



## **Crisis submission to MHCLG Consultation *A New Deal for Renting: Resetting the balance of rights and responsibilities between landlords and tenants***

October 2019

Crisis is the national charity for homeless people. We are dedicated to ending homelessness by delivering life-changing services and campaigning for change. Our innovative education, employment, housing and well-being services address individual needs and help homeless people to transform their lives. Our eleven UK Skylight Centres offer holistic support across a whole range of issues, including support to secure access to adequate and affordable housing and employment support to help people prepare for, find, sustain and progress in work. Ensuring that homeless people can get access to affordable, decent, secure housing is central to our work.

Last summer, Crisis [published a plan](#); *Everybody In: How to end homelessness in Great Britain*. The plan sets out the policies needed to ensure that everyone who is currently homeless has a stable home. The private rented sector plays a critical role in helping to end homelessness and is often the only viable housing option for homeless people, but reforms are needed to ensure the sector is fit for purpose as a housing solution for homelessness people. Ensuring homelessness is prevented wherever possible must be central to government action to end homelessness. Open-ended tenancies are a key element of the reforms we called for in the plan to end homelessness, providing a critical measure to prevent homelessness.

Crisis strongly supports the Government's intention to deliver open ended tenancies and welcomes the opportunity to respond to MHCLG's consultation [A New Deal for Renting](#) which sets out proposals to abolish section 21 of the Housing Act 1988 and end unfair evictions.

### **Key points from the Crisis submission**

- The Government's consultation on delivering open ended tenancies and ending the use of section 21 is an important step forward in addressing the insecurity experienced by many tenants, which too often results in homelessness. Open ended tenancies will give people moving on from homelessness more control not just of their future housing, but also other aspects of their lives, making it easier to seek and retain work, plan for childcare and schooling, and end the cost burden of frequent un-wanted moves. It is important that these rights are extended not just to private sector tenants, but also to those living in social housing.
- Reforming section 21 to create open ended tenancies will make a significant contribution to the Government's broader objective of supporting effective implementation of the Homelessness Reduction Act and embedding effective homelessness prevention.
- However, while this consultation is an important step in the right direction, we are concerned that some aspects of the proposals – particularly the proposed use of fixed terms with break clauses, and some aspects of the revised grounds for possession - will undermine the impact of reforms and leave tenants vulnerable to continued unfair eviction.
- Government should revise its proposals to ensure they deliver on the original commitment to provide open ended tenancies, whilst at the same time doing more to address landlords'

concerns about the effectiveness of the court system. Government must prioritise reform of the court system to ensure it delivers more expertise and consistency in housing-related cases and must ensure the system is adequately resourced.

- While tenure reform and improved court processes are essential, they are not a panacea in tackling the problems that impact on tenants' security, including lack of affordability and poor housing conditions in some parts of the sector. A wider package of reform is needed to address these problems, prevent homelessness, reduce pressure on the court system and enable Government to truly deliver on its objective of delivering a fairer private rented sector. Government must prioritise action to restore Local Housing Allowance to the 30<sup>th</sup> percentile and in addition take steps to deliver a national landlord registration and property "MOT" scheme and increase investment in Tenancy Relations and Help to Rent services. These reforms would help ensure that the private rented sector provides secure and affordable homes that can be used to prevent and resolve homelessness.

## 1. Introduction

The Government's consultation on creating a fairer balance of rights and responsibilities between landlords and tenants is welcome. The proposals to deliver open ended tenancies and end the use of section 21 are an essential step forward in addressing the insecurity experienced by many tenants, and in tackling homelessness.

The proposal to end the use of section 21 is an important step forward in addressing the insecurity experienced by many tenants, which too often results in homelessness. Open ended tenancies will give people moving on from homelessness more control not just of their future housing, but also other aspects of their lives, making it easier to seek and retain work, plan for childcare and schooling, and end the cost burden of frequent un-wanted moves.

We think it is right that this commitment should also be extended to social housing tenants, and therefore that these reforms should apply to the housing association sector and other not for profit landlords that use assured shorthold tenancies such as local housing companies.

