A New Deal for Renting: Resetting the balance of rights and responsibilities between Landlords and Tenants

September 2019

About you

In which region do you live?

Arbon House, 6 Tournament Court, Edgehill Drive, Warwick, CV34 6LG

In which capacity are you completing these questions?

Other – organisation

In which region(s) do you let out or manage property?

ARLA Propertymark letting agents manage property across England (East; East Midlands; London; North East; North West; South East; South West; West Midlands; Yorkshire and the Humber).

How many rental properties do you own or manage?

ARLA Propertymark is responding on behalf of the letting agents it represents, taking data from our monthly Private Rented Sector Report from July 2019, the average number of properties managed per letting agency branch currently stands at 184[1] and with almost 9,500 branches in membership, ARLA Propertymark members manage circa 1.75 million tenancies.

As a landlord or letting/property agent, please indicate which, if any, of the following statements describes you:

I rent out or manage properties with tenants who have children aged under 18 living with them.

Yes, ARLA Propertymark members manage properties with tenants who have children aged under 18 living with them.

At least one of my tenants is a student at a Higher Education Institution.

Yes, ARLA Propertymark members have tenants that are students at Higher Education Institutions.

At least one of my tenants is in receipt of housing benefit or the housing element of Universal Credit.

[1] https://www.arla.co.uk/media/1048252/prs-report-july-2019.pdf

Yes, ARLA Propertymark members have tenants that are in receipt of housing benefit or the housing element of Universal Credit.

I let out or manage at least one property that is categorised as a House in Multiple Occupation.

Yes, ARLA Propertymark members manage properties that are categorised as a House in Multiple Occupation (HMO).

At least one of my tenants is on a short-term letting agreement.

Yes, ARLA Propertymark members have tenants that are on a short-term letting agreement.

If you are replying on behalf of an organisation, which of the following best describes you?

ARLA Propertymark is a sector representative body for letting agents.

ARLA Propertymark is the UK's foremost professional and regulatory body for letting agents; representing over 9,500 members. ARLA Propertymark agents are professionals working at all levels of letting agency, from business owners to office employees.

Our members operate to professional standards far higher than the law demands, hold Client Money Protection and we campaign for greater regulation in this growing and increasingly important sector of the property market. By using an ARLA Propertymark agent, consumers have the peace of mind that they are protected, and their money is safe.

Executive Summary

ARLA Propertymark's response to this consultation can be summarised as follows:

- Whilst we strongly oppose the abolition of the Assured Shorthold regime, if it does go ahead, it must extend to all users of the Housing Act 1988.
- There should not be a statutory minimum length for a Fixed Term tenancy.
- Instead of removing the use of break clauses, the Government must provide guidance on fair and strengthened clauses for the use of both tenant and landlord.
- Ground 1 of Schedule 2 of the Housing Act 1988 must be widened to allow possession of a home for the landlord's family member to live in.
    - There should not be a requirement for the landlord or family to have lived in the property previously.
    - Landlord's should not be required to provide prior notice to the tenant to use Ground 1 as this ignores emergency situations.
    - This ground should be able to be exercised at any point in the tenancy and should not be limited a two-year restriction from the date the tenancy began.
- A new ground must be added for the landlord wanting to sell the property.
    - The landlord should not be required to give a tenant prior notice of sale as this ignores emergency situations.
    - This should not be subject to a two-year restriction.
- The rent arrears ground must be strengthened to ensure that repeat offenders are not allowed to play the system by paying off minimal arrears at the door of the Court.
    - To reflect conditions set by mortgage lenders, after two months of rent arrears the ground should be exercisable.
    - If a maximum of two occasions where a "pattern of behaviour" can be proven, the Court must grant a Possession Order.
- Antisocial behaviour grounds must be strengthened to ensure that tenant behaviour can be better evidenced in Court.
    - Guidance must be provided for stronger clauses in tenancy agreements to evidence poor tenant behaviour.
- The domestic abuse ground must be amended to include all users of the Housing Act 1988 (including the private rented sector).
    - Preferential tenancy rights must be given to the victim of domestic abuse.

- Ground 13 must be amended to allow possession where a tenant repeatedly prevents them from maintaining legal safety standards.
- We believe that all grounds that are currently mandatory (and the new ground for sale) can be disposed of without a hearing.
    - This may require additional hard copy evidence on application.
- Ground 4 must be widened to include all landlords who provide student accommodation.
- Short term lets of 90 days and under must be exempted from the new framework.
- Grounds for agricultural tenancies must be strengthened and made mandatory to ensure the continued success of agricultural businesses.
- Without effective court processes and tightened mandatory grounds for eviction the proposal will have a negative impact on homelessness.
    - This will come at a cost to the Government and local authorities who will need to invest more in providing social housing and temporary accommodation for displaced private rented sector tenants.
- Single parents on a low income, the elderly that are retired and on a low income and the disabled who are on a low income will be disproportionately impacted by the proposals due to the perceived risk of letting to low income groups.
- **To mitigate any negative impacts of the proposals the Government must:**
    - **Introduce a Housing Court to effectively deal with cases**
    - **Digitise the system and take claims online**
    - **Make all Grounds for Eviction mandatory to ensure an appropriate alternative to Section 21**
    - **Give landlords the automatic right to a High Court Enforcement Officer**
    - **Conduct a full pilot on the new proposals to monitor its progress before deciding on a national roll out of the policy**
- We support piloting the scheme before making any substantial change on a national scale.
    - If introduced, the sector must be given at least a minimum of 12 months' after Royal Assent before the legislation comes into force.
    - This will also provide the Ministry of Justice enough time to adjust processes to work with the new system.

The end of Section 21 evictions

Assured Shorthold Tenancies

Q1: Do you agree that the abolition of the Assured Shorthold regime (including the use of Section 21 notices) should extend to all users of the Housing Act 1988?

1. Yes, ARLA Propertymark agrees that the abolition of the Assured Shorthold regime should extend to all users of the Housing Act 1988.[2] We think this for two reasons. Firstly, giving preferential use of the regime to the social rented sector will make the sector more attractive to those who want flexible tenancies. Secondly, without extending the abolition of the Assured Shorthold regime to all users of the Housing Act 1988 this will create a two-tier system whereby social landlords are given greater protections than private landlords. By extending the proposals to all users of the Housing Act 1988 this is consistent with the introduction of recent legislation and provides for a level playing field.

2. Allowing the continued use of the Assured Shorthold regime, and therefore Section 21, for social landlords will make social renting more attractive for tenants who want flexibility. This is because, the social rented sector would be able to offer the flexibility that has been associated with the private rented sector. We believe that removing flexibility from the private rented sector only would put added strain on the social rented sector to provide more housing. Allowing this flexibility for social tenants will make the sector more desirable to groups who have often remained in the private rented sector. Historically, the private rented sector mainly housed single households or young couples, transient workers or students. In recent years, where tenants have struggled to access the social rented sector the private rented sector has housed many families and individuals, allowing for its growth and making up the shortfall for those without access to social housing. Making the social rented sector more desirable will only exacerbate council housing waiting lists, which a study by Shelter found that of 1.5 million households, 310,500 had been waiting for more than five years to be given a socially rented home.[3] We would expect these figures to increase and the situation to worsen, should the social rented sector be allowed the continued use of the AST regime. A key benefit provided by the private rented sector is flexibility, and therefore, if the flexibility of the Assured Shorthold regime is removed, it should apply to all sectors.

[2] http://www.legislation.gov.uk/ukpga/1988/50/contents
[3] https://www.independent.co.uk/news/uk/home-news/social-housing-uk-family-wait-homeless-shelter-accommodation-a8389926.html

3. If the removal of the Assured Shorthold regime is not extended to the social rented sector, this will create a two-tier system whereby social landlords have a greater protection of their assets than private landlords do. We would expect this to deter investors from the private rented sector as these landlords will not have the simpler route to eviction if needed. In addition, we would like to highlight that the social rented sector uses the Possession process in the courts a greater deal more than the private rented sector currently. This is despite more families in England and Wales living in the private rented sector. Recent data from the Ministry of Justice from January to March 2019 showed that 19,192 or 63 per cent of all landlord possession claims came from social landlords. In comparison, 21 per cent of claims came from private landlords in the period.[4] Given the high usage of the current eviction process by the social rented sector, it would be counterintuitive to allow its continued use of the Assured Shorthold regime, whilst removing this ability from the private rented sector.

