Reforming the Private Rented Sector

National Housing Federation submission to the Levelling Up, Housing and Communities Committee Inquiry

August 2022

Summary

Many areas of the White Paper, *A Fairer Private Rented Sector*, affect housing associations because they use assured tenancies as set out in the Housing Act 1988. Housing associations deliver housing types unlikely to be found in the private rented sector, for people needing high levels of support.

This submission answers the following questions about the government's proposals for reforming the private rented sector:

1. Do the proposals for reforming tenancies, including the abolition of Section 21, strike the right balance between protecting tenants from unfair eviction and allowing landlords to take possession of their properties in reasonable circumstances? (skip to)
2. How easily will tenants be able to challenge unfair rent increases under the proposals? (skip to)
3. Will the proposals result in more disputes ending up in the courts? If so, will the proposals for speeding up the courts service suffice? (skip to)
4. What impact, if any, will the reforms have on the supply of homes in the private rented sector? (skip to)

The NHF supports the government's aim of protecting the rights of tenants, and will continue to work with the government on the further detail of the reforms. Many of the proposals have taken on board challenges for the social housing sector, but we still have comments about some aspects of the proposals. We have specific concerns about the proposals for changes to rent.

We welcome the acknowledgement of the challenges that ending section 21 will bring for supported housing providers in particular. It is vital the government now works with the sector to ensure the proposed changes do not undermine housing associations' ability to continue to provide supported housing, particularly at a time when providers face a range of other significant challenges. We have shared some ideas on this issue in this response and we will be urging the government to meet with providers as soon as possible to explore these in more detail.

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Introduction

The National Housing Federation (NHF) is the voice of England's housing associations. Housing associations are not-for-profit social landlords. Our members provide more than two-and-a-half million homes for around six million people, including three quarters of all supported housing.

Housing associations deliver housing types unlikely to be found in the private rented sector, for very vulnerable people needing high levels of support and for people in crisis and needing emergency, short-term accommodation or support. Housing associations run vital services like homeless hostels, domestic violence refuges, retirement and extra care housing, homes for people with learning or physical disabilities and people with autism and mental health step-down units.

The White Paper, *A Fairer Private Rented Sector*, focuses on private landlords but there are significant areas that affect housing associations because they use assured tenancies as set out in the 1988 Housing Act.

Proposed changes affecting housing associations are:

- Assured shorthold and fixed-term assured tenancies will no longer exist.
- Landlords will be obliged to end tenancies on specific grounds.
- There will be new mandatory and discretionary grounds for possession in supported housing.
- There will be a mandatory ground for possession relating to leases.
- There will be a mandatory ground for possession in temporary accommodation.

The government will only allow increases to rent once per year and will increase the minimum notice landlords must provide of any change in rent to two months.

The NHF supports the government's aim of protecting the rights of tenants, and will continue to work with the government on the further detail of the reforms.

It is welcome that many of the proposals have taken on board challenges for the social housing sector. However, we still have comments about some aspects of these proposals, including definitions of "support", tenant notice, cases of abandonment, shared ownership, measures to address delays in the courts and the transition arrangements.

We welcome the acknowledgement of the challenges that ending section 21 will bring for supported housing providers in particular. It is vital the government now works with the sector to ensure the proposed changes do not undermine housing associations' ability to continue to provide supported housing, particularly at a time when providers face a range of other significant challenges.

We are also concerned that the proposed changes to rent could adversely affect the viability of social housing providers.

1. Do the proposals for reforming tenancies, including the abolition of Section 21, strike the right balance between protecting tenants from unfair eviction and allowing landlords to take possession of their properties in reasonable circumstances?

Use of assured shorthold tenancies in social housing

Social housing is regulated in a way the private sector is not. Regulated housing providers should provide the maximum level of security of tenure.