However, while this consultation is an important step in the right direction, **we are concerned that some aspects of the proposals will undermine the impact of reforms and leave tenants vulnerable to continued unfair eviction.** Our detailed comments on the proposals are set out later in our submission (see Section 3), but our key areas of concern with the proposals as they currently stand are as follows:

- Retaining the option of fixed terms with break clauses undermines the Government's original commitment to "effectively create open ended tenancies."<sup>1</sup> The consultation paper suggests that fixed terms will have benefits for landlords and tenants, with both parties able to agree whether to use a periodic or fixed term contract. In reality however, many tenants have very little negotiating power, particularly people moving on from homelessness. There is a significant risk that many tenants will not understand their rights to continue to occupy their home at the end of the fixed term, and that an unintended consequence will be an increase in the numbers of people facing homelessness and potentially being judged intentionally homeless. The reforms should therefore rule out the use of fixed terms and break clauses.
- While it is important that the reformed regime provides landlords with greater assurance that they can obtain possession of the property in cases of serious arrears or anti-social behaviour, we

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<sup>1</sup> MHCLH (2019) *Government announces end to unfair evictions*:  
<https://www.gov.uk/government/news/government-announces-end-to-unfair-evictions>

have concerns that proposed revisions to the grounds for possession and accelerated procedures will undermine the protections available to tenants to prevent unfair evictions. This is particularly the case for tenants needing to claim Housing Benefit/Universal Credit whose claim is unresolved at the time of a court hearing. We recommend mitigations to provide tenants with greater protection in response to the consultation questions (see section 3 of this submission).

- It is essential that the Government publishes detailed proposals to improve the effectiveness of the courts in property cases in parallel with this consultation, as the two issues go hand in hand. Landlords' concerns about their ability to regain possession of their properties in appropriate circumstances can be mitigated to a degree by improvements in the speed and effectiveness of court processes. Government should prioritise intervention in this area to ensure housing cases are handled with greater consistency and expertise and, critically, that the system is adequately resourced to manage the volume of applications and allow for continued increases in demand.
- To ensure that the court system works fairly for tenants, government must also improve access to legal aid in housing cases. The volume of legally aided housing cases dropped by half in the year after the legal aid system was reformed, and the Law Society identified that a third of legal aid areas have no specialist legal aid housing advice providers.<sup>2</sup> Restoring legal aid to pre-2012 levels for housing cases would play an important preventative role, ensuring that more low income tenants can defend their housing rights.

**While tenure reform and improved court processes are essential, they are not a panacea in tackling the wider problems that impact on tenants' security, including lack of affordability and poor housing conditions in some parts of the sector. A wider package of reform is needed to address these problems, prevent homelessness, reduce pressure on the court system and enable Government to truly deliver on its objective of a fairer private rented sector:**

- Government must address the gap between rents and benefits that undermines affordability and puts tenants at risk of eviction. While delivering more homes for social rent is critical in the longer term, there is an urgent need to ensure that benefit covers the cost of rents. This would reduce the number of households unable to cover the cost of their rents, helping the private rented sector to function more effectively for those on the lowest incomes. This should be a priority for the forthcoming spending review. Crisis analysis has shown that investing £3.3 billion over 3 years to restore Local Housing Allowance to the 30<sup>th</sup> percentile will deliver wider benefits of £5.5 billion through reduced use of homelessness services and health services.
- Significant or unexpected rent increases can also jeopardise tenants' security of tenure. While landlords may only adjust rents once a year under a periodic tenancy, currently the only safeguard for tenants against unaffordable rent increases is to appeal to the First-tier Tribunal for a judgement about what represents a market rent. In areas of high housing pressure, where rents are rising, this can still leave tenants facing unaffordable increases. Government should therefore introduce provisions to limit in-tenancy annual rent increases to an inflationary measure. There is strong evidence to support the case for in-tenancy rent stabilisation as part of a broader framework of private sector reform that includes indefinite tenancies and improved enforcement to tackle poor standards.<sup>3</sup>
- Government should introduce a nationwide help to rent and national deposit guarantee scheme providing public backing to expand the number of people able to access to tenancy sustainment support.<sup>4</sup> This support plays a critical role in enabling people moving on from homelessness to access and sustain tenancies, while providing landlords with reassurance that tenants will be

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<sup>2</sup> The Law Society of England and Wales (2017) *Access Denied: LASPO four years on – a Law Society Review*

<sup>3</sup> Whitehead C & Williams P (2018) *Assessing the evidence on rent control from an international perspective*. London: LSE

<sup>4</sup> Downie, M., Gousy, H., Basran, J., Jacob, R., Rowe, S., Hancock, C., Albanese, F., Pritchard, R., Nightingale, K. and Davies, T. (2018) *Everybody In: How to end homelessness in Great Britain*. London: Crisis.

supported to access benefits. Research for Crisis found that among landlords with experience of letting to homeless people, 59% said they would only consider letting to homeless households if backed by such interventions.<sup>5</sup> In the autumn 2017 budget, the Government committed £20 million to fund private rented access schemes as part of its wider programme of work to prevent homelessness and tackle rough sleeping, but it needs to go further to ensure that more people have access to this essential support, to establish a national deposit guarantee scheme, and to make landlords aware of the availability and impact of this support.

