

CIH response to Overcoming the barriers to longer tenancies



Chartered
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Housing

About CIH

Chartered Institute of Housing (CIH) is the independent voice for housing and the home of professional standards. Our goal is simple - to provide housing professionals and their organisations with the advice, support and knowledge they need to be brilliant. CIH is a registered charity and not-for-profit organisation. This means that the money we make is put back into the organisation and funds the activities we carry out to support the housing sector. We have a diverse membership of people who work in both the public and private sectors, in 20 countries on five continents across the world.

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Summary of our key points

1. The private rented sector (PRS) houses a diverse range of people. This includes many groups for whom it is often a short/medium term option, such as students and young professionals. Many of these tenants value the flexibility that the existing system of assured shorthold tenancies offers. However, as is noted in the consultation paper, there is also a growing group of tenants for whom there is a pressing need for greater levels of security. This particularly includes, for example, many families with children and a growing number of older renters who would now be unlikely to secure a mortgage.

We therefore support the government's intention to offer a greater level of security than the sector is currently able to offer. This is a view that is supported by our members. In a recent survey of our member opinion panel, 86 per cent agreed both that the PRS does not give tenants adequate security to 'put down roots' in their community and that it is unsuitable for the growing numbers of families with children in houses.

2. The Scottish Government has recently introduced reforms which go beyond those currently being proposed by eradicating fixed terms and 'no fault' eviction entirely. Instead landlords will only be able to end a tenancy by using one of 18 specific grounds for eviction.

48 per cent of members who took part in our survey said that they would prefer to see a similar system introduced in England, compared to 41 per cent who favoured longer fixed terms. We would therefore like to encourage government to think about whether they may want to consider this approach.

3. That said, we remain broadly supportive of the proposal that is being put forward. We consider it to be both workable in practice and a significant improvement on the current system.

If longer fixed terms are the government's preferred approach, we would encourage it to legislate to introduce the change on a mandatory basis (with specific exemptions). While a voluntary system would offer greater security for some tenants, especially if supported by financial incentives for landlords, our concern is that not all prospective tenants are able to exert the same degree of leverage to ask for a longer tenancy. We are therefore concerned that a voluntary system could benefit those tenants who are seen as being more desirable, for whatever reason, by landlords/letting agents, while those who are not may be left with little choice but to accept a shorter tenancy.

4. We would also encourage government to introduce this legislation alongside a number of wider changes. In particular it is important to acknowledge that:
 - landlords have a legitimate need to recover properties quickly in the event that there are problems, such as rent arrears. It is therefore essential that

separate plans to establish a stand alone housing court lead to a faster and more cost efficient system for considering possession cases

- there is some evidence that section 21 is most commonly used as a result of rent arrears. Therefore if the government's aim is to reduce the number of evictions, it is essential to also address the causes of arrears. We are concerned that a succession of welfare reforms introduced since 2012 have exacerbated problems with the high cost of renting and would encourage government to reverse some of these measures. Otherwise there is a danger that, regardless of what tenancy regime is put in place, tenancies will continue to break down as a result of rents being unaffordable.

Detailed responses to individual consultation questions

Q10: Do you think that the protection for tenants from retaliatory eviction introduced in the Deregulation Act 2015 has been successful? Please explain

As landlords issuing a section 21 notice do not need to give any reason for ending a tenancy, it is very difficult to accurately assess how widespread the problem of retaliatory eviction is. However anecdotal feedback from our members suggests that these protections, although welcome, have only been partially successful.

Under the current arrangements, tenants are only protected from a retaliatory eviction if their local authority has served a formal improvement notice or emergency work notice. In practice this is a fairly high bar which still leaves many tenants who have raised genuine issues unprotected.

Most tenants will not report issues directly to their local authority until they feel that they have exhausted all other options, and many councils also prefer to work informally with landlords in the first instance before resorting to any formal enforcement action. Therefore in practice there are likely to be a large number of tenants who have raised issues, either with their landlord or their local council, but who are not protected by the law from a retaliatory eviction.

Q11a: What do you consider to be the main benefits of a longer tenancy for landlords?

Landlords would benefit if longer tenancies reduce the frequency of void periods. As well as reducing any loss of rental income, this could also generate further savings by reducing costs associated with finding new tenants and with activities like property inspections, cleaning and refurbishment between lettings.

Q11b: What do you consider to be the main benefits of a longer tenancy for tenants?

Private renters are not a homogenous group and as the sector has grown in recent years the profile of tenants has become more diverse. It continues to house many groups for whom it is often a short/medium term option, such as students and young

professionals. These tenants frequently value the flexibility that the existing system of assured shorthold tenancies offers.

