

LGA Response to the Consultation on a new deal for renting: resetting the balance of rights and responsibilities between landlords and tenants

October 2019



1. About the Local Government Association (LGA)

- 1.1. The Local Government Association (LGA) is the national voice of local government. We are a politically-led, cross party membership organisation, representing councils from England and Wales.
- 1.2. Our role is to support, promote and improve local government, and raise national awareness of the work of councils. Our ultimate ambition is to support councils to deliver local solutions to national problems.

2. Overall view

- 2.1. The Local Government Association recognises the need for measures to improve housing security for tenants: everyone deserves a safe, secure and affordable place to live - it is critical for health and wellbeing.
- 2.2. The private rented sector has doubled in the last 20 years, and now accounts for 19 per cent of households in England, including an increasing proportion of young people, families and lone parent families¹.
- 2.3. Around one third of all families that councils accepted as homeless last year were made homeless by the ending of an assured shorthold tenancy, and the Government's proposals to improve housing security are therefore timely.
- 2.4. However, in order for Government to successfully implement its proposals, it should consider which lessons can be learned for monitoring and enforcement from previous reforms, e.g. measures aimed at improving security in the private rented sector introduced via the Deregulation Act 2015.
- 2.5. Careful consideration will also need to be given to potential unintended consequences – in particular, a potential restriction of

¹ Ministry of Housing, Communities and Local Government, *English housing survey headline report*, 2018, Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/834603/2017-18_EHS_Headline_Report.pdf

low-income households' ability to access homes in the private rented sector. This could have a severe net impact on levels of homelessness.

2.6. The LGA's view is that the best way to increase housing security is to address the unaffordability of housing, which is a key reason why many people lose their tenancy and become homeless. To do this, the Government needs to reform Right to Buy so that councils can build more genuinely affordable homes, by allowing councils to keep 100 per cent of receipts from homes sold to reinvest in housing delivery. Government should also realign Local Housing Allowance rates with at least the 30th percentile of local rental markets so that rates help people to cover the cost of their rent.

2.7. The LGA has not responded to the consultation questions in detail, but instead set out our broad views below. **These views, as they relate to the scope and detail of proposals, are contingent on the potential wider impact of proposals having been alleviated.**

3. Scope of proposals

3.1. The LGA's view is that the same level of protection available to tenants in the social housing sector should be available to those living in private rented accommodation, and vice versa. We therefore agree with the principle of removing the assured shorthold regime (including the use of section 21 notices) and that this should extend to all users of the Housing Act 1988 – in both the private and social sectors.

4. Protecting tenants from landlords increasing the rent above market value.

4.1. We agree with proposals to legislate to prevent unreasonable or excessive rent increases by preventing fixed-term tenancy agreements from containing clauses that would change a contract after the fixed-term has ended.

4.2. The First-tier Tribunal could act as an enforcement mechanism for rent increases in periodic tenancies, and we recommend that this is strengthened by extending a tenants' right to approach the tribunal to fixed-term tenancies as well as periodic tenancies.

4.3. However, as noted by the consultation document, the tribunal has low take-up by tenants, which evidence suggests might be a result of low awareness of its existence, or poor access to legal representation². The Government should therefore consider how to improve the effectiveness of First-tier Tribunals as a means of providing redress.

² Rugg, Rhodes, "The evolving private rented sector: its contribution and potential", University of York, 2018, Available at: <https://www.york.ac.uk/media/news-and-events/pressreleases/2018/the-evolving-private-rented-sector.pdf>