- The Government should consider and consult on options for additional measures to prevent evictions and should provide a stronger focus on the role of landlords in preventing homelessness, with advice and support to help prevent eviction. Preventative measures could be aligned with help to rent or other local tenancy sustainment support services, ensuring that the threat of eviction triggers preventative support. They might include placing a duty on private landlords to inform the relevant housing and social agencies, with tenants' consent, if they commence possession proceedings. In Scotland Section 11 of the (Homelessness etc (Scotland) Act 2003 has (since 2009) placed a duty on housing associations, private landlords and mortgage lenders to notify the relevant local authority when they begin possession proceedings and other European countries operate similar measures.<sup>6</sup> The Government should also consult on the feasibility of making a possession order conditional on a landlord having taken specified steps, such as notifying the local authority.
- Finally, Government must better enable local authorities to tackle poor housing conditions on a systematic basis by:
  - Introducing a national register of landlords that all private landlords and letting agencies are required to join, and a system which requires all landlords to hold a property MOT certificate which is annually renewed.<sup>7</sup> The call for a national registration system has been echoed in the MHCLG's recently published review of the use and effectiveness of selective licencing, as this would help address the poor quality evidence base undermining local authority efforts to tackle poor conditions and management standards, and address the fundamental problem of how to identify rented properties.<sup>8</sup>
  - Placing a statutory duty on local authorities to provide a tenancy relations service, with funding to enable local authorities to adequately resource support for tenant and landlord mediation, and action to remedy disrepair.

## 2. Context

Tenure insecurity damages tenants' wellbeing and is a cause of homelessness. In this part of our submission we set out the evidence to support the case for introducing open ended tenancies in the private and social sectors.

### **The case for open ended tenancies in the private rented sector**

The vast majority (80%) of the 4.7 million households living in the private rented sector have shorthold tenancies.<sup>9</sup> There is evidence of widespread concern that for the lowest income tenants, those with least bargaining power in the housing market, lack of long term security of tenure is

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<sup>5</sup> Reeve, K et al *Home: No Less will do – Homeless people's access to the Private Rented Sector*. Crisis July 2016

<sup>6</sup> Gerull, S. *Evictions Due to Rent Arrears: A comparative analysis of evictions in fourteen countries*. Alice Salomon Hochschule Berlin, Germany. Published in *European Journal of Homelessness* Volume 8, No 2, December 2014

<sup>7</sup> Rugg, J. and Rhodes, D. (2018) *The Evolving Private Rented Sector: Its Contribution and Potential*. York: University of York/Centre for Housing Policy

<sup>8</sup> Lawrence, S. (2019) *An Independent Review of the Use and Effectiveness of Selective Licensing* MHCLG

<sup>9</sup> MHCLG (2019) *English Household Survey 2017-18: Private Rented Sector*

associated with a sense of insecurity that can be damaging to health and well-being.<sup>10</sup> The role of section 21 in enabling landlords to end tenancies without a specific reason is also implicated in tenants' fear of reporting repairs or other problems.<sup>11</sup> While the majority of tenancies are ended voluntarily by tenants, the enforced and sometimes unexpected moves faced by the minority can have a damaging impact on health, household budgets and employment, and on the education of the growing numbers of children living in the sector.<sup>12</sup>

Longitudinal qualitative research conducted by Crisis and Shelter examining the experiences of people resettled into a private tenancy having been homeless documented the damaging impact of tenure insecurity.<sup>13</sup> Survey participants' confidence about being able to find a long-term home, and achieve housing stability, dropped as time went on, with worries that their tenancy could be ended at short notice. Tenants were anxious about how they would find the money to cover the costs of moving. Worries about how to meet these costs added to anxieties about the upheaval of moving.

