

From ideas to reality: longer term tenancies and rent stabilisation – principles and practical considerations

A report for the RLA

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Contents

Executive Summary.....	3
1. Introduction	4
Political progress.....	5
The Current Position	5
A good tenancy: Principles.....	6
A good tenancy: Practical considerations.....	7
Longer term tenancies	7
Rent stabilisation	7
Enforcement and exemptions.....	7
Our Approach.....	7
2. Core questions that need to be addressed.....	9
Assured shorthold tenancies	9
Rent liability and notice periods	10
Section 21 notice.....	10
Non-renewal	11
Rent stabilisation	11
Enforcement and exceptions	12
Initial Conclusions	12
3. Findings on security and rents from other countries	14
Germany: an example of good practice?.....	14
Ireland and Scotland: two countries with significant moves towards greater regulation:	15
Ireland	15
Scotland.....	16
New Zealand and Spain: countries looking to increase regulation.....	17
New Zealand	17
Spain.....	18
France: an example of uncertainty.	18
United States: localised controls	19
Postscript : London in an international context.....	19
Conclusions from the international evidence	19
4. Practical considerations	21
(a): Are there financial trade-off to be made between security and rent for tenants and landlords?	21

(b): What is the rationale for a fixed term contract as compared to an indefinite tenancy?	21
(c): The case for rent stabilisation.....	23
(d): What is the relationship between security of tenure, allowable exceptions and enforcement?	23
5. Conclusions	25
6. References	28

Executive Summary

- This report explores the complex and intertwined issues of longer term tenancies and rent stabilisation in the private rented sector (PRS) in England.
- It has been written at a time when the political focus on the PRS has intensified, reflecting the rapid growth and significance of this sector over the past two decades.
- There is now pressure to move on from the Assured Shorthold tenancy (ASTs) and the Section 21 No Fault eviction clause both of which have been bedrocks supporting the expansion of this sector over the last three decades.
- However, as a range of commentators make clear, piecemeal reforms run the risk of making the situation worse if related issues such as effective enforcement through housing courts and clarity around rent determination are not addressed.
- The report begins by setting out a number of principles around what makes a good tenancy and then moves on to the practical considerations behind them.
- Specific consideration is given to ASTs, rent liability and notice periods, Section 21 notices, non-renewal, rent stabilisation and enforcement and exceptions
- The report explores the evidence on security and rents in Germany, Ireland, Scotland, New Zealand, Spain, France and the USA noting that the long term trend towards deregulation has ended and that some general patterns are evident in the packages of reforms now being brought forward.
- The report drills down into the realities around longer term tenancies and rent stabilisation and the time it takes to get a good operational system in place plus of course the need to resource it and put in place effective enforcement. The intention is to make progress for the mainstream with a system that works for both sides and frees up time and capacity to deal with rogue elements.
- The PRS is one sector in name only but in reality is very varied. The authors conclude that the 2005 Law Commission report on *Renting Homes* still provides a good basis for taking the agenda forward.
- They also argue that longer term or probably indefinite tenancies and rent stabilisation could bring greater stability and order. The arguments for both are strong but of course there would be much detail to be settled.
- The report argues there is a case for putting incentives in place to secure the support of landlords. But all of this has to be underpinned by strong and effective enforcement and not least through specialist courts – that is a cornerstone which must be delivered by government.
- The challenge for government is now fully to engage with this agenda and to move forward with pace - and back the outcome with adequate funding so that local authorities and others have the capacity to deliver a modern PRS that works for both landlords and tenants across the country. It will save money in the longer run.

1. Introduction

Our starting point is the recognition that the private rented sector (PRS) is now a mainstream tenure accommodating more households than the social rented sector. The traditional view that the PRS should be a suitable home mainly for younger and mobile households who are more interested in ease of access and low rents is out of date. There is a widespread view that the sector now needs to provide longer term secure homes suitable for all stages in a housing career, not least because the opportunities to progress on the housing ladder to home ownership are now much more limited. As the evidence suggests (see for example, Rugg and Rhodes, 2018; Simcock, 2018) the duration of tenancies in the PRS is growing across age groups, but there are many related issues which make the system unsuitable for many of those currently in the sector.

It is not only the household mix that is changing but also the make-up of landlords. The latest landlords' survey (MHCLG, 2019) suggests that the proportion of landlords owning only one property has fallen dramatically, while landlords owning 5 plus properties now accounts for almost half of the sector.¹ It also suggests that the sector has become more stable with most landlords likely to remain in the sector for significant periods. As a result, what landlords on average want may be expected to change, moving more towards an emphasis on income predictability and rental returns rather than other shorter term objectives.

To date, the debate on how our current private rental market needs to change has mainly concentrated on the inadequacies of the standard contract, the Assured Shorthold Tenancy (AST), which made up 81% of tenancies in England in 2014/15. The AST has three main attributes:

- a minimum length of 6 months;
- market determined rent; and
- the possibility of no fault eviction (under Section 21 of the Housing Act 1988) at the end of the period (which in practice is usually 1 year).

Although large proportions of tenancies are renewed, such a regime is seen to give the tenant little or no security and to reduce their capacity to enforce their rights to adequate standards². Yet it is clearly generally in the interest of the landlord to maintain tenancies into the longer term as long as the tenant is fully meeting his/her contractual obligations. The objective therefore is surely to develop a regulatory framework which works well for the good landlord and for the good tenant, while at the same time minimising the costs to either party when problems arise.

¹ The sample base for the latest landlords survey is different from earlier government surveys so direct comparisons are difficult. The sample based is likely to have concentrated more on the better part of the market and the confidence limits suggest that somewhere between 56% and 71% of the market was covered.

² The amended Section 21 requirements in 2015 mean that landlords can no longer just write a letter telling tenants he/she wants the property back. A Section 21 notice on a new form, known as the Form 6A Notice, must be used. In addition to prevent "revenge" evictions a Section 21 notice cannot be used if:

- The tenant has already made a written complaint about the property;
- The tenant has reported an issue and has not had an adequate response prior to being served with the Section 21 notice. However Shelter research (2018b) suggests these changes introduced in the Deregulation Act 2015 have been ineffective.

Political progress

It is in this context that government consulted on the barriers to longer term tenancies with the aim of providing greater certainty and a more secure environment for both landlords and tenants (MHCLG 2018). The consultation suggested moving to a three year tenancy with a 6 month probation period (as well as changes to notice periods) but also asked about alternative strategies to achieve similar aims. The consultation was completed in August 2018. Smaller landlords were generally sceptical although a significant minority were prepared to work with the government's proposals (Simcox, 2018). Other respondents called for indefinite tenancies as the better approach. It was also recognised that whatever was implemented required complementary change to enforcement procedures. In this context the government sought responses to the possibility of introducing a specialist Housing Court on which consultation closed in January 2019 (MHCLG, 2018a).

