



A FAIRER PRIVATE RENTED SECTOR: IN DETAIL

The Government has published its “Fairer Private Rented Sector” White Paper setting out its proposals for the private rental sector. The objective: to tackle the “injustices” of the current system by levelling up “quality, affordability and fairness” across the board. In this article we explain the key tenets of the Government’s proposed reforms and the reasons behind these. For a brief overview of the main proposals see our Snapshot article.

Safe and Decent Homes

The Concern: According to Government statistics 21% of privately rented homes are classed as “non-decent”, with 12% having a serious ‘Category 1’ hazard (by reference to the Housing Health and Safety Rating System (HHSRS), which includes fall/trip hazards, damp, mould, excess cold and fire) that pose an imminent risk to the tenant’s health and safety.

The Proposals:

- 1. The introduction of a legally binding Decent Homes Standard (DHS).**
- 2. Accelerate quality improvements in the areas that need it most.**

Decent Homes Standard

To be ‘decent’ a property must be free from the most serious health and safety hazards such as trip hazards/fall risks, fire hazards or carbon monoxide poisoning. Landlords will be obliged to act proactively. They must ensure a property does not fall into disrepair by addressing problems before they deteriorate and not waiting for a tenant to complain or the local authority to take enforcement action against them.

- Kitchens and bathrooms should be adequate, located correctly and not too old.
- Decent noise insulation will be required.

- Renters must have clean, appropriate and useable facilities.
- Landlords must update these when they reach the end of their lives.
- A property must be warm and dry, not too hot in the summer and not damp or mouldy.

A review of the current HHSRS is due to conclude in the autumn of 2022. The aim of the review is to make it easier for landlords and tenants to understand the standards required for a property to be considered 'decent' and to make it easier for landlords to comply. The process for local authorities inspecting properties to assess hazards will be streamlined. There will be increased powers for local authorities to take action against landlords who fail to comply with the HHSRS/DHS.

Improvements in the areas that need it most

The Government has identified the particular areas of the country that have the highest proportion of sub-standard housing (including Yorkshire and the Humber, the West Midlands and the North West). By way of example, in inner Blackpool, where many former bed and breakfasts have been converted to poor quality private rental properties, 1 in 3 properties are considered 'non-decent' under current standards and the NHS estimates that hazards relating to poor housing in the areas costs it £11 million a year. 80% of private renters in inner Blackpool receive housing support, meaning landlords of sub-standard properties are profiting from housing tenants at the expense of the welfare budget.

Pilot schemes will be introduced with a selection of local authorities to trial improvements to the enforcement of existing standards and explore different ways of working with landlords to speed up the adoption of the DHS.

Increased Security and More Stability

The Concern: A key headline of the Government's proposals is the elimination of 'no-fault' evictions by the abolition of the s.21 notice possession procedure. Without security it is difficult for tenants to challenge a landlord's poor practices, make complaints about the quality of their housing or save for a home of their own.

22% of tenants who moved from private rental accommodation between 2019 and 2022 did not end their tenancy by their choice. According to statistics from Citizens Advice, in 2018 tenants receiving a s.21 notice were five times more likely to have recently complained to their local authority about the standards of their home than those who did not. Frequent home moves are expensive and tenants must often pay higher rents for the home they move in to, increasing financial pressures on them.

The Government's aim is that no tenant should be evicted against their will without proper reason and proportionate notice but that tenants should be able to move quickly and easily if their life circumstances change or they are unhappy with the property. This, however, should be balanced with a landlord's right to regain possession of their property when they have a valid reason to do so.

The Proposals:

- 1. Abolish section 21 'no fault' evictions and deliver a simpler, more secure tenancy structure.**
- 2. Reform grounds for possession to ensure landlords can gain possession of their property where necessary.**

Abolition of s.21 notices and fixed-term ASTs

The most common form of tenancy within the private rental sector is an Assured Shorthold Tenancy (AST). Almost all ASTs start life as a fixed-term (typically 6 months, 1 year or even 2 years) as opposed to a periodic tenancy i.e. a weekly or monthly tenancy. Although at the end of the fixed-term, if a new AST is not entered into and the tenant remains in occupation, it will become a periodic tenancy.

