Shelter submission to MHCLG

A New Deal for Renting

October 2019

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EXECUTIVE SUMMARY

Shelter strongly welcomes the government's intention to abolish Section 21, or 'no-fault' evictions, alongside assured shorthold tenancies. Everyone deserves to have access to a secure home where they can put down roots without the fear of being told to leave their home for no reason.

Abolishing Section 21 would be a genuine opportunity to give tenants currently suffering from insecurity and instability the security they need. With increasing numbers of older people and families living in the private rented sector, this change would rebalance the rights and responsibilities of landlords and tenants: landlords can still regain possession of their properties fairly and tenants can be guaranteed a secure place to live.

Tenants should be able to feel at home in the place they pay to live in. Similarly, tenants must feel able to exercise their rights within the property, for example when a landlord fails to carry out repairs, or seeks to impose an excessive rent increase, without the fear of being served with an eviction notice.

Section 21 must be abolished for all those who could currently be evicted under the 'no fault' rules. This change will affect not only private tenancies but also social tenancies. It is therefore critical that the social rented sector is involved with all stages of this proposal's development.

Landlords should have confidence that they can recover their properties in reasonable circumstances, either for personal reasons, such as moving back in or selling up, or because of tenant behaviour. It is therefore also vital that MHCLG and the Ministry of Justice work closely on how to improve the court experience for users.

Overall, Shelter makes the following recommendations to rebalance the rights and responsibilities between landlords and tenants:

- Open-ended tenancies should be standard for all private renters
- Landlords should be able to gain possession of their property when they wish to sell or move in but must produce convincing evidence to prove their intentions are genuine
- For grounds that are not linked to tenant behaviour, tenants should receive four months' notice, and the landlord should not be able to serve notice within the first two years of the start of the tenancy
- Proposed changes to the mandatory rent arrears ground should not happen and would prove disastrous for lower-income and vulnerable groups
- Government must provide sufficient resources for court administration so that court processes work efficiently

- Government should consider devising specific grounds for possession in particular circumstances, such as temporary accommodation for homeless persons, rather than allowing some providers to continue using Section 21
- Government should develop robust guidance for landlords on how to navigate the new system

CONSULTATION RESPONSE

A) Fixed terms

Fixed terms (Q2)

Fixed-term tenancies do not give renters the flexibility they need to make sensible choices for themselves and their household. If a landlord does not agree for a tenant to surrender their tenancy before the end of the fixed-term period when they need to do so, the tenant is locked into a tenancy that is often deeply unsuitable or unaffordable.

> *In relationship breakdowns properties can become unaffordable following a split. Often the remaining tenant becomes a lone parent who has limited opportunity to replace lost income. It is a difficult position for the remaining tenant as they do not want to fall into arrears and hence have a bad reference preventing them from obtaining a fresh private rented property.* (Shelter advisor, Manchester)

We do not support a minimum fixed term, or indeed any fixed terms at all. Efforts should be put into making open-ended tenancies work for landlord and tenant alike rather than proposing a fixed-term tenancy model, a legacy from Assured Shorthold Tenancies.

Fixed-term tenancies lock renters in. If their circumstances change, they are unable to leave without the consent of their landlord. This is terrible for people who lose their jobs and are no longer able to afford to live in their home, forcing them to accrue arrears. It is traumatic for people whose relationships break down and who are unable to move away from their ex-partner and can be dangerous for people who are trying to leave an abusive relationship. We know from our research that fear of being locked into a tenancy is one of the main reasons that tenants do not currently try to negotiate a longer tenancy with their landlord.[1]

Our services cite situations where someone has lost their job or their partner has left and the landlord does not accept a surrender, leaving them unable to pay their rent and unable to move. The shortfall in rent may, in some circumstances, be covered by Discretionary Housing Payments (DHP), but this is not always available. DHPs cannot, and should not, be relied upon as a sustainable way of paying rent, and if a renter is reliant on a DHP so as not to fall into arrears then the property is not affordable.

The cost involved in moving is often extremely high for renters; if renters secure a tenancy in a suitable property with a responsible landlord, they are unlikely to wish to move unless their circumstances change in such a way that makes the property unsuitable.

[1] YouGov for Shelter, survey of 3978 private renters, online, weighted, August 2017

Government should follow through with its commitment and create open-ended tenancies so that renters have the security and flexibility they need.

If government does sanction fixed term tenancies, we would expect to see grounds for tenants to give notice to terminate during the fixed-term period. These should include grounds enabling them to leave when a landlord is abusive or when the property is in disrepair, or when the tenant loses their job or in the event of relationship breakdown.

Break clauses (Q3)

We do not agree with break clauses for landlords. If government wants to give tenants security and rebalance the relationship between tenant and landlord, it cannot give landlords the option of Section 21 by the back door by evicting tenants for no reason after six or twelve months. It is illogical to go through a legislative process to deliver something that essentially recreates the existing system by allowing 'no fault' eviction at a certain time.

