



A New Deal for Renting

UK Finance Response to MHCLG Consultation

Due Date: 12 October 2019

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Introduction

UK Finance is the collective voice for the banking and finance industry. Representing more than 250 firms across the industry, we act to enhance competitiveness, support customers and facilitate innovation.

We are responding to this consultation on behalf of our members who are buy-to-let (BTL) mortgage lenders. These lenders provide nearly £250 billion of lending to support landlords' acquisition of privately rented accommodation. We note that lenders were not identified as organisations expected to respond to the consultation; nonetheless we believe our interest in the private rented sector warrants a response.

Overall Views

BTL mortgage lenders recognise that there is a political drive to adjust the power balance between landlords and tenants so that tenants feel they have a greater degree of protection and landlords are held to a greater degree of responsibility. Overall, lenders are supportive of measures which enhance trust between landlords and tenants, as this promotes long-term stability in the private rented sector, which improves investor confidence in the BTL sector.

Lenders recognise that abolishing Section 21 will not impact their ability to exercise their security over a mortgaged BTL property, provided that Ground 2 of Section 8 is an available option should they need to take possession. Therefore, if section 21 is to be abolished, we are supportive of the government's measures to enhance section 8 and are particularly supportive of the proposal to make Ground 2 a ground for accelerated possession.

More broadly, lenders have concerns about the capacity and efficacy of the court system to accommodate the volume and complexity of cases which are brought to it. We recognise that this issue may be mitigated by increasing the range of circumstances where accelerated possession can be granted. We note that MHCLG is still considering its response to the call for evidence, "Considering the case for a Housing Court" and we look forward to seeing the final output of this work which will hopefully result in increased resources allocated to expedite cases. Additionally, we support the governments' plans to introduce reforms to reduce the national average landlord possession time by two weeks, which are mentioned but not in scope of this consultation.

Separate from issues around gaining vacant possession of the property, mortgage lenders have an interest in the characteristics of tenancy models adopted by the private rented sector. Currently, many lenders require in their General Mortgage Conditions that a lender taking out a BTL mortgage must use an Assured Shorthold Tenancy (AST). Under the government's proposal,

AST's would be abolished. To satisfy their own policies around credit risk management, lenders may still require their BTL customers to impose minimum requirements around tenancy length and potentially other aspects of the tenancy. Our responses to the questions set out in the consultation are, in many cases, motivated by this concern.

Answers to specific consultation questions

Question 1: 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?

Our response: Don't know

Reasoning: Although there may be some benefit in promoting a consistent set of rules for all users of Housing Act 1988, we do not have a broad enough picture of the specific requirements of tenant types outside the private rented sector and housing associations to provide meaningful comment.

Question 2: Do you think that fixed terms should have a minimum length? If yes, how long should this be?

Our response: Yes, 6 months should be the minimum length

Reasoning: Lenders recognise that tenants may benefit from having the flexibility to negotiate the minimum fixed term of a contract so that the tenancy is tailored to their circumstances. However, tenants looking for short-term tenancies tend to have different motivations than those looking for a home to rent longer-term. Because of this, short-term tenancies are more complex to manage as tenant turnover is naturally high and the property's potential rental value may have seasonal variation.

BTL lenders recognise that short-term and longer-term tenancies are fundamentally different business propositions. Most lenders tend to avoid short-term tenancies and often require that their landlord customers impose a minimum six-month initial fixed period on the tenancy. This helps to reduce the risk of missed mortgage payments which are more likely to occur where a landlord offers short tenancies. We think that government should also consider short-term and longer-term tenancies to be different types of activities and should not necessarily apply the same set of requirements to each.

Additionally, requiring a six-month minimum fixed term for both fixed-term assured tenancies and assured periodic tenancies will provide consistency to landlords and tenants during the proposed transition period, should a transition period be implemented (addressed in Question 50).

Question 3: Would you support retaining the ability to include a break clause within a fixed-term tenancy?

Our response: Yes

Reasoning: Lenders recognise that there is some benefit for tenants to have the flexibility of a break clause. Lenders will likely be able to accommodate a tenancy model with a break clause, provided that the tenancy has a minimum fixed term of six months and there are no other barriers to the lender doing so (ie, requirements imposed by a funder in a securitisation arrangement).

Question 4: 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?