During the fixed-term the landlord cannot serve a s.21 notice on the tenant (although they may have other grounds to obtain possession, such as rent arrears or another breach of the tenancy agreement). Equally, however, tenants cannot end the fixed term early unless their landlord agrees; they are committed to paying rent for the duration of the fixed term. At the end of the fixed term the landlord can end the tenancy and evict the tenant by serving a section 21 'no-fault' eviction notice without any grounds other than that the fixed term has ended (the minimum notice period is 2 months).

Periodic tenancies offer more flexibility; if a tenant wishes to leave the property they can do so by giving their landlord notice and are only liable for the rent until the notice period has expired (usually a week or month depending on the term of the period).

The Government proposes to abolish s.21 notices/'no-fault' evictions and introduce a single system of periodic tenancies. All tenants who occupy a property pursuant to an AST will have a periodic tenancy. This will combine greater security with flexibility, by allowing tenants to leave poor quality properties without remaining liable for rent or to move more easily when their circumstances change.

Tenants will need to prove 2 months' notice when leaving a tenancy to allow their landlord time to find another tenant and avoid lengthy void periods.

Landlords will only be able to evict a tenant if they can prove one of the grounds for possession. Landlords will no longer have an automatic right to possession by serving a s.21 notice.

Purpose built student accommodation will be exempt from the new system, with tenancies instead governed by the Protection from Eviction Act 1977.

The new system will be introduced in two stages:

1. First implementation date - all new tenancies will be periodic and governed by the new system.
2. Second implementation date - all existing tenancies will transition to the new system.

At least 6 months' notice of the first implementation will be given. There will be at least 12 months between the first and second implementation dates.

Local authorities may be given the power to issue Civil Penalty Notices for offences related to the new system and will receive government assistance to tackle illegal evictions (as things currently stand successful prosecutions for illegal evictions are rare and there is a variation in approach across the country). There may need to be amendments to the Protection from Eviction Act 1977 to assist this process.

Reformed grounds for possession

The Government wants to encourage landlords who maintain good letting practices to remain in the market. In order to do so they recognise that landlords must be able to efficiently regain possession of their properties when necessary. The grounds for possession will be reformed so that they are "comprehensive, fair and efficient".

New grounds will be introduced to allow landlords who wish to sell their property or to move into the property (or allow close family members to move into their property) to take back possession. A landlord will not, however, be able to use these grounds within the first 6 months of a tenancy.

To tackle landlords' concerns about tenants who pay off small amount of arrears to reduce the arrears to just below the mandatory repossession threshold of two months' (which must be demonstrated at both time of service of a possession notice and the court hearing) in order to avoid a possession order being made at the court hearing, a new mandatory ground will be introduced so that a possession order must be made against a tenant who has been in at least two months' rent arrears three times within the previous three years, regardless of the level of arrears at the hearing date.

The notice period for the existing rent arrears eviction ground will be increased from 2 weeks to 4 weeks and (save for the above) the mandatory threshold of two months' arrears at the time of service of the notice and the hearing will be retained. This is to allow tenants a reasonable opportunity to pay off the arrears.

In recognition of the fact that some tenants fall into arrears due to the timing of their welfare payments – e.g. because a payment a tenant is entitled to has not been paid yet – protections will be introduced so that tenants cannot be evicted where this is the reason they have exceeded the mandatory rent arrears threshold.

Where there is criminal behaviour or serious antisocial behaviour the notice period will be reduced to allow a landlord to resolve the situation more quickly.

New specialist grounds for possession will be introduced to allow landlords providing supported and temporary accommodation to continue delivering their services.

Notice periods will be adjusted as necessary to reflect the reason for the landlord requiring possession and allow tenants time to find alternative housing. For example where the ground for possession is beyond the tenant's control, e.g. a landlord wants to sell their property, a minimum notice period of 2 months will apply. Where there are rent arrears or the tenant is guilty of antisocial behaviour the notice period will be less.

