

# Renters' Rights Bill

## Written evidence submitted by Suzanne Smith of The Independent Landlord to the Renters' Rights Public Bill Committee

### About The Independent Landlord

1. My name is Suzanne Smith, and I founded The Independent Landlord<sup>1</sup> in August 2022 to provide free, independent reliable content for private landlords in England.
2. The Independent Landlord website contains detailed “how to” blog posts to help landlords provide an excellent service to renters and practical advice on complying with the various landlord obligations. There is a weekly newsletter with well over 6,000 subscribers from landlords to lawyers, local government officials, and property businesses. The Independent Landlord Community private landlord-only Facebook group<sup>2</sup> has over 2,000 members.
3. I became a private landlord in 2019 after having worked as an in-house solicitor in the life sciences industry for 25 years, rising to the level of General Counsel and Company Secretary of a PLC. I have a small portfolio of privately rented houses in Kent, which I manage myself. They are family houses and most of the tenants have pets.
4. I draw on my experience as both a solicitor and a private landlord in providing my written evidence to the Committee.

### Overview

5. I welcome the aims of the Renters' Rights Bill as articulated by the Housing Minister in the *Daily Telegraph*: “We all want to see a strong, sustainable private rented sector that works all round; a level playing field of rights and responsibilities that underpin a healthy pipeline of secure, decent homes, allowing both tenants and landlords to prosper”.<sup>3</sup>
6. In this written submission, I highlight the key parts of the Bill which I believe do not provide a level playing field of rights and responsibilities, and/or which need clarification. I also highlight some additional areas where the Bill (or

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<sup>1</sup> See < <https://theindependentlandlord.com/> >

<sup>2</sup> See < <https://www.facebook.com/groups/theindependentlandlordcommunity> >

<sup>3</sup> Matthew Pennycook, ‘Landlords have nothing to fear from Labour’s rent reforms’, *Daily Telegraph*, 11 September 2024, < <https://www.telegraph.co.uk/money/property/buy-to-let/landlords-nothing-fear-labour-rent-reforms> >.

other legislation) could do more to create a “strong, sustainable private rented sector that works all round”.

7. Here is a list of the clauses and issues I cover in my written evidence:

- Clause 1 – Rental periods and advance payment of rent
- Clause 8 – Challenging increase of rent
- Clause 10 – Right to request permission to keep a pet
- Clause 19 – Notices to quit by tenants: timing
- Chapter 3 – The PRS Database
- Issues for student landlords
- Impact on landlords who are leaseholders
- Regulation of property agents
- Practicalities of the transition arrangements

### **Clause 1 – Rental periods and advance payment of rent**

8. The Bill is not clear on the question of whether landlords will be able to ask tenants for advance payment of rent.
9. It has been argued<sup>4</sup> that the requirement in Clause 1 for rent to be for a period of up to one month may prevent landlords from asking for advance payments of rent at the start of the tenancy.
10. However, neither the government’s *Guide to the Renters’ Rights Bill*<sup>5</sup> nor the *Explanatory Notes*<sup>6</sup> state that Clause 1 prevents landlords from accepting multiple amounts of rent in advance. Moreover, Clause 9 (Repayment of rent paid in advance) suggests that landlords may ask for rent in advance.
11. Polly Neate, Chief Executive of Shelter has been quoted in the press saying there nothing in the Bill “to prevent landlords from demanding tenants either cough up huge sums of rent up front or hit the road”.<sup>7</sup>

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<sup>4</sup> For instance, see David Smith, ‘A First Look at Renters’ Rights’, *JMW Commercial Litigation Blog*, 12 September 2024, < <https://www.jmw.co.uk/blog/commercial-litigation-dispute-resolution/a-first-look-at-renters-rights> >.

<sup>5</sup> MHCLG, *Guide to the Renters’ Rights Bill*, updated 26 September 2024, < <https://www.gov.uk/government/publications/guide-to-the-renters-rights-bill/82ffc7fb-64b0-4af5-a72e-c24701a5f12a> >.

<sup>6</sup> UK Parliament, *Renters’ Rights Bill Explanatory Notes*, 11 September 2024, < <https://publications.parliament.uk/pa/bills/cbill/59-01/0008/en/240008en.pdf> >.

