

Shelter submission to MHCLG

Overcoming the
barriers to longer
tenancies in the private
rented sector

August 2018

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EXECUTIVE SUMMARY

Shelter strongly welcomes the government's proposals to introduce three-year tenancies for private renters. Everyone should have access to a secure home where they can put down roots and a three-year tenancy would be a significant step towards giving private renters the security they need.

However, this change will only be meaningful if it is backed up by a change in the law, so that landlords have to offer longer tenancies to all renters. Anything less than a change in the law, which allows landlords to choose who they offer longer tenancies to, risks creating a two-tier market where some renters are given greater security and others are not. Landlords will only offer longer tenancies to those who they perceive to be the least risky and therefore with any voluntary system, there is a risk that renters who would most benefit from a longer tenancy will miss out.

The introduction of mandatory three-year tenancies would significantly improve the experience of private renters. Knowing they have the right to stay in their home for at least three years would give renters greater security, reducing anxiety about suddenly being asked to move and making it easier to complain, without fear of a retaliatory eviction.

However, whilst three-years is a significant improvement on the current situation, ultimately renters should have the right to stay in their home for as long as they want to, and nobody should ever be evicted without a good reason. Therefore, as part of developing proposals for a new longer tenancy framework, we encourage the government to look closely at what is happening in Scotland to assess the benefits of permanent tenancies.

Overall, Shelter makes the following recommendations for introducing longer tenancies in England:

1. The government should change the law so that landlords have to offer longer tenancies to all renters.
2. As part of developing its proposals for longer tenancies, the government should look closely at learning from Scotland to assess the benefits of permanent tenancies for tenants and landlords.
3. If the government chooses to introduce a three-year tenancy, at the end of three years renters should be entitled to another three-year tenancy, rather than moving on to an insecure monthly periodic tenancy.
4. The six-month break clause should be removed as this significantly undermines the security offered to private renters.
5. Rent increases should be limited to once per year and linked to an inflationary measure.
6. The government should ensure there are sufficient protections in place to make sure the additional grounds for landlords to recover their property if they want to sell or move back in, cannot be abused.
7. The government should not make changes to the Section 8 grounds for eviction, however they should consider reforms to the court system to improve access to justice for all types of housing cases.
8. There should be minimal exemptions to any new longer-term tenancy framework to try to keep the model as universal and simple as possible.

CONSULTATION RESPONSE

Retaliatory eviction (Q10)

Shelter was one of a number of charities who campaigned for a change to the law to protect private renters from retaliatory evictions. The changes brought in under the Deregulation Act 2015 were important because they were the first time that renters were given any form of protection from being forced to leave, simply because they complained about the condition of their home. However, whilst these protections were a good first step, in practice they have had very limited impact in protecting renters from revenge evictions and reducing renters' fear of eviction for complaining.

Firstly, although awareness of the protections under the Deregulation Act has grown slightly, over 75% of private renters are still not aware of these protections.

Awareness		September 2016	August 2017
In October 2015, a legal change came into effect making it impossible for private landlords to evict renters who have lodged complaints over the condition of their home with the council, until that complaint is resolved. This practice was sometimes referred to as 'revenge eviction'. Before taking this survey, were you aware of this law?	Base	3261	3978
	Yes, I was	10%	24%
	No, I wasn't/ not sure	90%	76%
Source: YouGov survey of 3261 private renters, Sept 2016, online, weighted YouGov survey of 3978 private renters, Aug 2017, online, weighted			

Secondly, since the Deregulation Act came into force, there has been no statistically significant reduction in the number of renters who are prevented from complaining because they fear retaliatory eviction. This is perhaps unsurprising given that the majority of renters are still unaware of the protections under the Deregulation Act.

Impact of fear of eviction on ability of private renters to exercise their rights	Jan 14	Sep 16	Aug 17
Base size:	4544	3261	3978
I have not asked for repairs to be carried out and/ or conditions improved because of fear of eviction in the last year.	8.1%	9.1%	8.6%
I have not challenged a rent increase because of fear of eviction in the last year.	7.4%	7.7%	7.4%
I have not asked for repairs and/or not challenged a rent increase in the last year because of fear of eviction.	11.7%	14.1%	13.2%
Source: YouGov survey of 4544 private renters, Jan 2014, online, weighted YouGov survey of 3261 private renters, Sept 2016, online, weighted YouGov survey of 3978 private renters, Aug 2017, online, weighted			

Arguably more concerning, Shelter's research suggests there may have been an increase in the number of private renters who have been retaliatory evicted or threatened with eviction, between January 2014 and August 2017. The table below shows that there has been a statistically significant increase in the numbers of renters who state that they have been evicted or threatened with eviction because they have complained to the council or asked for a problem to be dealt with in their home.

	Jan 14	Sep 16	Aug 17
Base size:	4544	3261	3978
I was evicted/ served notice because I complained to my local council about a problem with my home that was not my responsibility (e.g. repairs or conditions) in the last year	1.4%	1.0%	3.8%
I was threatened with eviction because I complained to my local council about a problem with my home that was not my responsibility (e.g. repairs or conditions) in the last year	1.7%	2.1%	4.9%
I was evicted/ served notice because I asked for a problem in my home to be dealt with that was not my responsibility (e.g. repairs or conditions) in the last year	2.0%	0.9%	4.3%
I was threatened with eviction because I asked for a problem in my home to be dealt with that was not my responsibility (e.g. repairs or conditions) in the last year.	2.7%	0.9%	4.3%
Source: YouGov survey of 4544 private renters, Jan 2014, online, weighted YouGov survey of 3261 private renters, Sept 2016, online, weighted YouGov survey of 3978 private renters, Aug 2017, online, weighted			

Finally, it is worth highlighting that Shelter's Legal Services are currently unaware of any eviction being prevented through a successful defence using the Deregulation Act.

The Deregulation Act sought to give tenants a protection against retaliatory eviction by giving them a specific legal route to challenging no-fault evictions on an exceptional basis, when a no-fault eviction was in response to a complaint. However, the defence is highly complicated and relies on over-stretched local authorities first having issued an improvement notice. As demonstrated above, this complex and exceptional approach to protecting renters from no-fault evictions has failed to meaningfully protect renters. Therefore, if the government wants to put an end to retaliatory evictions, they must change the law so that the default is for landlords to have to evidence a genuine ground for eviction.

The benefits of longer tenancies (Qs 11 and 12)

Tenants:

The government's proposal to introduce longer tenancies, if backed up by law, would offer significant benefits for private renters.

