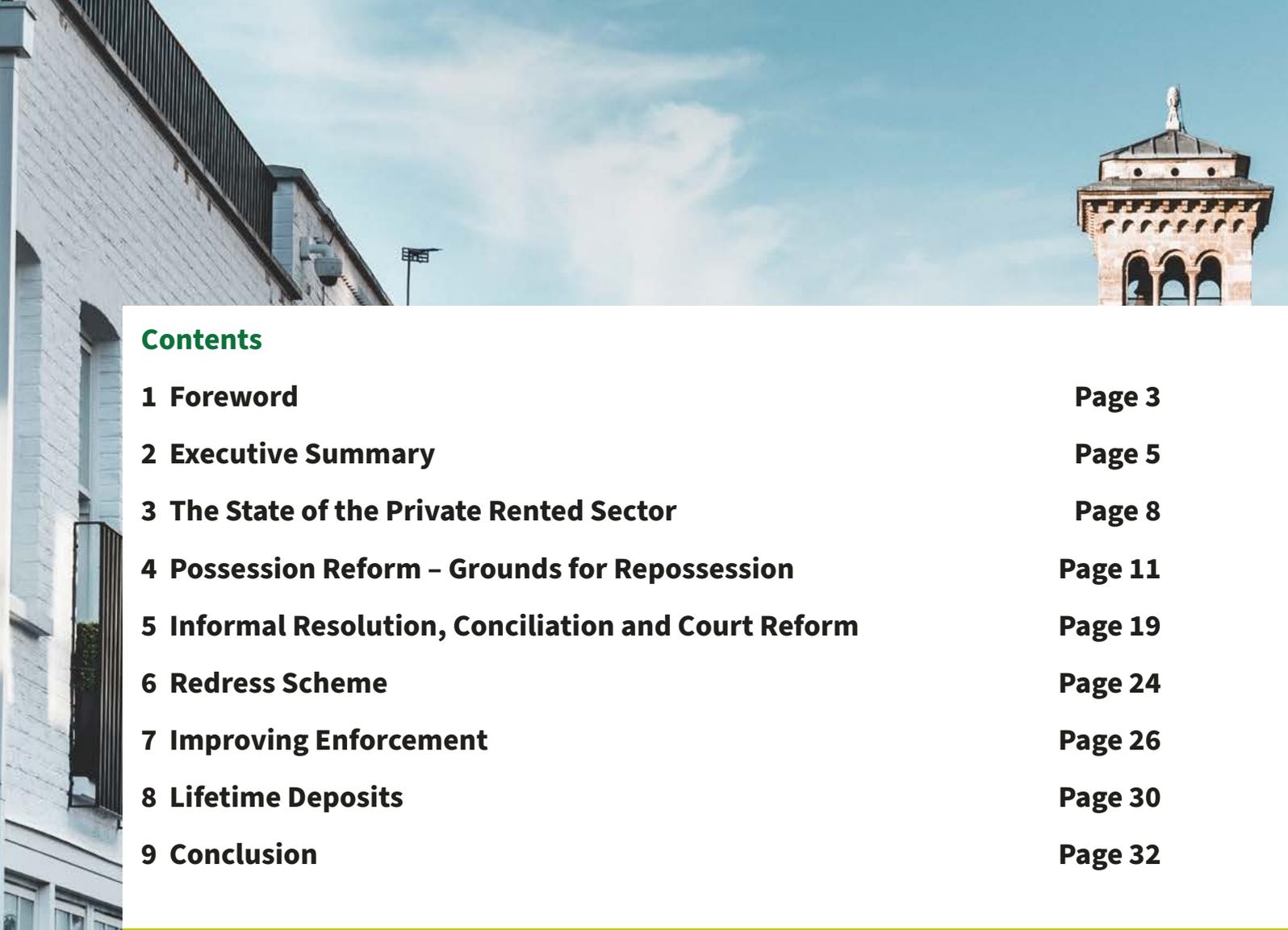




NRLA
NATIONAL RESIDENTIAL
LANDLORDS ASSOCIATION

A New Deal for the Private Rented Sector



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August 2021

For more information, visit nrla.org.uk/campaigns/rental-reform or contact us at policy@nrla.org.uk.

1

Foreword

TO LET

1 Foreword



It is almost 18 months since the country first went into lockdown in response to Covid-19. During this time the vast majority of landlords have done everything they can to support tenants who have been adversely affected by the effects of the pandemic. It is that constructive partnership that we want to see maintained as Ministers consider plans to reform the sector.

We welcome the Government's decision to publish its rental reform plans in the form of a White Paper. We are also pleased that it pledged to work with all stakeholders in developing its plans. Too often legislation affecting private renting has been rushed out, leading to the need to clear up problems that arise soon after. The present process provides an opportunity to get things right the first time.

As an organisation our objective is clear – a private rented sector that works for all. We are pleased that the Government shares this objective. We do not believe that reforms need be a zero-sum game that pits tenants and landlords against each other in a struggle for advantage. Rather, a collaborative approach will benefit everyone living and legitimately working in the sector.

It is in that spirit that we present our own shadow White Paper outlining how to achieve the balance we all want to see.

The central feature of our plan is to provide clear and comprehensive grounds upon which landlords may regain possession of their properties, should they have a legitimate reason to do so. These aim to provide clarity and fairness for landlords and tenants and ultimately to avoid disputes, whilst also acknowledging the impact of the removal of Section 21.

Where disputes do arise, we have developed plans to establish a new landlord/tenant conciliation service. This would provide a means of resolving disputes without the stress, anxiety, and cost of going to court, with a view to sustaining tenancies wherever possible or bringing them to a close in a collaborative way. The Covid-19 crisis has seen landlords and tenants work constructively to resolve their issues. Our proposals build on this sentiment and seek to make the court process the place to go if all else has failed.

We also recognise the urgent need to improve the way that courts handle possession cases. At present this takes too long. Our plans would help to reduce the number of cases proceeding to court, ensuring swifter processes for the ones that do need to progress.

We call for action to improve the enforcement of legislation and regulations affecting the sector. Too often good landlords and tenants have been let down due to an enforcement lottery in the ability of local authorities to utilise the wide range of powers they already have to tackle sub-standard housing in the sector. It is vital that we do not succumb to the idea that just passing legislation makes anything better without proper enforcement.

We wish to thank members of the NRLA's Independent Advisory Board who have contributed to the production of this paper, alongside ongoing discussions with others across the sector.

The developments that are proposed will represent some of the most significant changes the sector has seen in over 30 years and it is important that the solutions being discussed work for all parties. They must ensure that good landlords have the confidence to provide the homes to rent the country needs whilst ensuring renters have the protections they rightly deserve.