While there has been some debate (and a lack of specific evidence) about whether section 21 is, of itself, a driver of homelessness, such evidence as exists suggests that a minority of possession cases are pursued without valid grounds; that is without grounds that already exist or are proposed for inclusion in Schedule 2 of the Housing Act 1988. We consider this evidence further in response to question 45. But it is clear that the move to open ended tenancies will play a vital role in preventing unfair eviction for many.

There are some concerns that the abolition of section 21 may mean landlords become more reluctant to rent to people moving on from homelessness and those who need Housing Benefit or Universal Credit to cover the cost of rent.<sup>14</sup> However there is evidence that many landlords believe that the impact of tenure reform can be mitigated to a greater or lesser extent by more efficient court processes.<sup>15</sup> In addition, Crisis's own research and experience shows that with investment in help to rent schemes to provide more effective tenancy sustainment support, many landlords are willing to continue to house people moving on from homelessness.<sup>16</sup>

## International evidence

England's current framework of private sector tenancy law places us at the least regulated end of the spectrum of practice across Europe.<sup>17</sup> A recent international literature review conducted for the Residential Landlords Association noted that indefinite tenancies, along with rent indexation within a tenancy, have been core elements in the movement towards sustainable private rental sectors in other countries.<sup>18</sup> Based on this evidence the researchers recommended that the focus for reform in England should be putting in place a system which allows indefinite tenancies, and which imposes a

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<sup>10</sup> Rugg, J. and Rhodes, D. (2018) *Vulnerability amongst low income households in the private rented sector*. York: University of York/Centre for Housing Policy

<sup>11</sup> Rogers, C., Isaksen, M, and Brindle, B. (2018) *How to protect tenants from retaliatory eviction in England*. London: Citizens Advice

<sup>12</sup> Rugg, J. and Rhodes, D. (2018) *The Evolving Private Rented Sector: Its Contribution and Potential*. York: University of York/Centre for Housing Policy

<sup>13</sup> Smith, M., Albanese, F., Truder, J. *Sustain: A longitudinal study of housing wellbeing in the private rented sector* (2014). London: Crisis/Shelter

<sup>14</sup> Capital Economics (2019) *A new deal for renting? The unintended consequences of abolishing Section 21*. The Knowledge Network/National Landlords Association

<sup>15</sup> Capital Economics (2019) *A new deal for renting? The unintended consequences of abolishing Section 21*. The Knowledge Network/National Landlords Association

<sup>16</sup> Reeve, K et al (2016) *Home: No Less will do – Homeless people's access to the Private Rented Sector*. London: Crisis

<sup>17</sup> Whitehead C & Williams P (2018) *Assessing the evidence on rent control from an international perspective*. London: LSE

<sup>18</sup> Whitehead C & Williams P (2018) *Assessing the evidence on rent control from an international perspective*. London: LSE

degree of rent stabilisation alongside a much better enforcement system.<sup>19</sup> The Scottish Government's introduction of open ended tenancies in 2017 provides evidence that tenure reform can be delivered without significant disruption to the housing market.<sup>20</sup> Although it is early days, the available evidence from Scotland suggests the reforms have not resulted in the contraction of the private rental market and have had a beneficial impact on tenants' sense of security.

### **The case for open ended tenancies in the social sector**

It is important too that the Government addresses the impact of tenure insecurity in the social sector. The introduction of probationary tenancies in the 1990s delayed tenants' access to full security of tenure for up to 18 months and the subsequent introduction of fixed term tenancies as part of the Localism Act, means that a minority of new social sector tenants are no longer automatically granted open ended tenancies.<sup>21</sup> There is significant variation in practice between social landlords, as well as divergent opinion on the justification for use of tenancy conditionality.<sup>22</sup> Of those routinely using fixed term tenancies, a minority view them as a tool to influence tenants' behaviour, while the majority are concerned with making most effective use of housing stock. A worrying consequence has emerged, in which some housing associations and councils say that they will take account of financial capability in judging whether to renew a tenancy; that is on the grounds that rent is too expensive for the tenant.<sup>23</sup> This implies a risk of homelessness at the end of fixed terms for households considered too poor for social housing.