4. In recent years, the Government has introduced legislation that applies to both forms of renting in England. There are two examples that explain this. Firstly, the Tenant Fees Act 2019 and secondly, the Homes (Fitness for Human Habitation) Act 2018. Under the Tenant Fees Act 2019, the ban on fees applies to Assured Shorthold Tenancies in both the private rented sector and social rented sector. This is important because most registered providers of social housing give Assured Tenancies. As a result, the removal of the Assured Shorthold regime should be consistent with legislation that impacts on both social and private landlords. Similarly, under the Homes (Fitness for Human Habitation) Act 2018, this was introduced to ensure social tenants have the same protections as those living in the private rented sector. If their landlord has not dealt with a hazard in their property, they too will be able to take their local authority to Court, whereas previously property hazards were dealt with by the local authority who could not bring a case against themselves. Therefore, following recent legislation, we think that if the Assured Shorthold regime is removed it should be applicable to all users of the Housing Act 1988 and not just the private rented sector.

[4] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/800283/Mortgage_and_Landlord_Possession_Statistics_Jan-Mar_19.pdf

Q2: Do you think that fixed terms should have a minimum length?

5. No, ARLA Propertymark does not think that fixed terms need to be set at a statutory minimum. This is because the private rented sector needs to be flexible for the benefit of the tenant and the landlord, but many fixed terms are currently set at a minimum of six months. Despite the minimum historical tenancy length being removed by the Housing Act 1996, many landlords still work to the previous rules by offering a minimum of six months tenancy. We believe the length of a tenancy should be stipulated by mutual agreement between the landlord and tenant. This ensures that the length of a tenancy is workable for both parties; creating flexibility and in keeping with current arrangements for mortgage lenders.

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

7. Furthermore, by default many in the industry already provide a minimum length for a fixed term. Landlords are often limited by terms set by their mortgage lenders. Most lenders require buy-to-let landlords to provide tenants with a six- or 12-month tenancy as standard in their mortgage arrangements (to reflect the original provisions of the Housing Act 1988 where an AST was either six months or 12 months long). This also reflects the 'consent to let' where the property was purchased as the landlord's own residence but has since decided to let the property to tenants, and the mortgage lender is allowing the property to be let for a set period. For this reason, we do not agree that a minimum length for a fixed term tenancy should have a statutory minimum.

Q3: Would you support retaining the ability to include a break clause within a Fixed Term tenancy?

8. Yes, ARLA Propertymark would support retaining the ability to include a break clause within a Fixed Term tenancy. We think this for three reasons. Firstly, break clauses provide flexibility

for tenants. Secondly, they give landlords added protections based on individual circumstances. Thirdly, break clauses are not typically a measure that give preferential rights to the landlord. For these reasons, we support retaining the ability to include a break clause within a Fixed Term tenancy. We would like to note that our support for the continued use of break clauses is under the proviso that adequate mandatory grounds for eviction under Section 8 are provided for landlords to use when instructing the clause. This is because, on occasions where a break clause is being used currently, landlords are more likely to make use of a Section 21 notice if the tenant does not subsequently vacate the property than they are to use a Section 8.

9. Break clauses are beneficial as they typically provide flexibility for both parties within a tenancy and allow the landlord or tenant to end the tenancy agreement early during a fixed term. Many people use the private rented sector as a temporary measure while they save up deposits for their first home or renting property is often a choice for families who are likely to move due to job availability or education opportunities. Tenants need the flexibility and control of being able to move on short notice and not everyone wants to be tied down to a fixed term. Both landlords and tenants want and need flexibility. This can be evidenced by the ARLA Propertymark Private Rented Sector Report from June 2019 showing an average tenancy length of 18 months.[5] This is despite a push across the UK to promote longer term tenancies and greater security of tenure. Anecdotally, an ARLA Propertymark Protected letting agent in Cambridgeshire has informed us that they manage over 500 properties and 56% of the tenancies end within the first two years, 15% within the third year and 29% are longer than three years. Furthermore, 90% of these tenancies are ended by the tenant, not the landlord. This suggests that the continued use of break clauses will be initiated by the tenant more so than the landlord.

10. Landlords are given extra protection for their assets by the use of break clauses. The use of break clauses depends entirely on circumstance and will likely only be instigated by the landlord where an issue arises. If the landlord deems that the tenant is not suitable, for example, the tenant hasn't honoured terms of their tenancy agreement, the landlord can use the break clause before any further issue is caused later in the tenancy. Landlords would not

[5] https://www.arla.co.uk/media/1048158/prs-report-june-2019.pdf

instigate a break clause if the tenant remained suitable. Therefore, we do not see any legitimate reason to limit the use of break clauses where they will only ever have repercussions for bad tenants. For landlords, longer tenancies are preferable due to income security and less void periods. However, the use of break clauses allows both the landlord and tenant to assess the suitability of the agreement during the fixed term and ultimately either party has an additional level of protection should the tenancy not work out.

11. We would like to highlight that most break clauses are not unduly unfair on tenants. More than often break clauses favour either both the landlord and tenant or just the tenant. This is because break clauses that only give rights to the landlord can quite often be deemed as an unfair contract term under the Unfair Contract Terms Act 1977.[6] There are associated risks for both the landlord and the tenant, meaning that no one party benefits over the other; it is an equal relationship. For landlords, the use of break clauses increases the risk of void periods which in turn means the associated costs for empty properties and loss of income. For tenants, the risk is security of tenure. However, we would argue that tenants would be fully aware of break clauses upon signing a tenancy agreement and they too will often have the ability to end the contract early. Where break clauses are used, landlords do not have a guaranteed right for possession during the first six months of the tenancy as they can only be enforced after a minimum of six months. Further, where a landlord uses the break clause, but the tenant does not vacate the property, the landlord would then be required to issue eviction proceedings to regain possession. This in itself provides an extra level of security for the tenant.

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

[6] https://www.legislation.gov.uk/ukpga/1977/50

break clauses should be made clearer and detail the rights and obligations of all parties involved.

Bringing tenancies to an end

Moving into the property, widening the scope of Ground 1

Q4: Do you agree that a landlord should be able to gain possession if their family member wishes to use the property as their own home?

13. Yes, ARLA Propertymark agrees that a landlord should be able to gain possession if their family member wishes to use the property as their own home. There may be an emergency circumstance where a landlord needs to regain their rental property where a family member needs to be housed (such as them being made homeless or an unplanned pregnancy). Without the Assured Shorthold Tenancy regime and by not amending the Grounds under Section 8, in this situation landlords would not be able to provide a lifeline to a family member who may be facing hardship or struggling to move into the local area. A landlord should have the freedom to provide housing to their family if needed and without constraint, therefore, a landlord should be able to gain possession of their property in order to house their family.

Q5: Should there be a requirement for a landlord or family member to have previously lived at the property to serve a Section 8 notice under Ground 1?

14. No, ARLA Propertymark does not believe that there should be a requirement for a landlord or family member to have lived previously at the property to serve a Section 8 notice under Ground 1. We think this for three reasons. Firstly, it is unreasonable to stipulate that the property needs to be a place of previous residence for a landlord or family member to regain possession. Secondly, the requirement ignores emergency situations that may be faced by the landlord. Thirdly, it does not take into account the number of landlords who only own a minimal number of properties. For example, around 94 per cent of landlords let property as an individual, and 45 per cent of landlords only have one rental property.[7] For those landlords with less rental properties, this gives them a limited pool of properties that they or their family can live in and where a landlord has multiple rental properties the probability of them previously living in the property is minimal. Furthermore, it is even more unlikely that the family member will have lived in the property previously, which may make the amended

[7] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/775002/EPLS_main_report.pdf

ground defunct in many cases for this reason. Therefore, we do not agree that there should be a requirement for a landlord or family member to have previously lived at the property.

Q6: Currently, a landlord has to give a tenant prior notice (that is, at the beginning of the tenancy) that they may seek possession under Ground 1, in order to use it. Should this requirement to give prior notice remain?

15. No, ARLA Propertymark does not think that a landlord should have to give a tenant prior notice that they may seek possession under Ground 1, in order to use it. We think this for three reasons. Firstly, this requirement currently applies to Ground 1 and can deter landlords from seeking possession under this Ground due to this reason and thus, previously Section 21 has been used instead. Secondly, it ignores emergency situations where this may be the landlords only owned property and they quickly need to move in due to unforeseen circumstances. Thirdly, it is unreasonable to expect landlords to always know if they intend to move into the property at the beginning of the tenancy as they will not always be aware of their own (or their family's) future circumstances. Should this requirement remain, and Section 21 is removed, we would expect landlords to issue this notice at the beginning of a tenancy as a matter of precaution. This does not benefit tenants and does in fact impact their perceived security within that tenancy. Therefore, this requirement must not be included in the amended Ground 1.

Q7: Should a landlord be able to gain possession of their property before the fixed term period expires, if they or a family member want to move into it?

