



**BRIEFING PAPER**

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# The end of 'no-fault' section 21 evictions (England)

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**Contents:**

1. Background
2. The impact of section 21
3. The Government response
4. Reactions to the proposed abolition of section 21
5. The devolved administrations



# TENANCY AGREEMENT

A hand holding a silver pen, positioned as if about to sign a document. The background is a light grey surface with a white paper-like texture.

# Contents

<b>Summary</b>	<b>3</b>
<b>1. Background</b>	<b>5</b>
1.1 What does section 21 do?	5
1.2 The alternative: establishing a Ground for eviction	6
1.3 Statistics on possession claims	8
<b>2. The impact of section 21</b>	<b>11</b>
2.1 Growth of the private rented sector (PRS)	11
2.2 A cause of homelessness?	12
2.3 Impact on households	14
Insecurity	14
The cost of frequent moves	15
Securing repairs/improvements (retaliatory eviction)	16
Challenging rent increases	18
<b>3. The Government response</b>	<b>19</b>
3.1 Threatened with homelessness from an AST	19
3.2 Encouraging longer tenancies: a model agreement for an AST	19
3.3 Consultation on overcoming barriers to longer tenancies (July 2018)	20
3.4 A call for evidence on a specialist Housing Court (November 2018)	21
3.5 An intention to abolish section 21 evictions (April 2019)	22
Consultation on a new deal for renting (July 2019)	23
The forthcoming Renters' Reform Bill (Queen's Speech 2019)	25
The impact of Covid-19	26
<b>4. Reactions to the proposed abolition of section 21</b>	<b>27</b>
4.1 Support for abolition	27
4.2 Opposition to abolition	31
4.3 Social landlords	34
<b>5. The devolved administrations</b>	<b>37</b>
5.1 Wales	37
5.2 Northern Ireland	37
5.3 Scotland	38

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## Summary

### 2019 consultation on the abolition of section 21

On 15 April 2019, the then-Government announced: "[Private landlords will no longer be able to evict tenants from their homes at short notice and without good reason.](#)" This was followed by a [consultation process](#) in July 2019, with submissions accepted up to 12 October 2019.

The consultation paper proposed the abolition of section 21 of the Housing Act 1988. Section 21 enables private landlords to repossess their properties from assured shorthold tenants without having to establish fault on the part of the tenant. Hence it is sometimes referred to as the 'no-fault' ground for eviction.

In addition to abolishing section 21, the consultation paper proposed measures to strengthen and extend the Grounds for possession which are preceded by the service of a section 8 notice, particularly where the property is needed for the landlord's or a family member's use, and if the landlord wants to sell. Responses to the consultation exercise are being analysed by the Government.

### The Conservative Manifesto and proposed Renter's Reform Bill

The [manifesto](#) included the following commitment:

We will bring in a Better Deal for Renters, including abolishing 'no-fault' evictions and only requiring one 'lifetime' deposit which moves with the tenant. This will create a fairer rental market: if you're a tenant, you will be protected from revenge evictions and rogue landlords, and if you're one of the many good landlords, we will strengthen your rights of possession.

[The 2019 Queen's Speech](#) said a Renters' Reform Bill would be introduced:

A Renters' Reform Bill will enhance renters' security and improve protections for short-term tenants by abolishing "no-fault" evictions and introducing a lifetime deposit.

To date, the Bill has not been introduced. Various bodies, including the Housing, Communities and Local Government Select Committee, have called for the Bill to be fast-tracked to improve protection for tenants affected by the Covid-19 pandemic. There is concern that tenants in financial difficulty who have benefited from temporary restrictions on landlords' ability to seek repossession, will face homelessness when restrictions are relaxed. The Government has been pressed on timing. In [response to the Committee's interim report](#) on protecting rough sleepers and renters in June 2020, it said:

The Government remains committed to bringing forward legislation to deliver its planned reforms to enhance renters' security, including by abolishing so-called 'no-fault' evictions. However, the proposals for tenancy reform would represent the largest change to renting in 30 years and it is only right that these reforms are taken forward in a considered manner.

On 3 March 2021 the Housing Minister, Christopher Pincher, confirmed the Renters' Reform Bill will be brought forward "[once the urgencies of responding to the pandemic have passed.](#)"

### Why abolish section 21?

Private tenants, their representative bodies, and others working in the sector have long argued that the ability of landlords to terminate an assured shorthold tenancy (AST) at short notice has a detrimental effect on tenants' wellbeing. Research has highlighted evidence of tenants being reluctant to exercise their rights to secure repairs and/or

## 4 The end of 'no-fault' section 21 evictions (England)

challenge rent increases due to the ease with which landlords can evict them. Respondents to a 2018 consultation on, ['overcoming the barriers to longer tenancies in the private rented sector'](#), said:

...those renting from private landlords have been left feeling insecure by short fixed-term tenancies, unable to plan for the future or call where they live a home. This insecurity can have wide-ranging effects – from disrupting children's education and the impact on mental health through to the cost of frequent moves undermining people's ability to save for a deposit.

### Reactions to the proposed abolition of section 21

There is a clear divide in opinion between organisations advocating on behalf of tenants and those advocating on behalf of private landlords. Broadly, tenant organisations support the abolition of section 21 while landlord bodies oppose it.

The National Residential Landlords Association argues that a reformed and improved court system which has bedded-in, together with improvements to the Grounds for possession, should be introduced before section 21 is amended or abolished. Landlord organisations argue there is a risk of landlords leaving the sector, which could reduce the amount of housing available for people who cannot afford to buy and who cannot access social rented housing.

### Wales, Scotland and Northern Ireland

Scotland legislated to abolish no-fault evictions in respect of tenancies created on or after 1 December 2017. Research into the impact of these changes published by Shelter, a strong proponent of abolition, [argues that some of the 'scare' stories in England on the potential impact of section 21's abolition are misplaced](#).

The Senedd has also legislated to introduce minimum notice periods of six months for tenants in the private rented sector with a standard contract. These provisions are expected to come into force in 2022.

In Northern Ireland, tenancies created after 1 April 2007 are generally 'non-protected'. If a landlord wishes to end a non-protected tenancy on a no-fault basis, the length of the notice depends on how long the tenant has lived in the property.

# 1. Background

The key aim of Part 1 of the *Housing Act 1988* was to deregulate private sector tenancies. Assured and assured shorthold tenancies (ASTs) created by the 1988 Act are not subject to rent control akin to that which applies under the *Rent Act 1977* and section 21, as outlined below, has made it relatively straightforward for landlords of ASTs to regain possession of their properties.

This compares with tenancies governed by the *Rent Act 1977*, under which tenants have substantial security of tenure. A landlord seeking to evict a regulated tenant<sup>1</sup> must satisfy the court that one of the specified Grounds for possession<sup>2</sup> is made out, i.e. a reason for seeking eviction must be established.

## 1.1 What does section 21 do?

Part 1 of the *Housing Act 1988* came into force on 15 January 1989. Since this date, with some limited exceptions, new private sector tenancies created in England and Wales are either assured or assured shorthold tenancies (ASTs).

Subsequently, the *Housing Act 1996* amended the 1988 Act to make ASTs the default tenancy in the private rented sector with effect from 28 February 1997. ASTs are the most common form of private sector tenancy in England and Wales.

Section 21 enables private landlords to repossess their properties without having to establish fault on the part of the tenant. It is sometimes referred to as the 'no-fault' ground for eviction. Landlords must serve notice on the tenant giving a minimum two months' notice of intention to seek possession.<sup>3</sup> If the tenant does not move out on expiry of the notice the landlord must seek a court order for possession. The court will grant an order if the correct procedures have been followed and there is no defence (see below). Landlords have the option of applying for an [accelerated possession order](#). Where used, this negates the need for a court hearing. If a tenant does not move out on the date specified in the court order, the landlord may apply for a warrant for possession to arrange for bailiffs to evict the tenants.<sup>4</sup>

There are restrictions on when section 21 can be used to evict tenants with an AST. These restrictions have been extended over time; some only apply to ASTs created after 1 October 2015 following changes made by the *Deregulation Act 2015*. Tenants can defend an action for possession against a section 21 notice in the following circumstances:

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<sup>1</sup> Tenancies created under the 1977 Act are regulated tenancies and are also referred to as protected tenancies.

<sup>2</sup> The Grounds are set out in Schedule 15 to the *Rent Act 1977*.

<sup>3</sup> During the pandemic the Government extended the section 21 notice period to six months for notices served on or after 29 August 2020 up to 31 May 2021. At the time of writing it is not clear what notice period will apply after 31 May 2021.

<sup>4</sup> During the pandemic the Government introduced restrictions on the enforcement of bailiff warrants.

## 6 The end of 'no-fault' section 21 evictions (England)

- A section 21 notice cannot expire before the expiry of the fixed-term of an AST.
- The landlord cannot use section 21 to end a tenancy within the first six months of an AST.
- A section 21 notice will be invalid if the landlord has not protected the tenant's deposit in an approved scheme.
- The landlord failed to start court action within 6 months of the expiry of the section 21 notice.<sup>5</sup>
- The section 21 notice was served during the first 4 months of the original contract.
- The property is an HMO or subject to a local authority licensing scheme and the landlord has not obtained a licence.
- A section 21 notice may be invalid if served **after** a tenant makes a written complaint to the landlord about conditions in their home followed by a complaint to the council and the council serves an improvement or emergency works notice on the landlord.
- A section 21 notice will be invalid if the AST began on or after 1 October 2015 and has not been renewed since and:
  - the landlord has not issued the tenant with a [How to Rent](#) booklet;
  - the landlord has not issued the tenant with an Energy Performance Certificate;
  - the landlord has not given the tenant a gas safety certificate dated in last 12 months; and
  - the landlord has not used [Form 6A](#).
- There are outstanding prohibited payments, or a refundable holding deposit owed to the tenant under the *Tenant Fees Act 2019*.<sup>6</sup>

Some, but not all, of these restrictions also apply in Wales; for example, the requirement on the landlord to have protected the tenant's deposit. In addition, a section 21 notice served in Wales after 23 November 2016 is invalid if the landlord or agent is not registered or properly licensed with [Rent Smart Wales](#). The Senedd has legislated to abolish their equivalent of section 21 evictions (see section 5.1).

### 1.2 The alternative: establishing a Ground for eviction

A landlord can seek to evict an AST tenant at any point of the tenancy, including within a fixed-term, by serving a section 8 notice of intention to seek possession. The notice must set out the Ground under which possession is being sought. The possible Grounds for possession are listed in Schedule 2 to the 1988 Act. The mandatory Grounds are Grounds on which the court must order possession if the Ground is proven. For the discretionary grounds the court must be satisfied that it is reasonable to grant a possession order where the Ground is proven.

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<sup>5</sup> Note that this period has been extended during the Covid-19 pandemic.

<sup>6</sup> The 2019 Act's provisions have applied to all ASTs irrespective of when they were entered into from 1 June 2020.

The length of the notice period depends on the Ground under which an order is being sought. Tenants may seek to defend an application for possession.

The Residential Landlords Association<sup>7</sup> (RLA) identified several reasons why landlords prefer to use section 21 over section 8 when seeking to terminate ASTs and evict tenants:

1. Rent arrears – A Section 8 notice can be sought when a tenant reaches 2 months of rent arrears. If the tenant has paid the arrears off by the time the case goes to court the application by the landlord becomes invalid and can often be followed by the tenant again building arrears and again paying them off at the last minute.
2. Anti-Social Behaviour – To obtain a Section 8 notice in the face of a tenant committing antisocial behaviour the bar for securing the necessary evidence to prove this is relatively high. In itself it can be a long and difficult process, resulting in neighbours suffering as a result of a problem tenant.
3. Section 8 notices usually involve the case going to court. The MOJ has revealed that the average time taken for a landlord to repossess a property through the courts was 22 weeks in 2017. In London the figure was 25 weeks. Being left in legal limbo for such a long period of time is not helpful for either the tenant or the landlord.
4. Court hearings - Unlike the Section 21 process which can be carried out largely on paper, a Section 8 notice possession case always requires a hearing. Landlords find this intimidating and incur greater costs due to court representation.<sup>8</sup>

Note that a section 8 notice is not “obtained” nor “sought” as this extract suggests - the notice tells the tenant that the landlord will seek an order for possession on one of the specified Grounds for eviction if the tenant does not vacate on expiry of the notice.

