

Overcoming the Barriers to Longer Tenancies in the Private Rented Sector

LSE London response



Questions

You do not need to answer all the questions provided; please only respond to questions that are relevant to you.

About You

Q1: Are you responding (please tick one)

- ~~As a private individual?~~
- On behalf of an organisation? (Please give organisation's name below)

LSE London, London School of Economics

Q2: If you are an individual, in which capacity are you completing these questions? (please tick one)

- A tenant
- A landlord
- Other (please specify)

Q3: If you are an organisation, which of the following best describes you? Please leave blank if you are answering as an individual.

- ~~Landlord~~
- ~~Property agent~~
- ~~Letting agent~~
- ~~Local Authority~~
- ~~A sector representative body~~
- ~~Charity dealing with housing issues~~
- Other (please specify)

An academic and policy research group working on housing and urban issues based at the London School of Economics and Political Science.

Questions for Tenants:

Q4: Did you know that you could have a tenancy of greater than 6 or 12 months?

- ~~Yes~~
- ~~No~~

Q5: Have you been offered a tenancy of longer than 12 months?

- ~~Yes~~
- ~~No~~

Q6: If your landlord or agent offered you a tenancy of longer than 12 months would you accept it? Please explain

- Yes
- No

Questions for Landlords:

Q7: Have you ever offered a tenancy of longer than 12 months? Explain reasons

- Yes
- No

Q8: What would most encourage you to offer a longer tenancy? (Pick One)

- I do not want to offer longer tenancies
- Happy to offer them if a tenant wants one
- My mortgage provider conditions allowing it
- More efficient processes to remove a bad tenant or recover my property if needed
- Longer notice periods
- No restrictions around rent
- Financial incentive
- Other [Please explain]

Q9: Have you ever experienced difficulties repossessing a property? If yes, please include details of your experience including reference to time taken and cost.

- Yes
- No

Questions for all

Q10: Do you think that the protection for tenants from retaliatory eviction introduced in the Deregulation Act 2015 has been successful? Please explain

- Yes
- No
- Not aware of what these protections are

Retaliatory eviction typically occur at the lower end of the market where tenants as well as being low income face issues with language, education and are otherwise considered vulnerable. Whilst the 2015 Act went some way in trying to redress the balance it has not removed tenants' fear of eviction and thus their preparedness to complain about rents, quality and other problems where appropriate still remains limited, In particular it has not gone far enough at the lower end of the market where the problem is most acute.

Q11a: What do you consider to be the main benefits of a longer tenancy for landlords? (Assign a score out of 10 for the importance of that factor with 10 being the most important)

- Less risk of void periods for landlords (8)
- Tenants more likely to take care of property (2)
- Landlords save on costs of finding new tenants (8)
- Other (8)

The question is broader than savings on loss of rent and the costs of finding a new tenant (and the uncertainties associated with new tenants) but covers a wide range of transactions costs including additional fees, maintenance and equipment.

Q11b: What do you consider to be the main benefits of a longer tenancy for tenants? (Assign a score out of 10 for the importance of that factor with 10 being the most important)

- Greater security for tenants (8)
- Tenants saving money as they do not have to sign new tenancies or renew so frequently (5)
- Tenants MAY* have greater assurance they can afford any rent increase (5)
- Tenants more empowered to challenge poor practice (3)
- Other (Please Explain)(4)

Other: Tenants more likely to be able to integrate with their local community and build networks of support.

MAY* this depends on what it is in the regulatory framework – the rent increases within the contract period are not necessarily certain under all possibilities

A core issue here is that tenants are not homogeneous – many are looking for shorter tenancies – e.g. students but also many others do not want a longer term – so all depends on whether there are costs to the tenant and indeed the landlord from setting a longer but specified term. There appears to be no evidence as to whether changing the rules like this would change rents.

Q12: Do you consider that there are any further benefits of longer tenancies that are not covered in question 11? Please explain.

Yes, see above.