Thereafter the government moved forward specifically to address the issue of Section 21 'no fault' eviction. It announced that "Private landlords will no longer be able to evict tenants from their homes at short notice and without good reason". This announcement was followed in July by the launch of a consultation process with submissions which closed in October (MHCLG, 2019). The way forward was seen to be the abolition of section 21 of the Housing Act 1988 so that the core contract would be a secure tenancy with either a fixed term or a contractual periodic tenancy. Additional reasons for eviction would be included (Wilson, 2019). Consultees were, not surprisingly split. Broadly, tenant organisations supported the abolition of section 21 while landlord bodies oppose it. The Residential Landlords Association (RLA) in particular called for a reformed and improved court system, together with improvements to the grounds for possession, to be introduced before section 21 is amended or abolished (Clay, N, 2019). Other respondents continued to press for indefinite tenancies.

The Current Position

Before the results of the consultation could be published the December election was called. In its Manifesto the government reiterated its intention to abolish 'no fault' eviction but the details must wait for the new Parliament. Equally the results of the consultation on a specialist housing court are yet to be published.

What is clear is that an initiative that mainly concentrates on the length of contract addresses only one element of what makes a good tenancy. To move forward we should address all the necessary attributes together, including in particular clarification of how rents are to be determined within the term of the tenancy and ensuring an efficient and low cost means of enforcing both landlord and tenant rights and responsibilities.

Our report therefore takes a more holistic approach, reviewing both the principles and practical considerations behind ensuring good tenancies; comparing these with what is currently being provided in the private rented sector and with alternative approaches which might address identified problems. Finally, it seeks to set out a pathway towards achieving a better sector for all.

All this must also be set in the context of substantial changes that have taken place over the last few years both in the operating environment for landlords and tenants and in the wider social and economic context. For landlords this includes the tightening of regulation around the PRS and the reduced tax reliefs now faced by landlords (Jones et al, 2018) as well as increasing constraints on

housing benefit payments (which also impact on tenant choice). This has created a more negative environment in which any debate on changes to rent determination and security of tenure must take place. Capital Economics (2017) for instance estimated that “on aggregate ... the average landlord will raise rents by an additional 7.2 percentage points by 2020/21 reflecting the changes. It suggested that deleveraging in the market was likely to sum to around 46,000 buy-to-let properties being sold off”. Were it to be the case that rents could not rise as projected returns would fall and more landlords would leave. At the same time and looking wider as an interim report from the IPPR late last year suggested there are four major contextual threats to stability in provision in the private rented sector: the welfare system; changes in the taxation system; the legal system and importantly potential rises in interest rates (Baxter and Murphy, 2018).

A good tenancy: Principles

Under the category of principles, the starting point has to be what a well operating private rented sector would look like: basically it would be where a willing, well-informed buyer –the tenant - can purchase from a willing seller – the landlord - the mix of attributes they want and supply can adjust rapidly to changes in demand, so that prices reflect costs.

Obviously the private rented sector does not meet these perfect market criteria, at the very least because the housing product is a bundle of attributes where people cannot find every possible mix they might want and may well have little understanding of what they are getting before they sign up. In addition, there are significant problems of relative power. We tend to simplify these issues and identify three main elements where problems and regulation are concentrated: rents; security of tenure; and housing standards. In addition, government takes their own view about socially acceptable minimum standards not just with respect to dwelling attributes but also on affordability – so that income support for lower income tenants is also of relevance.

Importantly rents, security and standards are not stand alone issues – in principle at least they are strongly interlinked. Of particular importance here is the assumption made in much of the discussion that there is a financial trade-off to be made between security and rent for both tenants and landlords –in that it is often argued that more security justifies charging higher rents because of higher risks to landlords and higher value to tenants, while limited security implies lower risk and poorer conditions. This in turns leads to speculation that security of tenure may be of little value to a significant proportion of tenants who are only interested in the short term (RLA evidence suggests 37% of tenants do not want them), while many landlords – especially those with only a few properties – may feel that it is too risky to accept longer or indefinite terms without significantly higher returns.

Many of the same complexities relate to the relationship between rents and standards - while in principle it should be possible for the tenant implicitly to price each element and choose the preferred mix, lack of information, limited options and market power make the relationship highly opaque.

These issues are inherently linked to the question of exceptions and enforcement - risks can be reduced if there is a clear means of ensuring that contractual terms are met by both sides of the contract and changes in individual circumstances can be addressed. A strong belief that this is not the case is one of the core reasons why our current system is seen as inadequate.

Given the range and diversity of landlord and tenant objectives there is a fundamental question as to whether a single form of contract can work to meet the needs of wide ranges of different tenants and landlords. In a free market, it would be expected that a range of tenancy lengths would be on offer at different rents, so that potential tenants could choose the mix of rent and length of tenancy they wanted. Regulation has reduced such segmentation – eg by resulting in the AST becoming the norm but equally segmentation of the market adds additional complexities to ensuring effective regulation into the future.

A good tenancy: Practical considerations

Our focus here is on three main areas – longer term tenancies, rent stabilisation and enforcement/exceptions issues. In these contexts, we pose a number of questions:

Longer term tenancies

- What length should the tenancy be?
- What safeguards are necessary for each party?
- What probable tenant demand is there? Clearly there are subgroups and therefore potentially sub-markets – but can they be satisfied within the same framework.
- What landlord appetite is there to supply this demand? Again clearly there are submarket issues.
- What are the strengths and weaknesses of the different options in terms of practical implementation and the overall impact each might have on the market?

Rent stabilisation

- What different models might be used?
- What are the strengths and weaknesses of the different models?
- What issues might arise in implementation?
- How might this choice impact on landlord income and tenant affordability?

Enforcement and exemptions

- How can enforcement be ensured at low cost to both parties
- How can the problems of relative power be reduced?
- What exemptions should be allowed with respect to:
 - Length of tenancy
 - Rent stabilisation.

Our Approach

This is a short piece of work informed partly by our recent report and other RLA evidence as well as by a workshop chaired by Lord Kerslake on December 13th, 2018. Our objective is to provide informed commentary on likely outcomes and issues.

Our approach has been to undertake a rapid review of the evidence on the principles and practice and to provide an expert commentary based on these findings. We have discussed the issues with specialists in Ireland, Scotland, France and Germany who are grappling with these problems from different starting points as well as with Spain and New Zealand who are looking to move away from similar systems to our own. Contact has been made with relevant experts in all six countries.

