

# Renters' Reform White Paper and Consultation Response

## Briefing for housing associations

August 2022

### Summary

The Department for Levelling Up, Housing and Communities (DLUHC) published a white paper on Renters' Reform, [A Fairer Private Rented Sector](#), on 13<sup>th</sup> June 2022. The white paper gives proposals aimed at “redressing the balance” between landlords and private renters in England, including a new tenancy system and new grounds for possession. Most of the paper focuses on private landlords but there are areas that affect housing associations.

DLUHC has also published its [response to the 2019 consultation on abolishing Section 21](#), which gives further details on the reforms, in particular the new grounds for possession.

Following this, the government aims to bring forward legislation in the form of a Renters Reform Bill by May 2023.

Changes for housing associations in the White Paper and consultation response are:

- Assured Shorthold Tenancies will no longer exist.
- Landlords will only be able to end tenancies on specific grounds.
- There will be a mandatory ground for possession in supported housing.
- There will be a mandatory ground for possession relating to leases.
- There will be a mandatory ground for possession in temporary accommodation.
- There will be a mandatory ground to allow social landlords to evict tenants who no longer meet the criteria for key worker accommodation.
- Fixed term tenancies will no longer exist.
- Government will only allow rent increases once a year and will extend the minimum notice period landlords must give of any change to rent to two months.

Private sector landlords will also be bound by quality standards and tenants will be able to seek redress where these standards are not met, echoing the social sector.

The NHF has been engaging with DLUHC since the original consultation in 2019, and many of the provisions in the White Paper show that DLUHC has taken on board the sector's concerns. Thanks to engagement from the NHF, the government has recognised that in some cases in the social sector, possession is required so that landlords can continue delivering a service, such as temporary or supported housing.

The NHF supports the government's aim of protecting the rights of tenants, and will continue to work with the government on the further detail of the reforms. We will also support members as the reforms come into effect.

## Introduction

The Department for Levelling Up, Housing and Communities (DLUHC) published a white paper on Renters' Reform, [A Fairer Private Rented Sector](#), on 13<sup>th</sup> June 2022. It gives proposals aimed at "redressing the balance" between landlords and private renters in England. Most of the paper focuses on private landlords but there are areas that affect social landlords.

DLUHC has also published its [response to the 2019 consultation on abolishing Section 21](#), which gives further details on the new tenancy system detailed below.

The white paper sets out plans to reform the private rented sector and "level up" housing quality. The government is reforming the grounds that landlords can use in court to evict a tenant. It promises "a balance between protecting tenants' security and landlords' right to manage their property". Most of the paper focuses on private landlords but there are areas that affect housing associations.

The government's plan is based on five points, which are:

1. All tenants should have access to a good quality, safe and secure home.
2. All tenants should be able to treat their house as their home and be empowered to challenge poor practice.
3. All landlords should have information on how to comply with their responsibilities and be able to repossess their properties when necessary.
4. Landlords and tenants should be supported by a system that enables effective resolution of issues.
5. Local councils should have strong and effective enforcement tools to crack down on poor practice.

## New tenancy system

The government wants to “deliver a simpler, more secure tenancy structure”. It plans to do this by moving tenants with an assured tenancy or assured shorthold tenancy (AST) to a “single system of periodic tenancies”, which “will provide greater security for tenants while retaining the important flexibility that privately rented accommodation offers”.

Under this system, tenants will be required to give two months’ notice before leaving a tenancy and landlords will only be able to evict a tenant in “reasonable circumstances”, defined in law.

The government would like to know whether this new periodic tenancy system would present any problems for social landlords in making best use of stock.

## Changes to possession grounds

At the heart of the government’s plan is the promise to abolish ‘no-fault’ (‘Section 21’) evictions. In future, landlords will only be able to end tenancies in specific circumstances defined in law. The government still wants landlords to “be able to regain possession when reasonable”, and has “committed to strengthening ‘Section 8’ grounds for possession”. A full list of new grounds for possession is at [Annex A of the consultation response](#).

Grounds for possession will be made “mandatory where it is reasonable”, meaning a judge will have to grant possession as long as the requirements are met.

Thanks to engagement from the NHF, the government has recognised that in some cases in the social sector, possession is required so that landlords can continue delivering a service, such as temporary or supported housing.

More detail is available in the government’s [response to the 2019 consultation](#).

## New grounds for possession

- There will be a mandatory ground for possession in supported housing.
- There will be a mandatory ground for possession relating to leases.
- There will be a mandatory ground for possession in temporary accommodation.

