



**MINISTRY OF HOUSING, COMMUNITIES &
LOCAL GOVERNMENT CONSULTATION**

**OVERCOMING THE BARRIERS TO LONGER
TENANCIES IN THE PRIVATE RENTED SECTOR**

**RESPONSE BY THE
AGRICULTURAL LAW ASSOCIATION
8 AUGUST 2018**

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1.0 The Agricultural Law Association

1.1 Background

The Agricultural Law Association ('the ALA') was formed in 1976 and is the UK's largest inter-professional organisation devoted to the law and business of the countryside.

We focus on the law in a non-partisan, apolitical way in order to promote its knowledge, understanding and development among those who advise rural businesses.

The ALA has over 1370 members across diverse professions including lawyers, surveyors, accountants, farm business consultants, academics and members with specific expertise in international trade and investment. We have members from all the principal professional firms in the rural sector and, uniquely, all other principal member organisations within the rural sector.

We are a member of the following current sector cross organisation groups in the UK:

Tenancy Reform Industry Group
Agricultural Representatives Bodies Group (Taxation)
Scottish Land Commission – Tenant Farming Advisory Forum
Land Partnerships Service – National Advisory Group

We are also the largest member association of the European Council of Rural Law.



1.2 OUR RESPONSE

This response is submitted on behalf of the ALA and its members who advise their clients in a rural context on all land and property related matters.

Our members' clients have diversified land and property interests, including residential property that is let to private tenants.

We look forward to working with the Ministry of Housing, Communities & Local Government and other Government agencies in connection with the private rented sector.



2.1 Consultation Introduction

- 2.1.1 We note the Consultation Introduction on pages 7 and 8 and agree with the steps Government has taken recently to deliver a fairer private rented sector. We would submit that the practices employed in the rural sector when letting residential property are of a high quality, protecting both Landlords and Tenants. In this respect, we acknowledge that this Consultation considers the private rented sector as a whole and therefore the experience of parties within more urban areas may be different.
- 2.1.2 With that in mind, we submit that Government should take care in proposing any new legislation that undermines the current flexibility enjoyed by both Landlords and Tenants in a rural context.
- 2.1.3 Whilst the Consultation suggests that the change in size of the private rented sector has led to a growing need for longer, more secure tenancies than the minimum six months offered by the assured shorthold tenancy regime, in the experience of many of our members in advising the parties involved, who are often long-term property owners, the view is that the current legislation allows sufficient flexibility in this regard.
- 2.1.4 The current legislation provides the comfort required by tenants so that, as long as they meet their obligations under the tenancy agreement, it is generally evidenced that tenants stay in their property for as long as they desire.

3.0 Consultation Questions

We submit our answers to those Questions where we are able to offer assistance to the Consultation through the experience of our Members as advisers to the parties. We have referenced the Questions in accordance with the numbering used in the Consultation document:



Q9: Have you ever experienced difficulties repossessing a property?

Yes.

Our solicitor members inform us that they encounter difficulties in repossessing residential properties on a regular basis. This is normally where tenants fail to vacate on receipt of a section 21 notice and the landlord has to initiate court proceedings. There are numerous opportunities throughout the court process where the tenant can cause delay/additional cost, and, it should be noted, that more often than not, even if the landlord is successful in obtaining a possession order and/or money judgment against the tenant, the landlord rarely recovers their costs (and/or outstanding rental arrears) from the tenant as the latter is often has little or no funds available. As such landlords can be put to great expense in recovering possession, and during that possession process, without any rental income.

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

While our members are aware of what these protections are, we have not been informed by any of them that the protection from retaliatory eviction introduced in the Deregulation Act 2015 has been successful, or even that they have come across it. We cannot therefore comment any further on this question.

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 **6**

Landlords save on costs of finding new tenants **6**



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 **10**

Tenants saving money as they do not have to sign new tenancies or renew so frequently **7**

Tenants have greater assurance they can afford any rent increase **6**

Tenants more empowered to challenge poor practice **6**

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

No.