Allowing landlords to end a tenancy via a break clause will create a prompt that may encourage landlords to terminate a contract for any reason, from minor inconveniences to tenants requesting repairs, as some currently do. This will continue the significant churn in the sector, with the potential for some households to face forced moves every six months.

A break clause could have a disproportionately negative impact on some of the households who would most benefit from security. For example, if a tenant experiences a delay with their Universal Credit claim and therefore pays rent even slightly late, the landlord may choose to end the tenancy for fear of further issues with the benefits system. Research into Shelter's homeless clients also shows that some have been victim to landlords pre-emptively evicting tenants whose income drops, but before they have accrued arrears.[2] A tenant has no control over this situation and no opportunity to resolve the problem.

A break clause undermines the government's aim of making renting more secure: the knowledge that they can still be evicted for no reason via a break clause will result in tenants experiencing all the problems they currently do. Tenants already feel unable to complain for fear that their landlord will decide not to continue with the tenancy. 18% of renters state that they have not asked for repairs for fear of eviction. 15% have not challenged an unfair rent increase.[3] A break clause will only exacerbate these fears.

These fears are not unfounded. Research from Citizens Advice found that private renters who made a formal complaint to the local authority or a redress scheme

[2] Joseph Rowntree Foundation, *Poverty, evictions and forced moves*, 2017.
[3] YouGov for Shelter, survey of 3995 private renters, online, weighted, August-September 2019

had a 46% chance of receiving a Section 21 eviction notice in the following six months.[4]

B) Bringing tenancies to an end

Landlords should be able to gain possession when either they or a family member need to move in. However, they should be treated as two distinct and separate grounds, as they are in Scotland.[5] There should also be provision for landlords to gain possession when they need to sell their property.

However, all grounds for possession where a tenant is not at fault (e.g. based on the landlord's wish to regain control of the property) should have the following principles:

I. Landlords must serve a minimum of four months' notice. The current two months' notice period is insufficient for tenants to plan and fund a move to a new property. The notice period should reflect that the tenant is being evicted through no fault of their own.
II. Landlords should not be able to evict on a no-fault ground within the first two years of the tenancy. Allowing a landlord to evict because they wish to move in or sell within the first two years undermines government's aims of creating security for tenants and balancing the relationship between landlord and tenant.
III. Landlords should be prepared to produce convincing evidence in order to meet the threshold of a mandatory ground for possession
IV. If they are gaining possession to move in, landlords or their family members need to demonstrate that they will be living in the property as their sole or principal home for a minimum of 12 months

These principles must apply as a minimum to all grounds where the tenant is not at fault in order to ensure tenants have the security they need, regardless of whether the ground is mandatory or discretionary.

Ideally, we believe that judges should have discretion in all possession cases where the tenant is not at fault to decide whether or not the impact on the tenant of losing their home is proportionate, in comparison to the landlord's need for the property.

However, we understand that in order to be workable and for all interested parties to have confidence in the new tenancy regime, some limited mandatory grounds for possession will be necessary. That being the case, we nevertheless believe that it should be an aim of government to minimise the incidence of eviction

[4] Citizens Advice, *Touch and Go: How to protect private renters from retaliatory eviction in England*, 2018
[5] Ground for possession for private residential tenancies, https://www.mygov.scot/private-tenant-eviction/grounds-for-eviction-private-residential-tenancies/

where the tenant is not at fault and encourage landlords to pursue alternative means of resolution wherever possible, and that use of a mandatory ground should be a final resort.

As part of this policy, government should consider implementing a compensation scheme, whereby it becomes common practice for landlords to assist tenants with moving costs when they have to move through no fault of their own. The amount of compensation could depend on the circumstances of the household, such as whether they have children or vulnerabilities, and how long they have lived in the property. Similar models work effectively in other parts of the world, including Los Angeles.[6]

Landlord moving in (Qs 4-11)

In order to meet the mandatory threshold for a landlord moving back in, the landlord should be required to provide a high level of evidence to prove that their intention is genuine. The landlord should have to show that they are selling their current home or have handed in notice on their current rented property at the point of a possession hearing. The landlord should be required to have served four months' notice before applying to the courts if the tenant has not left.

The landlord should also be required to have served a notice at the start of the tenancy stating the possibility that they may wish to move in. However, government should consider that the this will inevitably mean that landlords serve notices to all tenants as a default, regardless of whether or not they intend to move in.

If a landlord that they served a notice at the start of the tenancy stating they may wish to move back in, then the ground should be discretionary. This will allow the judge to decide if it is reasonable to grant a possession order and which of the parties would suffer the greater hardship.