Making renting more secure

The loss of a private rented sector tenancy is now the leading cause of homelessness and accounts for 78% of the rise in homelessness since 2011.¹ Knowing that they can be evicted without a reason can cause significant anxiety and over half of private renters worry about being asked to leave by their landlord before they want to.² This worry about being asked to leave is compounded by the fear of not being able to find another decent home, with almost 75% of renters worrying about how they will find a decent, affordable home when they next need to move.³

¹ Shelter [analysis](#) of DCLG Homelessness Figures

² YouGov for Shelter, survey of 1,029 private renters, online, weighted, August 2018

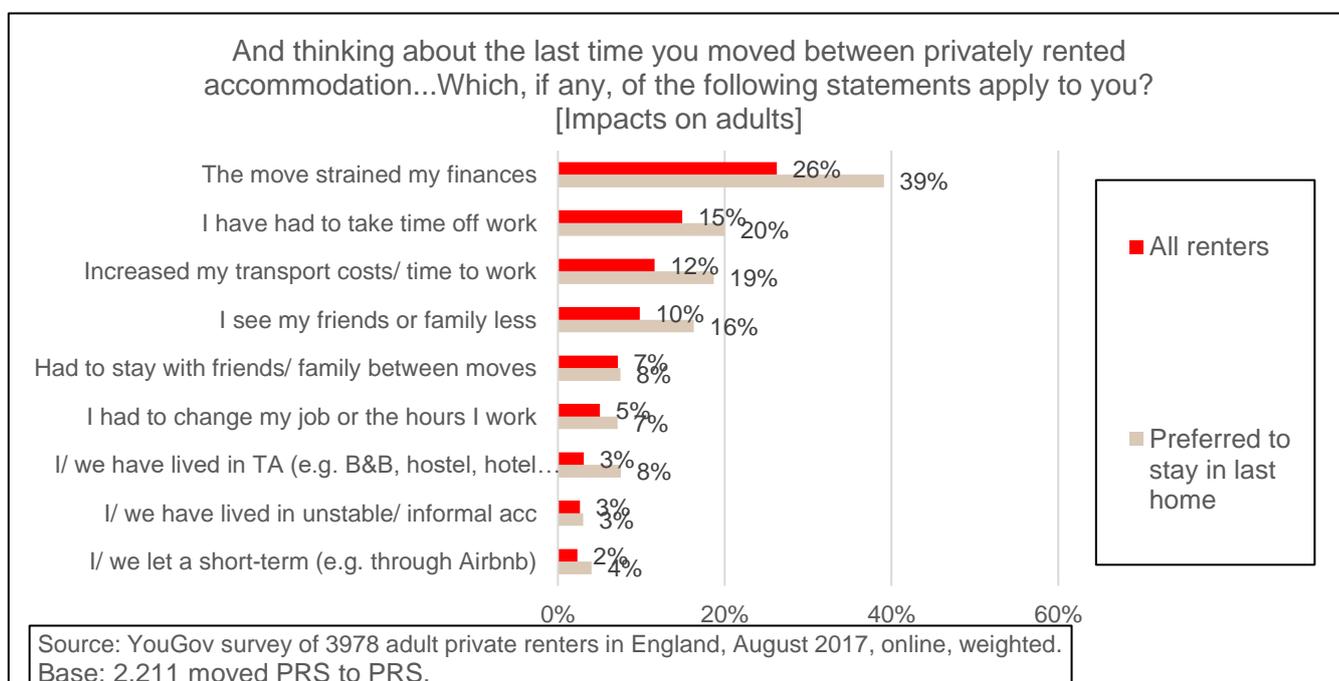
³ IBID

In the current legal framework, outside of the fixed term, landlords are able to use a Section 21 notice at any time to ask a tenant to leave, without any regard for their situation or potential vulnerability. This total lack of security can leave tenants in vulnerable situations and have serious consequences for their wellbeing, as highlighted by the quotes below, which renters provided in response to being asked about their worst experience of renting in the last five years.⁴

- “Being asked to move out when 9 months pregnant”
- “Being kicked out when back from hospital after having a caesarean birth. Landlord who was a lawyer, did not want children in the house.”
- “After renting the same property for almost 5 years, I received a phone call from the letting agency to tell me that the owner of the flat was going to sell it and so we would be served a Notice to Quit - ie 2 months notice. I was in the middle of chemotherapy at the time, had just had surgery, was waiting for radiotherapy and it was almost Christmas. That brought home to me the total lack of control I had as a tenant in private rented accommodation.”
- “Given notice to leave due to complaining about severe damp and leaking roof. We had a new born baby at the time.”
- “Being evicted and all the lies that followed. This caused me severe mental distress, I became depressed, suffered anxiety and now do not feel safe in my current home.”

Reducing damaging moves

There are also a range of impacts from regularly needing to move and our research suggests that those who are forced to move, are often more negatively affected. Approximately 1 in 5 moves are not the tenant’s choice and the graph below highlights how tenants who would have preferred to stay in their own home are more likely to have experienced a move straining their finances, requiring them to take time off work or forcing them to live in temporary accommodation.



⁴ YouGov for Shelter, survey of 3978 private renters, online, weighted, August 2017

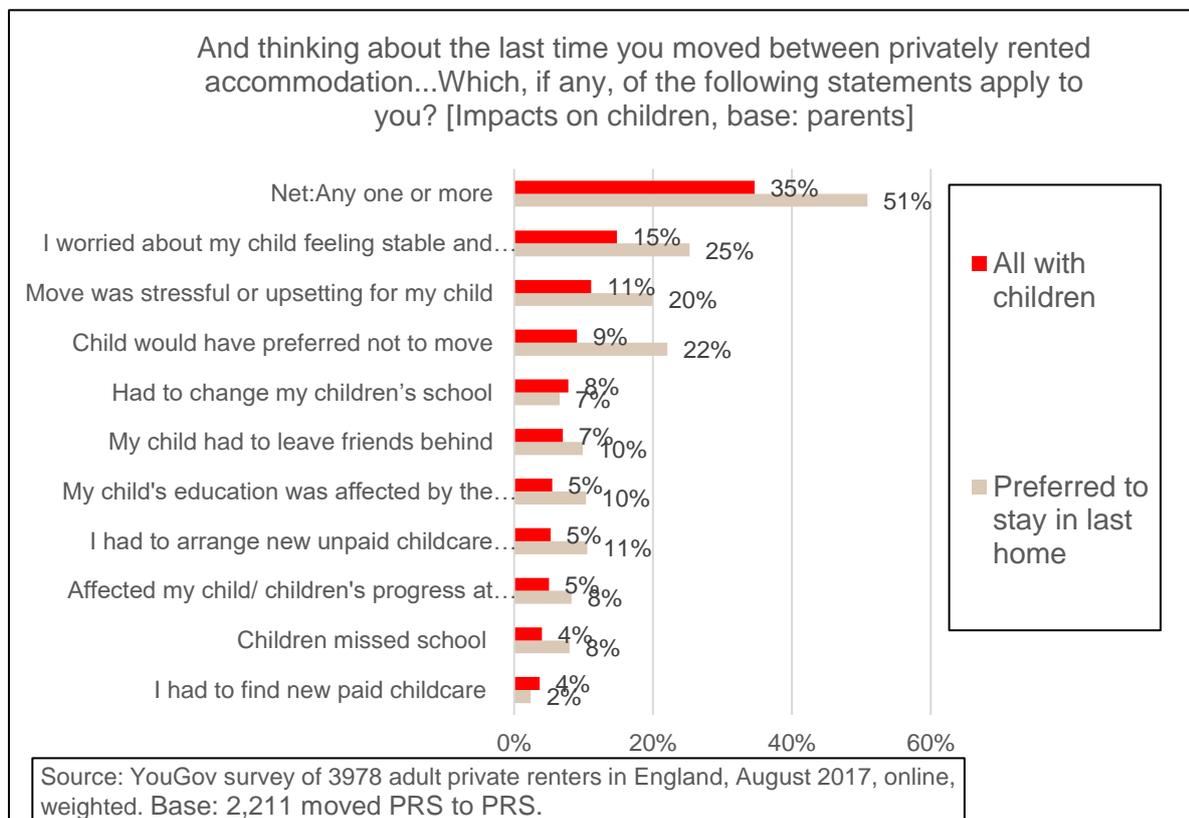
As well as reducing the impact of moving, longer tenancies will also provide renters with a greater ability to plan ahead – over 75% of renters report that having a longer term or indefinite tenancy would make it easier for them to plan ahead in their lives.⁵

