



MHCLG discussion paper on *A New Deal for Renting*

Response by the Intermediary Mortgage Lenders Association

October 2019

IMLA

IMLA is the representative trade body for mortgage lenders who lend wholly or predominantly through intermediaries. Our 40 members are banks, building societies and specialist lenders, and include 16 of the 20 largest UK mortgage lenders (measured by gross lending) and account for about 90% of mortgage lending (89.4% of balances and 90.6% of gross lending). IMLA provides a unique, democratic forum where intermediary lenders can work together with industry, regulators and government on initiatives to support a stable and inclusive mortgage market. We welcome this opportunity to comment on the proposals set out in the discussion paper on *Making Home Ownership Affordable*.

We welcome the discussion paper and the Government's intention to re-set the balance of rights and responsibilities between landlords and tenants. Approximately one-third of properties in the private rented sector are currently mortgaged. As the consultation paper acknowledges, the introduction of the Housing Act 1988 and specifically the s21 provisions, which ensured landlords were able to regain possession of their properties from tenants, did much to reinvigorate the private rental market. Our members are therefore keen to understand the implications of the proposed changes and to ensure that these are fully thought-through, avoiding any unintended consequences which could operate to the detriment of tenants as well as to the landlords who are our members' customers.

Summary of our views

- We welcome the emphasis that the consultation places on the need for a proper balance to be struck between the rights and responsibilities of landlord and tenants. The 1988 Act did much to open up the private rented sector and bring more rental property into the market. It is essential that any new provisions do not disincentive or otherwise discourage current and potential landlords from remaining in or entering the sector.
- We understand that the Government has yet to respond to the Call for Evidence issued in November 2018 which proposed the introduction of a new Housing Court. It will be very important to taken that response into account when considering the responses to this current consultation, to ensure that all proposals are fully and logically aligned.
- In principle, landlords must have the right to do what they wish with their property. Where they wish to take back a property so that it can used by a family member or to sell it, they must be able to do so. Adequate notice must, of course, be given to existing tenants, but if landlords were unable to exercise this basic right over their own property, this could damage the sector, with more properties simply being left empty because landlords were fearful that they would be hindered in making decisions about their future use.

- We understand that tenants may want to have clearer information about why they are being given notice that their tenancy is being terminated: but in providing this clearer information, landlords will expect their ability to enforce the notice period and gain possession of the property to be both straightforward and efficient. It will not be helpful if abolishing s21 and creating new grounds for termination of tenancies under s8 results in landlords finding it more difficult to gain possession.

Answers to specific questions are set out below: in some cases we have grouped our answers together

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.

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

Landlords who have mortgages may find the terms of their lenders' terms and conditions require tenancies to be of a minimum length – in order to ensure that the landlord is able to guarantee sufficient income to support the mortgage repayments. Lenders' ability to be flexible on this issue may in turn be affected by their funding and business models. We would suggest that it would be inappropriate to mandate a specific minimum length of tenancy contract and leave it instead to individual landlords who may wish to respond to specific reasons and circumstances. It may suit some individual landlords and tenants to rent for short periods – perhaps where a home is needed to bridge the period between selling and buying another property – or where a family is moving but children need to complete a term at school, for example. It would be unfortunate if mandatory minimum terms were to have the effect of preventing tenants and landlords from entering into contracts for mutually convenient periods.

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

Yes – there may be advantages on both sides for having such a clause.

Questions 4 – 9 (re use of the property by a member of the landlord's family)

Provided adequate notice is given to any existing tenants, a landlord should be able to decide how the property is to be used. Some landlords may have bought or inherited property which they intend to be used by family members at some point: others may find that a family member is in urgent need of accommodation – and the landlord will naturally wish to be able to help them, so will need to be able to give notice to any tenants in the property. If draconian restrictions are introduced which prevent landlords from being able to help family members – whether on a planned basis or at relatively short notice – some may decide to exit the rental sector altogether and some properties may simply be left empty until such time as they are needed by a member of the landlord's family, when they could be providing homes for private tenants in the interim.