16. Yes, ARLA Propertymark thinks that a landlord should be able to gain possession of their property before the fixed term period expires, if they or a family member want to move into it. We believe that to end the tenancy during the fixed term will mean that circumstances may need to be proven. A position of emergency would need to be evidenced, such as financial hardship, divorce or a new birth/adoption in the family, and this requires possession of the property. The landlords need for possession should be evidenced as ending a tenancy before the end of a fixed term, disproportionally impacts the tenant where they are not at fault. The requirement for evidence should not apply where the fixed term has expired.

Q8: Should a landlord be able to gain possession of their property within the first two years of the first agreement being signed, if they or a family member want to move into it?

17. Yes, ARLA Propertymark believes that a landlord should be able the gain possession of their property within the first two years of the first agreement being signed, if they or a family member want to move into it. By stating a minimum or two years until a landlord can regain their property for either themselves or their family to move into, this ignores unforeseen financial emergencies and will not be workable for landlords working on a secondment abroad or in the armed forces. This is because, a contract abroad may terminate at any time with any certain length of notice. By placing an arbitrary cap of a minimum length of tenancy, this could result in the landlord becoming homeless upon their return to the country. The property may be the landlord's only residence, that they have let to the tenant knowing that they would be out of the country for a certain period of time, and by stipulating this requirement this could come at a disadvantage to the landlord returning to the UK without a home to live in.

Q9: Should the courts be able to decide whether it is reasonable to lift the two-year restriction on a landlord taking back a property, if they or a family member want to move in?

18. Yes, ARLA Propertymark thinks that the courts should be able to decide whether it is reasonable to lift the two-year restriction on a landlord taking back a property, if they or a family member want to move in. Consideration must be made that should it be introduced there should be special provisions for those working a secondment abroad or in the armed forces to ensure that the landlord returning to the UK could regain their property to live in (or their family) if needed before the two year restriction expires.

19. However, we do not agree with the two-year restriction as this ignores situations where a landlord or their family member may need to move into the property as an emergency. Consequently, the two-year restriction should not be put in place as ultimately the landlord should have a simpler route for possession where they (or their family) need to live in the property themselves.

Q10: This ground currently requires the landlord to provide the tenant with two months' notice to move out of the property. Is this an appropriate amount of time?

20. Yes, ARLA Propertymark believes that requiring the landlord to give the tenant two months' notice to move out of the property is an appropriate amount of time. Whilst this could cause

problems for the landlord if they needed to move into the property immediately, the tenant needs to be given sufficient time to find new housing and we believe two months is adequate. For example, ARLA Propertymark's Private Rented Sector report for July 2019, shows that the average void period between tenancies was three weeks.[8] Therefore, two months provides sufficient time for both landlords and tenants to make alternative arrangements.

A new ground – selling the property

Q12: We propose that a landlord should have to provide their tenant with prior notice they make seek possession to sell, in order to use this new ground. Do you agree?

21. No, ARLA Propertymark does not agree that a landlord should have to provide their tenant with prior notice they may seek possession to sell, in order to use this new ground. As with the landlord or family moving into the property, to which this restriction currently applies, it will make this ground considerably more difficult to use. This is because it ignores emergency situations where the landlord may need to sell due to unforeseen financial difficulty or is moving away from the area. We believe that by stipulating this requirement, landlords will provide this notice as a precaution whenever signing a new tenancy agreement, even if they do not currently have any intention to sell. This is not beneficial to the tenant and will not provide them security within their tenancy with the worry of its longevity being forefront.

Q13: Should the court be required to grant a Possession Order if the landlord can prove they intend to sell the property (therefore making the new ground 'mandatory')?

22. Yes, ARLA Propertymark believes that the court should be required to grant a Possession Order where the landlord can prove that they intend to sell the property. For the associated risk of selling with a sitting tenant, landlords will often sell at a lower price than they could with vacant possession. Without making this ground mandatory, it could prevent investment into the sector as purchasers may be deterred from buying property with sitting tenants without a simple route to regain possession. Making the ground mandatory and deciding the outcome of the case on paper rather than a full court hearing will mitigate issues that landlords often face when selling their property with sitting tenants.

[8] https://www.arla.co.uk/media/1048252/prs-report-july-2019.pdf

23. Sitting tenants in a property for sale can come with many issues. Firstly, as the tenant has the right to quiet enjoyment, they will require at least 24 hours' notice in writing, with tenants still being allowed to refuse access. This is further frustrated where the tenancy agreement does not mention a specific clause on viewings by prospective purchasers, which must be present in order to conduct viewings with a sitting tenant in place. This can make conducting viewings for these properties difficult or impossible, which may deter potential buyers.

24. Whilst some investors are happy to purchase a property with sitting tenants, this does not necessitate that the property has been purchased for the purpose of buying to let. Further issues are faced where the buy to let property is purchased by an owner occupier, who is intending on moving into the property themselves. The new unintentional landlord can face issues when trying to evict the tenants, who may not leave by the required date and without Section 21 this could mean a long court process just to obtain possession of an owner's home. However, by making a mandatory Ground where the landlord intends to sell the property this will limit this issue if the landlord intends to sell without a tenant in situ.

Q14: Should a landlord be able to apply to the court should they wish to use this new ground to sell their property before two years from when the first agreement was signed?

25. Yes, ARLA Propertymark agrees that a landlord should be able to apply to the court should they wish to use this new ground to sell their property before two years from when the first agreement was signed. Here we would reiterate our response as outline in Q8 that we do not agree with the two-year restriction as this ignores emergency situations where a landlord may need to sell the property. Consequently, the two-year restriction should not be put in place as ultimately the landlord should have a simpler route for possession where they need to sell the property.

Q15: Is two months an appropriate amount of notice for a landlord to give a tenant, if they intend to use the new ground to sell their property?

26. Yes, ARLA Propertymark believes that requiring the landlord to give the tenant two months' notice to move out of the property is an appropriate amount of time. Whilst this could cause problems for the landlord needing to sell the property quickly, the tenant needs to be given sufficient time to find new housing or organise with the local authority to seek social housing and we believe two months is adequate. This takes into consideration that a recent study by

Rightmove found that the average time to sell a property in the UK is 77 days.[9] Therefore, two months' notice provides the landlord with adequate time to sell the property, and for the tenant to seek alternative accommodation before the property is sold.

Rent arrears

Q17: Should the ground under Schedule 2 concerned be revised so…

The landlord can serve a two-week notice seeking possession once the tenant has accrued two months' rent arrears.

27. Yes, ARLA Propertymark agrees that the ground under Schedule 2 concerned with rent arrears be revised so that a landlord can serve a two-week notice seeking possession once the tenant has accrued two months' rent arrears. This will ensure that the landlord is not unduly disadvantaged by the tenant being allowed to stay in the property for an extended period of time.

The court must grant a Possession Order if the landlord can prove the tenant still has over one months' arrears outstanding by the time of the hearing.

28. Yes, ARLA Propertymark agrees that the ground under Schedule 2 concerned with rent arrears be revised so that the court must grant a Possession Order if the landlord can prove the tenant still has over one months' rent arrears outstanding by the time of the hearing. This will provide added protection where the property has been purchased on a buy to let mortgage. With the current provisions of the Ground, if the landlord is reliant on the rent to pay for the mortgage and cannot recoup the money owed in rent arrears from elsewhere, the property may be repossessed by the lender. This is because, buy to let lenders require only two months' mortgage repayment arrears to issue repossession proceedings.[10]

29. In addition, in some instances where a tenancy is binding on the landlord's mortgage lender, the tenant has the right to remain in the property. This could mean that in some eventualities, a tenant who has consistently defaulted on their rent resulting in the landlord missing mortgage payments, the property has been repossessed by the lender, but the tenant still has the right to remain in the property. This is completely disproportionate considering the possession was at fault of the tenant not paying rent, and the landlord has lost their asset.

[9] https://www.landlordtoday.co.uk/breaking-news/2019/2/the-average-time-it-takes-to-sell-a-property-revealed
[10] https://www.telegraph.co.uk/finance/personalfinance/2794862/Buy-to-let-landlords-how-to-avoid-repossession.html

30. Further, buy to let mortgages cost more than a residential mortgage due to the associated risk with rent collection and void periods. We believe that should this risk increase, mortgage terms will become less favourable and make letting property less accessible. Ultimately, the opportunity for repossession has the ability to reduce the amount of properties available for private letting and will put prospective landlords off from purchasing properties with a buy to let mortgage due to the perceived risk of tenant's defaulting on rent payments.

The court may use its discretion as to whether to grant a Possession Order if the arrears are under one month by this time.