It will also make it easier for renters to enforce their right to a safe and decent home - almost 70% of renters agree that they would feel more confident in raising concerns about the condition of their property if they knew they couldn't be evicted without good reason.⁶

Benefits for particular renters:

All renters would benefit from greater security, however longer tenancies would particularly benefit some groups of renters who are more likely to want to stay in their current home or who would find it more difficult to find another suitable home if they need to move.

For example, 38% of households in the PRS are now **families with children**.⁷ As shown by the graph below, moving can have a significant impact on children as it can lead to moving school, leaving friends and causing stress and upset. Ensuring families have the right to stay in their home for longer, will help them to provide a more stable upbringing for their children, without regularly needing to move.



There are also a growing number of **older people** living in the PRS. For these renters, security is arguably even more fundamental because most older renters will expect to be renting for the rest of their lives. Age UK London highlight that “the nature of current Assured Shorthold Tenancies (ASTs) and the corresponding lack of security grossly undermines their ability to feel at home, to invest in

⁵ YouGov for Shelter, survey of 1,029 private renters, online, weighted, August 2018

⁶ YouGov for Shelter, survey of 1,029 private renters, online, weighted, August 2018

⁷ English Housing Survey [Headline Report](#), 2016-17

their home and disinclines many older people to engage with their landlord when they need something done to the property for fear of repercussions.”⁸

The challenges for older renters are echoed in Shelter’s research with private renters. The quotes below, were provided by renters to describe their worst experience of renting in the last five years.⁹

- “Being requested to leave a property we had rented for 14 years because the landlord’s son wanted to live in the property. It was such a shock as a retired couple.”
- “Given notice to leave on day of mother’s funeral... after spending 5 years hard work and a lot of money completely updating house as we were assured it was our forever home. The council would only house us in a hostel 20 miles away so we’ve ended up renting a private home we can’t afford. Next year when we retire we have nowhere to live.”

Finally, **households with low incomes**, are also likely to particularly benefit from knowing that they can stay in their home for longer. Our research suggests that these renters are more likely than the average renter to find it very difficult to find an affordable home if they need to move. Whilst 18% of renters reported that it was very difficult to find an affordable home last time they were looking to move, this rises to 23% for households with an income of lower than £15,000 and 27% for those who are currently receiving housing benefit.¹⁰

Landlords:

Our research shows there is significant support for longer tenancies amongst landlords. In our latest survey of private landlords, 35% say they like the idea of longer tenancies of three to five years and would be likely to try them. Of the remaining landlords, 34% say they are unsure and would like to see them working in practice before trying them and only 15% say they do not like the idea. This support is consistent across different types of landlords - 32% of landlords with only one property, and 40% of landlords with more than one property, say they like the idea.¹¹

Longer tenancies would provide a number of benefits for landlords and whilst campaigning on this issue, Shelter has been contacted by a number of landlords to describe the benefits of having tenants staying in their properties for longer.

Less risk of void periods and saving costs on finding new tenants:

In 2016-17 there were 860,000 moves within the PRS and this instability and regular moving causes problems for landlords as well as tenants.¹² Every time tenants move, this creates additional costs for landlords because they incur the cost of finding new tenants, including paying advertising costs and agency fees (if they use an agent).

A high level of churn also creates the risk of void periods, if a landlord cannot find a tenant to take on their property immediately after the current tenants move out. In Shelter’s latest survey of private landlords, 42% of landlords had experienced a void period of more than 2 weeks in the last 5 years and 18% of landlords had experienced this within the last 12 months.¹³

Short term contracts contribute to churn in the PRS because, in a similar way to fixed term employment contracts, private renters on a six or 12-month contract are likely to start looking for a new property when they near the end of their current agreement. This is because they know there is a risk they could be asked to move at the end of their contract. Longer tenancies would give renters

⁸ Age UK London, [Living in Fear: Experiences of older private renters in London](#), September 2017

⁹ Answers in response to the question “What is your worst experience of renting in the last 5 years?” YouGov for Shelter, survey of 3978 private renters, online, weighted, August 2017

¹⁰ YouGov for Shelter, survey of 3978 private renters, online, weighted, August 2017

¹¹ YouGov for Shelter, survey of 1137 private landlords, online, August 2017

¹² English Housing Survey, [Headline Report](#), 2016-17

¹³ YouGov for Shelter, survey of 1137 private landlords, online, August 2017

reassurance that they could stay in their properties for longer, which would prevent them feeling like they need to look for somewhere else to live every six or 12 months.

Enabling tenants to stay for the long term can therefore offer security to both the landlord and the tenant:

“Having long term tenants provides me with security. Knowing that my property will be occupied for the foreseeable future means I don’t risk any chances of sitting on a costly empty property.” – Hugo, who had been a landlord for three years.

Tenants more likely to take care of the property:

Tenants who know they are going to be able to stay in their property for a long time, will also have a greater incentive to look after the property.

“...there’s a mutual interest in the upkeep of the property... Tenants who can feel the property is their proper home for a long time, and that the some of the rent they pay will go towards repairs and maintenance are far more likely to look after it well.” – Maureen, who had been a landlord for twelve years.

In practice this is likely to mean:

- **Tenants invest more in the property** – tenants who plan to stay in their property for the long term are more likely to do things like redecorate or buy furniture. Nearly two thirds (64%) of renters in England agreed that 'If I knew I was going to be staying in a private rented home for up to five years, I would be more likely to ask to carry out decorations or other improvements myself', only 10% disagreed with this.¹⁴
- **Tenants that minimise wear and tear** – while wear and tear cannot be eradicated, it can be reduced by things like not wearing shoes indoors. Tenants with a long-term interest in their property have more of an incentive to make small changes that will extend the lifespan of fixtures and fittings.
- **Tenants report long-term faults earlier** – the cost of some faults (e.g. slow leaks) can spiral if left unfixed for the long term. A tenant with less confidence that they will live in the property for the long term has less incentive to report such faults early.