However, as is noted in the consultation paper, there is also a growing group of tenants for whom there is a pressing need for greater levels of security. This particularly includes, for example, many families with children and a growing number of older renters who would now be unlikely to secure a mortgage. Realistically many of these households may always need to rent privately and they need and deserve a greater level of security than the sector is currently able to offer.

This is a view that is supported by our members in our recent survey where 86 per cent agreed both that the PRS does not give tenants adequate security to 'put down roots' in their community and that it is unsuitable for the growing numbers of families with children in houses. Comments from individual respondents included:

"I support it (the proposal for three year tenancies) - given the increase in private renting and families in private rented accommodation, these families need more protection and stability"

"They (the proposals) are to be welcomed. It is important to give tenants a greater sense of security especially those with children at school"

Q12: Do you consider that there are any further benefits of longer tenancies that are not covered in question 11? Please explain.

As is noted in the consultation paper, the ending of an assured shorthold tenancy is now the most common cause of homelessness.

At the same time local authorities are increasingly discharging their statutory homelessness duties by placing, often vulnerable, households who are homeless or at risk of homelessness in the PRS. There is therefore a danger that these households, who might historically have been placed into social housing, could instead become caught up in an ongoing cycle of insecurity - with problems with insecure housing pushing them to the brink of homelessness, only for them to then be placed back into relatively insecure housing.

We consider that there could be wider benefits if longer tenancies are introduced as part of a wider package of measures to reduce homelessness, and that this should also include some significant changes to welfare policy. We have provided more information on this in our answer to question 29.

Q13: What do you consider to be the main barriers to landlords offering longer term tenancies?

It is important to recognise that landlords have a legitimate need to recover properties quickly in the event that there are problems, such as rent arrears.

Most landlords are private individuals operating on a small scale rather than on a full time, professional basis. Figures from the government's 2010 survey of landlords show that only three per cent own five or more properties, and that single property landlords account for 40 per cent of all lettings. As such, landlords' business plans are understandably predicated on them collecting 100 per cent of the rent. They are simply not able to absorb a degree of rent arrears, in the way that an institutional landlord operating at scale can do.

While many landlords would benefit from entering into a longer agreement with a reliable tenant, the biggest barrier to their widespread use is landlord concern about the risks associated with them. This is particularly pertinent given the long delay that landlords experience when they do need to pursue a possession case through the courts.

Research carried out by the Residential Landlords Association (RLA) suggests that, in a majority of cases where section 21 is used to end a tenancy, although the landlord is not required to specify a reason it is in fact related to rent arrears. Our view is that good landlords do not want to evict tenants without reason and that the strong support for section 21 among landlords stems from the fact that it provides a quick and reliable way of recovering properties when needed.

While recognising this as a legitimate concern, we consider that there are other ways in which this risk could be mitigated. For example the inclusion of a six month break clause in the government's proposal should provide some reassurance for landlords and it will also be vital that separate plans to establish a stand alone housing court lead to a faster, more cost efficient system for considering possession cases.

This issue was raised by a number of members who took part in our survey, who told us that:

“(If longer tenancies are going to be introduced) the legal process for evicting due to rent arrears or ASB and criminal conviction, needs to be quicker and easier”

“There needs to be reassurance by way of accelerated legal mechanism to evict for rent arrears, so that landlords feel confident that they can offer longer tenancies without the risk increasing”

A further issue for some landlords is the constraints placed on them by some mortgage lenders. We note that there has been some improvement in this area recently and that a growing number of lenders are now permitting landlords to offer longer tenancies. However this is not yet the case for all lenders and many landlords who took their mortgages out some time ago may still be bound by constraints that were written in to their agreements at the time.

Q14: Do you think that a three year tenancy with a six month break clause as described above is workable? Please explain

Yes, we believe that the model proposed in the consultation is workable and would represent a definite improvement on the current system.

It would provide a higher level of security for those tenants who are likely to be renting for the long term, without removing flexibility from those tenants who need it (as they would retain the ability to end tenancies before the end of the fixed term). At the same time, the inclusion of a six month break clause and the government's wider plans to introduce a separate housing court should help to mitigate many landlords' concerns.

However it is worth noting that the Scottish Government has recently introduced reforms which go further still by eradicating fixed terms and 'no fault' eviction entirely. Instead landlords will only be able to end a tenancy by using one of 18 specific grounds for eviction.

Whilst we are broadly supportive of the proposal that is being put forward, we would like to encourage government to consider whether they may want to go further and replicate something like the Scottish system of indefinite tenancies. 48 per cent of those responding to our survey said that they would prefer to see indefinite tenancies introduced, compared to 41 per cent who favoured longer fixed terms.