31. Yes, ARLA Propertymark agrees that the court may use its discretion as to whether to grant a Possession Order if the arrears are under one month by this time. Alongside the other proposals contained within this consultation to identify a "pattern of behaviour" and the strengthening of Ground 8, we believe that this will be sufficient in limiting tenants from "playing the system". Under the current system where Ground 8 of a Section 8 eviction notice has been used, it is known that some tenants will pay enough money owed to remove the mandatory ground for rent arrears before the hearing, which result in the Judge dismissing the case as the mandatory ground for eviction no longer stands. Whilst it can be a positive that landlords are paid money owed and the tenant can stay in the property, some tenants use this is a means to remain in the home without any intention of paying any further rent. This does not provide security for further rent payments. Further rent defaults could result in the landlord having to begin the process for another Possession Order.[11] Taking into consideration the Government's intention to limit this behaviour by the tenant, we support Ground 8 being amended where arrears are under one month by the time of the court hearing, for the decision to be at the Judge's discretion.

The court must grant a Possession Order if the landlord can prove a pattern of behaviour that shows the tenant has built up arrears and paid these down on three previous occasions.

32. Whilst ARLA Propertymark agrees that the court must grant a Possession Order if the landlord can prove a pattern of behaviour that shows the tenant has built up arrears and paid these down, this should be limited to a maximum of two times rather than three. This proposal

[11] https://www.arla.co.uk/media/1047711/considering-the-case-for-a-housing-court.pdf

allows tenants to play the system up to three times, meaning three occasions where the landlord will have been required to issue court proceedings. Considering that a majority (70 per cent) of surveyed ARLA Propertymark members have reported that pursuing an application at a hearing costs them between £1,000 and £9,999[12], expecting landlords to pay this on three occasions in addition to lost rent, will do little to give landlords confidence in the eviction process without Section 21 for rent arrears. Therefore, if there is to be a basis of "pattern of behaviour", this should be an absolute maximum of two times. If a tenant is consistently defaulting on rent payments, it is likely that they cannot afford the tenancy and should therefore allow the landlord possession of the property.

Anti-social behaviour

Q18: Should the Government provide guidance on how stronger clauses in tenancy agreements could make it easier to evidence Ground 12 in court?

33. Yes, ARLA Propertymark thinks that the Government should provide guidance on how stronger clauses in tenancy agreements could make it easier to evidence Ground 12 in court. It is likely that landlords and letting agents will be inclined to make use of Ground 12, which covers contractual breaches, however we think that this ground should become mandatory on the basis of specific significant breaches (for example: illegal subletting). By providing guidance for landlords and letting agents on stronger clauses to evidence contractual breaches, and by making the ground mandatory for certain instances, this will encourage the use of Ground 12 in the eviction process.

Q19: As a landlord, what sorts of tenant behaviour are you concerned with?

34. ARLA Propertymark letting agents report that landlords are concerned with the following tenant behaviour:
    - Nuisance (such as parties or loud music)
    - Vandalism (such as graffiti)
    - Environmental damage (such as littering or fly-tipping)
    - Uncontrolled animals

    The following additional issues were highlighted by ARLA Propertymark members:[13]
    - Smoking in the property without consent

[12] Section 21 Survey, ARLA Propertymark, September 2019. Responses collated from 469 respondents.
[13] Ibid

- Illegal subletting
- Drug use
- Illegal sex work from the property
- Purposeful damage to the property

Conclusively, this behaviour can have negative impact on the landlord, letting agent and people in surrounding properties but many can currently be difficult to evidence, meaning that landlords have previously had to resort to evicting these tenants via the Accelerated Possession process of Section 21.

Q20: Have you ever used Ground 7A in relation to a tenant's anti-social behaviour?

35. Around 95 per cent of surveyed ARLA Propertymark members reported that they had not used Ground 7A in relation to a tenant's anti-social behaviour.[14] Roughly 3.5 per cent of respondents stated that they had and 1.5 per cent stated that they were unsure. These figures highlight that Ground 7A is rarely used by letting agents and supports evidence that they instead choose to use a Section 21 notice for eviction due to the antisocial behaviour of a tenant.

Q21: Do you think the current evidential threshold for Ground 7A is effective in securing possessions?

36. No, ARLA Propertymark does not think the current evidential threshold for Ground 7A is effective in securing possessions. This reflects survey results from ARLA Propertymark members where only five per cent stated that the evidential threshold was sufficient. Around 64 per cent stated that they did not know and 31 per cent responded that the evidential threshold was not effective in securing possession. ARLA Propertymark members have reported that even where a Police Officer has provided evidence regarding the antisocial behaviour of the tenant, that the Judge has still not granted the Possession Order despite the evidence as the courts consider genuine remorse for the actions, previous good character and usually only grant a Suspension Order.[15] We believe that the evidential threshold will need to be amended to make Ground 7A workable should the Assured Shorthold regime be removed.

[14] Ibid
[15] https://www.arla.co.uk/media/1047267/overcoming-barriers-to-longer-term-tenancies.pdf

Q22: Have you ever used Ground 14 in relation to a tenant's anti-social behaviour?

37. In our September 2019 survey on the Government's proposals to abolish Section 21 of the Housing Act 1988, 89 per cent of ARLA Propertymark respondents stated that they had not used Ground 14 in relation to a tenant's anti-social behaviour. Nine per cent of respondents had used it and the remaining two per cent did not know. These figures highlight that Ground 14 is rarely used by letting agents and supports evidence that they instead choose to use a Section 21 notice for eviction due to the antisocial behaviour of a tenant.

Q23: Do you think the current evidential threshold for Ground 14 is effective in securing possession?

38. No, ARLA Propertymark does not think the current evidential threshold for Ground 14 is effective in securing possession. The threshold is not sufficient as tenant behaviour can be very difficult to evidence. This reflects surveyed ARLA Propertymark members,[16] where only six per cent of respondents stated that they thought the evidential threshold was sufficient.

39. Further, ARLA Propertymark members have noted concern where they are dealing with tenants that have acted abusively or in an intimidating manner towards the agent and/or the landlord. The issue here is that without Section 21 it would be difficult to prove this behaviour via an antisocial behaviour ground for eviction as the behaviour may not necessitate Police action and, overall, the tenant may be complying with their tenancy agreement. For this reason, the evidential threshold for Ground 14 must be reviewed and amended to allow for an easier route to possession on a mandatory basis.

<u>Domestic abuse</u>

Q24: Should this new ground apply to all types of rented accommodation, including the private rented sector?

40. Yes, ARLA Propertymark believes that the new ground for cases of domestic abuse should apply to all types of rented accommodation, including the private rented sector. It does not make sense that where private rented housing is now the second largest tenure, that this ground is only available to the social rented sector. What must be considered is that an estimated 1.9 million adults aged 16 to 59 years experienced domestic abuse in 2017,

[16] Ibid

according to the year ending March 2017 Crime Survey for England and Wales (1.2 million women, 713,000 men).[17] It is likely that many of these people will live in privately rented housing, and therefore, this new ground must apply to all types of rented accommodation.

Q25: Should a landlord be able to only evict a tenant who has perpetrated domestic abuse, rather than the whole household?

41. Yes, ARLA Propertymark believes that a landlord should be able to only evict a tenant who has perpetrated domestic abuse, rather than the whole household. It should not be the case that where issues have been created by the perpetrator, that the entire household should be punished when they have already faced hardship.

42. However, we are concerned by the current length of the eviction process (Ministry of Justice figures from April to June 2019, show a median average of 19.6 weeks[18]) and therefore, the length of time it may take to evict the perpetrator of domestic violence. This directly puts the victim at further danger of domestic abuse should the abuser remain in the property during this time. Therefore, we propose that as well as an immediate notice period, cases concerning domestic abuse will need to be fast tracked through the courts and disposed of administratively without a hearing to ensure the safety of the victim.

Q26: In the event of an abusive partner threatening to terminate a tenancy, should additional provisions protect the victim's tenancy rights?

43. Yes, ARLA Propertymark thinks that in the event of an abuse partner threatening to terminate a tenancy, there should be additional provisions to protect the victim's tenancy rights. In these situations, preferential rights should be given to the victim.

Q27: Should a victim of domestic abuse be able to end a tenancy without the consent of the abuser or to continue the tenancy without the abuser?

44. Yes, ARLA Propertymark believes that a victim of domestic abuse should be able to end a tenancy without the consent of the abuser or to continue the tenancy without the abuser. If it is the latter, consideration will need to be made regarding the affordability of the rent for

[17] https://www.arla.co.uk/news/september-2018/how-you-can-help-stop-domestic-violence/
[18] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/823752/Mortgage_and_Landlord_Possession_Statistics_Apr-Jun_19.pdf

the sole tenant. We are aware of situations where the tenants have been in receipt of Universal Credit, where one partner receives the benefits. In cases of domestic abuse, this could cause substantial issues should the perpetrator be the person who is receiving the Housing Benefit.