In [The Evolving Private Rented Sector: Its Contribution and Potential \(2018\)](#) Julie Rugg and David Rhodes referred to difficulties in using section 8 to evict AST tenants:

In part, the increasing use of ‘no-fault’ eviction reflects problems in securing evictions using S.8 for rent arrears, which requires the production of evidence to legal, court standard. Further, evicting a tenant under S.8 for rent arrears requires the tenant to be two months in arrears, and there is anecdotal evidence of some tenants making sufficient rental payment, prior to any court case, to take them slightly above that limit. Landlords argue that tenants are routinely advised by local authorities to remain in a property and actively frustrate the repossession process: both as a means of extending the period during which local authorities will have no obligation to re-house, and to obviate any risk that the tenant can be regarded as intentionally homeless.

Notwithstanding a great deal of confusion regarding practice in

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<sup>7</sup> Now merged with the National Landlords Association to form the National Residential Landlords Association (NRLA).

<sup>8</sup> RLA Press Release, 5 December 2018 [link no longer works]

## 8 The end of 'no-fault' section 21 evictions (England)

deploying S.21 notices, it is clear that 'banning' S.21 does not remove any of the reasons that provoke a landlord to use it.<sup>9</sup>

Rugg and Rhodes concluded:

...landlord groups still remain strongly wedded to the S.21 notice, and the strength of this feeling is an indicator of dissatisfaction with ending tenancies using the S.8 route, with its attendant delays and court costs.<sup>10</sup>

### 1.3 Statistics on possession claims

The Government publishes statistics on evictions pursued through the courts in England and Wales. The courts aren't involved in all evictions – some tenants may move out once a notice is served. Likewise, not all court proceedings end in the tenant's eviction. Action taken through the courts has several stages:

- Landlords must first enter a **claim** for possession.
- The court may then grant a possession **order**. Some possession orders are suspended (meaning the tenant can stay in the property if they meet certain conditions, such as making rent payments). Other possession orders specify a date on which the tenant must leave.
- If the tenant doesn't leave the property by the date specified, the court can issue a **warrant** for possession.
- The warrant enables a **repossession** to be carried out by court bailiffs.

Statistics are published on standard procedure claims by private landlords using section 21 and section 8 notices (as a combined total) and use of the accelerated procedure by all landlords (including social landlords). The accelerated procedure can only be used when preceded by a section 21 notice. The charts overleaf show trends in both since 2000.

Government measures in response to the Covid-19 pandemic had a substantial impact on repossession activity. In 2019, there were around 23,220 possession claims by private landlords using the standard procedure (section 8 or section 21). This was the highest number of claims in the series. In 2020, this fell by almost half to around 12,150 claims – with the bulk of these claims taking place in the first and last quarters of 2020. Trends in repossessions in 2020 are discussed in more detail below.

Use of the accelerated procedure for section 21 evictions<sup>11</sup> increased sharply after 2011, peaking at around 37,690 claims and 16,440 repossessions in 2015. Activity was declining before the pandemic, with 18,320 claims and 8,100 possessions in 2019. This fell to 8,740 claims

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<sup>9</sup> Rugg J; Rhodes D: Centre for Housing Policy University of York, [The Evolving Private Rented Sector: Its Contribution and Potential](#), 2018, p112

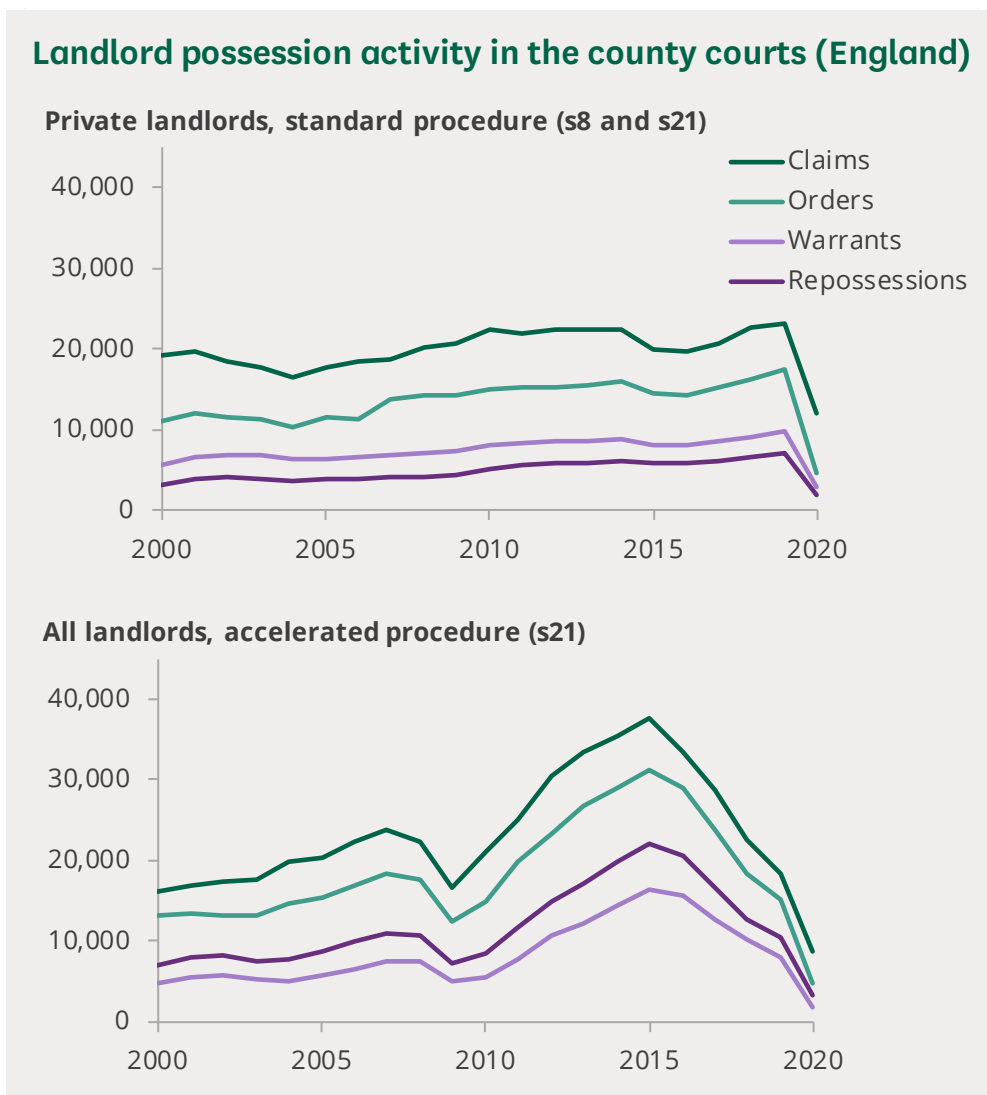
<sup>10</sup> Ibid.

<sup>11</sup> Statistics on the accelerated procedure include both private landlords and social housing providers. Housing associations/registered providers of social housing may use an AST in limited circumstances. Most housing association tenants have an assured tenancy.



and 1,830 repossessions in 2020, again with the bulk taking place in the first quarter of 2020 before the Covid-19 outbreak.

The court statistics also include information about the time it takes for a possession claim to progress through the courts. For private landlords using the standard procedure in 2019, there was an average<sup>12</sup> of 7.3 weeks between a claim being made and an order being issued, and an average of 17.0 weeks between a claim being made and a repossession being carried out. For landlords using the accelerated procedure in 2019, there was an average gap of 5.4 weeks between a claim being made and an order being issued, and an average of 18.7 weeks between a claim being made and a repossession being carried out.



Source: Ministry of Justice, [Mortgage and landlord possession statistics: October to December 2020](#), Table 8

<sup>12</sup> These figures use the median, a type of average designed to be less affected by extremely high values than the mean. The median is the point at which half of all cases take longer and half are slower.

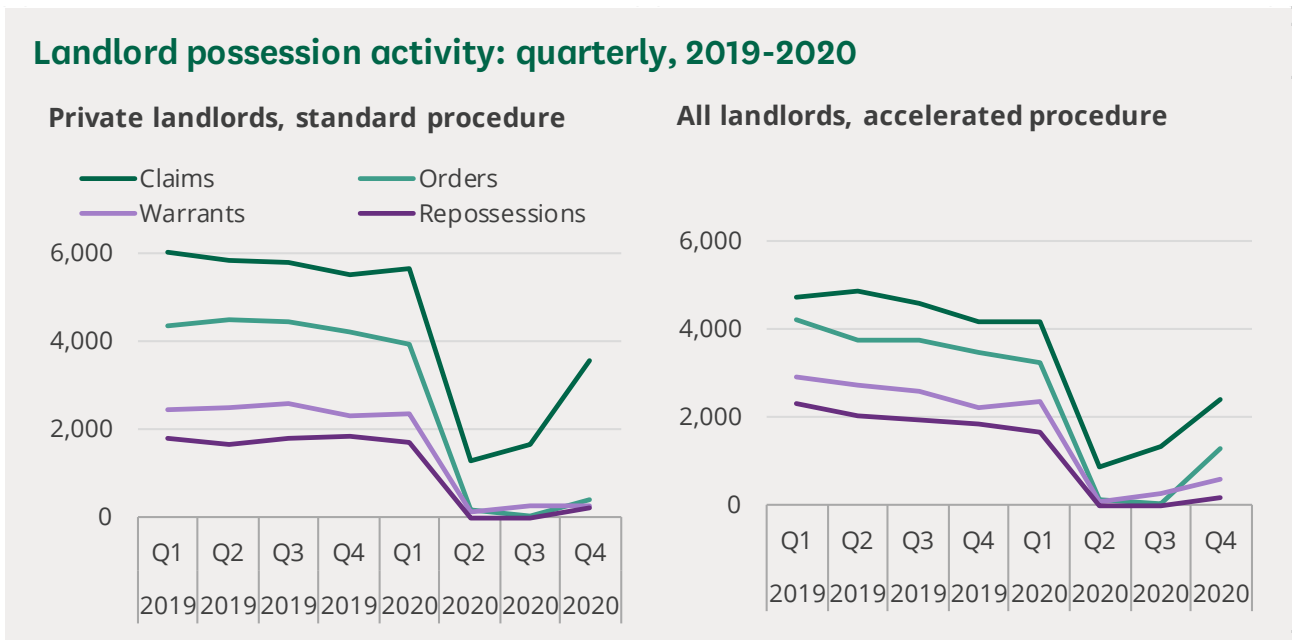
## 10 The end of 'no-fault' section 21 evictions (England)

The chart below shows how trends in possession activity changed in 2020 in more detail. A number of measures were introduced to prevent people losing their homes during the Covid-19 pandemic, described in the Library briefing [Coronavirus: support for landlords and tenants](#). As part of these measures, all ongoing housing possession activity in England and Wales was suspended between 27 March and 20 September 2020.

No repossessions were carried out by the courts between April and September 2020. Other activity also dropped substantially initially. In the second quarter of 2020, private landlords' claims under the standard procedure were at a level around one-fifth of what they were a year previously, as were claims for all landlords under the accelerated procedure.