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?

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?

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?

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?

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?

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?

A new ground – selling the property

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

For many tenants, two months' notice may be sufficient for them to find alternative accommodation. Depending on the individual circumstances, it may be reasonable for a tenant to ask for a longer period – but this should be a matter for individual negotiation. Ultimately, the landlord must have the right to regain possession of the property – and two months' notice does not seem unreasonable or inappropriate.

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

Only if the tenant has been in breach of the lease and is causing a nuisance, in which case it may be reasonable for the landlord to give shorter notice.

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?

There may be a number of reasons why a landlord might find it necessary to sell a property: given that it generally takes longer than two months to do so, it would be desirable if the landlord were able to give the tenant the maximum possible notice of intention to sell. Given that individual circumstances will differ, it may not be possible or appropriate to mandate a specific timescale in legislation.

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

Yes: the landlord must have the right to sell the property. Provided adequate notice (two months) has been given to the tenant, the court should be required to grant a possession order.

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

Yes: there may be circumstances where a landlord is obliged to sell a property within two years or entering into the first agreement with the tenant. This may be exceptional – but may reflect unfortunate personal circumstances over which the landlord has no control (unexpected unemployment/illness/bereavement). It would not be reasonable to prevent a landlord in such circumstances seeking possession of the property in order to sell it.

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

Yes.

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

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

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

Yes: for landlords with mortgages, the fact that a tenant may have accrued two months' arrears may well be impacting on the landlord's ability to service the mortgage payments. Where two months' arrears have accrued, the landlord should be able to accelerate action for possession.

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

Guidance may be helpful: landlords seeking to provide ground 12 evidence may need to rely on evidence from other tenants/residents – which may be difficult if these individuals are threatened by the tenants whom the landlord is seeking to evict.

Questions 19 – 27 – no comment.

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

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

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

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

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

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

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

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

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?

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

Yes.

Accelerated possession

Question 29:

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

All of these grounds should be capable of applying provided adequate prior notice had been given to the tenant.

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

Yes, this should be considered further.

Short term lets

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

There may be circumstances where it is mutually convenient for the landlord and the tenant to agree to a shorter letting period and correspondingly shorter notice periods on either side. This should be left to the market to reach appropriate agreements.

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?

If a property has generally been intended for occupation by a religious worker, it is entirely reasonable that its owners should be able to take it back and re-let it to another religious worker when the need arises. Making this more difficult would probably result in some such properties being left empty for periods during which they could be made available for those in need of private rented accommodation and depriving the owners of potential rental income.

Questions – 33 – 35 re Agricultural tenancies – no comment.

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?

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)?

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

Other grounds for seeking possession

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

No comment.

Questions 37 – 44 – no comment

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

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

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

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

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

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

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

Question 44: Are there any other impacts on your business or organisation the Government should consider when finalising its policy?

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

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

Very difficult to say: there is no reason why landlords would wish to evict well-behaved tenants who pay their rent on time. Where tenants do not pay their rent, or are in breach of their contract for other reasons (such as anti-social behaviour) – it is entirely reasonable that the landlord should be able to evict them. Landlords will also experience changes to their personal circumstances (unemployment/illness/need to care for family/bereavement) which may oblige them to sell property even where the tenant has not been in breach of the contract in any way. That may be unfortunate but the landlord must retain the ultimate right to regain control of the property, provided adequate notice has been given. Any legislation which restricts this right may result in more landlords becoming reluctant to make property available for rent – which, in turn, will put more pressure on the stock of properties which are available for private and public rent and may therefore have an impact on homelessness and the ability of local authorities to find suitable homes.

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

They may lead some landlords to carry out more due diligence on prospective tenants in order to try to avoid letting property to those whom they may regard as more likely to default on payments or behave in an anti-social manner.

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?

No.

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

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

A significant programme of information may be needed to ensure that all key stakeholders are fully aware of the changes made.