The Chartered Institute of Housing's submission to the Levelling Up Housing and Communities Select Committee inquiry on Reforming the Private Rented Sector

About CIH

The 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. 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

Will the Government's White Paper proposals result in a fairer private rented sector (PRS)?

We welcome the measures set out in the Government's White Paper which, when enacted, will represent a significant step forward for renters.

Removing Section 21 should help to level the playing field between landlords and tenants, empowering tenants to challenge poor practice and unjustified rent increases, as well as incentivising landlords to engage and resolve issues. (It will, of course, be important to ensure that the grounds for possession are clear – we set out further detail on this below.)

Making it easier for tenants with families and/or on benefits to rent privately, and for people to make their home their own will make a huge difference to their security and wellbeing. We are also pleased to see the establishment of a single Ombudsman for private renters and a portal to support private landlords to understand and fulfil their obligations, and to enable tenants to better hold their landlords to account.

Giving councils stronger powers to tackle the worst offenders, backed by enforcement pilots, and increasing fines for serious offences is welcome. However, we also need to see support for capacity building at the local authority level across the country, as well as in the courts. (Further detail on this below.)

Do the proposals for reforming tenancies, including the abolition of Section 21, strike the right balance between protecting tenants from unfair eviction and allowing landlords to take possession of their properties in reasonable circumstances?

Overall, we think these reforms strike the right balance.

We welcome the new proposals to move all assured and assured shorthold tenancies onto a single system of periodic tenancies – the original proposals in the 2019 consultation retained fixed term tenancies alongside periodic and included complex provisions for fixed term tenancies with break clauses. Fixed term tenancies provide no additional benefit to tenants where the tenant already has long term security. The abolition of fixed terms will make things much easier to understand for both parties. Periodic tenancies will enable tenants who live in unsuitable or unsafe homes to leave more easily which should provide an incentive to landlords to keep their properties in a good condition.

Another advantage of ending fixed terms is that forfeiture clauses in written agreements are no longer necessary. These usually take the form of words such as "the landlord has the right to re-

enter […]" or a similar phrase which tenants can misunderstand to mean that this is literally true even though the landlord requires a court order to terminate the tenancy. These clauses are standard in most written agreements, and they may continue to be reproduced even after fixed terms are abolished – this may need to be addressed by a revised version of the "How to Rent" guide (explaining that any such clause is void).

We have some concerns that the return of tenant security may see the re-emergence of some of the sharp practices designed to evade (or to give the appearance of evading) security – notably sham licence agreements – by the minority of landlords who have no regard for tenant's rights. In recent years new scams have emerged designed to circumvent the existing security arrangements such as property guardians and 'Air BnB' style arrangements. We ask the government to consider whether further provisions are needed – legal or financial – to discourage these kinds of abuse.

We would highlight a number of points of detail:

a) Safeguards for domestic abuse survivors

CIH is a member of the National Housing and Domestic Abuse Policy and Practice Group, and we support its proposals on the Renter's Reform Bill. We would like to highlight the following recommendations from the group:

- Whilst we support the plans to end section 21 it should be recognised that strengthening eviction grounds for anti-social behaviour (ASB) and rent arrears will present a risk for victims/survivors of domestic abuse as these often occur alongside or as part of the abuse they experience. Government should provide guidance for landlords and the courts to identify domestic abuse and signpost victims/survivors to support services.
- There should be additional safeguarding mechanisms to prevent evictions of victims/survivors who have rent arrears or ASB complaints against them.
- The extension of notice periods that tenants must give from one month to two should be reviewed in cases of domestic abuse.
- For joint tenancies there should be provisions to suspend an alleged perpetrator's ability to serve a notice to quit. This can be provided through powers under the Domestic Abuse Act 2021.

