [2010] UKSC 45, [2010] 3 WLR 1441 at [57].

strwythuredig hwn yn gwneud yn ofynnol bod barnwr yn cymryd i ystyriaeth holl amgylchiadau perthnasol y penderfyniad i ddadfeddiannu, gan gynnwys y tebygolrwydd o doriad pellach ac unrhyw gamau a gymerwyd i atal toriad pellach cyn gwneud y cais am orchymyn meddiant. Wedyn, bydd rhaid gwrthbwyso effaith debygol unrhyw orchymyn meddiant ar y meddiannydd a'i fywyd preifat neu deuluol, yn erbyn yr effeithiau ar y landlord ac ar bersonau eraill, gan gynnwys cymdogion a'r rhai sydd ar y rhestr aros am dai.

5.28 Gellid dadlau y byddai defnyddio disgresiwn strwythuredig wedi atal, er enghraifft, y barnwr rhanbarth yn *Thurrock Borough Council v West*[5] rhag camgymhwyso'r prawf cymesuredd. Yn yr achos hwnnw, dywedodd y Llys Apêl nad oedd dim yn amgylchiadau pâr ifanc a phlentyn gydag adnoddau ariannol cyfyngedig, a oedd yn gwahaniaethu rhyngddynt ac eraill ar restrau aros yr awdurdod lleol. Byddai gwrthbwyso eu hanghenion hwy yn erbyn angen y landlord i ddyrannu ei stoc tai mewn modd priodol, ac yn erbyn angen y rhai ar y rhestr aros am dai, fel y byddai'n ofynnol wrth ddefnyddio disgresiwn strwythuredig, yn fwy tebygol o arwain at benderfyniad o blaid yr awdurdod lleol.

5.29 Ar y llaw arall, mae'r disgresiwn strwythuredig yn darparu'r cyfle sydd ei angen ar y llys i ystyried pa mor agored i niwed yw meddianwyr y cartref, fel sy'n ofynnol gan Ddeddf Hawliau Dynol 1998 a'r ddeddfwriaeth cydraddoldeb.

TAI Â CHYMORTH

Argymhellion Rhentu Cartrefi

5.30 Roedd adroddiad terfynol Rhentu Tai yn nodi ein hargymhellion ar gyfer cynllun newydd i reoleiddio diogelwch mewn tai â chymorth. Buom yn cydweithio'n glòs gyda darparwyr tai, yn enwedig rhai o Gymru, i ddyfeisio'r cynllun, a fyddai'n hwyluso symud cleientiaid tai â chymorth ymlaen, fesul cam, o ddibyniaeth i annibyniaeth o ran tai. Mae'n osgoi'r angen i ddarparwyr ddewis rhwng trwyddedau, sy'n gyfreithiol amheus, a thenantiaethau byrddaliol sicr a all fod yn amhriodol ar gyfer tai â chymorth.

5.31 Nodir yr argymhellion yn llawn ym Mhennod 10 o'r adroddiad terfynol.

5.32 Yn gryno, mae'r argymhellion:

(1) yn diffinio tai â chymorth fel tai lle mae cysylltiad uniongyrchol rhwng darparu llety a darparu gwasanaethau cymorth;

(2) yn hepgor darpariaeth fyrdymor o'r cynllun statudol, gan ddarparu cyfnod o bedwar mis ar gyfer gofal seibiant neu i alluogi'r darparwr i asesu anghenion gofal a chymorth y cleient; a

[5] [2012] EWCA Civ 1435.

(3) yn eithrio tai â chymorth o'r gofyniad i ymuno mewn contractau diogel am gyfnod a ddisgrifir fel "y cyfnod rheoli dwys" ("*the enhanced management period*"). Mae'r eithriad i barhau am ddwy flynedd, ond gellir ei estyn am gyfnodau pellach mewn rhai amgylchiadau. Ar ddiwedd y cyfnod rheoli dwys, newidir y contract yn gontract diogel neu'n gontract safonol, fel y bo'n briodol.

5.33 Yn ystod y cyfnod rheoli dwys, mae'r cleient yn rhentu ar gontract safonol â chymorth, sef fersiwn amrywiedig o'r contract safonol. Mae hyn yn cynnig dau offeryn rheoli penodol i'r darparwyr. Yn gyntaf, mae'n rhoi pŵer i reolwyr tai â chymorth wahardd meddiannydd am gyfnod o hyd at 48 awr, heb fod angen unrhyw ymyriad gan y llys. Gall hyn fod yn gymwys os yw'r meddiannydd wedi defnyddio trais yn erbyn unrhyw un yn y fangre, neu'n creu perygl o niwed sylweddol, neu'n ymddwyn mewn ffordd sy'n amharu'n ddifrifol ar allu preswylydd arall, yn y llety â chymorth a ddarperir gan y landlord, i gael budd o'r cymorth a ddarperir. Yn ail, rhoddir pŵer i reolwyr symud meddianwyr o fewn y llety a ddarperir.

5.34 Ni chaiff landlordiaid ddefnyddio'r pŵer i wahardd fwy na thair gwaith mewn cyfnod o chwe mis. Os bydd yr ymddygiad yn parhau, rhaid i'r landlord wneud cais am feddiant.