Most importantly changing the length of tenancy will change the overall culture so that even those who do not particularly favour extension may benefit from a more stable sector. But (i) need to look at costs – partly covered by q13 below and (ii) also to compare to indefinite tenancies.

Q13: What do you consider to be the main barriers to landlords offering longer term tenancies?

- ~~Tenants do not want them~~
- Landlords do not want to offer them
- ~~Landlords concerned about void periods~~
- Time taken to gain possession of property
- ~~Agents' advice~~
- Landlords want to retain ability to increase rent
- Mortgage conditions
- Other [please list]

The suggested answers do not really capture the more nuanced views of landlords and in particular the differences between larger landlords (who can deal more effectively with risk and the smaller landlord who if they get a bad tenant will be faced with a much larger problem.

Equally it isn't the time taken to gain possession as such but what might happen over the whole period of problems – starting from rent arrears followed by not paying rent during the eviction process and damage to the property at its worst.

However it is almost certainly the lack of a high quality enforcement procedure that presents the greatest barrier.

Mortgage conditions have been a problem and still are for large numbers of those with older mortgages.

The question re rent increases depends on exactly what the terms and conditions of a longer lease are – can't answer it in general.

A New Framework

Our suggested longer term tenancy model is a three year tenancy with a six month break clause. The main components would be:

- a. A three year tenancy but with an opportunity for landlord and tenant to leave the agreement after the initial six months if dissatisfied. If both landlord and tenant are happy, the tenancy would continue for a further two and a half years.
- b. Following the six month break clause, the tenant would be able to leave the tenancy by providing a minimum of two months' notice in writing.
- c. Landlords can recover their property during the fixed term if they have reasonable grounds. These grounds would be in accordance with the existing grounds in Schedule 2 of the Housing Act 1988 and would include antisocial behaviour and the tenant not paying the rent. Landlords must give the tenant notice (which would follow the notice set out in section 8 of the Housing Act 1988 for the ground or grounds used). Additionally, there would be grounds which covered landlords selling the property, as is possible in the current model tenancy agreement, or moving into it themselves. These grounds would require the landlord to provide at least two months or 8 weeks notice in writing.
- d. Rents can only increase once per year at whatever rate the landlord and tenant agree but the landlord must be absolutely clear about how rents will increase when advertising the property. Any agreement on rent should be detailed in the tenancy agreement.
- e. Exemptions could be put in place for tenancies which could not realistically last for three years, for example, accommodation let to students or holiday lets.

Q14: Do you think that a three year tenancy with a six month break clause as described above is workable? Please explain

- Yes
- No

In principle it is workable and many of the elements appear sensible – especially in a well-working market where relative power is fairly even. But it may not be the best approach and in particular could result in 6 months tenancies becoming the norm for some groups of people. So the answer is no.

For those landlords who might normally raise rents excessively (however that may be defined), the 6-month break clause may create a de-facto tenancy whereby the break serves as a way of enabling landlords to go ahead with large rent rises through the churn of tenants. It is unlikely that this would occur in the better end of the sector where landlords operate to maintain their revenue stream at a steady rate. It is however very likely that this could happen at the lower more questionable end of the market where some of the greatest problems exist.

The 6-month break will discourage more vulnerable tenants from challenging poor housing quality. With a 6-month break clause these tenants could effectively need to put up with substandard housing for 6 months.

There are pros and cons to having a probationary period – though there appears to be little evidence of how it has worked in the social sector where the landlord maintains the tenancy if the tenant has kept to the rules. There are clear problems with the Scottish system where tenants can give notice immediately but equally 6 months has the problems set out above. At the least there should be an analysis of what evidence there is on the value of the break clause and a question asked about whether a year might be better.

The retention of Section 21 -no fault eviction (in this case at 6 months and after 3 years) may also not build the continuity that this policy aims to achieve.

A major area of concern is the right to evict if the landlord wishes to sell the property even to another landlord. This mirrors the Scotland legislation where there is as yet little evidence and in Ireland where there were fears it would result in those landlords who have lower than market rents evicting in order to sell with vacant possession. Ideally one would wish to develop a framework where for the tenanted value is close to the vacant possession value. So anything that can be done to facilitate this would be desirable. At the moment it is possibly the practicable answer. Again the biggest issue is that it is not obvious that any relevant evidence has been looked at.

