

# Questions

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

## **About You**

**Q1: Are you responding (please tick one)**

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

ARLA Propertymark.

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

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

It is not applicable for us to answer this question.

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

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

ARLA Propertymark is the UK's foremost professional and regulatory body for letting agents; representing over 9,000 members. ARLA Propertymark agents are professionals working at all levels of letting agency, from business owners to office employees.

Our members operate to professional standards far higher than the law demands, hold Client Money Protection and we campaign for greater regulation in this growing and increasingly important sector of the property market. By using an ARLA Propertymark agent, consumers have the peace of mind that they are protected, and their money is safe.

## **Questions for Tenants:**

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

- Yes

No

It is not applicable for us to respond to Questions four to six.

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

Yes

No

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

Yes

No

**Questions for Landlords:**

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

Yes

No

It is not applicable for us to respond to Questions seven to nine.

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

I do not want to offer longer tenancies

Happy to offer them if a tenant wants one

My mortgage provider conditions allowing it

More efficient processes to remove a bad tenant or recover my property if needed

Longer notice periods

No restrictions around rent

Financial incentive

Other [Please explain]

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

Yes

No

**Questions for all**

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

Yes

No

Not aware of what these protections are

Yes, we do think that the protection for tenants from retaliatory eviction introduced

as part of the Deregulation Act 2015 has been successful. Before the legislation was introduced there was no sound evidence that landlords were undertaking such practices on any scale. Since the introduction of the law there has been a very low number of prosecutions. Most landlords pride themselves on being responsible and want to be notified of issues with their property so that they can both protect their asset and continue to provide safe and secure homes for their tenants. The legislation has had no impact on most law-abiding landlords who carry out their repairing duties and only those landlords who flout their existing legal responsibilities were ever likely to be affected. Furthermore, the lack of prosecutions demonstrates that the problem was nowhere near as prevalent as was being described when the law was passed.

**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)**

- 10 Less risk of void periods for landlords
- 5 Tenants more likely to take care of property
- 0 Landlords save on costs of finding new tenants
- ┘ Other (please explain)

ARLA Propertymark does not consider that there are any benefits to landlords in offering longer initial tenancies. Flexible tenancies and rent prices driven by market forces have led to the success of the private rented sector across the UK. Survey results from ARLA Propertymark members show that the average tenure was 19 months in June 2018. Landlords and agents want long, well maintained tenancies as they are the most efficient way of generating rented income for landlords and fees for agents. The current regime provides for this.

**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)**

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

ARLA Propertymark does not consider there to be any benefits of a longer tenancy for tenants because it will mean less flexibility for renters. The private rented sector caters for a diverse range of people including single persons, commercial lets, professionals, those in transit, short-term lets, long-term lets, settled and unsettled families. The current tenancy regime allows for tenants to stay in a property for as long as they and the landlord want. Landlords understand the benefits of long occupancy and prefer a longer-term commitment, which is already benefiting many tenants. For instance, an ARLA Propertymark Protected agent who manages 25,000 properties across London has informed us that during 2017 less than 4% of their landlords asked their tenants to leave. The two main reasons cited by the landlords

for wanting their property back was, so they could either move back in to their home or sell the property. It is vital for tenancy agreements to reflect the needs of both tenants and landlords. The Government's proposals for longer tenancies do not provide for this.

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

No, we do not consider that there are any further benefits of longer tenancies.

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

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

The main barrier to landlords offering longer term tenancies is that demand for this type of contract from tenants is low. The other main barriers are the time taken to gain possession of property and mortgage conditions. In addition, letting agents want well-maintained tenancies as void periods and renewals reduce agent's fees.

Tenants want to stay in property long term, but they do not want to sign long tenancy agreements. Tenants want to get to know the property and landlord as much as the landlord wants to assess the tenant. Both tenants and landlords want and need flexibility. ARLA PropertyMark's latest Private Rented Sector Report showed that the average length of a tenancy remained at 19 months in June with tenants in London having the longest tenancies, 22 months on average, compared to just 13 months on average in the North East.<sup>1</sup> By mandating longer term tenancies, the Government is trying to fix a problem that does not exist.

