Consultation Response

A New Deal for Renting – Resetting the balance or rights and responsibilities between landlords and tenants

Date: 11 October 2019

Introduction

1. The CLA is the membership organisation for owners of land, property and businesses in rural England and Wales. Our 30,000 members own over 10 million acres and operate over 250 different types of businesses in rural areas. Our members are the most significant provider of houses for rent in rural areas and our members' businesses also generate housing need and help sustain rural communities.

2. The CLA gives its members legal advice, and our views are based on the experience of the many members we speak to on a daily basis and their written enquiries and views regarding rights and responsibilities in the Private Rented Sector (PRS).

3. We have been closely involved in the work of the Fair Possession Coalition (FPC) to engage constructively with Government to ensure a fair deal for both landlords and tenants.

4. Given the nature of this consultation, we have encouraged our membership to respond directly regarding their personal experience. However, we have also consulted them widely and would like to supplement their individual responses with some general comments below and we are pleased to submit this response on behalf of our members.

Residential landlords in rural areas

5. The CLA undertook a large-scale survey in 2017 on the contribution of rural landowners to the residential property market. It quantifies the contribution CLA members make to residential lettings and the development of new property in rural areas. The full results of the survey can be read in the report "Strong Foundations – Meeting Rural Housing Needs" on the CLA website and here.

6. Notably, the survey substantiated that residential tenancies last significantly longer in rural areas with an average length of occupation in rural areas of 7.6 years compared to 4.1 years in urban areas.

7. Many rural properties will have originally been let to agricultural workers who would have occupied them for their life time, as protected tenants. It is a key feature that many rural jobs also come with accommodation that is either provided or arranged by the employer. In some cases, this attracts specific statutory protection that should not be overlooked when

reforms are proposed. Many rural tenants tend to be older than those in urban areas and are far more likely to be families with children. Additionally, many rural settlements have a distinct sense of community and landlords and tenants are generally more likely to know each other and to live near each other.

General observations

8. We have previously warned Government that landlords are becoming increasingly reluctant to continue letting property as the regulatory burden increases and tax changes make it less financially viable. This coupled with the fear that it will be ever more difficult to repossess their properties quickly and smoothly if needed, has caused many to stop letting altogether. When the tenancy relationship breaks down (even with the availability of section 21 and the accelerated possession procedure) the burden in time, stress and lost finances can be extreme.

9. Feedback from our membership makes it very clear that landlords are extremely concerned about the removal of section 21. We are not at all surprised to see the RLA figure that 96% of landlords considering leaving the market if it is removed. Our members feel the same way.

10. Many of our members still have pre 1989 tenancies that are regulated by the Rent Act 1977 and the Rent (Agriculture) Act 1976. Still more remember the impact of such tenants having lifetime security of tenure and we have heard many reports of members who are already looking to sell their properties (or secure vacant possession now) in anticipation of legal changes that they fear would represent a return to those statutory regimes. An excerpt of a letter we received on this point from a member is annexed to this response.

11. While the CLA welcomes some of the proposed improvements to section 8, we believe that removing section 21 without a vastly improved court system for housing risks many landlords leaving the market. The reason that the section 8 route for repossessions is so little used in practice is that it requires an application to the court and this takes too long and is fraught with risks and costs. The Government's proposal to enhance the section 8 route with new and improved grounds will only work for landlords if the court system is fit for purpose and properly resourced which it currently is not. The proposals in the consultation would not appear to offer much comfort in this respect. There is the additional concern that the increased reliance on discretionary grounds will inevitably lead to cases being decided in favour of tenants given the reluctance by judges to see people lose their homes.

12. There is also a serious issue regarding access to justice that is raised by these proposals. Since 2010, 74 county courts have been closed in England and Wales. The removal of section 21 and ASTs would mean landlords increasingly having to attend court in order to obtain an order for possession. Landlords have already lost confidence in the court system and choose to rely on the accelerated paper-based procedure under section 21 (even where section 8 grounds are available) to avoid the unacceptable delays and rising costs. Fewer county courts facing a vastly increased workload should be a matter of very real concern to the Government. Inevitably this would disproportionately impact landlords in rural areas who would have to travel further to attend court. We note that the Government

plans to introduce a "*new online system to speed up and simplify the court process for landlords*". It should be noted that, in those rural areas that still lack adequate broadband, this will again be of small comfort to landlords.

13. We reiterate the FPC position statement*: "A thriving private rental market that provides choice for tenants hinges on landlords having confidence that they can regain possession of their property in a timely and efficient way. At present, only Section 21 repossessions provide that certainty. It should be kept unless and until a new system is in place that provides landlords with the same level of certainty. The other routes currently available for repossessing properties do not meet this test*."

14. The CLA view is that the scrapping of section 21 (by removing the AST regime altogether) is a disproportionate response to the perceived problem of tenant insecurity. The English Housing Survey 2017-18 reports that only 11.5% of PRS renters were actually asked to move out by their Landlord. We would, therefore, argue for reform (rather than abolition) of the existing AST and section 21 regime which we believe could meet the needs of both landlords and tenants for a fair and flexible housing market. Additionally, according to the same survey, only 12.8% of tenants believed the existing notice period was 'definitely too short to find new accommodation'. To the extent that the current length of the section 21 notice period is an issue, we believe it would be more sensible to consider lengthening it (as is currently being considered in Wales) rather than to remove it altogether.