Family member moving in (Qs 4-11)

As is the case in Scotland, if the landlord wishes to gain possession in order for a family member to move in, this should be a discretionary ground. This is because the court must be satisfied both that the family member has a genuine intention to occupy, and that it is reasonable in all the circumstances that they should be allowed to do so. This should include consideration of whether it would cause greater hardship to the tenant to be evicted than it would cause to the family member if they were not permitted to move in.

In either scenario, the landlord or family member needs to demonstrate that they intend to live in the property as their sole or principal home.

We recommend that the landlord or family member must be able to show that they intend to occupy the property for a minimum of twelve months. Any period

[6] Los Angeles, Relocation Assistance Scheme - https://hcidla.lacity.org/system/files_force/documents/relocation_assistance_english.pdf?download=1

less than twelve months does not justify forcing a household to leave their home; the landlord or landlord's family member's need for a temporary place to stay does not trump a tenant's right to a permanent place to live.

Landlord selling ground (Qs 12-16):

Landlords should be able to sell their property when they need to and the relevant ground for possession needs to be clear and workable. They should be required to provide robust evidence to show their commitment to selling their property. Without a high evidence bar, there is clearly a risk that this ground could be abused, since landlords could easily claim that they are planning to sell but then decide not to, in order to move new tenants in at a higher rent.

Government should implement changes that help to shift the culture of evicting tenants just because they are selling. Although there is a perception of a difference in value between tenanted properties and vacant properties, we are not aware of any up-to-date rigorous evidence that backs this up. As the size of the sector has grown significantly in recent years and the pool of potential landlord investors has also grown, we would expect values to equalise. Indeed, Rightmove reports that in much of the country this is the case and that there is little difference in values for tenanted and vacant properties.[7] Auctioneers even report that in some markets values of tenanted properties can be higher, with eviction and lost rental income adding significant costs to seeking vacant possession.[8]

Selling with sitting tenants is common practice in countries across Europe, including Germany, the Netherlands and Belgium.

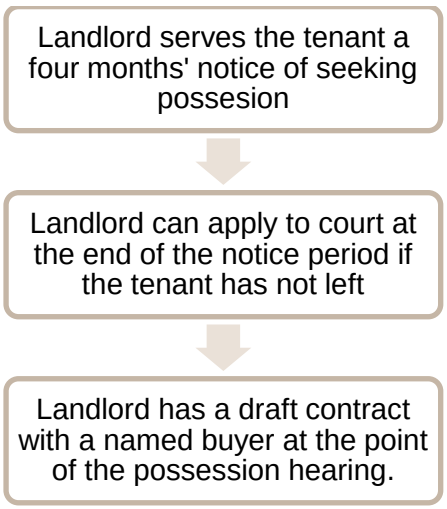
Government measures to encourage a cultural shift towards selling with sitting tenants should be complemented by setting the evidence bar for evicting tenants in order to sell relatively high, so that landlords are incentivised to explore selling with sitting tenants.

We are keen to strike a balance where sitting tenants are protected, but we are eager to discuss this further with government and landlords to ensure that the process works for all involved.

Our proposal for the landlord selling ground is:

[7] Selling a tenanted (buy-to-let) property, https://www.rightmove.co.uk/advice/seller/other-things-to-consider/selling-a-tenanted-buy-to-let-property/

[8] *Selling with Sitting Tenants* , https://www.thisismoney.co.uk/money/mortgageshome/article-1531672/Selling-with-sitting-tenants.html



The government's proposal that landlords would need to serve notice at the start of the tenancy is only worthwhile if not having served the notice has a consequence. If non-service would cause the ground to become discretionary, then we would support that measure. Again, however, government must be conscious that this will likely lead to all landlords serving notice at the start of every tenancy.

We would support this being a mandatory ground if the landlord had to produce a high level of proof.

If government's proposal is a low burden of proof, then any future ground should be discretionary so that a judge can weigh up the evidence provided versus the tenant's need to live in their home.

Rent arrears (Q17):

The government's proposed changes to ground 8, the mandatory rent arrears ground, creates the serious risk that people will be evicted for reasons out of their control. The proposed change will likely result in households, including older renters over-65 and working families becoming homeless as a result of the in-built five-week wait for Universal Credit and/or administrative delays and errors in the housing benefit system, as well as LHA shortfalls.

There are many reasons why people fall into rent arrears, and it is essential that renters who are experiencing financial hardship have access to advice and support when they need it.

The current ground 8, allowing landlords to serve 14 days' notice and regain possession if the tenant has two months' arrears at the time the notice is served and at the date of the hearing, provides sufficient protection to landlords whose tenants are in rent arrears.

We strongly oppose the suggested changes to the mandatory rent arrears ground. The proposed changes to ground 8 would prove disastrous for lower-income, precariously employed or vulnerable private renters.

