

# WRITTEN SUBMISSION TO THE RENTERS' RIGHTS PUBLIC BILL COMMITTEE BRITISH PROPERTY FEDERATION

## Executive Summary

1. The British Property Federation (**BPF**) supports the abolition of s 21, provided it is contingent on court reform. Landlords were promised balanced reforms by the Government that provide new grounds for possession in lieu of the abolition of s 21. Those new grounds rely on the courts and are therefore only effective if there is an efficient court system.
2. Making the abolition of s 21 dependent on court reform, however, raises new questions. What is sufficient court reform? How will it be objectively assessed?
3. We support the recommendation of the LUHC Select Committee to the Renters (Reform) Bill that there should also be key performance indicators for possession cases, and regular measurement as to whether they are being achieved.
4. We are concerned that Bill has no minimum tenancy length, which could be a further boon to the short-lets market. We support, however, tenants' ability to break a minimum period where, for example, their home is substandard.
5. The Bill abolishes rent review clauses, including those linked to inflation. This could affect tenants' budgeting, and on comparisons over 3, 5, and 10 years, an inflation-linked rent works out cheaper than a review to market. A better approach would be to set a maximum period of duration for a rent review clause and allow tenants to challenge an unfair clause at the tribunal.
6. It is not clear how the Private Rented Sector Database will work alongside selective licensing schemes. We recognise licensing can be helpful in problem areas, but needs to be better targeted, and avoid setting standards in parts of the sector that set higher standards.
7. The Purpose-Built Student Accommodation (**PBSA**) sector should be exempt from the Bill in its entirety, given the impracticalities of abolishing fixed term tenancies for PBSA given their cyclical tenancy nature, and in recognition of the fact that PBSA is governed by government-approved codes, as the advisory note to the Bill sets out. Subjecting PBSA to the Bill would be in many respects unnecessary duplication of regulation, and in other respects, wholly inappropriate for the sector.

## Introduction

8. The BPF represents large, institutional landlords in the private rented sector (**PRS**). Institutional landlords, such as pension funds and listed companies, are increasingly investing in the Build-to-Rent (**BtR**) and PBSA markets.

9. Our members' perspectives can be different to smaller landlords, whose risks are far more concentrated in one, or a handful of tenancies. The majority of our members will have hundreds, and in many cases, thousands of renting customers.
10. There are many things we wholeheartedly support in the Bill:
- Making it a requirement to join an ombudsman. In fact, many of our members have been voluntary members of the Housing Ombudsman for some years.
  - A Decent Homes Standard for the Private Rented Sector.
  - Pets are welcomed in our part of the sector, but we recognise that a large landlord's experiences are different, with risk of damage etc, spread, and not concentrated.
  - A portal (database) of landlords, has had our support since 2007, but there are points of detail in its implementation that we cover below.
11. However, as we detail below, we suggest several areas where amendment would alleviate negative impacts on the sectors we represent, and ensure our members can continue to invest in, develop, and provide high-quality, professionally-managed homes to renters.

### **Section 21 abolition must be contingent on court reforms**

12. We support the abolition of s 21, and the Government's proposal that it will strengthen the grounds on which a landlord can regain their property, to reflect that 'no fault' grounds will no longer be available. Nevertheless, all these new grounds are only able to be exercised through the courts.
13. And that really gets to the crux of the Bill. New powers for landlords will only be as good as their access to the courts. If landlords cannot access the courts efficiently, these new rights are illusory, and the 'balance' in the Bill is absent.
14. Sadly, at present, Ministry of Justice data shows landlord possession cases take a Ministry of Justice data suggests that it takes an average of seven months for landlords to regain possession using the Section 8 process in a system that requires far fewer cases going to court than will be the case with the proposed new system, and is a long way short of possession via s 21. Landlords' expectations for the Bill are that Government will not just restore the system to its pre-pandemic state, but support reform with a significantly improved speed and quality of service, making it fit for the 21st century, and underpinning that most precious of rights in a democracy – timely access to justice.
15. The Government has a solution for significantly improving performance – digitalisation of the process. It is a good step – we support it. On recent evidence, however, little progress has been made on digitalisation, further diminishing landlords' confidence in reform. It will take significant time to procure and test a digitalised system, and then train court staff in using it.
16. All this raises the question: what is sufficient court reform? How will it be objectively assessed? We need to set clear performance targets and Key Performance Indicators to ensure timely access to justice.
17. Good court reform could include:

- **Digitalisation and streamlined processes** - Digitalising court processes will improve the speed and transparency of possession cases. This would include enabling electronic filing of claims, digital submission of evidence, and online case tracking with status updates for both landlords and tenants. This would significantly reduce the reliance on physical paperwork and long waiting times caused by manual processing.
- **Increased court resources** – Alongside digitalisation, the Government must invest in the recruitment of more court staff and bailiffs. A shortage of bailiffs significantly delays enforcement of possession orders, leaving landlords in limbo even after a successful claim. Additional resources are needed to ensure that possession claims, particularly those involving rent arrears and antisocial behaviour, are fast-tracked through the system.
- **Fast-tracking of key cases** - Prioritising cases related to rent arrears and antisocial behaviour, ensuring these claims are processed more swiftly to provide relief to landlords and stability to tenants.

18. The LUH Select Committee also recommended:

*In consultation with landlords, the government should also agree how quickly the courts need to be processing possession claims before landlords can have confidence in the system, and then commit to meeting this target before abolishing section 21. It should also collect and regularly publish data on its progress towards meeting this target.*

19. We support this recommendation. In a time and age when KPIs are commonplace for the most trivial of service provision, there should be an expectation that something as important as access to justice have robust service level indicators and some measurement of whether those are being achieved.

### **No minimum tenancy length risks stoking short lets and illegal activity**

20. The Government is proposing no minimum tenancy length. A renter can simply serve notice on day one of their tenancy and leave after two months, rather than the current minimum six-month tenancy. A few years ago, the previous Government was enthusiastic towards short-lets. The economy would let citizens rent out their homes for short periods, earn a few pounds, and support the UK tourist trade. However, it has become apparent that more holiday homes, means fewer homes for local communities, in a housing crisis. And, by not prescribing a minimum tenancy length, the Government risks further fuelling a booming short-lets market, where holiday lets replace much needed permanent homes, at a time when the rental market is already suffering a significant lack of supply.

21. The lack of any meaningful minimum term also increases the risk and cost assumptions in the investment underwriting process – reducing investment value and viability of new schemes.

22. With no minimum letting period there is also an increased risk of fraud, and use of property for illegal purposes.
23. The previous Government's [response](#) to the LUH Select Committee report highlights the high costs of moving act as a deterrent to short-lets. This is drawn from a 2017 Shelter report, which stresses cost would ensure that tenants will not move unless "they really need to, particularly when they have recently started a new tenancy." This may be applicable across the wider PRS, but the BtR sector largely offers a "plug in and play" model where tenants can move into furnished and liveable accommodation from the first day, often without paying a deposit. The sector is particularly susceptible to lets of a short-term nature, especially in metropolitan areas.
24. The LUH Select Committee on the previous Renters (Reform) Bill also called for a 6-month minimum term:
- We recommend that tenants be unable to give two months' notice to leave until they have been in a property for at least four months. This will give landlords the legal certainty of at least six months' rent at the start of a tenancy.*
25. Whilst the introduction of a minimum six-month term would, in our view, be conducive to the aims of the Bill, we are sympathetic to concerns voiced over tenants being 'locked in' to mis-sold or unsuitable properties. We believe that this can be accounted for by grounds for early release within the minimum term in such circumstances, which can be arbitrated by the proposed PRS Landlord Ombudsman. For example, early release to the 6-month minimum term could be defined so that tenants would have the ability to give notice anytime during the six-month minimum term should the:
- property fail to meet the Decent Homes Standard;
  - property have been mis-sold or falsely advertised;
  - property have defects which are not rectified within a reasonable timeframe after being raised by the tenant; and/or
  - tenant experience a material change to personal circumstances (e.g. job loss).
26. The National Planning Policy Framework and National Planning Guidance encourage local authorities to secure fixed-term tenancies of three years or more on BtR property. The wording of these policies will also need to be amended, as a result of the provisions in this Bill.