5.35 Os bydd angen gwahardd am gyfnod hwy, neu wahardd yn barhaol, bydd rhaid i'r landlord fynd i'r llys i ofyn am waharddeb. Caiff y waharddeb barhau am hyd y cyfnod o rybudd ar gyfer achos meddiant.

5.36 Tra oeddem yn ysgrifennu'r adroddiad hwn, buom yn cyfarfod darparwyr tai â chymorth. Er bod cefnogaeth i'r argymhellion yn gyffredinol, roedd teimlad bod angen edrych yn fanwl ar rai o'r manylion, yn enwedig y terfynau amser ar gyfer gwahardd ac estyn y cyfnod rheoli dwys. Mynegwyd pryder penodol ynghylch yr anawsterau a wynebir gan ddarparwyr wrth geisio dod o hyd i lety dilynol o fewn dwy flynedd. Rydym yn cytuno bod angen ystyried y terfynau amser yn ofalus, ac yn credu y byddai estyniadau rhesymol yn hyd y cyfnodau hyn yn gyson ag amcanion ein hargymhellion. O ganlyniad, rydym yn argymell ymgynghori ymhellach gyda'r cyhoedd a rhanddeiliaid ynglŷn â'r manylion hyn.

GWEITHREDU

5.37 Roedd yr adroddiad Rhentu Cartrefi yn argymell gweithredu'r argymhellion mewn un "cam mawr". Ar y dyddiad gweithredu penodedig, byddai pob cytundeb tenantiaeth a thrwydded yn newid yn gontract diogel neu'n gontract safonol.

5.38 Nid oes rheswm, fodd bynnag, pam na all contractau enghreifftiol fod ar gael cyn y dyddiad gweithredu. Yn wir, gellir gweld manteision, i landlordiaid cymdeithasol yn arbennig, mewn defnyddio'r contractau enghreifftiol ar gyfer meddianwyr newydd cyn y dyddiad gweithredu. Rydym yn argymell drafftio darpariaethau deddfwriaethol a fyddai'n caniatáu hyn.

5.39 Mae tenantiaid Deddf Rhenti wedi eu heithrio o'r broses drawsnewid awtomatig. Yn rhesymegol, nid oes dim i rwystro'u newid i gontractau diogel, ond daeth gwrthwynebiad i'r bwriad oddi wrth rai tenantiaid yn y sector preifat sy'n denantiaid Deddf Rhenti. Daethom i'r casgliad, oherwydd amgylchiadau penodol y berthynas rhwng tenantiaid Deddf Rhenti a'u landlordiaid, y dylai tenantiaethau

Deddf Rhenti, yn unig o blith yr holl wahanol fathau o denantiaeth, barhau i fodoli (ond na ellid, wrth gwrs, greu unrhyw denantiaethau newydd o'r fath).

5.40 Tra oeddem yn ysgrifennu'r adroddiad hwn, gwnaed awgrym y dylai tenantiaid Deddf Rhenti sydd â chymdeithasau tai yn landlordiaid arnynt, gael eu dwyn i mewn i'r cynllun. Tynnwyd sylw at y fiwrocratiaeth helaeth a drud sy'n ymwneud â'r diogelwch rhenti teg a ddarperir i'r tenantiaid hyn – a hynny yn ddiangen gan fod y rhenti teg yn uwch na'r rhenti a godir ar denantiaid cymdeithasau tai. Yn ogystal, gellir dibynnu ar landlordiaid cymdeithasau tai i roi gwybodaeth gywir i denantiaid o'r fath ynglŷn â pharhad eu diogelwch. Credwn, felly, fod yr awgrym hwn yn un doeth, ac y gellid ei gynnwys yn y cynllun statudol.

5.41 Hoffai Comisiwn y Gyfraith fynegi ei werthfawrogiad o'r modd y mae Llywodraeth Cymru a rhanddeiliaid tai yng Nghymru wedi parhau i ymddiddori yn y cynigion Rhentu Cartrefi. Mae eu cyfraniadau wedi cyfoethogi'r cynigion gwreiddiol, ac wedi bod yn hynod o ddefnyddiol yn ystod yr adolygiad hwn. Oherwydd eu brwdfrydedd ynghylch Rhentu Cartrefi y cawsom ninnau'r cyfle hwn i arddangos cadernid a hyblygrwydd ein cynigion a'u gallu i wrthsefyll treigl amser.

ATODIAD

Cynhaliwyd y cyfarfodydd canlynol yn ystod cyfnod paratoi'r adroddiad hwn.

Grŵp Ymddygiad Gwrthgymdeithasol Cymru Gyfan

Tai â chymorth – trefnwyd gan Gymorth Cymru

Cam-drin domestig – arweinwyr polisi Llywodraeth Cymru

Y Cyngor Benthycwyr Morgeisi:

Landlordiaid Cymdeithasol Cofrestredig – trefnwyd gan Gartrefi Cymunedol Cymru

Cymdeithas y Landlordiaid Preswyl

Llywodraeth yr Alban

Ffederasiwn Cymdeithasau Tai yr Alban

Sefydliad Tai Siartredig yr Alban

Cymdeithas Prif Swyddogion Tai Awdurdodau Lleol yr Alban