Many respondents to the research conducted by Heriot Watt University suggested that fixed term tenancies impact negatively on tenants by undermining their sense of security and belonging in their community, with particular concerns for the wellbeing of vulnerable tenants and families with children. Respondents also highlighted that fixed term tenancies can have work disincentive effects. While some social landlords never adopted fixed term tenancies, there is evidence that some that have used them are now ending their use.<sup>24</sup> In these cases landlords have highlighted both the negative impact on tenants' wellbeing and the lack of alternative homes to encourage tenants to downsize as reasons why they have ceased their use.

Against this backdrop it is right that the Government now takes steps to end the use of fixed term tenancies and re-establish open ended tenancies as the norm in the social housing sector.

Probationary tenancies are very widely used across the sector,<sup>25</sup> but there is limited empirical analysis of their impact compared with other available mechanisms designed to improve tenancy sustainment and prevent rent arrears and anti-social behaviour. Relatively little use is made of demoted tenancies, however, which can only be used with a court order where there is evidence of anti-social behaviour. The widespread use of probationary tenancies in England contrasts with Scotland, where the short Scottish Secure Tenancy is used in a small number of cases only (620

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<sup>19</sup> Whitehead C & Williams P (2018) *Assessing the evidence on rent control from an international perspective*. London: LSE

<sup>20</sup> Shelter (2019) *The new private rental tenancies: evaluating changes to rental agreements in Scotland*. Shelter

<sup>21</sup> Watts, B. & Fitzpatrick, S. (2018) *Fixed Term tenancies: Revealing divergent views on the purpose of social housing*. Heriot Watt University

<sup>22</sup> Watts, B. & Fitzpatrick, S. (2018) *Fixed Term tenancies: Revealing divergent views on the purpose of social housing*. Heriot Watt University

<sup>23</sup> Watts, B. & Fitzpatrick, S. (2018) *Fixed Term tenancies: Revealing divergent views on the purpose of social housing*. Heriot Watt University

<sup>24</sup> <https://www.lqgroup.org.uk/about/media-centre/news/details/135>;

<https://www.insidehousing.co.uk/news/news/more-housing-associations-consider-ditching-fixed-term-tenancies-58315>; Inside Housing <https://www.insidehousing.co.uk/news/news/more-housing-associations-consider-ditching-fixed-term-tenancies-58315>

<sup>25</sup> <https://www.gov.uk/government/statistics/social-housing-lettings-in-england-april-2017-to-march-2018>

tenancies in 2017/18).<sup>26</sup> The short Scottish Secure Tenancy can be used to provide a temporary letting in specified circumstances only, including for people requiring housing support (typically young people/care leavers) or where tenants have a history of anti-social behaviour. In practice there is significant variation in the use of shortholds between social landlords, and little analysis of the outcomes achieved through their use.

Analysis of the impact of both demoted tenancies in England and short Scottish Secure Tenancies would be beneficial to inform decisions about whether there is a case to retain use of shorthold tenancies in specific and clearly prescribed circumstances.

### **3. Crisis response to relevant consultation questions**

#### **The end of Section 21 evictions**

##### **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?**

Yes. Crisis agrees that the assured shorthold regime and section 21 notices should be abolished for all users of the Housing Act 1988 across the private and social sectors, re-establishing open ended tenancies as the norm in both sectors. We have outlined our reasons for this position in section 2 of our submission.

##### **Question 2: Do you think that fixed terms should have a minimum length?**

Crisis does not support the Government's assumption that fixed term tenancies should be permitted under the reformed assured tenancy regime. Retaining the option of fixed terms with break clauses undermines the Government's original commitment to "effectively create open ended tenancies"<sup>27</sup> – a commitment grounded in evidence of the unacceptable impact of tenure insecurity on tenants' well-being.

The consultation paper suggests that fixed terms will have benefits for landlords and tenants, with both parties able to agree whether to use a periodic or fixed term contract. In reality however, tenants have very little negotiating power – particularly those on the lowest incomes and people moving on from homelessness. There is a danger that if tenants' circumstances change, for example because of loss of employment or a relationship breakdown, they are unable to get out of a fixed term contract and the accompanying rent liability.

There is also a risk that some tenants will not understand their rights to continue to occupy their home at the end of the fixed term, and that fixed terms will continue to be a source of insecurity. There is a risk that tenants will feel pressurised to leave, with the potential that this leads to judgements of intentional homelessness.

We strongly urge Government to reconsider this aspect of the proposals and ensure that the beneficial impacts of abolishing assured shorthold tenancies are not undermined by the routine use of fixed terms.