In addition to these we would like to draw the Committee's attention to CIH proposals for an exemption to the benefit cap for domestic abuse survivors living in private rented general needs accommodation.[1] These proposals were debated at Lords committee stage of the Domestic Abuse Bill but rejected.

b) Loss of policy levers resulting from the end of section 21

Section 21 is used as a policy lever for to enforce several management standards whereby the landlord's right to use it is suspended if the standard has not been met. The use of section 21 is suspended if the landlord:

- failed to give the tenant a copy of the How to Rent guide
- failed to protect the tenant's deposit
- demanded payment for an item that is banned under the Tenant Fees Act 2019
- failed to give the tenant a copy of the energy performance certificate
- failed to provide the tenant with the current annual gas safety certificate
- needs an HMO or part 3 licence but does not have one

[1] CIH (2020), The Domestic Abuse Bill and the Benefit Cap: A briefing for MPs

- has been served with an improvement notice in the past six months (and certain other conditions apply)

In addition to these a section 21 notice is only valid if it is served at the right time (not too early) and in the right form (has all the information required). The government needs to consider how these levers can be maintained in the absence of section 21. A replacement for the How to Rent guide is necessary even in the absence of section 21 so that tenants are properly informed of their rights under the new regime. The most obvious way to achieve the same effect would be to apply similar requirements for the landlord to make use of one of the mandatory grounds for possession.

c) Retention of section 21 for certain purposes

The white paper seems to imply that section 21 would not be available for use in any circumstances – if so, this is a change from the original renters' reform proposals. The 2019 consultation asked whether section 21 should be retained for certain limited uses or for general use by registered providers (e.g., for starter tenancies) – although this was a minority view. CIH does not support this because:

- if possession is justified (usually serious rent arrears or anti-social behaviour) the landlord should be able to demonstrate it with evidence in court
- housing-related injunctions are known to be far more effective at managing anti-social behaviour (a view supported by Resolve ASB[2])
- it would look distinctly odd if, following the reforms, social housing tenants ended up with less rights than private tenants

Further, there is a danger that retaining section 21 for general use by registered providers may drive the kinds of abuse that have emerged from the exempt accommodation scandal whereby small private providers register with the Regulator of Social Housing in bad faith.

However, we do think that it may be useful to retain section 21 for certain kinds of specialist accommodation that would cease to be viable without a no-fault procedure and which is sufficiently common and/or on a large enough scale to justify its inclusion. Using these criteria, we have identified the following:

- 'short-life' housing which is scheduled for demolition but which could be used for short-term accommodation in the meantime (typically where a compulsory purchase order has been made or is pending).
- key worker housing or similar schemes – 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 (such as 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. Since they 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.

d) Mandatory rent arrears ground

[2] The expert practitioner consultancy formerly known as the Social Landlords Crime and Nuisance Group

We welcome the recognition that exceeding the mandatory rent arrears threshold may be due to the timing of welfare payments and the proposal to prevent eviction if the outstanding payments would take them below it. However, this problem would be much less likely to arise if UC were reformed to end the five weeks wait, as well as being fairer and more transparent to both parties. What happens if, for example, the tenant fails to pay the full housing costs element to the landlord once their UC is paid?

We are also concerned about how cases are treated when the threshold is exceeded due to the shortfall between the tenant's actual rent (or the real 30th percentile rent if it is a lower figure) and the frozen LHA rate. In England, 56 percent of private renter UC claimants have a shortfall between their rent and their LHA rate, and this proportion increases for tenants outside London and the southeast. There are 152 broad rental market areas in England. The table below shows the numbers where there is a shortfall between the real 30th percentile rent (as of April 2022) and the frozen LHA rate. As the frozen rate continues, the decline in the real value of the LHA will accelerate.

BRMAs in England	**Shared**	**1 Bed**	**2 Bed**	**3 Bed**	**4 Bed**
London and South East (44)					
Total with shortfall	29 (66%)	33 (75%)	36 (82%)	34 (77%)	29 (66%)
£0.01 - £5.00	17	4	5	3	2
£5.01 -£10.00	4	17	20	10	3
More than £10.00	8	12	11	21	24
Rest of England (108)					
Total with shortfall	86 (80%)	100 (93%)	102 (94%)	104 (96%)	97 (90%)
£0.01 - £5.00	50	38	26	22	10
£5.01 -£10.00	23	40	54	41	22
More than £10.00	13	22	22	41	65

