

## A New Deal for Renting: Resetting the balance of rights and responsibilities between landlords and tenants – Generation Rent response

Generation Rent welcomes the Government's commitment to ending section 21 and creating a fairer private rented sector. However, the new eviction grounds proposed for sale and reoccupation fail to prevent abuse by unscrupulous landlords, offer no support to tenants who are evicted under them to find a new home, and don't do enough to encourage landlords to keep tenants in their homes.

To ensure that the new system adequately protects tenants from unfair evictions, any new regulations must minimise unwanted moves, minimise hardship for tenants who face unwanted moves, and give tenants more confidence to negotiate with or complain to their landlord.

To ensure that the proposed laws deliver on these tests, we are calling on the Government to:

- **End unfair evictions:** The Government must take steps to restrict the use of the new no-fault grounds.
- **Provide support to tenants when forced to move:** Landlords evicting tenants using the new no-fault grounds must pay relocation costs to mitigate the disruption of an unwanted move.
- **Prevent abuse of no-fault grounds:** Our proposed relocation payments would effectively act as a deterrent and prevent abuse of no-fault grounds.
- **Incentivise landlords to sell with sitting tenants:** Landlords evicting tenants to sell the property under the proposed new ground must only be able to do so once sale contracts have been exchanged.
- **Restrict rent increases within tenancies:** The Government must introduce restrictions on rent increases during tenancies to prevent tenants from unwanted moves due to rent rises.
- **Give tenants more time to find a new home:** There must be a notice period of 4 months or more for tenants.

In our response below, we have outlined our proposals for how the new system should operate following the abolition of section 21, as well as providing answers to individual questions.

### The end of section 21 evictions

#### *New grounds*

- The new grounds for possession proposed by the Government (in the event that the landlord wanted to sell the property themselves or move into it) would allow many no-fault evictions to continue, creating hardship for tenants. The grounds would be susceptible to abuse if the landlord is not required to provide evidence for these grounds. Assuming there would be penalties for falsifying evidence, it would still be difficult for evicted tenants to

prove, for example, that a landlord who had used sale grounds but did not end up selling had not acted in good faith.

- In these circumstances the landlord should be encouraged to opt for alternatives, such as moving to a different home, or selling with (or to) sitting tenants. If these grounds are to be adopted, we have proposed changes to these grounds which would reduce the prevalence of these evictions and mitigate the hardship faced by tenants.
- Any no-fault grounds must be restricted so that landlords can only use them if they gave the tenant adequate notice at the start of the tenancy, and the notice period should be 4 months or more.

#### *Relocation costs*

- As well as providing prior warning and 4 months' notice, landlords who use no-fault grounds should pay relocation costs to the tenant, set at a minimum of two months' rent. This would reduce the financial hardship that tenants face and create a substantial hurdle that would discourage abuse and encourage landlords to consider alternative arrangements.
- **We have provided further detail on this proposal in our response to section 3: 'bringing tenancies to an end'.**

#### *Restrictions on rent increases*

- Without restrictions on rent increases outside of fixed terms, renters will not be protected from unwanted moves caused by landlords seeking to maximise rents or avoid their legal obligations. Under the current proposals a renter faced with an excessive rent increase could challenge it through the First-Tier Tribunal. This currently provides some protection against rent rises, as the tribunal takes into account the state of repair in the property. However, because the tribunal uses the prevailing market rent as the benchmark, rather than average rents across the sector - including existing tenancies - it is little more than a valuation tool and could still allow unpredictable and unaffordable rent increases. Tenants who live in areas where rents are rising faster than wages would get little to no protection from a tribunal that awards the landlord the market rent.
- By permitting landlords and tenants to agree future rent rises at the start of fixed terms, there is a risk that unscrupulous landlords will exploit their additional bargaining power at the start of the tenancy to set out excessive rent increases which the tenant would find it hard to reject, knowing that another tenant would accept the terms.
- Instead of relying on the Tribunal to rule in rent disputes, we recommend that the government sets a limit on rent increases to ONS wage inflation. This would give tenants an incentive to request repairs without the risk of being priced out of their home, while maintaining a link with what tenants can afford to pay. Such a limit would not make rents affordable and further measures are required to achieve this.
- Our proposed restriction on rent increases would only apply to existing tenancies. Landlords would not be restricted from listing new tenancies in line with market rates.
- **We have set out further analysis on rent increases in Annex 1.**