2. Core questions that need to be addressed

As will be evident in this section the language of length of tenancies, security of tenure or rent stabilisation obscures the complexity of the issues nested within them. The recent exhaustive review of the state of the PRS undertaken by Rugg and Rhodes (2018) argues strongly that approaches to rental sector regulation have been piecemeal and not very productive as a consequence. They suggest (page 8);

Any change must encompass all relevant aspects of this tenure type including the initial tenancy length, rent liability during any fixed term, rent increases within the tenancy, notice period for the end of the tenancy, and 'no fault' eviction using s21 notices. Attempts to improve tenure security by altering just one or two of these elements are unlikely to be successful. Improvement in tenure security should acknowledge that both landlords and tenants see different elements of ASTs as being necessary to the mitigation of risk, particularly given dissatisfaction with forms of redress available through the court system.

Assured shorthold tenancies

In terms of policy development, the Rugg and Rhodes review reminds us that 81% of tenancies in 2014/15 were assured shorthold tenancies (ASTs), with only 4% as assured/regulated. Thirty six per cent of ASTs in 2015/16 had a 6 month term and 45% a 12 month term, implying that quite a number had been agreed with a longer term.

Evidence on what tenants would like suggests that there are considerable differences of opinion. The research by Rugg and Rhodes included four waves of an Ipsos MORI Omnibus survey in February 2018 which suggested that only 4% of tenants liked short term lets (rising to 8% for self-employed households). A survey by Citizens Advice found that a third of tenants wished that their tenancies were longer (Parker and Isaksen, 2017). Research by the National Landlords Association with tenants found that 40% of tenants wanted longer tenancies, but another 40% do not. More than 50% said they are happy with the tenancy length they were offered and 20% told the NLA that when they asked for a longer tenancy, they got it (NLA, 2018). None of these surveys asked about the costs involved. However, whatever the actual numbers were, it is clear that there are significant numbers of households who would prefer longer tenancies.

Rugg and Rhodes cite evidence that suggests that ASTs are getting longer – and as they note – without any policy intervention. In some part this is the impact of the expansion of the Build to Rent sector (BTR) which caters to a rather different market, albeit overlapping to a degree with the mainstream rental market. Even here however, in our earlier project, institutional landlords said that tenants often refused longer tenancies in part because they had had no direct experience of them.

In an RLA survey undertaken in 2018 (Simcock, 2018) almost half of the landlord respondents said they offered 6 or 12 months contracts because it was standard practice, but a third also said that bad experiences in the past were relevant to their decision. In this context, an AST gives landlords considerable comfort and protection and, as Rugg and Rhodes suggest, 'an AST can sometimes act as a shorter "probationary" tenancy' offering the easiest route to end a tenancy if needs be, while still holding out the possibility of the tenancy, if unproblematic, running longer'. It thus offers considerable flexibility alongside these protections.

Thus the evidence suggests that while there are significant proportions of tenants who would like longer tenancies, at least a large minority do not see them (of themselves) as an advantage. And many, especially smaller landlords see shorter term agreements as significantly reducing risks and providing evidence about the tenant which can be used to help inform judgements about continuation.

The most recent evidence, from the government's landlord survey (MHCLG, 2019), on preparedness to offer longer tenancies suggests that 40% of landlords were happy to offer tenancies of more than one year and a further 38% would do so if there were a break clause – something that could in part be addressed through a set of exceptions clarifying when a landlord could obtain possession. However, 70% stated that they would be happier to offer longer tenancies if it was made easier to remove poor tenants.

Rent liability and notice periods

While it is now quite common to argue for longer term fixed tenancies, we cannot ignore the question of rent liability which could go with such arrangements. Although tenants can leave a fixed term without notice they remain liable for the outstanding rent. Longer term tenancies could mean a bigger rent liability.

Landlords increasing rents to ease out tenants were cited in only 5% of cases as shown in the Omnibus Survey which formed part of the Rugg and Rhodes research. There were more general issues around the notice period – indeed some 41% of tenants surveyed thought that notice periods were possibly or actually too short to find alternative accommodation. The concept of the rapacious landlord is, on the evidence, only present in a small minority of cases. Indeed, many landlords opt to hold rents down in order to retain tenants and/or maintain good relations with them. The latest government sponsored landlords survey suggests that 70% of landlords did not raise the rent at renewal to the same tenant when agreeing their last extension (MHCLG, 2019).

However, problems are clearly more likely to occur for those with fewer options. The recent Housing, Communities and Local Government Select Committee report on the private rented sector focusses on the bottom of the private rented market as characterised by 800,000 homes with at least one Category 1 hazard (HCLG Select Committee, 2018) and it evidences many cases of abuse in terms of eviction notices and related issues.

Section 21 notice

Section 21 notice, i.e., being asked to leave at the end of the tenancy with no reason given, is accepted by many to be one of the most problematic aspects of the current system with commentators regarding enhanced security of tenure, and in particular the abolition of S.21 as a priority. Rugg and Rhodes highlight its use when the property does not meet mandatory licensing requirements/missing gas safety certificates/or EPCs suggesting that 'bad landlords' use section 21 to control tenant behaviour. This links back to the nature of ASTs and short term tenancies because, as the Select Committee among many others have argued, the tenant may be too scared to complain formally about the standard of the accommodation.

On the other hand, Shelter (2018b) has noted that, while Section 21 is the most common route used by landlords this is often only because they have no faith in court capacity or processes (only 25% of landlords had confidence in the court system). The RLA has suggested that it is often the case that landlords using Section 21 could potentially use Section 8 despite the difficulties it might pose (assuming the tenant has broken the terms of the tenancy) and that most tenancies are ended by tenants not landlords. Both the RLA and the National Landlords Association support reforms to section 8 and the development of a dedicated Housing Court. The debate pack prepared by the House of Commons Library (Bellis et al, 2018) provides a useful summary of evidence and views.

Non-renewal

The latest government landlords survey referred to earlier provides some useful evidence on how important non-renewal is as an issue, although not about the overall scale. They asked landlords whether they had had examples of non-renewal during the previous two years. Landlords reported that in 50% of cases the tenant did not want to renew; in another 25% the tenant had left before the end of the lease; 7% had asked a tenant to leave; another 7% had evicted a tenant; and only 4% simply did not renew.

Rent stabilisation

At the present time rents are set by the market and can be reset at market rates once a year within a tenancy. Alternatively, they can be raised each time a tenancy ends (eg, by a Section 21 notice after each six months). This provides very little certainty to the tenant about their costs into the longer term and can result in landlords pushing up rents further because of the costs resultant on the tenant of moving. The objective must be to find a way of getting greater certainty for the tenant at the same time as not disadvantaging the landlord.

In a report for Camden in 2014, Scanlon and Whitehead argue both economic principles and empirical evidence suggest that traditional rent **freezes** work badly, especially over the longer-term. They lead to immobility, poor quality housing in the sector and incentives for landlords to transfer to other tenures if possible. Almost all countries that have had such controls have either liberalised their systems completely (as in England) or limited them to rent increases within tenancies (often called rent stabilisation).