A better relationship with tenants:

Finally, landlords have highlighted that having longer term tenants can help to build a better relationship. This is partly because the tenants will be in the property for longer, but also a more equal power balance between landlords and tenants will make it easy for tenants to approach their landlord about any issues, without fear of eviction.

“It also means you can develop a relationship and build trust with your tenants, not having to start again and thinking ‘are they going to be okay?’” – Ruby, who has been a landlord for seventeen years.

¹⁴ YouGov for Shelter, survey of 3978 private renters, online, weighted, August 2017

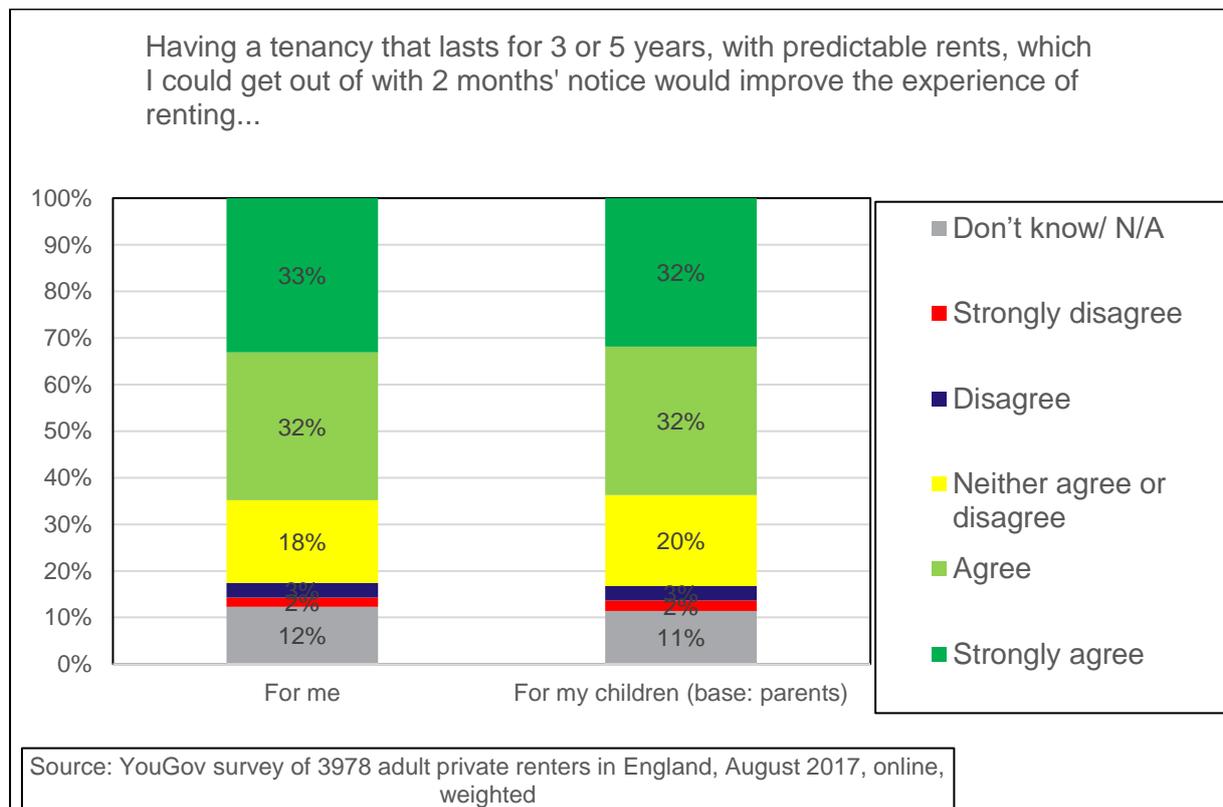
Barriers to offering longer tenancies (Q13)

There are no insurmountable barriers to landlords offering longer tenancies. This is highlighted by the fact that longer tenancies are the norm in most other European countries with large private rented sectors.¹⁵

There is clear demand for longer tenancies from landlords and tenants. The fact that the market fails to deliver long tenancies, despite this demand, indicates a clear market failure in the PRS, and suggests a significant government intervention is needed if longer tenancies are to be accessible for all renters.

As outlined above, over one-third of landlords like the idea of three or five-year tenancies and another third of landlords are unsure, but would be willing to try them if they saw them working in practice.¹⁶ Therefore it is simply not the case that landlords do not want to offer them.

Landlords and other organisations in the lettings industry often report that there is no demand for longer tenancies from tenants. However, Shelter's research clearly shows there is demand for longer tenancies. When a longer tenancy is explained, renters overwhelmingly report that this would improve their experience of renting and their children's experience, as illustrated by the graph below – almost two-thirds of renters say it would improve their experience, whilst only 5% suggest it would not.



Although tenants clearly want longer tenancies, there are several reasons why they are unlikely to ask for a longer tenancy. Firstly, in the current market, most renters have come to accept six or 12-month contracts as the norm and they are not aware that they can ask for a longer tenancy. 28% of renters

¹⁵ Shelter, [Time for reform: How our neighbours with mature private renting markets guarantee stability for renters](#), 2016

¹⁶ IBID

say the main reason they have not asked for a longer tenancy is because they didn't know it was possible.¹⁷

Secondly, the concept of a longer tenancy is often misunderstood and some renters fear that if they sign up to a longer tenancy this means they are locked in for that period. 15% of renters highlight that fear of being locked-in is the main reason why they have not asked for a longer tenancy.¹⁸ This fear is arguably justified in the current system because if a tenant asks for a longer tenancy, there is nothing to compel the landlord to include a clause which allows the tenant to terminate within the fixed term. These fears over being locked-in highlight the importance of ensuring tenants can leave with a reasonable notice period in any new longer-term tenancy framework.

Although there are no insurmountable barriers to longer tenancies working in practice, there are some practical issues, which the government should look to address as part of implementing any new tenancy model. Shelter anticipates that the main concern from landlords will be how easy it will be to recover their property if they needed to. In our latest survey, only 25% of private landlords said they had confidence in the court system and only 4% described their confidence as strong. This is despite the fact that fewer than 1% of landlords, had actually used the court system, which suggests that this barrier might be as much about perception as actual poor experience.¹⁹ There are clearly challenges with an overstretched court system, however, these challenges are not unique to private possession cases. Therefore, Shelter would encourage the government to look holistically at any court reform to consider how to improve access to justice for all housing issues, not just private possession cases.