### *Section 21 and supply*

- While most landlords value long term tenants and would not be affected by these changes, some may rely on Section 21 as part of their business model, and would leave the market, reducing the supply of homes available to renters. However, evidence conclusively disproves claims that this would negatively impact renters. As economic analysis from the Bank of England states, landlords are not providers of housing themselves, therefore, if the landlord sells, at the end of a sales chain will either be another landlord or an owner-occupier, meaning that these properties will continue to provide homes. The number of homes relative to people who need them does not change, and therefore landlords selling their properties will not have an impact on rents.<sup>1</sup>
- Generation Rent's own analysis demonstrates that a reduction in supply of rented homes would be matched by a drop in demand from renters. Evidence of the past 14 years suggests rents are most closely linked to wages, and renters' ability to pay them.<sup>2</sup> Rents are not always responsive only to supply. During the financial crisis, rents fell even as the number of private renters rose; in the recovery to 2015 the private rented sector continued to expand but real rents rose. Then, since a contraction in the size of the private rented sector following tax changes, rents have fallen in real terms. Should supply of rented homes continue to decline as a result of tenancy reform, renters who are able to buy their homes will do so, and those remaining in the sector will enjoy a better quality of life.

### *Section 21 and homelessness*

- We are aware of concerns that section 21 will increase homelessness, as a result of councils having fewer duties to house those evicted. We have outlined how this could be addressed in our responses to questions 45 and 46. However, Government homelessness figures indicate that section 21 is the leading cause of homelessness, and therefore the most significant effect of removing it will be to reduce this.
- 146,000 private tenants were asked to leave their home by their landlord in the last three years.<sup>3</sup> Government figures on homelessness indicate that 27,910 households were owed a homelessness duty in 2018-19 because of revenge eviction, re-let or property sale.<sup>4</sup> The total owed a homelessness duty by councils was 263,720. No-fault evictions account for more than 10% of all homelessness cases in that period, so abolishing section 21 and putting additional measures in place to protect tenants facing no-fault evictions could reduce homelessness by one tenth, reducing the burden on the state as well as individual renters.
- Restricting no-fault evictions will not affect the number of renters who get into rent arrears, and they will continue to face eviction, but under Section 8 grounds. This should not affect their eligibility for homelessness support from their local council. Wider government efforts

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<sup>1</sup> <https://bankunderground.co.uk/2019/09/05/houses-are-assets-not-goods:-what-the-difference-between-bulbs-and-flowers-tells-us-about-the-housing-market/>

<sup>2</sup> [https://www.generationrent.org/what\\_happens\\_to\\_rents\\_if\\_landlords\\_exit\\_the\\_market\\_nothing](https://www.generationrent.org/what_happens_to_rents_if_landlords_exit_the_market_nothing)

<sup>4</sup> <https://www.gov.uk/government/statistical-data-sets/live-tables-on-homelessness>

are needed to ensure that the housing benefit system works effectively for tenants and landlords.

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

Yes

- The Government should abolish assured shorthold tenancies for all users of the 1988 Act, to ensure all renters have equal protection from section 21 evictions.
- Assured periodic tenancies should be offered as the default. However, in some cases, specific exemptions may need to be made to accommodate supported housing or temporary accommodation providers. For example, providers of supported housing may need to move tenants who no longer meet the criteria, to provide that housing to a new tenant who is eligible. These exemptions should be made on a case-by-case basis. In many cases, social landlords would be making new accommodation available for the tenant and could thus use the existing ground 9, that suitable accommodation is or will be available, for possession on this basis.

**Question 2: Do you think that fixed terms should have a minimum length? No**

- The two-year protection from a no-fault eviction under an assured periodic tenancy is welcome and means that there is no benefit to the tenant in agreeing an initial fixed term. A fixed term would only restrict their flexibility to move.
- Despite the fact that assured periodic tenancies would be offered as the norm, unscrupulous landlords would be able to insist on a long initial fixed term to ensure tenants are liable for as much rent as possible, regardless of their circumstances. It would be difficult for tenants to negotiate a more flexible tenancy in areas of high demand for rented properties, due to the power imbalance between the landlord and tenant. The existence of fixed terms alongside periodic tenancies would add a layer of confusion for tenants.
- We therefore recommend that the Government abolish fixed terms and make assured periodic tenancies with an initial period where no-fault evictions are not permitted the only option.
- If the Government decides to permit fixed terms, they should only be permitted after an initial protected term during which landlords cannot sell or occupy the property. Sitting tenants would be in a better position to make an informed decision to enter a fixed term compared with a prospective tenant who might forfeit the tenancy if they refused a fixed term.