Their report highlighted the ways rent stabilisation schemes vary in their detail but generally aimed to provide greater certainty to both landlords and tenants within the period of the lease, while taking account of market pressures at the beginning of each tenancy. The objective is not therefore to hold down rents but rather to reflect longer-term trends. There are good reasons why landlords and tenants might be happy to agree to a form of rent stabilisation linked with longer-term tenancies.

The positive impact of such an approach could be that tenant turnover, with its many associated costs could be reduced, while at the same time landlord revenues would be more predictable. Institutional investors in particular could benefit from a system where initial rents are set by the market but increases within tenancies are index linked, as this would provide a relatively low risk and stable income flow that matches their liabilities. On the tenants' side, those who want longer-

term tenancies and predictable rents should find this type of contract attractive – although it has been argued that some tenants would end up paying more because of automatic increases.

However, not all landlords are looking simply at rent income. In the UK in particular, for many smaller landlords, capital gains are an essential part of the business model. Such landlords therefore require certainty of vacant possession. They cannot spread risk across a portfolio of properties, making it harder for them to accept a long-term commitment. In addition, those dependent on mortgage finance must obey their lenders' terms and conditions which may rule out longer term tenancies – although evidence to the Select Committee suggested this was now unusual³.

The most obvious lesson from the literature is that regulatory systems must address a range of other factors in addition to rents. These include security of tenure and procedures for eviction and sale, as well as standards and transactions costs. What works in one country with one set of institutional arrangements may well make things worse in another. We explore this further by looking at rent controls in Germany and other countries below.

Enforcement and exceptions

The discussion above makes it clear that the types of changes that are under discussion could only be effectively introduced if there was a system of enforcement which was accepted by both landlords and tenants and which could resolve disputes and uncertainties at reasonable cost. At the present time, as already noted a relatively small minority of landlords trust the Courts to do a good job; while much of the evidence put to the Select Committee stressed how unequal the system was from the point of view of more vulnerable tenants.

Initial Conclusions

There are a number of conclusions to be drawn from the discussion so far. First, there is considerable agreement, including not just pressure groups and independent analysts but also the government and major stakeholders that there is a need for reform. In part this is the result of changes in the make-up of both landlords and tenants as the sector becomes more mainstream. But it is also because some aspects of the current system work poorly.

Second, the three main areas of concern – length of tenancy, rent determination, and enforcement are tightly interlinked with one another – so addressing one element without the others cannot be the answer. Lengthening contracts must involve some mechanism for setting rents within the tenancy that does not negate the resultant security. Equally if landlords cannot evict bad tenants and tenants cannot bring bad landlords to book without fear, then the overall system cannot work. In this context it is clear that both bad landlords and bad tenants make up a very small proportion of the total sector. Having a well operating enforcement system will benefit not just those directly affected but everyone involved – in part because it would almost certainly reduce the need to use it.

³ Other limitations that mortgage lenders are said to impose include not allowing tenants on housing benefit, see for example Da Silva, M (2017). However, a UKF survey (2018) suggested that of 33 lender respondents 24 (comprising 80% of the BTL market) placed no restriction on tenants on benefits. Five (accounting for 10% of the market) allow tenants on benefits when certain conditions are met. Four lenders did not allow tenants on benefits to rent properties they lend on.

Third, problems are clearly concentrated in housing pressure areas and differentially affect lower income and vulnerable households. We therefore need to build a system which allows the sector overall to flourish but also recognises the particular needs of those tenants with fewer resources.

3. Findings on security and rents from other countries

The evidence in the 2014 Camden report we cite was based on six countries with widely differing regulatory frameworks, as well as more general European evidence. Three main messages emerged from that work:

- most countries had stronger regulations about rent rises within tenancies than the UK;
- in many countries there had been increasing pressures on private renting, especially since the financial crisis;
- and in these countries, whatever the basic level of regulation, there had often been political pressure to increase controls in the face of rising demand.

Since 2014, some of these political pressures to increase controls have been reflected in local regional and national legislation in a number of countries where private rental sectors have come under increasing pressure. We discuss some of the most important measures that have been implemented below. Other publication such as that published by the RLA itself in October 2019 cover additional countries and cities (Clay and Smith, 2019).

Germany: an example of good practice?

Germany, where nearly 50% of households rent privately, has often been seen “as the best exemplar of rent stabilisation”. However, partly because of its dominance within the country it is a very different sector to that found in the UK. Tenants generally have to make significant investment in their rented dwelling through bathroom and kitchen furniture and equipment, making it more obviously their home but also increasing the costs of moving. Rent increases within the tenancy are linked to specified indices. Initial rents may be higher than comparable properties to take account of future uncertainties. Security is indefinite but eviction procedures are relatively well defined. Importantly, general inflation in Germany has been very low and real house prices had been falling since the 1980s in many areas.

Germany has thus been a good example of both indefinite tenancies and rent stabilisation within these tenancies over a long period. However, within this framework it should be noted that tenants have to pay considerably higher costs when they move in – and also may face considerable difficulties in obtaining a tenancy. Rent stabilisation within the tenancy may also imply initial rents higher than comparable tenancies. There have also been exemptions – in particular that investment in energy efficiency enables significant rent rises. Even so it has clearly provided a much more secure system and appears to have an effective enforcement system – perhaps reflecting the fact that in such a large sector the majority of tenants and landlords are willing buyers and sellers.

However, since 2008, and indeed earlier in some cities (notably Munich), the situation had changed. Landlords have faced unexpected costs, particularly because of stricter energy efficiency requirements. The atmosphere in terms of eviction has become more toxic. Most importantly it has become increasingly difficult to access private rented accommodation in cities with buoyant markets. As a result, political pressure grew for stronger rent controls in major cities.

In 2015, the government introduced a new rent regime that limited the rents in new lease agreements for previously let properties. At the same time the allowable rent increase in existing tenancies - ie those where the tenant remains in occupation, was reduced from 20% to 15% in these areas. Rents on new tenancies – ie those where a new tenant is moving in - in tight housing markets

“must not exceed the local comparative rent by more than 10 per cent at the start of the lease agreement”. Newly built and comprehensively modernised properties are excluded from this regulation. While these rules pertain in what are known as “tight housing markets” they now apply in more than 300 cities and municipalities many of which have relatively little pressure.

Early evidence on the operation of these new regulations was that housing markets in major cities had not shown any noticeable signs of easing and that there were problems around the definition of tight housing markets and around the evidence on comparator rents; and indeed whether the controls were being followed and enforced (Deschermeier et al, 2016). In particular, because landlords are not obliged to lower rents, even where the rent is above the comparable rent, some observers have speculated, that this was being used as a loophole to increase rents. Now tenants can demand to see the contract of the previous tenant. Current evidence suggests that the brake on rents is now having some modifying effect - although in part this may reflect market conditions.