Mortgage conditions are not a barrier to landlords offering longer tenancies. Many mortgage providers have already increased their maximum tenancy length to 36 months, including Nationwide, Santander and BM Solutions. Mortgage providers have also adapted to the introduction of permanent tenancies in Scotland and therefore there's no obvious reason why mortgage providers cannot adapt their conditions in England.

Letting agent advice may have been a barrier to landlords offering longer tenancies in the past, however the ban on letting agent fees should reduce the impact of this. For as long as letting agents can charge tenants extortionate renewal fees, then agents have an incentive in ensuring tenants have to renew as often as possible. However, once the ban on fees is implemented, agents will have less incentive to do this, although they will still have an incentive in landlords regularly finding new tenants as they will be able to charge landlords for this.

The government's proposed model (Q14)

Shelter strongly welcomes the government's proposal of introducing a three-year tenancy. The government's proposal would be an improvement on the current situation, where the majority of renters are only offered six or 12-month assured shorthold tenancies.

Although the model as currently proposed could be workable, as set out below, we would encourage the government to amend certain features of the model in order to maximise the security for private renters.

Length of the agreement: (Q16)

A three-year tenancy agreement would be a significant improvement on the current situation, where the vast majority of renters can only access six or 12-month tenancy agreements. A three-year tenancy would give renters greater security, reducing anxiety about suddenly being asked to move and making it easier to complain, without fear of a retaliatory eviction.

However, whilst three years is a significant improvement on the current situation, ultimately renters should have the right to stay in their home for as long as they want to, and nobody should ever be

¹⁷ YouGov for Shelter, survey of 3978 private renters, online, weighted, August 2017

¹⁸ IBID

¹⁹ YouGov for Shelter, survey of 1137 private landlords, online, August 2017

evicted without a good reason. In Shelter's latest survey of private renters, 84% of renters said they would like to be able to stay in their home for as long as they choose to.²⁰

The changes in Scotland provide an opportunity for government to assess the benefits of indefinite tenancies for both tenants and landlords and we would encourage the government do this, before determining what approach to take in England. Although it is too early to fully assess the impact of the changes in Scotland, early indicators demonstrate that the move to permanent tenancies has not had a negative impact on rents²¹ or on homelessness²².

With any fixed length tenancy (as opposed to indefinite tenancy), careful consideration needs to be given to what happens at the end of the tenancy. For example, at the end of three years, it is unclear from the consultation whether the landlord and tenant would be expected to negotiate a new three-year tenancy or whether the tenancy would become a statutory periodic tenancy, leaving the tenant vulnerable to a Section 21 eviction at any time.

Instead, tenants should be entitled to another three-year tenancy, so that after three years of security renters are not forced to return to the insecurity of a statutory periodic tenancy. There should not be another break clause, in any subsequent three-year tenancy, as both parties will already have experience of being in a contract with one another. Serious consideration must also be given to how rent increases would be negotiated, as the tenant may feel they have very limited power to negotiate, if the landlord knows that the tenant really wants to stay.

Break clause: (Q17)

Shelter opposes the inclusion of a landlord break clause in any longer-term tenancy agreement because it will significantly undermine the security for private renters.

By allowing landlords the option to end the tenancy agreement at six months, some landlords may end the tenancy at this point if there is any minor problem. This could lead to significant churn, with an increased number of people being forced to move after only six months. This could create even more instability than the current situation, where many are given 12-month fixed-term contracts.

There is a particular risk that the six-month 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, which results in them paying their rent late, the landlord may choose to end the tenancy for fear of further issues with the benefits system, even though the tenant has no control over this situation.

Knowing that they could be evicted after only six months, will also result in tenants experiencing all the current problems with insecurity for the first six months of their tenancy. Tenants will feel unable to complain for fear that their landlord will decide not to continue with the rest of the tenancy. In particular, if a landlord has promised to make repairs or decorate or professionally clean before a tenant moves in, the break clause will make it difficult for tenants to challenge anything which has not been done.

There are also disadvantages to tenants being locked-in for the first six months. Although for most tenants this is no worse than the current situation where they choose to sign-up for six or 12 months, there are certain scenarios where being locked in can be harmful for private renters. For example, if someone moves into a new property with a partner and then starts to experience domestic abuse,

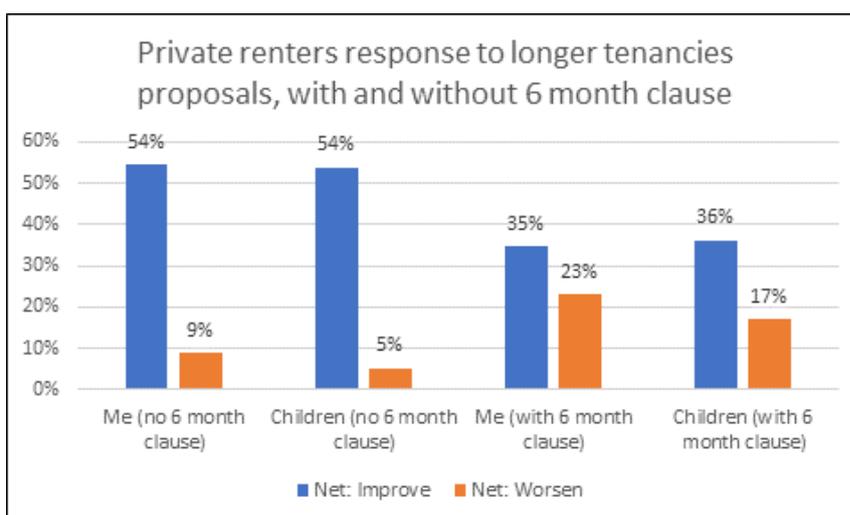
²⁰ YouGov for Shelter, survey of 1137 private landlords, online, August 2017

²¹ ONS Index of Private Housing Rental Prices shows since the changes came into effect in rents have increased at a slower pace than other comparable parts of the UK.

²² Despite the growing size of the PRS in Scotland, there has been no significant increase in homelessness emanating from the sector since the changes to tenancy law came in. The percentage of applicants who previously lived in the PRS has remained stable at around 18%.

being locked-in for six months could make it even more difficult for them to escape their situation. Similarly, if a tenant moves into a property in terrible condition and the landlord refuses to fix it, the tenant will still be forced to live there for six months. These issues could be resolved by the removal of the break clause or alternatively through the creation of grounds, which enable tenants to leave their property more quickly in certain circumstances.

Finally, our research suggests including a six-month break clause makes the government’s model significantly less popular with private renters. When asked about whether a three-year tenancy would improve their experience of private renting, there is a significant difference in popularity of the model, when it includes the break clause. When the six-month break clause is included, only 35% of renters say the model would improve their experience and almost a quarter of renters say the model will actually worsen their experience of renting. When the break-clause is not included, almost 55% of renters say it would improve their experience and only 9% say it would worsen their experience.²³



Notice periods: (Qs18 and 19)

Tenant notice:

We have previously suggested that tenants with a longer tenancy should have to give landlords two-months’ notice when they want to move.²⁴ It is worth noting, however, that two months is longer than renters currently have to give if they are on a statutory periodic tenancy and longer than the 28 days’ notice renters in Scotland have to give if they want to leave a private residential tenancy.