15. After all, what is abolishing section 21 hoping to achieve? What is needed, we believe, is to deal with the criminal element of the PRS that brings landlords into disrepute rather than punish the whole sector in the vain hope that this will correct the behaviour of the minority who are likely to continue to flout the regulations in any event. There are plenty of legislative tools to address the issues caused by irresponsible and criminal landlords and many of these have not yet been effectively enforced. We suggest the correct tools are chosen from the tool box to fix the problem before taking a wrecking ball to the entire tool box.

16. If history has taught us anything in relation to landlord and tenant legislation, it is that the legislative pendulum can swing too far in any given direction. In the interests of the PRS, we must avoid this happening again. Many of our members would be in favour of granting longer tenancies if required, so long as they could be sure of regaining possession at the end of a fixed term. To encourage this would seem a more creative and positive option than destroying the very system that has so successfully regenerated the PRS.

17. This policy could seriously backfire. Put simply - it is too drastic a step and the unintended consequences will, we believe, have very serious implications indeed for the PRS, especially in rural areas where accommodation options are more limited. Across the board, this policy will inevitably disadvantage the more vulnerable tenants.

18. As mentioned above, it is a special feature of housing in rural areas that landlords often need to provide accommodation for their employees and our responses below will explain the consequences of the current proposals in this respect in more detail. **These proposals will have a seriously detrimental impact not only on the availability of housing to rent in rural areas but also on the efficient working of the rural economy as a whole and, indeed, the sustainability of rural communities. The reality is that if employers**

cannot offer accommodation as part of the "package" for what are often unskilled low paid jobs, then people will no longer be able to afford to live and work in the countryside.

19. The parallel process in Scotland provides a powerful reminder of the potential damage that could be done to the provision of homes in rural areas. If rural businesses fear that they will not be able to repossess properties that are or might be needed for employees, they will be left with no choice but to leave properties empty as is currently the case in Scotland.

20. We have been told by many of our members that if these proposals are enacted, then they will no longer offer their properties to the PRS but will instead, turn them into holiday lets or keep them vacant for prospective workers. This will be of no benefit to the tenants who need homes in rural areas (where the options are already extremely limited) and would, have a detrimental impact on Local Authority waiting lists in the countryside.

21. Landlords forced to leave properties empty could be further penalised by having to pay double Council Tax.

22. The Government's response to '*Overcoming Barriers to Longer Tenancies in the PRS'* illustrated that 81% of tenants would accept a longer term if offered one and we believe "encouraging not mandating" landlords to offer longer tenancies would be the best way for all to benefit here.

23. We believe that:

a. ASTs and section 21 should remain, albeit arguably with a longer notice period.

b. ASTs and section 21 must be retained for use when employees are housed.

c. If section 21 must be removed, then more needs to be done to ensure landlords can confidently regain possession of their property where they need to and we would argue for the following:

- **the grounds available to landlords must be significantly expanded (see below) and strengthened, especially those for anti-social behaviour, property damage or breach of tenancy.**

- **That ground 16 be made a mandatory ground and be available to landlords who have housed Assured Agricultural Occupants.**

- **A new ground be added so that where a landlord has offered an original fixed term of e.g. 2-3 years or more, repossession can be by "notice only" of e.g. between 3-6 months depending on length of actual occupation.**

- **AND/OR that a tenancy of a longer fixed term of 2-3 years or more remain outside the scope of any new fully Assured regime.** (This would incentivise landlords to offer longer term tenancies as they would have the comfort of a "notice

only" ground being available once the fixed term had ended or at any stage if it continued on as a statutory periodic tenancy.)

- **Additionally, as mentioned, new grounds will be needed to cover the following:**
    - **The landlord intends to use the property or the land on which it is situated for non-residential purposes**
    - **The tenant is no longer occupying the property**
    - **The tenant has shared or sublet the property without the landlord's consent** (risk of HMO)
    - **Landlord's HMO licence has been revoked**
    - **Landlord needs possession to comply with a statutory or contractual obligation**
    - **Landlord needs possession to carry out and/or enable development on part of the property and/or on neighbouring property**
    - **Landlord needs possession to house a new employee**
    - **Landlord needs possession to provide "Suitable Alternative Accommodation" to an occupant who has a statutory right to remain in their current property either in person or by succession**
    - **Landlord needs possession to undertake works required to meet Minimum Energy Efficiency Standards**
    - **Landlord needs possession in the interests of rural business efficiency**
- **There must be significant improvement and investment in the existing court process to end the unacceptable delays in possession cases.**

Consultation Questions and Responses

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?

24. No.

If not, which users of the Housing Act 1988 should continue to be able to offer assured shorthold tenancies?

25. The CLA does not believe that the assured shorthold tenancy (AST) regime should be abolished at all. If changes must be made, we would rather see the AST regime amended so that it worked in a way that was arguably fairer to all landlords and tenants.

26. We do not agree with the statement at paragraph 1.6 of the consultation that "*Once we abolish section 21, there is no longer any significant legal distinction between an AST and an assured tenancy*." An important fact that seems to have been overlooked is that section 21 is not the only feature that distinguishes ASTs from Assured Tenancies. The latter also have a right of Succession under section 17 of the Housing Act 1988 which would further

disincentivise landlords from offering them. There is the potential for the tenancy to be interminable not just for the life of a tenant but for the life of a qualifying spouse as well.

27. The AST offers valuable flexibility and choice to tenants and landlords alike. In the Government's recent consultation on longer term tenancies many tenants, particularly more mobile groups such as young professionals, prefer the flexibility of this arrangement. Deloitte surveyed over 10,000 millennials and found that 43% of them planned to leave their existing job within two years and only 28% planned to stay beyond five years. The job market is becoming significantly more dynamic and it is important for the PRS to mirror this rather than work counter to it.