Housing associations meet the landlord condition in the 1988 Act and therefore use assured tenancies. In most cases, their assured tenancies are non-shorthold, which means the landlord can only end them by showing in court one of the grounds for possession listed in the 1988 Act. However, housing associations, like any other landlord within the scope of the 1988 Act, may also use assured shorthold tenancies, allowing no-fault possession under Section 21. While the majority of housing association tenants have assured tenancies, the sector has used assured shorthold tenancies in a range of circumstances.

In its response to the 2019 consultation, the NHF commended the government's aim of allowing landlords to manage their properties effectively while also recognising that tenants need security in their homes. We agreed that the abolition of Section 21 should extend to all users of the 1988 Act. The reasoning behind this was the importance of striking a balance between landlords and tenants in all sectors and that, while this may present some operational issues for housing associations, it would be unacceptable for housing association tenants to have less statutory protection than private sector tenants.

Housing associations (along with some other public-benefit landlords) deliver certain types of housing that are unlikely to be found in the private rented sector. This

includes provision for very vulnerable persons requiring high levels of support or accessible properties; and for persons experiencing crisis and requiring emergency short-term accommodation or support. It has not previously been necessary to make special provision for these forms of housing because they have used assured shorthold tenancies. There are some situations in some forms of supported housing and specialised provision where no-fault possession is legitimately required.

Providers of supported housing and temporary accommodation currently use assured shorthold tenancies because of the need to fit with commissioning cycles, and as a safeguard in situations, for example, where:

Support is decommissioned with little warning:

- The support is no longer needed.
- The tenant’s support needs increase or decrease and the provision as funded is no longer appropriate.
- The housing or the stay is intended to be temporary.

Most moves are planned/positive moves, but providers may need the fall-back of being able to seek possession by exception. Any of these circumstances mean that if possession is not available to the landlord, the provision is not available for use as supported housing as was intended, cannot be recommissioned as supported housing, or decommissioned services will result in tenants being left unsupported. Tenants would not have move-on options as intended, and supported housing provision could become ‘silted up’.

Without assured shorthold tenancies, or satisfactory alternative mechanisms, housing associations would find it more difficult, or impossible, to offer these forms of housing. This could have the unintended consequence of reducing supported housing provision and the wider use of granting forms of occupancy that will give rise to a licence rather than a tenancy, affording less security of tenure to service users. We recommended a potential way forward that balances ensuring supported accommodation is available for those who need it, the rights of residents and housing association needs as landlords.

This was changing the Housing Act to retain no-fault possession in a small number of cases, through a mandatory ground in section 8 notices, for use in specific circumstances (unavoidable situations where it is essential to end a tenancy quickly) and only where the letting were in furtherance of housing providers' charitable aims. Section 8 grounds are used in social housing (assured tenancies) and follow a robust internal authorisation process to ensure the action is reasonable. We believe

removing assured status from social housing tenants should be avoided wherever possible. We also feel the number of mandatory grounds should be kept to a minimum. We asked the government to work with providers to identify and define cases where retention of no-fault possession is needed.

New mandatory grounds would be a means to end tenancies quickly where needed and maintain supported housing/independent living provision. This would allow the flexibility that favours the resident and their needs, as well as landlords who depend on this flexibility to be able to provide supported housing and meet commissioning imperatives. We proposed that this should only be available if the landlord had served a statutory notice before the start of the tenancy to specify why the tenancy is temporary and the circumstances in which no-fault possession may be sought. These checks are to protect the tenant.

The white paper acknowledges the concerns raised by the sector and recognises the need to "protect vital sectors", including supported and temporary housing. The white paper proposes "new, limited ground(s) for possession for providers of supported accommodation covering clearly defined circumstances that have been identified in discussion with the sector." These grounds are proposed to be mandatory, with the exception of when the tenant is not engaging with the support.

These will include where:

- The tenancy was intended to be short-term from the outset and that term has come to an end.
- The funding or support element has ended naturally or dropped away unexpectedly, or been reconfigured so it no longer meets the tenant's safety and wellbeing needs.
- The support is no longer in line with tenant's needs, which may have increased or decreased, meaning the arrangement is no longer safe or necessary for the resident.
- The tenant is not engaging with the support.
- A shared housing arrangement has undergone significant changes (e.g., tenants moving out) and its closure or reconfiguration is necessary for the feasibility of the scheme.

