



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

**A NEW DEAL FOR RENTING**

**RESPONSE BY THE  
AGRICULTURAL LAW ASSOCIATION  
12 OCTOBER 2019**

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## **The Agricultural Law Association**

### **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 1400 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.



## **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 and we look forward to working with MHCLG in respect of these proposals.



**Question 1: Do you agree that the abolition of the assured shorthold regime (including the use of section 21 notices) should extend to all users of the Housing Act 1988?**

No.

As we submitted in our response to the Ministry's consultation 'Overcoming Barriers to Longer Tenancies in the Private Rented Sector' in August 2018, our members inform us that they encounter difficulties in repossessing residential properties especially where 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.

The introduction of these measures would add complexity to a regime which currently provides landlords and tenants with flexibility and confidence in the open market.

However, should the Ministry progress with these proposals, it would seem inconsistent for the changes to apply to some users and not others.

**~~If not, which users of the Housing Act 1988 should continue to be able to offer assured shorthold tenancies?~~**

**Question 2: Do you think that fixed terms should have a minimum length?**

No. This would remove the flexibility of both landlords and tenants where either may have specific reasons for a particular length of term.

**~~If yes, how long should this be?~~**



**Question 3: Would you support retaining the ability to include a break clause within a fixed-term tenancy?**

Yes.

**Question 4: Do you agree that a landlord should be able to gain possession if their family member wishes to use the property as their own home?**

Yes, if that person is a direct family member; for which a clear definition is required. For example, we would consider a son, daughter, spouse, siblings, parents, grandparent, aunt and uncle (including of the landlord's spouse) as being defined as a direct family member in this instance.

We also direct you to Schedule 3 of the Private Housing (Tenancies) Scotland Act 2016 which provides useful wording on the class of a family member to which this may apply.

**Question 5: Should there be a requirement for a landlord or family member to have previously lived at the property to serve a section 8 notice under ground 1?**

No. This would prejudice a reasonable requirement of the landlord to regain possession for the class of family members referred to in Q.4 above.

**Question 6: Currently, a landlord has to give a tenant prior notice (that is, at the beginning of the tenancy) that they may seek possession under ground 1, in order to use it. Should this requirement to give prior notice remain?**

No. The landlord should have the ability to serve notice at any time, subject to a two-month notice period.

**If not, why not?**

The requirement to serve a prior notice would result in an approach whereby landlord's would, as a matter of good estate management, serve a prior notice on each and every tenancy at



commencement in order to protect their position where the potential requirement for use of the property for a family member may not be known at commencement.

**Question 7: Should a landlord be able to gain possession of their property before the fixed term expires, if they or a family member want to move into it?**

No. Notwithstanding our comments under Q.6 above (i.e. whereby at commencement a landlord is not aware he may require the property for a family member), we do consider that if the parties have entered into a fixed term agreement, that agreement should be allowed to run its full term (assuming all other obligations of the parties are being met in accordance with the agreement).

However, if a minimum fixed term is applied, we do not consider that the minimum term should be no longer than 12 months.

**Question 8: Should a landlord be able to gain possession of their property within the first two years of the first agreement being signed, if they or a family member want to move into it?**

Yes, if the agreement has continued after an initial fixed term i.e. it has become a periodic tenancy. For example, if the fixed term of the agreement was six months, once that period has expired, if the agreement continues on a month to month basis, the landlord should be permitted to seek to gain possession, subject to the minimum notice requirements.

**Question 9: Should the courts be able to decide whether it is reasonable to lift the two-year restriction on a landlord taking back a property, if they or a family member want to move in?**

We refer you to our answer to Q.8 above. However, if new legislation imposed a restriction on the landlord from gaining possession within two years of the agreement first being signed, and the fixed term had expired, we do see merit in the courts being able to direct that the landlord should be entitled to possession and lift the two year restriction.



