



Which?, 2 Marylebone Road, London, NW1 4DF

Date: 24/08/2018

Response to: **Overcoming the Barriers to Longer Tenancies in the Private Rented Sector**

Private Rented Sector Division
Ministry of Housing Communities and Local Government
Third Floor – Fry Building
2 Marsham Street
London
SW1P 4DF

Consultation Response

Overcoming the Barriers to Longer Tenancies in the Private Rented Sector

Summary

- Which? welcomes the government introducing changes to deliver longer, more secure tenancies for those that want it. Our report '*Reform of the private rented sector: the consumer view*' found tenure security to be an issue for a number of tenants.¹ 51% of tenants in our survey stated that they were worried about having to leave their property before they wanted, this increased to 59% for families.
- **Length of the tenancy:** Which? welcomes introducing longer tenancy agreements. However, the government has not provided a clear rationale for why three years is considered the appropriate minimum length of tenancy. The government should do further work (including looking at the experience in Scotland with open-ended tenancies) to understand what length of tenancy will best suit tenants. Our research found tenants spend on average 4.6 years in their current property and an average of 12.4 years in the private rental sector overall. As such, a three year tenancy may be insufficient to provide adequate security.
- **Six month break clause:** Which? does not agree with the inclusion of a break clause at six months. It could be used by some landlords to avoid compliance and may discourage tenants to raise issues or complaints in the first six months of the tenancy.
- **Reform of the court system:** To deliver real change it is necessary that reforms work for the sector as a whole, including both landlords and tenants. Issues landlords can face when regaining possession from a tenant who has broken their tenancy terms are a major barrier to ensuring landlords are willing to offer longer tenancies. Such issues include the process for the handling of housing in the court and tribunal system. The government must publish the full details on the scope and timing of that review as soon as possible.

¹ <https://www.which.co.uk/policy/housing/2921/reform-of-the-private-rental-sector-the-consumer-view>

- **Flexibility for tenants:** Which? agrees with the consultation proposal enabling tenants to provide two months' notice to landlords in order to leave a property. In addition, we think the new framework should allow tenants to leave a fixed-term contract early if landlords fail to uphold their legal responsibilities. We also agree with exemptions for tenancies which could not realistically last for three years, such as student lets. However, these must be carefully designed to ensure they only apply when there is a genuine tenant's request.
- **Changes in landlord's circumstances and notice period:** Which? agrees that sensible provisions need to be put in place for changes in landlord's circumstances, such as wanting to sell their property. However, the government should reconsider the requirement for landlords to provide only two months' notice in such instances. Our research found many tenants found the length of their current notice period (which is usually two months) too short to find new suitable accommodation.
- **Rent increases:** Rent increases should be limited to no more than once per year. We agree that reform should include arrangements to protect tenants from unreasonable rent increases during the fixed contract period. In looking at options to deliver that protection the government should consider the policy in Scotland where tenants have a clear route through which to raise objections to increases they view as unfair. Such a process would require an efficient and accessible court system and for tenants to be made aware of the options available to them.
- **Implementation:** For reform to provide greater security to *all* tenants who want it, implementation through legislation is necessary. In parallel government must put plans in place to educate landlords and tenants of the changing requirements and their respective rights.

Background

Which? strongly agrees with the benefits of longer term tenancies set out in the consultation. Changes in the Private Rented Sector (PRS), including increasing numbers of families with children, highlights the need for a sector which offers stability and security. Our report '**Reform of the private rented sector: the consumer view**² found tenure security to be an issue for a number of tenants. 51% of tenants in our survey stated that they were worried about having to leave their property before they wanted to. This was a particular concern for tenants with children, with 59% of families expressing concerns about having to leave before they wanted to.

² <https://www.which.co.uk/policy/housing/2921/reform-of-the-private-rental-sector-the-consumer-view>

Our findings also support the view that greater security can be beneficial in empowering tenants to raise issues and assert their rights. We found that nearly 3 out of 5 (58%) tenants who had a problem but held back from complaining did so because they wanted to avoid repercussions with the landlord or because they didn't want to cause problems for themselves.

However, it is clear that there are a number of barriers which must be overcome in order for the benefits outlined in the consultation to be realised. Such barriers include landlords having legitimate concerns regarding getting their property back if their own situation changes or in facing delays in removing tenants who are in breach of their tenancy terms. Equally tenants can have concerns that they could lose the flexibility to move on from a property when they want to, or may need to.

Longer tenancy framework

The consultation proposes a minimum three year tenancy but with an opportunity for the landlord and tenant to leave the agreement after the initial six months if dissatisfied. Following the six months break clause the tenant would be able to leave the tenancy by providing a minimum of two months' notice in writing.

Which? welcomes longer tenancy agreements. However, the consultation has not provided a clear rationale for why three years is considered the appropriate minimum length of tenancy. Whilst the consultation states the average length of residence in the private rented sector is 3.9 years, our research found tenants spend an average of 12.4 years in the private rented sector overall. The government needs to do more work to determine what length of tenancy will best suit tenants. As part of this, the government should look at the experience in Scotland with its open-ended Private Residential Tenancy policy, to further inform its thinking. It is not clear from the consultation whether work has been carried out to understand if such a policy could work in England.

We agree the new framework should allow tenants to leave before the end of the fixed term by providing two months' notice. We also think the new framework should allow tenants to leave a fixed-term contract early if landlords fail to uphold their legal responsibilities.

However, we disagree with the inclusion of a break clause after the initial six months. Such a provision could be used by some landlords to avoid compliance and it may restrict the willingness of tenants to raise issues or complaints in the first six months of the tenancy. As such it risks undermining a number of the benefits to longer term tenancies that are outlined in the consultation.