We appreciate the government's acknowledgement of the specificity of supported housing and the need to safeguard supported housing provision through introducing grounds to allow possession in specific circumstances and prioritisation of these in court. Supported housing can be in high demand and limited numbers. Any

blockages can also stop people moving through a pathway situation and can have consequences for others trying to access the service, including people who require supported living as step down from more expensive places such as hospitals. Landlords will require clarification on the evidence required for mandatory possession. This could be addressed in guidance.

We commend the fact that the proposed notice period for the new supported accommodation ground(s) of one month would not be compulsory, as two months' notice can be needed to find alternative provision for the tenant. We agree with the sentiment of the proposed grounds, but have the below comments to make.

In the longer term, we need investment to build the social housing the country needs, alongside properly funded support services for appropriate commissioning of supported housing.

Use of wording "short-term"

In our proposals, we suggested that the ground should cover eventualities where *the purpose of granting the tenancy is at the outset explicitly limited to that of providing temporary accommodation (specifically defined) and the temporary period has now come to an end;* and *the tenancy is a designated short-term tenancy and that term has now come to an end.*

We did so because the term "temporary" does not necessarily mean "short-term". As well as instances (as covered below) where the housing association only has a lease of a property for a certain number of years, a property might be unavailable for permanent living because of 'planning blight', because funded support has been decommissioned or the provision of the current service in a specialist building has become unviable and landlords are exploring alternative funding or service remodelling arrangements, or because of the potential for reconfiguration of a service in the future. In these situations, no-fault possession is unavoidable; the alternative would be to leave the property empty, and take it out of use for (supported) housing provision. This could also apply to planned regeneration but would not be explicitly linked to support provision.

In many cases, support contracts stipulate maximum lengths of stay, but these timescales can be exceeded where move-on accommodation is difficult to source. If the time limit is specified in the tenancy agreement at the outset, there will be examples of these times being exceeded.

The above eventualities would not necessarily be covered by the words “short-term” but would be by the word “temporary”. This would not have the same meaning as temporary accommodation for use by local authorities in the fulfilment of their duties under Part VII of the Housing Act (accommodation for homeless households).

It is nevertheless also useful to have the term “short-term” in the ground(s), as some tenancies are specifically designated as short-term tenancies. We therefore feel “short-term” and “temporary” should be included.

Definition of “providers of supported accommodation”

The ground as currently worded says it is intended to be used by “providers of supported accommodation”.

In representations to government, we proposed the denomination “charities or community-benefit bodies”, to prevent the ground being used by private or profit-making landlords – even if registered with the RSH – to safeguard tenants. We also proposed that the tenancy should be granted in furtherance of the constitutional (charitable) aims of this body, so it could not be used for market rent properties, even if owned by a social landlord. We did not propose the ground should refer to Registered Providers of Social Housing, to protect unregistered housing associations and other socially-minded landlords that let homes in furtherance of their charitable aims. On the other hand, restricting who can use these grounds may have a negative impact on supply of accommodation and services. Our members have further reported that the denominations Private Registered Providers of Social Housing,[1] housing associations in the meaning of the Housing Associations Act 1985, charities providing housing services, managing agents and local authorities may need access to this ground.

It may be necessary to be specific about recognition by the local authority of the landlord as an approved supported housing provider. Thinking around this should be helped by the work of the DLUHC Supported Housing Improvement Programme. However, we suggest that tenure reform is not the best means to tackle poor quality supported housing and sustained investment in the sector is needed instead.

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[1] Private Registered Providers of social housing include housing associations and for profit providers registered with the Regulator of Social Housing. Private Registered Providers, including those that are for-profit, are subject to regulation by the Regulator of Social Housing. Housing associations and other charities are non-profit.