### **Limiting changes in rent to a section 13 process**

27. The Bill permits rent increases through s 13 notices, allowing tenants to challenge them at the First Tier Tribunal (**FTT**) within six months. Lack of clear guidelines on "unreasonable" rent increases may lead to widespread challenges from PRS households, overwhelming the FTT.

28. Increased challenges could exacerbate existing delays, postponing rent increases and creating financial uncertainty for landlords. The investment picture is stark – in a recent survey of our members on the Bill, 88% reported that proposed s 13 rent increase processes would significantly negatively impact the attractiveness of investing in residential development, with a further 12% responding that it would have a moderately negative impact.
29. These delays would destabilise BtR’s financial model, suppressing investor confidence in the sector and reducing our capacity to deliver new rental homes. To improve the process, rent increases should take effect from the date of the s 13 notice if challenges fail.
30. We support implementation of an independent assessor to filter appeals before reaching the FTT, similar to Scotland’s Rent Services, to also streamline the process and avoid congestion.

#### **How will the private rented sector database work alongside local authority licensing schemes?**

31. At present, our members get caught by local authority licensing schemes, despite are rental property to the highest standards. For a large block of BtR, or PBSA, this involves considerable cost, sometimes in excess of £400,000, when a block of 500+ homes is licensed for five years, with each licence being paid for an individual apartment, despite their being practically identical. It also involves significant administration; each flat has to be individually registered with a separate form, even although the management is common, and where the named employee on the license moves organisation or department, all licenses must be changed.
32. The situation is even worse in the PBSA market, where a statutory code of practice and inspection regime exists, that sets customer standards and management standards far higher than a license. In 2019, an independent review of licensing recognised this duplication, and recommended government should use the next primary legislation opportunity to exempt the sector, thus treating it in the same way as university-owned accommodation. The Bill provides an excellent opportunity to implement this recommendation.
33. We accept that licensing can help raise standards in exceptional circumstances, but would like the Government as part of the Bill debates to set out how licensing will work alongside a portal, and for it to simplify the process of licensing for large providers, and finally meet the recommendations of an independent review to exempt code-compliant PBSA providers.

#### **Ensuring a smooth transition to the new regime**

35. The current proposed transition period for the new regime is insufficient and does not recognise the amount of legislative, procedural, and financial changes that will be required by the sector:
  - Sufficient preparation time is needed to draft new tenancy agreements for 4.6 million households and review subletting arrangements.

- Secondary legislation and policy guidance will need to be updated and republished.
- Adjustments to insurance and mortgage policies must be implemented.
- Training materials are required for property professionals, alongside updated processes for landlords, agents, and local authorities.
- Letting agents will need to revise internal processes and IT systems.

36. The sector urges the Government to begin consultations now to ensure clarity and preparation before the changes are implemented.

### **PBSA should be exempt from the Bill in its entirety**

37. The advisory note to the Bill sets out:

*Abolishing section 21*

*12. Purpose-Built Student Accommodation (PBSA) will be exempt from these changes as long as the provider is registered for government-approved codes, since these tenancies are not assured. Lettings by PBSA landlords will be governed by the Protection from Eviction Act 1977.*

38. It is not clear whether this constitutes an exemption from all provisions of the Bill (i.e. where tenancies entered into in PBSA would be included in Schedule 1 to the Housing Act 1988 to be become “tenancies which cannot be assured tenancies”), or only those provisions related to the abolition of fixed-term assured shorthold tenancies and the abolition of s 21 notices. The Bill is silent on the exemption, and government officials are yet to formulate its mechanism and scope.

39. It is the BPF’s position that PBSA should be exempt from all provisions of the Bill. This position is based on several factors, including the impracticalities of abolishing fixed term tenancies for PBSA given their cyclical tenancy nature, and in recognition of the fact that PBSA is governed by government-approved codes, as the advisory note sets out. These codes ensure that PBSA providers are adhering to best practice and those tenant protections relevant to the student accommodation sector. Subjecting PBSA to the Bill would be in many respects unnecessary duplication of regulation (for example, in the Private Rented Sector Database and the Decent Homes Standard) and in other respects, wholly inappropriate for the PBSA sector.