The longer the notice period, the greater the risk that tenants will find themselves being liable for two properties at the same time. Most tenants will not want to give notice on their current property, until they have found somewhere else to live, however often a new property will be looking for tenants to move in as soon as possible. In overheated markets, tenants rarely have the bargaining power to negotiate a later move in date, as they risk missing out on the property to other tenants.

Another option the government could consider, to ensure renters have sufficient flexibility in special circumstances, is to enable tenants to give less notice if they have a particular ground, reflecting the landlord’s power under Section 8. For example, if the landlord is in breach of their obligations which causes significant hardship or discomfort to the tenant, then the tenant should be allowed to leave with one or two weeks’ notice. This would give landlords an additional incentive to respond to complaints in a timely manner.

²³ YouGov survey of 1,029 private renters, online, weighted, August 2018

²⁴ Shelter, [A better deal – towards more stable private renting](#), September 2012

Landlord notice:

If a landlord wants to recover their property to sell or move back in, they should give tenants as much advance warning as possible and at least four months' notice. This is not unreasonable as landlords are likely to know far in advance if they are planning to sell or will need to move back in. In many cases, this news will come out of the blue so tenants will need time to consider their options and then find a new property to move into. Tenants with limited incomes will also need time to save up for a deposit or to fund moving costs. Furthermore, for tenants with children, four months' notice would also allow them to at least finish the current school term, avoiding the disruption of having to move midway through term.

Grounds for eviction: (Q20)

Shelter agrees that the grounds for a landlord recovering their property during the fixed term under any longer-term tenancy agreement should mirror those in Schedule 2 of the Housing Act. We also accept there should be additional grounds for a landlord to recover their property if they wish to sell or move into the property, but there should be protections to avoid these being exploited.

Existing grounds:

Other than an additional ground for selling or moving back into the property, we would not want to see any further changes to the Section 8 grounds in Schedule 2. The current grounds strike a good balance between enabling a landlord to recover their property when necessary, whilst also offering protections to prevent tenants being evicted without good reason and therefore preventing homelessness.

We would strongly oppose any changes to Ground 8, which is the mandatory ground for rent arrears. Requiring evidence that a tenant is in two months' rent arrears at the time of serving notice and at the date of the hearing, gives tenants a fair chance to try to pay off their rent arrears before the hearing.

It is also important to be mindful that any changes to Section 8 grounds would not only affect tenants in the private rented sector but also tenants with assured tenancies living in social housing. If the government is proposing to change any grounds, they should engage with the social housing sector to fully understand the impact of these changes or limit these changes to only affecting private tenancies.

As outlined above, we recognise the current frustrations with the court system and welcome the government's intention to consider reforms to the court system to improve access to justice. We would suggest improvements to the court system are a better way to ensure landlords can recover their property, rather than any changes to Section 8.

Selling or moving into the property:

Although we accept that there are circumstances when a landlord might need to recover their property to sell or move back in, it is important to ensure sufficient protections are in place to prevent these grounds being abused.

Firstly, if a landlord wants to sell their property they should be required to provide significant evidence to demonstrate they are committed to selling their property. Without a high evidence bar, there is a risk that this could be abused - landlords could easily claim they are planning to sell but then decide not to, in order to get in new tenants at a higher rent. We would suggest that landlords are required to provide a draft contract naming the buyer, to evidence that they are committed to selling.

Similarly, if a landlord wants to recover their property to move into it, there should be a high bar of evidence to demonstrate that the landlord is planning to live in the property. For example, landlords could be required to provide evidence of selling their current residential home.

Secondly, when selling, the government should consider requiring landlords to initially try to sell the property with sitting tenants, before they are allowed to start eviction proceedings. For example, similarly to shared ownership, the landlord could be required to market the property with sitting

tenants and only if they are unable to sell after a given period, should they be allowed to evict the tenants.

Finally, the government should consider whether tenants should be offered compensation when they are being evicted through no fault of their own, to support tenants with moving costs. The amount of compensation could depend on the circumstances of the household (e.g. whether they have children, or particular vulnerabilities) and how long they have lived in the property. Similar models operate effectively in other parts of the world, for example, in the City of Los Angeles.²⁵

Rent increases: (Q21)

Any rent increases should be:

- a) Limited to a maximum of once per year
- b) Linked to an inflationary measure (such as the consumer price index)

We welcome the fact that the government is proposing to include some limits on rent increases in its 3-year tenancy model. It is essential that any longer-tenancy model includes some limit on rent increases, otherwise landlords will be able to propose drastic rent increases as a way of forcing tenants to leave before the end of their tenancy. Limits on the frequency and amount of rent increases are also important for providing tenants with predictability about how their rents can change from year to year; this is particularly important for low-income households on very tight budgets, who will find it more difficult to cope with unexpected rent increases.

We support limiting rent increases to a maximum of once a year, however, the government's proposed approach of only allowing rent increases which have been agreed at the start of the tenancy, does not offer enough protection to tenants. If landlords know they have to set out any rent increases at the start of the tenancy to cover the next three years, they are likely to suggest the maximum rent increases they feel they can get away with. Many tenants will find it difficult to negotiate over these, particularly in overheated markets, because tenants will worry that the landlord will simply choose other tenants who are prepared to pay. In Shelter's most recent survey of private renters, only 16% strongly agreed that they would feel confident in negotiating rent increases with their landlord for their current tenancy.²⁶

If the government pursues this option, it will be important to ensure that tenants have a mechanism for easily challenging any excessive rent increases. The landlord should also still be required to give tenants formal notice of a rent increase – rents should not just automatically increase based on what is in the tenancy agreement. This process of giving notice could be similar to the current Section 13 process for periodic tenancies.

A better approach to rent regulation would be to limit rent increases to an inflationary measure. Although inflation does fluctuate, it is relatively stable and a well-understood measure so both tenants and landlords will have an understanding of how rents may change over the course of a tenancy.

Inflation is not a perfect measure, as it does not reflect geographical variations and there could be advantages to limiting rent to a more local measure, such as local market average rents. However, for this approach to work effectively, it would require there to be easily accessible data on local market rents, which could be used to assess the fairness of any rent increases. An early evaluation of the rent regulation measures in Scotland, has highlighted the need for there to be better data on private rents, for these measures to be effective.²⁷

²⁵ Los Angeles, Relocation Assistance Scheme -

https://hcidla.lacity.org/system/files_force/documents/relocation_assistance_english.pdf?download=1

²⁶ YouGov survey of 1,029 private renters, online, weighted, August 2018

²⁷ Shelter Scotland, [An evaluation of rent regulation measures in Scotland's private rented sector](#), March 2018

Finally, in whatever model they adopt, the government should make clear to landlords that they do not need to increase the rent every year. In a similar approach to the model tenancy agreement, we would suggest landlords are provided with a number of options for changing rents on any model tenancy agreement and one option should be 'no increase'. In Shelter's most recent private landlord survey, at the last tenancy renewal 66% of landlords did not increase the rent, 31% increased it and 2% decreased it.²⁸

Exemptions: (Q23)

As far as possible, all renters should be offered the same longer tenancy model. Any exemptions add an additional layer of complexity which makes the legislation more difficult for both private renters and landlords to understand. Exemptions also risk creating loopholes and therefore place an additional burden on enforcement agencies.