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

Yes (only if fixed terms are retained)

- We recommend that to avoid confusion for tenants, the government permits only periodic tenancies without an option to fix. In this scenario the concept of the break clause is redundant.
- If fixed term contracts are to be retained under the new system, break clauses should be maintained in order to give tenants additional flexibility and prevent them from being locked into contracts. Break clauses would also protect tenants from rent increases in the event that the tenancy does continue after the break.
- Because tenants can face unforeseen circumstances where they must move home – for example a change to their job or relationships – they should have the ability to break a fixed term. Landlords should not be able to use a break clause. There is less need for the landlord to have this flexibility given that they have alternatives to selling the property vacant or moving in. If the landlord wished to use the property, they would be able to rent somewhere until the initial fixed term has expired.
- If the landlord is able to exercise a break clause, they must only be able to do so if they have valid grounds to end the tenancy under Section 8, to ensure break clauses are not used as a method to evict tenants who have done nothing wrong.

## **Bringing tenancies to an end**

### **Relocation payments**

- We recognise there will always be some situations in which a landlord will need to access the property without the tenant being at fault, for example if the landlord needs to sell the property and or use it themselves.
- The Government must ensure that support is provided to tenants faced with the expense and stress of an unwanted move and must put in place measures to reduce instances of no-fault possessions and prevent abuse of these new no-fault grounds.
- To achieve this, we propose that the landlord pay the tenant's relocation costs, set at no less than 2 months' rent, as well as providing tenants with 4 months' notice. The relocation payments would mitigate both the cost and disruption incurred by the tenant moving home.
- 146,000 private tenants were asked to leave their home by their landlord in the last three years, leaving them with the costs of moving home, which includes finding a new deposit, paying rent on two properties at the same time, the costs of cleaning and removals, and time lost in packing, cleaning, moving and unpacking. Generation Rent estimates this to be £1402 to the typical household (using data on average rents from the Valuation Office Agency).
- Survation polling for Generation Rent conducted in September 2019 found that 40% of respondents have previously paid rent and bills on more than one property when moving to a new house. A third (40%) of those who paid multiple rents did so for more than 2 weeks. A majority of those surveyed (58%) supported relocation payments.
- This principle of landlords paying reasonable moving costs when using no-fault grounds already exists in Section 14 of the 1988 Housing Act. The Act states that “where a court makes an order for possession...on Ground 6 or Ground 9... the landlord shall pay to the tenant a sum equal to the reasonable expenses likely to be incurred by the tenant in

removing from the dwelling-house". Extending it to the new no-fault grounds would ensure tenants' rights continue.

- Owners and social tenants are also eligible for Home Loss Payments under the Land Compensation Act 1973, in acknowledgement of the distress and inconvenience of an unplanned move. Social tenants are entitled to a flat rate. Under the new Home Loss Payments (Prescribed Amounts) (England) Regulations 2019, any occupants who are displaced on or after 1 October 2019 will be entitled to £6,400. Private renters should be offered the same protections as those with other tenures.
- We propose the payment be made at the time a no-fault eviction notice is issued. Introducing relocation payments at this stage would minimise hardship faced by tenants and discourage landlords from using the new grounds except when necessary, therefore reducing abuse.
- If the payment were to be introduced, the Ministry would have to work with the Department for Work and Pensions to ensure this payment would not impact benefit payments for those receiving housing benefit or universal credit. These tenants are likely to benefit most from the payments. We propose that the Government introduce an earnings disregard, and these already exist for calculating housing benefit.

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

No.

- Landlords should consider alternative arrangements that don't involve tenants being forced to find a new home. They or their family members could find a different rented home to live in.
- This ground is open to abuse, especially if expanded to include all family members, as the landlord would be under minimal pressures to prove that they needed the property. The tenants who are evicted would face hardship, and there are alternatives to eviction, such as the landlord/family member finding a different home.
- In instances where alternatives are not possible, the landlord should be required to pay the tenant's relocation costs (outlined above).

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

Yes

- A requirement that the landlord or an immediate family member (parent, child or sibling) must have lived at the property previously is essential to prevent abuse of this ground. Without this, there is little way to prove that a landlord would need the property as their home and tenants would not be protected from eviction. This requirement would also encourage landlords to seek alternative arrangements if they genuinely needed a home.