~~Q15 If you are a landlord would you be willing to offer the model of longer tenancy described above? If you are a tenant would the model of longer tenancy described above be attractive to you?~~

- Yes (landlord responding)
- No (landlord responding)
- Yes (tenant responding)
- No (tenant responding)

Q16: How long do you think an initial fixed term tenancy agreement should last (not considering any break clauses or notice periods)? Please explain

- 6 months
- 12 months
- 2 years
- 3 years
- 5 years
- No limit set
- Other

Most countries that aim to stabilise rents have unlimited tenancies and Scotland started from a 3 year term but moved to unlimited before legislating. The main reason for choosing 3 years seems to be around the Build to Rent conditions. Both depend on good quality enforcement procedures. The only cost to unlimited is how one sets the rent within the contract – and this is a real issue. But the benefits are greater stability and removes the no fault eviction issue.

Q17: What do you think is an appropriate length of time for a break clause?

- Less than 3 months
- 3 months
- 6 months
- 12 months
- Other

We have looked at this issue under Q14 – there are costs and benefits but 1 year at least means that there isn't a cliff edge earlier than now.

Q18: How much notice should landlords be required to give to tenants when they want to recover their property to sell or move into?

- Less than 1 month
- 1 month or 4 weeks
- 6 weeks
- 2 months or 8 weeks
- 3 months or 12 weeks
- 6 months or 24 weeks
- Longer than 6 months

Q19: How much notice should tenants be required to give to their landlords when

they want to leave their tenancy?

- ~~Less than 1 month~~
- ~~1 month or 4 weeks~~
- ~~6 weeks~~
- 2 months or 8 weeks
- ~~3 months or 12 weeks~~
- ~~6 months or 24 weeks~~
- ~~Longer than 6 months~~

Q20: Do you think that the grounds for a landlord recovering their property during the fixed term under any longer term tenancy agreement should mirror those in Schedule 2 of the Housing Act 1988, with the addition of the right for the landlord to recover their property when they wish to move in or sell it?

- Yes
- ~~No~~

Q21: Do you think that there should be any restrictions on how often and by what level the rent should be increased in a longer tenancy agreement? And if so what is the maximum that these restrictions should be? (Tick up to two)

- Yes – limited to once a year
- ~~Yes, rent increases should be limited to once per year~~
- ~~Yes – rent increases should be limited to once every two years~~
- ~~Yes – rent increases should be limited in frequency but not in the amount that can be charged~~
- Yes – any rent increases should be linked with inflation measures (e.g. Consumer Price Index (CPI))
- ~~Yes – any rent increases should be linked to local market averages~~
- ~~No – rent increases should not be limited~~
- ~~Other – please explain~~

Q22: What do you think is the best way to ensure that landlords offer longer term tenancies to those that want them or need them? Please explain.

- Change the law to require all landlords to offer longer tenancies
- ~~Change the law to require all landlords to offer longer tenancies as a default with an~~

- ~~option to choose a shorter term~~
- ~~Financial incentives~~
- ~~Voluntary measures such as a kitemark on longer term properties or an updated version of the existing model tenancy agreement~~
- ~~Other (please explain)~~

The evidence is currently clear that landlords do not generally wish to offer longer tenancies so unless it is made compulsory it is likely to have a slow take up (though default tenure might speed things up) There may be a case for a clear voluntary but strongly advised approach bringing with the government the major landlord organisations and getting them to advise acceptance in normal circumstances. This could be followed by a move towards legislating to require a longer tenancy once there has been some clear evaluation of outcomes.

Q23: Which types of tenancy should be exempted from the proposed system?

