

Department for Levelling Up, Housing and Communities - Technical consultation on consequential changes to the homelessness legislation
Written response from Propertymark
January 2023

Background

1. Propertymark is the UK's leading professional body of property agents, with over 17,000 members. We are member-led with a Board which is made up of practicing agents and we work closely with our members to set professional standards through regulation, accredited and recognised qualifications, an industry leading training programme and mandatory Continuing Professional Development.¹

Overview

2. Following the publication of the Fairer Private Rented Sector white paper in June 2022, the UK Government is proposing to remove Section 21 of the Housing Act 1988. Section 21 is the mechanism in which a landlord can serve notice to a tenant for any reason and there is no defence against it in court. The proposed changes mean that all notices of eviction will have to be served under Section 8, which requires a "ground" for eviction to be cited. Some grounds under Section 8 are mandatory, meaning that there is no defence, and a judge must grant a possession order, for example if the landlord needs to move back into the property.
3. Other grounds of Section 8 are discretionary, which means that a judge can consider whether or not to grant a possession order, this can leave ambiguity for both landlord and tenant as they will not know until the court date whether the possession order will be granted or not. An example of a discretionary ground for eviction is if the tenant has damaged the property or if the tenant is in rent arrears.
4. As set out in the Propertymark's position paper 'The Future of Renting', if Section 21 is to be abolished, the only workable alternative is to strengthen all grounds for possession and make them all mandatory.² This will give reassurance to the landlord that they can regain their property if necessary but will also assist tenants. Currently a tenant may not be offered assistance to prevent homelessness if the ground for eviction is discretionary, if all grounds are mandatory then tenants will be supported to prevent homelessness by the local authority. Since the publication of the UK Government's White Paper 'A fairer private rented sector'³ to ensure landlords have the protections they need, there must be more mandatory grounds under the plans to reform possession proceedings so that they are comprehensive, fair, and efficient. Court processes can take several months and without mandatory grounds landlords could still be unable to evict tenants who break the tenancy terms. Under the plans to abolish Section 21 and reform Section 8, additional mandatory grounds must include: breach of contract, persistent late payment of rent, acquiring a tenancy by using false identification, damage over the amount of the deposit and tenant refusing access to property.

¹ <https://www.propertymark.co.uk/>

² <https://www.propertymark.co.uk/resource/future-of-renting.html>

³ <https://www.gov.uk/government/publications/a-fairer-private-rented-sector>

Questions

Option 1 – explanation

5. Local authorities would assess whether the applicant is threatened with homelessness (within 56 days) and, if so, accept a prevention duty. Applicants who have been served valid notice to leave a tenancy may or may not be considered threatened with homelessness, and the local authority would assess whether a prevention duty is owed. The prevention duty could be ended when any of the circumstances for ending the duty apply, including having secured that suitable accommodation is available for six months or more, or that 56 days has passed. If after 56 days the applicant continued to be threatened with homelessness, the local authority could extend the duty and continue taking reasonable steps to prevent homelessness or could end the prevention duty. This option would completely remove the specific requirements to accept and continue prevention duties that currently apply to section 21 notices and evictions.

Q1a: What will be the impact of option 1 on local authority resourcing? Please provide comments for your answer.

6. It is likely that there would be an increased demand on resources under option 1. This is because of two issues. Firstly, the burden on local authorities to make assessments on all cases before determining whether a prevention duty is owed. Secondly, the local authority is able to use discretion when deciding on whether or not to assist with the prevention duty and when deciding if the local authority is going to extend the duty at the end of 56 days. Although on the face of it, giving the power to end a duty at 56 days may seem like it would use less staff resources, it would likely use more resource in the long term due to the increased likelihood of a household becoming homeless if support is withdrawn.

Q1b: What will be the impact of option 1 on local authority caseloads? Please provide comments for your answer.

7. Option 1 could increase local authority caseloads, due to the increase in workload mentioned in the point above. If the local authority must make an assessment on whether or not to accept a duty and a further assessment on whether or not to continue a duty on each case, then this is likely to impact time and resources and therefore increase caseloads and back logs.

Q1c: What will be the impact of option 1 on the demand on time for local authority staff? Please provide comments for your answer.

8. As mentioned in the points above, the increased responsibility on homelessness case officers to make decisions on each case, before even reaching the point of providing assistance to prevent homelessness, will ultimately result in increased workload and therefore more demand on time. This will have the knock-on effect of affecting how many households can be assisted and the quality of assistance which could result in unsuccessful outcomes.

Q1d: What will be the impact of option 1 on homelessness prevention activity and success rates within local authorities? Please provide comments for your answer.

9. There will be three impacts from the implementation of option 1 on homelessness prevention activity and success rates within local authorities. Firstly, option 1 provides little reassurance for homeless households. The household would not know whether the local authority is going to accept them as homeless or not. Including the caveats “may or may not be considered threatened

with homelessness” and “the local authority could extend the duty” in this option means that it is left open to interpretation by local authorities and may mean that a homeless household will get a different response depending on which local authority they attend. Secondly, the lack of consistency means that landlords and tenants will be unsure of their rights how to proceed in the case of a valid notice. More guidance is needed to make it clearer and to formalise the decision-making process will give greater clarity on whether a prevention duty will be accepted or not. Thirdly, success rates with local authorities will decrease as option 1 discourages households from seeking assistance, the applicant will not know if they will be accepted and a prevention duty owed, they would also be unclear that after 56 days whether the prevention duty will continue.

