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POSITION PAPER

# The future of renting



This position paper includes recommendations for **future economic crime legislation** and reforms to reduce economic crime in the property sector

Dec 2021

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AUCTIONEERS  
& VALUERS

The private rented sector is now the second largest housing tenure in England encompassing, individuals, couples, families, and older people. Some living in rented property for short periods, months, and others for longer periods, including years.

Six government departments interact with the private rented sector, and they should be coming together to set a long-term plan and have collective oversight of future policy making:

- DLUHC: private rented sector, homelessness, housing supply and local government policy
- HM Treasury: tax, purchasing property and economic crime
- DWP: welfare and Universal Credit
- BEIS: energy efficiency rules
- Home Office: Right to Rent
- MoJ: courts and access to justice

Consequently, overall policy development and the context for reform of the private rented sector should be looked at in six key areas to drive improvements that are needed:

1. Supply of private rented property
2. Tenancy management
3. Being a tenant
4. Inspections and enforcement
5. Access to justice
6. Future-proofing the sector

## SUPPLY OF PRIVATE RENTED PROPERTY

Providers of property in the private rented sector include individual landlords, investment landlords and build to rent providers. As a vital provider of homes for people up and down the country it is important that existing landlords who want to expand and improve their property portfolios have new investment channels to tap into.

4.0 million households are in the social rented sector. <sup>1</sup>



17%

4.4 million households are in the private rented sector.



19%

15.4 million households are owner occupiers.



65%

Due to the size of the private rented sector, the UK Government needs to do more to help landlords respond to the on-going demand for homes in the private rented sector.

Landlords' inability to offset finance costs against tax liabilities combined with increased mortgage regulation in the buy-to-let sector means there are less incentives for small investors reliant on buy-to-let finance to enter the market. Additionally, the current taxation system does not encourage landlords to proactively improve their properties. Lettings relief is no longer available and there are no tax reliefs on improvements landlords make against rental income.

Moreover, for individual landlords who can afford a buy-to-let property, tenants will likely see more of these additional costs passed on to them, meaning higher rents and less money spent on maintaining the property and tenants struggling to maintain increasing rent levels.

The UK Government must recognise that for many letting agents and landlords their view of the housing market and the longevity of the sector is often based on sentiment and certainty. If people no longer

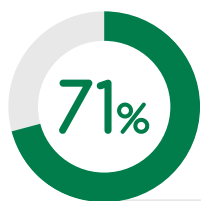
want to be landlords and the private rented sector reduces in size, local authorities will be placed under unmanageable pressure to help many households secure a suitable alternative against a backdrop of significant under-supply of affordable homes to rent. Homelessness will therefore inevitably increase.

During the last decade welfare changes, including the introduction of Universal Credit, have altered perspectives of some landlords in certain areas of the market. The impact of waiting periods and other delays causing rent arrears have had a negative impact on landlord attitudes to low-income households. To ensure that landlords and their letting agents have more confidence to let to renters in receipt of Universal Credit or Housing Benefit, action is needed to raise Local Housing Allowance rates and ensure Universal Credit is adequate and more effective.

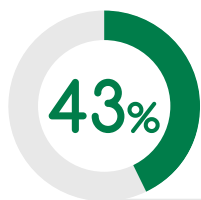
Any measures to improve the private rented sector must be considered in the wider environment of a lack of housing supply, a shortage of social rented housing in particular, recent tax changes and the financial capacity for people to purchase property.

## TENANCY MANAGEMENT

Management of tenancies is carried out by letting agents, landlords and build to rent providers. All letting agents offer slightly different services, but typically letting agents provide three types of service: let only, let and rent collection and fully managed.



of properties in the private rented sector are owned by individual landlords. <sup>2</sup>



of landlords use a letting agent to either let or let and manage a property for them. <sup>3</sup>

Letting agents are very important to landlords because some do not want to manage properties themselves and some are not able to. However, despite the requirement for letting agents to belong to a government approved redress scheme and sign up to a government approved Client Money Protection provider there are no barriers to entry.

Furthermore, apart from affordability, tax liability and safety rules there are no barriers to becoming a landlord in England—no registration, qualifications, continual training or redress scheme membership are required.

## BEING A TENANT

Despite it being common practice there is no legal requirement for a written tenancy agreement in England and notwithstanding aspirations from the UK Government to make moving between tenancies for renters quicker and easier there are no mandatory requirements for an inventory or check in and check out reports.

Furthermore, whilst landlords must put a tenant's deposit in a government-approved tenancy deposit scheme when renting on an assured shorthold tenancy, unless tenants are aware of these rules, actively check or landlords details are crossed referenced against other information, tenants have limited protections.

## INSPECTIONS AND ENFORCEMENT

Recent legislative change has seen the introduction of the Homes (Fitness for Human Habitation) Act 2018, Energy Efficiency (Private Rented Property) (England and Wales) (Amendment) Regulations 2019, Tenant Fees Act 2019 and the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 on top of the existing laws and regulations governing the private rented sector in England.

**168** Industry bodies calculate that by the time the Building Safety Bill is given Royal Assent, the number of statutory provisions on private landlords will have risen by 40 per cent in the last decade to 168 pieces of legislation. <sup>4</sup>

Removing poor management practices as well as sub-standard properties is vital to improving the sector and the lived experience of tenants. Local authorities need sufficient financial support to ensure they can invest in officers who can adequately inspect properties and enforce the wide range of rules and regulations in the private rented sector.

**5,000** Figures in 2018 highlighted that only 70,000 properties have been inspected across the country, with action taken against just 5,000 landlords by local authorities. <sup>5</sup>

Furthermore, there needs to be a better understanding from legislators about the practical implications of legislation. For example, since October 2015, in private rented property in England, a smoke alarm must be fitted on every floor on which there is a room used wholly or partly as living accommodation and a Carbon Monoxide alarm placed in any room where a solid fuel is burnt such as wood, coal or biomass. Checks must be made by the landlord or letting agent to make sure that each alarm is in proper working order on the first day of the tenancy.

When these regulations were passed, insufficient consideration was given to whether and how they could be enforced. Professional agents, such as Propertymark members, are complying with the rules but many landlords and agents are not. Furthermore, it is difficult to see how enforcing bodies are monitoring these rules consistently.

## ACCESS TO JUSTICE

There needs to be a better rationalisation of dispute resolution for housing and property disputes because the ability for landlords to access a swift, efficient, and cost-effective justice system is a key component of a successful lettings industry. While embedding alternative and more preventative approaches to dispute resolution can potentially help more tenants stay in their homes and keep the rent flowing for more landlords, there will inevitably be situations where recovering possession of a property via the court system is the only viable option. However, the current system does not currently provide a reliable route to justice for landlords in these circumstances.

While most tenancies are ended by the tenant, landlords need to be confident that a property can be recovered quickly if the tenant has caused damage, stopped paying the rent or if the landlord's circumstances change.

Through adequately resourcing and reforming the existing courts system this will speed up the system, increase expertise in the decision-making process and ensure greater consistency with reduced costs. Failure to fund the courts properly means a lack of justice for landlords and tenants.

Many landlords rely on the safety net of Section 21 when taking on tenants that are known to them as higher risk (more than often those on lower incomes, retired or in receipt of benefits). If a tenant is at a higher risk of defaulting on their rent payments, landlords want an option to know that they can regain possession of their property should things go wrong.

## FUTURE-PROOFING THE SECTOR

Any plans to reform private renting in England must also future-proof the sector by achieving two things. Firstly, by providing a consistent level of protection for consumers. Secondly, by maintaining a continuously sufficient supply of property to rent by encouraging landlords to stay in the market alongside enticing more individuals to become landlords.