Claims and other activity started to rise again later in 2020. In the final quarter of 2020, claims by private landlords under the standard procedure were around 64% of what they were a year previously, while claims under the accelerated procedure were around 57% of what they were a year previously.

A small number of repossessions were also carried out by the courts in the last quarter of 2020. 189 repossessions were carried out for private landlords under the standard procedure and 157 were carried out under the accelerated procedure. Both figures represent around a tenth of the level of repossessions carried out at the end of 2019.



Source: Ministry of Justice, [Mortgage and landlord possession statistics: October to December 2020](#), Table 8

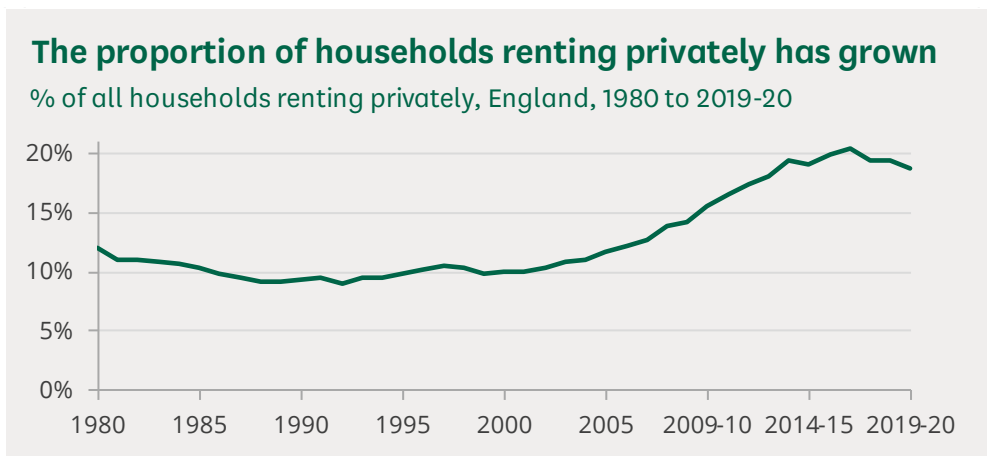
## 2. The impact of section 21

### 2.1 Growth of the private rented sector (PRS)

Deregulation of the PRS has coincided with substantial growth of the sector. The ability of landlords to regain possession of their properties on a no-fault basis, coupled with an absence of rent control, has undoubtedly increased potential landlords' willingness to invest in the PRS. However, other factors attributed with the sector's growth include:

- The availability of buy-to-let mortgages from 1996 onwards.
- Restricted growth and access to the social rented sector over the period.
- Difficulties in accessing affordable home ownership, e.g. since the 2008 financial crash lenders have applied much more stringent requirements for mortgage eligibility.

In England in 1988, around 9% of households were private renters. The proportion began to rise substantially in the mid-2000s and has been between 19% and 20% since 2013-14.



Source: MHCLG, [English Housing Survey Headline Report, 2019-20](#), Annex Table 1.1

The number of households renting privately has also risen. Around 4.4 million households were renting privately in 2017-18, more than twice as many as the 1.7 million renting privately in 1988.

The demographics of private renters are also changing. In 2019-20, around 36% of private renting households were families with children (around 1.6 million households) – up from 29% in 2003-04 (0.5 million households).<sup>13</sup>

While still a sector dominated by younger residents, the proportion of older people living in the PRS has increased over the past decade. In 2003-04, 4% of households with a Household Reference Person aged 55 or over were privately renting.<sup>14</sup> In 2019-20, this had increased to

<sup>13</sup> MHCLG, [English Housing Survey Headline Report, 2019-20](#), Annex Table 1.8

<sup>14</sup> The Household Reference Person is the person who owns the home or is responsible for the tenancy, or the higher earner in joint tenancies.

## 12 The end of 'no-fault' section 21 evictions (England)

7%. The number of 55+ year old households privately renting more than doubled in this period, rising from 366,000 to 775,000.<sup>15</sup>

The English Housing Survey (EHS) has also found that the private rented sector experiences more churn than any other sector. In 2019-20, 703,000 households moved within the private rented sector, while 122,000 households moved within the sector and 266,000 households moved out of the sector.<sup>16</sup>

In 2017-18, the EHS asked private renters who have moved in the last three years about their reasons for moving. **Overall, 12% said that they had been asked to move by their landlord**, and in the majority of these cases (69%) this was because the landlord wanted to sell or re-let the property. However, nearly three quarters (72%) of private renters moved because they wanted to. Reasons given included job-related reasons (18%), wanting a larger home (13%) or wanting to move to a better neighbourhood (16%).<sup>17</sup>

### 2.2 A cause of homelessness?

Local authorities in England have a duty to secure housing for unintentionally homeless households in a priority need category. When carrying out this duty, the local authority records the reason the household became homeless.

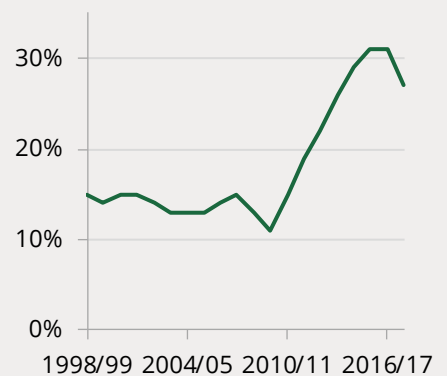
**The 2010s saw a substantial increase in recorded homelessness due to the end of an AST.** In 2010/11, the end of an AST was given as a reason in 15% of cases where the local authority had a duty to secure housing for a household, rising to a peak of 31% in 2016/17. In 2017/18, the figure was 27%.<sup>18</sup>

The system for reporting homelessness statistics changed when the *Homelessness Reduction Act 2017* came into force in April 2018, requiring local authorities to prevent or relieve homelessness for all eligible households. Around 20% of all households that were owed a prevention or relief duty in 2019/20 were homeless or at risk of homelessness due to the end of an AST (for any reason, not just following a section 21 eviction notice). In just under half of these cases (47%), local authorities reported that the AST ended because the landlord wished to sell or re-let the property.<sup>19</sup>

In 2017, the Joseph Rowntree Foundation (JRF) published a report on [Poverty, evictions and forced moves](#). Based on quantitative data and interviews with 145 participants, the organisation found that section 21 no-fault evictions were most frequently used to end a private sector

#### Homelessness due to the end of an AST has risen

% of households accepted as homeless that became homeless because an AST ended, England



Source: MHCLG, [Live Table 774](#)

<sup>15</sup> MHCLG, [English Housing Survey Headline Report, 2019-20](#), Annex Table 1.4

<sup>16</sup> MHCLG, [English Housing Survey Headline Report, 2019-20](#), p.20

<sup>17</sup> Ibid., paras 3.12 & 3.14

<sup>18</sup> [MHCLG, Statutory homelessness live table 774, December 2018](#)

<sup>19</sup> MHCLG, [Statutory homelessness in England: Financial year 2019-20](#), Tables A1 and A2

tenancy (occurring in over half of JRF's sample) whereas rent arrears was the most common reason in social housing.

The JRF also found:

Four out of every five (81%) of all repossessions using Section 21 are in London, the East and the South East, and nearly two-thirds (62%) are in London alone, although London only has one-fifth (21%) of the private rented housing stock. Even within London, repossessions using Section 21 are highly concentrated, with a third occurring in only five boroughs.<sup>20</sup>

When asked about the reasons for no-fault evictions, tenants responding to JRF gave a range of answers. The most common reasons given concerned landlords wanting to increase the rent, wanting to sell or live in the property, 'revenge evictions'<sup>21</sup>, and rent arrears.<sup>22</sup>

Research conducted on behalf of the Residential Landlords Association (RLA, 2018) argued that section 21 was not a *cause* of homelessness. In [Homelessness and the Private Rented Sector](#) (November 2018), Dr Chris O'Leary et al suggested that landlords use section 21 where there *are* grounds for evicting tenants, such as rent arrears and anti-social behaviour. Section 21 provides a straightforward mechanism through which a landlord can be sure of recovering possession and which avoids the lengthy processes associated with section 8. The report also pointed to evidence suggesting that tenants are responsible for ending ASTs in most cases:

Some in the sector assume that landlords use these provisions to end tenancies on a regular basis, though the costs involved, and evidence of risk-avoiding behaviour by landlords, data that suggest that ninety per cent of tenancies are ended by tenants, and increasing duration of tenancies, raises questions about this assumption. There is a significant gap in our knowledge around why landlords use Section 21 notices, a gap which our research has sought to address. But more research is needed on why Section 21 notices are used, and about the potential effect of making changes to this aspect of tenure security.<sup>23</sup>

The [English Housing Survey Headline Report 2019-20](#) records that the average length of residence in the PRS was 4.3 years.<sup>24</sup> As noted on page 12, the EHS 2017-18 findings confirmed that most private renters move of their own volition.

The RLA (now the National Residential Landlords Association, NRLA) has published several pieces of research to demonstrate that the rise in homeless applications from people living in the PRS is linked more closely to rent arrears caused by welfare reform, such as restrictions in

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<sup>20</sup> Clarke A; Hamilton C; Muir K; Jones M: JRF, [Poverty, evictions and forced moves](#), 2017, p1

<sup>21</sup> Where a landlord seeks to evict a tenant in response to requests for repairs.

<sup>22</sup> Clarke A; Hamilton C; Muir K; Jones M: JRF, [Poverty, evictions and forced moves](#), 2017, p.27

<sup>23</sup> RLA and Dr Chris O'Leary et al. [Homelessness and the Private Rented Sector](#), Residential Landlords Association, November 2018, p40

<sup>24</sup> [English Housing Survey Headline Report 2019-20](#), para 1.71

the Local Housing Allowance and the rollout of Universal Credit.<sup>25</sup> For example, [Homelessness and the Private Rented Sector](#) (November 2018) identified the following causes of homelessness from the PRS:

There is now a body of evidence, from this research and from a number of other sources, that the operation of the Local Housing Allowance in its current form is driving increasing homelessness from the private rented sector. This research has found that this increase in homelessness is associated with the introduction of the Local Housing Allowance (the method used to determine how much Housing Benefit will be paid to eligible households) in 2008. However, changes made to the rates payable under the Local Housing Allowance since 2011 have significantly impacted on levels of homelessness.

The Local Housing Allowance acts as a strong system of rent control, and acts to the detriment of tenants (Rugg and Rhodes, 2018). Current Local Housing Allowance rates have a double whammy effect – both increasing the likelihood that tenancies will be ended, and reducing the chances of affected households finding suitable, affordable, alternative accommodation. It is this 'double whammy' effect that is driving homelessness from the private rented sector. Evidence suggests that ninety per cent of working age households with children face a gap between their LHA rates and the rent they are paying; this is a group increasingly dependent on the private rented sector for accommodation. It is also the case that working, low income households are being affected.