We believe our proposals strike this balance and encourage government, Parliament and others with an interest in the private rented sector to consider carefully the ideas put forward.

Yours sincerely

Ben Beadle
Chief Executive

Jodi Berg OBE
Chair



2

Executive Summary

2 Executive Summary

2.1 The National Residential Landlords Association (NRLA) is the national voice for private residential landlords in England and Wales. With over 90,000 members we are the largest organisation for such landlords.

2.2 Whilst we recognise the challenges that the UK Government is seeking to address in the sector, it is vital that this builds on the many positive signs that can too often be overlooked:

- Private renters have lived in their accommodation for an average of over 4 years.
- In the vast majority of cases tenancies are ended by the tenant rather than the landlord.
- A higher proportion of private renters are satisfied with their current accommodation and the repairs and maintenance provided by their landlord than tenants in the social rented sector.
- The proportion of private rented homes with at least one of the most serious Category 1 hazards has more than halved over the last decade.

It is vital that the UK Government's intervention builds on the many positive signs in the sector that can too often be overlooked.



2.3 In line with the Government’s welcome commitment to ensure reforms in its White Paper “*deliver a private rented sector that works for both tenants and landlords*”¹ we propose:

- **There needs to be a set of clear and comprehensive grounds upon which landlords can legitimately regain possession** of a property when there has been a ‘fault’ and where the landlord needs to make business decisions such as selling the property, moving in, or making substantial changes to it. Our proposals in this document outline what these should be and how they should work.
- Seeking, wherever possible, to ensure possession cases do not end up in the courts in the first place through **improved access to dispute resolution and the development of a new landlord/tenant conciliation service.**
- For those cases that do end up in the courts, reforms are needed to ensure they can be heard more swiftly than at present, in a way that is fair to both landlords and tenants. This should include making **greater use of technology to hear cases and ensuring tenants can access suitable advice and support much earlier than they currently do.**
- Whilst we support the principle of developing a redress scheme for the sector, this would clearly make the need for a separate national register of landlords redundant. **A redress scheme should also be accompanied by a full review to establish if certain types of local landlord licensing schemes are still required,** to avoid duplication of efforts and unnecessary regulation.
- The Government should work with local authorities to conduct an **assessment of the ability of relevant departments to enforce the wide range of powers already available to them** to tackle criminal landlords. Good legislation is that which can be enforced. In proposing further measures in the White Paper, we need to be convinced that they can be enforced properly.
- There is a need to **update, and potentially consolidate, legislation for the modern world.** Much of the legislation that underpins landlord and tenant law was written before the era of email and could be updated to allow for easier use of electronic communication. It could also be adapted to reflect how tenants choose to live with friends, rather than family, for longer, by making it easier to replace a joint tenant.
- Those landlords bringing the sector into disrepute need to be the ones to pay for enforcement activity against them through civil penalties. However, **central government also needs to provide upfront, multi-year funding to help councils build the capacity to tackle bad practice.** Too often, pots of money provided by government for this purpose have been one off or short-term making it difficult for local authorities to plan for the longer term.
- As the Government develops its plans for a new lifetime deposit scheme for renters, it is **vital that the new deposit system in no way discourages landlords from making valid claims for damage** to properties. We recommend that the proposed new lifetime deposit scheme could work on the basis of a financial bridging facility to help tenants move from one property to another. Alternatively, the opportunity could be taken to develop a new deposit builder ISA to assist tenants to save for the future.

¹ Prime Minister’s Office, *The Queen’s Speech 2021*, 11th May 2021, page 113, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/986770/Queen_s_Speech_2021_-_Background_Briefing_Notes..pdf



3

The State of the Private Rented Sector

3 The State of the Private Rented Sector

3.1 At the State Opening of Parliament in May 2021 the Government announced its intention to publish a White Paper in the autumn outlining plans to reform the private rented sector in England². This is expected to include:

- Details of the system that the Government intends to put in place to replace Section 21 ‘no explanation’ repossessions
- Proposals for a new lifetime tenancy deposit scheme to make it less expensive for tenants to move from one property to another
- Plans to develop a redress scheme in the sector and improve enforcement against those landlords failing to provide accommodation at a suitable standard
- How to improve the court system to make it much easier and quicker for landlords and tenants to access justice.

3.2 As the voice of private landlords, the National Residential Landlords Association welcomes the opportunity to outline its proposals to ensure the private rented sector is fair and workable for both tenants and landlords.

3.3 Since the 1988 Housing Act introduced the Section 21 power, the proportion of homes in the private rented sector across England has more than doubled from just over 9% in 1988 to almost 19% in 2019/20, overtaking the social rented sector as the second largest housing tenure after owner-occupation³.

3.4 With just over a third (36%) of private rented households now containing at least one dependent child⁴ and growing numbers of older people, as noted by Age UK, now reliant on the sector for a place to live⁵, we recognise the driving forces behind calls to reform the sector and accept the mandate the Government has to do this.

Since the 1988 Housing Act introduced the Section 21 power, the proportion of homes in the private rented sector across England has more than doubled from just over 9% in 1988 to almost 19% in 2019/20.

² Prime Minister’s Office, *The Queen’s Speech 2021*, 11th May 2021, page 113, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/986770/Queen_s_Speech_2021_-_Background_Briefing_Notes..pdf

³ MHCLG, *English Housing Survey 2019 to 2020: headline report*, December 2020, Annex Table 1.1 available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945376/2019-20_EHS_Headline_Report_Section_1_Households_Annex_Tables_.xlsx

⁴ MHCLG, *English Housing Survey 2019 to 2020: headline report*, December 2020, Annex Table 1.5 available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945376/2019-20_EHS_Headline_Report_Section_1_Households_Annex_Tables_.xlsx

⁵ Age UK, *Parliamentary Briefing - Home Truths: Security for older private renters*, January 2020, available at: <https://www.ageuk.org.uk/globalassets/age-uk/documents/reports-and-publications/reports-and-briefings/parliamentary-briefing---older-private-renters---jan-2020.pdf>