5. Bringing tenancies to an end

- 5.1. We support the Government's commitment to balancing tenants' security with landlords' need to regain their property through the courts. Without this balance, proposals risk affecting landlords' willingness to continue letting homes.
- 5.2. A pre-requisite for improved evictions through the courts is the effective functioning of the courts themselves. The Government should urgently act on the findings of its research on factors influencing the progress of housing cases through court³.
- 5.3. Our views on the proposed changes to grounds for eviction under Section 8 of the Housing Act 1988 are set out below.
- 5.4. Firstly, there is a significant risk that the removal of section 21 evictions could impact the Private Sector Leasing (PSL) Schemes between local authorities and private landlords (or housing associations and private landlords). These arrangements are currently the most prevalent type of temporary accommodation for homeless households, and, in Q1 of 2019, were used to provide 24,870 units of TA⁴. PSLs require properties to be returned to landlords in vacant possession, and lengthy delays in this process may affect landlords' willingness to provide properties for TA. We recommend that Government considers a mechanism to alleviate this risk, either by introducing an additional mandatory ground for possession, or allowing assured shorthold tenancies to remain an option where properties have been leased to local authorities or housing associations for the purpose of temporary accommodation.
- 5.5. For all proposed grounds, there should be a requirement on the landlord to give tenants prior notice that they may use the ground at some point during the tenancy. We suggest that resources such as template tenancy agreements are made available to landlords to support them to implement this requirement. This will improve transparency for tenants.
- 5.6. The proposal to re-structure the ground relating to rent arrears must be aligned with the Government's proposals for a statutory debt repayment plan scheme as well as a period of breathing space. The proposal is that the scheme will allow individuals assessed as being in problem debt the right to legal protections from creditor action

³ Ministry of Housing, Communities and Local Government, "A qualitative research investigation of the factors influencing the progress, timescales and outcomes and housing cases in county courts", 2018, Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/755025/Factors_influencing_housing_case_progress_and_outcomes_in_county_courts_research_report.pdf

⁴ Temporary accommodation live tables 12 September 2019, Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/831061/TA_201903.xlsx

while they enter an appropriate debt solution; rent arrears may qualify tenants for this protection⁵, and ground 8 should therefore be discretionary (with guidance recommending that applications for eviction are not approved) in cases where the tenant has entered the scheme.

- 5.7. We support amending ground 13 to allow a landlord to gain possession where a tenant prevents them from maintaining legal safety standards. This proposal is particularly important in light of the Government's proposals to reform the building safety regulatory system, which will place significant new responsibilities on landlords on keep their buildings safe – in particular, the proposal to introduce a duty on residents to co-operate with building owners.
- 5.8. However, tenants must have safeguards against abuse of this ground by landlords. In line with our response to Building a Safer Future⁶, we recommend that guidance is set out detailing the grounds on which landlords may request entry, to provide a basis for challenge. Special consideration must also be given to vulnerable residents - many local authority landlords already have significant experience of how to work effectively with vulnerable residents as set out in e.g. hoarding policies, which can be used to understand which safeguards are generally put in place when residents pose a risk to themselves and others.
- 5.9. Grounds for possession are necessary for specialist housing, including housing for key workers, agricultural workers and religious workers. However, Government should consider how it can ensure that these tenants are provided high-quality move-on advice and support, where needed. This is also true of accommodation which is designed as short-term supported housing with a subsequent "move-on" option. In these cases, possession should only be granted contingent on move-on accommodation having been offered as agreed.
- 5.10. Interim temporary accommodation should continue to have the status of excluded occupation, as it is not intended to be long-term.
- 5.11. An additional ground for possession is required where a property is under-occupied significantly. However, use of this ground should be subject to prior notice, and to the landlord securing an offer of suitable alternative accommodation.

⁵ HM Treasury, "Breathing space scheme: response to policy proposal", 2019, Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/810058/17June_CLEAN_response.pdf

⁶ Local Government Association, "LGA response to MHCLG consultation on building a safer future", 2019, Available at: <https://www.local.gov.uk/sites/default/files/documents/LGA%20response%20to%20Building%20a%20Safer%20Future%20final%20-%20Copy.pdf>