45. We would like to highlight that the Government should work with the private rented sector in raising awareness of domestic abuse. In 2018, ARLA Propertymark worked with the Domestic Abuse Housing Alliance (DAHA)[19] to create a fact sheet for our members on 'Support for tenants threatened with or experiencing domestic violence or abuse'. The fact sheet highlights what domestic abuse is and what agents should do and consider. Furthermore, representatives from DAHA have presented to members at ARLA Propertymark Regional Meetings around the country. It is important to raise awareness amongst letting agents and landlords, as they could often be one of the first to spot warning signs. Examples here could be disclosure from the tenant, disclosure from the police, noise complaints from neighbouring properties or unexplained damage to the property. For this reason, we recommend that ARLA Propertymark letting agents include details of a free helpline service for victims of domestic abuse within tenancy packs and know about steps that they can take to help tenants.

Property standards

Q28: Would you support amending Ground 13 to allow a landlord to gain possession where a tenant prevents them from maintaining legal safety standards?

46. Yes, ARLA Propertymark supports amending Ground 13 to allow a landlord to gain possession where a tenant prevents them from maintaining legal safety standards. Whilst we recognise the tenant's right to quiet enjoyment, agents report that some tenants will persistently refuse access to a property despite contractual obligations. There are significant repercussions for landlords and letting agents where they do not abide with statutory safety standards, for example, fire safety offences and gas safety offences are Banning Order offences under the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017.[20] Banning Orders put the letting agent or landlord out of business, or where a civil penalty has been issued as an alternative, at a high financial cost. For this reason, tenants who routinely block property

[19] https://www.dahalliance.org.uk/
[20] https://www.legislation.gov.uk/ukdsi/2017/9780111162224/contents

maintenance visits should not be allowed to remain in the property where they block the landlord from complying with their legal safety standards.

Accelerated Possession

Q29: Which of the following could be disposed of without a hearing?

Ground 1: Prior notice has been given that the landlord, or a member of his family may wish to take the property as their own home.

47. Yes, ARLA Propertymark believes that Ground 1 can be disposed of without a hearing. A written statement of intention from the landlord should be provided as evidence.

Ground 2: Prior notice has been given that the mortgage lender may wish to repossess the property.

48. Yes, ARLA Propertymark believes that Ground 2 can be disposed of without a hearing. Proof should be provided by the mortgage lender of their intention to repossess the property.

Ground 3: Prior notice has been given that the property is occupied as a holiday let for a set period.

49. Yes, ARLA Propertymark believes that Ground 3 can be disposed of without a hearing.

Ground 4: Prior notice has been given that the property belongs to an educational establishment and let for a set period.

50. Yes, ARLA Propertymark believes that Ground 4 can be disposed of without a hearing.

Ground 5: Prior notice has been given to a resident minister that the property may be required by another minister of religion.

51. Yes, ARLA Propertymark believes that Ground 5 can be disposed of without a hearing.

Ground 6: Reconstruction, demolition or other works need to be carried out, but cannot go ahead with the tenant in situ.

52. Yes, ARLA Propertymark believes that Ground 6 can be disposed of without a hearing.

Ground 7: The previous tenant has died, with the tenancy passing on to a new tenant who does not have the right to carry on with the tenancy.

53. Yes, ARLA Propertymark believes that Ground 7 can be disposed of without a hearing.

Ground 7A: The tenant has been convicted of a serious offence in or around the property, against someone living in or around the property, or against the landlord.

54. Yes, ARLA Propertymark believes that Ground 7A can be disposed of without a hearing. Written evidence from the Police should be provided as evidence.

Ground 7B: A tenant or occupant has been disqualified from occupying the property due to their immigration status.

55. Yes, ARLA Propertymark believes that Ground 7B can be disposed of without a hearing. A Notice of Letting to a Disqualified Person[21] from the Home Office should be provided as evidence.

Ground 8: The tenant has significant rent arrears.

56. Yes, ARLA Propertymark believes that Ground 8 can be disposed of without a hearing. Statements from the tenants rental account should be sufficient to evidence this ground.

New Ground: The landlord wishes to sell the property.

57. Yes, ARLA Propertymark believes that the new ground where the landlord wishes to sell the property can be disposed of without a hearing. This should be evidenced with a statement of intention from the landlord.

Specialist provisions

Short term lets

Q30: Should Ground 4 be widened to include any landlord who lets to students who attend an educational institution?

58. Yes, ARLA Propertymark believes that Ground 4 should be widened to include any landlord who lets to students who attend an education institution. This is because, without Section 21, student landlords will face difficulties in evicting tenants who overstay their tenancy after the university term has ended. Without Section 21, educational institutions and landlords with purpose-built student accommodation (PBSA) will mean that there is a two-tier system whereby other student landlords are disadvantaged to those letting PBSA. This will cause

[21] https://www.gov.uk/guidance/ending-a-tenancy-due-to-immigration-status

difficulties where landlords have tenants in place for the next academic year, as students can begin looking for their next student home as early as 11 months before moving in. Where students remain in the properties for longer than the educational term, a lack of available supply and high demand will result in increased rents.

59. Without satisfactory options for all student landlords, it is likely that landlords in England could face similar issues to what has been witnessed in recent times in Scotland. The Private Residential Tenancy (PRT) introduced by the Private Housing (Tenancies) (Scotland) Act 2016[22] in December 2017 has caused particular issues for landlords who provide students lets. This is because, alongside removing the Scottish equivalent of Section 21, the PRT is indefinite until the tenant ends it or if the landlord has a specific ground to evict them (there is not a ground specific for student landlords or educational institutions). This has meant many students staying in their student property for a longer period than they would have done previously. This has pushed up rents due to an increase in demand, but less supply available as students decide to stay in the property for a longer time.[23]

60. Additionally, further issues have arisen in Edinburgh as student landlords have typically let their properties to performers during the Fringe which is held in August each year. Before the PRT, many student tenancies would have ended with the university term. However, as landlords do not know when the student tenancy will end (until given notice) due to indefinite tenancies, they have been unable to advertise their properties ahead of time. Research conducted by the National Landlords Association (NLA) in August 2018 estimated that this would affect 67,000 rental properties.[24] This has made it particularly difficult for performers to find affordable short-term accommodation in the city due to rising rents coupled with a limited supply. Consequently, the removal of Section 21 may also have an unintended impact on the provision of short term lets in England.

[22] http://www.legislation.gov.uk/asp/2016/19/contents/enacted
[23] https://www.lettingagenttoday.co.uk/breaking-news/2019/8/what-a-performance-edinburgh-artists-suffer-because-of-rental-rules
[24] https://landlords.org.uk/news-campaigns/news/scottish-rental-reforms-put-future-edinburgh-festivals-risk

Q31: Do you think that lettings below a certain length of time should be exempted from the new tenancy framework?

61. We believe that tenancies under a length of 90 days should be exempted from the new tenancy framework. This is because these tenancies have always been considered as "short term lets" and are often exempted from the legal requirements of tenancies exceeding this period. Further, this reflects the provisions of the Deregulation Act 2015[25] whereby homeowners are permitted to let their property for up to 90 days per year. This allows homeowners that may leave their property empty for up to three months per year to generate income from their home. By including these tenancies within the new tenancy framework, we would expect this to deter homeowners from letting their property on a short-term basis and contributing to the national problem of empty homes. This has the opportunity to take away much needed investment in the local economy and could stifle business and the entrepreneurship of homeowners. Therefore, we propose that these tenancies are exempted from the new tenancy framework in line with other existing legislation.

Religious workers

Q32: Should the existing Ground 5 be reviewed so possession can be obtained for re-use by a religious worker, even if a lay person is currently in occupation?

62. ARLA Propertymark does not have sufficient evidence in order to respond to this question.

Agricultural tenancies

Q33: Should there be a mandatory ground under Schedule 2 for possession of sublet dwellings on tenanted agricultural holdings where the head tenant farmer wants to end their tenancy agreement and provide vacant possession of the holding for their landlord?

63. Yes, ARLA Propertymark believes there should be a mandatory ground under Schedule 2 for possession of sublet dwellings on tenanted agricultural holding where the head tenant farmer wants to end their tenancy agreement and provide vacant possession of the holding for their landlord.[26] This is because many agricultural tenants sublet farm property during their tenancy. Creating a mandatory ground will enable the farm tenant to deliver vacant

[25] http://www.legislation.gov.uk/ukpga/2015/20/contents/enacted

[26] Our responses to questions 33 to 35 are based from evidence from a fellow member of the Fair Possessions Coalition, the Country Land and Business Association (CLA). The CLA is the membership organisation for owners of land, property and business in rural England and Wales, and consequently has specialist knowledge on the eviction process and agricultural tenancies.

possession in accordance with their Agricultural Holdings Act 1986[27] tenancy (AHA) or a Farm Business Tenancy (FBT) under the Agricultural Tenancies Act 1995.[28]

Q34: Should there be a mandatory ground under Schedule 2 for possession of tenanted dwellings on agricultural holdings where there is business need for the landlord to gain possession (i.e. so they can re-let the dwelling to a necessary farm worker)?