- There will be a mandatory ground to allow social landlords to evict tenants who no longer meet the criteria for key worker accommodation.
- A new ground will be introduced for landlords who wish to sell their property or have them or close family members move into the property, however this cannot be used in the first six months of a tenancy.
- A new mandatory ground for repeated serious arrears will also be introduced to prevent tenants paying off a small amount of arrears to stay below the eviction threshold.

## **Abandonment**

The government considers that the mandatory rent arrears ground provides the most straightforward route to possession in cases of abandonment.

In the 2016 Housing and Planning Act, legislation was passed to allow landlords to regain possession of seemingly-abandoned properties without going to court. A landlord could regain possession if they served three notices and a tenant had two months' arrears. These provisions were never enacted, and stakeholders have raised significant concerns about landlords repossessing properties without a court order, and how breaches of the law would be enforced. Given the possible implications for tenants' security, the government will repeal these provisions.

## **New obligations**

In the future, landlords will be required to provide a written tenancy agreement setting out basic information about the tenancy and both parties' responsibilities, while retaining their right to agree and adapt terms to meet their needs. It is felt that written contracts will help to avoid and resolve disputes, and provide evidence if disputes go to court.

## **The end of fixed-term tenancies**

Fixed-term tenancies will no longer exist and there will be no mandatory fixed term where possession cannot be sought at the beginning of tenancies, except that the government will restrict the use of moving, selling and redevelopment grounds in the first 6 months of a tenancy, replicating the current period in which Section 21 cannot be used.

The consultation response clarifies that Private registered providers of social housing (PRPs) will no longer be able to use shorter, flexible tenancies for probationary,

demoted and fixed-term tenancies. In future, all tenancies offered by PRPs will be periodic tenancies and governed by the new rules.

The government has said that the enhanced grounds for possession will ensure that PRPs have confidence in regaining possession of a property where tenants have broken the terms of their agreement, replacing the use of probationary and demoted tenancies to help deal with challenging behaviour, such as antisocial behaviour and rent arrears.

The government also feels that where ASTs have been used to manage stock, the existing ground that allows landlords to gain possession if suitable alternative accommodation is available can be used. It also says that the existing ground to provide suitable alternative accommodation can be used to facilitate possession of properties ahead of regeneration projects. It would welcome feedback from social landlords about how often they use the alternative accommodation ground and how easy it is to use.

## Notice periods

The government says it will take a proportionate approach to the period of notice that a landlord must give when seeking possession. It says “tenants must be given sufficient time to find appropriate alternative housing when their landlord requires possession of a property. Equally, in some circumstances tenancies must end quickly, such as where a landlord faces undue burdens or there is a serious risk to community safety.”

The government has said it will introduce two-month notice periods for situations outside tenants’ control, such as the landlord selling the property, with less notice required for issues such as arrears, and anti-social behaviour (ASB).

The notice period will be increased to four weeks for the existing arrears eviction ground and tenants will not be evicted if the reason for their arrears is that they are waiting for welfare payments.

Notice periods will be reduced for cases of criminal behaviour or serious ASB.

## Restrictions

Currently, the use of Section 21 is restricted if landlords have not complied with certain safety requirements and other protections for tenants. The government does

not think it would be proportionate to restrict possession for most of these requirements in future – now, landlords can use Section 8 grounds if Section 21 is not available, but will have no alternative route to possession in future. It has also found insufficient evidence that these restrictions are effective in improving standards. In future, only deposit protection will have to be demonstrated when making a claim for possession. The government will consider when legislating which grounds it is appropriate to restrict for failing to protect a deposit.

DLUHC encourage landlords and tenants to have conversations about their future plans, but will not apply prior notice to grounds that are likely to be widely used by landlords, such as selling. Instead, it will only require landlords to give tenants warning in written agreements where specialist grounds are likely to be used. It will not, however, restrict any possession ground if landlords don't provide this. It is still to be decided whether or not this would be on a prescribed form.

Currently, landlords who purchased a property after the tenancy began cannot use the redevelopment ground. DLUHC want to ensure that landlords can maintain property standards and understand that sometimes it will not be possible to complete redevelopment with a tenant in situ. Therefore, it will remove this restriction. The government would welcome feedback on whether and how often social landlords use the redevelopment ground.

## Supporting vital sectors

In its [consultation response](#), the government recognises that outside the private rented sector, other housing providers use ASTs to offer accommodation to tenants. The government will apply its reforms to all sectors who currently use Section 21, so PRPs will no longer have access to Section 21. PRPs will be required to use the same enhanced grounds as private landlords to tackle cases of tenant anti-social behaviour and rent arrears.