<sup>7</sup> Harry Farley, ‘Charities warn bill doesn’t protect renters enough’, *BBC*, 9 October 2024, < <https://www.bbc.co.uk/news/articles/cvgwjye2xvpo> >.

12. Even ministers and MPs were unclear in the Second Reading debate whether rent in advance is prohibited. (One MP referred to “excessive deposits”,<sup>8</sup> seemingly unaware that the Tenant Fees Act 2019 already prohibits tenancy deposits of over 5 weeks’ rent).
13. Landlords typically ask for 6 or 12 months’ rent in advance to mitigate against the risk of rent arrears when tenants have poor or no credit histories (for instance, where students or workers move to England from abroad).
14. Student landlords often ask for rent on a termly basis to coincide with the receipt of loans and funding.
15. The likely consequence of private landlords being unable to ask for rent in advance is that they will avoid prospective renters with an unknown or risky credit history, making it hard for these people to rent in the private rented sector.
16. Whatever the decision, please could the Committee amend the Bill so that it is clear whether landlords will be prohibited from asking for rent in advance. Uncertainty inevitably leads to confusion and litigation.

### **Clause 8 – Challenging increase of rent**

17. I understand why the government wishes to abolish rent review clauses, as they may enable the landlord to increase rent to a level that is above the market. I also understand why the government wishes to make all rent increases subject to challenge in the First-tier Tribunal. However, I do not believe it is fair or reasonable to delay all FTT-approved rent increases to the first rent payment date after the FTT determination.
18. If a tenant challenges a Section 13 rent increase notice, any increase will be delayed until the first rent payment date after the determination of the rent by the FTT. As the process is free, and there will no longer be the risk of the FTT increasing the rent, tenants will have every reason to challenge even the most reasonable of rent increases. For instance, an increase of CPIH that will result in a rent that is less than market value.
19. In the *Guidance*, MHCLG justify this change by saying they wish to “ensure tenants are not unexpectedly thrust into debt”.

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<sup>8</sup> See Hansard, *Renters’ Rights Bill Volume 754: debated on Wednesday 9 October 2024*, < <https://hansard.parliament.uk/commons/2024-10-09/debates/7A308DDD-EC0A-4F2D-9C18-664E12D5BC92/Renters%E2%80%99RightsBill#contribution-95B863CF-A6D9-41E3-872D-7A655649992B> >.

20. However, this does not take into account that any rent increase will necessarily be legally justifiable, and not above the market rent, otherwise the FTT would have reduced the rent. It won't be "unexpected", as tenants will have had two months' notice of the maximum rent increase, and more notice if they refer it to the FTT.
21. During the Committee Stage of the Renters Reform Bill, Matthew Pennycook referred to tribunal challenges as being "vanishingly rare". Yet, despite there being relatively few market rent cases in the FTT at present, research from the NRLA<sup>9</sup> shows that the average wait time from application to hearing is currently around 18 weeks. Where the FTT decides they need to inspect the property, average wait times increase to 27 weeks.
22. The workload the FTT is likely to increase because of Clause 8, extending the wait times further for landlords unless there is a significant expansion in the number of appropriately trained judges to hear the appeals.
23. Clause 8 is another instance of where the Bill does not create a level playing field because a tenant will be able to delay even the most fair and reasonable of rent increases until the first rent payment date after a determination of the FTT. Given the current delays, this will be several months.
24. Clause 8 should be amended so that the rent increase comes into effect on "the beginning of the new period specified in the notice under section 13(2), or (b) if it appears to the tribunal that that would cause undue hardship to the tenant, a date that the appropriate tribunal directs", as per Clause 8 of the Renters (Reform) Bill.

### **Clause 10 – Right to request permission to keep a pet**

25. I am a pet-friendly landlord, and most of my tenants have a dog or cat. Some even have both! I believe it is right for landlords to accept reasonable pets and I encourage landlords to do so by sharing practical tips on how to reduce the risk of pet damage, and providing a Pet Policy template.<sup>10</sup>
26. However, pets do increase wear and tear on properties. For instance, I have recently deducted the cost of carpet cleaning from the tenancy deposit

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<sup>9</sup> James Wood, 'Challenging rent increases: is the tribunal ready for rental reform?', *NRLA*, 16 August 2024 < <https://www.nrla.org.uk/news/challenging-rent-increases-is-the-tribunal-ready-for-rental-reform> >.