Q1e: Do you have any additional comments on the impacts of option 1 which have not been covered in your response to Q1a-d? Yes/No. If yes, please provide comments for your answer.

10. Yes. Option 1 gives too little assurance to tenants that they will be assisted at prevention stage, this means that a household may not receive the support required to prevent homelessness. A result of this is the landlord going to court to seek possession of the property. Court action puts a financial and mental strain on both landlord and tenant and ultimately the tenant will become homeless. Without the legal duty to provide prevention assistance, homelessness will increase.

Option 2 – explanation

11. Local authorities will be required to accept the prevention duty at the point of a section 8 notice being served regardless of whether the person is at risk of becoming homeless within 56 days. The local authority would owe a prevention duty where a valid notice was served on any ground relating to any Housing Act 1988 tenancy, including where the landlord is a Private Registered Provider. Where a local authority has accepted a prevention duty in respect of someone served with a section 8 notice they cannot end the duty on the basis that 56 days have passed. The local authority would be required to keep the prevention duty open until one of the other circumstances for ending the duty applied. If the local authority were unable to prevent the landlord from pursuing possession of the property, the local authority will be required to assess at what point it is no longer reasonable for the applicant to continue to occupy, such that a relief duty is owed.

Q2a: What will be the impact of option 2 on local authority resourcing? Please provide comments for your answer.

12. Less resources will be consumed through the implementation of option 2. Although, on the face of it, it may appear that option 2 is more resource intensive than options 1 and 3, Propertymark believes that in the long run, time is saved because the local authority is not having to make arbitrary assessments of whether a household is homeless or not. By accepting a duty to all households, the requirement for initial assessment is taken out and therefore work can begin on actually helping to prevent homelessness.

Q2b: What will be the impact of option 2 on local authority caseloads? Please provide comments for your answer.

13. If the need for assessment is removed then caseloads are likely to increase, however without the assessment criteria case workers can move straight to helping to prevent homelessness.

Q2c: What will be the impact of option 2 on the demand on time for local authority staff? Please provide comments for your answer.

14. Demand on time is likely to rise. Similarly, to the answers above, if the need for an initial assessment of a prevention duty is removed then there is likely to be more cases for a local authority to handle. However, discretion is also removed, and the local authority worker will be clearer on what action to take. Furthermore, in option 2 the ability to end a duty at 56 days is removed which means that more time can be spent on a case. Again, this may seem counterproductive but in fact will enable more work to be done with each household at a prevention stage, with more time for a successful prevention outcome and should reduce workload from relieving homelessness and providing temporary accommodation if prevention is unsuccessful, for example if a case is closed at 56 days but the household goes on to become homeless after this time.

Q2d: What will be the impact of option 2 on homelessness prevention activity and success rates within local authorities? Please provide comments for your answer.

15. Propertymark welcomes the requirement in option 2 to accept a prevention duty on any ground where the notice is valid. There are three main impacts. Firstly, option 2 is likely to improve rates of success at a prevention stage. Secondly, the current arbitrary 56-day rule of assisting a household to prevent homelessness is unnecessary and counterproductive. Option 2 removes the requirement for local authority caseworkers to monitor a case for 56 days and therefore gives the tenant more reassurance that they will be assisted before they become homeless and more chance of success. Thirdly, there is a concern that the local authority may be tempted to use discretion to decide at what point it is no longer reasonable for the applicant to continue to occupy the property, therefore there should be clear guidance published around when it is considered unreasonable to occupy. The general advice should not be to wait until there is a court order or bailiff's warrant in place as this causes a great deal of financial and mental stress for both tenant and landlord.

Q2e: Do you have any additional comments on the impacts of option 2 which have not been covered in your response to Q2a-d? Yes/No. If yes, please provide comments for your answer.

16. Yes. Propertymark calls for an end to the distinction of mandatory and discretionary grounds for eviction. If the landlord needs to regain their property for any reason it should not be up to the discretion of a judge and therefore all grounds should be mandatory. Propertymark accepts that there are some instances where court intervention is required, to protect tenant and landlord rights, for example in the case of a retaliatory eviction or if there is a dispute of the facts. However, these examples are in the minority and most notices are given in earnest for reasons such as the landlord needing to sell the property or because of tenants engaging in anti-social behaviour.

Option 3 – explanation

17. Local authorities would accept the prevention duty where a valid notice had been served under section 8 notice for one or more of the landlord circumstance grounds, regardless of whether the person is at risk of becoming homeless within 56 days. Where a local authority has accepted a prevention duty in respect of someone served with a section 8 notice under the landlord circumstance grounds, they would not close it on the basis that 56 days have passed even if the notice has expired. The local authority would continue to owe the prevention duty until one of

the other circumstances for ending the duty applied. This option would replace the current requirement to accept and continue a prevention duty where a valid section 21 notice is served, but only where certain grounds for possession are to be relied on.