Definition of “support”/“supported housing”

The white paper gives the following definition of supported housing: *“[a]ccommodation where support, supervision or care is provided to help people live as independently as possible in the community.”* However, as mentioned, this white paper has been published at a time when the government has also launched its Supported Housing Improvement Programme, with a package of government measures that include:

- Minimum standards for support provided to residents in order to help their progress towards living independently.
- Changes to Housing Benefit regulations to seek to define care, support, and supervision to improve quality across all specified supported housing provision.

It would be preferable for the white paper’s definition of “support” and “supported housing” to align with the definition used by the Supported Housing Improvement Programme, in dialogue with the supported housing sector. There are also other definitions of supported housing in use, such as in the Welfare Reform and Work Act 2016, Government’s Policy statement on rents, the National Statement of Expectations for supported housing, Affordable Homes Programme guidance, Housing Benefit Regulations. Varying interpretation could pose risks to stability of service provision, which could be helpfully addressed with guidance.

It should be acknowledged in both cases that a definition of “supported housing” and “supported accommodation” would need to take into account the many different types of supported housing provision. The definition of “support” should not be too tight and exclude some forms of provision, or too broad and allow for unscrupulous use of the accommodation type.

We suggested in our proposals that the word “support” should refer to the support received, rather than the tenant’s assessed support needs. We did not propose to define “support” in general, rather we proposed to define it through whether it is needed to allow the tenancy to be sustained and to keep the resident safe and well.

We are pleased to see acknowledgement of the tenant’s safety and wellbeing in the proposed grounds. This could assist housing providers in explaining the reasons for provision of the support and the reasons for a tenancy ending if the support is not adequate, when legal action is pursued and alternative accommodation is sought.

It should also be acknowledged that sometimes support in accommodation is not provided directly by the landlord, as some tenants receive direct payments or personalised budgets to arrange their own support. Tenancy agreements in this sector state that it is the purpose of the accommodation that the resident receive support, to fit with commissioning. Tenants in general needs accommodation may also receive floating support provided by a third party or the landlord.

Non-engagement with support

We have reservations about a ground relating to non-engagement with support, discretionary or mandatory. Providers would have to prove that the support is a condition of the tenancy, rather than a condition on the person, to justify the person not engaging with support being used as a reason to end the tenancy. See the 1999 PCHA v Boateng case for more information on why this is not practicable.

Local authority intervention

Commissioners of supported housing most often stipulate the maximum amount of time someone can receive a service. Despite this, some local authorities require a section 21 notice to see that a tenancy is coming to an end before they will assist with rehousing the tenant. An equivalent tool may be needed under the new regime to secure local authority rehousing.

Some housing associations have also reported that section 21 notices are required by adult social care when the person's needs increase to such a level where it would be unsafe for them to stay in the tenancy with the support as commissioned. We feel that the reference made to the support being needed for the person's safety and wellbeing can account for the need for adult social care intervention. However, removing security of tenure should not be used as a way to mitigate the pressures on statutory services. The answer to this should be increased funding for social care.

New tenancy system

The government wants to "deliver a simpler, more secure tenancy structure" by moving all tenants onto a "single system of periodic tenancies". Under this system, tenants will be required to give two months' notice before leaving a tenancy and landlords will only be able to evict a tenant in "reasonable circumstances", defined in

law. The success of the proposals will be dependent on adequate grounds for possession being in place.

Tenant notice

Housing associations have expressed concern with the stipulation that tenants provide two months' notice. This could be impractical where people's circumstances change rapidly, such as new employment necessitating a home move, or an offer of a new tenancy. Tenants may struggle to meet two months' rent liability, for example if they are fleeing domestic abuse and need to leave immediately but are still required to pay two months' rent (and may not be able to claim benefits on two properties), or if a person succeeding to a tenancy wants to serve notice. This may increase demand for Discretionary Housing Payments, which are intended to support people to stay in their tenancies.

