

CIH response to MHCLG's A New Deal for Renting consultation



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About CIH

Chartered Institute of Housing (CIH) is the independent voice for housing and the home of professional standards. Our goal is simple – to provide housing professionals and their organisations with the advice, support and knowledge they need to be brilliant. CIH is a registered charity and not-for-profit organisation. This means that the money we make is put back into the organisation and funds the activities we carry out to support the housing sector. We have a diverse membership of people who work in both the public and private sectors, in 20 countries on five continents across the world.

Further information is available at: www.cih.org

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General principles guiding our response

- CIH's starting point is that we broadly support the proposals to end s21. We agree with the Government that this should apply equally to both private and social landlords and that there should be very clear reasons firmly backed by evidence for exceptions based on tenure
- The main arguments for retaining s21 are that it provides landlords with certainty, is clear and easy to use and, as a result, encourages landlords to let their homes to people who they might consider to be a higher risk as tenants. Landlords argue that, if it is abolished, many may withdraw from the market altogether or refuse to let to 'higher risk' tenants such as those who are on universal credit
- We agree that repeal of s21 will help achieve a better balance between the rights and responsibilities of both parties than the current arrangements where the balance of power lies heavily in favour with the landlord in the event of a dispute. We carried out a survey of CIH members to seek their views on this consultation and 72 per cent agreed that the proposed changes will create a more balanced relationship between private tenants and landlords
- Long waiting times for a hearing is not an appropriate reason for extending the mandatory grounds for possession or for accelerated proceedings, but is instead a resourcing issue for the Ministry of Justice to resolve
- Mandatory grounds for possession are only appropriate for the most serious breaches of the agreement that fundamentally undermine the landlord and tenant relationship or where the property is genuinely intended for certain specialised use (e.g. holiday or student lets), in which case there should be a requirement for prior notice
- It should be recognised that the lack of alternative effective legal remedies available for enforcing repayment of proven rent debt is a factor that drives the use of possession as a means for collecting money or (more usually) limiting losses. If money judgments could be enforced more effectively without the need for multiple hearings, then they might be used more often as an alternative to possession.

We start from the principle that housing associations and private landlords should be treated the same unless there is some exceptional or compelling reason to treat them differently. This has the advantage that it makes the law simpler and easier to understand. In the absence of a specialist housing court (or subsequently) it should help with landlords' concerns about consistency in decision making. It will allow the Civil Procedure Rules (including the pre-action protocols) to be rewritten as a single code instead of there being two separate processes whereby social tenants are somehow assumed to be more vulnerable than private tenants.

We support the Government's principal aim to provide greater security for private renters. Our member survey showed that 92 per cent agreed that the proposed changes would achieve this and 69 per cent agreed that it would give private tenants

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more confidence to enforce their rights. Although it is true that some tenants do genuinely value the flexibility that the sector offers, as it continues to grow it is also housing increasing numbers of households whose needs can't be met with short-term tenancies. We supported the previous proposal for three-year fixed term tenancies. At that time the profile of private renters had already undergone dramatic change, and was, despite its image, no longer a tenure predominantly for young single people. Two out of five private renters are now families with children, and it is increasingly being used by households with more complex needs (e.g. homeless households, care leavers and so on). The age profile is also changing: since 2003/04 the proportion of 55 to 64-year olds who are private renters (10 per cent) has more than doubled; and the proportion of 45 to 54-year olds (16 per cent) has more than trebled. In response to the changing market the Scottish Government has already introduced reforms to end fixed terms and 'no fault' evictions entirely whereby landlords can only end a tenancy by using one of 18 specific grounds for eviction.

However, we also recognise that landlords have legitimate concerns about their ability to recover properties quickly and reliably where there are genuine reasons for doing so, such as serious rent arrears or anti-social behaviour. Landlord surveys suggest that existing grounds for possession as an alternative s21 do not provide them the certainty and reassurance they need. Government needs to strike a balance between tenants' need for security and landlords' need to minimise risk. Our member survey showed that 84 per cent agreed that the proposed changes would still allow private landlords to end tenancies where there is good reason to do so.

We support proposals (previously consulted on separately) to establish a specialist housing court which would help deal with landlords' concerns (as well as tenants and their advisers) about the quality and consistency of decisions. However, it wouldn't necessarily address the need for more efficient administration (such as the speed at which claims are processed) both of which are resourcing issues for the Ministry of Justice. Government should ensure that Her Majesty's Courts and Tribunal Service (HMCTS) is adequately resourced so that landlord confidence is maintained and adverse impact on the supply of private rented homes is minimal.