This year the situation in Berlin, where over 80% of households rent and where rents under the established regime have been rising rapidly, has changed. In June 2019, the Berlin Senate voted for a new form of rent control, by which around 1.5 million homes in Berlin would have their rents frozen for five years and capped at €9.80 per square meter. The law also says that landlords would not be able to charge rents higher than what the previous tenant paid, and, should their rent be above the limit set out in a "rent table," which will list the upper limits for rents in different suburbs across Berlin, the tenant may sue to have the rent reduced.

The rental laws were passed by the Berlin senate in October and the law was expected to be finalised by the House of Representatives in early 2020, before being applied retroactively to June 2019. However, the Federal Government has now ruled that the measure is unconstitutional and that changes to the law are a federal responsibility.

Ireland and Scotland: two countries with significant moves towards greater regulation:

Ireland

Historically the private rented sector in Ireland has for many years been one of the most lightly regulated. The only requirement introduced in 2004 was that a landlord could not charge above the market rent defined as ‘the rent which a willing tenant not already in occupation would give and a willing landlord would take for the dwelling’. When seeking a rent review, the landlord had to provide three examples of rents for comparable properties. Also at least 24 months must have elapsed since the last review.

Importantly the 2004 Act set up the Residential Tenancies Board (RTB) with which all private (and now housing association) tenancies must be registered. The Board’s main responsibilities are

- To maintain a register of private residential tenancies and tenancies of approved housing bodies, mainly housing associations;
- To provide a dispute resolution service for tenants and landlords (including approved housing bodies);
- To carry out research into the private rented sector; and

- To provide policy advice to the Government on the private rented sector.

The RTB can also share information with local authorities, which enforce the regulations relating to standards and rent books.

Since the financial crisis rents have become a much more of a political issue especially in high demand areas. The government responded in 2016 by introducing the Rent Predictability Measures which cap rent increases at 4% per year for the next 3 years in designated Rent Pressure Zones (RPZs), ie, areas where the housing market is overheated and households have the greatest difficulties in finding accommodation they can afford.

The system was put in place in December 2016. The maximum rent increase was set at 4% per year – and for new tenancies the rent could be raised annually (as compared to rents in other areas which can rise only every two years. The landlord must give the tenant in writing at the start of the tenancy information about the amount of rent that was last set under a tenancy for that dwelling and the date the rent was last set. Within this new context the RTB plays an important role in collecting data about rents and tenancy arrangements along with dispute resolution and monitoring the impact of the new laws.

There is evidence that the RPZs are having some dampening effect on rents as compared to the rest of the country (Nichols, 2018). However, it is not clear exactly how much this is an outcome of the regulation or instead to do with changing market pressures. An exception around renovations has been used by landlords to circumvent controls and set higher rents but this is being closed off by Government. Landlord organisations, eg, the Irish Property Owners Association, say there has been disinvestment and certainly considerable discontent - but landlord numbers have actually grown after a fall during the economic downturn. Enforcement of current measures is seen as the main challenge.

In some ways the biggest challenge is the short term nature of the RPZ controls. At the time it was introduced it was argued that controls had to be limited to minimise the longer term effects on investment. However, the reality of the problems in at least some of the pressure areas will certainly not have gone away by 2020. The question at the moment is how this problem will be addressed but it is generally accepted that the system will continue in some form.

An important element of the Irish regulatory framework as compared to Germany is the registration of landlords which has been in place since 2004 and the potential this has for providing a mechanism for ensuring reasonable levels of compliance. A particularly relevant part of the regulation is the requirement that the landlord provides information on previous rents. A shift towards this approach in Germany is said to have improved transparency and ensured greater compliance.

Scotland

The Scottish legislation has come in much more recently (2017) and was much affected by discussions with the Irish government and other stakeholders as well as other international experience. Initially the proposal was to put in place **longer fixed term tenancies** but it was

ultimately agreed that **indefinite tenancies** would work more effectively. The new tenancy which was introduced on December 1st 2017 puts in place indefinite tenure (with no probationary period) and gives the tenants' right to leave with 28 days notice. However, there are eighteen exceptions enabling eviction – including mandatory eviction if the landlord intends to sell on the market (so enabling the landlord to achieve a vacant possession price). Other reasons include refurbishment; change of use; using it as family accommodation; and varying breaches of the tenancy contract or law.

The legislation includes an element of rent stabilisation in that within the tenancy the landlord can increase the rent to market levels every year, with reference to the rent officer to ensure it is no higher than current market rent – so it is more about security than rent control. It is also possible to increase rents if improvements are undertaken.

The legislation includes the potential to designate rent pressure zones where local authorities may ask for CPI+1+x where x is to be defined by the Minister. No designations have yet been made and there is considerable doubt as to whether they will become operational.

All of these regulations require a more effective enforcement mechanism which must be both open and accessible. This is the responsibility of the Rent Officer Service that has been in place for sixty years but has been significantly modified to address their new rent determination task. Tenants will be able to appeal to the newly created First-Tier Tribunal (Housing and Property Chamber). An important issue is the quality of available data which is an absolute necessity in making the system work effectively. Detailed discussion of these and related issues can be found in Robertson and Young (2018) who also conclude that the pressure zone approach is not worth the effort and that there are many difficulties still to be overcome with respect to the administration of the system.

New Zealand and Spain: countries looking to increase regulation

New Zealand

New Zealand is a country which has traditionally had very limited controls. Under current legislation rents in the private sector can be raised every six months, and landlords can end most tenancies with 90 days' notice (this is reduced to 42 days when the home is to be sold or is required by the landlord for their own family).

However, this position is now changing rapidly. The Housing and Urban Development Minister confirmed in August 2018 that he wants to introduce legislation to reform the Residential Tenancies Act. This is intended to limit rental increases, removing no-cause terminations and stopping rent "bidding". In part this initiative has arisen because of growth in the scale of the sector with a third of New Zealanders, including family households, now renting privately.

A study comparing outcomes in New Zealand and Ireland (Nichols, 2018) found that less prescriptive regulation in New Zealand granted landlords greater flexibility, fewer costs, and led to significantly more use of dispute resolution mechanisms than in Ireland. More prescriptive regulation correlated with improved outcomes for tenants, better housing, security of tenure, affordability, and recourse to dispute resolution for Irish tenants compared with New Zealand where tenants' capacity to

enforce outcomes was seen as deeply flawed. Clearly each approach has its strengths and weaknesses.

One issue that appears not yet to have been addressed is how rent increases within the tenancy should be determined? The Minister has promised no rent control –as is the case in the consultation paper issued last July in England. Equally, the initial timetable – of the principles being put in place in 2018 has already slipped.