For landlords, this could have a negative impact on re-let times, because of the potential not to be able to enter the property to do repairs for two months, and rent loss during void periods, reducing resources to invest into services for tenants. A two-month notice period may also cause an increase in abandonments owing to residents wanting to leave quickly, particularly if they need to take up an offer of other accommodation. Other housing associations feel that two months would give them more time to fill the future vacancy. We do appreciate that this provision has been designed to prevent private landlords from demanding long notice periods that disadvantage the tenant.

The option to give less notice already exists if landlord and tenant voluntarily agree that the tenancy has come to an end, through express or implied surrender. Currently, a surrender would terminate the tenancy, whether it is fixed-term or periodic. Housing associations have asked for more clarification on whether this would change and be replaced by an option to formally agree a shorter notice period.

The end of fixed-term assured tenancies

Fixed-term assured tenancies will no longer exist. Private Registered Providers of social housing will no longer be able to use probationary, demoted or fixed-term tenancies.

The government has said that the enhanced grounds for possession will ensure that Private Registered Providers have confidence in regaining possession of a property

where tenants have broken the terms of their agreement, replacing the use of probationary and demoted tenancies to help deal with challenging behaviour, such as antisocial behaviour and rent arrears. The success of a single tenancy model without fixed-term tenancies will depend in part on the grounds for possession.

Many housing associations are moving away from fixed-term tenancies and have not used probationary tenancies or demoted tenancies for some time. There remain, however, some instances where a fixed term tenancy, or a legislative solution that allows these tenancies to be ended where needed, is required. Rules governing various non-social products, such as rent-to-buy, intermediate rent and shared ownership, stipulate that the tenancy given must be a fixed term. We address this below.

Other housing associations have used fixed-term tenancies when looking to redevelop a site. The government feels that where assured shorthold tenancies have been used to manage stock, the existing ground that allows landlords to gain possession if suitable alternative accommodation is available can be used. This would only be valid if there were alternative accommodation available, which can be challenging in high cost areas and areas where there is high demand for housing stock and delays in the courts. The fact that ‘suitable alternative accommodation’ is a discretionary ground also means the chances of success are not guaranteed. Where possible, social landlords will seek a dialogue with customers but may use the ground if a successful dialogue cannot be reached.

Abandonment

The government proposes not to include a specific ground on abandonment as it considers the mandatory rent arrears ground the most straightforward route to possession in cases of abandonment, and that if a property is not being properly maintained or occupied as agreed, a landlord can seek possession through the grounds for breach of tenancy or damage to the property.

Housing associations have reported that in many cases they continue to receive rent for a tenancy that has been abandoned, such as if a tenant has entered into a new relationship and moved in with a partner but wishes to retain their previous tenancy. This means the property is empty and cannot be used by others who need social housing. The mandatory rent arrears ground is therefore not appropriate to deal with cases of abandonment.

Similarly, breach of tenancy can only be used if abandonment is specified as a breach in the agreement. Ground 17 does not currently cover this situation.

We have sought clarity from DLUHC on whether notice to quit will continue to be available in cases of abandonment (non-occupation) when the property ceases to be the tenant's only or principal home. In this case, the tenancy ceases to be an assured tenancy and a landlord notice to quit can be used to end it. Notice to quit is also used where a tenant has passed away and there is no successor. The option of notice to quit should remain as it is a key tool for social landlords to manage stock in the context of a shortage of social housing. We understand that there are no current plans to amend the existing notice to quit rules.

Antisocial behaviour

Housing associations are satisfied with the attention given to the need to speed up listings of antisocial behaviour cases in the courts, because of the risk to other residents if antisocial behaviour is not dealt with swiftly and existing delays in court proceedings. Prioritisation is seen as desirable where there is a risk of harm to a person or people and if there is a closure order/injunction already in place. Further guidance should be issued on the evidence required and what is understood by "severe antisocial behaviour". There is a need to respond to the personal nature of antisocial behaviour and the impact on victims and witnesses.