Our services support people who are struggling with rent arrears every day, and we believe that the government's proposal would be catastrophic for our clients.

> *It allows less time for vulnerable people to address the issues causing non-payment of rent which is quite regularly due to circumstances beyond their control, for example issues with benefit payments, loss of employment etc. It could potentially turn a relatively minor blip into a life changing set of circumstances. Causes of arrears are not infrequently due to errors by the Department for Work and Pensions (DWP). Loading the victim with court costs, loss of home and damage to credit records can have catastrophic long-term effects.* (Shelter adviser, south-east)

> *This would lead to more insecurity of accommodation. There are various reasons why rent arrears can accrue over a relatively short period (e.g. delays in benefit payments, sanctions, perpetrators of domestic abuse controlling a victim's finances, employment coming to an end or a delay in payment from employers). Given that this change would also apply to social tenants, this could be placing vulnerable people with multiple and complex needs at a significant disadvantage with limited time in which to seek support.* (Shelter adviser, Bristol)

Our services flagged the five-week wait for UC as a key reason why the proposed changes to ground 8 would be disastrous. The in-built delay leaves claimants in arrears by design. In practice, the wait for income is even longer, with first payments often being far less than they should be as the assessment period took into account the claimant's last paycheque, effectively leaving someone with no income for two months.[9] This new proposed ground increases the likelihood that their landlord would be granted a possession order in these circumstances.

> *The rollout of UC should demonstrate just how devastating this change would be for thousands of families across the country. Moreover, administrative errors at councils' Housing Benefit teams can and often do mean that payments are withheld for some time, through no fault of the tenants and if this error occurs shortly before rent is due, then it is perfectly possible that rectifying the matter could take tenants into four weeks' worth of arrears. Just four weeks wouldn't offer tenants any sort of safety net.* (Shelter adviser, Bristol)

We fundamentally disagree with the principle that tenants can be evicted if they have accrued arrears due to benefit delays out of their control. Citizens Advice have found that 48% of UC claimants have fallen behind on bills and 46% have

[9] Shelter, *From the Frontline: Universal Credit and the Broken Housing Safety Net*, August 2019

gone without essentials as a result of the five-week wait.[10] Similarly, a 2018 report found that UC claimants were twice as likely to become homeless compared to those on the previous benefits system.[11] Clearly, benefit claimants are struggling as a result of recent changes and have very little control over that situation.

Furthermore, the government's proposed revisions to ground 8 will not make the possession process faster, which is what landlords say they want. Delays in the possession process, where they exist, happen at court and bailiff stage. The average time taken for a private landlord to gain possession from claim to repossession is 16.4 weeks.[12] The average wait for a bailiff's warrant within this timeframe is 6 weeks.[13] The government has consulted on how to improve court processes and we have previously called for courts to be well-resourced. We urge MHCLG and the Ministry of Justice to consider how to adequately fund current civil processes in order for them to work for landlords and tenants alike.

We understand the need for a mandatory rent arrears ground, and support any ground being discretionary if the arrears at either the point of notice or possession are under 8 weeks.

It is vital that government are mindful that Section 8 and Schedule 2 of the Housing Act 1988 are also used by Housing Associations who issue assured tenancies, and that all amendments will also affect them. Government must do further work with the social rented sector in order to fully consider the impact that changes will to ground 8 will have on social rented tenants.

Anti-Social Behaviour (Qs 18-23):

We recognise the need for landlords to evict anti-social tenants. Our advisors regularly support people who are struggling with anti-social neighbours or who are having difficulties with neighbour disputes. It is important to make the distinction between the two.

Neighbour disputes, which may stem from personality clashes and broken-down relationships within house shares, can cause distress to tenants. However, it is important that landlord involvement encourages tenants towards mediation services rather than eviction.

In situations of serious anti-social behaviour (ASB), landlords should be able to gain possession of the property as a last resort. We do not believe that there are significant barriers to landlords gaining possession under pre-existing ASB grounds. Much of the landlords' cited concerns come from hearsay from the social rented sector. However, our legal services report that private landlords tend to be treated differently from social landlords by judges:

[10] Citizens Advice, *Managing Money on Universal Credit*, 2019
[11] Inside Housing, *Figures suggest Universal Credit is driving homelessness and evictions,* 2018
[12] MoJ Possession Statistics, Q2 2019.
[13] MoJ Possession Statistics, Q2 2019.

The courts approach private and social landlords very differently. With private landlords, judges are more willing to give possession…occasionally it's suspended if the tenant is lucky but generally it's outright. (Shelter solicitor, south-west)

Our legal services' experience of private landlords gaining possession for ASB is that they are able to do so with relative ease. Landlords will need to produce evidence that the tenant is causing anti-social behaviour, but if they do, they are likely to gain outright possession of the property.