Ultimately landlords only use possession as it is the only effective means to recover their losses – or more realistically to cap their losses because once the tenant is evicted or moves out the debt is usually written off because there is no efficient and effective means to enforce it. A landlord can get a money judgment but if the tenant refuses to pay it amounts to little more than a declaration that the money is owed. Enforcing it would typically require a further two court hearings – a means inquiry (effectively a discovery stage) followed by enforcement action (e.g. attachment of earnings order, garnishee order). Even then a further order may be required if the tenant's circumstances change. If there was a less cumbersome and more effective alternative to recover arrears, then landlords may start to use it.

e) <u>Anti-social behaviour grounds</u>

Registered providers and housing trusts (whose tenancies fall under the assured regime) already possess significantly more powers to tackle anti-social behaviour (ASB) (such as housing-related injunctions) than the ordinary private landlord. It is not realistic to extend these powers to private landlords nor to expect local authorities to intervene every time a landlord reports an issue. Local authority private sector housing teams often only have two or three full time equivalent staff to cover all private housing issues (including HMO licensing, HHSRS, disabled facilities grant, etc and owner occupation) and as such they should be free to decide how best to deploy their thinly stretched resources.[3]

The mandatory ground for possession relies too heavily on the police or the local authority already having made a significant intervention (such as the tenant having committed an offence, or an

[3] Retained stock authorities may choose to intervene on behalf of their own tenants on local authority estates (for example former right to buy properties being let by private landlords)

injunction being made). For reasons stated previously we think these place unreasonable expectations on the landlord and the local authority. We think that further consideration needs to be given as to when possession may be granted where the tenant's conduct is serious but may not (for various reasons) meet the one of the specific conditions in the ground. For example, low level but persistent anti-social behaviour or minor multiple breaches of fundamental tenancy condition (e.g., rent arrears, anti-social behaviour, damage to property etc.)

The repeal of s21 provides an opportunity to restructure the grounds for possession relating to ASB. We believe that the Law Commission's proposals for Renting Homes[4] could be adapted to provide a more effective and balanced approach (even though they were based on the retention of section 21). These proposals are:

- for all discretionary grounds (not just ASB) new statutory provisions to 'structure the courts' discretion when considering whether it is reasonable to make an order for possession[5]
- a new contractual term implied into all letting agreements relating to 'prohibited conduct', that if breached can trigger possession proceedings in the normal way – perhaps with a shortened notice period[6]. The Law Commission's definition of 'prohibited conduct' could be adapted to include behaviour to likely to cause harassment, alarm, or distress[7]
- the government should consider whether retaining the option to temporarily demote a tenancy might be useful. If further breaches occur during the demotion period, the landlord could then use the section 21 procedure. The tenant would have the opportunity to challenge the landlord's evidence at the demotion hearing.
- Proceedings for possession, demotion or an injunction could be combined instead of being separate causes of action[8]

Will the proposals result in more disputes ending up in the courts? If so, will the proposals for speeding up the courts service suffice? Does the PRS need its own ombudsman? If so, what powers should it have?

Most disputes do not end up in court because there is no effective defence to a validly served section 21 notice; many others are abandoned before the hearing for the same reason. It might therefore seem reasonable to assume that more disputes will end up in the courts once section 21 is abolished. However, this assumes that tenants have both the financial means and access to good quality specialist advice to make or defend a claim if they have a dispute with their landlord.

We welcome the recent decision by MoJ to reconsider the proposed reforms to the Legal Aid Agency Housing Possession Court Duty Scheme (HPCDS). The consolidation of contracts into large geographic units would have excluded many not-for-profit providers (Citizens Advice, Shelter, Law Centres) – who make up almost two thirds of the contract holders – from making bids.[9]

Not every County Court has a HPCDS. To make matters worse, large areas of the country are housing advice deserts[10] where there are no legal aid providers of housing advice. There should be a thorough and meaningful review of publicly funded housing advice services which addresses the

[4] Law Commission (2006), LC 297 Renting Homes Final Report (2006) and Draft Bill
[5] Ibid, Final Report Volume 1 paras 5.31-42 and Draft Bill, Final Report Volume 2 schedule 7
[6] Ibid, Final Report Volume 1 paras 9.7-9 and 9.17-22
[7] To mirror the definition in the Anti-social behaviour, Crime and Policing Act 2007
[8] LC 297 Final Report para 9.23
[9] Shelter (2018) response to MoJ Housing Possession Court Duty Scheme Consultation (Commissioning Sustainable Services)
[10] The Law Society (2022) https://www.lawsociety.org.uk/campaigns/legal-aid-deserts/housing

question of resources. Without it we have serious concerns that tenants with limited means will be denied access to justice.