The right protection for good landlords

The consultation is right to recognise that landlord concerns regarding the time it can take to regain possession of a property is a major barrier to longer term tenancies. In our survey of landlords, the “inability to evict bad tenants” was stated by 46% of landlords who said they wouldn’t offer a tenancy of more than 12 months as the reason for this. The majority of landlords may be unlikely to face such situations. However, issues with the existing processes for the handling of housing in the tribunal and in the courts increases landlords’ risks and can act to deter landlords from offering longer tenancies. Such issues can include the length of time it can take for cases to be completed and for possession orders to come into effect. If during this time the landlord is not receiving rent payments from the tenant, a protracted process can be particularly difficult for the landlord to manage. In addition, landlords may lack confidence in regaining possession of their property where the ground(s) for repossession is not a mandatory ground. The government should, as part of their review of the court and tribunal process, examine whether the existing discretionary grounds are working fairly to ensure landlords have confidence in using the system. If landlords do not believe there will be swift and fair resolution when they need to evict tenants it will act to discourage a large number of landlords from offering longer term tenancies.

Which? welcomes the government’s commitment to look at the experience of users of the court system and to identify potential reforms. However, this commitment has been in place for some time and as yet no further details have been published. Given we believe that reform in this area will be essential for tangible improvement in tenure security in the sector, the government needs to publish full details of the scope and timetable for their review as soon as possible.

Notice period from landlords to tenants in case of changes in circumstances

Which? agrees that sensible provisions must be in place to provide for circumstances where a landlord’s own situation changes such as wanting to sell the property or move back in. We therefore welcome the inclusion of the additional grounds set out in the consultation.

The grounds would require the landlord to provide at least two months or eight weeks’ notice in writing. Our research showed, however, that the notice period a tenant is provided by their landlord can be as important to the tenant’s sense of security as overall tenancy length. Overall 64% of tenants we surveyed whose landlords asked them to move out of their previous accommodation found their notice period (which is usually two months) too short to find new housing. Therefore the requirement for the landlord to provide two months’ notice is likely to be too short for many tenants and hinder efforts to improve security in the sector. Government should reconsider the requirement for landlords to provide at least two months’ notice and introduce a longer period to provide tenants with adequate time to move on. The government should undertake further research to inform what this period should be.

Rent increases

The proposal in the consultation is that rents will only increase once per year at whatever rate the landlord and tenants agree but the landlord must be clear about how rents will increase when advertising the property.

Which? agrees that limiting rent increases to once per year is a sensible proposal. We also agree that the reform should include arrangements to protect tenants from unreasonable rent increases during the fixed contract period. In looking at options to deliver that protection the government should also consider the policy in Scotland where tenants have a clear route through which to raise objections to increases they view as unfair. Such a process would require an efficient and accessible court system and for tenants to be made aware of the options available to them.

Exemptions for short term lets and student accommodation

Which? agrees with the inclusion of sensible exemptions for tenancies which could not realistically last for the minimum length period. The government must ensure these are carefully designed to ensure they are not used by some landlords to avoid compliance.

Furthermore, it must consider the interaction of longer tenancies with the requirement for landlords to check their tenant has the 'Right to Rent' and can legally rent a property in England. In particular, where a tenant's permission to stay may only be for a limited time, the government must clearly set out how this will work with longer term tenancies to ensure landlords are not at risk of falling foul of their obligations.

Implementation

Which? believes that implementation through legislation is necessary to ensure that the system works for *all* tenants. We do not consider the alternative proposals to be sufficient to ensure greater security is accessible and available to all.

Tax incentives for landlords could incentivise longer tenancies but may not result in all tenants that want longer tenancies being able to get them. There is a risk that landlords will only be willing to provide greater security to certain types of tenants. Furthermore such a system could create unnecessary complexity where a tenant may have to 'search around' for a landlord willing to provide a longer tenancy to them.

Similarly we do not consider implementation *just* through better educating landlords and tenants so as to drive behaviour change to be an appropriate or effective route. There is nothing preventing longer term tenancies at present and yet even where there may be demand, in the main, these are not the norm. Tenants may feel disempowered to request terms which

better suit their needs, particularly in areas where demand for rental properties is high. Which? research found that only 16% of tenants in our survey negotiated on the length of their tenancy when they signed their current contract.

Furthermore, our recent report on the private rented sector highlighted the difficulties that both tenants and landlords can face in accessing information. For example, our survey found that awareness of existing available resources, such as the government's 'How to rent' guide, was low, with only 31% of tenants who had recently moved saying that they received a copy. Equally landlords can be difficult to contact in order to be able to share information given there is no comprehensive knowledge of who landlords in England are. As such it is unlikely that better education will be sufficient in driving timely culture change.

However, awareness raising amongst both tenants and landlords will still be important to complement implementation via legislation. Tenants need to be made aware of the options available to them and landlords need to be informed of changing requirements to ensure they are compliant. The government must therefore put plans in place to educate landlords and tenants in advance of any changes coming into effect.

About Which?

Which? is the largest consumer organisation in the UK with more than 1.3 million members and supporters. We operate as an independent, a-political, social enterprise working for all consumers. We are funded solely by our commercial ventures and receive no government money, public donations, or other fundraising income. Which?'s mission is to make individuals as powerful as the organisations they have to deal with in their daily lives, by empowering them to make informed decisions and by campaigning to make people's lives fairer, simpler and safer.

For further information, please contact Colum McGuire, External Affairs Manager,
Colum.Mcguire@which.co.uk | 020 7770 7874