Therefore, the only exemptions to any longer tenancy model should be:

- a) Purpose-built student accommodation
- b) Holiday lets

Students:

We accept that there should be an exemption for purpose-built student accommodation that is managed by an education provider, such as a university. However, there should not be an exemption for student accommodation more widely. There is no reason why students should be offered less security than other types of renters and some students, such as those with caring responsibilities, will particularly benefit from greater security. Any separation of particular types of renters, also risks distorting the market by creating different incentives for landlords to let to different renters.

As long as there is sufficient flexibility in the model, so that tenants can leave with a reasonable amount of notice, there is no reason why a longer-term tenancy agreement cannot work for students. There may need to be additional communication with students to ensure they understand the new tenancy and particularly the arrangements for giving notice.

Short-term work contracts:

We would strongly oppose there being an exemption for people on short-term work contracts as this would potentially disadvantage those in insecure employment, or those who are out of work, who may particularly benefit from more security.

Rather than having an exemption for those on short-term work contracts, the government should ensure that renters have the flexibility to give notice when they need to.

If there is a concern that accommodation may sometimes be provided as part of an employment contract (e.g. three-month accommodation to work at a hospital or on a farm), then a better approach would be to create an additional ground for possession, so that the employer can recover the property at the end of the work contract. This is the approach that was taken in Scotland, in response to concerns from rural landowners about offering permanent tenancies to seasonal workers.

Visas:

There is no justification for excluding people whose visas are for less than three years and creating such an exemption would risk causing further discrimination for people, who already find it difficult to rent in England. In Shelter's most recent private landlord survey, 30% of landlords said that they were

²⁸ YouGov for Shelter, survey of 1137 private landlords, online, August 2017

less likely to rent to people who do not hold British passports or who ‘do not appear to be British’ because of the Right to Rent legislation.²⁹

People with time-limited visas have a “limited right to rent” under the Right to Rent scheme and the assumption should be that people who are lawfully in the UK will observe the necessary procedures and renew their leave as necessary. When the visa expires, the landlord can ask for evidence that the tenant has renewed it and if they have not renewed it, or if they are refused another visa, the landlord can start possession proceedings, under s.33E, Immigration Act 2014.

Implementation (Qs 22, 24 – 27)

The only way to ensure landlords offer longer tenancies to all those that want or need them is to change the law. Anything less than changing the law is likely to be less effective and risk creating a two-tier market where some renters are able to access longer tenancies and others are not.

We have set out below the main advantages and disadvantages of the alternative approaches to implementing longer tenancies.

Voluntary adoption:

Voluntary measures (such as introducing a kitemark for landlords offering longer tenancies or an updated version of the existing model tenancy agreement) are likely to be the least effective way to introduce longer tenancies.

Landlords and tenants can already voluntarily agree to a longer-term tenancy agreement and as illustrated above, there is clearly demand for longer tenancies from both landlords and tenants. However, despite this demand, still only 4% of private renters initially rent on a tenancy agreement of longer than 18-months.³⁰ The market alone is clearly failing to deliver longer tenancies and any voluntary measure is unlikely to change that.

The introduction of the model tenancy agreement in 2013 has been helpful for providing a benchmark of what a tenancy agreement should look like. However, despite promoting longer tenancies, the model tenancy agreement has not led to any significant change in the proportion of tenants being able to rent on longer tenancies.

Part of the difficulty may be the lack of awareness amongst renters about the model tenancy agreement. Tenancy length and the model tenancy are both already mentioned in the *How to Rent* guide that landlords are obliged to provide to tenants at the beginning of their tenancy, but despite this in late 2016 only 6.9% of tenants say they were aware of the model tenancy.³¹

However, even if tenants are aware that they can ask for a longer-term tenancy agreement, that does not mean those that ask will be successful in being offered one. Our research shows that more than a fifth (21%) of tenants have previously asked for a tenancy of more than 12 months at least once, but that half have never been offered one.³² There is a risk that tenants who unsuccessfully request a longer tenancy will stop asking and this may undermine efforts to promote the model tenancy through word-of-mouth.

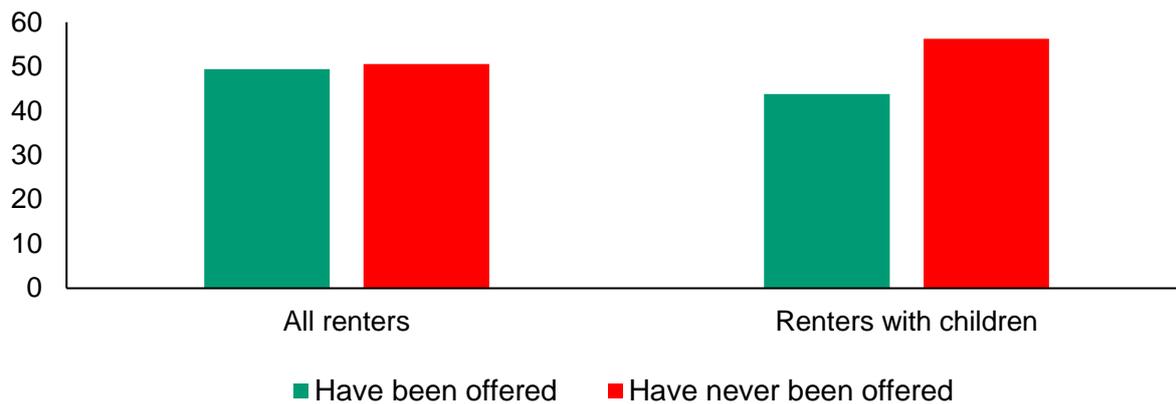
The graph below shows the proportion of tenants who have been offered a tenancy of longer than 12 months, of those who have asked at least once.

²⁹ YouGov survey of 1137 private landlords, online, August 2017.

³⁰ English Housing Survey, [Headline Report](#), 2016-17

³¹ YouGov for Shelter, survey of 3262 private renters in England, September 2016, online, weighted.

³² IBID



In light of the above, there is no reason to believe that an updated version of the model tenancy agreement is likely to be any more effective than the current version, in increasing the number of renters with longer tenancies.