We recommend that government produce clear guidance for landlords on what processes they should follow in order to evict a tenant for anti-social behaviour, and what kinds of evidence they should seek to gather.

Furthermore, our research suggests that landlords are not regularly intervening and resolving situations of ASB. Of those renters who have experienced anti-social behaviour from their neighbours or other tenants in the past five years, less than a third of those who reported the problem to their landlord saw the problem resolved.

Thinking about all of the times that you have experienced a problem with noise and/or anti-social behaviour in the last 5 years, which, if any, have happened as a result?[14] **(Tenants who reported the problem to their landlord/agent)**	
I have reported a problem to my landlord/ agent and they have resolved it successfully	31%
I have reported a problem to my landlord/ agent and they tried to resolve it, but this was not successful	19%
I have reported a problem to my landlord/ agent but they took no action or told me it was not their responsibility	28%
I have reported a problem to my landlord/ agent, they told me they were going to take action but did not	22%

This suggests that the key to ensuring an effective landlord response to anti-social behaviour is not primarily related to the availability of Section 21. Stronger guidance for landlords and information about how to tackle anti-social tenants is clearly necessary to ensure that those living with anti-social behaviour are supported by their landlords.

Domestic Abuse (Qs 24-27):

We welcome government's careful consideration of how to protect survivors of domestic abuse and ensure that they have somewhere safe and secure to call home. We call on government to work closely with the domestic abuse sector and be led by survivors' needs when considering changes to ground 14A.

[14] Source: YouGov for Shelter, survey of 3995 private renters, online, weighted, August-September 2019. Base taken from the 897 respondents who had experienced ASB in the past five years and reported the problem to their landlord.

While, in theory, it would be pragmatic to ensure that domestic abuse survivors are able to remain in a property without the perpetrator if they wish to, there are factors to be considered to ensure that this is the best course of action:

- Extending ground 14A to the private rental sector may place undue pressure on private landlords to intervene in situations that are potentially dangerous for both them and their tenants
- Government should work closely with the social rented sector to evaluate the efficacy of ground 14A in practice currently
- Government must ensure that there are sufficient support services to enable people trying to leave an abusive relationship to do so. This includes provision of refuges
- Government needs to examine the laws surrounding joint tenancies, most specifically one tenant's right to end a tenancy without the permission of the other
- Government needs to consider that a survivor who remains in the property will, under their proposals, become solely liable for the rent, which may be unaffordable
- Consideration must be given to how homeless applications made by survivors whose tenancies have become unaffordable will be assessed

Health and Safety (Q28)

We understand that landlords need to be able to gain access to a property in order to maintain standards, and occasionally gain access for emergency repairs. If a tenant routinely obstructs a landlord from accessing the property, we would not oppose strengthening ground 13.

However, this must be a discretionary ground and the bar must be relatively high. At present, landlords can apply for an injunction to access their property if a tenant is obstructing access. We would encourage landlords to explore alternative means of gaining access before seeking possession.

In that vein, landlords must consider that blocking access to a property is often a sign of vulnerability. Our services report that those who refuse access to their property are often people who have mental health problems. We therefore recommend that government develop a pre-action protocol for landlords to follow before taking proceedings on this ground. Judges will then have all the evidence before them to enable them to make an informed decision as to whether depriving the tenant of their home is the best course of action.

Again, in genuine emergencies, a landlord can apply for an injunction to gain immediate access to the property.

It is also worth noting that landlords must prove that they have good reason to require access to the property. We know that it is not uncommon for tenants to

report problems with their landlord entering their property without permission; 21% of tenants have experienced this in the past 5 years.[15]

It is therefore important that this ground has enough flexibility to protect renters who have had their quiet enjoyment breached and whose landlords may exploit this ground to gain possession.

Other grounds for possession (Q36):

We would strongly prefer that government designs new grounds for possession to cater for situations where landlords would otherwise have relief under Section 21 to end tenancies, rather than exempt certain housing providers from changes to future housing legislation.

Supported Housing

We would support a discretionary ground for possession that allowed supported housing providers to regain possession if a tenant no longer needed the support connected to their housing provision. However, we would expect this to be used only in extremely rare circumstances, as there should generally be a well-planned and coordinated move-on plan agreed by tenant and housing provider.

Homelessness Provision

We would expect all households living in temporary accommodation provided under S193 of the Housing Act 1996 to benefit from the abolition of Section 21. However, we understand that when the authority's duty comes to an end, they will need to regain possession of the temporary accommodation.

This could be catered for by a ground for possession that allows the local authority to seek possession once the main housing duty has been discharged. The ground would depend on the tenant being served with a notice before they occupy the property stating that the property is provided as temporary accommodation under the main housing duty, and that the landlord may recover possession where the authority has made a decision to discharge its duty under the Act, usually because an offer of other accommodation has been refused (subject to a review of the suitability of that offer).