- 3.5** It is vital however, that such reforms, the biggest to the sector for over 30 years, are delivered right the first time. The Government needs to avoid a situation in which it is having to return to the legislation to iron out problems because the detail has not been worked through properly to begin with. That is why we welcome the Government's commitment to consult with the NRLA and all other stakeholders and prepare its proposals in the form of a White Paper ahead of any legislation.
- 3.6** It is also important to avoid painting the removal of Section 21 as the answer to every challenge the private rented sector now faces as a result of the COVID-19 pandemic. Removing it would do nothing to address rent arrears built as a result of lockdown measures. Nor would it apply to existing tenancies given the important principle that new laws should not be applied retrospectively.
- 3.7** The package also needs to ensure the confidence of landlords to continue to meet the demand for homes for private rent on which many millions of people rely. The Royal Institution of Chartered Surveyors has warned of "*widespread rental growth going forward*" as a result of the demand for private rented housing outstripping supply⁶. It is vital that measures proposed by the Government do not exacerbate this problem.
- 3.8** More broadly, the Government's plans need to be balanced both in tone and content. Without in any way being complacent about the challenges in the sector, it should be remembered that, as outlined in the 2019/20 English Housing Survey⁷:
- The sector now houses a wide variety of people including students, young professionals, older people, families with children, single people and those who have been homeless. No 'one size fits all' model will meet the needs of each of these groups
 - Private renters have lived in their accommodation for an average of 4.3 years
 - In the vast majority of cases tenancies are ended by the tenant rather than the landlord. 76% of tenants said that their last tenancy ended because they wanted to move
 - 83% of private renters are satisfied with their current accommodation and 75% were satisfied with repairs and maintenance provided to their landlords – both a higher proportion than those who said the same in the social rented sector
 - The proportion of private rented homes with at least one of the most serious Category 1 hazards has more than halved over the last decade from just over 28% in 2009 to just over 13% in 2019⁸.

⁶ RICS, *UK Residential Market Survey – June 2021*, 8th July 2021, available at: https://www.rics.org/globalassets/rics-website/media/knowledge/research/market-surveys/6_web_june_2021_rics_uk_residential_market_survey_tp.pdf

⁷ MHCLG, *English Housing Survey Private rented sector, 2019-20*, July 2021, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1000052/EHS_19-20_PRS_report.pdf

⁸ MHCLG, *English Housing Survey 2019 to 2020: headline report*, December 2020, table 2.4, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945377/2019-20_EHS_Headline_Report_Section_2_Stock_Annex_Tables.xlsx

4

Possession Reform – Grounds for Repossession



4 Possession Reform – Grounds for Repossession

- 4.1** At the heart of the Government’s proposals to reform the rental market is its plan to end the ability of landlords to repossess properties using powers under Section 21 of the Housing Act 1988.
- 4.2** The Government has pledged that the replacement system will seek to “*improve security for tenants in the private rented sector, as well as strengthening repossession grounds for landlords when they have valid cause.*”⁹
- 4.3** **The new system needs to provide clear and comprehensive grounds upon which landlords can legitimately regain possession of a property when there has been a ‘fault’, and where the landlord needs vacant possession in order to enact a legitimate business decision such as selling the property, moving in, or making substantial changes to the building.**
- 4.4** The NRLA believes that the following should all be grounds upon which landlords can repossess properties. This is based around the existing Section 8 grounds, and we have highlighted where these should be reformed. For each we have outlined the process and timescales that would provide certainty to landlords whilst remaining fair not just to tenants, but also to their co-tenants and neighbours.



⁹ Prime Minister’s Office, *The Queen’s Speech 2021*, 11th May 2021, page 113, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/986770/Queen_s_Speech_2021_-_Background_Briefing_Notes..pdf

4.5 Mandatory Grounds

| Summary Description | Notice Period | Comment |
|--|---------------|---|
| <p>The landlord intends to sell the property and has:</p> <ul style="list-style-type: none"> (a) instructed a solicitor as part of the conveyancing process; and (b) provided a statutory declaration from a solicitor that they intend to sell. | 2 months | This would be a new ground. To avoid excessive bureaucracy, we propose this would be evidenced by demonstrating the landlord had begun actively seeking to sell the property through a letter from their solicitor. |
| <p>The landlord occupies the dwelling house as their only or principal home; or the landlord requires the dwelling-house as their, or their immediate family's, only or principal home.</p> | 2 months | The existing ground for possession requires prior notice and prevents purchasers from using the ground to live in the property. It also prevents it being used to house family members of the landlord. The ground is also only available to use outside of the fixed term of the tenancy. This creates a perverse incentive to offer shorter term tenancies. The NRLA suggests removing these limits. Instead, there should be a minimum time frame before use that can be bypassed if the courts consider it justifiable. |
| <p>A mortgagee has a charge and is entitled to exercise a power of sale and wishes to acquire vacant possession to do so.</p> | 2 months | This existing ground can only be used if notice has been given in advance meaning mortgagees are reliant on their borrowers having given notice properly. For this reason, most mortgagees do not use this ground and use Section 21. We suggest calling for the removal of the requirement to give notice in advance. |
| <p>Fixed term tenancy not exceeding eight months and:</p> <ul style="list-style-type: none"> (a) landlord gives notice in writing to the tenant that possession might be recovered on this ground; and (b) within the period of twelve months ending with the beginning of the tenancy, property occupied for a holiday. | 14 days | No change from the current Section 8 ground. |

4.5 Mandatory Grounds cont.

| Summary Description | Notice Period | Comment |
|---|---------------|---|
| <p>The tenancy is a fixed term tenancy for a term not exceeding twelve months and:</p> <p>(a) not later than the beginning of the tenancy the landlord gives notice in writing to the tenant that possession might be recovered on this ground; and</p> <p>(b) the property was let out by an educational establishment or to an entire household in full-time education.</p> | 2 months | The existing ground is limited to educational establishments and not normally used. The NRLA recommends revising this ground to allow for all student tenancies to continue to exist as fixed term tenancies in the private rented sector and for landlords to recover possession at the end of the agreed term with certainty. |
| <p>Property held for the purpose of being available for occupation by a minister of religion to perform the duties and (a) landlord gave notice in writing to the tenant that possession might be recovered on this ground; and (b) property required for occupation by a minister of religion as such a residence.</p> | 2 months | No change from the current Section 8 ground. |
| <p>Landlord intends to demolish or reconstruct the whole or a substantial part of property or to carry out substantial works on property and the intended work cannot reasonably be carried out without the tenant giving up possession.</p> | 2 months | The original ground is not available to landlords who purchase a property with existing tenants. This prevents them from improving the housing stock in the local area. The NRLA recommends amending the ground to remove this restriction. |
| <p>The tenancy has devolved under the will or intestacy of the former tenant.</p> | 2 months | No change from the current Section 8 ground. |
| <p>Notice of Letting to a Displaced Person given by Secretary of State for the Home Department.</p> | 14 days | No change from the current Section 8 ground, other than in response to changes to the Right to Rent scheme. |
| <p>The tenant is in arrears of at least 2 months of rent at the time a notice to repossess is served and in arrears of more than 1 month by the time of a court hearing.</p> | 14 days | This would be a new ground. The proposal mooted in the Government's consultation on tenancy reform should be implemented. This should replace the existing ground 8 in order to explicitly cover arrears where rent is paid weekly, fortnightly, monthly, quarterly and annually. At present defendants are able to argue the mandatory ground does not apply where the rent is payable every 4 weeks or every 6 months. This loophole should be closed as part of the reforms. |