Improved Dispute Resolution

The Concern: All tenants should be empowered to challenge poor practice by their landlord, including unjustified rent increases.

There must be a system that allows landlords and tenants to resolve disputes efficiently. The current system means simple disputes can escalate into expensive, protracted and adversarial court proceedings. There are 'redress' schemes in other consumer sectors such as finance, legal, energy and communications but not in the private rental scheme. The Housing Ombudsman provides mandatory redress for all social tenants but for private landlords there is no compulsory scheme. They can voluntarily join an agent redress scheme or the Housing Ombudsman but this currently covers approximately 80 to 90 private landlords out of an estimated 2.3 million.

The Proposals:

- 1. Only allow increases to rent once per year, end the use of rent review clauses and improve tenants' ability to challenge excessive rent increases through the First Tier Tribunal.**

- 2. Strengthen tenants' ability to hold landlords to account and introduce a new single Ombudsman that all private landlords must join.**
- 3. Work with the Courts and Tribunal Service to target areas where there are unacceptable delays in court proceedings.**

Challenging unjustified rent increases

Rent is likely to be a tenant's biggest monthly expense and an increase can leave tenants unable to afford their home and impact on their ability to save for a home of their own.

The prospect of introducing rent controls to set the level of rent at the outset of a tenancy is rejected on the basis this would discourage investment in the sector and lead to a decline in property standards.

Changes in rent should, however, be predictable and allow a tenant time to consider their options. Landlords will only be able to increase rent once per year and must give their tenant at least 2 months' notice.

The use of rent review clauses will be abolished as they have the potential to lock tenants into rental increases that do not reflect changes in the market prices.

If a proposed rent increase is disproportionate, tenants will be able to challenge the proposal in the First-Tier Tribunal. This is, in part, to prevent landlords trying to force tenants out by introducing excessive rent increases. The Tribunal will not be able to increase rent beyond the amount the landlord initially proposes.

Upfront rent

Where a tenant has paid rent upfront, a landlord will be required to repay it if a tenancy ends earlier than the period the rent has been paid for. There will be a power for the Government to limit the amount of rent that landlords can ask for in advance, which they will use if the practice of charging rent in advance becomes widespread or disproportionate.

Rent Repayment Orders

The use of Rent Repayment Orders will be simplified and expanded to cover repayment of rent paid by a tenant in relation to a non-decent home.

New Ombudsman

A single government-approved Ombudsman covering all private landlords in England will be introduced, regardless of whether they use a letting agent or not. This will ensure all tenants

have access to a redress scheme and that landlords remain accountable for their own conduct and legal responsibilities. Membership of the scheme will be mandatory for landlords and local authorities will be able to take enforcement action against landlords who fail to join.

The aim is to provide a scheme that offers landlords and tenants the ability to resolve disputes in a fair and impartial way without resorting to court proceedings. The Government hopes this will be quicker, cheaper, less adversarial and more proportionate than litigation. The Ombudsman service will be free to use for tenants.

The Ombudsman will have powers to put things right for tenants, including compelling landlords to issue an apology, provide information, take remedial action, pay compensation of up to £25,000 and/or reimburse rent for sub-standard properties. The Ombudsman's decision will be binding on the landlord should the tenant accept the final determination. Landlords who fail to comply with a decision may be the subject of a Banning Order. The Government will have the ability to enable the Ombudsman's decisions to be enforced through the courts if compliance becomes a concern.

A more efficient court process

The hope is that better access to redress through the Ombudsman will free up the courts to deal with more serious cases, with the hope that these will progress more quickly as a result. During the Call for Evidence, landlords expressed concerns with court delays and costs and the complexity of the system. The Government has, however, decided that the cost of introducing a new housing court would outweigh the benefits and that there are more effective ways to increase the efficiency and timeliness of the court possession action process. The Government will work with the Ministry of Justice and HM Courts and Tribunal services to introduce a package of court reforms that target areas that hold up possession claims. These include counter court bailiff capacity, paper-based processes, a lack of adequate advice about court processes and a lack of prioritisation of cases.