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

Yes

- This notice would minimise the stress and disruption for tenants. Tenants would be aware of the possibility of being asked to move and would be able to make informed choices based on this, for example when making decisions about their jobs or children's schools.
- Prior notice would also prevent abuse of this ground, as unscrupulous landlords would be unable to use this ground opportunistically to force an eviction for other reasons.

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

No

- Granting landlords permission to evict tenants during a fixed term would undermine tenants' security and would lead to unfair and unwanted no-fault evictions continuing after the abolition of section 21.
- The Government has acknowledged that this could lead to shorter fixed terms being offered initially. This problem would be solved by making all tenancies an assured periodic tenancy with an initial two-year period of protection from eviction, as outlined in our response to question 2.
- A landlord who would like to rent out their property for a shorter period than the fixed term, in between living there themselves, could rent somewhere else until they were able to move into the property.

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

No

- Tenants must be protected from unwanted moves during the first two years. As stated in our response to question 7, granting landlords permission to evict tenants would undermine tenants' security and would lead to unfair and unwanted no-fault evictions continuing after the abolition of section 21. Landlords should make alternative arrangements during the first two years of a tenancy. The inclusion of this exemption would also undermine the purpose of the initial two-year protection period. The motive of the landlord for taking possession makes no difference to the tenant who is losing their home for reasons beyond their control.

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

No.

- Again, the inclusion of this exemption would undermine the purpose of the initial two-year restriction. The rented property is the tenant's home, which the tenant will have secured through the standard processes of the rental market. There is no reason why the landlord or their family should not be able to find accommodation in the same way, without the existing tenant losing their home.

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

No

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

More than two months' notice

- Landlords using no-fault grounds must provide tenants with four months' notice. This would allow tenants to prepare for the upheaval of an unexpected move. Four months' notice would enable tenants to secure alternative employment and serve notice periods if forced to move to a new area, and to plan any moves outside school term times, minimising children's educational upheaval.

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

Yes

- As with ground 2, this notice would mitigate the stress and disruption for tenants. Tenants would be aware of the possibility of being asked to move, and would be able to plan around this, for example when making decisions about their jobs or children's schools.
- Prior notice would also prevent abuse of this ground, as unscrupulous landlords would be unable to use this ground opportunistically to force an eviction for other reasons.

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

No

- Making this ground mandatory would result in unfair evictions continuing. There must be greater protections for the tenant in this situation who faces the expense and stress of an unwanted move, and other solutions must be explored which would enable the tenant to stay in their home. Only a minority of tenants would want or be able to buy their home but giving the tenant the opportunity could help reduce unnecessary hardship and save the landlord the costs of marketing the property.

- If the landlord intends to sell the property, the tenant should have the right of first refusal, and should be offered the chance to buy the property before it is put on the market.
- Provided that the tenant does not wish to buy the property themselves, the landlord should then attempt to sell the property with the tenant continuing to live at the property. Selling the property with sitting tenants offers benefits for buyers, sellers and tenants. Landlords selling the property will be able to receive rental income throughout the sales process. The new landlord (the buyer) will know exactly what income they can expect to receive through rent. The tenants will benefit through not having to leave their home. We propose that landlords must attempt to sell the property with tenants in situ, and must provide evidence that they have done so, along with a reason this was unsuccessful if they wish to evict tenants to sell the property.
- If all other avenues are exhausted and eviction takes place, notice should only be valid and possession should only be granted after contracts are exchanged.

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

No

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

No

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

More than two months' notice

- As with ground 2, landlords using this no-fault ground must provide tenants with four months' notice, as we have outlined in our response to question 11.

**Question 17: Should the ground under Schedule 2 concerned with rent arrears be revised so: The landlord can serve a two-week notice seeking possession once the tenant has accrued two months' rent arrears.**

No

- The notice period for rent arrears must not be reduced. Changing the notice period would make will not address the fundamental causes of rent arrears and will make more renters homeless.
- Changes to housing benefit payments mean that tenants' payments are often delayed, or their benefits no longer cover their rent. Research published by Crisis in August 2019

indicates that in 94% of areas in Britain, one in five or less private rented homes are affordable to single people, couples, or small families who need housing benefit.<sup>5</sup>

- Households receiving Universal Credit payments for the first time must wait 5 weeks before receiving the first payment, leaving millions of rented households more vulnerable to arrears. Research by the RLA suggests as many as 54% of renters in receipt of UC fall behind on payments.<sup>6</sup> Figures published by Citizens Advice in September 2019 found that half (49%) of universal credit claimants have struggled to meet essential costs such as rent, household bills and food.<sup>7</sup>
- If arrears have accrued due to errors on the part of the Department for Work and Pensions, this can often take longer than two weeks to resolve, by which point the landlord would have likely taken possession of the property if the notice period were to be reduced.
- Reducing the notice period for rent arrears would negatively impact tenants with irregular shift patterns on zero hours contracts and will make it more likely for them to be made homeless as the result of an eviction.