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

Tenants do not want them **Yes**

Landlords do not want to offer them **Yes**

Landlords concerned about void periods

Time taken to gain possession of property **Yes**

Agents' advice

Landlords want to retain ability to increase rent

Mortgage conditions



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

Our members are concerned by the proposal.

Whilst we acknowledge that for those tenants seeking a long term tenure (and it must be acknowledged this is not always the case) that the proposals would offer them that security but it would, in our opinion, weight the flexibility of the assured shorthold tenancy regime too heavily towards the tenant's position as even if they do not exercise the break at six months they can still terminate the AST in the remainder of the fixed term by giving two months' notice.

However, from a landlord's perspective it is somewhat different. Once the six-month break opportunity has passed, the landlord can only terminate the tenancy by relying on one of the grounds in Schedule 2 of the Housing Act 1988.

Obtaining vacant possession via a section 8 notice, i.e. relying on the grounds in Schedule 2, is not necessarily straightforward and can be very time consuming and expensive with no guarantee of success. Our solicitor members' view is that more grounds would have to be included for termination in order for this proposal to be workable.

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

We can see the benefits of say, a minimum 12 months term. This gives tenants more security than they tend to have (as a default in the open market) at the moment but does not lock landlords in with difficult tenants for an overly long period. However, if a 12 month minimum term was adopted (by way of example), there must be a statutory break clause for both parties at the six month anniversary of the commencement date.



For example, one member provided the example of a tenant being in default of rent within the first two months of a 12-month term and the difficulties that arose where no ability to the break the tenancy was available in that situation.

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

3 months.

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

6 weeks.

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

1 month.

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

No. Our solicitor members consider that there should be additional grounds.



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 – rent increases should be limited to once per year ✓
- Yes – rent increases should be limited to once every 18 months
- 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

In our Members experience is that for tenancies in a rural context rent review frequencies vary between once every year and once every two years, depending on the factors of property/letting terms.

Consideration must also be given to contractual terms which provide for abatements of rent and the reversion to the open market rent, which may have been agreed between the parties on commencement.

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)

Our general view is that whilst there may be support in some sectors for a longer-term tenancy model, in practice the legislation allows for this at present.

One approach in which the issues raised in this Consultation could be addressed is to better educate the parties entering into an agreement as to what is permitted within the legislation. For example, a standard information pack/guidelines that a Landlord must provide to the Tenant when letting the property that provides clarity on the options for the length of term.

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

- Purpose Built Student Accommodation **Yes**
- All Student Accommodation **Yes**
- Holiday Lets **Yes**
- Tenancies for those with visas ending in the next 3 years **No**
- Tenancies for those with short term work contracts **Yes**
- Other (Please explain)

Employee accommodation should also be exempted

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

As stated under Q.22 above, one approach in which the issues raised in this Consultation could be addressed is to better educate the parties entering into an agreement as to what is permitted within the legislation. For example, a standard information pack/guidelines that a Landlord must provide to the Tenant when letting the property that provides clarity on the options for the length of term.



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

The Consultation raises the possibility of an alternative option where a longer-term tenancy is the 'default' by providing for the parties to opt out of the longer-term default where a short term is required.

Whilst the general principle of this would be helpful, our concern is the legislative process for achieving it. Are Government proposing a similar approach as is used under the Landlord and Tenant Act 1954 where the parties to agreements under the 1954 Act can contract out of the security of tenure provisions of that Act?

We are concerned that the practice of serving, delivering and exchanging notices to exclude a longer-term security of tenure in a residential context could prove complex and costly. Furthermore, there is an equally important concern that often agents are preparing and completing Assured Shorthold Tenancy agreements. The introduction of a notice procedure where an opt out is agreed by the parties could give rise to invalid notices/incorrect applications of the procedure where agents are not suitably qualified or trained.

We have welcomed the opportunity to contribute our views to this Consultation and we would be happy to assist the Ministry in further discussions on the issues that are raised above.

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