Social landlords are also concerned, in a context of increasing multiple and complex needs, about the potential for the grounds to be used by private landlords in cases of antisocial behaviour caused by disability. This may include mental health needs, or challenging behaviours due to learning disabilities. Domestic abuse can also be mistaken for antisocial behaviour. A supportive approach would be opportune here instead.

Redevelopment

Social landlords are prohibited from using the mandatory redevelopment ground (ground 6) unless the property is leased and redevelopment is required by a superior landlord, and are expected to use the suitable alternative accommodation ground (ground 9), which is discretionary. Whether or not this presents problems would depend on the difficulties involved in using the alternative accommodation ground. This may become relied upon in the future, if moves are required to comply with building safety work. Some housing associations have expressed the opinion that

social landlords should be able to use the ground on freehold properties in order to ensure that they are able to make the best use of stock.

Access for repairs

The government will mandate that all written agreements stipulate the tenant's responsibility for keeping the property in good condition and allowing reasonable access for repairs. However, it feels that landlords have routes other than possession available to secure access, such as applying to the court for an injunction, if tenants do not allow access. It also takes the view landlords will have access to grounds for possession where tenants allow the property to deteriorate, or if they break clauses in tenancy agreements, which provide a tool for possession in the most serious cases.

We have had feedback from housing associations that they very rarely have recourse to possession when they need to access properties to carry out health and safety checks, and would use injunctions instead. There is still a need to make sure mechanisms are in place to allow them easy access to carry out these checks, especially in light of fire safety-related building work, improvements and repairs.

As a technical point, Section 11 of the Landlord and Tenant Act 1985 sets out landlords' duty to repair property. There is a parallel, implied duty on tenants to allow access for the purposes of inspection or repair. Failure to do so means the tenant is in breach of their tenancy agreement and discretionary ground 12 is available to the landlord. To get rid of this would in effect be saying that the landlord has ground 12 available in the event of a breach of any term of the tenancy except the one implied by section 11 of the Landlord and Tenant Act. We do not see there is a particular rationale for doing this. Ground 12 is discretionary and would be unlikely to be used oppressively.

Another way of ensuring that legal health and safety standards can be maintained could be to allow housing associations to use the Environmental Protection Act – as is currently the case for local authorities.

Shared ownership

Housing associations offer shared ownership as an affordable home ownership product. Some have tens of thousands of shared ownership properties. Shared ownership leases currently fall technically within the definition of an assured tenancy.

The Homes England Capital Funding Guide stipulates that fixed-term, assured shorthold tenancies should be used for this product.

This also applies to rent-to-buy and intermediate rent products. The intention is for the household to have saved a sufficient amount to purchase the home within a specified time, by virtue of having a subsidised rent linked to local incomes. If the household is unable to buy the home within that time, housing associations may seek another buyer. Failing to recover homes from ineligible tenants might result in the landlord breaching a planning condition. This will need to be addressed in the reforms.
A solution could be changing the assured tenancy definition so that it no longer captures shared ownership or rent-to-buy and intermediate rent leases.

We will seek to continue discussions on this issue with DLUHC and social landlords.

2. How easily will tenants be able to challenge unfair rent increases under the proposals?

The government proposes only to allow rent increases once a year, and will increase the minimum notice landlords must provide of any change in rent to two months. They will end the use of rent review clauses in tenancy agreements.

The stated aim of the proposal is 'to prevent tenants being locked into automatic rent increases that are vague or may not reflect changes in the market price'. However, rent increases in the social sector are carefully regulated and increases are subject to a maximum ceiling. Social rents are governed by the rent standard for registered providers of social housing and rents for properties let at social rent are set based on a formula set by government. Social rent increases are capped at CPI+1% annually and the rent standard stipulates that Registered Providers must take affordability into account when setting rents. Increases are carefully considered to ensure that they are proportionate and fair, and the likelihood of social housing tenants being disadvantaged in the way the proposal is trying to address is unlikely. Therefore, our view is that the measure is disproportionate, so far as social tenants are concerned.