Landlords need to be confident that a property can be recovered quickly if the tenant has caused damage, stopped paying the rent or if the landlord's circumstances change. Figures from the Ministry of Justice in November 2017 show that it takes an average of 41 weeks for a landlord to regain possession if a tenant falls into arrears.<sup>2</sup> Consequently, there is a greater risk involved in offering longer tenancies as landlords will probably have to shoulder the cost of a tenant not paying their rent due to the prolonged process to regain possession of a property. Moving to three-year fixed term tenancies will make it harder for landlords to evict problem tenants; thus, deterring

<sup>1</sup> <http://www.arla.co.uk/media/1047156/arla-property-mark-prs-report-june-2018.pdf>

<sup>2</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/657881/mortgage-landlord-possession-statistics-jul-sep-2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/657881/mortgage-landlord-possession-statistics-jul-sep-2017.pdf)

landlords from renting out their property altogether or being much more selective about the types of tenants they will let their property to.

To this end, there is a need for a better rationalisation of dispute resolution for housing and property disputes. The ability for landlords to access a swift, efficient and cost-effective justice system is a key component of a successful lettings industry and would remove a barrier to landlords offering longer tenancies. ARLA Propertymark believe that by establishing a new housing court or tribunal to deal with all matters concerning housing and property this will speed up the system, increase expertise in the decision-making process and ensure greater consistency with reduced costs. The housing court would allow disrepair, possession and rent arrears all to be dealt with by judges with expert knowledge in these areas. By moving these areas to a new housing court with jurisdiction for property this will speed up the dispute process, improve constituency in judgments and reduce costs as many landlords are litigants in person and conduct legal proceedings on their own. Fundamentally, speedier and more consistent judgements would give the reassurance landlords need to offer longer tenancies.

Most buy-to-let lenders insist on no more than twelve-month tenancies, often including a break clause after six months. Lenders have been reluctant to accept longer tenancies to avoid becoming involved in the removal of tenants before obtaining possession if a landlord fails to meet their financial obligations. When the Section 8 notice is served, the landlord must base the decision to apply for a possession order on one or more of 17 grounds. The court will then decide upon whether to grant a possession order based on these grounds. Unless the landlord has specifically put 'Ground Two: mortgage property' which is used when the property is subject to a mortgage which existed before the start of the tenancy and the lender wants to repossess the property, the lender cannot evict the tenant. Understandably, this creates concern for lenders as an action outside of their control can result in them being unable to regain vacant possession in the event they have to repossess a property from a landlord. Consequently, mortgage conditions restricting the maximum tenancy length is a barrier to landlords offering longer term tenancies.

Letting agents want well-maintained tenancies as void periods and renewals reduce agent's fees. Where landlords use a letting agent, landlords will either pay a flat-fee upfront or a percentage of the rent each month for the agent to manage the tenancy. Where a flat-fee is paid upfront it is in the letting agents' interest to ensure the tenancy is well-maintained over a long period time because they are not receiving a monthly income from managing the property. Where a letting agent is receiving a percentage of the rent each month it is also in the letting agent's interest to actively promote longer tenancies to ensure the monthly income from managing the property continues as they will receive no income from void periods. Letting agents will also receive a fee from the initial let of the property and from a renewal. A renewal fee covers the negotiation of contracts, amends and update of terms and arranging a further tenancy. However, the commission for this extra work is much lower than the commission earned on the initial let. Therefore, it is in the letting agent's interest to actively promote longer tenancies and work in partnership with landlords to ensure tenancies are maintained for long periods.

## A New Framework

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

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

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

Yes

No

No, we do not think that three-year tenancy with a six-month break clause is workable. The proposals will not work for three reasons. Firstly, they will reduce flexibility and control for tenants. Secondly, the proposals will not provide parity for both tenants and landlords. Thirdly, automatic rent increases will likely cost tenants more money.

Making three-year tenancies a statutory requirement is unworkable because it will reduce flexibility and control for tenants. Many people use the private rented sector as a temporary measure while they save up deposits for their first home or renting property is often a choice for families who are likely to move due to job availability or education opportunities. Tenants need the flexibility and control of being able to move on short notice and not everyone wants to be tied down to a three-year tenancy agreement. An ARLA Propertymark Protected letting agent in Cambridgeshire has informed us that they manage over 500 properties and 56% of the tenancies end within the first two years, 15% within the third year and 29% are longer than three years. Furthermore, 89.7% of these tenancies are ended by the tenant, not the landlord. To this end, considering that the timing for ending a tenancy is almost always decided by the tenant not the landlord, mandatory three-year tenancies would be unacceptable and unworkable to renters who currently benefit from the increased mobility and flexibility that renting brings.