A new system in the First-Tier Tribunal will be trialled with the objective of streamlining how specialist property cases are dealt with where there is split jurisdiction between the civil courts and the property tribunal. This will provide a single judicial forum for these cases, removing the need to litigate in two judicial forums to determine a single case.

The Government will shortly publish the findings from the Rental Mediation Pilot recently introduced to provide independent and free mediation services to landlords and renters during the court process for possession with a view to building upon this to strengthen mediation services and prevent avoidable evictions

Better Compliance and Robust Enforcement

The Concern: Reforms to improve quality, security and dispute resolution will only make a difference if they are understood and effectively enforced. Landlords need guidance to fully understand and comply with their responsibilities and renters should feel confident to challenge their landlord if they are falling short of the standards. There are big variations in enforcement levels across England and local authorities need support to target landlords who neglect properties and exploit tenants.

The Proposals:

- 1. Introduction of a new Property Portal to make sure tenants, landlords and local authorities have all the information they need.**
- 2. Strengthen local authorities' enforcement powers and ability to crack down on criminal landlords.**

Property Portal

A new digital Property Portal will provide a single 'front door' that gives landlords the information they need to understand their obligations and demonstrate compliance with the same, whilst providing tenants with clear and accessible information to help them make decisions about their tenancies and undertake due diligence before entering into a new tenancy.

The portal will provide a one-stop-shop for guidance on renting in the private rental sector to level up awareness of tenants' and landlords' rights and responsibilities. Landlords will be legally obliged to register their property on the portal so that tenants and local authorities know who to enforce against when issues arise and simplify the process for them.

The Government hopes to 'future proof' the Portal so that it can support future policy developments. For example, it could support a system where landlords and agents must meet minimum standards before properties can be let so that landlords take a proactive approach to property management.

In the future there will be an obligation on landlords to provide tenants with a written tenancy agreement setting out basic information about the tenancy and the parties' respective responsibilities but allowing the terms to be adapted to meet specific needs.

Stronger enforcement powers for local councils - Database of Rogue Landlords and Property Agents

The Property Portal will increase local authorities' ability to enforce against criminal landlords and will incorporate some of the functionality of the existing Database of Rogue Landlords and Property Agents to make it easier for local authorities to take enforcement action.

Local authorities can currently make a Banning Order against landlords or agents convicted of a serious offence to prevent them from renting out or managing properties for a period of time. At present the local authority is only required to record this on the Database if they actually make a Banning Order. If the local authority uses its discretion not to make a Banning Order in a particular scenario then the underlying offence is not recorded on the Database. To ensure all tenants are able to identify if their prospective landlord or agent has committed an offence, it will be mandated that all eligible offences must be entered on the Database. This will reduce the likelihood of the local authority not administering offence data and create a level playing field for law-abiding landlords.

Currently local authorities have the discretion to record Civil Penalty Notices on the Database where a landlord or receives two or more within a 12 month period. This threshold will be lowered to cover all civil penalties. This will encourage informed and collaborative enforcement activity amongst local authorities and help tenants to seek out responsible landlords.

Removing 'red tape'

The Government aims to strip away red tape to enable local authorities to pursue offending landlords. This will include exploring ways to increase local authorities' investigative powers to target illegal business activity by requiring the provision of financial information. The fine regime will be strengthened, potentially by including minimum fines for the most serious offences. A national framework for fines will be introduced to ensure a more consistent approach and reduce the incidence of arbitrary reductions of fines by tribunals.

With barriers removed, the Government expects local authorities to prioritise enforcement in the private rented sector in the same way as they do public health enforcement, to which housing is a key contributor, and remove the 'postcode lottery' for landlords and renters. National oversight of local authorities' enforcement activity will be bolstered.