4.6 Discretionary Grounds with a Mandatory Backstop

| Summary Description | Notice Period | Comment |
|--|---------------|---|
| <p>The tenant or a person residing in or visiting the dwelling-house:</p> <ul style="list-style-type: none"> (a) has been guilty of conduct causing or likely to cause a nuisance to persons in the locality; (b) has been guilty of conduct causing or likely to cause a nuisance or annoyance to the landlord or a person employed in connection with the exercise of the landlord’s housing management functions; or (c) has been convicted of: <ul style="list-style-type: none"> (i) using the dwelling-house or allowing it to be used for immoral or illegal purposes; or (ii) an indictable offence committed in, or in the locality of, the dwelling-house; or (d) has been issued with an Antisocial Behaviour Order. | 24 hours | <p>The NRLA proposes merging the two existing Section 8 grounds to provide for a discretionary ground with a mandatory backstop where there has been a conviction.</p> <p>This would allow anti-social behaviour to be tackled swiftly to prevent further harm to victims. It would help address the concerns outlined in the report on anti-social behaviour published by Baroness Newlove when she was the Victims Commissioner¹⁰ which argued that victims of anti-social behaviour are being let down by the police, local councils and housing providers.</p> <p>There should be clear guidance for the judiciary about the types of antisocial behaviour which would result in possession being granted under the discretionary elements, including clear case study examples.</p> <p>Neighbours and co-tenants should also feel protected to provide evidence which the landlord can use in support of their claim.</p> |

¹⁰Victims’ Commissioner for England and Wales, ASB Help & Nottingham Trent University, *Anti-Social Behaviour: Living a Nightmare*, April 2019, available at: <https://victimscommissioner.org.uk/published-reviews/anti-social-behaviour-living-a-nightmare/>

4.6 Discretionary Grounds with a Mandatory Backstop cont.

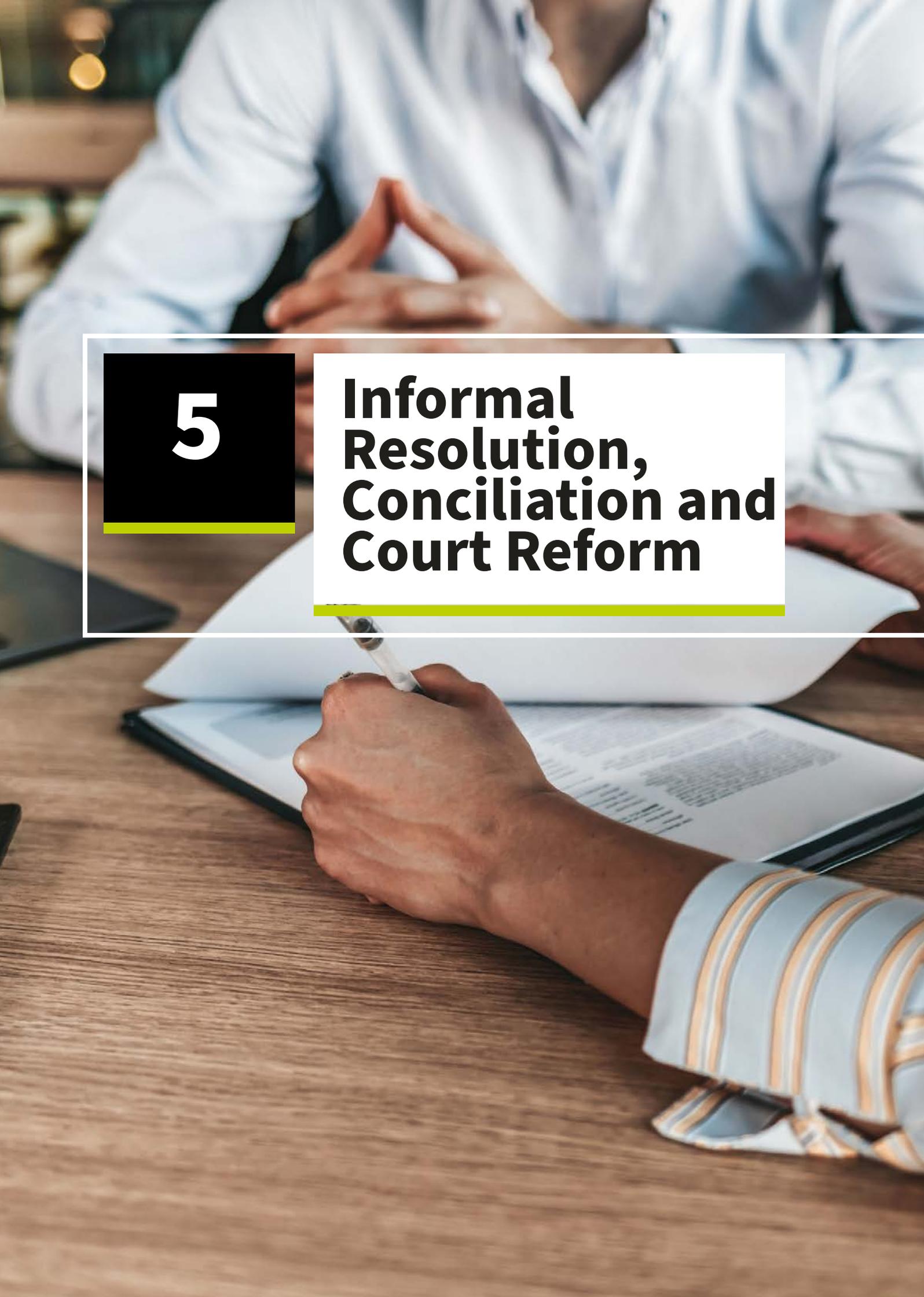
| Summary Description | Notice Period | Comment |
|---|---------------|--|
| Any obligation of the tenancy (other than one related to the payment of rent) has been broken or not performed. | 14 days | <p>Most breaches should remain discretionary but serious breaches of contract that could endanger the landlord's interest in the property or endanger the property itself should lead to mandatory possession.</p> <p>Subject to these terms being included in the tenancy agreement, the NRLA recommends the mandatory backstop should include:</p> <ul style="list-style-type: none"> • subletting without the written permission of the landlord • refusing access for a gas safety inspection or electrical installation inspection three times • refusing access for an Energy Performance Certificate assessment three times • breaching the terms of a superior lease or licensing conditions <p>where the tenant is aware of the terms of the superior lease or conditions</p> <ul style="list-style-type: none"> • registering a limited company at the property's address without the landlord's express written permission • running a business from the property which would result in a change of planning use class without the landlord's express permission. <p>We also recommend that the list of matters subject to a mandatory backstop should be enabled to be added to or altered by way of Statutory Instrument.</p> |