Under-performance in the administration of justice is not an appropriate reason for broadening the grounds for possession (whether mandatory or discretionary) or for extending the use of accelerated proceedings. The use of either should solely be determined by the grounds on which possession is sought. There are valid arguments which deserve careful consideration about whether the mandatory grounds for possession are too narrow or whether the court processes can be abused to frustrate a legitimate claim (e.g. applying for a postponement or by making the minimal part payment to escape mandatory possession). These concerns should be addressed through corresponding reforms to the Civil Procedure Rules (CPR) rather than broadening the grounds to try and anticipate every eventuality. This would have the advantage that if further changes were required, they could be made without the need for further primary legislation. We recommend that the Ministry commences discussions with the Ministry of Justice at the earliest opportunity since progress with this will almost certainly require further detailed consultation.

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Other changes in policy required to make the proposals work as intended

We recognise and welcome the fact that the proposed change is in part motivated by MHCLG's wider objective to reduce homelessness. But government must recognise that use of s21 (and the increase in homelessness) is partly driven by recent welfare changes that have cut help with rent payments through housing benefit (HB) and universal credit (UC). Further, the introduction of UC has meant that the circumstances in which welfare payments for rent can be made to landlords has been substantially reduced.

The government should recognise that abolishing s21 doesn't alter the underlying causes of landlord and tenant disputes. Landlord surveys suggest that s21 is most commonly used in connection with rent arrears. Therefore, if government wants to reduce the number of evictions, it needs to look at the things that are driving tenants into arrears in the first place, otherwise many of these tenancies will continue to break down, regardless of what changes are made to tenancy law. If s21 is repealed without complementary welfare changes, we are concerned that the courts won't be able to cope with the volume of disputes and this could undermine confidence in the market.

We believe the following changes would make a considerable difference and help alleviate the need for disputes escalating to the courts:

- end the four-year freeze on local housing allowance rates and restore them to the 30th percentile
- reverse the reduced benefit cap which is unfair to families living in the higher rent regions
- make further changes to end the five-week wait for universal credit (advance payments merely extend the period over which households are in severe financial stress)
- restore the maximum backdating period for help with housing costs to six months
- restore the discretionary ground to make direct payments where it will assist the claimant to secure or retain a tenancy.

We welcome the decision the Department for Work Pensions made last year to keep help with housing costs for UC claimants living in supported and temporary housing within housing benefit. Most hostels (as supported housing) continue to receive third party payments for their ineligible service charges. We think these arrangements are crucial for the continued viability of this sector and would welcome further clarification as to whether these arrangements will continue once migration to UC is complete.

No fault grounds: exceptions for certain kinds of letting

Given that one of the objectives is to reduce homelessness, we recognise that there is a concern that certain kinds of supported, temporary and publicly funded housing schemes would become too risky and would have to be discontinued. However, this only applies to a minority of supported housing schemes and we believe the majority will be able to continue to operate as before without being affected including:

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- short-term resettlement accommodation such as hostels and refuges let on residential licences (which largely fall outside statutory security)
- sheltered housing, which is let on ordinary assured tenancies.

Generally, we are against creating a long list of exceptions for specialist accommodation because it potentially widens the opportunities for abuse and makes the law unnecessarily complicated. There are some limited circumstances where we think the retention of a no-fault procedure is justified. There are three ways this could be achieved:

- extending the mandatory grounds for possession (i.e. through new grounds in schedule 2)
- extending the range of lettings that fall outside statutory protection (i.e. lettings within schedule 1) or
- retaining shorthold tenancies and the s21 procedure for certain specified limited purposes only.

Of these the second option is our least favoured because it provides even less security than the current arrangements.

We don't think it is realistic to ensure that provision is made for every kind of specialist letting that makes use of s21, not least because of the increased complexity. A list of exceptions should be restricted to accommodation that would cease to be viable without a no-fault procedure **and** which are sufficiently common and/or on a large enough scale to justify their inclusion. Using these criteria as guide, we have identified the following:

- 'short-life' housing which is scheduled for future demolition and a landlord wants to use it as short-term accommodation in the meantime. In most cases this relates to properties that are subject to a compulsory purchase order or where one is pending
- key workers'/young people's housing - where the tenant no longer meets the qualifying criteria
- supported housing where the landlord's provision of support is dependent on a funding agreement with a third party (typically with central or local government)
- rent to buy and intermediate rent schemes (including the London Living Rent) aimed at tenants on middle incomes where the expectation is that people will move on when they have enough income to buy. These schemes use fixed term tenancies which are subject to renewal.