Q16: How long do you think an initial fixed term tenancy agreement should last (not considering any break clauses or notice periods)? Please explain

If longer fixed terms are going to be introduced, we are comfortable with the proposed three year term. This is broadly in line with the current average residency in the PRS of 3.9 years. It is also CIH members' preferred option, with 45 per cent of those taking part in our survey favouring three year terms (compared to 21 per cent who favoured five years and 16 per cent who wanted to retain the current system).

Q17: What do you think is an appropriate length of time for a break clause?

We recognise that while many tenants need more security, landlords do have concerns that longer tenancies could expose them to a greater level of risk around rent arrears. It is essential that government seeks to strike a reasonable balance between these two needs.

As noted elsewhere in our response, landlords' concerns could be mitigated to some extent by making improvements to the system for considering possession cases (this needs to operate much more quickly and efficiently than is currently the case) and by reconsidering a number of welfare cuts which greatly affect tenants' ability to pay their rent. However we also recognise that the presence of a break clause, to allow

them to quickly act on any major problems, is likely to provide significant reassurance for landlords.

There is however some danger that a minority of unscrupulous landlords may abuse the break clause and, even if it is used very infrequently, it may still affect tenants' feelings of security. Thinking about concerns regarding retaliatory eviction, for example, it is likely that some tenants may choose to delay raising any issues until after they have passed the six month period in their tenancy.

Therefore, while we do not oppose the inclusion of a break clause, we do consider that its use should be closely monitored with a view to reviewing it should that become necessary. If it is to be included, we are comfortable with the proposal that it is set as six months.

Q20: Do you think that the grounds for a landlord recovering their property during the fixed term under any longer term tenancy agreement should mirror those in Schedule 2 of the Housing Act 1988, with the addition of the right for the landlord to recover their property when they wish to move in or sell it?

We agree that the grounds included in Schedule 2 of the Housing Act 1988 should remain available to landlords.

With regards to the proposed grounds for possession where a landlord intends to either sell or move back in to a property, we again recognise that many good landlords will have a legitimate need to rely on these grounds. However as they both relate to events that are going to happen, rather than events that have happened, it may be difficult for landlords to prove them, or for tenants to challenge them, effectively.

While we are not opposed to them being available for landlords who need them, we are therefore concerned that a minority of unscrupulous landlords could seek to abuse them by using them where there is no legitimate ground to end the tenancy. Once the property has been recovered based on the landlord's statement of intent, it would be difficult to prevent it from simply being rented out again to a different tenant.

One option to reduce the likelihood of this would be for government to consider requiring landlords who rely on these grounds to provide financial compensation for tenants to cover their moving costs. As well as helping tenants with the cost of an unexpected move this would also have the benefit of creating a financial disincentive for landlords to rely on these grounds, hopefully helping to deter any spurious use of them.

More generally, we note that similar grounds have been introduced in Scotland as part of their move to indefinite tenancies. While it is currently still too early to properly evaluate how these are operating in practice, we would encourage

government to monitor this closely and to seek to learn any lessons from Scotland as these emerge.

Q21: Do you think that there should be any restrictions on how often and by what level the rent should be increased in a longer tenancy agreement? And if so what is the maximum that these restrictions should be?

Yes, it is essential that some sort of mechanism is included to limit rent increases during a fixed term. Without this, there is a danger that unscrupulous landlords will use unaffordable rent increases to force an early end to a tenancy, where there is no legitimate ground for possession.

We note that government have provided a number of options for this, and consider that there are pros and cons of each approach.

A maximum annual rent increase linked to inflation would provide tenants with the greatest level of protection from unreasonable rent rises. However we are concerned that this runs the risk of normalising annual rent increases, which are not currently standard practice across the PRS. Although intended as a cap on annual increases, there is a danger that an annual increase in line with CPI could simply become the industry standard.

We are particularly concerned about the impact of this when combined with the ongoing freeze in local housing allowance (LHA) rates. Our latest research, due to be published next week, shows that as a result of the freeze renters in receipt of housing benefit are already facing shortfalls ranging from £25 a month (for a single room in a shared home outside London) to more than £260 a month (for a one to four-bedroom home in some areas of London). This affordability gap is only going to widen in the remaining years of the freeze.

We recommend that LHA rates are returned to a level where housing benefit recipients are able to afford a property in the bottom 30 per cent of the local market. Furthermore if an annual cap on rent increases is to be introduced, it is essential that LHA rates are allowed to increase at least in line with the rent cap in subsequent years.

