



Overcoming the barriers to longer tenancies in the private rented sector

CIEH consultation response

August 2018

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CIEH is the professional voice for environmental health representing over 8,000 members working in the public, private and non-profit sectors. It ensures the highest standards of professional competence in its members, in the belief that through environmental health action people's health can be improved.

Environmental health has an important and unique contribution to make to improving public health and reducing health inequalities. CIEH campaigns to ensure that government policy addresses the needs of communities and business in achieving and maintaining improvements to health and health protection.

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Key points from the response:

- We welcome this consultation on longer tenancies to give tenants better security and stability.
- Whilst we agree with most of the proposals, we would like longer tenancies to be underpinned by legislation to ensure that there is a level playing field for landlords and so that the full benefits of longer tenancies are available to all tenants.
- We would also want to see the break clause for landlords removed from the proposals, as this leaves tenants vulnerable to a 'no fault' eviction before the 3 year tenancy comes to an end. It is also inappropriate for tenants that may have been living at the property before the new longer contract, as they would be well known to the landlord, so evictions with reasons would be more appropriate in these situations.
- The detailed proposals should be analysed carefully alongside both existing and upcoming legislation, such as the Homes (Fitness for Human Habitation) Bill and the Deregulation Act 2015.
- We call on the Government to review and improve the protection for tenants at risk of retaliatory evictions. This could be done by separating out the protection offered to tenants from local authority formal action and lengthening the length of time that protection is offered.

Questions for all

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

No. The protection available for tenants has not been publicised adequately enough so many tenants are still unaware that this protection is available. Furthermore, many tenants do not feel confident that the local authority will have the resources and/or the will to take formal action in response to their complaint.

We know from recent research¹ that many local authorities do not take formal action on every serious (category 1) hazard that they identify. Whatever the reasons for this, this lack of formal enforcement action means that the Deregulation Act 2015 does not work in practice at protecting tenants from eviction. We ask the Government to review this piece of legislation and take steps to make it more effective. We believe that this could be done by separating the protection offered to tenants from local authority formal action.

Tenants in the cheapest part of the market are still concerned about losing their homes if they complain about disrepair or their housing conditions. If the property is improved, its market value may increase along with the rent. Some landlords recognise that the property has defects and therefore offer a lower initial rent, promising to rectify the issues later. The works needed never happen, but the tenants who find themselves in these situations have a double fear of complaining – fearing either a large rent rise and/or eviction.

We would like to see a full review of the Deregulation Act 2015 legislation, which protects tenants from eviction. Our members tell us that the link between formal action on housing conditions and the protection of tenants from eviction does not

work in practice. Many local authorities have stretched resources and prioritise the worst cases first, meaning that even if a tenant has a legitimate complaint, but this ends up being a category 2 hazard, the likelihood of formal action from a local authority is very low. Furthermore, the time taken to inspect a property and take formal action is often much longer than the timeframe in which a landlord can serve a Section 21 notice to evict a tenant. If this notice is served before formal action is taken, then the tenant has no protection. Yet the local authority has to give the landlords at least 24 hours' notice before an inspection of the property, letting the landlord know the reason for the inspection. We would suggest that the protection from a Section 21 notice should start at the time of the tenant complaint to the local authority and should be given where there is a genuine disrepair or hazard at the property, regardless of whether formal action is subsequently taken by the local authority.

Even if the local authority acts very quickly and takes formal action to protect the tenant, this only gives the tenant 6 months' protection. For many families and for low-income tenants who would struggle to find a new tenancy on the open market, this is simply not long enough. As a result, many tenants choose not to complain at all.

If longer tenancies are to be introduced in legislation and made the standard length of a new tenancy, the protection offered to tenants would need to be reviewed and re-assessed.

Q11a: What do you consider to be the main benefits of a longer tenancy for landlords? (Assign a score out of 10 for the importance of that factor with 10 being the most important)

- 8 - Less risk of void periods for landlords
- 6 - Tenants more likely to take care of property
- 8 - Landlords save on costs of finding new tenants
- 5 - Other: Particularly for accidental or non-portfolio landlords, there is stress and hassle associated with having to find new tenants. Longer tenancies are likely to encourage tenants to stay in a property longer, thus helping to reduce the turnover of tenants.