The proposals for alternative dispute resolution and for a housing ombudsman may help resolve some disputes – but only those complaints where the court has no effective remedy. Indeed, this is the basis for nearly every Ombudsman scheme (no recourse to the Ombudsman if the complainant has a legal remedy). Ultimately if a landlord and tenant cannot agree about the facts or the law only the courts can decide the dispute.

A new Ombudsman scheme will help – currently tenants can only have the right to access a redress scheme if they have a complaint about their agent. But the current arrangements for resolving landlord and tenant disputes are confusing. A tenant who uses a letting agent will be in one of six client money protection schemes, one of three tenancy deposit schemes and one of two property redress schemes. In addition, if the tenant wishes to challenge a rent increase s/he will also have the right to go to a property tribunal. We welcome the introduction of a single Ombudsman for private renters, but we think more could be done to simplify this system overall. Careful thought needs to be given as to how each part of the dispute resolution system interacts with the other. For example, a tenant who has failed to pay their rent or who is engaged in anti-social behaviour should not be able to use the Ombudsman to block their case from being heard by the courts.

If one of the objectives is to prevent cases from escalating to the court, then the quantum of damages awarded by the Ombudsman needs to be broadly comparable. Further, the Ombudsman needs to be fully resourced so that it has the capacity to resolve disputes speedily.

Apart from the proposals for ADR and an Ombudsman the white paper is very thin on proposals to speed up the process in the courts. In fact, there is only a commitment to "work with the Ministry of Justice (MoJ) and HM Courts and Tribunals Service (HMCTS)" with no details about any measures to be taken. The success of administrative reforms such as the introduction of a digital process, improving access to advice for court users and improved prioritisation of cases will ultimately depend on the funding HMCTS receives to implement them. Streamlining administrative procedures will not be sufficient on its own to clear the backlog in the courts. Ultimately, whatever the procedure is, claims still need to be processed and this requires being adequately resourced to meet demands.

How easily will tenants be able to challenge unfair rent increases under the proposals?

The fact that the rent cannot be increased if the tenant challenges it should give tenants greater confidence to challenge unfair rent increases. However, a £100 tribunal fee will likely discourage most tenants from challenging unless they have powerful evidence that a reduction can be secured.

Despite the government's reluctance to introduce rent controls at a time of rising inflation we note that they already possess the power to limit rent increases should they choose to do so.[11]

What impact, if any, will the reforms have on the supply of homes in the PRS?

The impact of further regulation on supply from these reforms is contested. There is no doubt that the Housing Act 1988 helped restore investor confidence in private renting, but it does not

[11] Landlord and Tenant Act 1985, section 31. It is also clear that this power can be used as a counter inflation measure or virtually any other reason Secretary of State for Environment, Transport and the Regions v Spath Holme Ltd [2000] UKHL 61

necessarily follow that the reintroduction of security will result in a corresponding contraction in the supply.

The sector's decline in the three decades before the Housing Act 1988 probably had more to do with the broad economic conditions that prevailed at that time (making the other tenures more attractive). The wide availability of cheap loans and low house price to income ratios (as well as the introduction of the right to buy) made home ownership the most economically rational tenure, while a large expansion in newly built council housing available at low rents inevitably meant that private renting became the tenure of last resort. The sharpest decline took place in the years immediately before and after the Housing Act 1957 which removed security and rent controls ('fair rents' are market rents).

That most landlords would prefer to retain section 21 is not disputed (almost no one uses ordinary assured tenancies) but there are costs involved in exiting the market. Some landlords may sell up, but if those properties are purchased by another landlord there is no loss in supply. House price to income ratios are now too high for owner occupation to be a realistic option for a significant proportion of the population so demand is likely to remain strong. In the medium to long-term it may mean that some market restructuring takes place (e.g. the proportion of lettings to students, young professionals, people on benefits and so on) and this may prove to be a more serious policy challenge than any overall change in the supply. The government should commit to a widespread review of the market once the reforms are in place.

