Department for Levelling Up,
Housing & Communities

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Dear James,

Thank you very much for your chairmanship at the Committee stage of the Renters (Reform) Bill ('the Bill') on Tuesday 21 November.

During the debate on Part 1 of the Bill, I said I would write to provide information on a number of issues, which are covered below.

References to 'grounds' below refer to the grounds for possession contained within Schedule 2 of the Housing Act 1988, as amended by Clause 3 and Schedule 1 of the Bill and other amendments.

Council Tax – NC6

The Committee asked about circumstances where a tenant previously held an assured tenancy, but would no longer hold one as a consequence of the Bill. Liability for council tax is set out in the Local Government Finance Act 1992 (LGFA '92). The minor changes being introduced in the Bill won't affect the majority of circumstances, because liability for council tax falls, firstly, on the person who is resident in the property, which most assured tenants and assured shorthold tenants will be. The amendment does not alter that position.

If a tenant doesn't hold an assured tenancy, then liability will depend on their status under the hierarchy as set out in the LGFA '92.

In the specific circumstances mentioned during the debate, where a tenant has passed away, a tenant's estate will be responsible for any council tax that is payable if the tenancy vests in the personal representatives of the estate following the tenant's death and qualifies as a material interest. This is the current position, which will not be altered by the amendment, and applies to many existing assured tenancies or assured shorthold tenancies.

In terms of how councils will know whether a tenant is in situ, councils are well experienced in the administration of council tax, including determining who is liable for council tax. We will work closely with the local authority sector when implementing the new system, to ensure the new rules are well understood.

Ground 4A – Students

The Committee asked what would happen to students who start their course in the winter and do not follow the typical academic cycle. If the tenancy met the criteria of the ground – full-time students on a joint tenancy living in an HMO – then the ground would apply. The landlord could only use the ground if they wanted to house an incoming group of student tenants.

However, the fact that the property was available for a winter intake may suggest that the landlord is happy to let on an alternative cycle and so they may be less likely to use the ground. It is also a "prior notice" ground, which means any tenant would be aware that they may be evicted under the ground before starting the tenancy.

Grounds 1, 1A, 1B – Selling

I committed to clarify whether these grounds permit eviction to allow the sale of a property held in commonhold, and can confirm that eviction would be permitted for such a sale.

A concern was also raised that individuals might grant "sham leases" to use Ground 1B. This would not be possible as this ground is only available to private registered providers.

A similar concern might arise in relation to Ground 1A. A landlord would need to prove there was a genuine intention to sell if the eviction proceeded to court, and to persuade a judge that ownership would be transferred. While the outcome would depend on the specific facts of the case, this would be a considerable legal and financial undertaking to simply evict a tenant, particularly when other reasonable grounds are available to seek eviction.

Ground 7 – Death of a tenant

As I set out, landlords will not usually be able to evict a spouse or partners from their homes using Ground 7. These individuals are entitled to succeed a tenancy under s17 of the Housing Act 1988 if they were occupying the property as their only or principal home, providing the named tenant did not themselves succeed. They may also be entitled to succession in certain other circumstances, such as when they were joint tenants with the deceased.

Hon. Members questioned whether this protection extended to co-habiting couples who were not married or in a civil partnership but lived together as if they were – I can confirm that it does.

Grounds 8A – Rent arrears

I was asked what evidence exists that tenants have paid down small amounts of arrears in order to frustrate possession proceedings.

In 2019, the Government consulted on abolishing section 21 and asked questions about potential changes to the grounds for possession. Landlords told us via the consultation that it can be difficult to gain possession using the existing mandatory serious rent arrears ground (Ground 8) because tenants can reduce their arrears by a nominal amount shortly before the hearing and do so repeatedly. 86% of landlord respondents felt that they should be able to gain possession if this had been done three times.

I was also asked about the risk of tenants being classed as intentionally homelessness when they were evicted due to arrears. Statutory guidance to local councils provides that tenants should not be treated as intentionally homeless if they have lost their home due to arrears resulting from significant financial difficulties, and are genuinely unable to keep up the rent payments even after claiming benefits, and no further financial help was available.

Queries have also been raised by the Committee on whether prospective landlords would be aware a tenant had been evicted due to arrears. Possession orders are not routinely published. As is currently the case, it will be for the judge to decide whether to add a money judgement and an order for costs to the order for possession, if the landlord has sought these. Landlords will need to consider the ability of the tenant to repay the arrears, and the additional cost and time to apply for a money order application when making a decision on whether to apply for a

money order alongside their possession claim. Even in this instance, court judgments are not automatically public knowledge, and need to be enforced by the landlord to appear on the public register.

Timing of application of Part 1 to existing tenancies

Hon. Members questioned what measures in the Bill would prevent landlords being incentivised to issue long fixed terms just after Royal Assent, in order to avoid the application of the new tenancy system to existing tenancies.

As mentioned in the debate, we will provide at least six months' notice of our first implementation date after which all new tenancies will be periodic and governed by the new rules, and allow at least a further 12 months before the new tenancy system is applied to pre-existing tenancies in general. After the first date, an assured tenancy where a fixed term expires will usually convert to the new system, whether or not the new tenancy system has been applied to pre-existing assured tenancies in general yet.

Landlords to assured shorthold tenancies have no real incentive to attempt to lock tenants into long fixed terms prior to implementation. The primary effect of this would be to prevent landlords using s21 to start possession proceedings for the duration of the fixed term, giving tenants some security. Tenants could also refuse to renew for a lengthy term - while the landlord could technically use s21 to evict the tenant at the end of the fixed term, they could only subsequently let to new tenants under the new system, so there is no incentive to do so.

I am copying this letter to members of the Public Bill Committee and will place a copy in both libraries of the House.

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