Alternatively, in Scotland rent increases are limited in frequency but there is no limit on the size of individual increases. Instead tenants are able to challenge any unreasonable increase. We consider that this approach lessens the danger of normalising annual rent increases but it does raise a number of practical questions about how such challenges will be heard. Unfortunately it is still too soon to evaluate the success of the Scottish approach but we would again encourage government to monitor this and to consider evidence as it emerges.

Q22: What do you think is the best way to ensure that landlords offer longer term tenancies to those that want them or need them? Please explain.

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We favour a change to the law to require all landlords to offer longer tenancies (with the exception of a number of specific exemptions). This was the preferred option of 51 per cent of members who responded to our survey.

While a voluntary system would offer greater security for some tenants, especially if supported by financial incentives for landlords, our concern is that not all prospective tenants are able to exert the same degree of leverage to ask for a longer tenancy. In particular there are a number of specific groups who can find it difficult to find any landlord who is prepared to let to them. This includes those who are in receipt of housing benefit, those with pets and, as a result of the introduction of right to rent checks, those who do not possess a British passport.

We are therefore concerned that a voluntary system could benefit those tenants who are seen as being more desirable by landlords/letting agents, while those who are not may be left with little choice but to accept a shorter tenancy.

However, as noted elsewhere in our response, it is vital that legislation requiring longer tenancies is introduced alongside a number of wider changes, including the creation of a quicker, more reliable and more cost effective system for dealing with possession cases and the reversal of some welfare cuts.

Q23: Which types of tenancy should be exempted from the proposed system?

We support exemptions for purpose built student accommodation and for holiday lets, as these are clearly intended as short/medium term accommodation and there would be no benefit to tenants from longer tenancies.

We oppose the right to rent system of immigration checks as evidence suggests that this is leading to a rise in discriminatory lettings practices and we would encourage government to end this scheme. However for as long as the scheme remains in place, we would accept that it is unreasonable to ask a landlord to grant a tenancy which would last for longer than the occupant's current visa, as the risk of breaching the right to rent requirement and incurring potentially serious sanctions as a result would simply be too great.

However we do not believe that other exemptions for non-purpose built student accommodation and for those with short term work contracts are necessary. In both cases it would not be unusual for tenants to stay for longer than the initial rental period, either because of a contract extension or for a further year of study. As tenants will retain the option to end a tenancy before the end of the three year fixed term, we see little harm in maintaining a presumption of a longer tenancy.

In particular we are concerned that as the use of short term employment contracts becomes increasingly common and more people struggle to find settled, long term

employment, any exemption linked to this could make it difficult for a significant group of people to access secure accommodation.

Q25: What, if any, financial incentive could encourage longer tenancies? Please explain

As noted in our answer to question 22, our preference is for a mandatory system introduced via legislation.

Q29: Do you have any other comments that have not been captured elsewhere in this consultation?

We are clear that while longer tenancies would be beneficial for many tenants, they may not significantly reduce homelessness, or even the number evictions, if introduced on their own.

As noted in answer to question 13, where section 21 is used to end a tenancy this often relates to problems with rent arrears. Therefore if the government's aim is to reduce the number of evictions, it is essential to also address the causes of rent arrears.

We are concerned that a succession of welfare policies and cuts introduced since 2012 have exacerbated existing problems with the high cost of renting. In particular:

- our latest research on the impact of cuts to local housing allowance (LHA) has shown that, although it was originally intended to enable households to afford a property in the bottom 30 per cent of their local market this is no longer the case in more than 90 per cent of areas
- the government's latest statistics show that 66,000 households are having their housing benefit or universal credit cut as a result of the £20,000 benefit cap. 43 per cent of these are losing more than £50 per week, an amount likely to seriously affect their ability to find and/or maintain a tenancy
- although changes introduced earlier this year (including the removal of the seven day waiting period and the introduction of a temporary two week housing benefit 'run on') have helped, the long wait for a first payment under universal credit continues to be a cause of rent arrears. These are exacerbated by administrative errors which can leave a minority of claimants facing an extended delay. Government statistics show that five per cent of claimants do not receive their full payment within the expected five weeks.

We would recommend that, at the same time as introducing longer tenancies, government also reconsiders these policies. Otherwise there is a danger that, regardless of what tenancy regime is put in place, these will continue to break down as a result of rents being unaffordable.

Although outside the scope of this consultation, we would recommend:



- ending the LHA freeze and returning it to a level where claimants can afford a property in the bottom 30 per cent of the local market
- abolishing the £20,000 benefit cap
- considering further options to reduce the wait for a first UC payment. For example this could be achieved by shortening claimants' initial assessment period, thereby allowing them to transition more gradually to monthly payments, or by moving to a system where UC is regularly paid half in advance and half in arrears.