How enforceable are the proposals to make it illegal for landlords to have blanket bans on letting to people on benefits or with children? What other groups, if any, should be protected from blanket bans?

We welcome the proposals to make it unlawful for landlords to have blanket bans on letting to people on benefits or with children. However, we are still concerned that landlords could effectively exclude prospective tenants by other means – for example by demanding financial references, a deposit, rent in advance and/or a rent guarantor, all of which are already fairly common practice.

We would like to have seen a commitment in the white paper to fund access schemes for low-income households. For example, start-up and core funding to support social letting agencies and or local bond schemes such as the SmartMove model developed by Crisis. The need for this is even greater given the growing cost of living crisis.

We are seriously concerned that the Home Office right to rent scheme results in direct or indirect discrimination against ethnic minority tenants, especially those without a UK passport (whether they are British Citizens or not). BME UK residents are more likely to live in larger households and include extended family members which means the landlord must carry out more checks. We fear that the recent change in the guidance to exclude physical documents and to rely on Home Office digital checks may make this worse. Research by the Joint Council for the Welfare of Immigrants (JCWI) has shown that people of colour and people with foreign sounding accents or names find it more difficult to rent a home. It takes BME people and migrants up to twice as long to rent a home as a white British person.[12] We think that some of these problems could be reduced if physical documents were once again acceptable, provided the landlord or their agent has taken reasonable care to ensure the documents are genuine. Another option might be to provide funding to local advice agencies (such as law centres) to provide an agency checking service to local landlords which would also help support the provision of local advice.

[12] JCWI https://www.jcwi.org.uk/right-to-rent

What should be included in the new decent homes standard and how easily could it be enforced?

In previous submissions[13] related to the decent homes standard (DHS), CIH has called for an updated DHS which is focused on outcomes, rather than tick-box exercises, and which aims to deliver homes that keep people:

- Safe
- Secure
- Healthy
- Comfortable and at an affordable cost
- Connected (socially and virtually)

A new DHS should be updated to reflect present day expectations and aspirations. This should include measures related to the energy efficiency of homes, but also other factors which are now increasingly important to people's lives, including: wi-fi and broadband connectivity; quality of communal and outside areas; soundproofing; and electric car charging facilities.The current data is not sufficient to identify the prevalence of the different issues in properties which fail the current DHS – although the proposals for a property portal may provide the means to get better data.

A different approach may be needed than that taken for social rented homes as most private landlords only have one or two properties. The structure of ownership in the sector does not really lend itself to local authorities taking a strategic approach and there is a risk that action may be driven by individual complaints which may not be the best use of local authorities' limited resources. Well targeted small area initiatives may provide a much better model for the most efficient use of resources.

The existing policy levers available under Housing Act powers do not really support the strategic approach. There might be a case for extending the criteria for selective licensing to facilitate this. However, the current criteria for selective licensing are far too narrow (the only legitimate objectives are tackling anti-social behaviour or low demand) and most local authorities regard the evidence requirements too demanding to make it a useful tool.

Local authorities should be free to decide the best approach to meeting the government's overall target (and wider objectives such as those related to climate change). This may mean the local authority taking a view that some of the older housing in its area is obsolete and is not worth the investment required to bring it up to the DHS, given that the country still has over five million pre-1919 dwellings, of which the greatest proportion are privately rented.[14]

A more strategic approach could also be taken towards achieving the DHS on estates that are predominantly social housing but where there may be some (ex-RTB) private rented homes. Many of these homes got left behind in the original decent homes programme. If future estate-based programmes are planned, it may be better to include any private homes and to recover the cost later (e.g. by placing a charge on the property). An alternative approach has been pursued in London, where the GLA has funded the buying back of more than 1,500 right to buy properties that were privately rented.

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[13] CIH (2021) https://www.cih.org/publications/cih-submission-to-mhclg-decent-homes-standard-review-additional-comments-on-a-new-decent-homes-standard

[14] English Housing Survey (2020), Housing quality and condition