With proposals to reform and introduce new rules and regulations for the private rented sector impacting on what we know as traditional housing options, this can allow new providers to come onto the market who use the existing housing stock in new and innovative ways, such as through short-term lets and second homes holiday market.

A careful balance needs to be struck over the long-term that provides enough flexibility for certain communities to benefit from short-term lets and tourism but also ensure safety standards are in place and areas can continue to provide a range of housing options, such as through the private rented sector, to meet local housing need.





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MOVING CARTON  
RECTANGLE  
LIGHT DUTY

MOVING CARTON  
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Wrap & Move

# RENTERS' REFORMS

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In the Queen's Speech in May 2021, it was announced that rather than introduce a Renters' Reforms Bill the UK Government will explore further options for reform before announcing changes through legislation. <sup>6</sup>

The Queen's Speech said that by the end of 2021, the UK Government is committed to:

- Publish the consultation response on reforming tenancy law to abolish Section 21 'no fault' evictions and improve security for tenants in the private rented sector, as well as strengthening repossession grounds for landlords when they have valid cause.
- Outline proposals for a new 'lifetime' tenancy deposit model that eases the burden on tenants when moving from one tenancy to the next, helping improve the experience of those living in the private rental sector.
- Bring forward reforms to drive improvements in standards in rented accommodation, including by ensuring all tenants have a right to redress, and ensuring well targeted, effective enforcement that drives out criminal landlords, for example exploring the merits of a landlord register.
- Publish a White Paper detailing this reform package in the Autumn. The Department for Levelling Up, Housing and Communities announced in October that the White Paper would be delayed until 2022.

This reform package is also expected to:

- Require all private landlords to belong to a redress scheme, to drive up standards in the private rented sector and ensure that all tenants have a right to redress.
- Consider further reforms of the private renter sector enforcement system so it is well targeted, effective and supports improvements in property conditions. This will include a set of measures to hold bad landlords to account for delivering safe and decent housing to tenants without penalising good landlords.
- Explore improvements and possible efficiencies to the possession process in the courts, to make it quicker and easier for landlords and tenants to use.



# THE FUTURE OF RENTING

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PropertyMark's position paper is in response to the UK Government's plans for Renters' Reforms and is broken down into the following three sections.

## SECTION 1: AFFORDABILITY

- Lifetime deposits should include a range of 'passporting' options
- There is a wide range of additional measures to support tenancy deposits and a passporting system
- Wider considerations to improve affordability in the private rented sector including changes to housing related welfare policies and a review of landlord taxes
- Support the sector to reduce its carbon footprint

## SECTION 2: CONSUMER PROTECTION

- Extend redress membership to landlords who self-manage property only
- Central government should take a lead in funding, developing and running a national landlord register, whilst working in partnership with local authorities
- Widen access to the Database of Rogue Landlords and Property Agents and make it publicly available
- Full mandatory government regulation of lettings and sales agents
- Digital Right to Rent checks
- Improve and increase local authority enforcement
- Widening the scope of money laundering supervision to include all letting agents

## SECTION 3: ACCESS TO JUSTICE

- Considering the case for a Housing Tribunal
- Improving efficiencies to the existing possession process in the courts
- Automatic right to a High Court Enforcement Officer
- Privatised County Court Bailiffs
- Digitise Possession Claims
- Replacing Section 21, make all grounds mandatory
- Implement a pilot scheme
- Importance of a transition period for any legislative change

A photograph of a row of white terraced houses with ornate architectural details. In the foreground, a green sign with white text reads "TO LET". The sign is mounted on a wooden post. The houses have white facades, dark roofs, and decorative moldings. A tree is visible on the left side of the frame.

TO LET

SECTION 1

# Affordability

## PROPOSALS FOR A LIFETIME DEPOSIT

To make it easier for tenants to pay for a new deposit when moving home the UK Government must balance affordability for tenants with confidence of landlords. The UK Government should shift the

emphasis from a 'lifetime tenancy deposit' to a 'tenancy deposit passport'. A lifetime tenancy deposit implies that the tenant will spend their whole life renting and not explore other housing options.

Tenant deposit passporting should include a range of options...

### TENANT GUARANTEE (BRIDGING LOAN OR INSURANCE POLICY) VIA THE TENANCY DEPOSIT SCHEMES (TDP)

Once a tenant has paid a full deposit, if they move on and rent another property, the deposit protection scheme retains the money, any deductions are made, and the remaining money is held by the scheme. Information is then provided to the new landlord about which scheme the money is held. If the new

landlord is happy with the arrangement the money stays with the scheme and a smaller amount may be needed by the tenant to top up the deposit for the new property. During this time the tenant should purchase an insurance policy or acquire a bridging loan from the scheme which is used to claim against any deductions. By ensuring that the guarantee is administered by the tenant deposit scheme this will reduce the risks for landlords and allow use the expertise of the schemes to work with tenants should problems arise.

### DEPOSIT BUILDER ISA (NRLA PROPOSAL)

Similar to the Help to Buy ISA, a Government protected savings pot could be made available to renters. Neither party would have access to money deposited into the account unless ordered by an approved deposit scheme or at account closure, provided no charge was associated with the pot

by a TDP scheme. Applicants would be able to demonstrate that the minimum required funds were in the account at the beginning of the tenancy and the account could be associated with a TDP scheme for the resolution of any disputes. Tenants would be able to save in this account beyond the minimum deposit required, mirroring the Help to Buy ISA, eventually using the funds for a deposit to buy their own home if they chose.

### ENCOURAGE EMPLOYERS TO OFFER A DEPOSIT LOAN SCHEME

The UK Government should be doing more to encourage employers to offer staff an interest free loan to pay for their deposit when moving into private rented property. UK Government should carry-out a survey amongst businesses and their trade bodies to ascertain who is providing employer-backed loans. Once this is determined the UK Government should publicise a list of companies

who offer employer-backed rental deposit loans to encourage others to do the same. Additionally, companies and organisations should be provided with guidance on how to package financial wellbeing benefits and information to employees in a more helpful way. Repayments can be made in instalments via deductions from their monthly salary, over a period, such as twelve months. Such a scheme can help staff secure a property without incurring financial difficulty leading to debt and it can also help companies recruit and retain staff.

## WIDER USE OF DEPOSIT BOND SCHEMES

The Bond is an agreement between a local authority, the landlord or letting agent and the incoming tenant. It is not a transfer of cash, but a written guarantee issued to the landlord on behalf of the tenant to cover the deposit for the property they wish to rent. The maximum value of the Deposit Bond is normally the monthly rent of the tenancy. It could cover the tenant's deposit for a certain period, for example two years,

in which time the tenant can save to cover their own deposit. Through the Deposit Bond Scheme, the landlord or letting agent has the benefit of knowing the deposit is backed up by the local authority, they have access to the advice should they need it, and the local authority can be more proactive in working with landlords and tenants to ensure that the condition of property is maintained. Furthermore, it can often mean that the tenant is more likely to be able to stay in a tenancy for a longer period.

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## AWARENESS RAISING TO ALLOW TENANTS TO PAY THEIR DEPOSIT IN INSTALMENTS

In the insured scheme the deposit can be protected based on the total amount of the deposit the landlord expects to receive for the tenancy over its life and ensure that the instalments are detailed in the

tenancy agreement. Through the custodial scheme, landlords can give the 'amount stated on the tenancy agreement' as the total amount of the deposit they expect to receive for the tenancy over its life, and the 'amount to protect' as the total amount they have already received. Landlords can then top up the deposit with each instalment once received.