The gap between Local Housing Allowance rates and market rents is significant, and is growing, suggesting that the problem will only get worse. Evidence from this and wider research suggests that landlords who currently rent to Housing Benefit tenants are concerned about the effects on planned tax and benefit changes and are looking to move out of this sector. Of particular concerns is the roll out of Universal Credit, both because of the frequency and direct payment arrangements, but also because of the delays being experienced in dealing with claims.<sup>26</sup>

## 2.3 Impact on households

### Insecurity

Irrespective of whether a landlord uses section 21 to evict a tenant, the fact that it *could* be used at any point after the expiry of a fixed-term tenancy is thought to have a considerable impact on tenants' wellbeing. Generation Rent has said:

...section 21 can mean constant anxiety and insecurity – particularly for the 1.8 million renter households with children or the growing numbers of older people renting privately.<sup>27</sup>

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<sup>25</sup> See Simcock, T.J., (2018): [How have welfare reforms impacted the private rented sector? A review of our research & policy work \(NRLA\)](#) and Dr Chris O'Leary et al. [Homelessness and the Private Rented Sector](#), Residential Landlords Association, November 2018

<sup>26</sup> RLA and Dr Chris O'Leary et al. [Homelessness and the Private Rented Sector](#), Residential Landlords Association, November 2018, pp38-39

<sup>27</sup> [What is section 21 and why does it need to be scrapped?](#) Generation Rent, 25 May 2018

Generation Rent refers to a fear of eviction which stops households from establishing roots in local communities.<sup>28</sup>

Research published by the London School of Economics (LSE) in June 2018, [The Future Size and Composition of the Private Rented Sector](#), forecast growth in the number of older households and families with children in the PRS:

While historically young single people and multi-adult households have dominated the growth of the private renting sector, future trends suggest more adults aged 35 plus and families with children will be renting privately. This is the case in the next decade for both the 'weak' and 'balanced' scenarios, not just in London, but across the country.<sup>29</sup>

There are concerns about the suitability of insecure tenancies for older people and those with young families. Children's education can be disrupted by the need to find new schools when forced to move at short notice; older people may struggle to secure landlords' agreement to structural adaptations when their mobility reduces.

Landlords' representative bodies often point out that many tenants *want* the flexibility of shorter tenancies and can be reluctant to commit to longer term contracts. This was acknowledged in the then-Government's July 2018 consultation paper [Overcoming the Barriers to Longer Tenancies in the Private Rented Sector](#):

Some tenants appreciate the flexibility of shorter contracts, although evidence regarding how many tenants is mixed. In some cases, shorter tenancies are necessary: for example students or those on a visa cannot commit to a longer contract. Other evidence suggests that tenants can be reluctant to sign up for a longer tenancy because they are unaware of the benefits, fear being 'locked in' to an agreement, and are not aware of ways to end a contract early (i.e. break clauses or negotiation with the landlord).<sup>30</sup>

Reference is also made to lenders' requirements for short-term tenancies:

Mortgage conditions can sometimes stipulate that landlords can only offer short tenancies, but this is so only in a minority of cases. Furthermore, several major lenders do allow longer tenancies.<sup>31</sup>

The Council of Mortgage Lenders (CML) responded to this point:

We are not opposed to longer tenancy agreements and, although it is for individual firms to determine their own lending policies, an increasing number of lenders are now willing to offer mortgages to landlords who want to provide extended tenancies.<sup>32</sup>

## The cost of frequent moves

In [Overcoming the barriers to longer tenancies in the private rented sector](#) (July 2018), the then-Government acknowledged that being

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<sup>28</sup> Ibid.

<sup>29</sup> Udagaw C; Whitehead C; Scanlon K: LSE, [The Future Size and Composition of the Private Rented Sector](#), 20 June 2018

<sup>30</sup> [Overcoming the barriers to longer tenancies in the private rented sector](#), MHCLG, July 2018

<sup>31</sup> Ibid.

<sup>32</sup> CML, Fact check: do lenders really oppose longer tenancies?, 19 January 2017

forced to move by a landlord for no reason can cause emotional and financial harm to tenants:

Such tenants bear the financial costs of moving more frequently and there is also an impact on health and wellbeing caused by living in uncertainty. This particularly impacts households with children who are forced to move school and lower income households that are just about managing to afford their rental costs.

A recent report by Shelter suggested that 'many families worry that they are going to lose their current home – 43% of renting families with children say this applies to them.'

Additionally, the report claims more than a third of tenants in the Private Rented Sector went into debt to finance their last move. This can have significant health and wellbeing consequences.<sup>33</sup>

### Securing repairs/improvements (retaliatory eviction)

Retaliatory eviction describes the use of section 21 by landlords in direct response to a tenant's request for repairs. Surveys commissioned by Shelter in 2014 led the organisation to conclude that around 200,000 private tenants had been evicted after asking for repairs to be carried out, or after complaining to a local authority's environmental health department about conditions in their homes.<sup>34</sup> Around one in twelve private tenants in Shelter's survey said they were too scared of losing their home to report a problem and/or request improved conditions.<sup>35</sup> Shelter's survey findings were challenged by landlord organisations. The RLA produced its own survey evidence which, it said, countered claims around the prevalence of retaliatory eviction:

According to the survey of more than 1,760 landlords, some 56 per cent had had to evict tenants from their properties. Almost 90% reported that they had carried out evictions for rent arrears, with another 43% for anti-social behaviour, nearly 40% for damage to the property and 20% for drug-related activity.

Just under 30% wanted to regain possession of the property, for example because they needed to sell it for personal reasons.

The RLA says its survey demonstrates that the vast majority of landlords only seek to evict when they really need to.<sup>36</sup>

The Government introduced some protection from retaliatory eviction through amendments to the Deregulation Bill as it progressed through Parliament. The *Deregulation Act 2015* provides that, if certain conditions are met, a landlord cannot serve a section 21 notice on tenants who have requested repairs for a period of six months. For more information see: [Guidance note: Retaliatory Eviction and the Deregulation Act 2015](#) (MHCLG) and [Retaliatory eviction in the private rented sector](#), Commons Library Briefing Paper CBP-07015.

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<sup>33</sup> MHCLG, [Overcoming the barriers to longer tenancies in the private rented sector](#), July 2018

<sup>34</sup> "More than 200,000 PRS tenants unfairly evicted", Inside Housing, 12 March 2014 [subscription required]

<sup>35</sup> Ibid.

<sup>36</sup> "Landlords do not evict tenants without reason – says new research", RLA, 15 August 2014



The Housing, Communities and Local Government (HCLG) Select Committee's inquiry into the [Private rented sector](#) (April 2018) investigated retaliatory evictions. The Committee heard from some stakeholders that the *Deregulation Act 2015*, while a welcome improvement, did not offer sufficient protection against retaliatory eviction. The Committee concluded:

We recommend that the Government seek to rebalance the tenant-landlord relationship by providing additional protections from retaliatory eviction and rent increases. The Government should conduct a review of how the protections within the Deregulation Act 2015 are being used in practice and whether they need to be enhanced. We believe the Act should be strengthened to protect tenants from a no-fault Section 21 eviction for longer than the current six-month period. Protections should also be extended to prohibit retaliatory rent increases for a period after making a complaint. We heard concerns that there were several scenarios where tenants might be left without protection under the Act; the Government should ensure tenants are fully protected as soon as they make a complaint to their landlord, letting agent or local authority, not from the point an improvement notice is issued.<sup>37</sup>

The Government rejected the Committee's recommendations in this area but said they would "keep the issue under review."<sup>38</sup> There was an intention to link the effectiveness of retaliatory eviction provisions to work on improving redress and security across the PRS. On the recommendation to extend protection from retaliatory eviction for longer than six months, the Government said: "We believe the current legislation strikes the right balance between the interests of landlords and tenants and we have no plans to change the legislation in this way."<sup>39</sup>

Citizens Advice published [Touch and Go](#) in August 2018 in which the authors estimated that retaliatory eviction "has affected about 141,000 tenants since laws attempting to ban revenge evictions were introduced in 2015."<sup>40</sup> Commenting on the report, Gillian Guy, chief executive of Citizens Advice, said:

Our report shows that well-intentioned laws created to put an end to revenge evictions have not worked, and a new fix is needed.

There are serious question marks over the existence of a power that allows landlords to unilaterally evict tenants without reason - known as section 21.

While Government plans for minimum 3-year tenancies is a step in the right direction, these changes must be strong enough to genuinely prevent revenge evictions once and for all.<sup>41</sup>

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<sup>37</sup> Housing, Communities and Local Government Committee, [Private rented sector](#), 19 April 2018, HC 440 Session 2017-19, para 28

<sup>38</sup> [Government response to the Housing, Communities and Local Government Select Committee Report: Private rented sector](#), Cm 9639, July 2018, paras 22-27

<sup>39</sup> Ibid.

<sup>40</sup> Rogers C; Isaksen M; Brindle B, [Touch and Go](#), Citizens Advice, 24 August 2018

<sup>41</sup> "[Complain and you're out: Research confirms link between tenant complaints and revenge eviction](#)", Citizens Advice, 24 August 2018

In [The Evolving Private Rented Sector: Its Contribution and Potential](#), (2018) Julie Rugg and David Rhodes referred to a failure to evaluate the 2015 measures:

It might be expected that the value of the regulations would become evident in a marked reduction in the overall number of evictions taking place as retaliatory evictions, and increased tenant confidence to make complaints. At present, there has been little impetus even to consider evaluation, given widespread dissatisfaction with the measure. Indeed, it has been argued that the law might even exacerbate tenant insecurity, in giving the impression that tenants will be 'safe' from eviction from the point at which the initial complaint is made.<sup>42</sup>

## Challenging rent increases

AST tenants have a very limited right to challenge rent levels and increases. Section 22 of the *Housing Act 1988* gives the tenant of an AST the right to refer the rent to the First-tier Tribunal (Property Chamber) for an assessment as to whether it is 'excessive'. Only one application can be made. For ASTs created on or after 28 February 1997, a referral cannot be made once the tenant has been in the property for more than six months.

If a tenancy agreement does not contain a rent review clause, or if the clause no longer has effect,<sup>43</sup> a landlord can use a section 13 notice to increase the rent on a periodic AST subject to certain limitations. The tenant can refer the increase to the First-tier Tribunal (Property Chamber) within the notice period. The Tribunal determines a market rent for the property, i.e. the rent which could reasonably be expected to be obtained in the open market for a similar property let on similar terms.

As with the reporting of repairs, it is argued that the threat of receiving a section 21 notice means tenants are unlikely to exercise these rights. The Tenants' Voice has said that for a minority of landlords:

Section 21 is a tool that can be used for legal blackmail and coercion to accept terms that are only favourable for the landlord.<sup>44</sup>

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<sup>42</sup> Rugg J; Rhodes D: Centre for Housing Policy University of York, [The Evolving Private Rented Sector: Its Contribution and Potential](#), 2018, p106

<sup>43</sup> This will arise where the fixed term of the tenancy has ended and the tenant remains in occupation as a periodic tenant

<sup>44</sup> [Section 21 – An Uphill Battle For Tenants?](#) The Tenants' Voice, 2017

## 3. The Government response

### 3.1 Threatened with homelessness from an AST

One response to concerns about homeless applications arising from the termination of an AST has been to place duties on local authorities in England to work to prevent and relieve homelessness for all eligible applicants. Similar legislation is in force in Wales. The *Homelessness Reduction Act 2017* amended Part 7 of the *Housing Act 1996* to limit the circumstances in which a local authority can require an assured shorthold tenant to remain in situ when served with a section 21 notice to which they have no defence. This issue is covered in [Applying as homeless from an assured shorthold tenancy \(England\)](#), Commons Library Briefing Paper CBP-06856.

### 3.2 Encouraging longer tenancies: a model agreement for an AST

In 2014, the then-Government published a [Model Agreement for an Assured Shorthold Tenancy](#). Last updated in January 2020, it encourages landlords to offer a tenancy agreement with a term of up to three years.

In the model agreement, if the tenancy is for two years or less, the Government recommends that the agreement should fix the rent for the duration of the contract with no break clauses.

For longer tenancies (typically three years), the agreement template has sections in which a tenant and landlord agree on annual rent increases. The model agreement also provides a one-off six-month break clause which the landlord can trigger to end the contract with two months' notice.

Where the longer tenancy agreement departs significantly from the norm is the insertion of a rolling three-month break clause, which allows the tenant to end a tenancy early at any time by giving three months' notice.