40. In our view, relevant tenant protections that would be inadvertently removed by exemption from the Bill can be incorporated into the codes, to ensure these rights are not eroded.

41. Below we detail the relevant provisions which are inappropriate for the PBSA sector:

- **Two-month notice termination** – given the cyclical nature of PBSA, it will be very difficult for PBSA providers to fill rooms midway through the academic year if students leave (especially given planning restrictions that often only allow PBSA providers to let rooms to students). Providers already offer flexible terms in the period before the start of the academic year, recognising that students may change their minds or fail to achieve the requisite grades for their course.

- **Grounds for possession** – this ground seeks to address concerns with ending fixed term tenancies for student accommodation, and as such it only applies to houses of multiple occupation (HMOs). Landlords must give at least four months’ notice; in practice, it is likely that PBSA providers will provide this notice at the start of the tenancy, essentially creating a fixed term arrangement to allow for the room to be advertised and re-let for the next academic year. The restrictive nature of the notice period, providing for a move out date of between 1 June and 30 September, does not recognise the post-graduate ‘semester’ market, which runs during the summer months.
- **Discrimination against tenants with children or who are in receipt of benefits** – PBSA tenancy agreement typically prohibit tenants from having minors/dependents living with them, as PBSA schemes are not an appropriate environment for minors.
- **Removal of ability to require one months’ rent in advance** – PBSA schemes take rent payments often in alignment with the schedule for the payment of student loans, which assists students in their budgeting, and reduces the need for guarantors. Many providers offer the option for students to move to monthly rent payments if it is more appropriate for their circumstances. However, changing the ability to take rent payments wholesale may result in increased arrears for those students that are unable to budget throughout the year, and may result in increase financial stress on those students.
- **Right to request pet ownership** – PBSA buildings are not designed to house animals due to their small rooms sizes and inadequate common areas and outside space to provide a suitable environment for an animal. Universities often do not allow for animals on campus, which means pets will be left alone for long periods of time, and providers have experienced therapy pets being neglected by students in their accommodation. Further, the nature of PBSA means students live in close proximity, and not all students will be able to live with animals due to allergies, phobias, or religious reasons. It should be noted here that PBSA providers will accept recognised service or assistance dogs where a student has a disability.
- **Increasing the rent arrears period to three months** – generally, PBSA providers will work with students to avoid formal rent arrears processes. However, should it be required, arrears collection is generally more successful with the tenant in situ, and an increase to three months will increase the likelihood of arrears existing at the end of the lease. This will result in a higher number of occupants in larger arrears, with a significantly reduced ability to secure payment. Any increase in bad debt provision and cost of recovery will affect the returns and the appeal of the sector.
- **Landlord Redress Scheme/Private Rented Sector Database/Decent Homes Standard** – PBSA providers are also governed by government-approved codes, which have a robust compliance and escalation process with regular inspections and conflict resolution. Subjecting PBSA tenancies to these additional obligations under the Bill would unnecessarily duplicate regulation.

**The core issue behind the PRS problem is lack of supply**

42. We wholeheartedly support the Government's vision is to provide security and stability for tenants. This cannot ignore the crucial role of increasing housing supply.
43. Government reforms have thus far have failed to tackle the central issue of housing supply across all tenure types. The critically low supply and subsequent market forces have harmed affordability, quality, and provision across the PRS. Current Government ambitions must provide for the development of purpose-built rented homes, and not continue to focus solely on for-sale homes.
44. BtR has provided additionality to housing supply over the past decade, with government and industry intervention helping set the sector up to contribute to the diversity of housing supply through a quality, professionally managed product. The number of completed BtR homes rose over the last year to reach a new peak of 120,000. Further, BtR has been at the forefront of, and often ahead of, many recent reforms aimed at improving the PRS, resulting in longer fixed-term tenancies, better quality homes for renters, no fees (in some cases no deposits) and high standards of energy efficiency at or above the Minimum Energy Efficiency Standards.