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<sup>26</sup> <https://directory.scottishhousingregulator.gov.uk/Pages/Datasets-and-Reports.aspx>

<sup>27</sup> MHCLH (2019) *Government announces end to unfair evictions*: <https://www.gov.uk/government/news/government-announces-end-to-unfair-evictions>

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

No. For the reasons outlined in response to Question 2, Crisis does not support the proposal to retain the use of break clauses. Break clauses that allow landlords to end a tenancy before the end of a fixed term have the potential to become a de facto alternative to section 21, undermining the security promised by the Government.

**Bringing tenancies to an end**

***Moving into the property, widening the scope of ground 1***

**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?**

Yes. Crisis agrees that a landlord should be able to gain possession if their family member wishes to use the property, but the definition of “family member” should be tightly defined in relation to immediate family members, and this extended part of the ground should be a discretionary possession ground. The ground should also be subject to prior notice arrangements and a minimum term of two years before the ground can be used. This safeguard is important to provide tenants with at least two years certainty of occupation, and to ensure unscrupulous landlords do not use the measure as a device to secure possession when there is no genuine intention for a family member to occupy.

Landlords should be obliged to provide 4 month’s-notice of their intention to use this ground. Crisis recommends that landlords are obliged to give tenants four month’s-notice for all the no-fault grounds. This recommendation is informed by the evidence submitted to the London Mayor’s tenancy reform proposals, which identified four months as the minimum appropriate period for households to plan and save for an unexpected house move and to allow school age children to finish their term before having to move and potentially change schools.<sup>28</sup>

**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?**

Crisis accepts there may be a case for removing the requirement that a landlord or family member previously lived in the property, so long as other appropriate safeguards are in place as described in response to questions 4 & 6.

**Question 6: Currently a landlord has to give a tenant prior notice that they may seek possession under ground 1, in order to use it. Should this requirement to give prior notice remain?**

Yes. Crisis believes that the prior notice requirement must remain, to ensure that prospective tenants understand from the outset that there is a risk they may have to leave their home through no fault of their own.

**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?**

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<sup>28</sup> Greater London Authority (2019) *The London Model: Reforming Private Rented Sector Tenancies. A Technical paper.*

No. Crisis does not support the continued use of fixed terms, but if they are retained, it would be inappropriate for landlords to be able to regain possession before the fixed term expires if this is longer than two years. Crisis also supports the principle of a two-year minimum term before possession can be regained on this ground.

**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?**

No. Crisis supports the proposal that the ground for possession should not be available within two years of the start of the tenancy.

**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?**

No. It should not be possible for the Courts to remove the two-year restriction.

#### ***A new ground – selling the property***

**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?**

No. Crisis recommends that the notice period is 4 months.

**Question 11: If you answered No to Question 10, should the amount of notice required be less or more than two months?**

More than two months' notice. Crisis recommends a 4 month notice period. Please see response to question 4 to explain evidence for this.

**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?**

Yes. Crisis believes that the prior notice requirement must remain, to ensure that prospective tenants understand from the outset that there is a specific risk they may have to leave their home through no fault of their own.

**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')?**

The Government should ensure that there are robust arrangements in place to ensure that the intention to sell is genuine if it introduces this as a mandatory ground. The Court should be required to satisfy itself that the intention to sell is genuine, with landlords required to provide tangible evidence of an impending sale.

Crisis also recommends that the government considers the feasibility of introducing a robust mechanism to ensure tenants are compensated if it is subsequently established that landlords do not sell the property following eviction on this ground.

**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?**

No. This would not prevent a landlord selling a property with the tenant in situ within the first two years of the tenancy. Analysis by IPPR has highlighted that sale of property with a sitting tenant is more common in other countries. The Government should examine the case for supporting the development of a sub-market for tenanted properties, enabling tenants to remain in situ when a property is sold, rather than reduce the protections available to tenants within the first two years of their tenancy.<sup>29</sup>

**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?**

No. Crisis recommends that the notice period is 4 months for the reasons set out in response to question 4.

**Question 16: If you answered 'no' to question 15, should the amount of notice required be less or more than two months?**

More than two months' notice. Crisis recommends a 4 month notice period for the reasons set out in response to question 4.

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

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

No. The notice period should be four weeks for tenant fault grounds including rent arrears.