Spain

Spain has a long history of changing regulation which is applied to tenancies started in the relevant period. Under legislation in 2013 most tenancies were for one year with market determined rents and easy eviction.

In 2018 the Spanish government proposed major changes which included increasing tenancy length to five and sometimes seven years and limiting deposits to two months rent (as well as controlling holiday lets).

However, the government decided against imposing rent controls in cities where prices continue to increase rapidly, stating that Ministry of Economic Development needs to study what are the factors pushing rent prices up before coming to a final decision.

This decision has caused major political difficulties as the left-wing alliance leader Pablo Iglesias noted “We agreed during the budgetary pact that we had to control rent prices to lower rents. If the government doesn’t comply with our agreement, we’ll vote against the decree.”

Since then, the make-up of the coalition has changed but rent controls remain a very live issue.

France: an example of uncertainty.

The length of lease in France is three years and the landlord can only gain possession if required by his/her family or they wish to sell. Rents within the tenancy cannot rise by more than a national index. Rents for new tenancies are market determined.

In 2015, the government introduced two special rules that could be applied in cities with high demand and rapidly rising rents:

- Even for a lease for a new tenant the level of the rent must be the same than for the previous tenant.
- The rent must not be higher than 20 % over the median rent in the same area for the same type of dwelling (number of rooms and date of construction).

These rules were only applied in two cities: Paris *intra muros*, ie, within the City, and then in Lille. In Paris there was some evidence from the Paris Rent Observatory that rents were being constrained by the legislation.

However, in October 2017 the court, *Tribunal administratif*, annulled the rule 2 applicable in Paris and Lille from December 2017. The reason of the decision was that the application was not strictly in

compliance with the law. Following the decision, Paris officials worked to bring rent control back to the city. A government decree issued on April 5, 2019 made that possible.

The order brings into force legislation voted in November 2018 (known as the Elan law), which grants cities the right to impose rent control, under certain conditions, as a means to protect tenants and create more affordable housing. In August the government announced that there would be further controls on rents for anyone living in a *zone tendue* - any area that has a housing shortage. Twenty eight towns and cities including Ajaccio, Bordeaux, Grenoble, La Rochelle, Lille, Lyon, Marseille, Montpellier, Nice, Strasbourg and Toulouse are all affected by the renewal of the government decree. Local authorities may set their own rules. In Paris this means that the local authority sets the cap – which will take account of location and be set in per square meter terms – and the regulation will only apply to new tenancies.

United States: localised controls

Across the United States as of 2019, five states (California, New York, New Jersey, Maryland and Oregon) and the District of Columbia have localities in which some form of residential rent control is in effect. Thirty-seven states either prohibit or pre-empt rent control, in others it is allowed but not implemented. For the cities with rent controls of various forms it often covers the majority of that city's stock of rental units –although there are often exemptions for new and improved units coming into the sector.

In 2019 Oregon's legislature passed a bill which made the state the first in the nation to adopt a state-wide rent control policy. This new law limits annual rent increases to inflation plus 7 percent; allows rents to adjust to market between tenancies and exempts new construction for 15 years.

Postscript: London in an international context

While national policy in England is mainly looking to remove no fault eviction and give some greater security at the same time as improving court procedures and enforcement, London has taken the initiative to develop a detailed approach to long term security of tenure based on indefinite tenancies (GLA, 2018). This was seen as an important input into government thinking on security of tenure issues. However, in 2019 the Mayor raised the possibility of introducing rent control related to local incomes. As a starting point the Mayor wishes to introduce rent stabilisation but then to set up a Private Rent Commission which would look to reduce rents and make them more locally affordable (GLA, 2019). Any such possibility is not within the Mayor's devolved powers – but it is seen as a popular political move.

Conclusions from the international evidence

The first, and most obvious conclusion is that the long term trend towards deregulation has been reversed in many countries/cities. The three main reasons for this are (i) the growth of the private rented sector, especially for family households – so that in a number of countries private renting has moved from being a marginal tenure to the mainstream; (ii) rapidly rising rents in areas of housing pressure and spreading outside major cities; and (iii) the need to increase the supply of privately

rented housing including the use of institutional investment which requires certainty about the regulatory environment and rental revenues.

The second is that specific legislation around pressure zones has been very much less effective in stabilising rents. There tend to be tensions between local politicians and central government and the courts. Where it has been implemented it has tended to spread into less pressured areas which has consequences for the effective operation of the market. It requires better data and a more sophisticated enforcement and appeals systems than those currently in place.

While there have been some mixed results, nationwide approaches to registration, longer term and often indefinite tenancies, rent stabilisation, and improved enforcement procedures is generally seen as the better package than other options – and certainly better than unfettered market determination - both for tenants and mainstream landlords. However much of the success of individual policies has depended on attention to detail, the quality of the information available and greater transparency around rights and responsibilities.

A major finding is that in most cases (until at least 2019) the core of the legislation has been to enable fair market rents especially for new tenancies, with rent stabilisation mainly restricted to in-tenancy rises. The objective has generally been not to replace the market but to work with it to provide a reasonable and predictable return for landlords as well as security for tenants. This appears now to be changing – with increasing political pressure for additional controls probably reflecting the new scale and political significance of the population of renters.

Much of the literature discusses the impact of rent controls on the preparedness of landlords to continue to let and the extent to which tenants actually benefit from these controls. A particular area of concern is how they impact on new investment – so that a number of authorities exclude new build from their regulation.

The main gap in understanding lies in the fact that there is very little evidence on landlord behaviour and their preparedness to enter or remain in the sector. In part this is because most of the initiatives are relatively new but it is also because it is extremely difficult to separate the effects of changing regulation from wider market factors and in particular taxation changes.

What is also clear is that no-one likes uncertainty whether they be landlords, financiers or tenants. The changes experienced across many countries in Europe have raised concerns that regulatory frameworks will continue to be modified on a regular basis reflecting the politics surrounding the tenure.

Some of the examples discussed above make it clear that regulation is not inherently good for tenants and bad for landlords. By providing a clear framework it can be a win-win situation, at least for mainstream landlords and tenants alike. It can address market failures for both tenants and landlords, while reducing risks for both. It can give landlords more consistent rent rises and reduce financing costs and risks for landlords, while providing better security of tenants. However, achieving a better solution depends on the detail of each initiative as well as the institutional and market environment. Finally, although the patterns may be similar, countries and therefore international comparisons simply do not start from same point, so should be treated with care.

4. Practical considerations

Here we begin to weigh some of the practical considerations around our twin issues of longer term tenancies and rent stabilisation and their implications for effective implementation.

(a): Are there financial trade-off to be made between security and rent for tenants and landlords?