4.7 Discretionary Grounds

| Summary Description | Notice Period | Comment |
|--|---------------|--|
| Suitable alternative accommodation is available for the tenant or will be available for them when the order for possession takes effect. | 2 months | No change from the current Section 8 ground. |
| Either/or: (a) some rent lawfully due from the tenant is unpaid; (b) the tenant has persistently delayed paying rent which has become lawfully due. | 14 days | No change from the current Section 8 ground. |
| Either/or: (a) the condition of the property or common parts has deteriorated owing to damage by the tenant; (b) the condition of any furniture provided for use under the tenancy has, in the opinion of the court, deteriorated owing to ill-treatment by the tenant or any other person residing in the dwelling-house and, in the case of ill-treatment by a person lodging with the tenant or by a sub-tenant of theirs, the tenant has not taken such steps as they ought reasonably to have taken for the removal of the lodger or sub-tenant | 14 days | No change from the current Section 8 ground. |

4.7 Discretionary Grounds *cont.*

| Summary Description | Notice Period | Comment |
|---|---------------|--|
| <p>The dwelling-house was let to the tenant in consequence of their employment by the landlord seeking possession or a previous landlord under the tenancy and the tenant has ceased to be in that employment.</p> | 2 months | No change from the current Section 8 ground. |
| <p>The landlord was induced to grant the tenancy where the tenant has:</p> <p>(a) a false statement made by the tenant; or</p> <p>(b) a false statement made by someone providing information relating to the tenant.</p> | 14 days | <p>The existing ‘false statement’ ground is a cause of much frustration amongst landlords as it is often impossible to prove that a false statement by which a tenant has benefitted was instigated by them.</p> <p>To address this the ground should be amended, removing references to derived benefit and instigation, so that it may be relied on where the landlord has been induced to grant a tenancy because of:</p> <ul style="list-style-type: none"> • a false statement made by the tenant; or • a false statement made by someone providing information relating to the tenant. |

A background image showing a person in a light blue shirt sitting at a table with their hands clasped. In the foreground, another person's hand is visible, holding a pen and writing in a notebook. The scene is set on a wooden table with papers and a laptop.

5

Informal Resolution, Conciliation and Court Reform

5 Informal Resolution, Conciliation and Court Reform

5.1 The court system, as currently established, is not working for landlords or tenants. Previous research that drew on responses from over 6,300 landlords¹¹, demonstrated the frustrations felt about the time taken by the courts in responding to, and then enforcing, legitimate possession cases.

5.2 This is unsurprising given that it currently takes an average of around a year for a possession case to reach its conclusion. The Government's data suggests that the average time between a private landlord making a claim to repossess a property to it being enforced in the first quarter of 2021 was 47.7 weeks using the mean and 49.9 weeks using the median¹². With Section 21 repossessions due to end, without court reform, such waiting times are likely to increase further.

5.3 Tenants too are being let down by the current system. Citizens Advice has reported research¹³ which found that just 23% of tenants feel confident applying to court. For tenants whose landlord had taken an unreasonably long time to complete repairs, 99% said they did not bring a claim for disrepair to court. Of these, 54% said this was due to the complexity of the process while 45% said they were put off by the length of time involved.

5.4 There is a case for a specialist housing court or tribunal, which would include specialist judges and administrators, provide greater consistency for both landlords and tenants and relieve pressure on the county court system. We continue to believe that this would benefit the PRS, improving efficient access to justice for landlords and tenants. However, we understand that wholesale reform is a slow process and there are significant improvements which could be delivered, swiftly within the existing system, to address issues faced by court users.

5.5 In light of this, and within the context of possession reform, **we are calling for a system that takes the pressure off the courts by increasing the use of informal resolution and, importantly, by introducing a new conciliation service to resolve disputes.** This should be coupled with a focus on trying to sustain tenancies wherever possible.

5.6 At the heart of our proposal is the development of an ACAS style conciliation service for tenants and landlords. As with ACAS it would be publicly funded, but we would expect the costs to be significantly less than those for ACAS given that:

- There are likely to be fewer cases to be considered by a landlord/tenant service and therefore the service would be considerably less expensive than ACAS. In 2019/20, whilst ACAS received nearly 140,000 early conciliation notifications¹⁴, in the year to March 2020 (and therefore pre-COVID), 23,711 possession claims were brought to the courts in England and Wales by private landlords, with 18,469 cases brought under the accelerated procedure¹⁵.
- Cases brought to a landlord/tenant service are likely to be less complex and time consuming to consider than an employment dispute.

¹¹ RLA PEARL, *Possession Reform in the Private Rented Sector: Ensuring Landlord Confidence*, July 2019, available at: <https://research.rla.org.uk/wp-content/uploads/Possession-Reform-in-the-PRS-July-2019-1.pdf>

¹² Ministry of Justice, *Mortgage and landlord possession statistics: January to March 2021*, May 2021, table 6, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/985674/Mortgage_and_landlord_possession_statistical_tables_Jan_to_Mar_2021.ods

¹³ Citizens Advice, *Citizens Advice response to 'Considering the case for a Housing Court: call for evidence'*, January 2019, available at: https://www.citizensadvice.org.uk/Global/CitizensAdvice/Housing%20Publications/Citizens%20Advice%20response%20to%20%E2%80%98Considering%20the%20case%20for%20a%20Housing%20Court_%20call%20for%20evidence%E2%80%99.pdf

¹⁴ ACAS, *Acas annual report 2019 to 2020*, July 2020, available at: <https://www.acas.org.uk/acas-annual-report-2019-to-2020/html>

¹⁵ Ministry of Justice, *Mortgage and landlord possession statistics: January to March 2021*, May 2021, table 7, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/985674/Mortgage_and_landlord_possession_statistical_tables_Jan_to_Mar_2021.ods

5.7 We are confident that an ACAS model could significantly reduce the pressures on the courts. In 2019/20, of the cases presented to ACAS, 77% did not lead to an employment tribunal being required¹⁶.

5.8 We therefore propose a new structure which could also be adopted for other disputes not related to repossession matters.

5.9 Stage 0: Informal Resolution Offered

- We strongly support efforts to use informal resolution to settle disputes between landlords and tenants in order to limit the numbers of cases ending up in court.