Except for the first, all of these are unique to social landlords, relate to a government programme and are usually dependent on some form of government funding (including local government). Since they all share these characteristics it might be possible to devise a generic category that covers all of them and which is sufficiently broad and flexible to accommodate new government initiatives as and when they arise.

Use of fixed term tenancies to allocate social housing

There is little or no evidence to demonstrate positive outcomes from using fixed term tenancies in social housing. In fact, after adopting fixed term tenancies, several landlords have reverted to full security after concluding that the benefits for their business and wider communities outweigh any marginal gains and/or the additional bureaucracy required to manage them.

The use of fixed term tenancies to allocate social housing is no less indiscriminate than using starter tenancies to manage anti-social behaviour. If the Ministry still believes that there are small marginal gains to be had (after taking into account the detrimental effects of limited security on tenants) then possession should only be available when the individual circumstances justify it (for example, a single tenant left in occupation of a four bedroomed house).

A better approach would be to adopt the Law Commission's 'estate management grounds' for use in appropriate cases. Possession would be available under a new discretionary ground, subject to an offer of suitable alternative accommodation and the payment of relocation expenses (for a further discussion see [Renting Homes \(2003\)](#), paras 9.30-36 and 14.9-20. For recommendations see the [Final Report, Volume 1](#), paras 4.76-38, 5.14-15 and 7.34-35). For draft clauses see the draft Bill, [Final Report Vol 2](#), schedule 5 (suitable alternative accommodation) and schedule 6 (estate management grounds).

We are satisfied with the proposals to allow the use of break clauses since the landlord would still be required to use one of the statutory grounds if the tenant doesn't want to give up possession. However, we think calling it a 'break clause' is likely to cause confusion and a small minority of landlords may misuse it (whether intentionally or otherwise) to mislead the tenant that it is a no-fault ground for possession. We think it would less likely to be misunderstood if it was rebranded as the 'tenant's right to terminate' (or something similar) and that it would only be valid if it was in writing and in a prescribed form set out in a statutory instrument. The statutory wording clause would be written in such a way that the tenant would be left in no doubt that they could continue in occupation if they did not want to leave and that if activated s/he could walk away without incurring any further liability for rent.

Use of starter tenancies by social landlords

The two main reasons why a landlord may wish to bring a tenancy to an end are for rent arrears and anti-social behaviour (other reasons are only a tiny minority of cases). There is no evidence to suggest that either kind of breach is any more prevalent among social renters than it is for private renters, although the way these issues are dealt with is significantly different between the two sectors. Rent arrears is more of a threat to the viability of a private landlord who operates for profit and usually at a much smaller scale than most social landlords. However, it should be recognised that rent arrears do affect a social landlord's capacity to maintain and manage homes, borrow and build new housing.

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Some argue that starter tenancies act as an inducement to landlords to let to prospective tenants who they perceive to be high risk (e.g. those with a history of tenancy failure). But to prevent the risk of discrimination registered providers must use starter tenancies for all their new lettings or not at all. Arguably this may encourage risk averse behaviour and undermine the incentive to invest in support for tenants who need it. It is likely that 'affordable rent' conversions (because of their higher rents and perceived risk of rent arrears) are the main driver in the use of shorthold tenancies with the result that large numbers of new tenants who present only a moderate or low risk of tenancy failure are forced to accept insecure housing. We know that private rented tenants complain that the lack of security causes anxiety and makes it difficult to plan their work and family life. The offer of a social tenancy due to homelessness is meant to provide a stable platform from which the tenant can establish their independence which fixed term tenancies undermine. Unfortunately, it is not possible to identify within the official statistics the proportion of possession orders by social landlords that were obtained using the s21 procedure.

CORE data on new lettings by private registered providers suggests that, except in the north, the use of starter tenancies is fast becoming the default position rather than being determined by local circumstances. If the current trend continues most new lettings by private registered providers in the south of England will be shorthold tenancies. Although we suspect that affordable rent conversions are the main driver this doesn't explain why around 40 per cent new lettings in the West Midlands but only ten per cent in the East Midlands are starter tenancies when rent levels in both regions are similar. In fact, prior to the affordable rent programme, the highest use of shorthold tenancies was in the West Midlands. This suggests that landlords use of shortholds is not based on any objective basis (such as a high risk of tenancy failure) but more to do with peer group practice and as a tool to manage demand (e.g. to help make the offer of social tenancy more attractive in areas where social and private rents are similar).