The ground should be a discretionary ground, because some families spend so many years in temporary accommodation that it feels like their permanent home, and the court may consider that it is reasonable for them to remain where they are. In the majority of cases, however, possession is likely to be awarded in these circumstances.

Accelerated Possession (Q29)

We do not believe that accelerated possession proceedings have a place in a post-Section 21 world because paper-based processes are entirely out of keeping with the principle that a landlord needs to be able to demonstrate grounds. Accelerated possession proceedings, by their very nature, increase the

[15] YouGov for Shelter, survey of 3995 private renters, online, weighted, August-September 2019

risk that renters may have no meaningful right of reply to landlords seeking possession of the renter's home.

While paper-based procedures might be considered suitable for Section 21 applications, where most elements of the claim can be proved by documentary evidence (i.e. the notice itself, evidence of deposit protection, gas safety certificate, etc), it is not at all suitable for grounds for possession which depend on the credibility of the landlord's evidence about their future intentions. In possession proceedings there is a great deal at stake: potentially the loss of a tenancy where a household may have lived for many years. It is therefore not appropriate for a court to accept evidence given by witness statement without giving the defendant an opportunity to test and challenge that evidence. The new proposed mandatory grounds are based on the landlord intending to live, sell, refurbish, etc, and the court needs to hear evidence from the landlord about what arrangements they have put in place and how genuine those intentions are before deciding to deprive a tenant of their home.

While supporters of accelerated possession will argue that defendants can request a hearing in their written defence, that is to ignore the inability of many to understand their legal rights because of the drought of legal advice in many parts of the country. Almost a third of legal aid areas in England and Wales have one or no local legal aid housing advice providers, ruling out easily accessible legal advice for swathes of the population.[16] Where it is available, it is scarce and often difficult to secure an appointment. Tenants are expected to file a defence in writing within 14 days to prevent the court making an accelerated order on the papers. This is bound to work against those who cannot get advice or who cannot articulate the relevant facts that the court needs to hear. This would undermine the purpose of the reforms, which is to promote stable tenancies in the private rented sector.

For those with disabilities, ill health, low literacy or language skills, seeking advice is even more of a challenge. Therefore, the most vulnerable renters would inevitably be the ones most adversely affected by accelerated possession claims.

C) Specialist Provisions

Students (Q 30)

While students are a unique group, their needs from private rented accommodation do not drastically differ from the rest of the renting population.

We support providers of purpose-built student accommodation (PBSA) being exempt from the abolition of Section 21. However, other providers of student accommodation, that is to say, normal private rented accommodation usually let to students, should be bound by the new legislation.

[16] Law Society, *Access Denied? LASPO Four Years On: A Law Society Review*, 2017

Students are not homogenous; their needs differ in terms of their employment status, need to stay in the city they study in and in their future plans. Government should defer to student representative groups to better understand the diverse needs of students and what they require from their homes in order for them to thrive.

It should be noted that students often experience disrepair in their properties, with 61% of students reporting damp, condensation or mould.[17] There is an unfair expectation that students should tolerate poor conditions; greater security of tenure and knowing that you have a right to stay for another academic year even if you complain would embolden students to hold their landlord to account.

Short term lets (Q31)

An assured tenancy is clearly not appropriate for short-term lets. However, it is essential that government ensures that measures are taken to close loopholes which could allow landlords to use a short-term let exemption when they are renting to longer-term tenants.

It is not necessarily helpful to define a specific minimum length of time for which a landlord has to grant an assured tenancy. However, given that landlords should not be able to evict within the first two years of signing a tenancy agreement other than on a fault-based ground for possession, it is worth government exploring how to manage lets under the two-year period. The government could consider:

- short-term landlords needing to obtain a licence
- a ban on the property being re-tenanted after two years, to demonstrate that the landlord is not simply avoiding issuing an open-ended tenancy
- the tax status of short-term landlords

Religious workers (Q32)

We would support the current ground 5 being amended so that possession can be obtained for use by a religious worker even if a lay person is currently in occupation. Our support is conditional on there being a reasonable level of evidence needed in order to meet a mandatory threshold, and on there being a physical hearing for a judge to hear evidence.

Agricultural tenancies (Qs 33-34)

We consider that a new mandatory ground for possession of sub-let dwellings on tenanted agricultural holdings may be justified, subject to provisions of Section 137 Rent Act 1977 and Section 18 Housing Act 1988, where applicable, and subject also to strict safeguards requiring the court to be satisfied that the head tenancy is to be lawfully terminated.