Additional measures to support tenancy deposits and a passporting system...

## REQUIREMENT TO HAVE AN INVENTORY

An inventory is a listing of all the contents of a property and a record of the condition of each item as well as the condition of the property itself.

If the tenant has agreed the inventory, this reduces the potential for a dispute to arise at the end of the tenancy speeding up the end of tenancy process. In a deposit passporting scenario this would help to ensure that the end of tenancy process is quicker and straight forward to resolve.

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## LEGAL REQUIREMENT TO HAVE A WRITTEN TENANCY AGREEMENT

A written tenancy agreement protects the landlord's property and ensures that landlords and tenants understand their rights and responsibilities. The agreement can be used to stipulate the periodic

inspection schedule ensuring that the tenant has written notification and is given appropriate notice. This will help to maintain the condition of the property throughout the tenancy and help to reduce disputes and costs for tenants at the end of the tenancy that will allow them to retain more money and move quickly.

## ENSURE UNIVERSAL CREDIT IS ADEQUATE AND MORE EFFECTIVE

To ensure Universal Credit is adequate and more effective and landlords and letting agents have more confidence to offer tenancies to those receiving it, the UK Government should do three things. Firstly, giving tenants the option to have the housing element paid direct to their landlord. Secondly, allowing

all Universal Credit claimants to choose whether to receive payment monthly or twice monthly to assist with budgeting. Thirdly, review the waiting period at the beginning of a claim and/or whether the advance would be more effective in the form of a non-repayable grant rather than a loan to help reduce rent arrears and the negative knock-on effects this can have for tenants and landlords.

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## RESTORE AND RETAIN LHA RATES

The UK Government must restore and retain Local Housing Allowance (LHA) rates to at least the 30th percentile to cover the average cost of rents in the lowest third of local markets. Current rates have not kept up with the lowest third of market rents in many areas, due to the freeze in April 2021, leaving a shortfall for a significant number of renters. There are two main benefits to raising LHA rates. Firstly, it will more accurately reflect the cost of renting. Secondly, it will improve recipient's ability to obtain good

quality and well managed accommodation. Many people lose their homes when the rising pressure from high rents and low incomes becomes too much. By increasing LHA rates, it will provide a greater safety net for anyone who loses a job or falls ill. It will also mean that for most private renters who are reliant on housing benefit to pay their rent, there will be more properties in their area that they can afford. Ultimately, this will make more homes affordable to renters and ensure landlords and letting agents have more confidence to let to people in receipt of help with their housing costs through the welfare system.

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## INCREASE SOCIAL HOUSING

The long-term solution to address the lack of affordability in the private rented sector is to ensure that more social housing is built to reduce housing need. The demand for social housing has far outstripped availability, meaning that many people

who most need help with affordability now live in the private rented sector. To improve their circumstances and ensure that renting is more affordable and secure for renters in all tenures, the UK Government must commit to a significant programme of building social housing.

## AVOID RENT CONTROL

Evidence tells us that rent controls are unable to effectively regulate rent levels. They are more likely to cause the private rented sector to shrink and will not benefit vulnerable tenants. With a shortage of supply landlords will be able to select the most attractive tenants, pushing vulnerable, low-income

households towards rogue and criminal landlords. Fundamentally, landlords do not increase rents for the sake of it. Where rents have risen, the recent increases in costs and legislative requirements that landlords face, along with an array of tax changes have placed additional financial burdens on landlords.

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## REVIEW OF LANDLORD TAXES

HM Treasury must launch a review of all taxes relating to private landlords. Investment is stalling because the phasing out of tax relief on mortgage interest for landlords, the additional SDLT surcharge on buy-to-let property, changes to the Wear and Tear rules and the repercussions of the Tenant Fees Act banning letting agents from charging fees to tenants means that landlords costs have significantly increased, and many landlords can no longer make ends meet. Additionally, many landlords

and letting agents worked hard throughout the COVID-19 pandemic to support tenants by offering rent deferrals and negotiating rent reductions as well as changing their business models, but they cannot provide this type of financial assistance indefinitely. Through a review of taxation, the UK Government will be better placed to introduce policies that reduce costs for those wishing to invest in the private rented sector, which in turn will help reduce rent for tenants, help lead to longer-term tenancies and make it more affordable for renters.

# SUPPORT THE SECTOR TO REDUCE ITS CARBON FOOTPRINT

Improving the energy efficiency of homes across the country is not only important because it will help the UK reduce its carbon footprint, but it will also help to bring down the cost of monthly bills for tenants. However, without providing landlords with incentives and access to sustained funding, it is unlikely that energy efficiency targets for the private rented sector and a reduction in emissions across the property sector will be met.

The Department for Business, Energy and Industrial Strategy needs to set a long-term goal with incremental objectives to a property rather than seeking to meet one-off targets. For instance, for the private rented sector, it is only since April 2020 that rules came into force to ensure all private rented tenancies must meet Energy Performance Certificate (EPC) Band E, but the UK Government has now proposed going to Band C by 2025.<sup>7</sup>

Under the proposals for all new tenancies to be EPC Band C by 2025, a simplified exemptions regime and additional financial support must be made available otherwise the measures in their current form, will not be achievable and would mean reductions in the supply of rented property available.

## KEY RECOMMENDATIONS

The Department for Business, Energy and Industrial Strategy must move away from a one-size fits all policy and develop energy efficiency proposals that work with the different age, condition, and size of properties. This way the UK Government can target grants and funding support based on the archetype of a property rather than its tenure.

The UK Government should set out a plan for energy efficiency improvements that are linked to the recommendations on an EPC. This would provide a clear plan of action for landlords and homeowners, which demonstrate the most suitable route to a warmer home, regulatory compliance and zero carbon, in an appropriately staged way.

Reform the Green Homes Grant scheme so the measures are extended to include more home improvements and the value of the grant is increased from £5,000 to £10,000.

Use tax breaks to incentivise landlords to finance energy efficiency improvements. This could include, making energy improvements exempt from VAT, offering lower rates of Council Tax for properties that have been made more energy efficient or introducing an adjustable rate of property tax tied to energy performance.

The UK Government should be doing more to support private landlords by reintroducing the Landlord's Energy Saving Allowance (LESA) and extending it to include anything contained within the Recommendations Report of an EPC to help landlords with the cost of energy efficiency improvements to their properties.



SECTION 2

# Consumer protection



## PROPOSALS TO REQUIRE PRIVATE LANDLORDS TO BELONG TO A REDRESS SCHEME

To strengthen the rules for consumers, membership of a redress scheme should be a requirement for landlords who are self-managing property only. This is because those landlords who do not fully manage property often have other jobs and are not

renting out their property full time. They are unlikely to have either a complaints procedure in place or the infrastructure comparable to a letting agent or a landlord who is managing property on a full-time basis when dealing with grievances.

### EXTEND REDRESS MEMBERSHIP TO LANDLORDS WHO SELF-MANAGE PROPERTY ONLY

The requirement should be limited only to those landlords who do not use an agent to let and manage their property. This is because the letting agent is already required to register with a redress scheme and therefore the consumer has access to independent redress.

#### Additional measures...

### ENVIRONMENTAL HEALTH OFFICERS TO ENFORCE

The requirement for letting agents to be a member of a redress scheme is enforced by Trading Standards, but the requirement for self-managing landlords to be a member of a redress scheme should be enforced by Environmental Health Officers. Local authorities are responsible for the health and safety of properties in their area through the Environmental Health Department.