	Assured*				Assured Shorthold			
	2013/ 14	2014/ 15	2015/ 16	2016/ 17	2013/ 14	2014/ 15	2015/ 16	2016/ 17
North East	96.8%	94.5%	92.6%	94.7%	1.4%	4.0%	4.2%	2.2%
North West	95.0%	91.0%	92.7%	88.1%	4.3%	8.7%	6.4%	7.8%
Yorkshire East Midlands	95.1%	94.0%	94.3%	88.6%	4.0%	3.9%	5.0%	11.0%
West Midlands	94.3%	93.7%	91.5%	86.9%	4.8%	5.5%	7.4%	11.9%
East of England	69.0%	73.8%	65.2%	60.8%	29.7%	25.3%	33.4%	37.2%
London	76.7%	71.3%	58.9%	54.1%	21.0%	28.0%	37.2%	41.6%
South East	72.0%	62.0%	54.4%	52.8%	24.1%	36.0%	41.2%	43.9%
South West	83.1%	76.6%	69.4%	54.6%	14.7%	22.3%	28.9%	43.1%
	81.3%	70.9%	66.8%	57.2%	17.6%	28.5%	31.7%	42.0%

* other lettings such as licences not included (0.3% to 4.3%)

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We are aware that some argue that s21 should be retained for use by registered providers on the grounds that there are additional safeguards in place to protect social tenants namely:

- private registered providers are accountable to the Regulator of Social Housing
- the Regulator's tenancy standard requires landlords to adopt the review procedure
- tenants have the right to escalate a complaint to the Housing Ombudsman
- registered providers being 'social' landlords aren't driven solely by the profit motive but by their wider corporate social values.

We don't think these provide the safeguards that are claimed for the following reasons:

- the Regulator doesn't get involved in individual disputes and even a series of poor decisions is unlikely to result in regulatory intervention. This safeguard amounts to nothing more than the regulatory standard itself
- the Housing Ombudsman cannot intervene in areas that are within the jurisdiction of the court (i.e. determine the facts or how the law has been applied), and the court can only refuse possession for a procedural defect. If the facts are disputed and these are critical to the outcome, then the tenant is at risk even if the landlord's findings are faulty
- for similar reasons the review procedure doesn't provide an adequate safeguard, because a reviewer is bound to favour their own decision and so contravenes natural justice (no one should judge their own cause)
- the consequences of an adverse decision for the tenant are so serious that they merit full reconsideration by an independent third party (i.e. a court or tribunal).

Demoted tenancies and demotion orders

There is no available data about how often demotion orders are made but we suspect that they are very rarely used because most landlords will apply for suspended possession instead. As the law currently stands, demotion is only available to registered providers letting at sub-market rents.

Although we have no strongly held view, we think there is a case for retaining these and if they are, we see no reason why they shouldn't be available to all landlords. Our concerns about social landlords' use of starter tenancies and the adequacy of the safeguards in place don't apply to demoted tenancies because:

- demoted status only applies where there is clear evidence that the tenant has broken the agreement (whereas the starter period applies irrespective of the tenant's conduct);
- a demotion order is only granted after a full trial in the court about the law and facts, and only then if it is reasonable to grant one
- all the other starter tenancy safeguards also apply (conversion to assured status after one-year, correct notice etc).

Demoted status has the advantage over suspended possession that the tenancy doesn't automatically end if the tenant defaults (e.g. mistakenly misses one payment) but the disadvantage is that the tenant has no defence if s/he disputes the landlord's reasons to serve notice.

Amendments to the grounds for possession relating to anti-social behaviour

Regarding anti-social behaviour, social landlords have significantly more powers to compel a tenant to modify their behaviour (including a private tenant living within their estate) by using housing-related injunctions (see below). A private landlord's options are much more limited and therefore, if anything, the case for retaining s21 to deal with anti-social behaviour is stronger for private than for social landlords (although we wouldn't support doing so). For similar reasons we don't support a general extension of the mandatory grounds for possession for social landlords as we believe they already possess the necessary powers to tackle anti-social behaviour effectively.