Our response: Yes

Reasoning: This will provide some additional flexibility to landlords. A substantial percentage of landlords own just one rental property, and the ability to either move themselves or their family members into the property may impact whether they decide to acquire or let the property. However, not all BTL mortgage contracts will allow a family member of the landlord to move into the property, so not all landlords will be able to take advantage of this.

Question 5: 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?

Our response: Don't know

Reasoning: It is unclear whether the protection this affords tenants is outweighed by the constraint it imposes on the landlord.

Question 6: 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? If not, why not?

Our response: No

Reasoning: Landlords are already required to provide a substantial amount of information to tenants at the beginning of the tenancy, including the How to Rent Guide. It may be less onerous on all parties if the How to Rent Guide were expanded to inform tenants that the landlord could seek possession under Ground 1.

Question 7: 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?

Our response: No.

Reasoning: Allowing this would undermine the intended benefit of a fixed-term period.

Question 8: 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?

Our response: Don't know

Reasoning: This may provide additional flexibility to the landlord, particularly in the case of an emergency. However it is unclear whether many landlords would be able to exercise this in practice, particularly as most general conditions of BTL mortgages will prohibit it.

Question 9: 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?

Our response: Don't know

Reasoning: Out of lenders' scope.

Question 10: 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?

Our response: Yes

Reasoning: This feels right as it is consistent with precedent which seems to work well for landlord and tenants. Under current Section 21 rules, landlords in England must provide two months' notice for eviction. In Scotland, landlords must typically provide 28 days if the tenant has been in the property less than 6 months, or 84 days' notice if the tenant has lived there more than six months. Requiring landlords in England to provide two months' notice would keep the requirements in line with precedent and roughly in line with what is required in Scotland.

In Wales, 2 months is the typical notice period for all grounds, however the Welsh government is consulting on a proposal to extend this to six months. We will be objecting to this proposal under the grounds that it will make it even more challenging for landlords to remove problematic tenants who know how to take advantage of the system—a credit risk which is then borne by BTL lenders.

Question 11: Not applicable as we answered Yes to Q10.

Question 12: We propose 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. Do you agree?

Our response: No

Reasoning: Landlords are already required to provide a substantial amount of information to tenants at the beginning of the tenancy, including the How to Rent Guide. It may be less onerous on all parties if the How to Rent Guide were expanded to inform tenants that the landlord could seek possession if they wish to sell.

Question 13: 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')?

Our response: Yes

Reasoning: Making this ground mandatory will provide comfort to the landlords that they will obtain the possession order.

Question 14: 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?

Our response: Don't know

Reasoning: This may provide the landlord some comfort that they have a route to obtain the property if necessary. However, in practice this will probably be an infrequent occurrence.

Question 15: 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?

Our response: Yes

Reasoning: Same as reasoning provided for Question 10.

Question 16: N/A as we answered yes to Q15.

Question 17: Should the ground under Schedule 2 concerned with rent arrears be revised so:

1. The landlord can serve a two-week notice seeking possession once the tenant has accrued two months' rent arrears. **Yes**
2. 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. **Yes**
3. The court may use its discretion as to whether to grant a possession order if the arrears are under one month by this time. **Yes**
4. 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. **Yes**

Reasoning: The strengthening of this ground is likely to provide comfort to landlords that they can more easily remove a problematic tenant using Section 8 in the absence of section 21.

Question 18: Should the Government provide guidance on how stronger clauses in tenancy agreements could make it easier to evidence ground 12 (anti-social behaviour) in court?

Our response: Yes

Reasoning: Further guidance will provide additional comfort to landlords that they will be able to rely on Section 8 take possession of their property when tenants engage in anti-social behaviour.

Question 19-23: Propose not to answer as questions relate to landlord experiences of using grounds 7A and 14 under Section 8 to evict tenants for antisocial behaviour.

Question 24-27: Propose not to answer as questions related to a new proposed ground for eviction in the case of Domestic Abuse (out of scope of lenders).

Question 28: Would you support amending ground 13 to allow a landlord to gain possession where a tenant prevents them from maintaining legal safety standards?

Our response: Yes

Reasoning: Lenders recognise the importance of maintaining safety standards in the private rented sector. Moreover, lenders have a direct interest in ensuring the value of the property is protected through regular maintenance and upkeep.