The Government's proposal is unworkable because a mutual commitment from the tenant is key to ensure the private renter sector continues to receive investment and cater for all.

Under the current tenancy regime both the landlord and tenant make a commitment to maintain the tenancy and the property. The proposal from the Government means that tenants make no commitment beyond the first six months. As a result, the six-month break option on every tenancy, combined with no tenant charges, mean that many tenants will be able to get cheap short term lets of just six months and move between tenancies. Therefore, the tenant will be able to move into a new property every six months, whilst the landlord burdens the cost of any repair to the property and arranging a new tenancy. Unlike, landlords who wish to recover their property, tenants are not bound by any grounds or charges to leave the property. Consequently, tenants have no commitment to the full length of the tenancy, resulting in no parity for both parties and making the proposals unworkable.

The lack of parity is further highlighted when examining the owner-occupied sector where mortgage lenders often charge fees for an early repayment and an exit or early closure fee. Early repayment charges typically range from 1–5% of the value of the early repayment. For example, a £100,000 mortgage with a 3% charge would cost £3,000. The charge covers lender costs if all or part of the mortgage is paid earlier than the agreed term or deal period. The mortgage provider might also ask for any rewards or incentives paid to be returned, such as discounts on legal fees or cashback. Exit or early closure fees are charged when individuals repay their mortgage, even if they are not repaying it early. The charge typically ranges from between £75 to £300. When renting a property, a tenant is taking a legal interest in land for the duration of their tenancy. Considering that the majority of tenancies end at the request of tenants the Government's proposals do not give landlords the adequate protection they need against non-payment of rent or damage to their property and, thus, are unworkable.

At the same time as the housing shortage continues with not enough homes being built each year, landlords are becoming increasingly important to those who need a safe and secure place to live. ARLA PropertyMark's Private Rented Sector Report shows that demand for rental properties increased by eighteen per cent in June, with letting agents registering 71 new house-hunters per member branch, compared to 60 in May. Demand was highest in the North East with 86 prospective renters registered per member branch.<sup>3</sup> Currently, most landlords prefer a longer commitment from tenants and are prepared to accept reasonable rents in return. Furthermore, automatic rent increases will likely cost tenants more as current practice is not to increase rent at tenancy renewal.

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

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

It is not applicable for us to answer this question.

<sup>3</sup> <http://www.arla.co.uk/media/1047156/arla-property-mark-prs-report-june-2018.pdf>

**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

If the Government decide to implement their suggested longer-term tenancy model of a three-year tenancy there should be a probationary period of six months where either party is able to terminate the tenancy under “no fault” terms. If problems with the tenancy or between either party are going to arise, they will usually do so in the first six months.

**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

Further to our response to Question 16, we do not believe that there should be a break clause after the six-month probationary period. It is important that the balance in the tenancy model is equal and does not favour either party. It is imperative that either both parties have a “no fault” ground or neither party does.

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

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

**Q19: How much notice should tenants be required to give to their landlords when they want to leave their tenancy?**

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

Tenants should be required to give their landlords two months or eight weeks-notice when they want to leave their tenancy, but only for one of a list of specified reasons. As outlined in our response to Question 14, unlike, landlords who wish to recover their property, tenants are not bound by any grounds or charges to leave. Consequently, tenants have no commitment to the full length of the tenancy, resulting in no parity for both parties. Either both parties have a “no fault” ground or neither party does.