A social landlord's options include eviction (using the existing grounds, 7A, 12, 14 and 14ZA) and housing-related injunctions under part 1 of the Anti-social Behaviour, Crime and Policing Act 2014. In this case 'social landlord' includes registered providers and charitable housing trusts. Accepted best practice in dealing with anti-social behaviour is that possession is the most appropriate response only in a limited range of circumstances (e.g. to separate two or more households acting together) and in any other case injunctions are almost always more effective because:

- eviction doesn't stop the offending behaviour it just moves it elsewhere and the landlord loses their power to control it
- injunctions can be obtained much more speedily (on the same day if necessary) and can be applied for without giving notice to the offending party
- injunctions can compel the subject to address the cause of their offending behaviour (e.g. undergo treatment for substance misuse)
- injunctions provide for a much wider range of options for enforcement if breached, including the power of arrest and exclusion of a person from the home (not just the tenant).

The availability of s21 (being very simple to initiate) may even discourage landlords from engaging in best practice. Some landlords don't use injunctions because they believe the costs are prohibitive, but leading practitioners (such as [Resolve ASB](#)) have shown, that with the right approach, they are no more expensive than possession. Social landlords with in-house expertise who act as managing agents for other landlords (whether social or private) can apply for injunctions on their behalf. The government may wish to explore ways in which it can encourage best practice.

We understand the concerns of landlords that the repeal of s21 may make it difficult to get possession due to anti-social behaviour – especially when using one of the discretionary grounds, for example for relatively low level but persistent behaviour. We expect that the Ministry will receive numerous submissions as to how the grounds for possession could be extended and improved and we understand the political imperative to be seen to act on these. However, there is a danger that this will result in piecemeal changes that increase complexity making it more difficult to

navigate the law and result in more inconsistency in decisions, when landlords' main concern is to achieve greater certainty.

We believe that the repeal of s21 provides an opportunity to restructure the grounds for possession into a simpler more effective legal code. The work for this has been largely done in Law Commission's [Renting Homes Final Report \(2006\)](#) and [Draft Bill](#). The Commission's proposals assumed that shorthold tenancies ('standard contracts') would continue as the default position and that the anti-social behaviour-related grounds for possession would become an implied term in every tenancy agreement. However, with some adjustments, we think their proposals for dealing anti-social behaviour and domestic violence could easily be adapted for use. The specific proposals we think have merit and deserve careful consideration are:

- statutory provisions to 'structure the courts' discretion to make an order for possession, in any case (not just the anti-social behaviour grounds) when their decision is based on a test of reasonableness' ([Final Report, Volume 1](#), paras 5.31-42 and see the [Draft Bill \(Final Report Volume 2\)](#), schedule 7)
- a 'fundamental term' is implied into all agreements relating to 'prohibited conduct', that if breached can trigger possession proceedings in the normal way. But in this case (unlike other grounds) proceedings can be started on the same day as the notice is served: Volume 1 paras 9.7-9 and 9.17-22
- Proceedings for possession, demotion or an injunction can be combined instead of being separate causes of action that have to be applied for separately: Volume 1, para 9.23
- housing trusts and registered providers would also be able to apply for an exclusion order as well as an injunction. In this case breach of either would come with the power of arrest: Volume 1 para 9.10-14 (already partially enacted by the Anti-social Behaviour, Crime and Policing Act 2014).

'Prohibited conduct' is defined as:

- (1) The tenant may not use or threaten to use violence against a person lawfully living in the premises, or do anything which creates a risk of significant harm to such a person.
- (2) The tenant may not engage or threaten to engage in conduct that is capable of causing nuisance or annoyance to:
 - a. a person living in the locality of the premises; or
 - b. a person engaged in lawful activity in, or in the locality of, the premises.
- (3) The tenant may not use or threaten to use the premises, or any common parts that they are entitled to use under the contract, for criminal purposes.
- (4) The tenant may not allow, incite or encourage others who are residing in or visiting the premises to act in these ways (or allow, incite or encourage any person to act as mentioned in (3)).

We suggest that this definition should be extended to include conduct that is 'likely to cause harassment, alarm or distress' (to mirror the definition used in the Anti-social Behaviour, Crime and Policing Act 2014, s2(1)).

Domestic violence

The Law Commission's proposals in *Renting Homes* provided for a comprehensive scheme to deal with domestic violence to work alongside and in conjunction with its proposals for dealing with anti-social behaviour. Their intention was that this scheme would replace the existing arrangements for ending tenancies (including the domestic violence ground) with a scheme that is flexible and responsive whilst being accountable and transparent.