Most disrepair issues that a landlord is legally responsible for fixing will fall under the responsibility of Environmental Health, and in these cases, tenants would need to apply to the local Environmental Health Department for an inspection of their home. Conversely, the issues that Trading Standards Officers have competency to deal with mean they are unlikely to encounter self-managing private landlords (on a regular basis) whereas Environmental Health Officers will deal with landlords directly.

Wider considerations...

## A STREAMLINED REDRESS PROVISION IN HOUSING

The UK Government should create a single-entry point (one ombudsman portal for housing related complaints) for consumers to engage with the redress process and ensure that the redress schemes are all operating to the same criteria.

The entry point should have the capacity to redirect the consumer to their agent to exhaust the agent's

formal complaint proceedings or direct the issue to the relevant ombudsman. Consumers want simple, quick and effective redress. A single ombudsman portal would allow for a clear and simple system for consumers to raise complaints about their home.

Ensuring that the redress schemes are all operating to the same criteria would guarantee that all the schemes' members are abiding by the same professional standards and the schemes are adjudicating against members in the same way.

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## EXPLORE AUTOMATIC COMPENSATION

This is an area that Ofcom have introduced to protect telecoms customers. Under the scheme broadband and landline customers can get money back from their providers when things go wrong without having to make a claim. Customers are compensated automatically by providers for slow repairs, missed appointments and delayed installations, which in-turn means credit on a customer's account without having to ask. A similar scheme could be set up for the private rented sector to ensure that consumer complaints and issues are dealt with within a certain time frame.<sup>8</sup>

## EXPLORING THE MERITS OF A LANDLORD REGISTER

Central government should take the lead in funding, developing and running the national landlord register, whilst working in partnership with local authorities.

### The purpose of the landlord register...



#### INCREASE ENFORCEMENT

Having accurate information would enable better targeting of enforcement and allocation of resources locally.



#### IMPROVE ENGAGEMENT

Data from the new register would enable the UK Government and local authorities to better engage with landlords.

### Additional measures...

- It should be a national landlord register and a property register
- Provide landlords with a registration number
- A landlord cannot advertise a rented property without a registration number
- Connect the register with the Database of Rogue Landlords and Property Agents
- The register should be running centrally but accessed and enforced by local authorities
- A registration fee to be charged to cover the administration of the scheme
- If the landlord sells the rented property, they must come off the register
- Search the register via rental property postcode or landlord registration number
- Ensure a redacted version of the landlord's address is viewable
- Adequate fines for renting out property without being registered

This would also allow for enforcement across borders in Scotland, Wales and Northern Ireland where landlord registers are currently in existence.

### Wider considerations...

Information landlords should be required to provide to the register:

- Full name
- Date of birth
- Address, email address, telephone numbers, including mobile telephone numbers
- Company registration number if the landlord is a company
- Name, address and contact number of any agent acting on the landlord's behalf
- Name and contact details of any joint owners
- Property addresses

#### LANDLORDS SHOULD BE REQUIRED TO PASS A FIT AND PROPER PERSON TEST

The test should include landlords providing information that they have not committed fraud, or violent or drug related offences, evidence of no discrimination in any business activity and information showing that they have not broken any other laws in relation to housing.

#### EXPLORE REMOVAL OF LICENSING SCHEMES

Through any introduction of a national register of landlords, the Department for Levelling Up, Housing and Communities should review the existing rules for local authority licensing under Housing 2004 and explore the removal of these powers.

## OPEN DATABASE OF ROGUE LANDLORDS AND PROPERTY AGENTS

The Database of Rogue Landlords and Letting Agents was introduced in April 2018.

Local authorities can place landlords and letting agents who have committed a Banning Order offence (or received two or more civil penalties as an alternative to prosecution) on the Database for a minimum of two years. The Database is only available for local authorities and the UK Government to monitor the worst offenders.

The UK Government must widen access to the Database and make it publicly available to allow:

- Sitting tenants and potential tenants to vet landlords and letting agents
- Landlords to check letting agents
- Letting agents to check landlords
- Letting agents to use the Database when recruiting staff and vetting potential employees
- Membership bodies to have access for enforcement purposes

It will also help National Trading Standards Estate and Letting Agency Team (NTSELAT), and the redress schemes to join up enforcement.

### Additional measures...

- Include fully managing landlords and property agents who are expelled from a redress scheme
- Access portal should require users to enter their postcode and property number, this will ensure that personal details are not required
- Ensure a redacted version of the landlord/agent's address is viewable
- Existing tenants should be able to view the landlord/agent's full name
- Landlords/agents to disclose to existing or prospective tenants if they're on the Database
- Full details of the offence a landlord or agent has been convicted of should be viewable, including nature of the offence
- Landlord/agent should remain on the Database as long as the conviction remains unspent and in line with the Rehabilitation of Offenders Act<sup>9</sup>
- Landlords and agents who fail a standardised fit and proper person test should be included on the Database

### Wider considerations...

#### INCLUDE ESTATE AGENTS IN THE DATABASE

Many letting agents also work as sales agents and are therefore regulated under the Estate Agents Act 1979. Consequently, a ban under the Act should

constitute a Banning Order offence under the Housing and Planning Act 2016. Without combining the lists there is a real danger that a banned sales agent could work as a letting agent or vice versa which will do little to improve the standards or perception of the industry.

## PROFESSIONALISE LETTING AGENTS TO BENEFIT LANDLORDS AND TENANTS

Full mandatory government regulation of lettings and sales agents is the quickest and most effective method to eliminate unprofessional, unqualified and unethical agents from the property sector.

There is no statutory regulation to ensure agents are suitably qualified. Additionally, agents who are not

members of a professional body do not have to meet minimum competency standards.

The UK Government should implement the recommendations of the Regulation of Property Agents (RoPA) Working Group Report.<sup>10</sup>

### WHAT REGULATION SHOULD LOOK LIKE:

#### INDEPENDENT REGULATOR

- Licence to operate granted by the Regulator
- Meet legal obligations, e.g. redress, Client Money Protection and registration with HMRC for anti-money laundering supervision
- Pass a fit and proper person test
- Be appropriately qualified

#### MANDATORY QUALIFICATIONS

- Licensed agents (individuals) qualify to minimum level 3
- Company directors and Managing Agents qualify to minimum level 4

#### CODES OF PRACTICE

- Overarching code set in statute
- Regulatory codes specific to different aspects of property agency

#### Additional measures...

- A new public body should be established to undertake the role of Regulator or appoint Designated Regulatory Bodies to carry out its functions
- The work of the Regulator should be funded by firms and individuals it regulates
- Regulator to impose Continuing Professional Development (CPD) requirements

#### Wider considerations...

#### LIST 'RESERVED ACTIVITIES'

To clarify the functions of a property agent, the UK Government should create a list of reserved activities, e.g. conducting viewings, market appraisals and providing direct advice. This will also help to create a level playing field between letting agents and self-managing landlords.

#### WIDEN THE SCOPE TO INCLUDE LANDLORDS

Landlords who manage property other than their own should be considered as part of the regulatory programmes for letting agents.

# RIGHT TO RENT

The Home Office introduced Right to Rent checks with the aim of making the UK an unviable environment for people who try to live here illegally.

As a private tenant in England, if the tenancy began on or after 1 February 2016 and the property, they are renting is their main home, they must prove that they have a legal status to live in the UK.