**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

Yes, we do 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. However, the mandatory grounds need tightening and there should be fewer discretionary grounds. For example, ground eight is the mandatory ground for rent arrears. However, if the tenant borrows enough money to get the rent arrears down to just £1 under the required period, and usually on the day of the court, then the ground is lost because the arrears must be outstanding both at the date of the notice and the date of the hearing. This is a common tactic used by tenants and means that the process must start all over again. Under discretionary grounds, the courts rarely grant possession. For example, ground fourteen, which is the discretionary ground for nuisance, annoyance or criminal conviction is ineffective because it relates to the actions of not just the tenant but someone living with the tenant or even visiting them at the time the breach was committed, and the ground makes no distinction between wanted and unwanted visitors. ARLA Propertymark Protected agents have informed us that even when the Police have provided evidence on behalf of a landlord, the court won't grant possession. The courts consider genuine remorse for the actions, previous good character and usually only grant a Suspension Order. This contrasts with a Section 21 notice which gives landlords a clear and more certain outcome. Consequently, very few landlords take Section 8 court action for eviction for non-payment of rent or breach of the tenancy. They are more likely to wait until both the end of the notice period and the end of the fixed term and issue a Section 21 notice to regain possession of the property. Therefore, before anything can change with longer tenancies, landlords must be confident that they can regain possession and reforms to the court system is needed.

**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

Yes, we do think that there should be restrictions on how often and by what level the rent should be increased in a longer tenancy agreement. The maximum restriction should limit rent increases to once per year as is currently the case under Section 13 of the Housing Act 1988.

Any further restrictions on rent increases are unnecessary for three reasons. Firstly, rent controls where increases were capped by inflation each year would leave tenants worse off because, for example, CPI was 2.7% in the year to January 2018 and rent increases were considerably lower than that. Secondly, it costs landlords time and money to re-let property. Landlords must spend on redecoration, minor maintenance and search items, such as agency fees, to attract new tenants. Thirdly, landlords are not increasing rents across the board just for the sake of it. Where landlords have had to raise rents, this is because of spiralling costs to deal with tax rises to both purchase and let a property. The extra costs include restricting mortgage interest relief to the basic rate of income tax, putting a premium stamp duty levy on the purchase of new homes to rent; not extending the 20% rate of capital gains tax to residential property and taxing a landlord's turnover rather than profit. ARLA PropertyMark's Private Rented Sector Report shows that the number of tenants experiencing rent hikes rose to 35 per cent in June, up from 28 per cent in May.<sup>4</sup>

In addition to this, there is a chronic supply shortage in the rental market meaning that competition for property is getting more and more fierce, so the cost of renting is only increasing. Implementing longer restrictions on rent rises would give landlords less flexibility to recoup costs. If landlords can't put rents up as fast as their costs increase, the investments become unviable. In this context where rents are rising, in many cases initial rents would be higher than market ones because the rent control measure means that landlords front-load rents. As a result, at the start of the period, when the rent is negotiated with a new tenant, the rent is higher than the old short tenancy market one and then declines relative to it over the contract period, only to rise above it when rents are negotiated again. This could mean that landlords start tenancies with higher initial rents or they leave the market altogether, thus resulting in even less choice for tenants.

**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.**

- X Change the law to require all landlords to offer longer tenancies
- 2 Change the law to require all landlords to offer longer tenancies as a default with an option to choose a shorter term
- 1 Financial incentives
- X Voluntary measures such as a kitemark on longer term properties or an updated version of the existing model tenancy agreement
- 3 Other (please explain)

Financial incentives, changing the law to require all landlords to offer longer tenancies as

<sup>4</sup> <http://www.arla.co.uk/media/1047156/arla-property-mark-prs-report-june-2018.pdf>

a default with an option to choose a shorter term and easier access to justice are the best ways to ensure that landlords offer longer tenancies to those that want them or need them.

Financial incentives would ensure that professional landlords remain in the sector, purchase additional property and continue to provide good quality long term homes to rent. To this end, many landlords renovate property and bring them back into the rented sector. These are properties that local Councils or companies do not want to take on so without landlords investing they are left empty. Once these properties have been renovated, landlords rent them out for fair rents to families and young professionals. In many cases these people cannot get a mortgage due to affordability tests for new borrowers. However, landlords are penalised for taking on these properties in two ways. Firstly, they must pay an additional 3% stamp duty surcharge. Secondly, since April 2017 landlords are no longer able to deduct all their finance costs from their property income to arrive at their property profits. Instead they receive a basic rate reduction from their income tax liability for their finance costs. If the Government provided landlords with financial incentives, for instance, removing the 3% surcharge on buy-to-let property and revoked the restrictions on finance cost relief, they will be in a stronger position to invest in additional property and their current investments will be financially viable. However, without financial incentives, such as changes to the current rules, landlords are unlikely to want to stay in the sector long term and will not offer longer tenancies.