Thanks to engagement by the NHF, the government has also recognised that in some sectors, regaining possession is vital to offering support services or ensuring businesses continue to be viable. The white paper therefore says that new specialist grounds for possession will be introduced “to make sure that those providing supported and temporary accommodation can continue to deliver vital services”.

These grounds will be “specific, tightly-defined grounds for possession, making sure that tenants in these sectors have the same opportunity to challenge unlawful possession as others”. Where possible, landlords will be required to warn tenants in

their tenancy agreement that these grounds could be used to end the tenancy. This is also something the NHF recommended, to protect tenants. So far, the government has said that failure to give prior warning will not mean this ground cannot be used.

## **Supported accommodation**

Following engagement from the NHF and other stakeholders in the supported housing sector, the government will introduce new, limited ground(s) for possession for providers of supported accommodation, covering clearly defined circumstances that have been identified in discussion with the sector. These will include where:

- the tenancy was intended to be short-term from the outset and that term has come to an end.
- the funding or support element has ended naturally or dropped away unexpectedly, or been reconfigured so it no longer meets the tenant's safety and wellbeing needs.
- the support is no longer in line with tenant's needs, which may have increased or decreased, meaning the arrangement is no longer safe or necessary for the resident.
- the tenant is not engaging with the support.
- a shared housing arrangement has undergone significant changes (e.g., tenants moving out) and its closure or reconfiguration is necessary for the feasibility of the scheme.

These grounds will be mandatory, with the exception of when the tenant is not engaging with the support, where there is particular scope for differing views between parties. The NHF will continue engaging with the government on this, including on how to define who can use the new grounds. We will press for opportunities for members to engage directly with the government.

Stakeholders from the supported housing sector also raised concerns about the complexity and length of time associated with taking possession through the courts. The government has therefore decided that the notice period for the new ground(s) will be 1 month, and will work with the Judiciary to review the time taken for first possession hearings to be listed by the courts for these cases.

## **Superior leases**

The NHF highlighted that Section 21 is currently used to return vacant properties to head landlords at the end of contractual leasing arrangements. Failure to do so may

breach the terms of the commercial contract and could deter head landlords from leasing properties in future.

The government will therefore introduce a mandatory ground that will allow landlords to regain possession when a contractual lease is ending. To avoid misuse of this ground, the government will allow only PRPs, providers of supported accommodation and agricultural businesses to use it. The NHF will engage with the government on the specifics of this ground.

## **Homelessness and temporary accommodation**

Local authorities have a duty to provide certain homeless households with temporary accommodation. They may use properties owned by PRS landlords or PRPs as temporary accommodation. ASTs currently allow them to issue short-term tenancies.

To make sure this type of provision can continue, the government will introduce a mandatory ground delimited to where local authorities have been using the property to deliver the main housing duty and the tenancy is no longer required.

The new ground will enable local authorities to instruct landlords to end tenancies to better manage the available housing stock. This could include where the household is being offered alternative, settled accommodation or where they need to move them to more appropriate temporary accommodation. The new ground will have a 1-month notice period and the government will work with the Judiciary to review the time taken for possession hearings to be listed by the courts for these cases.

## **Student accommodation**

Students renting in the general private rental market will be included within the reforms. However, Purpose-Built Student Accommodation cannot typically be let to non-students, and these properties will be exempt from the reforms – with tenancies instead governed by the Protection from Eviction Act 1977 – so long as the provider is registered for a government-approved code.

## **Shared Ownership**

The fact that rent is payable on the PRP's share of the property in the case of Shared Ownership means these long leases currently fall within the statutory definition of an AST. DLUHC will therefore consider whether legislative measures are needed to ensure Shared Ownership schemes can continue to operate in the



new system. We will engage with DLUHC on this on behalf of our members who provide properties for shared ownership.

## **Key worker accommodation**

PRPs sometimes use ASTs to provide employment-related tenancies for key workers. To help ensure this sector continues to provide crucial accommodation for key workers, DLUHC will introduce a mandatory ground to allow social landlords to evict tenants when they stop meeting the employment eligibility criteria for that tenancy. To ensure tenants are aware of their rights, landlords will be required to warn the tenant that this is a possibility in the written tenancy agreement.

## **Death of a tenant**

The government is aware that it can sometimes take a long time for PRPs to establish whether succession has occurred following the death of a tenant. To help them manage stock in these difficult circumstances, the government will extend the length of time after the tenant has died in which the relevant ground can be used, from 12 to 24 months. This is to allow PRPs further time to establish whether the new tenants can succeed to the tenancy.