The accompanying guidance states that the three-month rolling break clause is designed to encourage both tenant and landlord to sign up to a longer agreement:

This break clause reflects that the circumstances of a tenant might change unexpectedly, for example, because he or she has to move out of the area for employment reasons and that it would in such circumstances be inappropriate to compel them to be locked into the agreement for the full term. The three months' notice requirement gives the landlord sufficient time to find a replacement tenant, whilst at the same time ensuring he continues to receive a rental income.<sup>45</sup>

Use of the model agreement is discretionary for landlords.

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<sup>45</sup> [Model Agreement for an Assured Shorthold Tenancy and Accompanying Guidance](#), Ministry of Housing, Communities and Local Government, updated 2021

The model agreement also allows the landlord to end a tenancy early to sell the property.

In all versions of the model tenancy agreement, the landlord can still seek possession if a tenant has broken the terms of the contract by serving notice under section 8 of the *Housing Act 1988*.

### 3.3 Consultation on overcoming barriers to longer tenancies (July 2018)

In July 2018, the then-Government launched a consultation on [Overcoming the Barriers to Longer Tenancies in the Private Rented Sector](#). In recognition of the benefits of longer tenancies for both tenants and landlords, views were sought on a new model tenancy agreement to encourage or prescribe longer agreements, starting at a minimum of three years.

Then Parliamentary Under-Secretary of State at MHCLG, Heather Wheeler responded to a debate on the PRS on 29 November 2018:

The consultation on longer tenancies closed at the end of August—not that long ago—and stakeholder events were held in September. We are analysing the responses and we will respond shortly. We had a large number of responses—more than 8,000—and it is important to consider them fully, and align them with the workload of our experience in the courts. Considering the volume of responses is no small feat. We are working to provide the Government response to the consultation in due course.<sup>46</sup>

The consultation paper suggested changes to the model agreement, including:

- A minimum term of three years, with a six-month break clause in which both parties can end the tenancy.
- Changing the rolling break clause for the tenant so that they only need to give two months' notice.
- Setting the notice period for possession if a landlord is selling the property at a minimum of two months.

The consultation sought views on how such reforms might be implemented. Legislation could either impose the changes or make it a default model. The Government highlighted that legislative changes would improve security of tenure for tenants and “introduce consistency to the market”, although it was noted that some exceptions would be required. The Government said that legislation might make the process of repossessing properties more of a burden for landlords and acknowledged that “steps would be needed to mitigate this.”<sup>47</sup>

The consultation also suggested that a financial incentive for landlords to use the model agreement might be sufficient. This would be quicker to implement than legislation, but might pose administrative challenges,

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<sup>46</sup> [HC Deb 29 December 2018, c221WH](#)

<sup>47</sup> MHCLG, [Overcoming the Barriers to Longer Tenancies in the Private Rented Sector](#), July 2018, para 78

measures would need to be in place to ensure the system is not abused.<sup>48</sup>

Opinions were sought on alternative strategies, such as:

- Improved education and awareness for landlords to build understanding of the value of longer-term tenancies.
- Using “a kitemark on property portals and adverts to indicate properties where the landlord is keen to consider a longer-term tenancy”.<sup>49</sup>

The RLA surveyed over 4,500 landlords on the proposed three-year tenancy model and found:

43% of landlords think that the three-year tenancy agreement with a 6-month break clause was workable. However, only 40% of landlords reported that they would be willing to offer the proposed Government model as it stands.<sup>50</sup>

Landlords expressed a wide variety of opinions on elements of the proposed model, full details can be found in the RLA’s report on [Longer Term Tenancies in the Private Rented Sector](#) (August 2018).

### 3.4 A call for evidence on a specialist Housing Court (November 2018)

On 13 November 2018, the then-Government launched a call for evidence “to help the government to better understand and improve the experience of people using courts and tribunal services in property cases, including considering the case for a specialist Housing Court.”<sup>51</sup> Responses were invited up to 22 January 2019. Views were sought on:

1. Private landlord possession action process in the county court.
2. User experience in both the county courts and the First-tier Tribunal for property cases.
3. The case for a new Housing Court.
4. The case for other structural changes such as an extension of the remit of the property tribunal.<sup>52</sup>

Responses to the call for evidence are being analysed.

Alongside the call for evidence, MHCLG published a [report](#)<sup>53</sup> “outlining the findings of a qualitative research study that was undertaken in order to understand tenants’ and landlords’ experience of the county courts

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<sup>48</sup> MHCLG, [Overcoming the Barriers to Longer Tenancies in the Private Rented Sector](#), July 2018, para 80

<sup>49</sup> MHCLG, [Overcoming the Barriers to Longer Tenancies in the Private Rented Sector](#), July 2018, para 82

<sup>50</sup> Dr Tom Simcock, [Longer Term Tenancies in the Private Rented Sector](#), Residential Landlords Association, August 2018

<sup>51</sup> MHCLG, [Considering the case for a Housing Court: call for evidence](#), 13 November 2018

<sup>52</sup> Ibid.

<sup>53</sup> [A qualitative research investigation of the factors influencing the progress, timescales and outcomes of housing cases in county courts](#), 13 November 2018

and First-Tier Tribunal (Property Chamber), and to identify issues that may be deterring them from exercising their rights effectively.”<sup>54</sup>

Giles Peaker, Partner at Anthony Gold solicitors and editor of the Nearly Legal Housing Law website, [commented](#) on the qualitative research findings – an extract from the article is reproduced below:

It highlights a lack of knowledge of both landlords and tenants on legal requirements and legal process, and this is increasingly important as more and more tenants, and indeed landlords are or will be in person in proceedings.

It also highlights a gap between the perceptions (and understandings) of legal professionals and landlords (in particular) on timescales for proceedings...While lawyers (and judges) think that, say, 5 weeks from issue to a possession order (including as it does time for service, and a fortnight for any defence) is pretty damn quick, landlords thought things would be even quicker.

[...]

What the whole research report means for a 'housing court' is unclear. Most (though not all) of the landlords' issues are to do with legal requirements for a possession claim, not the actual procedure - which is merely the implementation of those requirements. There are some practical suggestions (online applications or better ones, sorting out enforcement), and an acknowledgment of the general perception of the impact of funding cuts, under resourcing and over-burdened courts on the administration of proceedings. But these are not 'specialist court' specific.<sup>55</sup>

The National Residential Landlords Association (NRLA) supports the establishment of a dedicated Housing Court in addition to reforms to section 8 of the 1988 Act.

### 3.5 An intention to abolish section 21 evictions (April 2019)

The Government published [Overcoming the barriers to longer tenancies in the private rented sector: summary of responses and government response](#) on 15 April 2019. The accompanying press release said: “Private landlords will no longer be able to evict tenants from their homes at short notice and without good reason” and went on:

As part of a complete overhaul of the sector, the government has outlined plans to consult on new legislation to abolish Section 21 evictions – so called ‘no-fault’ evictions. This will bring an end to private landlords uprooting tenants from their homes with as little as 8 weeks’ notice after the fixed-term contract has come to an end.

This will effectively create open-ended tenancies, bringing greater peace of mind to millions of families who live in rented accommodation. Many tenants live with the worry of being evicted at short notice or continue to live in poor accommodation

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<sup>54</sup> [Considering the case for a Housing Court: call for evidence](#), MHCLG, 13 November 2018

<sup>55</sup> [Challenging service charges that aren't yours, and views on housing in the courts - Nearly Legal: Housing Law News and Comment](#), 18 November 2018

for fear they will be asked to leave if they complain about problems with their home.

It will give them the reassurance that they will not be suddenly turfed out of their home and reduces the risk of being faced with having nowhere else to go. And evidence shows that the end of tenancies through the Section 21 process is one of the biggest causes of family homelessness.

The private rented sector has grown rapidly over recent years, with more than 4 million people now living in privately rented accommodation – the vast majority of whom are responsible tenants who pay their rent on time and take good care of the property. Yet the housing market has not kept pace with the changes in society and leaves many tenants feeling insecure.

The proposed measures will provide greater certainty for tenants and make the housing market fit for the 21st century, whilst creating a more secure rental market for landlords in which to remain and invest.<sup>56</sup>

The press release said that changes would be accompanied by amendments to the section 8 eviction process and to court processes to enable landlords to “swiftly and smoothly regain their property in the rare event of tenants falling into arrears or damaging the property”.<sup>57</sup>

### **Consultation on a new deal for renting (July 2019)**

A [consultation process](#) was opened on 21 July 2019 with submissions invited up to 12 October 2019.<sup>58</sup>

The consultation paper proposed the removal of section 21. Future PRS tenancies would be either be fixed-term or periodic assured tenancies under the 1988 Act. It would only be possible to evict a tenant on one of the Grounds set out in Schedule 2 to the 1988 Act, or at a break point in the tenancy agreement where one has been agreed between the landlord and tenant. The consultation asked whether a minimum fixed-term for an assured tenancy is needed and how this might interact with a break clause.

The consultation paper said the Government did not support rent controls.<sup>59</sup> To prevent landlords from increasing the rent near to the end of a fixed-term, the Government intended to prevent tenancy agreements from containing any clauses that would change the contract after the fixed-term has ended:

Landlords would still be able to adjust the rent in line with market levels by negotiating a new fixed term contract with the tenant. If the contract moved onto a statutory periodic tenancy, the landlord can use section 13 of the Housing Act 1988.<sup>60</sup>

The Government would consider how the various protections which limit when a landlord can use a section 21 notice (see section 1.1) might be carried over into the new tenancy regime.

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<sup>56</sup> [“Government announces end to unfair evictions”](#), MHCLG, 15 April 2019

<sup>57</sup> Ibid.

<sup>58</sup> [A new deal for renting: resetting the balance of rights and responsibilities between landlords and tenants](#), MHCLG, July 2019

<sup>59</sup> Ibid., para 2.23

<sup>60</sup> Ibid., para 2.27

## 24 The end of 'no-fault' section 21 evictions (England)

There was an intention to strengthen/extend the existing Grounds for possession that are preceded by the service of a section 8 notice, particularly where the property is needed for the landlord's or a family member's use, and where the landlord wishes to sell. The Government's stated aim was for landlords to "retain the ability to regain their property, with an easier journey through the courts when things go wrong or where they need their properties back for other valid reasons."<sup>61</sup>

Three new Grounds for possession were suggested:

1. For landlords to seek possession of their property where they need it for occupation by a family member (extending the existing ground from where they need it for occupation by themselves). This would be a mandatory ground where the landlord had served prior notice that they may use this ground and where the tenancy had been in place for two or more years.
2. For landlords to seek possession of their property where they needed to sell it. This would be a mandatory ground where the landlord had served prior notice that they may use this ground and where the tenancy had been in place for two or more years.
3. Amending ground 13 to allow a landlord to gain possession of their property where a tenant prevents them from maintaining legal safety standards. This would be a discretionary ground.<sup>62</sup>

The following grounds for possession may be reviewed:

- Rent arrears.
- Anti-social behaviour.
- Domestic abuse.

The consultation also sought views on whether the accelerated possession procedure should be available for the mandatory grounds for possession.

The consultation acknowledged that certain groups of tenants and landlords might find it difficult to operate within the new framework. Once such group includes lettings to students. An FAQ document published alongside the consultation paper: [A new deal for renting: frequently asked questions for landlords and tenants](#) said:

We know that there are some circumstances that could make it difficult for certain groups of tenants and landlords – such as those who rent to students or those who grant an agricultural tenancy – to operate within the new framework as proposed. It may be necessary for these groups to be placed outside the scope of our new tenancy framework or be provided with specialist provisions. One option could be, for example, providing these groups with specialist new grounds for possession under Schedule 2 of the Housing Act 1988.