### **A new ground – selling the property**

**Question 10: This ground currently requires the landlord to provide the tenant with two months' notice to move out of the property. Is this an appropriate amount of time?**

Yes

~~**Question 11: If you answered No to Question 10, should the amount of notice required be less of more than two months?**~~

**Question 12: We propose that a landlord should have to provide their tenant with prior notice they may seek possession to sell, in order to use this new ground. Do you agree?**

No. Whilst we would welcome the new ground, it is unreasonable to expect that a landlord would have a clear indication he would sell the property at the commencement of a tenancy, as the requirement to sell may be a consequence of unforeseen circumstances.

**Question 13: Should the court be required to grant a possession order if the landlord can prove they intend to sell the property (therefore making the new ground mandatory)?**

Yes. This should be a mandatory ground.

**Question 14: Should a landlord be able to apply to the court should they wish to use this new ground to sell their property before two years from when the first agreement was signed?**

Yes. However, we propose that this new ground should be mandatory to provide the landlord with certainty.



**Question 15: Is two months an appropriate amount of notice for a landlord to give a tenant, if they intend to use the new ground to sell their property?**

Yes

~~**Question 16: If you answered 'no' to Q.15, should the amount of notice required be less or more than two months?**~~

### **Rent Arrears**

**Question 17: Should the ground under Schedule 2 concerned with rent arrears be revised so:**

- (i) The landlord can serve a two-week notice seeking possession once the tenant has accrued two months' rent arrears.**

Yes

- (ii) The court must grant a possession order if the landlord can prove the tenant still has over one months' arrears outstanding by the time of the hearing.**

Yes

- (iii) The court may use its discretion as to whether to grant a possession order if the arrears are under one month by this time.**

Yes





- (iv) **The court must grant a possession order if the landlord can prove a pattern of behaviour that shows the tenant has built up arrears and paid these down on three previous occasions.**

Yes

### **Anti-Social Behaviour**

#### **Question 18: Should the Government provide guidance on how stronger clauses in tenancy agreements could make it easier to evidence ground 12 in court?**

Yes. Clear guidance on the operation of the obligations of each respective party prior to commencement will assist.

Whilst we recognise the very difficult circumstances that anti-social behaviour gives rise to, we are concerned with legislation that would put the landlord in a position of adjudicator, say in circumstances where there is a neighbour complaint and the landlord is not in a position to ascertain clear evidence.

#### **Question 19: As a landlord, what sorts of tenant behaviour are you concerned with?**

Nuisance	Yes
Vandalism	Yes
Environmental Damage	Yes
Uncontrolled animals	Yes
Don't know	
Other	Unauthorised or illegal use of the property

#### **Question 20: Have you ever used ground 7A in relation to a tenant's anti-social behaviour?**

As a general note, as Section 21 is the preferred route in this instance for most practitioners, we have limited evidence of the use of ground 7A in the context of rural property; the principal sector within which our Members act.



**~~Question 21: Do you think the current evidential threshold for ground 7A is effective in securing possession?~~**

**Question 22: Have you ever used ground 14 in relation to a tenant's anti-social behaviour?**

See our answer to Q.20 above as currently Section 21 would be the preferred route in this instance for most practitioners.

**~~Question 23: Do you think the current threshold for ground 14 is effective in securing possession?~~**

### **Domestic Abuse**

**Question 24: Should this new ground apply to all types of rented accommodation, including the private rented sector?**

Whilst we recognise the very difficult circumstances that domestic abuse gives rise to, we are concerned with legislation that would put the landlord in a position of adjudicator in a domestic abuse situation in relation to their tenancy.

**Question 25: Should a landlord be able to only evict a tenant who has perpetrated domestic abuse, rather than the whole household?**

We suggest it should be for the courts to provide a direction on who should be evicted where the case requires it. In that instance, it is then the court issuing the order for eviction and ensuring that eviction takes place; subject to the landlord's interest in the property/tenancy agreement not being prejudiced by the direction of the court.

**Question 26: In the event of an abusive partner threatening to terminate a tenancy, should additional provisions protect the victim's tenancy rights?**

Please refer to our answer to Q.25 above. This should be a matter for the courts to decide.



**Question 27: Should a victim of domestic abuse be able to end a tenancy without the consent of the abuser or to continue the tenancy without the abuser?**

Please refer to our answer to Q.25 above. This should be a matter for the courts to decide.

