



Ministry of Housing, Communities & Local Government

A New Deal for Renting

Resetting the balance of rights and responsibilities between landlords and tenants:

Questions

The end of section 21 evictions

Assured shorthold tenancies

Question 1: Do you agree that the abolition of the assured shorthold regime (including the use of section 21 notices) should extend to all users of the Housing Act 1988?

- Yes
- No
- Don't know

If not, which users of the Housing Act 1988 should continue to be able to offer assured shorthold tenancies? (tick all that apply)

- Housing associations
- Local Authority Housing Companies
- Local authorities discharging their duties under the Housing Act 1996
- Providers of Supported Housing
- Providers of rent-to-buy products
- Don't know
- Other (please specify)

Question 2: Do you think that fixed terms should have a minimum length?

- Yes
- No
- Don't know

If yes, how long should this be?

- 6 months
- 12 months
- 2 years

Question 3: Would you support retaining the ability to include a break clause within a fixed-term tenancy?

- Yes

- No
- Don't know

There is no point in having a break clause if ASTs and Section 21 Notices no longer exist. The only point of having a break clause is to end the tenancy without having to rely on one of the grounds for possession. If the only opportunity to seek possession is through a Notice of Seeking Possession relying on one of the grounds for possession, which a landlord can serve at any point during the fixed term tenancy then break clauses become entirely irrelevant. Break clauses only remain relevant if an assured shorthold tenancy regime is maintained for all or certain types of landlords.

Bringing tenancies to an end

Moving into the property, widening the scope of ground 1

Question 4: Do you agree that a landlord should be able to gain possession if their family member wishes to use the property as their own home?

- Yes
- No
- Don't know

If not, why not?

Question 5: Should there be a requirement for a landlord or family member to have previously lived at the property to serve a section 8 notice under ground 1?

- Yes
- No
- Don't know

If you think there should be such a requirement, explain why

Question 6: Currently, a landlord has to give a tenant prior notice (that is, at the beginning of the tenancy) that they may seek possession under ground 1, in order to use it. Should this requirement to give prior notice remain?

- Yes
- No
- Don't know

If not, why not?

Question 7: Should a landlord be able to gain possession of their property before the fixed-term period expires, if they or a family member want to move into it?

- Yes
- No
- Don't know

Question 8: Should a landlord be able to gain possession of their property within the first two years of the first agreement being signed, if they or a family member want to move into it?

- Yes
- No
- Don't know

Question 9: Should the courts be able to decide whether it is reasonable to lift the two-year restriction on a landlord taking back a property, if they or a family member want to move in?

- Yes
- No
- Don't know

A new ground – selling the property

Question 10: This ground currently requires the landlord to provide the tenant with two months' notice to move out of the property. Is this an appropriate amount of time?

- Yes
- No
- Don't know

Question 11: If you answered No to Question 10, should the amount of notice required be less or more than two months?

- Less than two months' notice
- More than two months' notice
- Flexible notice period
- Don't know

Question 12: We propose that a landlord should have to provide their tenant with prior notice they may seek possession to sell, in order to use this new ground. Do you agree?

- Yes
- No
- Don't know

If no, please explain.

We act for many housing associations who will periodically do a stock condition survey and as part of making the best use of their stock will make decisions to sell properties which have become unduly expensive to maintain. The tenants occupying those properties may well have moved in many years ago. The requirement to give prior notice unduly limits the ability for social landlords to manage their stock effectively and dispose of properties which are otherwise very expensive to run, for example, older Georgian properties or properties which are in a geographical area where they have very little other stock and so the costs of management are very high. Many social landlords will seek to do a stock swap or stock rationalisation of a group of properties in one area, but individual isolated expensive properties often need to be dealt with separately.

We would suggest that the two month notice period and not being able to seek possession to apply for sale within 2 years of the tenancy start date would be sufficient safeguards for tenants of social landlords.

We suggest considering amending the ground so that prior notice was not required and instead replace that with an obligation to provide suitable alternative accommodation - that would help many social landlords to carry out effective asset management of their stock particularly once they have following a typical stock condition survey identified some properties are too expensive to repair or too costly to manage often due to being in an isolated geographical area.