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<sup>61</sup> Ibid., para 3.1

<sup>62</sup> [A new deal for renting: frequently asked questions for landlords and tenants](#), MHCLG, July 2019



We will therefore give consideration as to which groups might require specialist provision, and the form that such provision might take.<sup>63</sup>

In Wales, legislation due to come into force in 2022 to extend tenants' security of tenure will retain a two month notice period for certain types of student accommodation (see section 5.1).

There was no intention to abolish section 21 retrospectively:

The Government does not intend for any changes to legislation to be retrospective – landlords will still be able to use a section 21 notice to end an existing assured shorthold fixed-term, or an assured shorthold statutory periodic tenancy that continues beyond the date when legislation comes into force. Any new tenancy created after the new legislation comes into force will not be capable of being ended by using the section 21 notice. To ensure smooth implementation of the new law, and to enable time for landlords to prepare, we are minded to commence the new law six months after it receives Royal Assent.<sup>64</sup>

Social landlords also use the assured shorthold tenancy regime. For example, housing associations can use ASTs as probationary or starter tenancies. The different circumstances in which a social landlord may issue an AST are covered in paragraphs 2.9 to 2.14 of the consultation paper. The Government said it was minded to apply the abolition of ASTs to all landlords, but sought views from social landlords.<sup>65</sup>

## The forthcoming Renters' Reform Bill (Queen's Speech 2019)

The Conservative Party's 2019 [Manifesto](#) included the following commitment:

We will bring in a Better Deal for Renters, including abolishing 'no-fault' evictions and only requiring one 'lifetime' deposit which moves with the tenant. This will create a fairer rental market: if you're a tenant, you will be protected from revenge evictions and rogue landlords, and if you're one of the many good landlords, we will strengthen your rights of possession.<sup>66</sup>

Subsequently, the 2019 Queen's Speech included a commitment to introduce a Renters' Reform Bill. The background notes to the Queen's Speech described the main elements of the Bill:

- Abolishing the use of 'no-fault' evictions by removing section 21 of the Housing Act 1988 and reforming the grounds for possession.
- Giving landlords more rights to gain possession of their property through the courts where there is a legitimate need for them to do so by reforming current legislation. In addition to this we will also work to improve the court process for landlords to make it quicker and easier for them to get their property back sooner.

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<sup>63</sup> [A new deal for renting: frequently asked questions for landlords and tenants](#), MHCLG, July 2019,

<sup>64</sup> [A new deal for renting: resetting the balance of rights and responsibilities between landlords and tenants](#), MHCLG, July 2019, para 4.2

<sup>65</sup> *Ibid.*, para 2.9

<sup>66</sup> [2019 Conservative Party Manifesto](#), p29

- Introducing a new lifetime deposit so that tenants don't need to save for a new deposit every time they move house.
- Alongside these, we will continue to develop and implement measures to wider access to and expand the scope of the database of rogue landlords and 47 property agents. Giving greater powers to drive improvements in standards, and empowering tenants to make an informed choice about who they rent from.<sup>67</sup>

## The impact of Covid-19

To date the Renters' Reform Bill has not been introduced. Various bodies, including the Housing, Communities and Local Government Select Committee, have called for the Bill to be fast-tracked to improve protection for tenants affected by the pandemic.

There is concern that tenants in financial difficulty who have benefited from temporary restrictions on landlords' ability to seek repossession will face homelessness when restrictions are relaxed. The Government has been pressed on timing. The [Government response to the HCLG Committee's interim report](#) on protecting rough sleepers and renters was published on 25 June 2020 and said:

The Government remains committed to bringing forward legislation to deliver its planned reforms to enhance renters' security, including by abolishing so-called 'no-fault' evictions. However, the proposals for tenancy reform would represent the largest change to renting in 30 years and it is only right that these reforms are taken forward in a considered manner.<sup>68</sup>

On 3 March 2021 the Housing Minister, Christopher Pincher, [confirmed](#) the Renters' Reform Bill will be brought forward "once the urgencies of responding to the pandemic have passed."<sup>69</sup>

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<sup>67</sup> [Queen's Speech 2019 Background notes](#), p46

<sup>68</sup> [Government Response to the Housing, Communities and Local Government Select Committee Report on Protecting Rough Sleepers and Renters](#), CP 248, 25 June 2020, pp8-9

<sup>69</sup> [PO 157111 \[Evictions and Homelessness: Coronavirus\] 3 March 2021](#)

## 4. Reactions to the proposed abolition of section 21

There is a clear divide in opinion between organisations advocating on behalf of tenants and those advocating on behalf of private landlords. Broadly, tenant organisations support the abolition of section 21 while landlord bodies oppose it. The following sections provide more information on their respective positions.

### 4.1 Support for abolition

Numerous organisations have long called for the abolition of section 21. **Generation Rent**, a campaigning organisation for private renters, welcomed the Government's announcement and said it was seeking the following outcomes for tenants from the reforms:

- minimal unwanted moves
- minimal hardship for tenants who face unwanted moves
- more confidence to complain about disrepair and mistreatment<sup>70</sup>

**Shelter** described the Government's announcement as "an outstanding victory", Polly Neate, Shelter CEO said:

Government plans to abolish no-fault evictions represent an outstanding victory for England's 11 million private renters. This change will slam the brakes on unstable short-term tenancies and give tenants everywhere a massive boost in security, for which the government will deserve great credit.

One in four families now privately rent their home, as do hundreds of thousands of older people. And yet, we frequently hear from people with contracts shorter than your average gym membership, who live in constant fear of being thrown out at the drop of a hat. Ending Section 21 evictions will transform these renters' lives – giving them room to breathe and put down roots in a place they can finally call home.

Getting this new legislation through parliament is critical to people being able to stay in their rented home as long as they need, so we look forward to the government passing this law as quickly as possible.<sup>71</sup>

The **Local Government Association** (LGA) expressed support for potential to deliver increased security and stability for households, and thus reduce homeless applications from ASTs:

Responding to the Government's announcement that landlords will no longer be able to unfairly evict tenants, a Local Government Association spokesperson, said:

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<sup>70</sup> [Government consults on ending section 21](#), Generation Rent, 22 July 2019 [accessed on 2 May 2021]

<sup>71</sup> [Abolishing no-fault evictions will be 'outstanding victory' for 11 million renters](#), Shelter, 15 April 2019 [accessed on 2 May 2021]

Housing security is critical for the health and wellbeing of families and everyone deserves a safe, secure and affordable place to call home.

The vast majority of landlords are responsible and provide decent housing for their tenants, but their reputation can be tarnished by a minority that can exploit loopholes with little regard to the welfare of tenants.

Around a third of all families that councils accepted as homeless last year were made homeless by the ending of an assured shorthold tenancy. We therefore look forward to exploring the detail of the proposals that aim to ensure that landlords cannot evict tenants without sufficient warning or justification.

However, the proposal does not address the unaffordability of housing which is a key reason why many families lose their tenancy and become homeless. To address this the Government needs to adapt welfare reforms, and reform Right to Buy so that councils can build more genuinely affordable council homes.<sup>72</sup>

Jon Sparkes, CEO of **Crisis**, also expressed support:

Responding to the news, Jon Sparkes, Chief Executive of Crisis, said:

We warmly welcome the news that private landlords will no longer be able to evict tenants at short notice with no reason. We know that the end of a private tenancy is the single leading cause of homelessness across England so this decision represents a monumental leap forward in helping prevent homelessness across the country. We look forward to seeing further details.

Where so many renters across the country currently live in anxiety of a 'no-fault' eviction, more stable tenancies are especially important to those who have experienced homelessness - helping provide much-needed stability, giving them time to put down roots in their community, find employment and access support services if needed.<sup>73</sup>

Councillor Darren Rodwell, **London Councils'** Executive member for Housing and Planning said:

Government proposals to abolish 'no-fault' section 21 evictions are a welcome move that we have long been calling for. Too many Londoners have been asked by their landlords to leave rented accommodation unnecessarily, fuelling the capital's homelessness crisis.

Given that 40% of London families will be living in private rented sector accommodation by 2025, we urgently need to ensure the sector is working effectively.

As well as ensuring no tenancy ends due to issues that could be resolved, London boroughs want to see a better balance of power between landlords and tenants, streamlined courts processes, more resources for early dispute resolution and mediation and improved legal aid for tenants.<sup>74</sup>

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<sup>72</sup> LGA responds to Government announcement on landlord evictions [accessed 18 September 2019 – link no longer operational]

<sup>73</sup> [Crisis responds to Government plans to end 'no-fault' evictions](#), Crisis, 15 April 2019 [accessed 2 May 2021]

<sup>74</sup> [Statement on 'no-fault' evictions consultation](#), London Councils, 15 April 2019 [accessed 2 May 2021]

Campbell Robb, CEO of the **Joseph Rowntree Foundation (JRF)** said:

It is morally wrong that people are evicted from their homes with no good reason, and it is absolutely right that this should be tackled. Too many people in the UK are pushed into homelessness or having their lives disrupted at short notice because section 21 has been a relatively easy option for private landlords.

A secure and stable home should be the bedrock on which people can build a better life for themselves and the families, whether they are in the private sector or social housing. This is a serious step in improving the lives of tenants – we now need to see the housing and social security systems work together to ensure that people are not swept into poverty due to the shortage of low cost rented homes.<sup>75</sup>

There is a good deal of cross-Party consensus on the abolition of section 21 in England. The **Labour Party** announced in December 2017 that its next manifesto would contain a commitment to remove no-fault evictions.<sup>76</sup> This commitment was reinforced during the then-Shadow Housing Secretary's speech to the 2018 Labour Party Conference.<sup>77</sup> The **Liberal Democrats** passed a motion at their 2019 Conference to abolish section 21 evictions through reform of the *Housing Act 1988*.<sup>78</sup> The **Green Party's** housing webpage states:

Assured Shorthold Tenancies should be phased out, and replaced with a new Stable Rental Tenancy, which would recognise the principle that the property is the home of the tenant first, and an asset of the landlord second. This will include the following provisions:

- a) Security of tenure, during which time the tenant can end the tenancy with two months' notice. The reasons why the landlord can end a tenancy are set out below.
- b) The abolition of section 21 "no-fault eviction" powers for landlords, so it is the choice of good tenants whether they wish to remain in the property. The landlord may only end the tenancy at this time in order to sell the property (with proof of purchase), to move in or where there has been a serious breach of the contract.<sup>79</sup>

As previously noted, pressure to introduce the Renters' Reform Bill has grown throughout the pandemic. The HCLG Select Committee supported calls to fast-track the Bill in May 2020 and again in March 2021:

The Government must accelerate its plans to introduce the Renters' Reform Bill to Parliament and abolish 'no-fault evictions' under section 21 of the Housing Act 1988 within the next 12 months.<sup>80</sup>

The Government must introduce the Renters' Reform Bill urgently. The Government does not want to introduce the Renters' Reform

The HCLG Select Committee called for the abolition of no-fault evictions to be fast-tracked.