6. Wider impact of proposals

6.1. Addressing the drivers of evictions

- 6.1.1. Ending Section 21 is potentially an important back-stop against unfair evictions. However, the Government's 2018 survey of English private landlords suggests that the majority of landlord-led tenancy terminations in the last two years occurred as a result of rent arrears⁷.
- 6.1.2. The private rented sector has become significantly less affordable to low-income tenants in recent years. This is partially due to increasing demand for tenancies relative to supply, particularly as social rented accommodation and owner-occupied homes become less accessible; it is also a result of shortfalls in the support that tenants receive with their housing costs, via local housing allowance (LHA) rates.
- 6.1.3. LHA rates determine the maximum amount of financial support that people receive to assist with paying rent in the private rented sector. They were initially intended to cover the bottom half of market rents (the 50th percentile), but this was reduced to the 30th percentile in 2011. In 2012, the link between LHA rates and actual rents was broken by freezing the rates for one year, and a series of subsequent changes culminated in a four-year freeze from April 2016. This has resulted in 97 per cent of areas in England becoming unaffordable for households reliant on LHA⁸.
- 6.1.4. The unaffordability of housing is a significant factor in the loss of housing security and homelessness, with Government data in England showing that homelessness acceptances by councils due to the ending of an assured shorthold tenancy increased by 66 per cent since 2011/12⁹, when the changes to LHA rates were introduced.
- 6.1.5. Removing section 21 as a mechanism will not remove the main drivers behind rising evictions. The best way to improve housing security is to address the unaffordability of housing. To do this the Government needs to reform Right to Buy so that councils can build more genuinely affordable homes, by allowing councils to keep 100 per cent of receipts from homes sold to reinvest in housing delivery. Government should also realign Local Housing Allowance rates with at least the 30th

⁷ MHCLG, "English private landlord survey 2018", 2018, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/775002/EPLS_main_report.pdf

⁸ Crisis, "Cover the cost: how gaps in Local housing Allowance are impacting homelessness", 2019, Available at: https://www.crisis.org.uk/media/240377/cover_the_cost_2019.pdf

⁹ Ministry for Housing Communities and Local Government (2019) Live homelessness tables.

percentile of local rental markets so that rates help people to cover the cost of their rent.

6.2. Potential impact on the size of the private rented sector

6.2.1. There is a potential risk that additional regulation of the private rented sector will drive landlords to leave the market.

6.2.2. Emerging evidence from parallel reforms in Scotland suggests that the size of the private rental market has seen no significant change following reform¹⁰. However, these reforms are in their early stages, and the Government should consider a more comprehensive evaluation of their impacts. In particular, more evidence is needed on the potential impact on the rental market for low-income renters.

6.3. Potential impact on homelessness prevention and relief

6.3.1. Once families have lost a private tenancy, homelessness arises from being unable to find a new tenancy which is affordable. There is also evidence to suggest that landlords are cautious about letting homes to tenants in receipt of housing benefit, or with a history of homelessness¹¹. There is a risk that caution will increase following the removal of the section 21 mechanism – this would have a severe impact on families' access to tenancies, as well as local housing teams' ability to relieve homelessness through the private rented sector.

6.3.2. Local authorities have demonstrated leadership in alleviating landlords' concerns through the proliferation of local "help to rent" schemes, which work with local landlords to procure properties for low-income households or those with experience of homelessness. These schemes can have a significant impact on councils' ability to use the PRS for preventing or relieving homelessness.

6.3.3. However, in the context of a pressurised housing market, the success of these schemes often depends on the use of financial incentives. P1E statistics in 2017/18 show that there were 13,890 preventions into PRS accommodation "using a landlord incentive", and 2,950 reliefs¹².

¹⁰ Shelter, "The new private rental tenancies: Evaluating changes to rental agreements in Scotland, executive summary", 2019, Available at: https://england.shelter.org.uk/_data/assets/pdf_file/0010/1769077/Scotland_Exec_Summary_Final_1.pdf

¹¹ MHCLG, "English private landlord survey 2018", 2018, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/775002/EPLS_main_report.pdf

¹² P1E live homelessness tables 788 and 789, 2017/18

6.3.4. Local authorities have anecdotally reported concerns that the incentives which will be required to develop relationships with landlords will increase as a result of the proposed reductions in flexibility in the tenancy regime. This would again limit access to a vital source of housing for families who are homeless or at risk of homelessness.