**Property Standards**

**Question 28: Would you support amending ground 13 to allow a landlord to gain possession where a tenant prevents them from maintaining legal safety standards?**

Yes

**Accelerated Possession**

**Question 29: Which of the following could be disposed of without a hearing?**

Subject to our responses above, our response below is given notwithstanding our view that prior notice should not be required under grounds 1, 2 and 3, see below:

1	Prior notice has been given that the landlord, <i>or a member of his family</i> may wish to take the property as their own home	Yes
2	Prior notice has been given that the mortgage lender may wish to repossess the property	Yes
3	Prior notice has been given the property is occupied as a holiday let for a set period	Yes
4	Prior notice has been given the property belongs to an educational establishment and let for a set period	Yes
5	Prior notice has been given to a resident minister that the property may be required by another minister of religion	Yes



6	Reconstruction, demolition or other works need to be carried out, but cannot go ahead with the tenant in situ	Yes
7	The previous tenant has died, with the tenancy passing on to a new tenant who does not have the right to carry on with the tenancy	Yes
7A	The tenant has been convicted of a serious offence in or around the property, against someone living in or around the property, or against the landlord	Yes
7B	A tenant or occupant has been disqualified from occupying the property due to their immigration status	Yes
8	The tenant has significant rent arrears	Yes
<i>New</i>	<i>The landlord wishes to sell the property</i>	Yes

We would also suggest that a new ground is introduced to deal with situations where a tenant fails to comply with an obligation or condition of occupancy as required under planning law in relation to the property.

### **Short-term lets**

**Question 30: Should ground 4 be widened to include any landlord who lets to students who attend an educational institution?**

Yes

**Question 31: Do you think that lettings below a certain length of time should be exempted from the new tenancy framework?**

Yes. All lettings of six months or less should be exempted. For example, holiday lets or short-term work contracts.



### **Religious Workers**

**Question 32: Should the existing ground 5 be reviewed so possession can be obtained for re-use by a religious worker, even if a lay person is currently in occupation?**

Yes

### **Agricultural Tenancies**

**Question 33: Should there be a mandatory ground under Schedule 2 for possession of sub-let dwellings on tenanted agricultural holdings where the head tenant farmer wants to end their tenancy agreement and provide vacant possession of the holding for their landlord?**

Yes, otherwise the head tenant will likely be in breach of the terms of their tenancy for the holding.

**Question 34: Should there be a mandatory ground under Schedule 2 for possession of tenanted dwellings on agricultural holdings where there is business need for the landlord to gain possession (i.e. so they can re-let the dwelling to a necessary farm worker)?**

Yes, however this should also be available for landlords of property that is not comprised in an agricultural holding where business needs may also apply.

**Question 35: Are there any other issues which Government may need to consider in respect of agricultural tenancies?**

We would refer you to the Department for the Environment, Food and Rural Affairs and their ongoing review of the agricultural tenanted sector and specifically any new measures that may come forward following DEFRA's recent tenancy reform consultation.



Of critical importance is the ability to regain possession once an employee's employment has ceased and there should be provisions for a mandatory ground to enable a landlord to regain possession. It is common practice for assured shorthold tenancies to be used for agricultural workers.

A new provision could be included with reference to similar provisions in Part 2, Schedule 3 of The Private Housing (Tenancies) (Scotland) Act 2016 whereby it is an eviction ground where the tenant no longer qualifies as an employee.

### **Other grounds for seeking possession**

#### **Question 36: Are there any circumstances where the existing or proposed grounds for possession would not be an appropriate substitute for section 21?**

In situations where there is an occupancy condition in relation to the property, for example, agricultural occupancy conditions, if the tenant who originally qualified then ceases to qualify, this would be a breach of the occupancy condition. In the absence of section 21 procedures, we propose that a mandatory ground should be made available to landlords in these circumstances.

### **Transition period**

#### **Question 50: Do you agree that the new law should be commenced six months after it receives Royal Assent?**

Our preference would be for twelve months.

We have welcomed the opportunity to contribute our views to this Consultation and we would be willing to engage with the Ministry and other stakeholders to consider these proposals in further detail should the Ministry wish to proceed with new legislation.



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