64. Yes, ARLA Propertymark believes that there should be a mandatory ground under Schedule 2 for possession of tenanted dwellings on agricultural holdings where there is business need for the landlord to gain possession. However, we do not agree that it should be necessary to prove "business need" unless this is first broadly defined to provide clarity. What must be considered is that the purpose of a sub tenancy is pivotal to farming and agricultural business, but this does not necessitate whether this will involve the housing of an agricultural worker or not. Many farm tenants sub let to non-agricultural workers and therefore, these situations need to be considered.

Q35: Are there any other issues which the Government may need to consider in respect of agricultural tenancies?

65. The removal of Section 21 may limit the options of an AHA landlord when they are seeking a property for the outgoing farm tenant to move into in order to encourage another generation to manage the agricultural business. If there is a limited pool of accommodation owned by the landowner, the removal of Section 21 creates an additional indirect barrier to succession of the farm tenancy. This comes at a time when the Department for Environment, Food and Rural Affairs (DEFRA)[29] has engaged widely with the industry on measures to facilitate movement between the generations in order to bring down the average age of a tenant farmer. One issue has been that there is little incentive for a farm tenant with the benefit of security of tenure. The CLA[30] argues that, it is felt across the board that this holds back the next generation of agricultural workers and denies the industry the dynamism and innovation that the next generation might bring. On occasion, a landlord can overcome this obstacle by making alternative accommodation available, but issues would be faced without the ability to use Section 21 when and if needed.

[27] https://www.legislation.gov.uk/ukpga/1986/5/contents
[28] http://www.legislation.gov.uk/ukpga/1995/8/contents
[29] https://www.gov.uk/government/organisations/department-for-environment-food-rural-affairs
[30] https://www.cla.org.uk/

Other grounds for seeking possession

Q36: Are there any other circumstances where the existing or proposed grounds for possession would not be an appropriate substitute for section 21?

66. ARLA Propertymark believes that the existing and proposed grounds are adequate under the provision that all grounds are made mandatory. As the Government acknowledges, there needs to be an appropriate substitute for Section 21 evictions, but without all grounds being made mandatory, this will not be achieved. This is because, the current Accelerated Possession procedure guarantees a landlord possession of their property, this will not be the case if any particular ground is made on a discretionary basis and in the hands of a Judge to determine. Making all grounds mandatory will provide a landlord with a guarantee of possession and will also provide the tenant with a valid reason for eviction, this works for all parties involved. It also benefits local authorities as they will know a tenant will be evicted and can start working on rehousing the tenant, rather than waiting until they are evicted by a bailiff. This would also alleviate local authority costs for housing tenants in temporary accommodation.

Impact and timing of implementing our changes

Q37: How many Section 21 notices have you issued in the past two years?

67. When surveyed in September 2019, 43 per cent of ARLA Propertymark members[31] have issued over 10 Section 21 notices in the past two years. An additional 24 per cent have issued between 5 and 10 notices. The remainder of surveyed members have issued between one to five notices, none, or preferred not to say.

Q38: Of these, how many applications for Possession Orders have you made to the courts?

68. Around 31 per cent of surveyed ARLA Propertymark members said that they had not applied for Possession Orders to the courts. A further 25 per cent stated that they had made two to three applications to the courts, 23 per cent had made one application. Nine per cent had made four to five applications; seven per cent made five to ten applications and four per cent had made over ten. These figures highlight that on average, many notices do not progress to the courts.

[31] Section 21 Survey, ARLA Propertymark, September 2019. Responses collated from 469 respondents.

Q39: Of these, how many have resulted in a court hearing?

69. In response to this question, 37 per cent of surveyed ARLA Propertymark members reported that one court application had resulted in a hearing. A further 29 per cent stated two to three progressions to a hearing, and 16 per cent stated 'none'. In addition, 10 per cent had progressed four to five applications to a hearing, four per cent stated five to 10. Finally, another four per cent had progressed one or more cases to a hearing. The remainder of respondents preferred not to say.

Q40: Taking into account legal fees and loss of income what would you estimate to be the average cost of a single case:

a) Using the Accelerated process

70. A majority (53 per cent) of surveyed ARLA Propertymark members report the cost of a single case via the Accelerated process as costing between £1,000 and £4,999. A further 18 per cent stated between £500 and £999 and 14 per cent stated a figure between £5,000 and £9,999.

b) Pursuing the application at a hearing

71. Almost 48 per cent of surveyed ARLA Propertymark members reported the cost of single case via hearing as costing between £1,000 and £4,999. A further 22 per cent noted the cost as between £5,000 and £9,999. These responses highlighted that more respondents paid a higher amount for the cost of a single case via hearing than through the Accelerated process.

Q41: How many Section 8 notices have you issued in the past two years?

72. Around 39 per cent of surveyed ARLA Propertymark members stated that they had issued zero Section 8 notices in the past two years. A further 22 per cent had issued between two and three, 15 per cent had issued one and seven percent had issued either between four or five or ten or more.

Q42: Of these, how many applications for Possession Orders have you made to the courts?

73. Most respondents (32 per cent) had progressed zero applications for Possession Orders via Section 8 to the courts. An additional 28 per cent had one instance where they had applied to the courts, with 22 per cent stating between two and three. Around eight per cent had made a court application for between four or five cases, and five per cent had done so for between five and 10 cases or 10 or more.

Q43: Of these, how many have resulted in a court hearing?

74. Around 42 per cent of surveyed ARLA Propertymark members reported that they had one Possession Order result in a hearing. Almost 28 per cent stated that two to three Orders had resulted in a hearing, eight per cent stated four to five hearings. Seven per cent stated none or 10 or more and the remainder of respondents preferred not to say.

Q44: Are there any other impacts on your business or organisation the Government should consider when finalising its policy?

Comments on existing procedures

75. Many landlords and letting agents opt to use a Section 21 notice for the purpose of regaining a property where a tenant has consistently defaulted on rent payments or due to antisocial behaviour. A recent study by the Residential Landlords Association found that 85 per cent of landlords that have used a Section 21 notice, used this route exclusively due to tenant rent arrears. This route is taken due to it often being a quicker method of possession than it would be if a ground for eviction was used. Section 8 requires a court hearing therefore lengthening the eviction process whereas a Section 21 eviction via the Accelerated Possession route will typically not unless the tenant brings forward important information before a Possession Order is granted.

76. We are concerned that by introducing the proposals contained within this consultation, landlords will have no viable option of evicting problem tenants quickly and efficiently due to current court procedures. Where a ground for eviction has been used, and it goes to a court hearing this stage can be extended through delays, adjournments, and through the actions of the tenant. This is either by making vexatious claims or through playing the court system by making payments at the court in order to remove the mandatory ground for possession for rent arrears, currently via Ground 8 of Schedule 2 of the Housing Act 1988. Most often, landlords make use of a Section 21 notice as they are guaranteed to get possession. Further, where possession has been sought on discretionary grounds, the Judge may adjourn the application for possession where the tenant claims hardship. This can last for either a fixed period of time or indefinitely, providing that the defendant pays their rent and makes regular contribution towards existing arrears, if the tenant defaults again, the landlord or agent will have to wait more time to go to court and request another Possession Order.

77. Furthermore, landlords report difficulty in proving the anti-social behaviour of a tenant in order for them to be evicted. We have heard reports of Police giving evidence on behalf of a landlord, and the court would still not grant possession. The courts consider genuine remorse for actions and previous good character, the result of this being that only a Suspension Order is granted. We believe that without robust reform to the court system, these existing issues will worsen should these proposals be introduced as a standalone modification.

Investment in the sector

78. The Government must recognise that investment in the private rented sector is falling and this is a direct result of increasing levels of legislation that is putting even more pressure on the industry. In April 2019, we reported a spike in landlords exiting the rental market.[32] Furthermore, feedback from members outlined that the number of tenants experiencing rent increases rose with the number of tenants negotiating rent reductions falling. This is important because it follows the Government's announcement in 2019 to scrap Section 21 and for the 2019-20 tax year, landlords are only able to deduct 25% of their mortgage interest. Before the Government decided to restrict Income Tax relief for landlords to the basic rate of tax, higher rate taxpaying landlords could claim tax relief at 40%, but the relief will now be restricted to the 20% basic rate of Income Tax by April 2020. If it is harder for landlords to regain possession of their property this may act as a deterrent to further investment in the sector. This is important because if supply of rental accommodation falls further, tenants will only be faced with more competition for properties, pushing up rent prices on good-quality, well-managed accommodation and decreasing tenants' ability to negotiate rent reductions.

Wider impact

Q45: Do you think these proposals will have an impact on homelessness?