28. In rural areas where ASTs are often used to house workers it is particularly important that landlords are able to continue to house their employees in a way that is genuinely flexible so that housing requirements can respond in line with employment needs and opportunities.

29. As many of our members let properties to their employees, we would argue that ASTs should remain an option in such circumstances. Please also see our answer to Q 36 below.

30. On the one hand we have such groups who require flexibility and on the other we have families who would value the security of longer tenancies. Any new tenancy regime needs to serve the needs of both and the AST regime could, we believe be made to work intelligently in this way.

31. It should surely be the ultimate aim of any new legislation to encourage the grant of longer tenancies where they are required by tenants. We believe that landlords would be much more willing to do this if they could be assured of getting their properties back as now so our suggestion is that:

    Landlords who grant longer fixed term tenancies of e.g. 2-3 years or more should fall outside the proposed new regime (i.e. still be able to grant an AST and use a section 21 type – notice only – ground).

    AND/OR

    There should be a new ground for possession that where the landlord has granted a longer fixed term tenancy of e.g. 2-3 years or more, repossession can be by notice only of between 3-6 months depending on length of actually occupation.

32. This would we believe encourage the granting of longer tenancies. The reality is that unless landlords have confidence that they can repossess, they will become much more selective about who they are prepared to let property to with severe consequences for more vulnerable tenants. (Manchester Metropolitan University have produced independent research that reinforces this view).

33. A number of our members let properties to those tenants that other landlords will not take on (because they are vulnerable and/or do not pass normal tenant referencing) and part of the reason they do this is that they have the reassurance that section 21 is there if they

need it. They would certainly not take this risk if they thought that lengthy and expensive court battles were going to be part of the process if the relationship were to break down.

34. The abolition of ASTs and section 21 would also make it very difficult for landlords to continue to enter into "Company Lets". These are extremely popular arrangements as they provide a way for residential properties to be let to non-individual tenants (such as a company or trust) who then houses their employees or workers under ASTs. Without the confidence of being able to return such properties with vacant possession at the end of the company let, it is difficult to see how such arrangements would continue to function.

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

35. No.

36. We think longer fixed terms should be encouraged where they are actually required or requested (as set out above) rather than made mandatory.

37. In practice a court cannot make an order for possession in any event in the first 6 months of an AST tenancy so there is currently a minimum fixed term for AST by default.

38. The CLA believes that the parties should continue to be free to agree a fixed term of any length as required in the individual circumstances. Many of our members grant longer fixed terms and a statutory minimum term length may actually have the effect of reducing the length of term that is granted in practice and, as such, be counter-productive.

39. In rural areas, even where it is standard practice for some landlords to grant a standard fixed term of 6-12 months, our research shows that ASTs last for an average of 7.6 years. As one member remarked on this point "one of our tenants came for 6 months and is still there 30 years later!" We often speak to members whose ASTs have lasted between 10 and 20 years.

40. What concerns us here is that talk of "fixed terms" is actually rather misleading as, under the new proposals, the tenant may well be able in practice to stay forever in any event. The reality is that once the fixed term has expired, if the tenant refused to leave but kept paying rent (and was not otherwise in breach etc) then the landlord would not be able to get repossession (i.e. if no ground were available). The truth is that these changes are creating open ended tenancies despite them being labelled as "fixed term" or "periodic assured".

41. We are aware that there will be more grounds for possession under s8 but we are concerned that they will not cover every eventuality and in rural areas where tenants often live in close proximity to their landlords, this could cause very serious issues for landlords' enjoyment of their own homes and indeed the harmony of small rural communities if the relationship breaks down.

42. Under these proposals, the grant of "fixed terms" would be academic for landlords as, if the tenant decided to stay beyond the end of the term, then there may not be anything the landlord can do about it. In the interests of fairness to both parties, we are therefore

suggesting that a tenancy should be exempt from these proposals (i.e. still be an AST with the option of a notice only ground) where the landlord has originally granted a longer fixed term and/or there should be a ground for possession under section 8 where the tenant is refusing to go at the end of a fixed term of over a certain length (e.g. 2-3 years).

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

43. The CLA is in favour of freedom of contract as the parties may well have reasons to want a break clause.

44. However, in practice, if a tenant wants to leave (even during a fixed term) they tend to just go (and landlords cannot force them to stay). Equally, there is no advantage to a landlord of a break clause if the reality is that a tenant who does not honour the break clause cannot be forced to leave without a court order in any event.

45. Given this, we do not think that break clauses offer any real comfort to a landlord under these new proposals.

46. As mentioned above, we think landlords would be more interested in being sure that repossession can actually be obtained at the end of a fixed term rather than whether or not they can have a break clause.

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?

47. Yes.

48. We note that “family member” is to be defined at a later date and it will be essential that this is adequately widely defined. In rural areas, properties are often required for use by extended family members where they are returning to play a role in the running of the farm or diversified estate business.

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?

49. No.

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?

50. No.

If not, why not?

51. The CLA welcomes the proposed change to ground 1 that allows the landlord’s relatives to make a home in a let property.

52. This change would allow landlords to offer homes to family members in the event of unexpected changes in circumstance such as needing to take on new roles on the farm or estate.