Under their proposals, domestic violence would constitute a breach of the prohibited conduct term and the same powers to seek an injunction or exclusion order that are available to respond to anti-social behaviour would also apply to violence from within the home (*Renting Homes* (2003), para 3.86, Final Report, Volume 1, para 15.11).

The landlord would also be able to take proceedings against a joint tenant who breached the prohibited conduct term and the court could grant possession on the same basis that they would have done had that person been the sole tenant. But in this case the effect of the order would be to extinguish perpetrators' rights and convert the agreement into a sole tenancy for the survivor (Final Report, Volume 1, paras 4.96-99).

The Law Commission's scheme also provides for a simple procedure whereby one joint tenant can serve notice on any other joint tenant who no longer occupies the dwelling as their only or principal home. At the end of the notice period the tenant in occupation could apply to the court to convert the agreement into a sole tenancy. But the court couldn't make an order if it was satisfied that the absent tenant moved out because the other tenant breached the prohibited conduct term (Final Report paras 4.100-103 and 15.42-46).

Alternatively, in cases where the victim wishes to be rehoused elsewhere, a landlord could seek possession for breach of an injunction that would end the (joint) tenancy. But in these cases, when the court considers whether it is reasonable to grant possession, it must take account of the landlord's plans for re-housing the victim in suitable alternative accommodation (Final Report, Volume 1 para 15.47).

The current method used by social landlords to respond to domestic violence by one joint tenant against the other whereby the victim serves notice and is granted a new tenancy would no longer be available. But it would have the advantage that the perpetrator couldn't end the tenancy by notice either (or threaten to) (as the law currently stands the recommended course of action for advisers is to apply for an injunction to prevent this) and any other consequential rights that the victim has acquired over the course of time and that depend on the tenancy continuing would be preserved.

Amendments to the grounds for possession relating to rent arrears

We recognise that the current arrangements have the advantage that they provide landlords with certainty and therefore confidence to let to tenants who they might otherwise perceive to be a risk. We want to try and ensure, as far as possible, that

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once s21 is repealed, landlords will continue to let to tenants on low incomes and won't exit the market on any significant scale. Our member survey showed that only 22 per cent think the proposed changes will drive good private landlords out of the market.

Our starting point is that landlords would prefer not to have to seek possession. It is unusual for possession to result in recovery of arrears but rather it is used to limit the landlord's losses (although this is less true for social landlords who mostly use suspended possession as lever for repayment). Landlords continue to use possession because the alternative – a money judgment – is even less effective at recovering the debt and amounts to little more than a declaration that the tenant owes the amount claimed. If the tenant refuses to pay, the landlord must apply for enforcement action which can mean two further hearings (a means inquiry, plus an appropriate order such as attachment of earnings). But these depend on judicial discretion and may be rendered ineffective if the tenant's circumstances change.

There is no effective way for a private landlord to recover their loss once the tenant moves out, either through the court or by third party deductions from benefit payments (which are only available for current arrears). Social landlords can sometimes recover the loss in full or in part if a former tenant reapplies for housing. If landlords had a more effective and reliable alternative to recover the arrears and/ or guarantee the ongoing rent, then possession action would be far less common.

We support the Ministry's proposals for a limited extension to the mandatory rent arrears ground (if the ground had been used on three previous occasions and minimum amount paid down). We urge caution against widening it any further to try and cover off every eventuality. However, we think that where the landlord has relied on the mandatory ground, and the initial condition was met, the court should be obliged to consider the other two discretionary grounds, even if the landlord failed to include them in their notice (adjustments could be made the statutory notice to make this clear).

In addition, in order to give landlords', the certainty and confidence that they require we think the following are worth consideration:

- The Law Commission's proposals for structured discretion where any one of the statutory grounds is subject to a test of reasonableness ([Final Report, Volume 1](#), paras 5.31-42, and see the [Draft Bill](#), schedule 7).
- We think that some careful thought needs to be given as to guidance issued to the judiciary to improve the consistency of decision making. In particular, how to approach cases where there are 'technical arrears' (e.g. where the debt is in whole or in part due to arrears of HB or UC). For example, is it fair that the tenant can first raise it as a defence on the day of the hearing or request an adjournment? And if it is, should they be required to provide documentary evidence of their claim (and that it is complete).
- Given that the proposals apply equally to private and social landlords we think it is reasonable that the pre-action protocol requirements under the Civil Procedure Rules should also be the same. There are no grounds for believing that social tenants are somehow (automatically) more vulnerable than private tenants.