Some argue that landlords (unlike agents) gain from longer tenancies because of lower transactions costs so they should not be able to charge a higher rent; others suggest that security involves higher risks and so there must be higher returns. The evidence that the vast majority of landlords use ASTs rather than assured tenancies and stick to either 6 months or one year terms would suggest the second dominates, especially among smaller landlords who have no means of reducing the price of risk through diversification. But do we have any evidence that people would pay more for more security? We know many tenants are not looking to stay for significant periods so would have little reason to welcome higher security with a higher premium. Would a menu of choices work? Traditionally furnished and unfurnished provided some segmentation but also resulted in considerable avoidance. The relationship in pressured markets is asymmetrical with landlords holding far more power than the tenants. Importantly no-one has addressed in quantitative terms how market rents are affected by varying levels of security.

There are real issues about whether the apparent success of the German rent model arises from a long period of declining population and declining house prices in most areas. As this has been reversed, significant problems have emerged not just about implementation but also about the quality of the data available. This poses the question of whether rent stabilisation works over the economic cycle? RLA research showed that the majority of landlords would support rent increases being limited to once a year.

(b): What is the rationale for a fixed term contract as compared to an indefinite tenancy?

The government has suggested a three-year tenancy, as did the Scottish government before them. However, the review above raises big questions as to the nature of a fixed term tenancy and how it can be superior to an indefinite system – three years is too long if landlords cannot readily get rid of bad tenants or buy and sell when they wish. Moreover, all such arrangements allow the tenants to leave with a short notice period. While some of the benefits of less risk of void periods, better care of the property by tenants and lower costs on finding new tenants might be increased. What is unclear is exactly how such a tenancy gives any greater benefits than an indefinite tenancy as long as there are appropriate exceptions and adequate low cost enforcement.

In an environment in which indefinite tenancies have not been on the cards, RLA research suggests that 28% of landlords had offered tenancies in excess of 12 months and more would do so if recovery processes were enhanced. Mortgage lenders are also often cited as the main reason for not offering longer term tenancies (Simcock, 2018). However, the survey evidence suggested this is not a major stumbling block and many lenders have moved to revise their lending terms and conditions. Not surprisingly, a number of landlords felt they would offer them if there were financial incentives (although clearly such a scheme would carry considerable deadweight costs). Tax reliefs are another option.

Importantly landlords supported a 6 month's break clause and a majority felt that a 2 month notice period if they needed to recover the property would be justified. The first raises important issues around whether Section 21 is actually removed and the second suggests a rather short timescale.

It is probably worth reminding readers that the government's consultation questions suggested a detailed approach to putting in place a fixed term tenancy that might form the basis for the new arrangements:

- 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 were happy, the tenancy would continue for a further two and a half years.
- 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.
- Landlords could 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 would have to 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 8 weeks notice in writing.
- Rents could 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.
- 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.

An LSE London response to these suggestions (LSE London, 2018) argued that an indefinite tenancy caused no additional problems and provided a better basis for long term stability in the sector. This view was reflected in many of the responses including for instance from the GLA.

They argued that the implied government suggestion of a three-year lease with a break clause at six months, at which point either party may cancel the contract generates *two* no-fault eviction points—on; at six months and one at three years. Landlords who want to raise rents excessively (however that is defined) can use the break clause to remove any existing tenants and increase the rent. This is a tension which applies to any extension of security and is just as important if an indefinite tenancy was on offer – and in many other countries is addressed by having no probationary period.

On the other hand, without some sort of probationary period, landlords might well become much more selective about which types of tenants they accept, because they are committing to a longer term. Some might decide to leave the sector.

Partly to address landlords' concerns, the proposed longer-term tenancies in England would be mediated by a range of 'exceptions' allowing the landlord to gain possession when circumstances change. One of these gives the landlord the right to repossess the property if they wish to sell—even

to another landlord. This mirrors legislation in Scotland and Ireland – but clearly reduces the feeling of security for tenants.

(c): The case for rent stabilisation

The benefits of a mandatory rent stabilisation scheme were discussed in detail in Scanlon and Whitehead (2014). These included that all tenants would in principle be treated equally; have greater security; and there would be greater predictability for both landlords and tenants. Where both sides are comfortable with these arrangements, transaction costs and risks might fall.

However mandatory systems also imposed costs that could outweigh the benefits. These include that tenants and landlords have diverse requirements - a one-size-fits-all system would not benefit everyone; and in order to provide adequately for landlords, rent stabilisation may result in higher initial rents as they do in Germany as well as more regular rent increases for tenants.

Inevitably some would perceive any rent stabilisation process as the first step towards further regulation, perhaps especially in high demand and pressured area as has happened in Germany. The authors recommended that Camden should positively enable longer-term tenancies with index-linked rent increases, voluntarily agreed by landlord and tenant, while at the same time improving transparency and contractual enforcement for both landlords and tenants across the sector.

The experience in other countries suggests that there are two main indices that could be used: either some measure of general inflation (such as CPI) or an index of local rents. The scheme would not necessarily have to specify which should be used, as long as landlord and tenant agreed. This voluntary approach could be an attractive part of the voluntary accreditation scheme for a sub-set of accredited landlords.

(d): What is the relationship between security of tenure, allowable exceptions and enforcement?

As we argued from the outset it is inconceivable that we can resolve the questions around longer term tenancy and rent stabilisation without reference to this crucial third leg. The issue of exceptions has been an important element in the development of the Scottish system – but the fact that they have eighteen specified exceptions could mean it would be difficult to ensure compliance without a significant element for testing the evidence and monitoring outcomes. Without this it is likely that some landlords would claim exceptions without actually then implementing the implied decisions – eg to sell, improve or use it for family.

Enforcement is at the heart of the issue. While most of the necessary powers are in place albeit not necessarily in the right order, the evidence from Ireland and Scotland suggests that it takes time and money actually to put a fully operational system in place across the country.

It does suggest that it is time for a new compact between landlords and local government associations on how to take forward these responsibilities and how to secure the funding necessary to make this a realistic goal. The key issue here is cost and resources. The risk is that government is just layering ever more responsibility on local authorities who have no realistic capacity to deliver. Clearly there are authorities with little appetite to enforce regulations on the private rented sector,

partly out of fear of taking on obligations to rehouse as a consequence of their actions. This is discussed at length in the Select Committee report.

Without a transparent and low cost enforcement system it is likely that there would be part of the sector providing for poorer and more vulnerable households where the rules would not be applied. This is an issue which is not well addressed in the international comparison literature.