53. If prior notice were a requirement, it is inevitable that such a notice would be included as standard in all ASTs to cover this eventuality (as was the case prior to 1997 when the implementation of the Housing Act 1996 made ASTs the default tenancy type). Any such standard term, rather than explicitly warn the tenant this may happen, would get lost with all the other terms.

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?

54. Yes.

55. It is hard to predict when such a need might arise (e.g. where a son or daughter needs to return home to live/work on the farm as a result of sudden relationship break down or to look after a sick relative), so unless this flexibility is available it would seriously deter landlords from granting longer fixed terms that they might otherwise be open to.

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?

56. Yes.

57. As set out above, in rural areas where there is a shortage of accommodation in any given locality, this would be too restrictive a condition.

58. It is the nature of rural communities that people often work where they live. If need arises in a family e.g. due to illness or relationship breakdown then it may also be key to the family farm or other business that the landlord has the option to regain possession in a truly flexible manner.

59. If a property were needed for a family member to return to work on the farm or estate (perhaps due to the sudden death of the older generation) then it is key that the landlord can confidently regain possession of their property without the concern of facing an extended, uncertain battle through the courts.

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?

60. Yes, but for the reasons set out above we believe it should not be there in the first place.

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?

61. Yes, or possibly longer if it were to be in line with a reformed section 21 or other "notice only" ground.

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?

62. No.

If no, please explain.

63. As in question 6, it is very hard to predict if or when a landlord might have to sell a property and there should be some accommodation for changes in the circumstances of the landlord.

64. Our members are generally reluctant to sell their properties as often they are part of a small rural community and/or connected rural business. However, as they face increasing financial uncertainties and risks to the viability of rural businesses, the reality is that they may need to sell a property to invest in a different part of the business or just to stay afloat.

65. In rural areas, properties tend to be older and more expensive to maintain. It is increasingly costly to keep up with the legal requirements in this respect and many of our members are reluctantly considering selling as a result. We note the RLA research shows that removing section 21 risks 98.1% of landlords in the private rented sector leaving the market and in rural areas often our members are the only providers of rental accommodation.

66. We would repeat our warning in answer to Q 6 (above) - if prior notice were a requirement, it is inevitable that such a notice would be included as standard in all ASTs to cover this eventuality (as was the case prior to 1997 when the implementation of the Housing Act 1996, made ASTs the default tenancy type). Any such standard term, rather than explicitly warn the tenant this may happen, would get lost with all the other terms.

67. It is not unreasonable, of course, to give tenants notice that the landlord intends to sell the property but we do not think that this should *have* to be given before the tenancy begins.

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')?

68. Yes.

69. We are very concerned here about the potential frustration to a landlord and their prospective purchaser if a tenant refuses to leave the property. If a landlord has to have a hearing (the average time for which is 22 weeks) then e.g. the sale of the property could be lost. This new policy could severely damage the PRS and have a detrimental effect on the housing market as a whole.

70. Not only should this ground be mandatory, but serious consideration will need to be given to ensure that it works with the minimum of delay.

71. The following case study from a member highlights the potential headache in these scenarios:

"I write as a responsible landlord. Well reputed agents we have worked with for more than one generation frequently tell us so. Our service to our tenants is excellent and we look to be environmentally responsible when the opportunity arises (fitting secondary glazing etc). We look to help our tenants where we can. We are proud to do this and want to do the right thing by all concerned.

However, the system often feels one sided and sometimes people take advantage of it. I think this is aided by the political discourse which usually portrays 'the landlord' as the evil one and the 'tenant' as the victim.

Of course, it can well be the other way around. Some tenants use the lengthy legal process to not pay rent or not vacate.

In one case we had a tenant, who we let the property on a 6-month AST as we were selling the property – which we fully declared. However, at the end of the notice period the person refused to move out knowing full well that it could take us 4 months to evict them. This was an abuse of the system. The fact that they were running a brothel (as it turned out) did not help and my lawyers said that it would have been even more expensive to have evicted them on the basis that they were in contravention of the AST by using the apartment for immoral purposes. I learnt from the police that this is a common problem."

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

72. Yes, but for the reasons set out above we believe the 2-year restriction should not be there in the first place.

Questions 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?

73. Yes, or possibly longer if it were to be in line with a reformed section 21 or other "notice only" ground.

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

- 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.

Please explain

74. Yes. A number of the proposed changes are welcome. Many of our members have experienced the frustrations of tenants paying a fractional amount of their arrears so that the current ground 8 is no longer applicable. As such, changing it so that the tenant must pay the majority of their arrears off before the hearing is a welcome one. Similarly, we welcome the change that allows landlords to gain mandatory possession where they can show a persistent pattern of building up and paying down rent arrears but have concerns about how this might work in practice.

75. If section 21 were to be removed, it is essential that this ground be made to work as well as possible as it is the main reason our members have used section 21.

76. It is notable that, even though we advise our landlord members that if they use section 21, they cannot simultaneously recover the rent arrears, they still prefer to use section 21 as they just want to recover possession of the property as quickly as possible. Often, they are owed a lot of money but they know they are unlikely to get any of it back from an impecunious/chaotic/ fraudulent tenant so the last thing they want to do is throw good money after bad by spending it on lawyers and court hearings.

77. We remain concerned that once a tenant receives a section 8 notice, they are likely to stop paying rent and a landlord will have the injustice of having to spend more than previously to obtain a court order and will lose more rent as the process will take longer. It must be remembered that in the vast majority of tenancies, deposits are now reduced to 5 weeks' rent which will rarely cover the losses incurred when a tenant stops paying rent and refuses to leave.