• Prior to the initiation of the legal process for repossessing a property by serving notice, ideally the landlord and tenant should be in communication to seek to resolve the issues. That is why the NRLA is working with The Dispute Service (TDS) on a pilot scheme to provide a free dispute resolution service¹⁷ prior to court action. This pilot scheme is already demonstrating successful settlement of disputes.

- We want such negotiations to work and appeal to both tenants and landlords. From the perspective of landlords, dispute resolution offers an opportunity to avoid the costs and difficulties associated with beginning a legal procedure by seeking to resolve the issues by agreement at an early stage. This can help to sustain tenancies in the long term, through the support of an independent party to find a mutually agreeable settlement.

- **To support the use of informal resolution, it would be helpful if the Government:**

- **Provides public recognition of the NRLA-TDS scheme**
- **States a clear objective to support the use of informal resolution before a repossession notice is served.**

5.10 Stage 1: Possession Noticed Served

• The landlord would issue a notice to the tenant to repossess a property based on one of the grounds set out in section 4.

At this stage, two options would be available:

- If neither party takes the case forward for conciliation either the tenant vacates the property by the end of the notice period, or the landlord takes the case directly to court.
- Either the landlord or tenant decides to take the case forward for conciliation.

¹⁶ ACAS, *Acas annual report 2019 to 2020*, July 2020, available at: <https://www.acas.org.uk/acas-annual-report-2019-to-2020/html>

¹⁷ NRLA, *TDS Resolution*, available at: <https://www.nrla.org.uk/services/mediation/tds-resolution>

5.11 Stage 2: Conciliation

- **Cases should be considered and decided upon by the conciliation service within the notice period provided by the landlord to the tenant.**
- **The service would be able to provide the tenant and landlord with independent advice and support to prepare and present their case where needed.**

- The conciliation service would be required to understand the detail and background of why a notice had been served and take evidence from both parties. The service would then seek, where possible, to draw up a suggested plan for both parties to agree in order either to sustain the tenancy or bring the tenancy to an end without having to resort to the courts. This agreement would include evidence that might be required to prove if either party did not abide by the undertakings made should it be needed at a later date.

The process could result in two scenarios:

Scenario A: The landlord and tenant agree on a plan

- Under this scenario there would be a set period, to be determined by the conciliation service, in which the agreement reached can be actioned by both parties.
- The original possession notice served by the landlord would be suspended rather than made void during this period but would lapse should no further action be taken by the landlord.
- In the event that either the landlord or tenant failed to abide by the agreement reached with the conciliation service, the other party to the dispute could raise this with the service and provide the evidence to support this. In such a situation the conciliation service could provide a certificate of non-compliance. The following should be the result:
 - Where the tenant had breached the agreement, the landlord could take the case through the courts under an accelerated process for mandatory grounds. The certificate could also turn a discretionary ground into a mandatory one.
 - Where the landlord failed to abide by the terms of the agreement there should be a suspension of the original repossession notice served for six months, with the landlord unable to serve any other notice for the same period under the grounds that were the subject of the conciliation.

Scenario B: Agreement cannot be reached

This could be because:

- (i) the matter was so serious or complex that it was not deemed suitable for conciliation;
- (ii) either the landlord or tenant failed to engage with the process completely; or
- (iii) either party to the dispute did not accept the agreement reached.
 - Under this scenario the conciliation service would issue a 'failure' notice to both parties with an explanation as to why the case failed to reach an agreement. This would then be taken into account by the courts when scheduling cases.

5.12 Stage 4: Cases Before Court

The NRLA suggests a number of ways to speed up those cases that continue to the courts.

- **A sifting service for possession cases**
- **Early signposting for tenants to advisory and/or legal support services**
- **Introduce the use of online platforms to hear cases and utilise community buildings where cases need to be heard in person.**

- A sifting and signposting service should be developed as a gateway to the courts where possession cases reach this point. At this stage, those cases which did not go through the conciliation or mediation processes would need a brief review to determine how much of a priority they should be in scheduling cases. Any certificates or notices provided by the informal resolution or conciliation services should also be taken into account.
- Tenants should be signposted to advisory and/or legal support services early on ending the spectre of such advice only being made available at the last minute. This support should be accessible by phone, email or via web-based video conferencing platforms.
- The courts should seek to draw on online platforms to hear cases wherever necessary or preferred by the parties (as indicated on the application). We agree with the following:
 - The Master of the Rolls, who, in a speech to the Law Society’s webinar on civil justice and law-tech in January 2021¹⁸, said that:
 - *“This is an opportunity for the UK to lead the world in showing how a mature first-world justice system can make full and effective use of technology to allow legal rights to be cheaply and quickly vindicated.”*
 - *“Coming generations will not accept a slow paper-based and court-house centric justice system. If that is all that is available, the new generations will look for other means of dispute resolution. For that reason, the use of technology by the courts is not optional, it is inevitable and essential. Appropriate and accessible dispute resolution mechanisms must be made available. This is central to the rule of law itself.”*
 - The House of Lords Constitution Committee which, in a report published in March 2021, concluded that: *“Remote hearings can significantly improve the delivery and accessibility of justice in appropriate cases.”*¹⁹
 - The Lord Chancellor, who, in a speech to the Law Society in June 2021, declared that: *“new technology has an enduring role to play in our courts and tribunals.”*²⁰
- **Where cases do need to be heard in person, courts should make use of buildings such as community centres and town and village halls.** These types of venues are already used by tribunals and greatly improve the physical accessibility of justice which has been made more difficult by recent court closure programmes and would be more in line with modern expectations regarding accessibility.
- **A key component of improving the system would be to legislate to end the anomaly requiring landlords to go back to the courts to seek an enforcement warrant where a repossession order has been issued but not acted upon by the tenant.**
- Ministry of Justice’s data²¹ shows that in the first quarter of 2020 (and therefore prior to COVID restrictions being introduced), whilst the average time between a private landlord making a claim to the courts and possession orders being granted was 8.9 weeks, the average time between making the claim and having a warrant issued was 16.2 weeks.

¹⁸ Courts and Tribunals Judiciary, *Speech by the Master of the Rolls: Reliable data and technology – the direction of travel for Civil Justice*, 28th January 2021, available at: <https://www.judiciary.uk/announcements/speech-by-the-master-of-the-rolls-reliable-data-and-technology-the-direction-of-travel-for-civil-justice/>.