Moreover, most social landlords currently increase rents at the same point annually regardless of when each tenancy started. The first Monday in April is the most common date for a rent change. This is important in minimising the costs of administration and financial planning for the organisation within the context of tightly regulated rents. It is also anticipated by the DWP in the administration of Universal

Credit. This can be done legally within the statutory s13 rent review mechanism, even though the increase is within a year of the start of the tenancy for some tenants, provided that the tenancy agreement contains an 'ouster clause' setting aside the statutory mechanism for the purposes of the first increase. This also means that the housing association complies with the Rent Standard.

If it were to be made unlawful to increase rent more than once a year, this would mean rents would have to be increased individually at different times throughout the year on the anniversary of each tenancy start. This would create a huge administrative burden on social landlords, many of which have a large housing stock (over a hundred thousand homes) and change rents in bulk, and work with systems that operate in this way. However, this would also be difficult for smaller providers too who do not have the administrative capacity to deal with rent increases throughout the year. Housing associations would have to change their systems entirely and potentially hire new staff.

The impact of managing multiple rent increase dates would raise costs for social landlords, affecting the viability of housing associations and could ultimately affect services for tenants and availability of social housing supply. This would affect 2,414,000 housing association households. Moreover, local authorities administering housing benefit will find it significantly more difficult to deal with landlords who issue rents increases on different dates.

If new tenants' rents could not be increased at the same time as existing tenants (because of landlords not being allowed to increase the rent within the first year), it would never be possible to bring their rent in line with other tenants' rent, even if there were increases the following year. This would "bake in" inequitable differences in rent levels between tenants. Likewise, not being able to increase the rent in line with others would mean that property would accrue below formula rent – which would mean a "baked-in" underperformance of that property. This would create losses for social landlords, which would mean they would have less to invest in services for tenants and in new housing for people in housing need.

Even if it were still possible to increase rents within the year, the proposed change to notice periods would impact overall processes and procedures, timing of budget and business plan cycles and board involvement in approving the rent changes. Housing association rent increases are calculated based on the September Consumer Price Index figures, which are released in mid-October. Increasing the required notice period for rent changes would squeeze the period between approving the annual

budget and needing to notify tenants. Social landlords undertake impact assessments on any increase. There may be less time for these assessments to take place. Alternatively, it could mean approving a budget earlier, with the risk of greater uncertainty. In supported housing, rents are reviewed and agreed by housing benefit departments, and giving two months' notice of the change would be impractical.

The proposals around changes to rent are of great concern in terms of impact on housing associations. We are concerned that the proposed changes could adversely affect the viability of social housing providers, and strongly recommend specific consideration for social housing.

We propose amending Section 13 of the Housing Act 1988 to say that the tenancy agreement may specify a date within one year of the commencement of the tenancy on which the first rent increase will take place, but that otherwise an increase may not take place within 12 months of the start of the tenancy or the previous increase (subject to continuing to allowing an increase after 52 weeks rather than a full year in accordance with the existing formula). We advise against mandating two-month notices.

3. Will the proposals result in more disputes ending up in the courts? If so, will the proposals for speeding up the courts service suffice?

Repealing Section 21 means that landlords will only be able to end an assured tenancy if at least one ground for possession is demonstrated in court. This will inevitably mean more cases reaching court and requiring a hearing. Steps will need to be taken to ensure courts have the capacity to deal with the additional requirements.

We have also heard evidence that section 21 notices may be used because of the time it takes courts to process cases. This will mean more cases coming to court that would previously not have reached court.

The recognition of antisocial behaviour and temporary accommodation specifically in the reasons for improving how courts deal with possession is welcome, because of the risks to residents and housing supply. There are already significant delays in the courts, exacerbated by the pandemic, with negative effects on other residents in cases of antisocial behaviour. We have also heard reports of a lack of consistency

between the approaches of judges and time taken, and courts being difficult to access. The government should ensure more investment goes into the court system to mitigate the impact of these proposals. This would reduce waiting times and could allow for more guidance for the judiciary on social housing.