78. Accordingly, we believe that this ground should not only be mandatory but also accelerated.

79. A CLA member recently reported a case where the tenant *"fell behind with the rent in March 2017 – paying less than the full amount each month with promises that it was a short-term problem. In fact, by October they had paid £2,000 out of £6,000 due. She was advised to serve a Section 8 but whilst the notice was running, she discovered the agent, who held the deposit had gone into liquidation with the deposit. This had to be returned to the tenant and the expiry of the S8 [notice] had to wait before she would have to serve it again. This took until late December. There was finally a court judgment in her favour in March and then a further wait as she could not actually get possession without the Involvement of bailiffs. You can imagine the toll of the cost and worry that such an exercise over the 12 months took*".

80. The Government should also be aware that forcing landlords to rely on this ground (rather than a "no fault" option) will result in many more tenants being saddled with County Court Judgments that could not only impact their ability to pass tenant referencing in the future,

but could also prevent them from being eligible for social housing and even impact their prospects more widely.

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

81. Yes.

82. However, we remain concerned that where a landlord has to prove breach of tenancy, he will inevitably have to spend a disproportionate amount of money on legal fees.

83. In many cases, the process is just too complicated for people to navigate themselves and the cost of representation is a real concern. Additionally, landlords are reluctant to bring legal action where they fear it will drag on. CLA members often complain that the court process should be much quicker and there should be the right of entry/to change the lock within a short time frame after the court order. One of our members wrote (expressing the views of many others): *"…. I actually think the most important thing which the consultation picks up is the delay between obtaining a possession order and actually gaining possession if the tenant refuses to leave.*"

84. The delays experienced by so many of our members are just unacceptable and this is a major concern for many if section 21 is to be abolished. The stated aim to reduce average possession proceedings from 22 to 20 weeks is not ambitious enough to resolve the problem.

Question 19: As a landlord, what sorts of tenant behaviour are you concerned with?

85. Nuisances (such as parties or loud music)

Vandalism (such as graffiti)

Environmental damage (such as littering or fly-tipping)

Uncontrolled animals

Drug farms

Pop-up brothels

Threats to neighbours

Obstructing rights of way (public and private)

Disrupting legitimate activities on neighbouring land e.g. conducting rural businesses, shoots and environmental works etc

86. We hear from many members who suffer the misery of having to deal with rogue tenants, as illustrated by this *case study:*

". A CLA member described a case when an existing tenant's partner moved into the property and when the tenancy ended, the tenant moved out but the partner remained. The property was in a very bad state, suffering over £14,0000 of damage, much of it deliberate: cement poured into the head tanks blocking the plumbing, wiring tampered with and rat poison put in the private water supply. When they went to collect the keys from the exiting tenant, the tenant knocked one of them unconscious and the police refused to come "because the partner was known to them as having mental health problems and their hands were tied". When they applied to retain the deposit, the application failed because they had been prevented from carrying out a proper inspection on the day of departure."

87. The difficulty and expense in obtaining possession seems especially unjust when the tenants, as we often hear, are using the property as: drug dens, brothels, cannabis farms and intimidate landlords with violence and threats of violence.

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

88. Yes, although our members often still prefer to use section 21 in these cases as they do not want to prolong what has often become an alarming or confrontational situation (see case study above).

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

89. No.

Please explain

90. We often speak to members who are experiencing anti-social behaviour but they usually prefer to wait for the end of any fixed term and use a section 21 notice (with the reassurance of certain possession) rather than try to fight to establish this ground.

91. In close knit rural communities, it is highly unlikely that neighbours would be persuaded to give evidence against a tenant who is aggressive, violent or unpredictable as is often the case. They would be too afraid of the consequences.

92. With a 22 week wait on average according to the MOJ's own figures, it is hardly surprising that landlords do not want to risk the time and money on a discretionary ground that is so hard to establish in practice.

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

93. Yes, although our members prefer to use section 21 in these cases as they do not want to involve neighbours' testimonies in what is often a tight knit community.

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

94. No.

Please explain.

95. Many of our members want advice on dealing with anti-social tenants and they would use ground 14 if they were confident that it would help them to deal with the issue as these tenants are often a blight on the wider community.

96. The following email is representative of the difficulties suffered by many of our members:-

"*We certainly appreciate long-term occupation and provide tenants with assurances that, even if monthly periodic, they have little to fear, unless things break down financially or socially.*

We take great care when selecting tenants to try and get things right for the community, but people can misrepresent themselves or change.

It's social misconduct which concerns me. The Government are wrong to assume that the behaviour of all tenants is beyond reproach. You only need a noisome or foulsome dog, a problem with drugs, displays of racism, sexism or the like and the whole community will understandably expect the Landlord to address the issues and ultimately see off a problem occupant who will not conduct themselves appropriately. If there is no threat of losing occupation, it can encourage antisocial behaviour which the Police will not address effectively – a civil matter!

I have issued perhaps 5 residential NTQ's over the last 15 years, 3 for reasons of financial failure and 2 for reasons of re-housing staff or farm tenants (I've retracted notices where the rent has been settled and rehoused those we needed to move to accommodate staff etc). With 250 let properties, it's a very small number and no antisocial issues. I have however wished I was in the position to evict someone for antisocial behaviour who was protected under the Rent Act and I could do nothing about. They knew they were protected, however badly they behaved. If they knew they could be evicted, they might not have behaved so badly.

It's wrong for a Landlord to behave inappropriately and threaten eviction as a form of oppression. It's equally wrong for a tenant to be beyond reproach for unacceptable behaviour."