It is evident that the changes under discussion cannot fully solve the problems of relative power at the lower end of the market. What these proposals aim to do is to bring the majority of the sector into the mainstream where it belongs and to provide a clear and straightforward framework for the good landlord and the good tenant – which make up the vast majority of the sector. We can hope to work towards ensuring that the proportion of such landlords and tenants increases and that there is therefore time and resources to address the extremely important issue of rogue landlords, relative power, high rents, poor quality and lack of security who are accommodated in the lower end of the market – which neither landlords in general nor the government wish to see continue.

5. Conclusions

Reforming the PRS is a considerable challenge. It is widely recognised that our basic understanding of the sector is weak. There has been a lack of good quality data and the survey evidence on what works/might work in terms of reforms is fragmentary and piecemeal. The Government and others have opposed fundamental review and reform of the law around the sector and have instead favoured piecemeal adjustments, typically without much monitoring or assessment of the impacts.

The reality of reform in the PRS is that there are many different rented sectors and it is easy to create new rules that work effectively in one part of the sector but not another. The scope of reform should be focussed on the mainstream rental market and exclude the purpose built student market and holiday lets. The Build to Rent sector might also be excluded but it still should be captured by regulation.

The Law Commission Report on *Renting Homes* published in 2005 along with a draft Renting Homes Bill (Law Commission, 2005) was rejected by the Government in England but ultimately accepted in Wales in a revised report tailored for Wales in 2016. This remains the most comprehensive review of the law in relation to the private rented sector in recent years and centres on a model contract. As Professor Martin Partington, who led the work, accepts there have been significant changes in the role of the sector since 2005. In a recent article (Partington, 2018) he highlighted the fact that the law has become more complex and although the government in England has promoted a model agreement it has not given it legislative backing. He also notes the progress in Scotland and Wales in adopting the Commission recommendations. He argues for making the law more coherent. The Select Committee called for a Law Commission review of legislation and the Government has indicated it is willing to discuss this (Government Response, 2018). In its response to the Select Committee it states (page7);

We believe the Law Commission could provide useful insight into PRS legislation. In light of the Committee's recommendation, we propose to discuss this further with the Law Commission to ascertain what support they could provide in this area. We will update the Committee on this as it develops.

It is important that this is now pursued with speed and vigour. The 2005 report still provides a starting point for new efforts to reform this sector. The work is simply too important to be left aside. However, with the passing of the Homes (Fitness for Human Habitation) Bill 2017-19 through Parliament in December 2018 we now have yet another layer added. It requires residential rented dwellings in England to be fit for human habitation at the start of the tenancy and thereafter. MHCLG published guidance for local authorities, landlords and tenants in March 2019⁴.

Our immediate task in hand is the question of longer term tenancies and rent stabilisation. Both can be justified on principle – bringing greater stability and order to the sector in ways which might begin to transform both image and relationships. There has been considerable momentum around

⁴ See <https://www.gov.uk/government/publications/homes-fitness-for-human-habitation-act-2018/guide-for-landlords-homes-fitness-for-human-habitation-act-2018> for landlords and <https://www.gov.uk/government/publications/homes-fitness-for-human-habitation-act-2018/guide-for-tenants-homes-fitness-for-human-habitation-act-2018> for tenants

the introduction of indefinite tenancies, even though government may feel it is a bridge too far.. At the seminar chaired by Lord Kerslake for this project he concluded that the case for indefinite tenancies was already a done deal, as long as effective enforcement procedures were in place, because it provided both greater security and greater flexibility for both sides and removed many of the complexities around fixed term tenancies. It is also strongly supported in the latest report from IPPR which calls for indefinite contracts – with no probationary period - and rent stabilisation within the tenancy based on the consumer price index (Baxter and Murphy, 2019). The London model set out by the GLA also makes the case strongly for indefinite rather than fixed term tenancies (GLA, 2018).

However, the practical detail is a considerable challenge. Ensuring compliance would mean a new reporting and enforcement framework which could include landlord and tenancy registration (Future of London, 2018) as well as a clear and simple appeal structure. A number of bodies have started to set out more detailed proposals (eg, Robertson and Young 2018, for Scotland; the GLA for London – GLA, 2018 and 2018a) and we look to the response to the consultation for the government's view.

The evidence on longer term tenancies is that these are commonplace in other countries and that there is some real demand for them in England. In England the 6 month AST has become the default tenancy even though longer term arrangements are possible (and in practice fairly common). Clearly not all tenants want longer term tenancies and they do pose risks for both tenants and landlords in terms of liabilities, flexibilities and enforcement.

The debate in England at first centred on 3 year tenancies with a six month break clause and is now looking to either fixed term or periodic tenancies. This could still mean that 6 months remains the default tenancy length? In our view the way forward is indefinite tenancies **but** only on the basis of a reformed enforcement process - the creation of housing courts which could offer landlords and tenants timely and effective resolution.

On the question of rent stabilisation again the principles are clear and supported – for instance by the IPPR's latest report (Baxter and Murphy, 2019). There are important questions about which index to use – as any particular index will favour one side or the other – and maybe differently over time. What is clear to us is that an agreement before the tenancy is put in place without any constraints as suggested in the government consultation could favour the bad landlord in unacceptable ways. More generally, England has the basis for taking this forward in the clauses already in place for the voluntary model agreement set out in 2014. There is some landlord support for such arrangements and in practice this is what some landlords do anyway.

In practical terms the Government could put real momentum behind both proposals by creating incentives for landlords to adopt them. Given the weight of legislation now bearing down on the PRS and what is still to come this could be the right time to move in the direction of incentives to deliver the required step changes in policy and reality.

The question of incentives has been explored at some length in the literature (CIH and Resolution Foundation, 2014) albeit partly driven by concerns around evidence around refusals to take HB claimant tenants (Clarke and Oxley, 2017 and 2018). Given the Government taxes the PRS in a variety of ways, eg, capital gains tax and income tax it does have the potential to offer reliefs to

incentivise behaviours it sees as desirable. These might be time limited and subject to review but they could result in rapid progress.

The other major concern must be about how to ensure that those with little bargaining power gain from a restructured private rented sector. In reality this has to include a re-examination of the impact of welfare changes on the capacity to find acceptable accommodation and its costs in terms of no fault eviction - and links with the positive elements of the Homelessness Prevention Act 2018 which looks to provide a more effective approach to enabling access to mainstream tenancies. This requires further exploration.

More fundamental issues relate to implementation and enforcement. Most of the countries that have long experience of rent stabilisation and indefinite security have well operating enforcement systems. Until this aspect of regulation can be improved very significantly - and to be seen to work – perhaps through a new specialist court, it will be difficult to make effective progress.

Overall, there is potential for agreement as to the way ahead at least in principle. There is now increasing and positive debate about exactly how these principles can best be implemented. The details will ultimately have to be a matter for government decision. It would therefore make sense for government to engage to see how the vision can become a practical reality - including not just changes in legislation and regulation but also the part incentives in might play in that process.

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