Q3a: What will be the impact of option 3 on local authority resourcing? Please provide comments for your answer.

18. There will be more demand on local authority resources. We think this for three reasons. Firstly, this option only allows for the local authority to continue support under “certain grounds”. Similarly, to option 1, this will require an assessment from the housing caseworker. Secondly, arbitrary assessments give freedom for local authorities to exercise discretion, especially those who are busiest, therefore households may find that support for them is rejected depending on certain grounds even though they are still threatened with homelessness. Thirdly, option 3 would require more resources to manage these households who ultimately become homeless, and time taken in making assessments on whether a household qualifies under this option or not.

Q3b: What will be the impact of option 3 on local authority caseloads? Please provide comments for your answer.

19. There will ultimately be more case work in assisting and relieving homelessness from those who are evicted under grounds not covered in option 3.

Q3c: What will be the impact of option 3 on the demand on time for local authority staff? Please provide comments for your answer.

20. As above, if the local authority exercises discretion in deciding which households to assist and which will not be assisted, time will be spent on making these decisions (and dealing with the appeals from those who disagree) and ultimately more time will be spent relieving homelessness and providing temporary accommodation.

Q3d: What will be the impact of option 3 on homelessness prevention activity and success rates within local authorities? Please provide comments for your answer.

21. There will be three main impacts on homelessness prevention activity and success rates within local authorities if option 3 is implemented. Firstly, Propertymark believes that restricting the duty to assist a tenant on basis of mandatory grounds is confusing and unhelpful to the tenant. Regardless of whether a ground is mandatory or not, the tenant is at risk of homelessness by the simple fact that the landlord is seeking repossession. Secondly, option 3 will mean that tenants are unclear about what assistance they are entitled to and even whether they are able to approach the local authority for assistance. Thirdly, it also opens the possibility for the local authority to practice discretion in whether they owe the prevention duty to a household. Clear guidance would need to be issued to ensure that local authorities were fair and consistent. For example, if the tenant is in arrears, this is not proposed to be a mandatory ground. Therefore, if the tenant owes more than 2 months’ rent at the point of notice but makes irregular payments towards the arrears, the local authority may make the decision that there is no prevention duty as the grounds are not mandatory for eviction and a judge could exercise discretion on granting a possession order. Overall, we welcome the removal of the arbitrary 56-day rule so the duty will continue even if the notice has expired. This option removes the requirement to monitor a case for 56 days and therefore gives the tenant more reassurance that they will be assisted before they become homeless and more chance of success.

Q3e: Do you have any additional comments on the impacts of option 3 which have not been covered in your response to Q3a-d? Yes/No. If yes, please provide comments for your answer.

22. Yes, we have two additional comments. Firstly, PropertyMark has repeatedly called for all Section 8 grounds to be mandatory, this gives reassurance to landlords that they can reclaim their property, particularly in cases of rent arrears or where the tenant has been convicted for illegal or immoral use of the property. Maintaining discretionary grounds gives too much leeway to bad tenants and discourages landlord investment in the sector. Secondly, ensuring that all Section 8 grounds are mandatory also gives reassurance to tenants who, under the current discretionary system, will not know whether they are going to be made homeless until the day of the court hearing. Local Authorities have used this discretion as a way to absolve their duties to assist a homeless household, stating that they are not guaranteed to become homeless if the ground is discretionary, this further disadvantages tenants from gaining social housing or assistance in moving to another private tenancy and leaves them vulnerable to being evicted and placed in temporary accommodation.

Q4: Do you have any comments on the proposed option to remove the reapplication duty from the homelessness legislation? Yes/No/Don't Know. Please provide comments for your answer.

23. Yes, we have two comments on the proposed option to remove the reapplication duty from the homelessness legislation. Firstly, the reapplication duty does not enhance the HRA obligations of the local authority, as they should be providing prevention duties regardless of priority need anyway. However, removing the clause from the Act will mean that applicants will no longer be given an automatic duty to be rehoused, which takes valuable resources away from other applicants who may be more vulnerable at the time of reapplication. Secondly, the reapplication duty was included in the original HRA under the assumption that the PRS is a 'short-term' option and therefore insecure, the lack of data on use of the reapplication duty since the Act came into force in 2018 indicates that this is not the case. According to the English Housing Survey 2021 – 2022, the average time a private tenant lives in their home is 4.4 years. This is significantly higher than the reapplication duty time of two years, suggesting the duty is obsolete.

Q5a: Do you have any comments on the proposed approach to minor technical changes? Yes/No/Don't know. Please give your comments.

24. We have no comments on the proposed approach to minor technical changes.

Q5b: Do you have any comments on the proposed minor technical changes in Annex A? Yes/No/Don't know. Please give your comments.

25. We no comments on the proposed minor technical changes in Annex A.

Q6: Do you think that any of the proposed changes could give rise to any impacts on people who share a protected characteristic? Yes/No/Don't know. Please give your comments.

26. We are not aware of any issues that may impact on people who share a protected characteristic as a result on the proposed changes.