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

No

- Mandatory grounds for possession should not be introduced with regard to rent arrears of this size. Research published in September 2019 by Shelter indicates that almost half of private renters (3 million people) could not afford to pay their rent for more than one month if they lost their job.
- Tenants in receipt of universal credit get paid monthly in arrears, meaning any tenant who has fallen behind is very likely to have at least a month's arrears outstanding. Reducing the amount of arrears to one month would put tenants at risk of homelessness almost immediately if they were to lose their job or were in receipt of benefits.

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

Yes

- Tenants with less than a month of rent arrears should be allowed to stay in the property. Eviction for rent arrears should only take place as a last resort.

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

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<sup>5</sup> <https://www.crisis.org.uk/media/240986/crisis-cover-the-cost-solutions-report.pdf>

<sup>6</sup> <https://research.rla.org.uk/report/investigating-effect-welfare-reform/>

<sup>7</sup> <https://www.citizensadvice.org.uk/about-us/policy/policy-research-topics/welfare-policy-research-surveys-and-consultation-responses/welfare-policy-research/achieving-income-security-for-all/>

No

- In practice, it may be difficult to establish whether the tenant is deliberately reducing arrears by a small amount, even if a pattern is evident. Tenants may be reducing the arrears to below 8 weeks in an attempt to pay it off rather than to 'game' a system. This is particularly likely if the tenants are paid irregularly or facing delays to universal credit payments.
- The court should allow tenants to stay in their home if there is evidence that the tenant is already attempting to reduce arrears or is willing to. The courts should commit landlords and tenants to a repayment plan (facilitated by a third party if possible) that allows the tenant to reduce the arrears at a sustainable rate. Eviction in the event of rent arrears should only be authorised as a last resort.

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

No

- As ground 12 is discretionary, the court will decide if the tenancy has been breached and if it is reasonable to grant a possession order. There is therefore no need for the Government to provide guidance on the content of tenancy agreements.

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

Don't know

- A decision on whether to introduce this ground should only be made after extensive consultation with experts in this sector. Giving private landlords the power to intervene in complex and potentially dangerous situations could inadvertently endanger victims. It is unclear if private landlords would have sufficient knowledge to intervene in the most appropriate way, nor the inclination to involve themselves with these cases.

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

Don't know

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

Don't know

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

Don't know

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

No

- Though discretionary, an amended ground 13 could be open to abuse. For example, a landlord could insist on frequent, intrusive inspections. If a landlord has reasonable grounds to suspect that the property has fallen below legal safety standards, then they should be able to use ground 12, which covers a breach of any term in the tenancy agreement other than rent.

**Question 29: Which of the following could be disposed of without a hearing? (tick all that apply)**

- None of the grounds should be disposed of without a hearing. Unlike section 21, the new grounds rely on evidence given by landlords, meaning that a hearing must take place to allow the tenant to dispute the evidence's validity. The use of accelerated applications for possession on grounds which rely on subjective evidence would result in an erosion of tenants' rights and would give unscrupulous landlords the ability to evict tenants without proof. This would allow unfair evictions to continue. The landlord must be required to provide evidence, and the tenant must be given an opportunity to dispute this evidence before a decision is made on granting possession.
- There is a perception that section 21 is a quicker process than section 8. The opposite is in fact the case. Ministry of Justice possession statistics show that in Q2 2019 the median time between claims and repossessions was 16.4 weeks for section 8 (Private Landlord) possessions and 18.3 weeks for section 21 (Accelerated) possessions. If landlords have concerns about the speed of the repossession process, the problem appears to be with the court system as a whole, rather than the type of process.<sup>8</sup>
- We therefore urge MHCLG to work closely with the Ministry of Justice (MoJ) to ensure the court system is sufficiently resourced to give landlords confidence in the system and feel able to use the new grounds when they need it, while giving tenants a fair hearing and the ability to defend themselves.