The point this underlines is that without the fallback position of section 21, troublesome tenants will be able to ruin the lives of their neighbours and communities and the landlord will, in reality, be powerless to act as was the case under the Rent Acts.

Question 24: Should this new [domestic abuse] 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?

97. Yes.

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?

98. Yes.

99. This would be a welcome addition to the grounds as we often hear from members who experience problems with tenants refusing them access e.g. to carry out the gas safety checks.

100. We would argue that it should be a mandatory ground as the implications for both the occupiers and the property are potentially so serious.

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

1 Prior notice has been given that the landlord, or a member of his family may wish to take the property as their own home.

2 Prior notice has been given that the mortgage lender may wish to repossess the property.

3 Prior notice has been given the property is occupied as a holiday let for a set period.

4 Prior notice has been given the property belongs to an educational establishment and let for a set period.

5 Prior notice has been given to a resident minister that the property may be required by another minister of religion.

7A the tenant has been convicted of a serious offence in or around the property, against someone living in or around the property, or against the landlord.

8 The tenant has significant rent arrears.

New The landlord wishes to sell the property.

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

101. Yes

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

102. Yes

If yes, what is the minimum length of tenancy that the framework should apply to?

103. Tenancies of up to 3 months have been considered holiday lets in the past and these should continue to fall outside the scope of the assured tenancy regime.

104. It is hard to decide a minimum period where flexibility is vital. Sometimes for rural businesses the landlord needs to provide temporary accommodation for a worker whilst waiting for a permanent property to become available. Where there is agricultural restructuring, for example, then sometimes houses are let for a short transitional period whilst restructuring takes place before the house is re-let as part of the holding, or indeed for a different long-term use. It is important to be able to deal flexibly with such housing without fear of creating permanent rights.

105. In practice, we believe the best way for this to be dealt with is to continue to allow tenancies granted to all employees to be ASTs.

106. In the case of workers employed in agriculture, this would be the only way an employer could be sure he could regain possession of accommodation when employment ended (unless the security of tenure that they would otherwise attract is also to be abolished – please see below.)

107. As the Government's (and indeed the tenant's) objective is to encourage rather than mandate longer tenancies, we also think that tenancies of a longer fixed term of e.g. 2-3 years or more should fall outside any new regime and continue to be ASTs. This would act as a real incentive for landlords to consider granting longer fixed term tenancies as there would be the reassurance of a "notice only" ground available once the term had expired.

Agricultural tenancies

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?

If no, please explain.

108. Yes – so that the farm tenant can deliver up vacant possession in accordance with his Agricultural Holdings Act (AHA) Tenancy or Farm Business Tenancy (FBT).

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)?

If no, please explain.

109. Yes - but we would argue here that it should not be necessary to show "business need" unless this is defined broadly to encompass diversification.

110. The point to be made is that the purpose of the sub-tenancy is ancillary to the farm business as a whole and this may or may not involve the housing of an agricultural worker.

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

111. The removal of section 21 may limit the options of an AHA landlord when seeking a property for the retiring farm tenant to move to in order to encourage the next generation to take over. If there is a limited pool of accommodation owned by the landowner, the removal of section 21 creates another indirect barrier to succession of the farm tenancy. This comes at a time when DEFRA has engaged widely with the industry on measures to facilitate movement between the generations in order to bring down the average age of a tenant farmer https://consult.defra.gov.uk/ahdb-sponsorship-and-agricultural-tenancies/agricultural-tenancy-consultation/ One issue has been that there is little incentive for a farm tenant with the benefit of security of tenure under the AHA 1986 to retire. This is because the level of rent under such tenancies offers inexpensive accommodation combined with security of tenure. It is felt across the board that this holds back the next generation and denies the industry the dynamism and innovation that the next generation might bring. On occasion a landlord can overcome this obstacle by making alternative accommodation available but would be hampered without the ability to use section 21 when needed to secure an alternative property.

112. Section 21 is needed, therefore, not only to remove a former employee in order to house another, but also to regain possession of alternative properties on a farm or estate in which to house new workers for an expanding or diversified business.

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?
If yes, please explain.

113. Yes

Housing employees

114. It is important to note that it is not only in the context of agricultural tenancies (AHAs or FBTs) that employees are housed.

115. Landowners who do not let their land under agricultural tenancies often house their own employees, both agricultural and non-agricultural using ASTs. Of course, sometimes employees are housed using Service Occupancy Agreements where, as a licence, this will not be a problem unless the occupier is a "qualifying" agricultural worker.

116. It is therefore, key that such employers are able to regain possession of the property where the employee is housed once the job comes to an end.

117. Provision for this is currently made in Ground 16 of the Housing Act 1988 which provides that the court may order possession where:

> *"The dwelling-house was let to the tenant in consequence of his employment by the landlord seeking possession or a previous landlord under the tenancy and the tenant has ceased to be in that employment."*

118. If section 21 were no longer to exist, there are two main problems with this ground.

119. The first is that it is a discretionary ground so there is no guarantee that a court would make an order for possession in these circumstances. In the interests of efficient estate management, **we believe it is essential that this should become a mandatory ground.** The CLA made this argument to the Fair Possessions Coalition and was well supported by the other members.

120. Secondly, it is vital that the situation is improved as regards employees who are "employed in agriculture" who often have lifetime security of tenure as Assured Agricultural Occupants.