6.3.5. To mitigate this risk, the Government must invest in local housing allowance rates to ensure that they cover the cost of rents, by realigning them to at least the 30th percentile of local rental markets. This will provide a level playing field for low-income families to access the PRS, without recourse to direct financial incentives for landlords.

6.4. Enforcement – self-enforcement by landlords and tenants

6.4.1. The private sector regulation landscape is fragmented and complex, and evidence suggests that tenants and landlords may not be sufficiently aware of their rights and responsibilities¹³. The legal and regulatory framework for the private rented sector would benefit from a complete review, as the LGA has previously suggested.

6.4.2. In the interim, Government should carry out a comprehensive programme of landlord and tenant engagement to ensure that all parties are aware of their rights and responsibilities – this should build on existing provision of the How to Rent guide, which evidence suggests is not widely disseminated or used, despite legal requirements¹⁴. Evidence suggests an appetite for this - for example, in a 2018 survey, Which found that 43% of landlords surveyed wanted more information, training and advice.¹⁵

6.4.3. Tenants' ability to seek housing advice has also been affected by cuts to legal aid, which has limited both direct access to legal advice and the availability of support from third-sector agencies¹⁶.

¹³ Rugg, Rhodes, "The evolving private rented sector: its contribution and potential", University of York, 2018, Available at: <https://www.york.ac.uk/media/news-and-events/pressreleases/2018/the-evolving-private-rented-sector.pdf>

¹⁴ *Ibid*

¹⁵ Which?, "Reform of the Private Rented Sector: The Consumer View", 2018, Available at: <https://www.which.co.uk/policy/housing/2921/reform-of-the-private-rented-sector-the-consumer-view>

¹⁶ Ministry of Housing, Communities and Local Government, "A qualitative research investigation of the factors influencing the progress, timescales and outcomes and housing cases in county courts", 2018, Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/755025/Factors_influencing_housing_case_progress_and_outcomes_in_county_courts_research_report.pdf

6.4.4. Without a widespread awareness of such requirements and access to legal support, there is a risk that the incidence of illegal evictions will rise. Evidence is needed on the extent to which this was the case following previous reforms, including those introduced by the Deregulation Act 2015, which required landlords to comply with certain legal responsibilities before serving a Section 21 notice, such as protecting tenants' deposits.

6.5. Enforcement by local authorities

6.5.1. Government proposals have not yet considered how the ending of section 21 would be enforced. Local authority tenancy relations officers support tenants in cases of illegal eviction. They operate in parallel with Environmental Health Officers; however they do not have parallel powers to investigate illegal evictions, and – like EHOs – have been severely affected by cuts to local government funding.

6.5.2. If responsibility for enforcement is placed on local government, which would be consistent with the existing regulatory framework, this would be a new burden and must be properly resourced with upfront funding and a national programme of communication.

6.5.3. Landlord licensing schemes can have significant benefits for both landlords and tenants, and particularly in respect of enforcement. For example, where landlord licensing is in place, there is an obligation on the 'person in control' to identify themselves to the council in order to secure a license. Having this information allows councils to contact private landlords quickly and easily when necessary. It also makes it much easier to implement effective complaint mechanisms which put tenants at ease.

6.5.4. However, local authorities lack the flexibility to take forward whole area or area-specific licensing schemes. From April 2015, councils have been required to secure Secretary of State approval for licensing schemes that cover more than 20 per cent of the area or 20 per cent of privately rented homes.¹⁷

6.5.5. We are urging the Government to heed the recommendation of the Housing, Communities and Local

¹⁷ Department for communities and local Government, "Selective licensing in the private rented sector", 2015, Available at: <https://www.gov.uk/government/publications/selective-licensing-in-the-private-rented-sector-a-guide-for-local-authorities>

Government Committee¹⁸, and remove this 20 per cent threshold.

¹⁸ House of Commons, Housing, Communities and Local Government Committee, “Private rented sector: fourth report of session 2017-19”, 2018, Available at: <https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/440/440.pdf>