## COVID-19 PANDEMIC

Due to the pandemic and social distancing requirements the UK Government introduced the following temporary changes for adjusted checks on 30 March 2020 and remain in place until 5 April 2022:

- Checks can currently be carried out over video calls
- Tenants can send scanned documents or a photo of documents for checks using email or a mobile app, rather than sending originals
- Landlords should use the Home Office Landlord Checking Service if a prospective or existing tenant cannot provide any of the accepted documents

## KEY RECOMMENDATIONS

To reduce the administrative burden on landlords, the Home Office should introduce enhanced digital Right to Rent checks—building on the changes introduced as part of the adjusted check process.

Through enhanced security, letting agents should be able to conduct the checks remotely.



## IMPROVE AND INCREASE LOCAL AUTHORITY ENFORCEMENT

Councils can play a crucial role in driving up standards in the private rented sector, but more needs to be done to resource local authority enforcement teams rather than creating new legislation that won't be enforced.

Key recommendations...

### 1. MORE FUNDING

There needs to be more funding for local authorities to ensure they have the resources needed to tackle poor quality housing. Additionally, local authorities should be required to report back on the number of inspections and any follow up enforcement action taken as a result including how much they have spent and any outcomes such as the general condition of properties in their areas.

### 2. APPRENTICESHIP SCHEMES FOR LOCAL AUTHORITIES

The UK Government should work with local authorities to develop an apprenticeship scheme to increase the number of local authority enforcement officers, resulting in more property inspections.

### 3. JOINED-UP WORKING

Where enforcement does take place there needs to be better joined up working between local enforcement agencies. For example, within local authorities, planning departments must liaise with environmental health teams to ensure landlords can comply with the requirements of both Planning and Environmental Health.

### 4. ENSURING COUNCILS COMPLY WITH THE LAW AND STATUTORY GUIDANCE

The Housing Act 1996 (section 175) specifies

Local authorities should receive, and allocate, adequate long-term funding to enforce the current regulations affecting rented property. These include both recently created and long-standing laws.

that anyone served with a valid Section 21 notice is threatened with homelessness meaning local authorities must take reasonable steps to help prevent them from becoming homeless. Furthermore, the statutory Homelessness Code of Guidance says it should not be considered "reasonable for an applicant to remain in occupation until eviction by a bailiff," but most councils are still advising tenants to remain in their home until they have been forcibly evicted, with tenants routinely cautioned against leaving beforehand as they could be found intentionally homeless. This poor practice means tenants do not receive timely help and face increased costs because of the delay in landlords recovering possession. To ensure that the rental sector provides security and stability for all, more needs to be done to force councils to comply with their statutory duties and are not ignoring official Government guidance.

### 5. REFORM HHSRS

The method of assessing private rented housing conditions under the Housing Health and Safety Rating System (HHSRS) should be reviewed with a view to changing it to an easier to use set of "Fit for Human Habitation" criteria.

The HHSRS is too complicated and poorly understood by tenants, landlords, agents, and enforcement officers. The HHSRS does not provide practical assistance for landlords and agents to know what is expected of them in relation to the main hazards under HHSRS. A single standard is needed that is easy to understand and implement for tenants, landlords, letting agents and local authorities.

## MONEY LAUNDERING SUPERVISION TO INCLUDE ALL LETTING AGENTS

The sheer size of the property market in the UK and the high value of property assets means that extremely large amounts of criminal funds can be 'cleaned' in a single transaction.

The sales and lettings sectors, property auctioneers and high value dealers are all attractive targets for money laundering. Both small and large agencies are susceptible to criminal activity.

Whilst the property sector remains unregulated and without minimum entry standards to operate, the industry is vulnerable to attack.

Unlike estate agents, letting agents hold a significant amount of money from deposits, rents, service charges and ground rent which highlight the opportunities for cash payments to be made. We know of one letting agent who had a tenant explain that they could not pay through a bank account but was able to pay 12 months' rent in advance, in cash. This amounted to £26,000. Although it is best practice to do so and letting agents in England must carry out Right to Rent checks, they have no statutory obligation to carry out Customer Due Diligence. Alarming, in circumstances as outlined above, letting agents would not be committing a criminal offence by not submitting a Suspicious Activity Report (SAR).

### Key recommendations...

#### REMOVE THE THRESHOLD FOR LETTING AGENTS

Letting agents should be included fully within the Money Laundering Regulations to reduce the risk of cash payments being used to 'clean' dirty money. The UK Government should remove the EUR 10,000 monthly rent threshold and set this at zero to create consistency and cover all tenancies let in the private rented sector.

On 20 December 2019 the UK Government introduced the Fifth Money Laundering Directive into UK law as an amendment to the existing Money Laundering Terrorist Financing and Transfer of Funds Regulations 2017.

The scope of regulated businesses in the property agency sector was expanded to include the letting agency sector for high value transactions with a monthly rent of 10,000 euros (or equivalent amount) or more.

#### INTRODUCE A REGISTER OF OVERSEAS ENTITIES

Currently, criminal funds can be concealed and made to look legitimate through an untraceable offshore 'company' and subsequently the purchasing of UK property. In October 2021, files in the so-called Pandora Papers revealed how wealthy individuals can shield their income and their assets from taxation through hiding them in "tax havens". If the UK Government is serious about tackling economic crime, they should accelerate plans to implement a new beneficial ownership register of overseas entities that own property in the UK. <sup>11</sup>





SECTION 3

# Access to justice

## CONSIDERING THE CASE FOR A HOUSING TRIBUNAL

The majority of landlord and tenant disputes (including possession cases and disrepair) are currently split between the County Court and the First-tier Tribunal (Property Chamber).

A specialist Housing Tribunal would allow for an easier and streamlined process for housing claims,

which will subsequently provide faster justice, and make the process more cost effective.

A new Housing Tribunal would take over a large range of cases currently heard by the County Court, property tribunal and Magistrates' Court.

## WHAT WOULD A HOUSING TRIBUNAL LOOK LIKE?

### POWERS

The Housing Tribunal should be given the existing powers of both the County Court (claims for possession and disrepair in respect of rented dwellings) and First-tier Tribunal (Property Chamber) to ensure that wherever possible persons bringing proceedings before the Tribunal should be able to have their matters dealt with in a single process.

### APPEALS

- Appeals on a point of law from the Housing Tribunal would then go to the Upper Tribunal and then the Court of Appeal. Appeals would require the Tribunal's permission.
- Homelessness and statutory appeals currently heard by County Courts, and housing and homelessness related Judicial Review applications should be transferred to the Upper Tribunal.

### APPOINT SPECIALIST JUDGES

Appoint specialist judges for their knowledge and expertise in the property sector, as has been witnessed with the First-tier Tribunal (Property Chamber) in Scotland.<sup>12</sup>

### CASE MANAGEMENT

- Tribunal officers to be allocated cases rather than simply listing the case hearing. This would allow for mediation, or another means of resolving the dispute before a hearing.
- Introduce appointment, ticketing and promotion arrangements that would allow more experienced members to undertake more complex cases.

### APPLICATIONS

- Landlords will be able to apply to the Housing Tribunal for eviction and repossession orders where they consider that they have grounds for eviction.
- Former tenants will be able to apply to the Housing Tribunal if they consider that their tenancy has been terminated unlawfully.

## LEGAL AID

Legal aid should be made available before the Housing Tribunal on the same basis as it is currently available before a County Court.

## ADVICE SERVICE

Access to “on-the-day” free emergency face to face legal advice and advocacy to anyone facing possession proceedings.

## LOCATION

The Tribunal can hold hearings in existing court buildings but also local public buildings, such as schools, making it physically easier to access and reduce the pressures on busier court locations.

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## BENEFITS OF A HOUSING TRIBUNAL

Use mediation and enhanced Alternative Dispute Resolution procedures particularly for cases in respect of property disrepair.