121. It should be noted, that Ground 16 is specifically excluded in relation to Assured Agricultural Occupancies by section 25(2) of the 1988 Act which provides that: "in its application to an Assured Agricultural Occupancy, Part II of Schedule 2 to this Act shall have effect with the omission of Ground 16".

122. Since the implementation of the Housing Act in 1989, therefore, the housing of agricultural employees has mainly been exercised by granting them ASTs with the prior service of the prescribed "from 9" notice (Tenancy form 9: "L*andlord's notice proposing an Assured Shorthold Tenancy where the tenancy meets the conditions for an Assured Agricultural Occupancy"*). This notice ensures the occupation is under an AST and prevents it from becoming an Assured Agricultural Occupancy with security of tenure.

123. Landowners /employers are then able to have the comfort of being able to use section 21 if for any reason a former employee refused to leave the property that was provided with the job.

Therefore, as things stand, even if Ground 16 were to become mandatory, it would be of no use to employers (whether they are farm tenants or the landowner) where the employee is (or was) employed in agriculture and fulfils the "agricultural worker condition".

124. As stated above, we believe (whatever other reforms are made) that employees should still be able to be housed using ASTs (with a "notice only" ground of 2 months' notice or the length of their employment contract notice period if it is greater).

125. If, however, ASTs were to be abolished altogether, the CLA will argue that the Housing Act 1988 should be further amended to ensure that Ground 16 would be available to all landlord employers.

126. It may be helpful to give an indication of the types of employees for whom landlords often provide accommodation:

Farm managers,
foresters,
gardeners,
house keepers,
game keepers,
agricultural workers (arable and livestock),
land managers and resident agents,
shepherds,
joiners,
bakers,
farm or village shop staff,
food processing staff,
fire salvage teams
large numbers of temporary seasonal workers such as pickers,
and staff employed in an increasing number of diversified rural businesses.
groundsmen,
builders,
security staff,
hotel staff,
village pub staff,
grooms and stable staff,
fishery staff,
rural tourism staff,
events managers,
carers,
brewers,

Requiring additional housing for new and/or retiring/retired employees

127. Our members are very concerned about the reduced flexibility that will be caused by these changes and the detrimental impact it will have on the efficient working of the rural economy and indeed the sustainability of rural communities.

128. Our members often let key rural properties for relatively short periods to PRS tenants because they are confident that, as and when that property is needed to house a key worker, they will be sure to secure vacant possession under the current system. It is vital, therefore, to avoid properties being left empty in the countryside, that our members have confidence that they could regain possession of a property when it is needed for a new employee.

129. Additionally, often our members have a statutory obligation to house retired workers for their lifetime (with succession rights to spouses and other family members) where they have the protection of the Rent (Agriculture) Act 1976 or as Assured Agricultural Occupants under the Housing Act 1988. Landlord employers often, therefore, need to move these workers on their retirement (or when the job ends) to "Suitable Alternative Accommodation" under this legislation to free up the most appropriate property for an incoming employee e.g. a dairy worker who needs to be in the closest proximity to the herd. It is only reasonable that in such cases, exercising this duty should be a ground for ending a different PRS AST or Assured Tenancy.

Planning Issues

130. There may be circumstances where the presence of the tenant renders the landlord in breach of a planning restriction and this should also be a ground under the amplified Schedule 2.

131. **Additionally, new grounds will be needed to cover the following:**

- **The landlord intends to use the property or the land on which it is situated for non-residential purposes**
- **The tenant is no longer occupying the property**
- **The tenant has shared or sublet the property without the landlord's consent (risk of HMO)**
- **Landlord's HMO licence has been revoked**
- **Landlord needs possession to comply with a statutory or contractual obligation**
- **Landlord needs possession to carry out and/or enable development on part of the property and/or on neighbouring property**
- **Landlord needs possession to house a new employee**
- **Landlord needs possession to provide "Suitable Alternative Accommodation" to an occupant who has a statutory right to remain in their current property either in person or by succession**
- **Landlord needs possession to undertake works required to meet Minimum Energy Efficiency Standards**
- **Landlord needs possession in the interests of rural business efficiency**

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

132. Yes. There are currently 1.2 million people on social housing registers (Shelter) and this is causing significant pressure on the PRS.

133. If removal of section 21 encourages Landlord's to dispose of properties or forces them to keep properties empty, the number of PRS properties will decrease, creating a larger disparity between supply and demand, pushing up rents.

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

134. The duty will remain unchanged but the task will be ever more impossible as supply contracts.

As one of our members writes: "*We see an increasing number of Government responses to the frustrations of undersupply in the housing market. They treat symptoms and overlook the cause. More houses and more choice for individuals would supress the opportunity for bad landlord practices. Supply is so short though; I don't suppose eradication of the rental market would presently drive freehold values down to realistic levels. I perceive that, if introduced, the changes will, in the short-term at least, lead to a*

greater number of vacancies as small private Landlords aware of the changes are frightened by the potential difficulties of regaining possession".

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

135. Yes. As stated above the CLA believes the unintended consequences of this policy will have a detrimental impact on the PRS with fewer properties being available which will not only have the effect of putting up rents but will inevitably mean landlords are less willing to let to higher risk tenants and the more vulnerable in society.

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?

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?

136. No.

137. The CLA believes that 12 months would be a more appropriate transition period for a change as fundamental as this. This should be the minimum period as it will take landlords, who are already feeling overwhelmed by the number of recent legislative developments to adjust to this.

138. Ideally, any reforms should only be implemented when it can be shown that the court system is ready to absorb the additional case load and that the sector as a whole has been fully informed of the changes.