## **Changes to Rent**

Government proposes only to allow rent increases once a year and will increase the minimum notice landlords must provide of any change in rent to two months. They will end the use of rent review clauses in tenancy agreements and will make sure can challenge unjustified rent increases through the First-tier Tribunal. The Tribunal will not be able to increase rent beyond the amount landlords asked for when they proposed a rent increase. The government plans to bolster the existing Rent Repayment Order system and expand Rent Repayment Orders to cover repayment for non-decent homes.

This will apply to social and non-social products.

## **Access for repairs**

The government will mandate that all written agreements stipulate the tenant's responsibility for keeping the property in good condition and allowing reasonable access for repairs. However, it feels that landlords have routes other than possession available to secure access, such as applying to the court for an

injunction, if tenants do not allow access. It also feels landlords will have access to grounds for possession where tenants allow the property to deteriorate, or if they break clauses in tenancy agreements, which provide a tool for possession in the most serious cases. The government is interested in hearing whether it would present particular problems for landlords not to have the possibility of eviction if a tenant does not allow access for repairs.

## Courts system

The government has ruled out introducing a new Housing Court to improve the efficiency of any litigation, as it believes the costs would outweigh the benefits. It will work with the Ministry of Justice (MoJ) and Her Majesty's Courts and Tribunal Service (HMCTS) to target the areas where there are delays in court proceedings, and aims to introduce a package court reforms that will target the areas that particularly frustrate and hold up possession proceedings. These are: county court bailiff capacity; paper-based processes; a lack of adequate advice about court and tribunal processes; and a lack of prioritisation of cases.

The MoJ will also trial a new system in the first-tier tribunal (property chamber) to streamline how specialist property cases are dealt with where there is split jurisdiction between the civil courts and property tribunal.

DLUHC will work with HMCTS to consider the prioritisation of certain cases, including exploring the feasibility of particular cases being listed as urgent. They will consider how to expedite cases involving serious harm, including ASB or where grounds are critical to the functioning of sectors such as temporary accommodation, without using the accelerated possession procedure for all grounds, as it is necessary to protect tenants.

DLUHC will work with the MoJ to review the time taken for first possession hearings to be listed by the courts for the ASB, supported accommodation and temporary accommodation grounds. The NHF flagged court delays as a significant issue for landlords and appreciate the recognition of temporary accommodation specifically in the reasons for improving the way the courts deal with possession.

## Transition to the new system

The NHF has highlighted the importance of a transition period before the reforms take effect, i.e. a period whereby section 21 notices could still be used on leases entered into in good faith on the assumption that they would be able to be ended

with vacant possession by the landlord. This is to protect those that already have a tenure and will not be penalised due to new changes, and so that existing current leases can be ended in the usual way even following enactment of the legislation. It would avoid a cut-off date that may have the unintended consequence of private head landlords looking to evict tenants before the new ground comes into play.

The government has listened to this and has said it will “allow time for a smooth transition to the new system”. This will be implemented in two stages, with timing depending on when Royal Assent is secured.

The government will provide at least six months’ notice of the first implementation date, after which all new tenancies will be periodic and governed by the new rules.

Between the first and second implementation dates, pre-existing tenancies will continue as now, with Section 21 able to be used in pre-existing periodic tenancies and as fixed terms end. If neither party serves notice as a fixed term ends, the tenancy will automatically move to the new tenancy system.

All existing tenancies will transition to the new system on a second implementation date, which will be at least 12 months after the first date. After this point, all tenancies will be protected from Section 21 eviction.

The government is keen to hear from social landlords about the practicalities of changing, or issuing new, tenancy agreements as tenancies transition to the new system.

The government understands the importance of communicating the reforms in advance of their introduction, particularly to landlords, to allow time to understand any new requirements and comply accordingly. This is something the NHF made the case for to DLUHC.

## Guidance

Landlords will need to provide adequate evidence that a ground is met in court. The government understands that landlords who have not used these grounds before may have practical concerns about how they work. The government will produce additional guidance on evidencing the grounds. This guidance will be in addition to existing guidance on [Understanding the possession action process](#), which will be updated to reflect the new system.

Alongside strengthening the grounds, the government will produce guidance for landlords on: identifying ASB; working with other agencies such as local authorities and the police; how this interacts with licensing schemes; and evidencing ASB in court. It will also work with the courts to consider the prioritisation of ASB cases.

The government will also strengthen and embed mediation services for landlords and renters, preventing avoidable evictions. It will publish the findings of the Rental Mediation Pilot and use these to see how mediation can help sustain tenancies.

## Next steps

The NHF will continue to work with government on the detail of these reforms and will seek opportunities for members to engage directly with the government.