This ground would not otherwise assist for properties that were let some time ago if prior notice is required to be given

The existing ground 9 suitable alternative accommodation ground and ground 6 for demolition which both assist the social landlord in asset management are NOT available against fixed term tenancies. This can be a major obstacle to good asset management where fixed term tenancies are used. Therefore, adding suitable alternative accommodation as a condition or alternative condition to prior notice to this new sale ground would mean it would provide much greater flexibility for landlords whilst also providing sufficient protection for tenants where they are on fixed term tenancies.

Question 13: Should the court be required to grant a possession order if the landlord can prove they intend to sell the property (therefore making the new ground 'mandatory')?

- Yes
- No
- Don't know

If not, why not? (please specify)

Question 14: Should a landlord be able to apply to the court should they wish to use this new ground to sell their property before two years from when the first agreement was signed?

- Yes
- No
- Don't know

Question 15: Is two months an appropriate amount of notice for a landlord to give a tenant, if they intend to use the new ground to sell their property?

- Yes
- No
- Don't know

Question 16: If you answered 'no' to question 15, should the amount of notice required be less or more than two months?

- Less than two months' notice
- More than two months' notice
- Flexible notice period
- Don't know

If flexible, should this depend on:

- Length of the tenancy
- Agreed in the terms of the tenancy agreement
- Don't know

Rent-arrears

Question 17: Should the ground under Schedule 2 concerned with rent arrears be revised so:

- The landlord can serve a two-week notice seeking possession once the tenant has accrued two months' rent arrears.

- Yes
- No

Don't know

If no, please explain.

• The court must grant a possession order if the landlord can prove the tenant still has over one months' arrears outstanding by the time of the hearing.

Yes

No

Don't know

If no, please explain.

• The court may use its discretion as to whether to grant a possession order if the arrears are under one month by this time.

Yes

No

Don't know

If no, please explain.

• The court must grant a possession order if the landlord can prove a pattern of behaviour that shows the tenant has built up arrears and paid these down on three previous occasions.

Yes

No

Don't know

If no, please explain.

This needs much clearer definition – what does “paying down” mean? Without it, every Judge will interpret it differently and landlords will not get the consistency of approach needed especially for such a heavily relied upon ground.

Anti-social behaviour

Question 18: Should the Government provide guidance on how stronger clauses in tenancy agreements could make it easier to evidence ground 12 in court?

Yes

No

Don't know

Question 19: As a landlord, what sorts of tenant behaviour are you concerned with? (tick all that apply)

Nuisance (such as parties or loud music)

Vandalism (such as graffiti)

Environmental damage (such as littering or fly-tipping)

Uncontrolled animals

Don't know

Other (please specify)

Drug use or dealing; hoarding; use and threat of violence; cuckooing. We are a private practice firm of Solicitors who act for many housing associations and some local authorities nationwide in tackling anti-social behaviour and breach of tenancy in their properties.

Question 20: Have you ever used ground 7A in relation to a tenant's anti-social behaviour?

- Yes
- No
- Don't know

Please explain.

We have most commonly used the conditions relating to conviction for a serious offence, closure orders, breach of ASB injunction and occasionally conviction for breach of noise nuisance abatement notices.

Question 21: Do you think the current evidential threshold for ground 7A is effective in securing possession?

- Yes
- No
- Don't know

Please explain.

Question 22: Have you ever used ground 14 in relation to a tenant's anti-social behaviour?

- Yes
- No
- Don't know

Please explain.

We always rely on Ground 14 together with Ground 7a, just in case. Ground 7a later becomes unavailable. Ground 14 is very extensively used.

Question 23: Do you think the current evidential threshold for ground 14 is effective in securing possession?

- Yes
- No
- Don't know

If no, please explain.

Domestic abuse

Question 24: Should this new ground apply to all types of rented accommodation, including the private rented sector?

- Yes
- No
- Don't know

If no, please explain.

Question 25: Should a landlord be able to only evict a tenant who has perpetrated domestic abuse, rather than the whole household?

- Yes
- No
- Don't know

If no, please explain.

Question 26: In the event of an abusive partner threatening to terminate a tenancy, should additional provisions protect the victim's tenancy rights?