Enable the use of the in-house surveyors and inspectors, thereby reducing the need for costly, external experts’ reports to be obtained.

Integrate with the new online courts so that the majority of paperwork and case management can be dealt with online.

The more informal operation of a Tribunal, compared to a County Court for example, would make it much less daunting for tenants and landlords allowing easier access for unrepresented parties.

## IMPROVING EFFICIENCIES TO THE EXISTING POSSESSION PROCESS IN THE COURTS

Delays are reported at every stage of the possession process, and although landlord possession action has been steadily decreasing since 2014, the time taken from claim to repossession is increasing. The median average time from claim to landlord repossession has increased to 68.4 weeks, up from 20.1 weeks in 2019.<sup>13</sup>

When landlords and tenants are involved in a housing possession court case, it is important that they can identify issues and have the additional resources necessary to help resolve them.

Within the court system there are typically three types of cases...

1. Cases may relate to a landlord client taking action to recover possession of their property via a County Court under Section 8 or Section 21 of the Housing Act 1988.
2. Other forms of residential property disputes via the First Tier Tribunal (Property Chamber).
3. Agents and their Landlords and tenants can also take legal action to recover moneys owed via the County Court Money Claims Centre (small claims court) where, for example, a landlord can recover unpaid rent arrears, and a tenant can seek financial compensation for a failure to carry out a repair.

Outside of the court system, letting agents will experience dispute resolution in two ways:

Through their own practice as they seek to prevent disputes arising through communication in their daily interaction with landlords and tenants, through negotiation and conciliation where appropriate or through their complaints handling process.

They will have experience of alternative dispute resolution, specifically aimed at preventing disputes from escalating to the courts system. Such services include the deposit dispute service provided by each of the three UK Government-approved deposit protection schemes, and The Property Ombudsman or Property Redress Scheme as a means for tenants to seek redress if they are unhappy with their agent's service - the latter also provides a dedicated tenancy mediation service for landlords to help resolve issues and prevent cases needing to go to court.

We believe action across ten areas can help enhance dispute resolution and improve the possession process...

## 1. COMMUNICATION AND REPORTING

The start of a tenancy, where relationships are formed provides a valuable opportunity for landlords, tenants and agents to share important information and set strong foundations for an open and honest relationship. At this point clear communication and a written tenancy agreement can make a notable difference to the likelihood of successful dispute resolution later on. Professional agents will take this early opportunity to communicate clearly about landlord and tenant rights and obligations, including the potential consequences of non-compliance. At this stage landlords and tenants should be provided with details of how to raise issues and the importance of reporting concerns at the earliest available opportunity. Managing expectations in this way helps prevent disputes arising from misunderstandings or a lack of awareness as well as providing information to report issues and concerns so they can be resolved at the earliest available opportunity.

## 2. NEGOTIATION AND CONCILIATION

Once the tenancy has started and concerns or issues have been brought to the attention of the agent, as soon as this happens, and where it is appropriate given the type of case and circumstances of all parties, a professional letting agent will attempt to negotiate, or conciliate between the parties in order to resolve the disagreement and prevent a dispute from developing further. In some cases, an agent can negotiate an outcome that both parties are happy with, for example where a tenant has rent arrears but cannot clear the entire amount, an agent may negotiate a rent repayment agreement to enable the tenant to pay their arrears off in instalments over time.

## 3. COMPLAINTS

Ensuring that a landlord and letting agent has a robust complaint handling process, presents an important and valuable mechanism for resolving a dispute before it escalates and moves closer towards the court system. Our conversations with members highlight the importance of having trained staff with the right skills to investigate complaints properly to help inform an impartial judgement based on careful consideration of the facts of the case and having regard to any legal and professional requirements and expectations.

## 4. REDRESS SCHEMES

Existing schemes can help resolve disputes between letting agents and both landlords and tenants:

- The Property Redress Scheme which provides an impartial property-related consumer complaints and redress service as well as dedicated tenancy mediation to help resolve tenancy issues and prevent cases needing to go to court.
- The Property Ombudsman provides consumers with an alternative route to redress outside of the court system and professional agents will optimise the opportunities to prevent cases reaching this far by ensuring their internal complaints handling system is delivered by skilled and appropriately trained staff.

## 5. DEPOSIT SCHEMES

Tenancy Deposit Scheme and Deposit Protection Scheme's free dispute resolution service if a tenant disagrees with their landlord about how much of their deposit should be returned to them.

## 6. ESCALATED COMPLAINTS AND MEDIATION

Even when all attempts to resolve an issue have been unsuccessful or by the time an agent is made aware of the problem it is too late to attempt any form of negotiation or conciliation between parties, letting agents still have an opportunity to help landlords and tenants resolve disputes outside of the courts system. At this stage agents will inform parties of their options for accessing a formal mediation service where an independent third party will work with them to find a solution. If all parties agree then formal mediation should be accessed before the start of the legal process for reprocessing a property by serving notice.

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## 7. NOTICE GIVEN

If the dispute has not been resolved and the landlord wants the tenant to leave the property, they will give the tenant notice using one of the mandatory grounds outlined in this document. If the tenant does not leave by the date specified in the notice, the landlord can take the case directly to court.

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## 8. PROVIDE ONLINE LEGAL SUPPORT AND ADVICE FOR TENANTS

This should be done via telephone, email or virtually and be delivered via a fully funded ACAS style model of dispute resolution which can ensure that letting agents, landlords and tenants can access impartial legal advice, information, and support to help them resolve dispute without the need to enter the court system. This would be particularly important to ensure tenants have unfettered access to impartial third-party support where the balance of power could be compromised by the letting agent's binding relationship with their landlord client, causing tenants to worry that an outcome will be skewed in favour of the landlord.

## 9. MANDATORY PRE-ACTION CONSIDERATION OF ALTERNATIVE DISPUTE RESOLUTION

Compelling the prospective complainant to demonstrate, where it is appropriate and possible, that all reasonable efforts have been made to resolve the dispute via alternative means before the court process can be utilised would potentially lead to a positive culture shift where dispute prevention and alternative dispute resolution interventions are employed as common practice wherever possible. If consideration of alternative dispute resolution were to be mandatory as part of a pre-action protocol it would be important to ensure that all potential parties know what it is, where to go and how to find it. Letting agents are likely to include a mediation clause in their management agreements with landlords that would require an earnest assessment and consideration of the appropriateness of alternative dispute resolution to resolve issues before action reaches the courts.

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## 10. COURT HEARING

Use online platforms and community buildings if cases need to be heard face to face. The First Tier Tribunal for Scotland's Housing and Property Chamber demonstrated that holding case management discussions and evidential hearings via tele- and video conferencing during the Covid pandemic is both feasible and beneficial, permitting all parties to participate remotely and maintaining case progression where possible. While it will not be possible to deal with all cases in this way, Propertymark sees no reason why these methods could not continue to be used alongside traditional in-person hearings and adopted in any new system for England and Wales.

## AUTOMATIC RIGHT TO A HIGH COURT ENFORCEMENT OFFICER (HCEO)

Providing landlords with an automatic right for a High Court Enforcement Officer (HCEO) to enforce Court Possession, would speed up the possession

Possession Orders issued by the County Court are enforced by County Court Bailiffs (CCBs) and can only be enforced by HCEOs if leave is granted by either the County Court or High Court, which Judges are advised against doing.

Ultimately, possession proceedings being escalated to the High Court are at the discretion of County Court Judges, and permission is not always given; creating inconsistencies across the country on how Judges deal with these applications.