- **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.**

No. Government should not reduce the period of arrears that triggers the mandatory possession ground. Where tenants claim Universal Credit to help cover the cost of rent, many are at risk of arrears while their claims are resolved, meaning that they will be at risk of mandatory evictions if more than one month's rent is outstanding. Crisis recommends that Government introduces additional protection for tenants with a reasonable expectation of eligibility for Housing Benefit or the housing element of Universal Credit, by introducing a provision that ground 8 becomes a discretionary ground if the reason for the tenant not paying some or all of the rent is a delay or failure in the payment of these benefits.

- **The court may use its discretion as to whether to grant a possession order if the arrears are under one month by this time.**

No. Existing discretionary ground 10 provides an appropriate basis for the Court to judge whether to award possession where some rent is unpaid.

- **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.**

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<sup>29</sup> Baxter, D & Murphy, L (2019) *Sign on the dotted line: A new rental contract*. IPPR

No. The Court should be able to determine when it is appropriate to award possession in circumstances other than significant rent arrears.

**Question 18: Should the Government provide guidance on how stronger clauses in tenancy agreements could make it easier to evidence ground 12 in court?**

Yes, but this should be part of broader guidance to support landlords in preventing and responding effectively to anti-social behaviour. This should include providing landlords with access to information about local prevention services, encouraging early intervention to prevent and manage anti-social behaviour. It is also essential that landlords are made aware of the association between anti-social behaviour complaints and domestic abuse and are aware of the steps they can take to support survivors. This type of intervention could be effectively delivered through help to rent schemes and targeted through a national registration scheme as recommended in section 2 of our submission.

**Questions 24-27: Domestic Abuse**

We do not consider that grounds for possession are an appropriate way to address the protection of housing rights for survivors of domestic abuse. Crisis supports the recommendations developed by the National Housing & Domestic Abuse Policy & Practice group, proposing a new general mechanism by which a survivor can apply to the court for the transfer of the perpetrator's sole or joint tenancy rights to the survivor solely, and regardless of marital status or the presence of children. Any new mechanism should apply equally across the social and private sectors.

**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?**

It is important that the Government puts in place safeguards to protect tenants with support needs who may be at particular risk of eviction under this ground, particularly if the Government introduces the proposed amendment. Safeguards should seek to minimise the risk of eviction arising from this ground, with the focus on pursuing alternative legal mechanisms to enable landlords to secure access to tenants' homes to conduct essential works, and the provision of specialist support/intervention for households with mental health needs.

**Question 29: Accelerated possession. Which of the following (grounds) could be disposed of without a hearing? (tick all that apply)**

Crisis does not support the use of accelerated procedures for possession claims on any of the section 8 grounds. The court process provides tenants with a more effective opportunity to present their case than the accelerated procedure and can provide a critical safeguard in cases of unfair eviction. The proposals suggest that such procedures would help to address landlord concerns about the time it takes to obtain possession using section 8. We urge Government instead take steps to improve the speed and effectiveness of court processes, to improve landlords' confidence in relying on section 8 grounds.

**Wider impact**

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

The proposals to deliver open ended tenancies and end the use of section 21 are an essential step forward in addressing the insecurity experienced by many tenants, and in tackling homelessness.

There are two key ways in which the proposals may impact on homelessness – the direct impact of abolishing the section 21 possession process on the scale of evictions and the associated insecurity experienced by tenants, and the indirect impact of the reforms on the supply of homes available to homeless people. We address each in turn below.

### **Impact on the scale of evictions**

Whilst the available evidence on homelessness arising directly because of the use of section 21 in England is limited, there are several indicators that suggest that the proposals will result in fewer people becoming homeless without a valid ground for possession.

While a recent report by Manchester Metropolitan University suggested that changes to section 21 were unlikely to reduce homelessness arising as a result of court proceedings, as many landlords had legitimate grounds for possession that could be pursued through section 8,<sup>30</sup> the same study confirms that some landlords report using section 21 without a valid ground for possession. The survey of landlords underpinning the research found that 28% of section 21 possession cases reported by landlords involved circumstances that would not be actionable under the current or revised section 8 proposals; that is, they were not triggered by tenant-fault grounds or by a requirement to sell, move back in or carry out renovations. Whilst the survey sample may not provide a representative sample of the national landlord population,<sup>31</sup> it nevertheless suggests that as a minimum a sizeable minority (over a quarter for the sample) of section 21 evictions are not related to existing or proposed section 8 grounds and are therefore potentially preventable.

