

Frontline Network response to: A new deal for renting: resetting the balance of rights and responsibilities between landlords and tenants

This response considers the proposals from the perspective of frontline homelessness workers, primarily based in Coventry.

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Rent arrears

Section 21 “no fault” evictions are often quoted as one of the top three reasons for a tenancy ending, especially in the context of approaches to Local Authority homelessness services.

Frontline workers believe the use of S21 often hides other factors. Our experience of clients accessing homelessness support shows that tenants receiving a S21 notice often have rent arrears, which might instead be dealt with under Section 8 grounds. Information from landlords such as that from the National Landlords Association supports the fact that S21 is often used when tenants have arrears, because landlords feel that the S8 process is too time consuming compared with the relative simplicity of S21.

We welcome the proposals to redirect claims for rent arrears to the S8 process. This would provide more clarity about the reasons for eviction, give the courts discretion over claims for possession, and give tenants the ability to defend claims.

S8 processes should be clearly defined, with supporting court processes improved and properly resourced to ensure S8 can be used as intended. It may be difficult to estimate future demand, due to the lack of information about how many S21 evictions could have followed the S8 process for rent arrears – better recording of this information through homelessness services would be helpful.

We support the existing threshold of two months’ rent arrears being retained as the trigger for possession action. We would not support reducing this threshold, especially in light of the built-in waiting period for Universal Credit, which can put tenants into five weeks’ arrears upon application.

We feel the two-week notice seeking possession could be insufficient notice for the tenant. Although there could be a further wait before court proceedings took place, this is a large reduction in notice from the current two months under S21 processes and we would prefer tenants to have longer notice.

Other reasons for possession

We appreciate the need for landlords to have a route to regain possession for other reasons, eg when wishing to move into a property themselves, and we broadly support the extension of this to include family members. Advisers did note examples of S21 notices quoting a landlord’s wish to sell,

where the property was instead put back on the rental market at a higher rent, so we welcome the proposals to give the courts discretion over these claims to ensure they are made in good faith.

We welcome more flexibility to allow tenancies to continue when a perpetrator of domestic violence is removed from a tenancy, if this is safe and in line with the wishes of the person who experienced the violence.

Homelessness and Homelessness Reduction Act duties

We would ask for careful consideration of any changes that might be required to homelessness legislation, including Homelessness Reduction Act duties.

Local Authorities currently have specific duties to eligible tenants in receipt of a valid S21 notice. References to S21 evictions within homelessness legislation may need expanding, to ensure LAs still have a duty to tenants facing eviction under historical tenancies open to S21 evictions, and also those subject to newly-amended S8 routes.

The proposal to allow a possession claim for rent arrears with only two weeks' notice would give tenants very little warning of court action. This would significantly reduce the chances of early LA intervention under HRA duties, which currently apply to tenants from the receipt of a valid S21 notice, giving 56 days in which to prevent homelessness. It may be beneficial to require earlier communication between landlord and tenant, to ensure that the tenant is fully informed about any arrears that are accruing (where there have been problems with direct benefit payments that the tenant might not be aware of, for example) before the two weeks' notice is triggered. This could provide more time for the tenant to seek help from the LA homelessness service or other sources of advice. Homelessness legislation should make it clear that a tenant at risk of a S8 eviction, whether due to rent arrears or other grounds, should be able to make a homelessness approach.

Advisers noted that revised grounds could impact upon whether tenants were found "intentionally homeless". We would not want S8 processes to be interpreted automatically as intentional homelessness.

Moving evictions to S8 could increase the complexity of the process for tenants and LAs. To continue supporting homeless applicants effectively, LAs would need to give detailed and useful advice within a much compressed timescale, and would need well-resourced referral routes available to help clients navigate the court process, in larger numbers than previously. LAs may need to undertake more engagement with landlords, the courts, and other specialist organisations, increasing workloads on all parties.

Transferring evictions for arrears to the courts would provide the tenant with a chance to defend the claim, perhaps helping to reduce homelessness. However, it might also reduce the likelihood of landlords engaging with LA homelessness teams once court action was underway, as landlords would have already spent time and money progressing the claim and could perhaps be less willing to negotiate by this stage.

Relieving homelessness

We know that landlords are already reluctant to rent to tenants in receipt of benefits, and that some Buy to Let mortgages contain this restriction. Landlords are very aware of Universal Credit issues that further impact on rent, usually delaying the first payment and sometimes subsequent payments.

Landlords may state that removing S21 impairs their ability to gain possession quickly and cheaply, increasing their financial risk when renting to tenants in receipt of benefits.

Discussions with the NLA suggest that without an option for "no fault" evictions, landlords will impose even stricter checks on prospective tenants, and only rent to those with good credit scores and tenant history and who won't rely on UC to pay housing costs, to reduce the risk of having to evict for rent arrears.

This could make it more difficult for LAs to rehouse people in the private sector, leading to longer stays in temporary accommodation for those experiencing homelessness.

This position ought to be improved if courts were better resourced and S8 a quicker and more viable option for landlords, giving them assurances that they could evict if necessary.

Further points

We broadly support the proposal of transition periods between the S21 regime and new processes, although we noted this will cause some confusion for tenants, landlords, advice agencies and HRA services, due to the parallel operation of different regulations. Clear information should be produced for tenants and landlords covering their rights and responsibilities under each scenario.

Providers of supported accommodation expressed reservations about being able to manage short-term tenancies without S21 processes to end them and to trigger homelessness applications. We support the National Housing Federation's proposals to consult in detail with the sector about which tenancies may still require a S21 process.

Many aspects of the Tenants Fees act refer specifically to assured shorthold tenancies. This legislation should be reviewed to ensure that the majority of private sector tenants continue to enjoy these protections.