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

No.

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<sup>8</sup> <https://www.gov.uk/government/statistics/mortgage-and-landlord-possession-statistics-april-to-june-2019>

- Ground 4 should not be widened to include lets to any students who attend an educational institution and student tenants should have equal rights to tenants with an assured tenancy under the new system.
- Student lets are not currently legally distinct from assured shorthold tenancies. Exempting students from protection against no-fault evictions would result in practical difficulties for both students and landlords. Widening this ground would create difficulties for students leaving courses mid-way through the year, or for students living with non-students.
- Making student lets distinct from the wider private rented system would distort the rental market further, potentially making these lets more attractive to landlords. With fewer tenancy protections, landlords could be incentivised to choose student lets rather than non-student lets, which would result in fewer homes for families or professionals in certain areas.
- Practically, it would be very difficult to define a 'student tenancy' as distinct from a regular tenancy, and landlords could abuse this category in order to continue to let to tenants with the ability to evict them without legitimate grounds.

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

Yes

- This should not apply to holiday lets, defined for tax purposes as anything let for under 31 days.
- Given the popularity of letting out one's home for short periods on platforms such as Airbnb, bringing such lets under the new system would be impractical and potentially shut off householders from this source of extra income. A reasonable cut-off would be based on the standard annual holiday allowance of around 1 month. Where homes are being let for longer than 1 month, we might reasonably see these as homes which could be otherwise providing a long-term home, so the government should encourage them into that long term market.
- To ensure that landlords do not attempt to deny tenants their rights by abusing holiday let exemptions, holiday lets should be registered as part of a wider system of landlord registration.

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

Yes.

- We understand that there may be circumstances where a religious worker needs to access a property and cannot easily make alternative arrangements, unlike other landlords. If the Government modifies this ground, we believe the same principles must be applied to this ground as to the new ground 1 principles. This must only be used in instances where the property was used for this purpose previously, that the landlord notifies the tenant of this

possibility at the start of the tenancy, and a relocation payment is made to the departing tenant, as outlined above.

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

Don't know.

However if such a ground is created, the same principles as above should apply: that a tenant at risk of losing their home for reasons outside of their control should be notified of this at the start of the tenancy, and that their relocation costs be covered if they are evicted.

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

Don't know.

But as above, if such a ground exists, the same principles for tenants evicted for reasons outside their control still apply.

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

- In order to ensure that the new grounds are an appropriate substitute for section 21, the existing technical exemptions which are in place for section 21 must also be in place for the new grounds.
- Under the existing system, a section 21 notice is invalid if the landlord has failed to protect the tenant's deposit, failed to provide the tenant with the How to rent guide, Energy Performance Certificate (EPC) or gas safety certificate, received a prohibited payment, or failed to obtain an appropriate license (if required). We propose that the new no-fault grounds have the same conditions, to ensure tenants' ability to challenge landlords who are not compliant is not curtailed by the threat of a no-fault eviction, and spur landlords into complying with these regulations.
- As part of the reforms, MHCLG should prepare for increased attempts by landlords to evict tenants illegally, through harassment, changing the locks or other criminal methods. As part of this, MHCLG should ensure that local authorities have a duty – and sufficient resources – to enforce the Protection from Eviction Act.
- Where the landlord has certain obligations around letting only to tenants who meet certain eligibility criteria, and a tenant loses eligibility, the landlord could use existing ground 9 and provide alternative accommodation which would allow them to make the home available to an eligible tenant.

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

Yes

- The Government's proposals will reduce homelessness. In 2018-19, 27,910 private tenant households were put at risk of homelessness because of revenge eviction, or landlord's decisions to re-let or sell the property – out of 57,400 cases caused by the end of a private tenancy. Abolishing Section 21 and creating protections for tenants whose landlord is selling would prevent these types of cases resulting in homelessness – more than 10% of the 263,720 homelessness cases in total.<sup>9</sup>
- Generation Rent's research in 2018 showed a 90% correlation between Section 21 evictions and homelessness cases caused by the end of a private tenancy, indicating that Section 21 evictions are the leading cause of homelessness in England, with 216 households becoming homeless every week in this way.<sup>10</sup>
- By requiring grounds for eviction, the government would eliminate cases where the landlord is evading their legal obligations to provide a safe home or fair treatment to their tenant through retaliatory eviction or attempting to raise the rent by churning tenants.
- However, the new grounds for no-fault eviction, if a landlord needs to sell the property or move into it, will allow many evictions that currently take place through section 21 to continue. Because 63% of private tenants have no savings, many who face unwanted moves get into debt or present as homelessness. Without provisions to discourage these evictions, prevent abuse of these grounds and support those forced to move, renters will continue to be made homeless as the result of a tenancy coming to an end.