Easier access to justice would reduce the risks for landlords and ensure they offer long tenancies to those that want or need them. Currently, a key disincentive for landlords is that when something goes seriously wrong, such as a tenant falling into serious rent arrears, neglecting the property, or engaging in anti-social behaviour, they must resort to the courts to act. This costs an increasing amount but is also increasingly delayed, with a possession case taking an average of 41 weeks to complete. For a landlord in receipt of nothing in rent, still with a mortgage to pay and obligated to maintain the property, this is an unsustainable cost and delay. By reducing delays there will be less risk when offering longer tenancies as landlords won't have to worry about non-rent payments and their costs will be reduced.

Requiring all landlords to offer longer tenancies as a default with an option to choose a shorter term would ensure that the private rented sector can continue to offer security and flexibility for both landlords and tenants. This is important because due to its size the private rented sector is a key provider of housing, has invested in providing homes for the population and put more homes into use than other landlord types. For instance, figures show that there are now over two million private landlords in the UK.<sup>5</sup> This is in stark comparison to other rent providers such as the build to rent sector where only 124,037 units are either completed or planned across the UK.<sup>6</sup> However, the build-to-rent sector typically offers longer tenancies of up to three years with a rent reviews taking place no more frequently than once a year or at the end of the initial term. Nevertheless, consumers are not under any pressure to take up the three-year tenancy option and can still opt for shorter terms. Furthermore, rents in the build to rent sector are on average 11 per cent higher than the private rented sector.<sup>7</sup> Considering that

<sup>5</sup> <https://www.landlordtoday.co.uk/breaking-news/2018/4/number-of-uk-landlords-rises-to-1-75-million>

<sup>6</sup> <https://www.bpf.org.uk/what-we-do/bpf-build-rent-map-uk>

<sup>7</sup> <https://www.theguardian.com/housing-network/2018/apr/11/build-to-rent-developers-profiting-generation-rent>

landlords are the largest provider of private rented housing they should also have the flexibility to offer shorter contracts. Without this option, renters will have less flexibility and landlords will be forced to compete against institutional investors.

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

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

The types of tenancy that should be exempted from the proposed system should be: Purpose Built Student Accommodation; All Student Accommodation; Holiday Lets; Tenancies for those with visas ending in the next three years; and Tenancies for those with short term work contracts. Tenancies where military personnel are on deployment should also be exempted from the proposed system.

Student accommodation typically requires shorter contracts tied to the academic year and therefore should be exempt from the proposed system. Holiday lets are let on a short, time-limited period where the property is used for leisure purposes and occupiers do not remain in the property after this period. Due to these specific measures they should be exempt from the proposed longer tenancy requirements. Tenancies fixed to visas and short-term work contracts should also be exempt to support labour market mobility and ensure there are properties available to rent for those working in seasonal employment or in secondment.

In certain parts of the country, such as in the South West, a large percentage of landlords are service personnel in the Navy who get posted away for up to 12 or 24 months. During this time, they rent out their homes. These properties provide vital rental stock in areas of high demand and should be exempt from the proposed system to ensure they are not left empty and prospective tenants have enough property to choose from.

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

ARLA PropertyMark does not think that there are any benefits of changing the law to require all landlords to offer the longer-term tenancy model. There are three disadvantages of the Government's proposal. Firstly, history will repeat itself. Secondly, reduction in property standards. Thirdly, professional landlords selling to the criminal operators.

If the Government's longer-term tenancy model is introduced history will repeat itself because the last time rent controls existed, the private rented sector went from making up nine-tenths of the housing stock in 1915 to one-tenth by 1991.<sup>8</sup> This was because

<sup>8</sup> <http://researchbriefings.files.parliament.uk/documents/SN06747/SN06747.pdf>

reduced rental returns led to reduced investment in the sector. Since the Housing Act 1988, flexible tenancies and rent prices driven by market forces have led to the success of the private rented sector. According to the English Housing Survey 2016-17 the private rented sector accounts for 4.7 million households across England and is larger than the social rented sector.<sup>9</sup> To this end, the current laws have created a system where more landlords are prepared to enter the market which means there is more property available to rent, giving tenants greater choice. As highlighted throughout our response housing costs are currently very high for landlords with rents rising to keep up. However, as housing supply fails to keep up with demand and landlord's costs continue to rise, rents will increase further. In the absence of a much larger supply of council and social housing, there is a risk of pushing more people into homelessness. Consequently, we do not see any benefits in requiring landlords to offer the longer-term tenancy model because it will threaten the viability of the only tenure that has housed growing numbers of people in the past three decades.