- Purpose Built Student Accommodation
- All Student Accommodation
- Holiday Lets
- ~~Tenancies for those with visas ending in the next 3 years~~
- ~~Tenancies for those with short term work contracts~~
- ~~Other (Please explain)~~

Q24: What do you think would be the benefits and disadvantages of changing the law to require all landlords to offer the longer term tenancy model?

The disadvantage would be the likelihood that some landlords would withdraw their properties from the market. However the advantage would be that these properties could well be acquired by more professional landlords who are in the business for the long term.

There are however significant risks both because of landlords choosing the easy life and excluding more risky potential tenants and because we have no idea what the supply response might be. A two stage approach could be more appropriate based on voluntary move towards unlimited term tenancies. BUT outcomes under any scheme will depend on effective enforcement.

Q25: What, if any, financial incentive could encourage longer tenancies? Please explain

Obviously payment will always produce some result – but there might be a great deal of deadweight loss. What would be better would be to produce a more coherent tax system for landlords which wasn't so distortionary.

Q26: If there were a financial incentive to offering longer tenancies, what conditions should a landlord have to comply with to be eligible? (Tick all that apply)

- Meet all legal requirements
- Agree to certain restrictions about frequency and level of any rent increases
- Comply with a minimum property standards, including gas safety checks and tenancy deposit protection
- Other (please explain)

Clearly, they should meet the legal requirements and point 3 is also already a legal requirement. Point 2 is the only thing on this list that is new. This list is one reason for not providing financial incentives but a proper flat playing field in which regulation is enforced.

Q27: What other options to promote longer tenancies should be considered?

Most importantly a proper and transparent enforcement system that works for both sides.

Anything that would increase professional landlords who are looking for a steady stream of income rather than short term profit.

A more coherent tax system.

Q28: Do you consider that any of the above would impact on people who share a protected characteristic, as defined under the Equalities Act 2010, differently from people who do not share it? If yes, please provide details.

- Yes
- No

Q29: Do you have any other comments that have not been captured elsewhere in this consultation?

For tenants there will be some greater security around rent rises and longer secure tenancies (6mo +2.5 years). This is largely positive, except for the points made above, however there are some caveats to this.

Agreed rates of yearly rent rises will be likely to contribute to yearly rent rises. Whilst it is positive that these will not be shocking or exorbitant it is more likely that they will be regular and yearly. This is acknowledged in paragraph 48 of the document where it is indicated that 68% of landlords do not currently raise rents on a yearly basis with sitting tenants. Evidence from Germany reinforces this concern. It is likely that an inflation based adjustment would be better than an 'agreed' increase before the start of the contract.

One rather odd omission is any discussion of Assured Tenancies which have many of the attributes that we are looking for and which have been in place since 1980. A relevant issue is why they are hardly used in the PRS given the availability of Assured Shorthold Tenancies as are some of the analyses in the 1980s.

The consultation document takes a very simplistic view which appears to treat landlords and tenants as almost homogeneous groups. This is a massive simplification which reflects the lack of both an underlying framework for analysis and an evidence base for the suggested approach and possible alternatives.

It might be helpful if the policy approach was reconsidered taking a geographic focus that recognises the difference in the propensity to enact extreme rent rises /no-fault evictions across the country. In order to do this more accurate data would need to be secured.

Sadly, the consultation document does not address the problems associated with tenants in receipt of Housing Benefit. A recent study by Shelter and the NHF indicate that at least 1 in 10 high street agencies will not rent to tenants in receipt of housing benefit.

Finally it would be far more helpful if the approach taken recognised more clearly that this is not a zero sum game. If we get it wrong both sides will suffer and if we get it right it could really be a win-win environment. Unusually this is an area where it might be better to move a little slowly so that there is time for appropriate data and research findings can be analysed and their results taken into account as well as further discussion with the major stakeholders to work towards a greater understanding among the different groups and a willingness to move forward towards a more coherent system.

A report that we have completed for the RLA* reflects a belief that there is considerable good will among landlords for change but that whatever is enacted should be acceptable across political parties.

*Assessing the evidence on Rent Control from an International Perspective
Christine Whitehead and Peter Williams, London, LSE London August 2018