- Yes
- No
- Don't know

If no, please explain.

Question 27: Should a victim of domestic abuse be able to end a tenancy without the consent of the abuser or to continue the tenancy without the abuser?

- Yes
- No
- Don't know

If no, please explain.

However, this is very difficult – a joint tenancy can end the joint tenancy without the consent or knowledge of the other joint tenant. It ends the whole tenancy however – this is long established law. The tenancy cannot continue as a sole tenancy once it's been terminated – a joint tenancy cannot be cut in half.

Property standards

Question 28: Would you support amending ground 13 to allow a landlord to gain possession where a tenant prevents them from maintaining legal safety standards?

- Yes
- No
- Don't know

If no, please explain.

This ground will be helpful.

However, landlords really need a mandatory ground to obtain possession when tenants refuse access for gas safety inspections in particular. Clearly access for other works, for example, for electricity safety, asbestos works and fire safety is equally important, but failure to carry out gas safety inspections is a criminal offence for a landlord and equally many landlords who have failed to comply with these requirements are also at risk of being downgraded by the Regulator of Social Housing.

Landlords have to apply to the County Court for an injunction to gain access, but that injunction generally cannot allow the landlord to force entry to the property for the purposes of carrying out the gas safety inspection as the landlord has no legal power to "force" entry. They risk committing criminal offences and being sued under the Protection from Harassment Act and potentially the Protection from Eviction Act as well if they do. This is a longstanding problem for landlords and their access injunctions take up a lot of Court time and cost a great deal of money, a court fee every time of £308 to the landlord and simply add costs on to tenants.

We suggest landlords (perhaps only social landlords due to fear of abuse in the private rented sector) should either be given a power to force entry for the sole purpose of carrying out works to enable them to maintain a property to legal safety standards (e.g. for gas, electricity, fire, asbestos, water, lifts etc),

subject to them being able to show that they have for example sent two/three prior appointments and that those appointments have not been complied with. These injunctions would not then be required, and County Court time would be freed up.

Accelerated possession

Question 29:

Which of the following could be disposed of without a hearing? (tick all that apply)

- | | | |
|-----|--|-------------------------------------|
| 1 | Prior notice has been given that the landlord, <i>or a member of his family</i> may wish to take the property as their own home. | <input checked="" type="checkbox"/> |
| 2 | Prior notice has been given that the mortgage lender may wish to repossess the property. | <input checked="" type="checkbox"/> |
| 3 | Prior notice has been given the property is occupied as a holiday let for a set period. | <input checked="" type="checkbox"/> |
| 4 | Prior notice has been given the property belongs to an educational establishment and let for a set period. | <input checked="" type="checkbox"/> |
| 5 | Prior notice has been given to a resident minister that the property may be required by another minister of religion. | <input checked="" type="checkbox"/> |
| 6 | Reconstruction, demolition or other works need to be carried out, but cannot go ahead with the tenant in situ. | <input checked="" type="checkbox"/> |
| 7 | The previous tenant has died, with the tenancy passing on to a new tenant who does not have the right to carry on with the tenancy. | <input checked="" type="checkbox"/> |
| 7A | The tenant has been convicted of a serious offence in or around the property, against someone living in or around the property, or against the landlord. | <input checked="" type="checkbox"/> |
| 7B | A tenant or occupant has been disqualified from occupying the property due to their immigration status. | <input checked="" type="checkbox"/> |
| 8 | The tenant has significant rent arrears. | <input checked="" type="checkbox"/> |
| New | <i>The landlord wishes to sell the property</i> | <input checked="" type="checkbox"/> |

Don't know



Specialist provisions

Short-term lets

Question 30: Should ground 4 be widened to include any landlord who lets to students who attend an educational institution?

- Yes
- No
- Don't know

If no, please explain.

But we expect that private landlords letting to students will withdraw their properties from letting if they cannot continue to use the assured shorthold tenancy and a quick route to possession. We suggest that landlords letting to students are permitted to continue to use assured shorthold tenancies.

Question 31: Do you think that lettings below a certain length of time should be exempted from the new tenancy framework?