Whenever rent controls are introduced, the quantity of available housing reduces significantly and the conditions in privately rent properties deteriorate dramatically. For instance, it is estimated that there are around 100,000 remaining tenancies in the UK still under rent control that applied to landlords before the introduction of the Housing Act 1988. Whilst the gap between the rent charges on these properties compared with similar unregulated property near to them underlines just how much private rents have overtaken prices and earnings since the 1980s, the fact that many of these properties are in very poor condition, as it is not in either the landlords or the tenant's interest to maintain them, clearly highlights the problems of restricting short term contracts and rent controls. As a result, there are no benefits to requiring all landlords to offer the longer-term tenancy model because when prices are capped, people have less incentive to improve and rent out their property.

Furthermore, low earners cannot afford to buy and increasingly rely on the private rented sector for housing. If good landlords leave the sector these renters will be left with fewer secure and safe places to live. At a time of demand for private rented sector homes massively outstripping supply a disadvantage of requiring all landlord to offer the longer-tenancies models is that it will cause the sector to shrink. In turn, this means professional landlords will only take the very best tenants, and the vulnerable and low-income people that longer tenancies and rent controls are designed to help, will be forced into the hands of rogue and criminal operators, who may exploit them.

## **25: What, if any, financial incentive could encourage longer tenancies? Please explain**

Landlords have faced significant tax increases in recent years and we believe that there are financial incentives that would encourage landlords to offer longer tenancies. These should focus on: revoking the 3% Stamp Duty surcharge on buy-to let properties; reversing the mortgage interest relief changes; ensuring the same level of roll-over relief to landlords that other businesses receive; introducing more flexibilities with Universal Credit; reduce tax for landlords who use a regulated letting agent; reduce the cost or eliminate license fees; and giving tax incentives to landlords who offer longer tenancies

<sup>9</sup> <http://www.arla.co.uk/news/january-2018/what-does-the-english-housing-survey-reveal-about-the-prs.aspx>

to improve the condition of their property.

The 3% Stamp Duty levy on purchases of buy-to-let property discourages landlords from purchasing further rental properties. Due to cuts to social house building more and more people are relying on the private rented sector. Without private landlords there would be very few options for those people who cannot or do not want to buy a property to live in. Removing the 3% surcharge on second homes in exchange for longer tenancies would encourage landlords to continue to invest in the sector and provide the homes that people need.

Under the changes brought in under Section 24 of the Finance Act 2015 to restrict mortgage interest relief for residential landlords to the basic rate of income tax, thousands of landlords will pay more tax. The change will push landlords up a tax band despite their income not increasing as tax will be applied to turnover instead of profit. To cover the additional taxes landlords will increase rents for new and existing tenancies. They will also cut back on other expenses such as property maintenance. As the extra tax mounts up some landlords could sell up altogether and leave the sector. Over the long term this will impact on the value and quality of property tenants rent. By revoking the mortgage interest relief changes to encourage longer tenancies, landlords will be able to reduce the costs that they pass on to tenants. It will also ensure that landlords remain in the sector and provide long term affordable homes for tenants.

Ensuring that Capital Gains Tax (CGT) roll-over relief applies where the proceeds of a rented property are re-invested in a rental property will further stimulate the supply of long term properties to rent. This is because the existing CGT mechanism discourages landlords from selling their property in order to reinvest. Unlike many other businesses, landlords are unable to take advantage of business asset rollover relief. As rental income is considered to be unearned landlords may not defer their CGT liabilities when disposing of assets to invest in new or existing rental property. By extending business asset rollover relief to the sale of residential property (used exclusively for the purposes of a lettings business) would help encourage longer tenancies because it would allow landlords to reduce the 'gearing' (borrowing to support an investment) of their portfolios, thereby protecting against market shocks and improve stability over the long term.