Requiring landlords to display a kitemark, if they are willing to offer a longer tenancy agreement, might be more effective in terms of helping renters to identify landlords who are willing to offer longer lets. This could help address some of the market failure, by helping to match landlords who are willing to offer longer tenancies with renters who want them. However, it would still lead to many renters missing out, as the number of renters who would like a longer tenancy exceeds the number of landlords who are currently willing to offer them.

More importantly, the risk with any voluntary system is that there is no guarantee that landlords will be willing to offer longer term tenancies to those who need them most. Many renters already face discrimination in the rental market because landlords are reluctant to let to them - this includes low-income households, people in receipt of benefits and families with children. Landlords who are unwilling to let to these renters on a six or 12-month tenancy agreement are even less likely to want to voluntarily offer them a longer tenancy agreement. Therefore, there is good reason to believe that some of these households who would most benefit from greater security, are less likely to be offered longer tenancies.

The risk of creating further discrimination is highlighted by the chart above, showing families with children were less likely to have been offered a longer tenancy when asking for one. In a 2016 survey of renters, more than 27% of the tenants with children had asked for a tenancy of more than 12 months, compared to just over 17% of childless tenants. However, while the majority of these renters without children got a longer tenancy when they asked, for tenants with children the pattern was reversed.³³

Financial incentives:

Offering financial incentives to landlords who let on longer tenancies, may marginally increase the number of landlords willing to offer longer tenancies, but it would be highly costly and carry the same risks around creating a two-tier market as other voluntary approaches.

There is some evidence to suggest that financial incentives could encourage more landlords to offer longer tenancies. Shelter commissioned the Cambridge Centre for Housing and Planning Research to conduct a small survey of landlords on how tax incentives would affect their willingness to offer longer tenancies. This found that they would have a marginal impact, increasing the overall proportion of landlords who would offer a three-year contract from just under a third to almost half.³⁴

³³ YouGov for Shelter, survey of 3262 private renters in England, September 2016, online, weighted.

³⁴ CCHPR, *The effects of rent controls on supply and markets*, 2015

However, as with voluntary adoption, there is no way of guaranteeing that landlords who benefit from financial incentives, will be willing to offer longer tenancies to those who need them most. Furthermore, unlike voluntary adoption, introducing financial incentives for landlords who offer longer tenancies is likely to be highly costly.

Firstly, there is the cost of paying for any financial incentives, such as a reduction in tax for landlords who offer longer tenancies. Whilst some of this cost might be justified in terms of persuading some landlords to offer longer tenancies, the Cambridge Centre for Housing and Planning Research analysis highlights that many of these landlords would have been willing to offer them anyway.

Secondly there would be the cost of enforcing any changes to the tax regime. In the current self-assessment tax regime, there would be serious challenges to ensuring any landlord who receives any tax benefits, is definitely providing a longer tenancy. In addition, if the government chooses to pursue the tax incentive route, then it would be essential to ensure that any landlord who receives a tax benefit, is also meeting all their other legal responsibilities as a landlord. There would need to be a system for checking this, which is likely to place additional burden on enforcement agencies.

Finally, although introducing financial incentives is likely to be quicker than changing the law to introduce a new legal framework for a 3-year tenancy, it would still require legislative change.

Changing the law:

Changing the law so all landlords have to offer longer tenancies, without any opt-outs, is the only way to provide renters with the right to stay that they deserve. The overwhelming majority of our neighbours, with large renting populations, require greater security as a legal default and the government must follow their example if they want to meaningfully improve the experience of private renters.³⁵ Any other approach risks exacerbating discrimination towards households who landlords are already reluctant to let to and will create a two-tier market where some can access longer tenancies and others cannot.

Changing the law is not only the fairest way to introduce longer tenancies, but it is also the simplest model. Tenancy terms are currently poorly understood and introducing a new standard tenancy agreement, which all landlords are required to offer by law, would make it easier for all landlords and tenants to know their rights. It will also support enforcement, because it will be easier for any enforcement agency to enforce against any landlord who is trying to deviate from the new arrangements.

We would oppose a situation where a longer tenancy is introduced as the legal default but where landlords and tenants have the option to negotiate a shorter contract if they wish to. Firstly, any form of opt-out inherently makes the system more complicated and it will be far more difficult for landlords and tenants to understand any new tenancy arrangements if there are opt-outs.

Secondly, there is a risk any option to negotiate a shorter contract will be exploited by landlords who do not want to offer longer tenancies. Whilst in theory, the consultation suggests that tenants would have to request a shorter tenancy, in practice many tenants have limited negotiating power, particularly in overheated markets where there is high competition for properties. Therefore, landlords could easily make a take-it or leave-it offer to a tenant and if the tenant feels there is high competition for the property, they are likely to feel pressured into accepting it.

Finally, if tenants have sufficient flexibility within the tenancy arrangements to leave with a reasonable amount of notice, then there should be no need to create an opt-out where tenants can request a shorter contract.

³⁵ Shelter, *Time for reform: How our neighbours with mature private renting markets guarantee stability for renters*, 2016

Other considerations

Equality Act: (Q28)

If the government chooses to implement a new longer tenancy arrangement by encouraging voluntary adoption or using tax incentives, then this approach may negatively impact on certain groups with protected characteristics.

For example, given that 61% of landlords currently bar or prefer not to let to people on housing benefit, it is likely that landlords may refuse to voluntarily offer longer tenancies to renters who claim housing benefit.³⁶ Analysis by Shelter shows that people in receipt of disability benefits are three times more likely to also receive housing benefit.³⁷ Additionally, Shelter analysis of official figures from the Department for Work and Pensions suggest that 60% of adults on housing benefit are women and 95% of single parents receiving housing benefit are female.³⁸

The best way to ensure that any new longer tenancy framework, does not impact differently on those with protected characteristics, is to change the law so that all renters benefit from longer tenancies and landlords cannot discriminate against certain renters by not offering them longer tenancies.

Shared housing: (Q29)

Shelter would encourage the government to think carefully about how any new tenancy framework would work for shared housing and houses in multiple occupation. In particular, careful consideration needs to be given around the ending of tenancies in shared housing and whether it will be possible for one tenant to end the tenancy by giving notice or if all tenants will need to give notice to end the tenancy. Consideration then needs to be given as to the rights of the remaining tenants, who may want to continue living in their property.

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³⁶ YouGov survey of 1137 private landlords, online, August 2017.

³⁷ Due to the inability to cross refer disability and housing benefits on the DWP stats tool this data is taken from wave 7 of Understanding Society. Tenure data was matched to the Household identifiers for the individual respondents, and filtered by those within the PRS and claiming Disability Living Allowance. Total unweighted base is c.4,000 within this group. Data was collected January 2015 – January 2017.

³⁸ These statistics were calculated using caseload data published by the Department for Work and Pensions. Data is as of December 2016. The 60% of adults on housing benefit who are women is the number of adult women in a household with a housing benefit claim. 71% of these women are the only adult in the household, 29% are part of a couple. 95% of single parent households claiming housing benefit are led by a woman.