<sup>10</sup> See 'Landlord Guide: How to reduce the risk of pet damage', *The Independent Landlord*, 18 July 2024, < <https://theindependentlandlord.com/pet-friendly-landlord/> >, and "Model Pet Policy for Landlords in England, *The Independent Landlord*, < <https://theindependentlandlord.com/resources/property-investors-glossary/pet-policy/> >.

because the tenants did not clean the new carpet at the end of a two-year tenancy, leaving a pervasive smell of dog in the house. This reduced the amount of deposit left to cover other items of excessive wear and tear. It is also unlikely that pet insurance would pay for a deep clean and carpet clean if the tenants choose not to leave the property in the same state of cleanliness as they found it at the start of the tenancy.

27. The Committee should consider amending the Tenant Fees Act 2019 so that landlords can require tenants to pay another week's deposit in return for granting consent to keep a pet, increasing the total maximum deposit to six weeks' rent. This would be a simple way to recognise the extra risks a landlord faces when tenants have pets.
28. Although pet insurance is welcome, as a landlord, I would be reluctant to take it out if a claim would affect my claims history. Unless claims affect tenants' claims history, there will be moral hazard whereby tenants may be less inclined to ensure their pets do not cause damage, safe in the knowledge there will be no adverse consequences for them. If the tenant assumes responsibility for taking out pet insurance, landlords will worry that the tenant will let the policy lapse.
29. Finally, we do need clear examples of reasonable grounds for a landlord to refuse consent in the promised guidance. For instance, HMOs where the tenants are not on a joint tenancy, allergies, too many pets for the property, and concerns about pet welfare issues where a dog would be left alone all day.

#### **Clause 19 – Notices to quit by tenants: timing**

30. Clause 19 enables tenants to serve two months' notice to quit at any time; even from the first day of the tenancy. The Renters' Rights Bill does not have the protected period in Clause 18 of the Renters (Reform) Bill that would have required the notice to expire on or after six months following the start of the tenancy.
31. The *Guidance* justifies what is effectively now a minimum tenancy of two months as follows: "This will end the injustice of tenants being trapped paying rent for substandard properties and offer more flexibility to both parties to respond to changing circumstances".
32. This short minimum tenancy does not offer "more flexibility" to landlords as claimed, because they will no longer be able to terminate with two months' notice when Section 21 is abolished. Further, without an initial protected period during which a notice to quit cannot take effect, landlords cannot be

certain that a prospective tenant is not intending to rent the property as a form of “Airbnb light”; a cheaper way of renting short term accommodation. This is particularly true for furnished properties.

33. Many tenants like the certainty of a fixed term. When my tenants’ initial fixed term expires, I give them the choice of another fixed term or leaving it to roll onto a periodic tenancy. The majority choose another fixed term as it gives them a feeling of security.
34. The two-month minimum tenancy will result in landlords incurring more costs. I no longer use high street letting agents to find tenants, and do it myself with an online platform that enables me to list the property on the portals. However, despite saving on letting agent fees by doing it myself, I still incur at least £500 for each new tenancy, in addition to my time: the platform fee (£69), the check-out and check-in inventories (c£300 for a three bedroom house), referencing (£42 per applicant), travel costs for viewings, new keys, void costs (council tax and utility bills) and costs for repairing any fair wear and tear to make sure the property is in top condition for the new tenants. There is also the lack of rent during the void period.
35. Clause 19 does not fairly balance the interests of landlords and renters. Landlords such as myself are concerned that they may not be able to cover our upfront costs for tenancies if there is no initial protected period. It will be easy for renters to move in and out of HMOs as a cheaper alternative to Airbnb. This is likely to lead to increased rents.
36. I appreciate the reference to “abolishing fixed term assured tenancies and assured shorthold tenancies” in the long title of the Bill means that fixed term tenancies must be abolished, but I strongly urge the Committee to consider an amendment along the lines of Clause 18 of the Renters (Reform) Bill that effectively created a minimum six-month tenancy, despite having the same wording in the long title.
37. Finally, from a practical point of view, it would be useful if future guidance could state clearly that the notice must expire at the end of a rental period. The *Explanatory Notes* (para 176) state legalistically: “The default period of notice required is not less than two months before the end of a period of the tenancy”. However, nothing is mentioned in the *Guidance* to explain this in plain English.