There is also wider evidence that section 21 is being used by some landlords to obtain revenge evictions. Analysis by Citizens Advice has shown that section 21 is sometimes used as a response to tenants' repair requests, with tenants who made a complaint to their landlord twice as likely to have received a section 21 notice as tenants who did not.<sup>32</sup> In research by JRF, some tenants reported having been evicted using section 21 to enable landlords to increase the rent, as well as revenge evictions.<sup>33</sup>

The current regime allowing the use of section 21, with short notice periods for eviction and routine use of 6 or 12-month tenancies, impacts negatively on the most disadvantaged renters and also significantly undermines the well-being of people rehoused in the private rented sector.<sup>34</sup> Removing section 21 will reduce the scale of evictions where landlords do not have valid grounds, meaning that fewer tenants will face the devastating impact of homelessness as well as the disruption and costs of forced moves. But in doing this, the reforms will bring significant additional benefits for the mental health and well-being of tenants who currently live with the fear of their tenancy ending and will also strengthen tenants' position in seeking to remedy disrepair or enforce their rights to a decent home.

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<sup>30</sup> O'Leary, C., O'Shea, S., & Albertson, K. (2018) *Homelessness and the private rented sector*. Manchester Metropolitan University/Policy Evaluation Research Unit

<sup>31</sup> The survey sample was open to all members of the Residential Landlords Association. The researchers note that this cannot be claimed to be representative of all landlords.

<sup>32</sup> Rogers, C., Isaksen, M, and Brindle, B. (2018) *How to protect tenants from retaliatory eviction in England*. London: Citizens Advice

<sup>33</sup> Clarke, A., Hamilton, C., Jones, M. & Muir, K. (2017) *Poverty, Evictions and Forced Moves*. Joseph Rowntree Foundation

<sup>34</sup> Smith, M., Albanese, F., Truder, J. Sustain: A longitudinal study of housing wellbeing in the private rented sector (2014). London: Crisis/Shelter

As noted in our introductory comments, ending section 21 is not, however, a panacea, and the Government must do more to maximise the benefits of tenure reform and prevent homelessness by introducing a wider package of reforms and by delivering a major programme of investment in social rented housing. Reforms to the private rented sector should include restoring Local Housing Allowance to the 30<sup>th</sup> percentile, delivering a national landlord registration and property MOT scheme, and resourcing Tenancy Liaison and Help to Rent services.

### **Impact on the supply of homes available to homeless people**

Some parts of the property industry have suggested that if section 21 is removed, the supply of homes available to homeless people will decrease. While this is a risk, the likely scale of any impact is unclear. It is clear however that there are a number of measures the Government could implement to mitigate any impact and protect as far as possible the supply of homes being made available to people moving on from homelessness and others on the lowest incomes. These measures include restoring LHA to the 30<sup>th</sup> percentile so that it covers the cost of rent, increased investment in help to rent schemes and tenancy relations services to support those at risk of homelessness and those moving on from homelessness into the private rented sector and improving court processes to ensure that landlords can regain possession of their property where they have valid grounds.

A recent study for the National Landlords Association highlighted concerns that the abolition of section 21 may mean landlords become more reluctant to rent to people moving on from homelessness and those who need Housing Benefit or Universal Credit to cover the cost of rent.<sup>35</sup> In a survey of 2800 National Landlords Association members, around half of landlords that currently let to people in receipt of benefits said they would be more selective about which tenants they accept if section 21 is removed. The researchers concluded that the impact would be felt most strongly in the North East and East of England. However, the same study found that 80% of landlords agreed the impact of the reform could be mitigated to a greater or lesser extent by more efficient court processes.

Crisis own research also demonstrates that the reforms outlined above have significant potential to address landlords' concerns about letting homes to people moving on from homelessness, helping to maintain the supply of homes being made available to this client group. Crisis urges Government to prioritise the delivery of a wider reform package to minimise the impact of tenancy reform on the supply of homes available to homeless people, while at the same time creating a fairer housing market that works for all.

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

As noted in response to question 45, the Government should take steps to minimise any potential impact of the reforms on the supply of homes available to local authorities to help prevent and relieve homelessness. The measures available to achieve this are listed in response to Question 45.

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

See response to Question 45.

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<sup>35</sup> Capital Economics (2019) *A new deal for renting? The unintended consequences of abolishing Section 21*. The Knowledge Network/National Landlords Association