A Positive Renting Experience

The Concern:

All tenants should be able to access a home in the private rental sector and not be turned away unreasonably. 26% of private rental sector households and families receive some form of Housing Benefit, yet the English Private Landlord Survey 2021 found that 44% of landlords were unwilling to let to tenants on housing support or Universal Credit. Some landlords and

agents actively discourage or prevent people in receipt of benefits or with children from renting their properties. This severely restricts the ability of a person on low income to live in a decent home.

All tenants should be able to treat their property as their home. Domestic pets bring happiness and comfort to their owners and support their mental and physical wellbeing but the English Private Landlord Survey 2021 found that 45% of landlords were unwilling to let to tenants with properties.

Pulling together a new deposit before the deposit for a tenant's current home has been returned is a financial barrier to tenants moving. Some tenants end up staying in sub-standard accommodation because they cannot afford the upfront cost of moving elsewhere. Nearly half of households within the private rental sector have no savings and so struggle to fund a second deposit. This encourages tenants to borrow money from, or move in with, family and friends or take out short-term credit to fund the second deposit.

The Proposals:

- 1. Blanket bans on renting to families with children or those in receipt of benefits will be illegal.**
- 2. Tenants will have the right to request a pet in their property, which the landlord cannot unreasonably refuse.**
- 3. The Government will work with industry experts to monitor the development of market-led solutions to 'passport' deposits.**

Ban on 'No DSS' Practices

It will be illegal for landlords or agents to have blanket bans on renting to families with children or those in receipt of benefits. Landlords will be supported to make informed decisions on individual circumstances. The Government will work with the insurance industry to address misconceptions that it is difficult to arrange insurance for properties where tenants are in receipt of benefits. Improvements to welfare support information for both tenants and landlords will be made to ensure those who are unable to manage their rent payments can arrange direct payments of housing costs to their landlord through the Universal Credit (Managed Payments).

Renting with Pets

All tenants will have a right to request a pet in their home. Landlords will not be permitted to unreasonably withhold consent when a tenant makes this request and the tenant will be able

to challenge a negative decision. The Tenant Fees Act 2019 will be amended to allow landlords to require tenants to obtain pet insurance so that any damage to the property caused by a pet is covered.

Changes to the Property

Landlords will be encouraged to allow reasonable requests by tenants to redecorate, hang pictures and change appliances provided they return the property to its original state when they leave.

'Passporting' Deposits

There are no firm proposals in this respect included in the White Paper. The Government has considered several proposals to reduce the financial burden on tenants whilst making sure landlords have the security of the deposit, this includes loan and insurance products for tenants to bridge the period where deposit requirements overlap. The Government plans to:

- i. Monitor market-led solutions that aim to reduce the problems experience during the overlap between tenancies.
- ii. Keep the impact and risks of market-led solutions under review, including their affordability and accessibility.
- iii. Keep the current deposit protection and the broader deposit market under review and introduce new legislation if needed.

Conclusion

The reforms will undoubtedly be welcomed by tenants although their primary concern is likely to be that local authorities have sufficient resources and willingness to enforce these legal obligations against rogue landlords. It is important for all parties, however, that good landlords are not discouraged from entering or remaining in the private rental sector to avoid a mass exit from the market and a consequential reduction in supply, which will hike up rents

even further. Most of these reforms should, on the face of them, be welcomed as they will level up the playing field for good landlords, particularly in areas of the country where rogue landlords are rife. Landlords, will, however be concerned to ensure that the proposed reform of grounds for possession give them the ability to take back possession where it is needed. For example, no mention is made in the White Paper of where a landlord wishes to undertake significant works of improvement or redevelopment to their property. It also remains to be seen whether the introduction of the new Property Portal will truly assist landlords' to understand all of their legal obligations in respect of their rental properties. The vast majority of landlords in the private rental sector are 'good' landlords but it is very easy for them to be tripped up by the spider's web of legislation and regulations that exist in relation to the private rental sector.

CONTACTS

If you require any further information or assistance in relation to the Government's proposed rental reforms or any other property dispute please contact one of our experts:



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