[17] NUS, *Homes Fit for Study*, 2014

We consider that the existing law on assured agricultural occupancies in sections 24 to 26 of the Housing Act 1996 already deals with this situation, and we would be strongly opposed to the creation of a new mandatory ground for possession. The existing legislation on agricultural lettings is intended to protect occupiers who have satisfied the agricultural worker condition from losing their home when their employment ends, for example through retirement or illness, and a mandatory ground would clearly not be compatible with these protections.

Build to rent (Q36)

The proposal to provide exemptions for build-to-rent products contradicts the government's intention to rebalance the relationship between landlord and tenant. We do not support specialist provisions for build-to-rent products. If anything, build-to-rent providers operate on long-term business models which should put them in the best possible position to offer more secure tenancies and provide stable, long-term homes for renters.

The proposal allows tenants to be evicted when they have done nothing wrong, such as when their financial circumstances change and they can no longer afford an increase in market rents. This would allow landlords to make unwarranted assumptions about their tenants and risk discrimination against certain tenant groups.

All the circumstances proposed in this consultation (planned refurbishment, unplanned refurbishment, managing ASB, unaffordable rents) are already covered by pre-existing grounds for possession. There is no justifiable reason for build-to-rent products to be given any specialist provision.

D) Wider context

Section 21 and homelessness (Qs 45 & 46)

It is essential that scrapping Section 21 is part of a package of housing and welfare reform designed to fix the housing emergency and ensure that everyone has access to a stable home they can afford. Alongside reforms to the private rented sector, Local Housing Allowance (LHA) rates must be restored to reflect at least the bottom 30th percentile (i.e. the cheapest third) of local rents.[18] Similarly, the government must embark on an ambitious social-rented house building programme and deliver the 3 million social-rented homes that we need to solve the housing emergency once and for all.[19]

However, abolishing Section 21 will, undoubtedly, have an impact on homelessness and homelessness services. New research shows that a massive 30% of private renters currently say that they worry about becoming homeless –

[18] Shelter Briefing: *Westminster Hall Debate on Local Housing Allowance and Homelessness*, July 2019
[19] Shelter Briefing: *Long-term commitment to increased provision of social housing to help to reduce housing costs, homelessness and housing benefit expenditure*, January 2019

abolishing insecurity would undoubtedly provide reassurance for those living under the threat of a no-fault eviction notice.[20]

> *I think ending section 21 would have a huge impact on several thousands of private tenants… many of the clients I've worked with have had to leave their homes through no fault of their own, and been left in council temporary accommodation, often for years. It would provide tenants who value their homes and communities with peace of mind and better security.* (Shelter adviser, Bristol)

The loss of an AST has long been a leading trigger of homelessness. While no one suggests that abolishing ASTs will stop people being evicted from the private rented sector, granting greater security for private tenants presents a genuine opportunity to slow the churn of private tenants being evicted.

As landlords do not currently need a reason to evict tenants, we are lacking robust data to show when and why landlords use Section 21 notices. However, landlords often cite the need to sell, refurbish or move back in. This corresponds with our research, which suggests that 43% of renters who have been evicted were told it was due to the landlord selling the property.[21] However, given that landlords do not have to provide any reason for obtaining possession, there is no way of verifying if landlords genuinely intended to sell or otherwise.

A higher evidence bar will inevitably put off landlords who seek to evict in order to raise rents or because they do not want to make essential repairs or because their tenants have complained.

> *We see numerous clients with families who lose their properties because of "no fault" rules…usually because the landlord wants to increase the rent or because the tenant has complained about disrepair.* (Shelter adviser, Manchester)

Our services regularly support people who have been victims of a 'revenge eviction' and face homelessness as a result. We will be able to advocate for these tenants in the knowledge that we can protect them from eviction once Section 21 has been abolished.

> *What Section 21 does is allow abuse of tenants by bad landlords, where landlords can evict tenants for complaining about disrepair, can discriminate against tenants who may be in receipt of benefits, or can evict tenants to get higher rent. I see this every day. The removal of Section 21 will mean that it will be much harder for bad landlords to be able to harass and inflict suffering on our clients… good landlords should not notice any difference in their ability to rent and evict a tenant if they have a good reason.* (Shelter adviser, Manchester)

[20] YouGov for Shelter, survey of 3995 private renters, online, weighted, August-September 2019
[21] YouGov for Shelter, survey of 3995 private renters, online, weighted, August-September 2019

While some landlords have warned that abolishing Section 21 will lead to a spike in homelessness as they sell properties and evict tenants, evidence from Scotland, where open-ended tenancies have been commonplace since December 2017, shows no negative impact from the changes.[22] We would already expect to see shifts in the size of the market, rates of homelessness and spikes in average rents if landlord predictions were coming true. We are not seeing indications of any of these things happening.[23]

Intentionality

Fears have been cited that ending Section 21 will lead to a spike in intentionally homeless decisions. However, this is to ignore the work that local authorities do whenever a household presents as homeless.