¹⁹ House of Lords Constitution Committee, *COVID-19 and the Courts - 22nd Report of Session 2019–21*, 30th March 2021, available at: <https://publications.parliament.uk/pa/ld5801/ldselect/ldconst/257/257.pdf>

²⁰ Ministry of Justice, *Lord Chancellor outlines his plans to recover the justice system from COVID-19*, 4th June 2021, available at: <https://www.gov.uk/government/speeches/lord-chancellor-outlines-his-plans-to-recover-the-justice-system-from-covid-19>

²¹ Ministry of Justice, *Mortgage and landlord possession statistics: January to March 2021, May 2021*, table 6, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/985674/Mortgage_and_landlord_possession_statistical_tables_Jan_to_Mar_2021.ods

A professional business meeting scene with a man and a woman in business attire looking at documents on a table. The woman is holding a pen and pointing at a document. A white text box with a yellow underline is overlaid on the image.

6

Redress Scheme

6 Redress Scheme

- 6.1** The Government has pledged to use the White Paper to make proposals to require all private landlords to belong to a redress scheme in order to “*drive up standards in the private rented sector and ensure that all tenants have a right to redress.*”²²
- 6.2** The NRLA supports the development of such a scheme and is currently working to establish a pilot to deliver this service.

- 6.3** **We believe that registering with a redress scheme would provide an opportunity to collate details of the properties let out, thereby improving compliance with relevant documents to confirm that a property meets required standards, such as up to date gas safety, electrical safety and Energy Performance Certificates.**

- 6.4** This can be linked to the Unique Property Reference Number (UPRN) to allow easy reference for both tenants and enforcement authorities. It could also provide information about whether the landlord is a member of a relevant trade association or accreditation scheme.
- 6.5** At the point at which prospective tenants make initial enquiries about renting a property, they should be able to access information about it from the redress scheme to ensure they understand whether it meets required standards. For landlords it would provide an opportunity to openly show that they are meeting all their legal obligations and could be used as a method of communicating to them updates on changes to relevant legislation and regulations.
- 6.6** We would argue that developing a national redress scheme of this kind would need also to be matched by a full review to establish if certain types of local landlord licensing schemes would need to continue to avoid duplication of efforts and unnecessary regulation.
- 6.7** The requirements of a mandatory national redress scheme, or schemes, would negate the development of a separate national register of landlords. The requirement for landlords to join a redress scheme would automatically provide the information needed for a national register. In these circumstances, having separate national registration and redress schemes, and local licensing schemes, would cause unnecessary confusion and complexity. We note also that:
- In 2009, the Department for Communities and Local Government published an impact assessment for a national register of landlords and described full licensing as “*onerous, difficult to enforce and costly*”, costing £300 million.²³
 - In February 2018 the then Minister for the private rented sector, Heather Wheeler MP, argued that a national register would “*introduce an unnecessary and costly additional layer of bureaucracy.*”²⁴
 - In November 2019, the then Housing, Communities and Local Government Minister, Viscount Younger of Leckie, told the House of Lords that a national register: “*could place an additional regulatory burden on landlords.*”²⁵

²² Prime Minister’s Office, *The Queen’s Speech 2021*, 11th May 2021, page 113, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/986770/Queen_s_Speech_2021_-_Background_Briefing_Notes..pdf

²³ DCLG, *Impact Assessment of a national register for landlords*, June 2019, page 4, available at: <https://webarchive.nationalarchives.gov.uk/20120919185843/http://www.communities.gov.uk/documents/housing/pdf/1243567.pdf>

²⁴ Written Parliamentary Answer, *Landlords: Registration*, UIN 127973, tabled on 19th February 2018, available at: <https://questions-statements.parliament.uk/written-questions/detail/2018-02-19/127973>

²⁵ Written Parliamentary Answer, *Landlords: Registration*, UIN HL372, tabled on 23rd October 2019, available at: <https://questions-statements.parliament.uk/written-questions/detail/2019-10-23/hl372>

A stack of papers and folders on a wooden surface. The papers are of various colors (white, pink, yellow) and are stacked in a way that shows the edges of many pages. The background is a dark, warm brown color.

7

Improving Enforcement

7 Improving Enforcement

- 7.1** The Government has pledged that as part of its White Paper it will consider how best to take enforcement action against those landlords who bring the sector into disrepute, without penalising the vast majority of landlords who do a good job. We agree with this approach.
- 7.2** According to our analysis, by the time the forthcoming Building Safety Bill is given royal assent, the number of statutory provisions applying to the sector will have risen by 40% over the last decade to 168 pieces of legislation²⁶. We contend therefore that it cannot feasibly be argued that the sector is ‘under regulated’. Rather the problem is a failure by local authorities to properly enforce using the wide range of powers already available.
- 7.3** One example of the failure to use the tools available relates to the database of rogue landlords and banning orders introduced in 2018.
- 7.4** In November 2015, the then CLG Minister, Marcus Jones MP, told the Housing and Planning Bill Committee that “about 10,500 rogue landlords may be operating.”²⁷ In January 2018 the then HCLG Minister, Jake Berry MP, said that the Government’s estimate was that “*about 600 banning orders per year will be made.*”²⁸
- 7.5** Despite these estimates, in May this year the HCLG Minister, Lord Greenhalgh, told the House of Lords that there were currently just 43 entries on the rogue landlord database²⁹. In April, the Housing Minister, Christopher Pincher MP, also said that just 7 landlords had been issued with a banning order³⁰.
- 7.6** New data obtained by the NRLA³¹ also suggests that whilst the use of Civil Penalty Powers, introduced as part of the Housing and Planning Act 2016, has increased, more than half of local authorities have not used this power since it became available in April 2017. The great majority of penalties issued are concentrated within a small number of local authority areas.
- 7.7** The NRLA made Freedom of Information (FoI) requests to 316 local authorities in England seeking data for the period 2018/19 – 2020/21. From these, 275 (87%) local authorities provided responses to at least some of the questions asked.

²⁶NRLA, *Not under-regulated but underenforced: the legislation affecting private landlords in England*, July 2021, available at: <https://www.nrla.org.uk/download?document=1313>

²⁷House of Commons, *Housing and Planning Bill Afternoon Session*, 24th November 2015, available at: <https://publications.parliament.uk/pa/cm201516/cmpublic/housingplanning/151124/pm/151124s01.htm>

²⁸House of Commons, *Draft Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017*, 9th January 2018, available at: [https://hansard.parliament.uk/commons/2018-01-09/debates/e01988d3-2878-4b35-8646-c8a7116c9f0e/DraftHousingAndPlanningAct2016\(BanningOrderOffences\)Regulations2017](https://hansard.parliament.uk/commons/2018-01-09/debates/e01988d3-2878-4b35-8646-c8a7116c9f0e/DraftHousingAndPlanningAct2016(BanningOrderOffences)Regulations2017)