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

- Because the conditions causing rent arrears will not be altered by the proposals, we might expect more evictions under Section 8. However, this would not alter the criteria that local authorities use to assess whether households are owed a homelessness duty.
- Tenants evicted on rent arrears can currently be found by the council to be unintentionally homeless, if there are extenuating circumstances such as benefit difficulties, and are thus owed a homelessness duty by the council. The recent Supreme Court decision supporting a tenant's decision to prioritise her children's food over paying her rent would strengthen many tenants' claims to homelessness support.
- While evictions will decrease following the abolition of section 21 the level of evictions on rent arrears grounds will not decline without changes to the levels and administration of housing benefit. Councils must also be adequately resourced to ensure they can comply with the duties of the Homelessness Reduction Act 2017.
- Another benefit of abolishing Section 21 is that it means that a tenant who faces difficulties in paying their rent can tell their landlord this at an early stage with the intention of finding a mutually beneficial arrangement, without the risk that they will be immediately issued with a Section 21. This would result in more arrears cases being resolved before the landlord takes legal action and the tenant receives a County Court Judgement. However,

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<sup>9</sup> <https://www.gov.uk/government/collections/homelessness-statistics>

<sup>10</sup> [https://www.generationrent.org/no\\_fault\\_evictions\\_drive\\_up\\_homelessness](https://www.generationrent.org/no_fault_evictions_drive_up_homelessness)

it underlines the importance of MHCLG putting in place appropriate systems to help sustain tenancies.

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

- The Government must ensure that landlords are not deterred from choosing tenants on lower incomes or in receipt of housing benefit when choosing new tenants, due to concerns over the ability of tenants to pay rent over a longer period.
- Research from homelessness charity Centrepoin<sup>t</sup> found that just 21% of landlords were happy to rent to tenants on housing benefit, and just 19% were happy to rent to those in receipt of universal credit.<sup>11</sup> Clearly the system is already not working as the government intends.
- The removal of section 21 should therefore take place alongside measures to encourage landlords to rent to tenants on lower incomes. The Government should introduce codes of practice for letting agents that prevent discrimination, as well as ensuring that landlords who do let to those receiving benefits have access to up to date information and advice. Tenants receiving universal credit should have the option to have their housing payments sent directly to the landlord.
- Landlords' reluctance to rent to tenants on housing benefit is based in part on insurance policies which have a blanket restriction on tenants in receipt of housing benefit. This factor could be eliminated in the short term through a mandatory rent guarantee insurance scheme for landlords. We included the following proposal in our response to the 2018 consultation on longer tenancies:
  - First, we assume 50,000 private tenants would face eviction for arrears per year (this is roughly the number of Accelerated and Private Landlord repossession claims in 2017, so is a high estimate), and that it takes an average of 24 weeks or six months to evict them. Add the initial two months before serving notice, and, at an average rent of £800, that means arrears cost landlords up to £320m a year. If the annual insurance of £68 (plus admin costs) was paid for every private rented home in England, then it could cover the losses of every landlord whose tenant went into arrears while they went through the eviction process (or the tenant paid back the rent). This could be part of a national landlord registration scheme. Because a lot of landlords already pay insurance – a minimum of £120 a year, according to AXA – they could actually save money under a registration and rent guarantee scheme. If the government were to lead this then more could be saved by integrating it with the housing benefit system.
- Insurance would only be part of the solution: it would do nothing to prevent tenants getting into rent arrears in the first place. To address this, the Government should also ensure that local housing allowance covers the costs of renting, by restoring LHA levels to at least the 30<sup>th</sup> percentile of local market rents.

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<sup>11</sup> <https://centrepoin<sup>t</sup>.org.uk/media/3048/ready-to-move-on.pdf>

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

- Research indicates that BME people are more likely to live in the private rented sector and to access homelessness services.<sup>12</sup> BME people are also more likely to live in poorer quality housing. Through ensuring that tenants are protected from no-fault or retaliatory evictions, the Government's measures will have a positive impact on this characteristic under the 2010 Act.
- Removing section 21 would also enable tenants to exercise their rights to complain or take appropriate action against landlords who were acting unlawfully or harassing tenants regarding characteristics as defined in the act. Without fear of retaliatory eviction, tenants would be more able to take action against sexual or racial abuse at the hands of a landlord.