<sup>75</sup> [JRF responds to Government promise to ban no-fault evictions](#). JRF, 16 April 2019, [accessed 3 May 2021]

<sup>76</sup> [Jeremy Corbyn pledges to scrap 'no-fault' evictions to tip housing rules back in favour of renters](#), Independent, 27 December 2017

<sup>77</sup> [John Healey's speech to Labour Conference 2018](#), 24 September 2018

<sup>78</sup> ARLA Property Mark: [Lib Dems to scrap section 21](#) [accessed 3 May 2021]

<sup>79</sup> Green Party: [Housing Policy](#) [accessed 3 May 2021]

<sup>80</sup> Housing, Communities and Local Government Committee, [Protecting rough sleepers and renters: Interim Report](#), HC 309 Session 2019-21, 22 May 2020, para 28

Bill until the pandemic has finished, but this is at odds with the approach the Government has taken with NHS reforms. The Health Secretary told the House that the pandemic made the reforms "more not less urgent". The same logic applies to the Renters' Reform Bill and the urgent need to remove section 21 'no-fault' evictions. If the Government does not abolish section 21 before we come out of the pandemic, there will be serious consequences for renters.<sup>81</sup>

The [English Housing Survey Household Resilience Study November–December 2020](#) reported:

- In November–December 2020, 9% of private renters (353,000 households) were currently in arrears, up from 3% in 2019–20 but unchanged from June–July 2020 when 7% were in arrears (the difference is not statistically significant).
- Of the 9% in arrears, 4% were up to 1 month behind, 2% were more than one month but less than 2 months behind, 1% were 2 months or more behind, while 2% were in arrears but did not declare how far behind they were.
- A further 8% of private renters said they were very or fairly likely to fall behind with rent payments in the next three months, representing approximately 278,000 households.
- Overall 22% of private renters reported finding it more difficult to keep up with rent payments since June–July 2020. The main reasons cited for such difficulties were being furloughed on reduced pay (15%) or working fewer hours/less over time (14%).<sup>82</sup>

Private renters were found to be more likely to be behind with utilities (14%), credit card payments (9%) and other household bills (9%). Half of private renters surveyed were behind with household bills.<sup>83</sup>

There is concern that landlords will move to evict AST tenants with rent arrears when restrictions on evictions are lifted. The Renters' Reform Bill is seen as a long-term solution. Professor Christine Whitehead and Dr Nancy Holman of the London School of Economics suggested a moratorium on section 21 evictions until after the Bill has progressed through Parliament, alongside an offer of support for tenants with rent arrears:

A strong case can be made for mediating agreement between landlord and tenant, where tenants have fallen into arrears, but a long-term solution can be envisaged. The Government could incentivise such mediation, via a low-interest, government backed loan to landlords which has already been put in place in Wales.<sup>84</sup>

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<sup>81</sup> Housing, Communities and Local Government Committee, HC 1329 Session 2019–21, [Protecting the homeless and the private rented sector: MHCLG's response to Covid-19](#), 31 March 2021, para 98

<sup>82</sup> [Household Resilience Study: Wave 2](#), MHCLG, April 2021

<sup>83</sup> Ibid., para 2.42

<sup>84</sup> Christine Whitehead and Nancy Holman LSE, [Evictions: where are we now? What needs to change?](#) 27 August 2020

## 4.2 Opposition to abolition

**Landlord bodies oppose the abolition of section 21.** The RLA<sup>85</sup> argues that since the decline of the PRS to 10% of households in 1996 (from a high of 76% in 1915), the deregulation of rents and security of tenure has given landlords confidence to invest in the sector, resulting in its growth.<sup>86</sup> It is now England's second largest tenure behind home ownership.

In the immediate aftermath of the Government's announcement the RLA warned of "serious dangers" to the supply of rented housing for vulnerable tenants.<sup>87</sup> David Smith, Policy Director for the RLA said:

With the demand for private rented homes continuing to increase, we need the majority of good landlords to have confidence to invest in new homes. This means ensuring they can swiftly repossess properties for legitimate reasons such as rent arrears, tenant anti-social behaviour or wanting to sell them. This needs to happen before any moves are made to end Section 21.

For all the talk of greater security for tenants, that will be nothing if the homes to rent are not there in the first place. We call on the government to act with caution.<sup>88</sup>

The RLA said a reformed and improved court system which has bedded-in, together with improvements to the Grounds for possession, should be introduced before section 21 is amended or abolished. The approach adopted in Scotland has been cited as a precedent.<sup>89</sup>

In July 2019, the RLA's Private Renting Evidence, Analysis & Research Lab (PEARL) published [Possession Reform in the Private Rented Sector: Ensuring Landlord Confidence](#).<sup>90</sup> This report arose from what the RLA described as:

...the largest ever non-government survey of the PRS in England and Wales to establish what Section 21 means to landlords, agents and those supporting the supply of private rented properties. The report seeks to identify what measures, if any, will give landlords the confidence to continue to provide tenants with homes if Section 21 is removed.<sup>91</sup>

The survey confirmed that where landlords act to remove tenants they are five times more likely to serve a section 21 rather than a section 8 notice. Poor tenant behaviour was the most common reason given for service of a section 21 notice.<sup>92</sup> There was a suggestion that the removal of section 21 would lead to more court delays as all cases would require a hearing. As previously noted in section 1.2, there is wide dissatisfaction with the court system amongst landlords – the

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<sup>85</sup> Merged with the National Landlords Association in 2020 to form the National Residential Landlords Association (NRLA).

<sup>86</sup> Dr Tom Simcock, [Longer Term Tenancies in the Private Rented Sector](#), National Residential Landlords Association, August 2018

<sup>87</sup> RLA, [Section 21 to go – housing reforms risk hurting tenants](#), 15 April 2019

<sup>88</sup> Ibid.

<sup>89</sup> Ibid.

<sup>90</sup> Clay, N (2019). [Possession Reform in the Private Rented Sector: Ensuring Landlord Confidence](#). Manchester: Residential Landlords Association

<sup>91</sup> Ibid., executive summary.

<sup>92</sup> Ibid., executive summary.

survey identified that section 21 is used where a Ground for eviction could be established as it delivers certainty and is felt to minimise delays.<sup>93</sup>

96% of respondents to the survey who let properties to private tenants said section 21 was important to their business:

Over 40% of landlords feel so strongly about it that they cannot envisage supplying homes to tenants if it is removed, regardless of any compensatory reforms.<sup>94</sup>

The removal of section 21 would, the report noted, make 84% of landlords likely to become more selective in their choice of tenants. There was a suggestion that this would impact on low income, vulnerable tenants most of all.<sup>95</sup>

### **The changes landlords identified as necessary to retain confidence in the event of section 21's abolition included:**

- Implementation of a new specialist, low cost Housing Court which is properly funded and staffed.
- A privatised bailiff service for the court to provide a faster service for landlords once they have obtained a possession order.
- New and amended Grounds for possession and access to an accelerated procedure. The new and amended Grounds would include:
  - A Ground which gives landlords “a reliable way to regain possession from unreliable or disruptive tenants”.
  - A new section 8 Ground allowing landlords to regain possession to sell their property.
- Introduction of new fiscal incentives to allow landlords to feel more confident buying and selling properties with tenants in situ. Landlords currently prefer to sell with vacant possession.<sup>96</sup>

The National Landlords Association (NLA<sup>97</sup>) called for reforms to section 8 procedures, stating that the length of time it takes to obtain an eviction this way is the reason behind the overuse of section 21.<sup>98</sup> The NLA's Q2 2019 survey of landlords found that only 29% said their business expectations for the next three months were good or very good, representing the lowest level since the survey began in Q4 2006. The fall in confidence was attributed to the Government's section 21 announcement.<sup>99</sup>

The National Residential Landlords Association (NRLA) has an ongoing campaign on the reform of section 21 in which it is calling for:

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<sup>93</sup> Ibid., executive summary.

<sup>94</sup> Ibid., executive summary.

<sup>95</sup> Ibid., executive summary.

<sup>96</sup> Ibid., executive summary.

<sup>97</sup> Merged with the RLA in 2020 to form the National Residential Landlords Association (NRLA)

<sup>98</sup> Labour Party calls for scrapping of section 21 and renters' unions, National Landlords Association, 24 September 2018

<sup>99</sup> Landlord confidence hits record low, NLA, 13 August 2019



1. **Clear and comprehensive grounds for possession:** There needs to be clear and comprehensive grounds upon which landlords can legitimately regain possession of a property for when there has been a 'fault', and where the landlord needs to make business decisions such as selling the property, moving in, or making substantial changes.
2. **Court reform and conciliation:** We continue to advocate for a dedicated housing court or tribunal which will ensure consistency in cases for both landlords and tenants, through specialist judges and court officials. Where there is a dispute, landlords and tenants should be able to seek conciliation during the notice period to try to avoid the need to go to court. Where tenants fail to abide by the judgements of the service, landlords could have their claim for possession fast tracked by the courts. In cases where landlords fail to abide, they would not be able to issue another possession notice for six months.
3. **Lifetime deposits:** It is vital that the new system in no way discourages landlords from making valid claims for damage to properties. Landlords cannot be expected to give up their right of recourse to a security deposit until such time that they are satisfied there will be no need to make a claim against it.<sup>100</sup>

The Lettings Industry Council Section 21 Working Group commissioned research into the impact of section 21's abolition over 2019/20. The resulting [report](#) identified a risk of landlords withdrawing from the market and the introduction of "intense screening" processes for prospective tenants.<sup>101</sup> The report's conclusions echo those set out above in relation to reform of section 8, additional mandatory Grounds (specifically concerning rent arrears), bailiff and wider court reforms. The authors set out a preferred sequence for reform:

Implementation of the measures listed above needs to be planned carefully and with sufficient foresight. A transitional period should be considered, as follows:

- Phase 1: Bailiff Process
- Phase 2: Court reform and mediation process
- Phase 3: Abolition of Section 21 and Reviewing of Section 8

While the mediation process and the bailiff process reform can be introduced on relatively short-term planning, court reform needs a long-term planning as it requires more sophisticated and elaborate preparation. Due to the tripling in case load abolishing Section 21 and reviewing Section 8 should be implemented as a last step.

Such step-by-step implementation will not only prevent a short peak increase in serving Section 21 notices but also give all

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<sup>100</sup> [Renters' Reform Bill Campaign](#), NRLA, 1 December 2020

<sup>101</sup> [BEYOND SECTION 21 Evidencing need and processing a model for change](#), Company Consultancy Project (CCP) on behalf of The Lettings Industry Council Section 21 Working Group [undated]

relevant parties enough time to adapt to the change in legislation.<sup>102</sup>

In addition to proposed amendments to section 8 and the separate consultation on a specialist Housing Court, the Government's consultation paper included the following information on measures underway to reduce average case times:

The Ministry of Justice are looking to free up enforcement agent (bailiff) resources to help them prioritise possession cases, as we know there can be delays in enforcement once a court has granted a warrant for possession. Currently the Civil Procedure Rules (CPR) state that possession cases must have a first hearing between four and eight weeks. There is potential to reduce this by one week without significantly impairing the timeframe for tenants to seek legal advice, subject to approval by the Civil Procedure Rules Committee and possible consultation. Taken together, these reforms have the potential to reduce national average landlord possession case times by two weeks.

In addition, the [Courts and Tribunal Service Possession Reform Project](#) will introduce a new online system to speed-up and simplify the court process for landlords. This will reduce the errors that landlords can currently make when progressing a possession claim and preparing evidence, which can lead to delays. Similar reforms recently introduced for divorce claims, which block progress if the claim is completed incorrectly, have already reduced rejection rates. In possession cases, these errors can often result in hearings being adjourned and rescheduled, adding up to 12 weeks to case timelines (8 weeks on average). These reforms are expected to speed up cases which currently take significantly longer than the average, and reduce delays experienced by thousands of landlords when recovering possession of their property.

Improved guidance will also be provided so that both landlords and tenants better understand their rights and responsibilities as the case goes through the courts. The Court Services will prioritise these reforms to the private landlord possession process and they are expected to be introduced by August 2020.<sup>103</sup>

### 4.3 Social landlords

As previously noted, housing associations use assured shorthold tenancies in a variety of circumstances. The National Federation of Housing (NHF) published a [briefing paper](#) for members on the proposals in the 2019 consultation paper.<sup>104</sup> The NHF briefing outlines some issues and suggests some possible responses to the abolition of section 21.