### **Chapter 3 – The PRS Database**

38. I support the establishment of a database for landlords. However, landlords who own properties in their own names have legitimate privacy concerns if

their address is to be on the public register. Not only would this result in them receiving junk mail, but it would also increase the risk of property fraud and harassment.

39. The landlord's address should only be available to local authorities and relevant government and public bodies such as HMRC. The tenant already has the right to know the landlord's address for service under Section 48 of the Landlord and Tenant Act 1987.

### **Issues for student landlords**

40. The abolition of fixed terms for student lets that reflect the academic year means that many students will serve a notice to quit to expire after their exams finish in May.
41. Whilst this does give students more flexibility, it will reduce income for landlords, at the same time as increasing their costs (eg council tax and unoccupied property insurance). Assuming landlords continue to let to students, which is not a given, it is likely that landlords will increase the monthly rent for the period September to May, so that their revenue remains the same. This will disadvantage post-graduate students who tend to stay for a full calendar year.
42. Landlords won't be able to obtain possession of their properties ahead of a new academic year under the new Ground 4A unless the property is an HMO and all of the tenants are full-time students at the start of the tenancy. This will disadvantage students who are part-time, juggling working with studying due to a lack of funding.
43. As a result of these changes, many landlords are likely to either stop letting to students or increase the monthly rent.

### **Impact on landlords who are leaseholders**

44. I welcome the abolition of the "AST trap" in Clause 20, which unfairly brings holders of long leases into the regime designed for assured tenancies.
45. However, the extension of rent repayment orders to superior landlords in Clause 100, designed to reverse the decision of the Supreme Court regarding rent-to-rent in Rakusen v Jepsen, will also catch freeholders.
46. Landlords who are leaseholders are concerned that this will give freeholders a reason to increase the cost of proving them with consent to let. Likewise, it will expose freeholders to a situation analogous to the AST trap by subjecting

them to obligations intended for private landlords who sub-lease their property to rent-to-renters, as freeholders will be potentially liable to pay a Rent Repayment Order if the leaseholder breaches any the 13 offences in the Housing and Planning Act 2016.

47. It cannot be right for the Bill to require freeholders to “police” leaseholders who are private landlords.

### **Regulation of property agents**

48. The Bill increases the number of laws to which private landlords are subject, and many will turn to letting agents for guidance. However, there are no minimum qualifications or training requirements for letting agents, no compulsory code of practice, no central register and letting agents are not even legally required to have a written complaints procedure.
49. I urge the Committee to amend the Bill to incorporate the recommendations of the Regulation of Property Agents working group, chaired by Lord Best.<sup>11</sup>

### **Practicalities of the transition arrangements**

50. The merit of having one commencement date for the implementation of the new tenancy system is simplicity.
51. However, please give landlords and letting agents sufficient time to transition to the new system after Royal Assent and publication of the regulations that will provide crucial detail.
52. The date of summer 2025 mentioned by Matthew Pennycook<sup>12</sup> gives insufficient time to the private rented sector to understand the detail of the definitive rules, undertake training, develop new procedures, draft new tenancy agreements, communicate with tenants, and transition existing tenancies to the new system.

**Suzanne Smith**  
**The Independent Landlord**  
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<sup>11</sup> *Regulation of Property Agents: working group report*, 18 July 2019, < <https://www.gov.uk/government/publications/regulation-of-property-agents-working-group-report> >.

<sup>12</sup> Becky Morton and Jennifer McKiernan, ‘Aim for no-fault eviction ban to be in place by summer’, *BBC*, 11 September 2024, < <https://www.bbc.co.uk/news/articles/cz9wd5dvknxo> >.