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

n/a

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

No

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

No transition period

- The new law should be introduced with no transition period once the Bill receives Royal Assent. The Government have stated that the new system will only apply to new tenancies, meaning that landlords will be able to issue assured shorthold tenancies until the point at which the Bill receives Royal Assent. Private renters continue to live with the damaging impacts of insecurity and evictions and urgently need better protections. There is no need for a transition period.

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<sup>12</sup> <https://blog.shelter.org.uk/2017/10/bame-homelessness-matters-and-is-disproportionately-rising-time-for-the-government-to-act/>

## **Annex 1 – analysis of rent increases**

The Office for National Statistics' Index of Private Housing Rental Prices (IPHRP) measures changes in rents across the whole private rented sector. Because this includes existing tenancies in which rents are less likely to rise year on year, it has recorded rental inflation similar in scale to consumer price and wage inflation.

Homelet produces an index which covers only rents on new tenancies. These tend to show larger increases than the less volatile, sector-wide IPHRP.

Both indices have a regional breakdown, which we have compared between July 2013 and July 2019. The IPHRP shows rent inflation over those 6 years ranging from 3% in the North East to 14% in the South East. The Homelet index has a wider range of 1% in the North East to 29% in London – a difference of 17% with the IPHRP figure for London.

The relationship between market rents and sector-wide rents varies considerably between regions, but in the London, South East and Eastern regions, market rents have outpaced sector-wide rents substantially, by between 10 and 17 percentage points. Average tenants in those regions would have seen their rents go up by between 11 and 14 percent over six years – around two percent each year. But tenants with an unscrupulous landlord, who wanted to maximise their returns or avoid requests for repairs, could have been hit with an increase of 23 to 27 percent, which would have been difficult to manage on an average household income.

Under the proposals, tenants can challenge rent increases at the First-Tier Tribunal, but there is no real incentive for a tenant to do this if they expect the Tribunal to award the landlord the rent the tenant would pay if they moved out instead.

The rent set at the start of a tenancy reflects the risk to the landlord of taking on a tenant who is unknown to them. After time, the tenant's reliability reduces this risk so decent landlords will keep rent at the same level to encourage the tenant to stay.

Tenants should have the same expectations about their rent whether their landlord values long term tenants or not. This would give them confidence to complain about disrepair without risking being priced out of their home.

If the government wishes to rely on the First-Tier Tribunal to protect tenants from excessive rent rises, it should consider amending the Housing Act 1988 so that the Tribunal uses sector-wide rent levels as its benchmark. This would take into account the lower risk that sitting tenants represent to landlords when setting the rent.

However, as sector-wide rents can still rise faster than tenants' ability to pay, we recommend that rent increases be simply limited to wage inflation. This would reduce reliance on the Tribunal to rule on rent disputes, while allowing rents to rise broadly in line with how they have done in the past. This would not absolve the government from its duty to adopt measures to bring rents down, for example by building social housing.

It should be noted that there appears to be variation between market and sector-wide rent inflation within regions as well, but data is currently of limited quality – e.g. the Valuation Office Agency advises that their rent data should not be used to compare over periods of time.

| Region               | Homelet rent index (£ per month) |        |          | IPHRP change | Difference |
|----------------------|----------------------------------|--------|----------|--------------|------------|
|                      | Jul-13                           | Jul-19 | % change |              |            |
| North East           | 526                              | 529    | 0.6%     | 3.0%         | -2.4%      |
| North West           | 659                              | 726    | 10.2%    | 6.3%         | 3.9%       |
| Yorkshire and Humber | 612                              | 641    | 4.7%     | 7.7%         | -2.9%      |
| East Midlands        | 580                              | 646    | 11.4%    | 13.6%        | -2.3%      |
| West Midlands        | 609                              | 709    | 16.4%    | 10.3%        | 6.1%       |
| East                 | 752                              | 925    | 23.0%    | 12.9%        | 10.1%      |
| London               | 1295                             | 1665   | 28.6%    | 11.3%        | 17.3%      |
| South East           | 850                              | 1053   | 23.9%    | 14.1%        | 9.7%       |
| South West           | 789                              | 855    | 8.4%     | 11.8%        | -3.4%      |