Given that the time endured for a CCB to attempt eviction can take weeks, allowing an automatic right to an HCEO would result in landlords' properties being returned to them much sooner.

process for landlords attempting to regain possession of their property.

When and if leave is granted, the landlord will need to apply to the High Court for permission to issue a Writ of Possession, which will then be executed by the HCEO, and the landlord will regain their property.

This can cause significant hardship for landlords and letting agents, particularly financially with the loss of rental income during this time.

## BENEFITS OF INTRODUCING AUTOMATIC RIGHT TO A HCEO

By removing the need for judicial permission for landlords to access HCEOs, the number of instructions for enforcing a Writ of Possession for HCEOs will increase.

Even if waiting times for County Court Bailiffs (CCB) decrease, it is likely that enforcement conducted by an HCEO to still be the quicker option, as they work privately and are paid on results as opposed to being employed directly by the Courts, as CCBs are.

Many landlords feel that due to the need for judicial permission as the process currently stand, they are not able to have the possession enforced by an HCEO as this is ultimately down to the Judge's discretion.

Allowing landlords access to HCEOs without judicial permission will take away strain from CCBs, which will contribute to a decrease in waiting times for those wishing to instruct a CCB.

Recent evidence from the High Court Enforcement Officers Association when surveying court users whether they would support a change in the law to all HCEOs to enforce judgments and recover debts

under £600 show that 97 per cent of courts users are concerned about the backlog of cases in the County Court with 86 per cent experiencing delays.<sup>14</sup>

## PRIVATISE COUNTY COURT BAILIFFS (CCB)

Waiting times for Privatised County Court Bailiffs (CCB) differ drastically throughout England and Wales depending on geographic location and need.

A lack of CCBs in many areas attributes to delays in enforcing a Possession Order.

### Key recommendations...

To further improve the situation, we believe that the county court bailiff system should be privatised, as is the case with High Court Enforcement Officers.

This would relieve the Ministry of Justice from funding the service and a fee could be charged to prospective service suppliers. There would be no loss to tenants with the same level of oversight as already exists in the High Court.

- The process could be outsourced to providers who work to clear guidelines relating to qualification and certification of private bailiff officers.
- Through a tendering process the UK Government could grant licences to certified private bailiff providers.

## DIGITISE POSSESSION CLAIMS

The Possession process could be improved through digitisation in further areas than those on Possession Claim (PCOL) currently.<sup>15</sup>

### REFORM POSSESSION CLAIMS

Mandatory notices for eviction should be integrated into the PCOL system. This would not only make the process simpler for the user, but arguably would be more cost effective, due to online systems taking away responsibilities of the court workforce through the application being processed through PCOL rather than manually. Furthermore, the court issue fee when using PCOL is cheaper, and the service is generally more accessible than traditionally making a claim at the County Court, as it can be accessed on any day at any time.

### UPDATE MONEY CLAIM ONLINE (MCOL) PROCESS

The MCOL process would be improved by being updated. The existing MCOL website presents itself as outdated. The user guide looks contrastingly modern in comparison.<sup>16</sup>

Overall, the website is not fit for purpose in its current format. Many GOV.UK websites have undergone an update in beta development, MCOL should be integrated into this to ensure an improved user experience.<sup>17</sup>



## REPLACING SECTION 21: MAKE ALL GROUNDS MANDATORY

If Section 21 is to be abolished, the only workable alternative is to strengthen all grounds for possession and make them all mandatory.

Landlords must have a simpler route to eviction than what is currently provided under the regime for Section 8 of the Housing Act 1988. There are a number of key grounds that do not exist, such as a landlord wanting to sell a property and other grounds do not work as they should. For example, the level of evidence required makes addressing the problem of anti-social behaviour from tenants difficult to prove.

Using Section 21 landlords are guaranteed possession for issues such as rent arrears and antisocial behaviour. Additionally, the length of time it takes from a private landlord applying to the courts for a property to be repossessed to it happening means that the problems with using Section 8 are compounded by a court system that is not fit for purpose. Furthermore, by allowing grounds dealing with rent arrears and antisocial behaviour to remain at the discretion of the Judge, this will do little to remedy landlord confidence in the sector.

By making all grounds mandatory, it is in the spirit of the UK Government's intentions as tenant's will not be evicted unless they have been provided with good reason to do so. In addition to this, many of the grounds for eviction can be dealt without a hearing where the ground is mandatory. This should reflect the current Accelerated Possession process, but with the addition of reasoning behind the eviction of the tenant.

In order for a decision to be made without a hearing, landlords should be required to provide certain types of evidence in addition to their online possession claim. This will also improve the court process and allow improved timescales as it will take away caseloads from the Courts.

## MANDATORY GROUNDS

### 1. Landlord or member of his/her immediate family require the property for their only or principal home (two months)

- The existing Ground 1 of Schedule 2 of the Housing Act 1988 must be widened to allow possession of a home for a landlord's family member to live in.
- Landlord or family member must intend to live in the property for a period of at least three months with a written statement provided as evidence of the intention to do so.

### 2. Landlord wishes to sell the property (two months)

Landlord must demonstrate their intention to sell by evidencing advertisement of the property on a portal, with an estate agent or letter from a solicitor.

### 3. Mortgage lender wishes to repossess the property (two months)

Landlords should not be required to provide prior notice to the tenant of a mortgage lender's intention to repossess the property. Currently, this ground can only be used if notice has been given in advance meaning mortgagees are reliant on their borrowers having given notice properly. For this reason, most mortgagees do not use this ground and use Section 21 instead.

#### 4. Rent is unpaid, persistently delayed

- The rent arrears ground must be strengthened to ensure that repeat offenders are not allowed to play the system by paying off minimal arrears at the door of the Court.
- To reflect conditions set by mortgage lenders, after two months of rent arrears the ground should be exercisable. Where the arrears total less than one month, the court should be able to use its discretion. If a maximum of two occasions within a certain timeframe where a "pattern of behaviour" can be proven, the Court must grant a Possession Order. Once the Possession Order has been granted tenants would receive two weeks' notice to leave the property.
- Statements from the tenants rental account should be sufficient to evidence this ground.

#### 5. Tenant or a person living in or visiting the property has engaged in anti-social behaviour in, or in relation to, the property (24 hours)

Guilty of conduct causing or likely to cause a nuisance to people in the area, the landlord or anyone managing the property or issued with an Anti-social Behaviour Order.

#### 6. Tenant has been convicted of a serious offence in or around the property, against someone living in or around the property, or against the landlord (24 hours)

Guidance must be provided for stronger clauses in tenancy agreements to evidence poor tenant behaviour.

#### 7. Tenant behaviour has caused nuisance or annoyance in the locality or to the landlord (14 days)

- This ground should be used if the tenant, or someone living with the tenant, or visitor of the named tenant or occupier has caused alarm, distress, nuisance or annoyance to the people around them by being noisy, destructive or verbally abusive, or by failing to control pets and evidence can prove this.
- Landlords should be able to evidence that they have investigated the complaint about their tenant's behaviour and written to the tenant to explain that their behaviour is causing concern and asking they modify it.

#### 8. Domestic Abuse

- Preferential tenancy rights must be given to the victim of domestic abuse and landlords should be able to evict only a tenant who has perpetrated abuse rather than the whole household.
- This ground must be drafted in consultation with specialist domestic violence and abuse services to ensure risks and costs to victims are not unintentionally increased.

#### 9. The tenancy was granted as a result of a false statement or statements provided by the tenant or someone on their behalf (nil)

The tenancy agreement is subsequently voided because of fraud.