- Yes
- No
- Don't know

If yes, what is the minimum length of tenancy that the framework should apply to?

Tenancies for less than 6 months should be exempt.

Religious workers

Question 32: Should the existing ground 5 be reviewed so possession can be obtained for re-use by a religious worker, even if a lay person is currently in occupation?

- Yes
- No
- Don't know

If no, please explain.

Some religious organisations are very large landlords but have gaps of some years between new religious workers being appointed to post during which time they sensibly make the most of their charitable assets by letting them out privately. Flexibility under this Ground should be extended.

Agricultural tenancies

Question 33: Should there be a mandatory ground under Schedule 2 for possession of sub-let dwellings on tenanted agricultural holdings where the head tenant farmer wants to end their tenancy agreement and provide vacant possession of the holding for their landlord?

- Yes

- No
- Don't know

If no, please explain.

Question 34: Should there be a mandatory ground under Schedule 2 for possession of tenanted dwellings on agricultural holdings where there is business need for the landlord to gain possession (i.e. so they can re-let the dwelling to a necessary farm worker)?

- Yes
- No
- Don't know

If no, please explain.

Question 35: Are there any other issues which the Government may need to consider in respect of agricultural tenancies?

Other grounds for seeking possession

Question 36: Are there any other circumstances where the existing or proposed grounds for possession would not be an appropriate substitute for section 21?

- Yes
- No
- Don't know

If yes, please explain.

Housing associations, housing the homeless and providing supported housing and short let housing in properties which are likely to be demolished or subject to regeneration in the next 3 years. Student lettings by private landlords.

Impact and timing of implementing our changes

Question 37: How many section 21 notices have you issued in the past two years?

- None
- 1
- 2-3
- 4-5
- 5-10
- 10+
- Prefer not to say

Question 38: Of these, how many applications for possession orders have you made to the courts?

- None
- 1
- 2-3
- 4-5
- 5-10
- 10+

- Prefer not to say

Question 39: Of these, how many have resulted in a court hearing?

- None
- 1
- 2-3
- 4-5
- 5-10
- 10+
- Prefer not to say

Question 40: Taking into account legal fees and loss of income what would you estimate to be the average cost of a single case:

a) Using the accelerated process

- £0-499
- £500-999
- £1,000-4,999
- £5,000-9,999
- £10,000-14,999
- £15,000-19,999
- £20,000+
- Prefer not to say

b) Pursuing the application at a hearing

- £0-499
- £500-999
- £1,000-4,999
- £5,000-9,999
- £10,000-14,999
- £15,000-19,999
- £20,000+
- Prefer not to say

Question 41: How many section 8 notices have you issued in the past two years?

- None
- 1
- 2-3
- 4-5
- 5-10
- 10+
- Prefer not to say

Question 42: Of these, how many applications for possession orders have you made to the courts?

- None
- 1
- 2-3
- 4-5
- 5-10
- 10+
- Prefer not to say

Question 43: Of these, how many have resulted in a court hearing?

- None
- 1

- 2-3
- 4-5
- 5-10
- 10+
- Prefer not to say

Question 44: Are there any other impacts on your business or organisation the Government should consider when finalising its policy?
If yes, please provide evidence to support this view.

The proposals as drafted would have the surprising effect of increasing the rights of tenants in the housing association and private rented sector over and above those of local authority tenants. Local Authorities will still continue to have available to them the introductory tenancy regime which has been very effective in providing a probationary period to help tenants sustain their tenancies during the first 12 months of the tenancy and tackling at an early stage tenants who either breach their tenancy or cause anti-social behaviour or get into excessive arrears.

Housing associations will no longer have the same ability to issue starter tenancies because the assured shorthold tenancy option will have disappeared.

There is no point in issuing an assured fixed term tenancy for 12 months when its rights and obligations would be exactly the same as a 5-year fixed term assured tenancy or a periodic tenancy agreement. Housing associations are consolidating and therefore growing in size and many landlords do not want the administrative cost of sign tenants up to a 12-month tenancy and then carry out a second sign up 12 months later to a longer-term tenancy with exactly the same rights. This is why after the Localism Act, many large landlords introduced 6-year fixed term ASTs which incorporate a 1-year starter tenancy period which can be terminated during the first 12 months by a break notice followed by a Section 21 Notice. A break notice cannot then be used after the first 12 months.