79. Yes, ARLA Propertymark believes that without effective court processes and tightened mandatory grounds for eviction, that the proposals will have a negative impact on homelessness. We think this for four reasons. Firstly, there will be a reduction in private rented housing stock due to landlords finding the proposals too risky and exiting the market. Secondly, landlords that remain in the sector will become more risk averse and only choose

[32] https://www.arla.co.uk/lobbying/private-rented-sector-reports/april-2019/

the best tenants. Thirdly, the proposals will disadvantage tenants who have been evicted as they will have a County Court Judgment and be on the Register of Judgments. Fourthly, the proposals will provide additional pressure on the social rented sector to provide accommodation for displaced private rented sector tenants. Should the social rented sector not account for the shortfall in private rented housing, we expect an increase in homelessness across England.

Q46: Do you think these proposals will have an impact on local authority duties to help prevent and relieve homelessness?

80. Yes, ARLA Propertymark thinks that these proposals will have a negative impact on local authority duties to help prevent and relieve homelessness. We think for two reasons. Firstly, the proposals may encourage landlords to exit the market, and therefore, tenant displacement in the private rented sector may increase. This will mean increased local authority expenditure on providing homes for social rent, and where this isn't available, the cost of temporary accommodation for these tenants. Secondly, currently local authorities are advising private rented sector tenants to remain in property until forcibly removed. Otherwise they will class them as intentionally homeless and not house them. If local authorities continue this practice, there will be an increased workload for Councils as landlords attempt to leave the sector.

81. If the private rented sector decreases, it will be the responsibility of local authorities to house those without access to the private rented sector. This will come at a significant cost to the Government as more will need to be invested in building and acquiring homes to be socially rented to make up for the shortfall in privately rented housing. Furthermore, it is likely that with less homes available to privately rent and social stock isn't increased to accommodate for this, the public sector will need to increase expenditure on temporary housing. A Freedom of Information request from 2018 highlighted that local authorities had spent £3.7 billion on temporary accommodation between 2013/14 and 2017/18, a figure that had increased by 56 per cent from five years previously.[33] Should the proposals in this consultation be introduced without assessing issues with court procedures and appropriate mandatory grounds for eviction, we would expect this figure to increase dramatically.

[33] https://www.insidehousing.co.uk/insight/insight/the-cost-of-homelessness-council-spend-on-temporary-accommodation-revealed-57720

82. Under the current regime it is unhelpful that some local authority staff advise tenants to remain in the private rented properties after being issued with a Section 21, and further Notices to Leave until they are forcibly evicted. This is despite the Statutory Homeless Code of Guidance for Local Authorities stating that tenants in private rented homes should not be advised to remain in the property when they have been issued with a Section 21. Local Authorities make it clear to tenants with an eviction notice that if they vacate the property before being forcibly removed, their housing status will be classified as "intentionally homeless". This creates frustration for both the landlord and the tenant, as more than often a tenant would like to leave the property during this time – but by making themselves intentionally homeless they will not be able to receive any assistance with housing from the Local Authority. Many tenants may rely on local authority assistance with social housing as they do not have the means to put down a deposit and rent on another property in the private rented sector, these tenants are often amongst the most vulnerable. These practices only frustrate the eviction process for landlords and agents further and can directly result to a further loss in rental income where a tenant continues to default on their rent payment during this time. Should the proposals of the consultation be taken forward and local authorities continue with this practice, we would expect workload to increase as landlords attempt to leave the sector and displaced private tenants seek accommodation in the social rented sector.

Q47: Do you think the proposals will impact landlord decisions when choosing new tenants?

83. Yes, ARLA Propertymark thinks that the proposals will impact landlord decisions when choosing new tenants. This is because, many landlords rely on the safety of Section 21 when taking on tenants that are known to them as higher risk (more than often those on lower incomes, retired or in receipt of benefits). If a tenant is at a higher risk of defaulting on their rent payments, landlords want an option to know that they can regain possession of their property should things go wrong. To mitigate this risk, landlords will only let their property to the "best" tenants on paper, such as higher earners without dependants. This is because, with a steady income stream these tenants will be less likely to default on rent payments, and therefore the perceived need to regain the property decreases. The consequence of this is that the most vulnerable tenants will be alienated from the private rented sector. Tenants in receipt of benefits will be the most disadvantaged. Subsequently, those out of work such as

single parents, people with severe disabilities and pensioners will be deemed as more of a risk for landlords. The vulnerable and low-income people without access to the social rented sector, will need to find an alternative to the private rented sector. This could mean them turning to the rogue and criminal operators, who actively flout their responsibilities and are often very difficult to track down.

Q48: Do you have any views about the impact of our proposed changes on people with protected characteristics as defined in Section 149 of the Equality Act 2010? What evidence do you have on this matter?

84. Yes, as stated in our response to Q47, ARLA Propertymark believes that the proposed changes may have negative impacts on people with protected characteristics as defined by Section 149 of the Equality Act 2010. We believe the following protected groups may be disproportionately impacted:
    - Gender: single parents out of work/low income
    - Age: retired/low income
    - Disability: accessibility in property and may be out of work/low income

85. Currently, ARLA Propertymark members report the issues they face when their landlords would like to let to tenants in receipt of benefits or Universal Credit, however recent legislation is making it difficult to rent to these groups. As discussed, the risk associated with letting to tenants in receipt of benefits will deter landlords from letting to these groups. Further issues are reported where the tenant has moved to Universal Credit. Universal Credit is paid in arrears and rental payments are not given to the private landlord directly by default. This means that a tenant will instantly be in arrears, and only once this has become persistent can the landlord arrange for a Managed Payment to Landlord where they receive the benefit direct. This is in addition to a waiting time of five weeks for new claimants. If the proposals in this consultation are to be implemented and risk increases for landlords, therefore impacting tenants receiving Universal Credit, the issues surrounding the administration of the benefit must first be rectified as this will only worsen the situation further.

86. Considering the above, ARLA Propertymark received feedback from a tenant living in the social rented sector in August 2019, who stated that they believed the proposals would disproportionately impact their chances of moving into the private rented sector. This was

because, they worked part time and received top-up Housing Benefit to pay for their rent. They stressed that they believed the proposals would deem them as a "risk", and therefore alienate them from renting in the private rented sector due to the situation with their income. This reflects the thoughts of ARLA Propertymark members regarding the proposed changes to the AST regime.

Q49: If any such impact is negative, is there anything that could be done to mitigate it?

87. To mitigate the negative impacts of the proposals, ARLA Propertymark believes there are five things that the Government must do in stages. Firstly, to ensure the proposals are workable the Government must consider introducing a Housing Court or adequately resource and amend the existing Courts system. Secondly, Possession claims must be digitised and taken online. Thirdly, all grounds for possession both existing and new should be made mandatory in order to effectively compensate for the removal of Section 21. Fourthly, landlords must be given an automatic right to have their Possession order executed by a High Court Enforcement Office. Finally, before a national rollout of the proposals, a pilot scheme must be administered to evaluate the effectiveness of the new system. Should these measures be considered, we believe that this will mitigate the negative impact of the proposals.

<u>Considering the case for a Housing Court</u>

88. Without effective court processes, the proposed changes to the eviction process will not be workable. The current court processes are slow and inconsistent and can be attributed to the preferential use of Section 21 notices for eviction over notices due to tenant fault. This is why, ARLA Propertymark is advocating for the creation of a specialist Housing Court for England and Wales.

89. The Housing Court should be given the existing powers of both the County Court and First-tier Tribunal (Property Chamber) to ensure that wherever possible persons bringing proceedings (whether before Court or Tribunal) should be able to have their matters dealt with in a single process. Appeals could then go to the Upper Tribunal and then the Court of Appeal. We believe that a specialist Housing Court would allow for an easier and streamlined process for housing claims, which will subsequently provide faster justice, and make the process more cost effective.

90. A specialist Housing Court would be beneficial in three ways. Firstly, it would make the process for housing claims easier and simpler as specialist judges will be better trained and more experienced. Secondly, it has the potential to be a cheaper process than those in existence. Finally, it would allow landlords to take on longer-term default contracts with ease, providing greater security for tenants, landlords and letting agents.

91. In a Housing Court, specialist Judges will be appointed for their knowledge and expertise in the field, as has been witnessed with the First-tier Tribunal (Property Chamber) in Scotland. This will allow judges to expedite cases, as experts in their field they will easily eliminate vexatious claims, and correct minor errors made by landlords during the process. A consequence of this is that both court time and resources will be used effectively and efficiently, and ultimately this will provide a consistent standard of judgments across the court system.