Question 29:

Which of the following could be disposed of without a hearing? (tick all that apply)

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.	<input type="checkbox"/>
2	Prior notice has been given that the mortgage lender may wish to repossess the property.	<input checked="" type="checkbox"/>
3	Prior notice has been given the property is occupied as a holiday let for a set period.	<input type="checkbox"/>
4	Prior notice has been given the property belongs to an educational establishment and let for a set period.	<input type="checkbox"/>
5	Prior notice has been given to a resident minister that the property may be required by another minister of religion.	<input type="checkbox"/>
6	Reconstruction, demolition or other works need to be carried out, but cannot go ahead with the tenant in situ.	<input type="checkbox"/>
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.	<input type="checkbox"/>
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.	<input type="checkbox"/>
7B	A tenant or occupant has been disqualified from occupying the property due to their immigration status.	<input type="checkbox"/>
8	The tenant has significant rent arrears.	<input type="checkbox"/>

New	<i>The landlord wishes to sell the property</i>	<input type="checkbox"/>
Don't know		<input type="checkbox"/>

Reasoning:

Offering the option to apply to the court for accelerated possession and have the case decided based on what the landlord, tenant, and lender have provided in writing will likely lead to swifter decisions. Lenders are therefore supportive of this option, particularly for Ground 2.

Question 30: Should ground 4 be widened to include any landlord who lets to students who attend an educational institution?

Our response: Yes.

Reasoning: This may provide additional assurance to landlords who specialise in letting to students that the property will be vacated in time to be re-let for the next academic term.

Question 31: Do you think that lettings below a certain length of time should be exempted from the new tenancy framework?

Our response: Don't know

Reasoning: Typically, BTL mortgages are offered only for landlords who provide long-term rented accommodation, so lenders are not able to comment on exemptions for short-term lets.

Question 32: 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?

Our response: Don't know

Reasoning: Out of scope for BTL lenders.

Question 33: Should there be a mandatory ground under Schedule 2 for possession of sub-let 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?

Our response: Don't know

Reasoning: Out of scope for BTL lenders.

Question 34: 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)?

Our response: Don't know

Reasoning: Out of scope for BTL lenders.

Question 35: Are there any other issues which the Government may need to consider in respect of agricultural tenancies?

Our response: No comments from BTL lenders.

Question 36: Are there any other circumstances where the existing or proposed grounds for possession would not be an appropriate substitute for section 21?

Our response: We feel the new proposed grounds provide an adequate substitute for Section 21.

Questions 37-43: Questions specific to landlords- **propose not to comment:**

37: How many section 21 notices have you issued in the past two years?

38: Of these, how many applications for possession orders have you made to the courts?

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

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

41: How many section 8 notices have you issued in the past two years?

42: Of these, how many applications for possession orders have you made to the courts?

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

Question 44: Are there any other impacts on your business or organisation the Government should consider when finalising its policy? If yes, please provide evidence to support this view.

Our response: As set out in the introductory paragraphs, lenders of BTL mortgages want to reduce their exposure to credit risk stemming from non-payment of rent. As such, we are supportive of:

- The protection of ground 2 of section 8 which allows the mortgage lender to take possession if the borrower defaults on payments;
- Tenancy models which obligate the tenant to a minimum fixed term; and
- Measures which provide protection to the landlord that they can swiftly remove tenants who are not paying rent or otherwise pose a credit risk to the lender.

Question 45: Do you think these proposals will have an impact on homelessness?

Our response: Don't know / Out of scope of BTL lenders

Question 46: Do you think these proposals will have an impact on local authority duties to help prevent and relieve homelessness?

Our response: Don't know / Out of scope of BTL lenders

Question 47: Do you think the proposals will impact landlord decisions when choosing new tenants?

Our response: Don't know / Out of scope of BTL lenders

Question 48: 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?

Our response: No views or evidence

Question 49: If any such impact is negative, is there anything that could be done to mitigate it?

Our response: Not applicable.

Question 50: Do you agree that the new law should be commenced six months after it receives Royal Assent? If not, what do you think would be an appropriate transition period?

Our response: We believe six months is not enough time for the market to adjust to the new law, as there will be potentially a lot of changes introduced at one time. We suggest that twelve months will provide additional time for lenders, as well as landlords and tenants to fully digest the implications the changes will have on them.

If you have any questions relating to this response, please contact Carla Sateriale, Manager, Mortgages. (Carla.sateriale@ukfinance.org.uk)