Additional Points to Note

Court reform

139. Landlords have lost confidence in the court system. We continue to argue that any amendment to landlords' rights to repossession must be in conjunction with adequate court reform. The reason that the section 8 route for repossessions is so little used in practice is that it requires an application to the court and this takes too long. The Government's proposal to enhance the section 8 route with new and improved grounds will only work for landlords if the court system is fit for purpose and properly resourced which it currently is not. The proposals in the consultation would not appear to offer much comfort in this respect.

140. This consultation illustrates an alarming lack of ambition to be only aiming to reduce average durations for repossessions from 22 to 20 weeks.

141. We agree with the RLA proposal that privatisation of the Bailiff system will go some way to improving this but this would need time to be implemented and a backlog cleared before any benefit would be felt by landlords.

Issues with abandonment and goods left at the property

142. We frequently speak to landlords whose tenants are not paying the rent, not responding to communications and the landlord is left unsure whether there has been abandonment or not. This grey area is extremely hard to navigate for risk of falling foul of the Protection from Eviction Act 1977. Notably the Abandonment provisions of the Housing and Planning Act 2016 that could be of some use to landlords here have still not been enacted.

143. There is also then the issue of the tenant's belongings to deal with.

144. Advising Landlords who have often already put up with breach after breach of the tenancy agreement, whilst receiving no rent, who then have to collect and store the tenant's belongings in accordance with the Torts (Interference with Goods) Act 1977 seems to place them under an unfair and disproportionate burden.

145. These landlords are left wondering whether there is any justice in the system at all. The inability to use section 21 to secure a quicker court order will make the situation even worse.

146. The CLA has previously asked Government to look at ways to simplify and clarify this procedure as we believe this should be addressed in the interests of fairness and balance.

Tenants frequently request section 21 notices

147. We know that many of our members have been asked to serve a section 21 notice by the tenant, because they are desperate to be eligible for social housing.

148. Or the family of a vulnerable tenant who perhaps has issues with hoarding asks the landlord to serve the section 21 notice to help the tenant on the road to more appropriate accommodation that s/he would not qualify for without it.

149. Despite the laudable intentions behind the Homelessness Reduction Act 2017, we still hear that many Local Housing Authorities persist in advising tenants on whom notice has been served, to remain in their rented properties until a court order is obtained and enforced.

150. To quote one of our professional members: "*often employees are dismissed from their employment and remain in occupation of the residential property owned by their employer and the employee wants to move out of the residential property but cannot afford to rent in the private sector. In order to be eligible for local authority housing, the employee/tenant is informed by the local authority that he must remain in occupation until the landlord has obtained an order for possession, otherwise the local authority will treat the tenant as having voluntarily made himself homeless and therefore will not be eligible for local authority housing and certainly will not be placed as a priority. As I say, this is something*

that is true not only with regard to agricultural workers but landlord and tenant relationships generally. Landlords are then forced to go through the cost of serving notices, issuing proceedings and obtaining orders for possession, and usually not receiving a penny piece towards rent and losing the opportunity to house a new tenant. I have had numerous occasions where the tenant has confirmed that he would leave but they simply cannot do so as the local authority have informed them that it will render them homeless and the local authority will not do anything and they will no longer be a priority for local authority housing. This is something that needs to be dealt with adequately moving forward, especially if s.21 notices are to be abolished and there must be a much quicker and more efficient Court process."

Universal credit

151. We believe it would help both landlords and tenants (especially the more vulnerable) if the parties could agree that the rent element be paid direct to the landlord.

The fundamental issue

152. Ultimately, we believe that only a Government that addresses the root cause of the "Housing Crisis" – the under supply of homes where people want to live – will stand a chance of really helping both landlords and tenants.

ANNEX

Letter from a member expressing the views of many who remember the realities of tenant security of tenure prior to ASTs

153. *"Whilst many others may give you the same information I thought it might be useful if I set down my comments for use in the Government's consultation process.*

As far as I am concerned this is "history repeating itself". In 1965 when I first went out to work at £3 per week in a surveyors office in Reading, the first job I had to do was to serve fistfuls of "Notices to Quit" on the large numbers of residential tenants of properties that the firm managed. The 1965 Rent Act not only effectively gave security of tenure to all residential tenants (except furnished) but froze the rents, which couldn't thereafter, be raised except through Government run Tribunals.

The result of all this was a virtual shutdown in the availability of residential properties to let, and many landlords unable to gain vacant possession of their properties and sitting tenants not only for life, but for the next generation also.

The whole process caused a great deal of hardship to both landlords and tenants. Small landlords with, perhaps one or two properties found their assets were virtually worthless and yet were still responsible for all the repairs and thousands of tenants found themselves "out in the streets" from those properties where the landlords did have the foresight to evict them before the legislation came into force. That in turn led to thousands of properties remaining empty whilst at the same time, the firms agricultural clients were being subject to compulsory Acquisition Notices so that the councils could buy some of their land to build new council houses upon!

One wonders whether this Government has taken leave of its senses because it is not as though there isn't a fairly recent (1965) precedent to what happens in these circumstances. I, for one, have served Section 21 Notices on all my shorthold tenants because I fear that if I delay, I may not be able to do it later and will lose vacant possession of my properties.

I have no confidence that the Government will be even-handed in its treatment of landlords when it comes to issuing guidelines to the Courts.

Reverting to the 1965 situation, there were thousands of empty properties pursuant upon landlords issuing Notices to Quit, and may of these got "dumped" on the sales market leading to over-supply and falling prices."

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