Under these proposals, if a fixed term 6 year assured tenancy is granted then the only option at any stage will be to serve a Section 8 Notice of Seeking Possession relying on one of the Grounds, so there will be no starter tenancy/probationary period.

See comments above in relation to powers to force entry for gas safety and other health and safety works and inspections.

Wider impact

Question 45: Do you think these proposals will have an impact on homelessness?

- Yes
- No
- Don't know

If yes, please provide evidence to support this view.

We suspect that many private landlords who have one/a very small number of properties may withdraw from their private rented sector market without reform to the speed and efficiency of the county court and an online process to use akin to the accelerated possession procedure. Don't introduce the reforms until the online procedures and court reforms are ready and in place.

The County Court system is very slow and badly resourced administratively, orders take 4 – 5 weeks to be sealed and sent out. After the first hearing further hearings can for example in London court take 5 months to be listed for one hour of court time. Croydon CC is currently listing for March 2020. Very few processes are online. There are too few Bailiffs and delays for Bailiffs are routinely 6-8 weeks and at certain times of the year when Bailiffs are sick, absent or busy, we have known Bailiff appointments to take between 5-6 months which is completely hopeless for any landlord trying to tackle anti-social behaviour or excessively high arrears who already has a possession order.

Question 46: Do you think these proposals will have an impact on local authority duties to help prevent and relieve homelessness?

- Yes
- No
- Don't know

If yes, please provide evidence to support this view.

For the reasons given at question 45, the availability of private rented sector accommodation may be reduced without visible reform in place to the court system.

Question 47: Do you think the proposals will impact landlord decisions when choosing new tenants?

- Yes
- No
- Don't know

Please explain further.

Not for social landlords but possibly for private landlords. This depends on whether rent possession proceedings using a Section 8 Notice of Seeking Possession can be pursued under an accelerated procedure which doesn't involve a Court hearing, but the matter being dealt with by a Judge on paper only.

Question 48: Do you have any views about the impact of our proposed changes on people with protected characteristics as defined in section 149 of the Equality Act 2010?

What evidence do you have on this matter?

All occupiers with protected characteristics can already invoke the Equality Act by way of a Defence to any possession proceedings brought on mandatory or discretionary grounds for possession and any mandatory routes to possession

in any event. The Equality Act and the Human Rights Act is frequently raised by tenants who defend possession proceedings, particularly with the support of legal aid and is the main reason for social landlords' possession claims taking so much longer to get through the Court process than private landlords and incurring much higher legal fees.

Question 49: If any such impact is negative, is there anything that could be done to mitigate it?

Tenants have sufficient protection under the existing legislation.

Transition period

Question 50: Do you agree that the new law should be commenced six months after it receives Royal Assent?

- Yes
- No
- Don't know

If you answered 'no' to question 50, what do you think would be an appropriate transition period?

- No transition period
- Three months
- Twelve months
- Don't know

List of Questions

About you

Questions for all respondents

In which region do you live?

- East
- East Midlands
- London
- North East
- North West
- South East
- South West
- West Midlands
- Yorkshire and the Humber
- Prefer not to say

In which capacity are you completing these questions?

- Landlord operating as an individual
- Landlord operating on behalf of an organisation
- Tenant
- Letting/property agent
- Other- organisation
- Other- individual
- Prefer not to say

Solicitors Law firm acting for social landlords and some large private landlord charities and large and small faith groups.

Questions for other organisations

If you are replying on behalf of an organisation, which of the following best describes you?

- Sector representative body
- Charity that deals with housing issues
- Local government sector
- Religious organization
- Legal sector
- Academic/research institution
- Prefer not to say
- None of the above (please specify below)

Questions for other individuals

If you are replying as an individual, which of the following best describes you?

- Former tenant
- Former landlord
- Concerned citizen/interested party
- Legal sector
- Charity sector/community activist
- Homeowner
- Potential landlord
- Potential tenant
- Housing professional
- Both landlord and tenant
- Prefer not to say

None of the above (please specify below)