Regardless of whether or not a household approaches with a Section 8 or Section 21 notice, the local authority will conduct investigations into the reasons why the notice has been served. If a tenant is served with a Section 21 notice because of anti-social behaviour or rent arrears, they will likely be issued with an intentionally homeless decision. On the other hand, someone served with a Section 8 notice because of rent arrears caused by benefit delays will likely be issued with an unintentionally homeless decision.

> *It might make it easier to evidence intentionality decisions for local authorities…however, it merely short circuits the process as local authorities usually, as part of their evidence gathering, contact former landlords and where the reasons for issuing a Section 21 notice are behaviours by the tenant will then use that as a basis for an intentionality decision.* (Shelter adviser, South-East)

> *Councils in Greater Manchester are normally quite good at considering the underlying reason for a Section 21 notice to be served. For example, if the cause is rent arrears then the client may be found intentionally homeless, whereas if the cause is sale of the property the client will not.* (Shelter adviser, Manchester)

We therefore do not anticipate a spike in intentionality decisions once Section 21 has been scrapped. However, we support calls by Crisis to review the intentionality test to ensure it's only used in limited circumstances as Parliament originally intended.[24]

Prevention, Relief and PRSOs (Q46)

The abolition of Section 21 could have an immensely positive impact on local authorities carrying out prevention and relief duties.

[22] Shelter, *Evaluating Changes to the Scottish Rental Market*, 2019.
[23] Shelter, *Evaluating Changes to the Scottish Rental Market*, 2019.
[24] Crisis, *Everybody In: How to End Homelessness in Great Britain*, 2019

Prevention

Since the introduction of the Homelessness Reduction Act 2017, local authorities have a duty to try to prevent homelessness, preferably by keeping them in their homes. This may come in many forms: paying down arrears, mediating between landlord and tenant or assisting with aids and adaptations to make a home suitable for a tenant with disabilities.

However, there is a risk attached to using their limited resources to help an applicant keep a private rented tenancy, because the landlord could decide to serve a Section 21 notice for no reason at any moment.

With Section 21 abolished, local authorities could assist, prevent and relieve homelessness in a genuinely meaningful way. They could grant a DHP that would reduce arrears below a mandatory level to ensure that tenants could stay in their homes. Co-working with their social care teams, it would make financial sense for them to invest in adaptations in a property that would allow someone to continue to live in their home despite a physical condition that would otherwise make the property unsuitable.

Relief & PRSOs

Under the Homelessness Reduction Act 2017, local authorities can discharge their duty to relieve homelessness by providing help to secure accommodation that's available for at least six months. With the chronic shortage of social housing, housing authorities look to secure a private rental of at least six months.

While this offer relieves a household's immediate homelessness, it provides no long-term security to a household that has already experienced the trauma of being homeless and risks rapid repeat homelessness at great cost to both the authority and the household. If Section 21 were abolished, local authorities could help people into a genuinely stable private rental.

Similarly, the Localism Act 2011 allows housing authorities to rehouse unintentionally households in priority need with an offer of a suitable private rental of at least 12 months. If the tenant is served with a Section 21 notice within two years, the local authority has an automatic duty to rehouse the household. This is clearly cost inefficient, given the often-significant incentives paid to private landlords to take on homeless households.

Abolishing Section 21 provides local authorities with a genuine opportunity to assist homeless households, or those threatened with homelessness, into secure and stable long-term accommodation. It could have significant positive impacts and allow housing officers to provide genuinely meaningful assistance.

Landlord discrimination (Q47)

Some landlord groups admit to discriminatory practices and confess that they will become more selective over whom they will let to once Section 21 has been abolished.

We believe that any blanket bans on people who, for example, are in receipt of benefits, are discriminatory – and our research shows that 43% of landlords have an outright ban on tenants who are receiving benefits.[25] Selection of tenants should be made on a case-by-case basis, with landlords or letting agents assessing whether or not a household can afford the rent.

This should remain the case regardless of whether Section 21 has been abolished. Landlords will be able to evict their tenants in reasonable circumstances.

E) Transition period

Royal Assent (Q50)

We would support the new law commencing six months after it receives Royal Assent. As with previous legislative changes introduced for new tenancies from a particular date, such as the provisions of the Deregulation Act 2015, we believe that the new law should also be applied to existing tenancies, from some time after the commencement date, to simplify the system and ensure all tenants benefit. This will protect tenants on rolling contracts who have not renewed their tenancy or moved.

For more information, please contact:

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[25] YouGov survey of 1137 private landlords in the UK, online, July-August 2017

Shelter helps millions of people every year struggling with bad housing or homelessness through our advice, support and legal services. And we campaign to make sure that, one day, no one will have to turn to us for help.

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