92. Through the creation of a specialist Housing Court, there is potential for housing cases to come at a lesser cost to the claimant. A Housing Court should also have fewer stages in the process of a case. This would not only cost less than existing processes, but it could also ensure that enforcement is completed sooner. Where contested cases are not allocated sufficient time in the County Court, due to its specialist nature, the Housing Court could allocate time more effectively to housing cases to ensure that where necessary cases can be heard in one hearing. This will provide ease to landlords and agents during possession cases where they have evidence they wish to present, as well as the argument from the defendant. This would also allow for counterclaims (vexatious or otherwise) to be heard in a timely manner, rather than putting the process on hold for significant periods of time. We would also argue that this would provide improved access to justice, as current timescales in the County Court can deter claimants from pursuing lesser claims and using the grounds for eviction.

93. The creation of a Housing Court would make longer tenancies workable for landlords. Without a Housing Court and enhanced grounds for eviction, landlords will be reluctant to offer longer terms where they are faced with the threat of needing to reclaim their properties. For many landlords' long-term contracts do not prove viable due to current procedures. Letting agents want well-maintained tenancies as void periods and renewals reduce agent's fees. Where landlords use a letting agent, landlords will either pay a flat-fee upfront or a percentage of the

rent each month for the agent to manage the tenancy. Where a flat-fee is paid upfront it is in the letting agents' interest to ensure the contract is well-maintained over a long period time because they are not receiving a monthly income from managing the property.[34] For this reason, we would advocate that a Housing Court is essential if the Government is endeavouring to promote longer term tenancies. This would benefit landlords as they would have fewer void periods, letting agents for the reasons stated above and ultimately tenants who have a secure home. Without a specialist Housing Court to deal effectively with evictions, it is highly unlikely that landlords will feel able to offer longer term tenancies.

Digitise Possession Claims

94. Landlord's must have a simpler route to eviction than the current regime for Section 8 of the Housing Act 1988 provides. We believe that the Possession process could be improved through digitisation in further areas than those on Possession Claim (PCOL)[35] currently. For this reason, mandatory notices for eviction should be integrated into the PCOL system. This would not only make the process simpler for the user, but arguably would be more cost effective, due to online systems taking away responsibilities of the court workforce through the application being processed through PCOL rather than manually. Further, the court issue fee when using PCOL is cheaper, and the service is generally more accessible than traditionally making a claim at the County Court, as it can be accessed on any day at any time. We also believe that MCOL operability would be improved by being updated. The existing MCOL website presents itself as outdated. The linked user guide[36] looks contrastingly modern in comparison, and certain hyperlinks are defunct, such as the link to HM Courts and Tribunals Service homepage. Other links can't be directly clicked through, and the website is generally not fit for purpose in its current format. Currently, many .gov websites are undergoing an update in beta development, MCOL should be integrated into this to ensure an improved user experience.

Make all grounds mandatory

95. We believe that the Government must strengthen all grounds for possession (existing and new) and make them all mandatory. ARLA Propertymark members report that if Section 21 is to be abolished, the only workable alternative would be to ensure that there are sufficient

[34] http://www.arla.co.uk/media/1047267/overcoming-barriers-to-longer-term-tenancies.pdf
[35] https://www.possessionclaim.gov.uk/pcol/
[36] https://www.gov.uk/make-court-claim-for-money

grounds for eviction (which, when considering the addition of landlord wants to sell and the extension of Ground 1, we believe they are sufficient), all grounds for eviction must be made on a mandatory basis. This is because, with Section 21 landlords are guaranteed possession for issues such as rent arrears and antisocial behaviour. By allowing grounds dealing with rent arrears and antisocial behaviour to remain at the discretion of the Judge, this will do little to remedy landlord confidence in the sector. We believe that by doing this, it is in the spirit of the changes to the legislation as tenant's will not be evicted unless they have been provided with good reason to do so. In addition to this, we believe that many of the grounds for eviction can be dealt without a hearing where the ground is mandatory. This should reflect the current Accelerated Possession process, but with the addition of reasoning behind the eviction of the tenant. As we responded to Q29, in order for a decision to be made without a hearing, landlords should be required to provide certain types of evidence in addition to their online possession claim. We believe that this will also improve the court process and allow improved timescales as it will take away caseloads from the Courts.

Automatic right to an HCEO

96. Providing landlords with an automatic right for a High Court Enforcement Officer (HCEO) to enforce Court Possession, would speed up the possession process for landlords attempting to regain possession of their property.

97. Landlords must have an automatic right to an HCEO. For this reason, we do not believe that there is a need for judicial permission to enforce Possession Orders in the High Court. At this stage in the possession process, there has already been a full judicial case decided by a Judge. The result of the need for judicial permission, is inconsistency with decisions made by County Court Judges to transfer the case to the High Court. By removing the required judicial permission, the possession process will be sped up. For these reasons, enforcement of Possession Orders by the High Court should work as a purely administrative exercise, as the landlord is only seeking to enforce a judgment of the Court.

98. Without the need for judicial permission to transfer a case, landlords and agents across England and Wales will be provided with a level playing field in what way they would like their Possession Order to be enforced. ARLA Propertymark members report frustration with inconsistencies for criteria needed for their Possession Order to be transferred from the

County Court to the High Court. Landlords and agents must obtain leave from the County Court under Section 42(2) of the County Courts Act 1984[37] if they wish for their Possession Order to be enforced by an HCEO (this includes for cases involving rent arrears under the provision that the landlord is claiming more than £600 including court costs). However, Judges are advised by superiors against doing this, thus this relies on the County Court Judge to be given enough reason to grant permission – for example the time taken for a County Court Bailiff (CCB) to enforce the Possession Order and the landlord needing urgency to evict their tenants in order to sell their property. Issues arise where the County Court refuses to transfer the Possession Order to the High Court, either due to the claimant not reaching the criteria or through the Judge's own discretion. Regarding discretion, one Judge in a County Court in London may have a different outlook to a Judge in South Wales, which contributes to a lack of a common standard across the Courts system. Removing judicial permission in this instance would, therefore, remove these inconsistencies.

99. Removing the need for judicial permission for the High Court to enforce County Court Possession Orders, would speed up the possession process for landlords attempting to regain possession of their property. When and if leave is granted, the landlord will need to apply to the High Court for permission to issue a 'writ of possession', which will then be executed by the HCEO and the landlord will regain their property. Given that the time endured for a County Court Bailiff to attempt eviction can take weeks, allowing an automatic right to an HCEO would result in landlords' properties being returned to them much sooner. ARLA Propertymark members report that landlords would prefer having easier access to HCEOs, despite the associated costs, as ultimately this cost will be much lower than the losses accrued through rent arrears, with the tenant being unlikely to pay their rent during the eviction process.[38] Ultimately, this will provide landlords and agents access to an option that would speed up the possession process.

Conduct a pilot

100. Due to the significant impact and change to the sector, the Government must conduct a full pilot of the proposals and review its outcomes before making any decision to roll out the new

[37] https://www.legislation.gov.uk/ukpga/1984/28/contents
[38] https://www.arla.co.uk/media/1047712/arla-propertymark-response-to-mhclg-call-for-evidence-considering-the-case-for-housing-court.pdf

regime across England. We believe that this reflects other important legislation that has been introduced, which was first trialled to measure its impact before being introduced fully. An example of this being the pilot for Universal Credit in Ashton. However, the Government should learn from past decisions and ensure that the pilot group is substantial enough to effectively predict the outcomes of a national change in policy. The Universal Credit pilot only included 300 participants per month, which it can be argued was not a sufficient sample in order to determine the effectiveness of the new policy.39 Another example of a Government policy pilot, is the Right to Rent scheme under the Immigration Act 2014. Right to Rent checks requires landlords or agents to check ID to determine the immigration status of all prospective adult tenants before the start of a tenancy. Right to Rent checks started as a pilot scheme in parts of the West Midlands in December 2014 before rolling out across England on 1 February 2016. It was originally intended for this to be extended across the UK, but there are currently no plans for it to apply to the private rented sector in Scotland, Wales or Northern Ireland. Considering the above and the importance of the proposals within this consultation, the Government must ensure that a pilot of the new system is done over a substantial area in the UK with consideration taken for courts that currently struggle with the existing eviction process, before determining whether to proceed with the new system.

Transition period

Q50: Do you agree that the new law should be commenced six months after it receives Royal Assent? What do you think would be an appropriate transition period?

101. No, ARLA Propertymark does not agree that the new law should be commenced six months after it receives Royal Assent. This is for two reasons. Firstly, for the proposals to work the court system must first be given sufficient time to prepare for the incoming changes to eviction. Secondly, landlords and letting agents will need a period longer than six months in order to familiarise themselves with the change in legislation. We believe that if passed, an appropriate transition period would be a minimum of 12 months. During this time, landlords and letting agents will be able to familiarise themselves with the changes and the Government will be given sufficient time in order to conduct a full communications campaign to inform those working and living in the private rented sector.

[39] https://www.parliament.uk/business/committees/committees-a-z/commons-select/public-accounts-committee/news/universal-credit-report/