To further encourage longer tenancies the Government should unify CGT rates for property with those relating to other types of investment. In March 2016, CGT rates were cut significantly from 28 per cent and 18 per cent, for top rate tax payers, to 20 per cent and 10 per cent for lower earners. However, landlords were excluded from this cut and means that while sale of shares in a company that owns property would incur CGT at 20 per cent, individuals making reasonable gains on the sale of a second property would face the existing 28 per cent. The move ignores the positive contribution made by landlords and property companies as the incentive is to invest in companies over property. However, residential lettings activity provides 58,000 jobs, which generate employee taxes in the order of £400 million for the Exchequer each year.<sup>10</sup> Excluding landlords from CGT cuts makes this asset class less attractive at a time when the supply of rented homes is tight. Furthermore, keeping the old rates of CGT on residential

<sup>10</sup> <http://www.arla.co.uk/media/1045728/letting-the-market-down-assessing-the-economic-impacts-of-the-proposed-ban-on-letting-agents-fees.pdf>

property makes it more difficult for existing buy-to-let landlords (who also face a cut in income tax relief on interest payments) to reorganise their portfolios towards better performing property.

The Government should also introduce a CGT cut or taper for landlords on they will need to pay when they come to sell their property based on how long they have owned and let it out for. The current way CGT is applied fails to recognise the difference between landlords' long-term holding of property as a business asset and short-term speculative trading. To this end, to encourage longer tenancies, longer term holdings (longer than five years) should be subject to an increasingly generous taper, where CGT liability is reduced to a maximum of 50 per cent for property held for more than 10 years. For example, a landlord selling a property bought three years ago would pay CGT on 100% of any gains made, where as a landlord selling a similar property after nine years would pay 60 per cent of the relevant gain. Landlords who have invested in residential property for the long term are different from short-term speculators who buy and develop properties. Therefore, to encourage longer tenancies the Government should recognise this when it comes to how much CGT landlords pay when they decide to sell.

More tenants now rely on housing benefit to pay their rent, but fewer landlords are willing to let to tenants in receipt of Universal Credit. Waiting times and delays in payments are causing not only an increase in rent arrears but also hardship and stress for tenants. We are aware of one landlord who has 49 tenants on Universal Credit, all with rent arrears - 20 of these were on the Alternative Payment Arrangement, whereas 29 were not. The landlord was owed a total of £22,000. Unless landlords are offered more support, they will not rent to tenants on Universal Credit. The Government should incentivise landlords to offer longer tenancies by giving claimants the choice as to whether they are paid monthly or twice monthly to make it easier for claimants to budget according to their circumstances. Furthermore, compared to the social rented sector the private rented sector is at a distinct disadvantage when it comes to access to information to prevent arrears from escalating. The Government should also provide better access to information around tenant's claims and better support to private rented sector landlords when applying for direct payments. If the Government do not act to combine their proposals for longer tenancies with reform to Universal Credit more and more people will find themselves homeless as the proportion of landlords who consider themselves able to house those who need it most will keep on falling.

Letting agents have an important role to play in making sure tenants are fully aware of the tenancy options available and in facilitating longer tenancies where they are desired. With the announcement that the Government will regulate letting agents with minimum qualifications and a code of practice, the Government should make it a requirement for agents to make tenants aware of the full range of tenancy options available, and, where appropriate, to broker discussions about tenancy length between landlords and tenants. Where landlords use regulated agents, who are facilitating longer tenancies the Government could offer them tax reductions. This would not only increase the number of longer tenancies but ensure that landlords use professional agents who can provide high management standards and a good service to tenants.

The Government should also abolish or reduce the fee on Selective and Additional Licensing Schemes where the landlord is providing a longer tenancy. Under the schemes,

all landlords and agents pay several hundred pounds for a licence per property, and they, and their properties, are subjected to legal checks with financial penalties if they don't comply. However, the schemes rely on landlords and agents to pro-actively make themselves known to their local authority. Most schemes fail as they are not adequately resourced to undertake the necessary enforcement activity. The licensing regime becomes an administrative exercise, penalising those landlords who comply with the regulations whilst still allowing the landlords that the scheme was designed to target to continue operating under the radar. By wavering or reducing the fees for landlords and agents in exchange for longer tenancies, professional landlords and agents can make themselves known, helping to reduce the administration carried out by local authorities, and resources can go on targeting criminal operators.