For social landlords that have not previously used assured tenancies (as they mainly provide supported housing), there will need to be support for them to adjust to taking possession cases to court. There will be increased costs for landlords who have not previously had to use the court process.

4. What impact, if any, will the reforms have on the supply of homes in the private rented sector?

Superior leases

As housing associations aspire to meet the support needs of as many people as possible, as well as using their own stock, they have entered into short-term leases with private landlords. Within these frameworks, tenants are often offered assured shorthold tenancies the housing association doesn't own the property. Section 21 may be used to terminate the tenancy as the end of the lease approaches. This is to ensure that the landlord is not in breach of lease obligations to a superior landlord.

We were concerned about the potential impact of changes to the private rented sector on the supply of supported housing provided in leased properties. Without specific legislative safeguards, private landlords could perceive the reform as negatively affecting their business and terminate leases ahead of the reforms taking effect.

We recommended a specific legislative solution, such as a no-fault ground, linked to the ending of superior leases and sub tenancies under those leases.

The government has acknowledged this and proposed to introduce a mandatory ground that will allow landlords to regain possession when a contractual lease is ending. "To avoid misuse of this ground", the government has proposed only to allow private registered providers of social housing, providers of supported accommodation, and specific agricultural businesses to use it.

We are pleased to see addition of this ground. However, the same issues around definition of “providers of supported accommodation” as raised above would apply. We would prefer a ground that is available to “charities or community-benefit bodies”, as we proposed for the “supported accommodation ground”, as well as Private Registered Providers of Social Housing and housing associations in the meaning of the Housing Associations Act 1985. There could also be situations where superior leases are used between one charitable company and another.

Transition period

The government proposes to implement the new system in two stages. It proposes to provide at least six months’ notice of the first implementation date, with the specific timing dependent on Royal Assent.

A transition period would avoid a cut-off date that may have the unintended consequence of private landlords offering leases looking to evict their tenants before the new ground comes into play. This would protect those that already have a tenure.

After the first implementation date, any new tenancies will be governed by the new system. Between the first and second implementation dates, pre-existing tenancies will continue as now, with Section 21 able to be used in pre-existing periodic tenancies and as fixed terms end. If neither party serves notice as a fixed term ends, it will automatically move to the new tenancy system.

The government “want[s] to avoid a prolonged two-tier tenancy system”, so will extend the reforms to all existing assured and assured shorthold tenancies. It will have a second implementation date, after which all remaining assured shorthold tenancies and assured tenancies will move to the new system. The government will allow at least 12 months between the first implementation date and the second.

This means that the government intends to time-limit the use of Section 21 for pre-existing tenancies. Our members stressed that any ground relating to superior leases should cover tenancies in buildings where the lease was already in existence prior to the legislation coming into force. This is because housing providers would have entered in good faith into an agreement on the assumption that they would have been able to give vacant possession. An automatic transfer of existing tenancies to the new system would mean this were possible.

The government should not make tenancy changes contingent on the issuing of new tenancies by landlords: some landlords will not be able to do it or not do it, and even if they do, some tenants will refuse to sign or may be unable to sign, for example if their capacity has changed. Making tenancy changes contingent on the issuing of new tenancies would have the effect of creating the two-tier tenancy system that the government wants to avoid.

Furthermore, even if this were not true, requiring new tenancy agreements to be issued to all tenants would represent a huge administrative burden on social landlords, affecting service delivery and viability.

We are also concerned about the administrative burden on social landlords if they were required to issue notices to tenants informing them of the change to their tenancy agreement, even if entirely new tenancy agreements were not required.

Landlords may need support, guidance and potentially access to funding in order to help them through the transition, including for training (additional) staff and changing their systems. Tenants will need clear communication on their rights, the reasons why the changes are being made, and the impact on them. We look forward to working further with the government on this.