Q11b: What do you consider to be the main benefits of a longer tenancy for tenants? (Assign a score out of 10 for the importance of that factor with 10 being the most important)

- 10 - Greater security for tenants
- 7 - Tenants saving money as they do not have to sign new tenancies or renew so frequently
- 9 - Tenants have greater assurance they can afford any rent increase
- 8 - Tenants more empowered to challenge poor practice

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

For families, there are obvious benefits of longer tenancies. Not having to change schools and nurseries and the benefits this brings for children's development and educational attainment. Tenants are also more likely to be able to keep their

employment, as moving to a different area can make the commute too long or too expensive. Staying in the same place also means that tenants would be more likely to maintain contact with their support networks, family and friends. Tenants who feel that they have a more permanent home might also experience some improvements in their mental health and wellbeing.

Longer tenancies may encourage landlords and tenants to develop a better relationship and the perspective that the property actually is the tenants' home. In Germany, where this is common, this builds trust and mutual respect, as well as a default perception that the tenant is the long-term occupant, rather than the default in the UK that the tenant is a transient occupier.

It is also likely that tenants who feel more invested in a permanent home may be more likely to engage with their local community. This, in turn, could help to improve neighbourhood cohesion and a reduction in anti-social behaviour, as tenants come to see themselves as key members of the community, as much as owner-occupiers are.

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

We do not represent landlords so we cannot comment on this question.

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

We support the introduction of a 3 year tenancy agreement but we are not in favour of a six month break clause for landlords.

We believe that longer tenancies should be underpinned by legislation, with exceptions being available for students and where the tenant has specifically requested a shorter tenancy. A legislative footing would ensure that the benefits of longer tenancies are available to all tenants, rather than just a minority of tenants. Landlords currently have the option to offer longer tenancies, yet very few choose to do so. This is possibly because the proposed tenancy agreement is more restrictive and therefore less attractive for the landlord than the more flexible and familiar 12 month AST contract. The introduction of standard 3 year contracts for all tenancies would also ensure that all landlords will be on a level playing field.

We are not in favour of including a break clause for landlords as part of the new longer tenancy agreement. This is because the presence of a break clause could be used as a loophole to evict tenants early without providing a legitimate reason. However, we recognise that the court process for gaining possession of a property and Section 8 powers should be carefully reviewed to ensure that the landlord can legitimately evict a tenant when there is sound and legal reason to do so.

Furthermore, the justification for allowing landlords to use a break clause only works if the tenants are new. Tenants who are renewing their tenancy contract

would be known to the landlord, so there should be no need for the break clause in these cases.

If the Government does decide to introduce a break clause for landlords at 6 months, consideration would need to be given to notice periods. A notice period is usually involved when using a break clause. Therefore, if this notice period were 3 months, then only 3 months would have passed since the tenant first moved in. Therefore, 6 months may be too short to assess how well the tenancy is working.

All proposals within this consultation should be assessed against both current and upcoming housing legislation. For example, longer tenancies contracts may need an allowance for the rectification of major issues that might make a property uninhabitable but which, if left unattended, could leave a landlord vulnerable to claims under the Landlord & Tenant Act, especially if the new Homes (Fitness for Habitation) Bill becomes law. Possession procedures under Section 8 already make allowance for this kind of situation, but can take a long time if the ground is contested. Whilst this would apply to a very small number of circumstances, it is important for these two pieces of legislation to work together. All the grounds of Section 8 therefore might need to be re-assessed in light of longer tenancies and borne in mind when introducing new legislation.

Similarly, the new proposed grounds of the landlord wishing to sell their home or to move into the property themselves, should be strengthened to ensure these new grounds are not abused. For example, whilst it may not be possible in practice to check whether the landlord has genuinely moved in or attempted to sell their property, they should not be able to rent the property back out within 6 months of the evicted tenants moving out. We believe that this would act as a sufficient disincentive against abuse of these grounds for eviction.

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

3 years.

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

CIEH is not in favour of introducing a break clause for landlords; however, if the Government is so minded as to introduce such a clause then a break after 12 months should be considered as this is enough time to decide whether the tenancy is working and also allows for an appropriate 3 month notice period before a break clause can be used. As mentioned in response to Q 14, if this is 6 months then notice would need to be given at 3 or 4 months into the tenancy, which may not be long enough to ascertain whether the tenancy is likely to work well for the next 3 years.

Q18: How much notice should landlords be required to give to tenants when they want to recover their property to sell or move into?

A minimum of 3 calendar months or not less than 12 weeks

Q19: How much notice should tenants be required to give to their landlords when they want to leave their tenancy?

2 months or 8 weeks.