**Fixed-term tenancies:** some associations offer new tenants a fixed-term tenancy. The household's circumstances are reviewed at the end of the fixed-term. The tenancy can be terminated at this point using section 21, or a new fixed-term may be issued. The NHF observes:

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<sup>102</sup> Ibid.

<sup>103</sup> [A new deal for renting: resetting the balance of rights and responsibilities between landlords and tenants](#), July 2019, MHCLG, paras 1.17-1.19

<sup>104</sup> [Repeal of section 21 – government consultation](#), NHF, September 2019

Such a system, however, currently relies for its effectiveness on the availability of no-fault possession if the tenancy is deemed no longer to be needed.<sup>105</sup>

The most common reason for the termination of a fixed-term tenancy is where a household is under-occupying their home. The NHF suggested the creation of a new, mandatory ground for possession available in cases where a property is under-occupied. The Ground would only be available if:

- notice had been given before the start of the tenancy that this ground might be used, and
- the landlord offered, or had secured an offer of, suitable alternative accommodation.<sup>106</sup>

**Probationary tenancies:** the NHF reported that 84% of new housing association tenants in general needs housing were offered an initial probationary tenancy which usually lasts around 12 months. If tenants exhibit anti-social behaviour during this period the tenancy can be terminated using the section 21 procedure.

The NHF observed that it would be “counter-intuitive” for tenants of housing associations to lack “a level of statutory protection enjoyed by tenants of private landlords.” There are also concerns about local authorities operating introductory tenancies under a different legislative framework, and a preference for a “single approach” in both the housing association and local authority sectors.<sup>107</sup> Comparisons are made with the approach in Scotland:

When no-fault possession was abolished in Scotland, the short Scottish secure tenancy was introduced. This resembles an assured shorthold tenancy in that the landlord may end it without grounds by serving two months’ notice (provided the tenancy runs for at least six months overall), but the key difference is that it can be used only in specified circumstances, and the tenant has the right to go to court to have the tenancy converted to a full Scottish secure tenancy. The short Scottish secure tenancy can be used, for instance, if the tenant has previously been evicted for anti-social behaviour or if the tenant or a member of his or her family is subject to an ASBO. So the short Scottish secure tenancy lacks the ubiquity of the assured shorthold and cannot be used for new tenants in general.<sup>108</sup>

**Demoted tenancies:** This involves a reduction in security of tenure (conversion to an assured shorthold tenancy) where an assured tenant exhibits anti-social behaviour:

Demoted tenancies thus raise similar issues to probationary tenancies, but with one key difference: before a tenancy can be demoted, a court must be satisfied that this action is warranted. This gives the tenant a degree of protection that does not currently apply to a probationary tenancy.<sup>109</sup>

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<sup>105</sup> Ibid., para 3.1

<sup>106</sup> Ibid.

<sup>107</sup> Ibid.

<sup>108</sup> Ibid.

<sup>109</sup> Ibid.

## 36 The end of 'no-fault' section 21 evictions (England)

The NHF [briefing paper](#) set out a number of circumstances in which assured shorthold tenancies are used in different types of supported housing schemes, for temporary housing, and specific schemes such as intermediate rent leading to ownership. The NHF suggested two possible approaches:

- exclude the tenancy from assured status, and therefore from statutory security, by adding it to the list of exclusions in Schedule 1 to the 1988 Act, meaning that it can be ended by simple notice to quit
- add new mandatory grounds for possession to Schedule 2 to the 1988 Act.<sup>110</sup>

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<sup>110</sup> Ibid., para 4

## 5. The devolved administrations

### 5.1 Wales

Currently, as in England, most private sector tenancies in Wales are assured shorthold tenancies. *The Renting Homes (Wales) Act 2016* (the 2016 Act) is introducing a new legal framework for renting a home in Wales. The Act's provisions are expected to come into force in spring 2022. When in force, standard occupation contracts modelled on the assured shorthold tenancy are expected to be the main type of contract in the private rented sector.

On 15 April 2019, the First Minister, Mark Drakeford announced plans to end no-fault evictions at the Welsh Labour conference in Llandudno.<sup>111</sup> Following a consultation exercise, the *Renting Homes (Wales) (Amendment) Act 2021* was introduced and gained Royal Assent on 7 April 2021.

This Act amends the 2016 Act to give tenants with a standard contract additional security of tenure. When in force, landlords will have to give tenants a section 173 notice<sup>112</sup> with a minimum notice period of six months. Landlords will be prevented from issuing this notice until at least six months from the date of occupancy. Further provisions will ensure that landlords are unable to issue rolling 'speculative' notices on a 'just in case' basis.<sup>113</sup>

There will be limited cases where a two month notice period will still apply, e.g. on student accommodation provided by a higher education provider<sup>114</sup> and supported housing.<sup>115</sup>

### 5.2 Northern Ireland

Most tenants in the private rented sector in Northern Ireland have either a fixed-term tenancy, a default six-month tenancy or a periodic tenancy. A small number of tenants whose private tenancy began before 1 April 2007 may have protected tenancies with rent control and substantial security of tenure.

Tenancies created after 1 April 2007 are generally 'non-protected'. If a landlord wishes to end a non-protected tenancy on a 'no-fault' basis, the length of the notice depends on how long the tenant has lived in the property. These periods were extended in 2011 when the *Private Tenancies (Northern Ireland) Order 2006* was amended. The notice periods are:

- If the tenant has been in the property for less than five years, they must get at least four weeks' notice.

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<sup>111</sup> [Pledge to end no-fault evictions](#), Welsh Housing Quarterly, 15 April 2019

<sup>112</sup> Equivalent to the section 21 notice under the 1988 Act in England.

<sup>113</sup> Section 174 of the 2016 Act (as amended).

<sup>114</sup> Paragraph 3 of Schedule 8A to the 2016 Act.

<sup>115</sup> Paragraph 4 of Schedule 8A to the 2016 Act.

- If the tenant has lived in the property for more than five years but less than 10, they must get at least eight weeks' notice.
- If they have lived in the property for over 10 years, they are entitled to 12 weeks' notice.

## 5.3 Scotland

On 1 December 2017, a new type of tenancy was introduced in Scotland. The private residential tenancy has replaced the assured and short assured tenancy regime for all new PRS tenancies created since that date. The key features of the new tenancy are:

1. It is open-ended, which means a landlord will no longer be able to ask a tenant to leave simply because the fixed term has ended.
2. It provides more predictable rents and protection for tenants against excessive rent increases.
3. It includes the ability to introduce local rent caps for rent pressure areas.
4. It provides comprehensive and robust grounds for repossession that will allow landlords to regain possession in 18 specified circumstances.<sup>116</sup>

The Scottish short assured tenancy was very similar to the English and Welsh AST - section 33 of the *Housing (Scotland) Act 1988* gave landlords a route to 'no-fault' eviction akin to that of section 21. This does not exist under the new private residential tenancy regime.

The Scottish Government website explains why changes to the tenancy regime in the PRS were felt to be necessary:

[A place to stay, a place to call home: a strategy for the private rented sector in Scotland](#) contained an action to review the current tenancy regime to ensure it was fit for purpose and meet the growing demand for private rented housing from a range of different household types, including families. In September 2013 a stakeholder-led group was established to review private tenancies.

The group made one main recommendation, namely that the current assured tenancy regime be replaced by a new one for all future private sector lets. The group also agreed that the new tenancy should provide clarity, simplicity, ease of use and flexibility.

Ministers accepted the recommendation and consulted with tenants, tenants representative organisations, landlords, landlord representative organisations, letting agents, investors and local authorities during the development of the new tenancy.

Further information is available on the [tenancy review section of the gov.scot archive](#).<sup>117</sup>

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<sup>116</sup> [Scottish Government: Private Renting website](#) – accessed on 5 May 2021

<sup>117</sup> Ibid.

Shelter published an evaluation of the new Scottish tenancy regime in 2019.<sup>118</sup> 18 months after the introduction of the new regime, the research found “a positive effect” on Scottish renters:

Renters on the new tenancy:

- worry less about becoming homeless,
- feel less locked-in to their tenancy and
- have more faith that their elected representatives have their interests at heart.

Our research suggests that the introduction of open-ended tenancies can be managed smoothly and without significant impacts on the private rented market.<sup>119</sup>

[Shelter's research](#) argued that some of the ‘scare’ stories in England on the potential impact of section 21’s abolition were misplaced:

Though so far only half of private tenancies in Scotland are on the new terms, our analysis of official statistics has found that all the key indicators of Scotland’s market are in line with comparable regions. The evidence so far suggests no significant impact.<sup>120</sup>

No marked reduction in the size of the PRS in Scotland was noted:

Though it is too early to tell whether the size of the sector has changed since the new tenancy was introduced, official data shows that there was no substantial change in the size of the private rental market in Scotland in the two years after the new policy was announced.<sup>121</sup>

The Nationwide Foundation is funding RentBetter Research to evaluate the impact of the *Private Housing (Tenancies) (Scotland) Act 2016* as part of a three-year programme. Douglas Robertson presented some baseline findings in November 2020:

A further surprise was that landlords voiced little concern (so far) about the changes overall, and the loss of the ‘no-fault ground’ in particular. Most offered a ‘no impact’ assessment of the tenancy change. This may be reflective of the lack of turnover mentioned earlier, as many have yet to directly experience a PRT. While some issues were raised by landlords and letting agents, these tended to be based on perceptions, rather than their actual experience, confirming that it may be too early to tell. The ‘open ended’ tenancy combined with the 28-day notice period is reported to have increased ‘churn’ in some specific markets. Technical issues about the time taken to process eviction for arrears were a concern, as were the legal challenges thrown up by operating joint tenancies under the PRT. But overall, landlords were not experiencing the concerns that were feared at the time of reform.<sup>122</sup>

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<sup>118</sup> [The New Private Rental Tenancies: Evaluating Changes to Rental Agreements in Scotland](#), Shelter, May 2019

<sup>119</sup> [The New Private Rental Tenancies Evaluating changes to rental agreements in Scotland: Executive Summary](#), Shelter, May 2019

<sup>120</sup> Ibid.

<sup>121</sup> Ibid.

<sup>122</sup> [“Douglas Robertson: Tenancy change impacts - You don’t always get what you want \(quickly\)”](#), Scottish Housing News, 11 November 2020

Andy Wightman (Member of the Scottish Parliament) raised the fact that landlords in Scotland might still evict tenants with relative ease during a debate on homelessness on 29 November 2018:

Constituents have contacted me after being served with a notice to quit because the landlord wanted to operate short-term lets. Again, one might think that the new private residential tenancy regime would protect a tenant against eviction, but it will not. Under the sixth ground in schedule 3 to the 2016 act, tenants can continue to be evicted when the landlord wishes to use the property for a purpose other than providing someone with a home. That is why our amendment asks that the statutory grounds for repossession be reviewed.<sup>123</sup>

The Scottish Parliament Information Centre published a [briefing](#) in November 2018 which looked at the data required to evaluate some of the PRS legislation in Scotland, including the new tenancy arrangements.<sup>124</sup>

Julie Rugg and David Rhodes (2018) recommended that any changes in England should await an assessment of the Scottish changes:

Further recommendations around security of tenure should only follow when there has been a thorough evaluation of the impacts on landlord and tenant behaviour of the changes to tenancy law in Scotland. Current proposals around the possible introduction of a three year tenancy do not address the entirety of difficulties relating to security of tenure.<sup>125</sup>

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<sup>123</sup> [Scottish Parliament, Official Report, 29 November 2018, c50](#)

<sup>124</sup> [Private renting reforms: how to evidence the impact of legislation](#), SPICe, 14 November 2018

<sup>125</sup> Rugg J; Rhodes D: Centre for Housing Policy at the University of York, [The Evolving Private Rented Sector: Its Contribution and Potential](#), 2018, p112



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