²⁹House of Lords, *Rogue Landlords Register*, 26th May 2021, available at: <https://hansard.parliament.uk/lords/2021-05-26/debates/07E89DCF-E021-4DF7-A923-8B2FDFBDDBE0/RogueLandlordsRegister>

³⁰Written Parliamentary Answer, *Landlords: Standards*, UIN 174997, tabled on 24th March 2021, available at: <https://questions-statements.parliament.uk/written-questions/detail/2021-03-24/174997>

³¹NRLA, *The Enforcement Lottery: Civil penalty usage by local authorities*, July 2021, available at: <https://www.nrla.org.uk/research/special-reports/enforcement-civil-penalty-usage>

7.8 Our data shows that:

- 47% of respondents had issued civil penalties to private landlords over the last five years. A total of 3,195 were issued between 2018/19 and 2020/21 compared to 332 in 2017/18
- Just 7% of local authorities are responsible for 71% of the civil penalties issued
- The offence of breaching a selective licensing scheme was the primary reason for issuing a civil penalty with over 1,100 penalties or 39% of the total, twice as many as for improvement or overcrowding notices. This is the only offence which cannot have any impact on hazardous conditions in properties
- 40% of councils that had issued civil penalties had issued between just one and five penalties over the past three years.

7.9 The reasons for such poor levels of enforcement are various but can be broadly summarised as resourcing pressures and the political will of local authorities to prioritise such activity.

7.10 Research published by Unchecked UK has demonstrated the scale of cuts made by local authority departments³² charged with enforcing regulations in the private rented sector:

- The amount spent on housing standards by local authorities in England fell by 45% between 2009 and 2019
- The amount spent on environmental protection and regulatory services by local authorities in England fell by 31% between 2009 and 2019
- Over the same period, the amount spent on Local Authority Environmental Health Officers in England and Wales fell by 32%
- The number of local Environmental Health programmed inspections fell by 41% between 2009 and 2019. Over the same period the number of local Environmental Health enforcement visits fell by 49%.

7.11 We agree with the Housing, Communities and Local Government Select Committee which argued in 2018³³ that whilst the level of resources available to local authorities to enforce regulations was a major issue, this “*does not fully explain the variation in enforcement levels that exist between different local authorities.*” It continued:

“It is clearly the case that some local authorities have placed a higher priority on addressing low standards in the private rented sector than others have done. We believe this disparity in effective action can only be resolved through political leadership.”

³²Unchecked UK, *The UK's Enforcement Gap 2020*, October 2020, available at: <https://www.unchecked.uk/wp-content/uploads/2020/11/The-UKs-Enforcement-Gap-2020.pdf>

³³HCLG Select Committee, *Private Rented Sector - Fourth Report of Session 2017–19*, April 2018, page 34, available at: <https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/440/440.pdf>

7.12 In order to improve enforcement we propose the following:

- **The Government should work with local authorities to conduct an assessment of the ability of relevant departments to enforce the wide range of powers already available to them to tackle criminal landlords. Good legislation is that which can be enforced. In proposing further measures in the White Paper we need to be convinced that they can be enforced properly.**

- **There is a need to update, and potentially consolidate, legislation for the modern world. Much of the legislation that underpins landlord and tenant law was written before the era of email and could be updated to allow for easier use of electronic communication. It could also be adapted to reflect how tenants choose to live with friends, rather than family, for longer, by making it easier to replace a joint tenant.**

- **Those landlords bringing the sector into disrepute need to be the ones to pay for enforcement activity against them through civil penalties. However, central government also needs to provide upfront, multi-year funding to help councils build the capacity to tackle bad practice. Too often, pots of money provided by government for this purpose have been one-off or short-term making it difficult for local authorities to plan for the long term.**



8

Lifetime Deposits



8 Lifetime Deposits

- 8.1** We recognise and welcome the Government's intentions to develop lifetime deposits for private sector tenants to manage the costs they face.
- 8.2** Whilst we will work constructively on the detail of the proposal, it is vital that the new system in no way discourages landlords from making valid claims for damage to properties.
- 8.3** It is especially important that at no point in the process under any scheme a landlord is faced with a tenant not covered by a full deposit, or equivalent level of protection. This could arise when a tenant transitions from one rental property to another, and where part or all of the deposit they paid is required to cover or is being disputed as a result of damage to a property. The scheme must protect the new landlord in such circumstances.
- 8.4** It is important also that the system is easy to access both for the landlord and the tenant with disputes dealt with swiftly.
- 8.5** We encourage the Government to look at innovative ways to fulfil this pledge without adding complexity to the existing tenancy deposit system and the legislation which currently governs it. Landlords cannot be expected to give up their right of recourse to a security deposit until such time that they are satisfied there will be no need to make a claim against it.
- 8.6** The NRLA recommends that the Government explores two options for providing a lifetime deposit facility:

- **A financial bridging facility** - Options to provide financial bridging arrangements should be explored. This would be particularly effective where the deposit is being protected by means of one of the insurance-backed schemes and where no simple system of transfer from one landlord to another would be available.

- **A deposit builder ISA** - Like the Help to Buy ISA, a government protected savings pot could be made available to renters. Neither party would have access to money deposited into the account unless ordered by an approved deposit scheme or at account closure, provided no charge was associated with the pot by a Tenancy Deposit Protection (TDP) scheme. Applicants would be able to demonstrate that the minimum required funds were in the account at the beginning of the tenancy and the account could be associated with a TDP scheme for the resolution of any disputes. Tenants would be able to save in this account beyond the minimum deposit required, mirroring the Help to Buy ISA, eventually using the funds for a deposit to buy their own home if they chose.

An aerial photograph of a residential street during sunset. The street is lined with brick houses and has several cars parked along the sides. The sky is filled with warm, orange and pink clouds, and the sun is low on the horizon, creating a strong glow over the scene. A white rectangular box is overlaid on the upper part of the image, containing the number '9' and the word 'Conclusion'.

9

Conclusion

9.0 Conclusion

- 9.1** The UK Government has the opportunity to reshape private renting in England, ensuring that the sector meets the contemporary needs of tenants whilst also providing a business environment that works for landlords. Our vision is a rental sector that works for all, and we believe our proposals set out a balanced approach which meets this objective.
- 9.2** The Government must ensure that there are improvements to all stages of the possession process to acknowledge the impact of the removal of Section 21 on the sector. At the same time, we argue the necessity of providing improved opportunities to reach agreement outside of the courts, utilising informal resolution and a new conciliation service.
- 9.3** But the reforms needed do not end there. Effective enforcement, the introduction of redress and innovative, yet secure, mechanisms for deposits will also contribute to improving the operation of the sector. It is essential that the Government considers the impact of each of these in full, to ensure any future legislation is fit for purpose.