Whilst this is shorter than the notice period for landlords, tenants may need more time in order to move house, including finding new schools for their children, a new doctor, new accommodation and making arrangements for the move itself. Finding new tenants can also take time but 2 months should be a sufficient length of time for most landlords and agents to achieve this.

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

Yes, this generally sounds fair for both landlords and tenants.

However, we have heard that landlords often say that they wish to move into or sell the property, and instead use this as a way of ending a tenancy without subsequently moving in or offering the property for sale. This is sometimes done in areas of high housing demand and in order to raise the rent. Whilst it would not be possible to monitor if a property has really been sold, there are a number of ways to ensure that this clause is not used inappropriately.

One way to ensure that these new clauses are not abused by landlords is to prohibit the renting out of properties for 6 months where certain grounds for eviction have been used to evict previous tenants. This would ensure that these grounds carried a cost to the landlord and were therefore much less attractive as an option to evict current tenants. This rule should not affect those landlords who genuinely do want to sell their properties or move into them. In Scotland, if a landlord wishes to use these two grounds they have to provide a level of evidence to prevent abuse of these grounds for eviction.

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

- Yes – rent increases should be limited to once per year
- Yes – rent increases should be limited to once every 18 months
- Yes – rent increases should be limited to once every two years**
- Yes – rent increases should be limited in frequency but not in the amount that can be charged
- Yes – any rent increases should be linked with inflation measures (e.g. Consumer Price Index (CPI))**
- Yes – any rent increases should be linked to local market averages
- No – rent increases should not be limited
- Other – please explain

We would argue that rent increases should not be 'linked' with inflation but limited by inflation. Inflation rates could be higher than the local market averages, therefore it is important that rents shouldn't automatically increase.

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

- Change the law to require all landlords to offer longer tenancies
- Change the law to require all landlords to offer longer tenancies as a default with an option to choose a shorter term**
- Financial incentives
- Voluntary measures such as a kitemark on longer term properties or an updated version of the existing model tenancy agreement
- Other (please explain)

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

(All of the below)

- Purpose Built Student Accommodation**
- All Student Accommodation**
- Holiday Lets**
- Tenancies for those with visas ending in the next 3 years**
- Tenancies for those with short term work contracts**

Q24: What do you think would be the benefits and disadvantages of changing the law to require all landlords to offer the longer term tenancy model?

Changing the law would ensure that all tenants can benefit from longer tenancies, more security and better protection from unlawful eviction. This would be particularly beneficial for families and renters who are using the sector as their long term home. We believe that there are few disadvantages if the legislation is designed appropriately to allow shorter tenancies in certain circumstances and to allow the landlord to regain possession faster and easier where the reasons are legitimate.

However, there is always the possibility of new loopholes being introduced, whereby agents may select tenants who want shorter tenancies, so that they can charge the landlord fees regularly.

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

We do not believe that a financial incentive is appropriate to encourage landlords to offer longer tenancies. By definition, tenants who stay in the property for longer periods should translate into a higher income for the landlord due to fewer void periods, costs of marketing the property, etc. Longer tenancies should also have the added advantage of tenants taking better care of a property, as they are more likely to consider it their permanent or long-term home.

Q26: If there were a financial incentive to offering longer tenancies, what conditions should a landlord have to comply with to be eligible? (Tick all that apply)

Not applicable.

Q27: What other options to promote longer tenancies should be considered?

We have no further comment to make.

Q28: Do you consider that any of the above would impact on people who share a protected characteristic, as defined under the Equalities Act 2010, differently from people who do not share it? If yes, please provide details.

Yes

No

Longer term tenancies would have a beneficial impact upon the following:

- Families with children, as children shouldn't have to endure the disruption of moving schools so frequently.
- Vulnerable people, including those with disabilities, should be able to maintain links to support networks, family and friends.

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

We would recommend that Section 8 grounds for eviction and the additional grounds are carefully reviewed – both for loopholes that could be exploited by landlords - and also to ensure that the grounds cover all reasonable circumstances where possession may be necessary for the landlord.

Longer tenancies legislation would need to be reviewed alongside other housing obligations and the new Homes (Fitness for Human Habitation) Bill proposals.

There also will need to be associated work with mortgage providers to allow landlords to permit longer tenancies before legislation is brought in.

¹ [Local housing authority action on conditions in rented housing](#): Report following a Freedom of Information request to local housing authorities prepared for Karen Buck MP by Stephen Battersby, Dec 2017