10. Landlord has received notice from the Home Office that a tenant does not have the Right to Rent (14 days)

Landlord to evidence the Notice of Letting to a Disqualified Person from the Home Office.

11. Neglect or wilful damage to the property by the tenant or occupant (14 days)

Landlord to evidence where a tenant has repeatedly prevented them from maintaining legal safety standards.

12. Tenant (or other occupant) has ill-treated furniture for use under the tenancy leading to its deterioration (14 days)

13. Reconstruction, demolition, redevelopment or other works need to be carried out, but cannot go ahead with the tenant in situ (including refusal by the tenant for access to the property) (two months)

14. Prior notice has been given that the property is occupied as a holiday let for a set period (28 days)

15. Prior notice has been given that the property belongs to an educational establishment and let for a set period (28 days)

16. Prior notice has been given to a resident minister that the property may be required by another minister of religion (28 days)

17. The previous tenant has died, with the tenancy passing on to a new tenant who does not have the right to carry on with the tenancy (two months)

18. The accommodation provided is linked to a tenant(s) employment, which has come to an end (two months)

19. Tenant has abandoned or not occupying let property (14 days)

The tenant or a person to whom a sub-tenancy of the let property has been lawfully granted is not occupying the let property as their home.

20. Breach of tenancy agreement (14 days)

Where a tenancy condition (other than payment of rent) has been broken, the landlord may rely on this ground.

## FIXED TERM—NO STATUTORY MINIMUM

Propertymark does not think that fixed terms need to be set at a statutory minimum. This is because the private rented sector needs to be flexible for the benefit of the tenant and the landlord, but many fixed terms are currently set at a minimum of six months. Despite the minimum historical tenancy length being removed by the Housing Act 1996, many landlords still work to the previous rules by offering a minimum of six months tenancy.

The length of a tenancy should be stipulated by mutual agreement between the landlord and tenant. This ensures that the length of a tenancy is workable for both parties, creating flexibility and in keeping with current arrangements for mortgage lenders.

By dictating a minimum length, this takes away the much-needed flexibility and will disproportionately impact flexible groups such as transient and contract workers, and students. There are also many people who live in the private rented sector once they have sold their property and are waiting to move into the next due to a property chain and the situation of others within it. Setting an arbitrary minimum fixed term length will mean that those living in the private rented sector on a temporary basis will find it difficult to rent a property. An unintended consequence of this could be a halt in property churn, as homeowners have less options of where to live during the transition of a move. This may act as a deterrent to purchase where the vendor is in a property chain.

Furthermore, by default many in the industry already provide a minimum length for a fixed term. Landlords are often limited by terms set by their mortgage lenders. Most lenders require buy-to-let landlords to provide tenants with a six- or 12-month tenancy as standard in their mortgage arrangements (to reflect the original provisions of the Housing Act 1988 where an AST was either six months or 12 months

long). This also reflects the 'consent to let' where the property was purchased as the landlord's own residence but has since decided to let the property to tenants, and the mortgage lender is allowing the property to be let for a set period.

## FIXED TERM—RETAIN BREAK CLAUSES

The ability to include a break clause within a Fixed Term tenancy must be retained. Break clauses are beneficial as they typically provide flexibility for both parties within a tenancy and allow the landlord or tenant to end the tenancy agreement early during a fixed term. Many people use the private rented sector as a temporary measure while they save up deposits for their first home or renting property is often a choice for families who are likely to move due to job availability or education opportunities. Tenants need the flexibility and control of being able to move on short notice and not everyone wants to be tied down to a fixed term. Both landlords and tenants want and need flexibility.

To ensure clarity for the continued use of break clauses, the UK Government must provide clear guidance to landlords and letting agents on drafting correct break clause wording. Currently, the use of a break clause relies heavily on the specific wording. If a break clause contains complicated wording that is difficult to interpret, either party may face issues when trying to exercise their right to terminate the fixed term early. A consequence of this is that they can often lead to disputes. Tenants are often required to comply with certain preconditions before successfully exercising their right to end the tenancy. These can be difficult to prove but could be avoided by the use of clearly worded break clauses.

## IMPLEMENT A PILOT SCHEME

Due to the significant impact and change to the sector that would be introduced as a result of the UK Government's Renters' Reforms proposals, the UK Government must conduct a full pilot of the proposals to remove Section 21, mediation and a new possession process before rolling out the new reforms across the country. Through testing and learning this will provide better outcomes and ensure informed decision making.

A pilot scheme would mirror the way that other important legislation has been introduced for the

private rented sector, which was first trialled to measure its impact before being introduced fully.

Considering the importance of the UK Government's Renters' Reforms proposals, the UK Government can ensure the effective reform of tenancy law through plans to abolish Section 21 and strengthening repossession grounds for landlords by ensuring that a pilot of the new system is done over a substantial area with consideration taken for courts that currently struggle with the existing eviction process, before determining whether to proceed with the new system.

### PILOT CASE STUDY 1

## UNIVERSAL CREDIT IN ASHTON-UNDER-LYME

In April 2013, a jobcentre in Ashton-under-Lyne became the first-place claimants could seek access to Universal Credit, as the staged rollout of the UK Government's flagship welfare programme commenced.

Universal Credit is a single payment for each household, to help with living costs for those on a low income or out of work. Support for housing costs, children and childcare costs are integrated into Universal Credit. It also provides additions for people with a disability, health condition or caring responsibilities which may prevent them from working.

The pilot provided details about how claimants might respond to the changes introduced by Universal Credit and how systems could be scaled up to deal with the number and complexity of claimants Universal Credit would ultimately need to accommodate.

Due to the significance of the changes to the welfare system under Universal Credit it wasn't until December 2018 that Universal Credit was available to the full range of applicants in every Jobcentre across Great Britain.

## RIGHT TO RENT <sup>18</sup>

Right to Rent checks started as a pilot scheme in parts of the West Midlands in December 2014 before rolling out across England on 1 February 2016. The purpose of the pilot was to determine any potential issues with the scheme and to see how checking tenants' immigration status would affect the rental market before any national programme was introduced.

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## TRANSITION PERIOD

For the proposals to work the court system must first be given enough time to prepare for the incoming changes to eviction rules.

Landlords and letting agents will need a period longer than six months in order to familiarise themselves with the change in legislation.

Additionally, if changes are introduced, after a pilot scheme, the sector must be given at least a minimum of 12 months before the legislation comes into force.

During this time, landlords and letting agents will be able to familiarise themselves with the changes and the UK Government will be given sufficient time in order to conduct a full communications campaign to inform those working and living in the private rented sector.

The evaluation of the first six months of the scheme's operation was undertaken by the Home Office and assessed the impact on immigration enforcement outcomes; the compliance burden on landlords and agents; potential discrimination linked to the scheme; effects on vulnerable groups and impact on the housing market.

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## CASE STUDY

### PRIVATE RESIDENTIAL TENANCY SCOTLAND

The new private residential tenancy was introduced for new tenancies from 1 December 2017 by the Private Housing (Tenancies) (Scotland) Act 2016.

The Bill was passed by the Scottish Parliament on 17 March 2016 and received Royal Assent on 22 April 2016. The transition period from the legislation being passed to coming into force was 19 months.

- The Act provides comprehensive and robust grounds for repossession that will allow landlords to regain possession in 18 specified circumstances.
- Under the Act any existing short assured and assured tenancies continue, but new tenancies granted in the private rented sector from December 2017 are private residential tenancies.

Tenants who were already on a short, assured tenancy on 1 December 2017 their tenancy has continued as normal until they or the landlord decide to bring it to an end.



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