The Government should reintroduce the Landlord's Energy Saving Allowance (LESA) with a higher cost cap and extend it to include anything contained within the Recommendations Report of an Energy Performance Certificate (EPC). This will help landlords with the cost of energy efficiency improvements to their properties and ensure that tenants benefit from lower fuel bills. LESA encouraged landlords to invest in energy efficiency improvements by permitting them to offset up to £1,500 per dwelling against income tax or corporation tax for installing energy efficiency measures. Considering it is the tenant who benefits from the improvements the Government should incentivise landlords to offer longer tenancies with a higher cost cap. This has two main benefits. Firstly, it ensures that landlords invest in their properties. Secondly, society receives the wider economic benefits of tenants spending less money on energy bills and more on local goods and services.

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

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

If there were a financial incentive to offering long tenancies landlords should have to meet all legal requirements and use a written tenancy agreement. By meeting all legal requirements this will mean that landlords are complying with rent increase obligations, protecting tenants deposit in a government-approved scheme and complying with minimum property standards. The use of a written tenancy agreement will ensure that both parties are aware of their obligations under the tenancy and help reduce the potential risk of problems or disputes.

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

We do not think any other options to promote longer tenancies should be considered.

**Q28: Do you consider that any of the above would impact on people who share a protected characteristic, as defined under the Equalities Act 2010, differently from**

**people who do not share it? If yes, please provide details.**

Yes

No

Yes, we do consider that the decision to move to longer tenancies, including the rent capping measures, would impact on people who share a protected characteristic as defined under the Equalities Act 2010. Many landlords would be forced out of the market, resulting in even less choice for tenants. This will have a profound impact on older renters and disadvantage lower income earners.

Landlords who remain in the sector will insist on greater reference and credit checks as well as guarantors for tenants. Referencing prospective tenants involves checking employment status, salary, obtaining written references from employers and previous landlords / letting agents and the prospective tenant (and anyone else who will be living at the property) has the Right to Rent in the UK. This will impact all renters, but particularly vulnerable tenants such as older renters and people on low incomes. Older tenants are increasingly reliant on the private rented sector, but they are unlikely to have parents or employers to act as guarantors. Furthermore, at a time when demand for private rented sector homes is massively outstripping supply, fixed tenancy lengths and rent controls will cause the sector to shrink. In turn, this means professional landlords will only take the very best tenants, and the vulnerable and low-income people that these measures are designed to help, will be forced into the hands of rogue and criminal operators, who may exploit them.

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

ARLA PropertyMark does not believe that now is the time to introduce longer tenancies. There is too much legislative intervention already. The Government need to let existing laws take shape (or even come into force) before introducing new ones. Continuous changes mean no ability to measure what has worked and what has not. Furthermore, law after law has been passed in the sector but none of it is being enforced. As highlighted throughout our response to this consultation what we need is much greater tenant empowerment; we need a more effective enforcement regime; we need a more effective court system; and we need simplification.

The private rented sector needs a coherent framework of regulation. It should not be a piecemeal approach. Successive Governments over the last 20 years have tried to find individual legislative solutions to specific problems rather than looking at the sector as a whole. The sector is currently preparing for the ban on tenant fees, mandatory client money protection, five-yearly electrical checks and the regulation of agents. The private rented sector has grown very rapidly over the last few years and local authorities have been struggling to keep up with how to deal with it. New and existing laws need time to bed-in, otherwise local authorities, landlords, agents and tenants will struggle to plan, prepare and understand how they should work.

Coinciding with the growth of the sector a huge number of laws governing pretty much every aspect of renting out a property have been introduced. Up to June 2015, there

were 145 laws with over 400 regulations that landlords need to abide by to legally let a property in England and Wales.<sup>11</sup> These laws have been wildly varied and they have multiple different enforcing bodies. However, nobody really knows they exist. Landlords do not know, tenants do not know, agents struggle, and even enforcing officers themselves do not necessarily understand half the laws that govern the industry. There needs to be more resource available for local authorities through the planning system, through the building regulations system and through the subsequent enforcement systems to ensure that existing laws are being adhered to.

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<sup>11</sup> [http://www.propertychecklists.co.uk/downloads/20170508\\_1](http://www.propertychecklists.co.uk/downloads/20170508_1)