

## Appendix 1

### Mayor of London's response to MHCLG consultation: A new deal for renting

#### Summary

1. The Mayor is committed to improving the lives of London's 2.4 million private renters, many of whom are facing high rents, little or no security and poor conditions. The Mayor is leading the way nationally in promoting the rights of private renters, despite having no statutory powers to do so. In July 2019, he published *Reforming Private Renting*, his blueprint for the reforms required to make renting more secure and affordable for London's renters: [https://www.london.gov.uk/sites/default/files/reforming\\_private\\_renting\\_-\\_the\\_mayor\\_of\\_londons\\_blueprint.pdf](https://www.london.gov.uk/sites/default/files/reforming_private_renting_-_the_mayor_of_londons_blueprint.pdf), alongside a technical paper setting out his vision of a London Model for private renting.
2. The Mayor is pleased that the Government has responded to his calls to improve security and stability for renters and, in particular, that it has committed to ending 'no fault' section 21 evictions. The abolition of section 21 is vital to increasing renters' security of tenure, providing protection from retaliatory evictions and improving their ability to enforce their existing rights.
3. Many renters in London, and across the country, can be described as vulnerable or disadvantaged, and will benefit from any increase in security of tenure. The Mayor has consistently opposed the hostile environment 'Right to Rent' policy, which increases barriers to renting.
4. The Mayor is concerned, however, that the proposals set out in the Government's consultation on a new deal for renting will fail to deliver the overhaul of the private rented sector that Londoners need. He believes that the use of fixed-term tenancies is not appropriate for an increasingly diverse population of renters, many of whom have long term housing needs. The Mayor strongly believes that open-ended tenancies, coupled with strong protection from unnecessary eviction, is the best solution to improve security of tenure for private renters.
5. The Mayor believes that the Government's inclusion of options for fixed-term tenancies and break clauses in the consultation fundamentally undermines the intention to provide greater security for renters. Break clauses and fixed term tenancies are unnecessary if court processes and possession grounds work effectively, enabling landlords to regain possession of their property where they have a legitimate reason to do so, and if tenants have the flexibility to end a tenancy when it suits them.

6. Although the consultation recognises the importance of court reform to ensuring the private rented sector functions effectively for both landlords and tenants, its proposals fall far short of what is required to achieve it. The Mayor is clear that comprehensive reform and greater resourcing of the court system is essential to delivering meaningful improvements for London's renters.
7. Furthermore, the proposals' reliance on landlords and tenants reaching agreement on key points, such as the type or length of a tenancy, and on rent increases, ignores the fundamental power imbalance that currently exists between them. The proposed approach is unrealistic in London, where the shortage of housing creates competition amongst tenants and gives them little option but to agree to a landlord's terms to secure a property.
8. The Mayor believes that to make renting affordable for Londoners, the Government must give him the powers to develop and implement a system to reduce private rents in London over time. This should include enabling data to be gathered to inform the design of this system and underpin its operation.
9. The Mayor's London Model of tenancy reform sets out, in detail, the package of reforms he believes are necessary to give renters the security they deserve, while giving landlords the confidence to continue to invest in the sector. The London Model proposals are contained in Appendix 2, with relevant sections referenced below. The Mayor's team engaged with the Government during the development of this Model, and the Mayor urges the Government to adopt it in its entirety to create a fair and balanced relationship between landlord and tenant.

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

10. The Mayor believes that renters, in both private rented and social housing, should have the stability and security afforded by the Government's proposal to abolish the assured shorthold regime (including the use of section 21 notices). This includes renters who live in Build to Rent properties.
11. The use of 'no fault' evictions fundamentally undermines renters' security of tenure and their ability to enforce their existing rights. The Mayor believes that this aspect of the Housing Act 1988 must therefore be ended, and the processes which have led landlords to become dependent on Section 21 must be reformed. Specifically, court processes to

allow 'tenant fault' Section 8 evictions to take place are under-resourced, slow and inefficient, and do not provide landlords with the certainty they need to manage their assets. These processes must be reformed to ensure that the sector can continue to function without Section 21 and landlords can continue to have the confidence to let their properties to London's renters.

12. 'No fault' evictions cannot simply be abandoned in isolation, as it could lead to serious unintended consequences for renters, and for organisations who provide accommodation for homeless households or as part of homelessness prevention. For this reason, the Mayor has proposed a wider package of measures to support open-ended tenancies and identified a number of exemptions in his London Model.
13. The Mayor has serious concerns about the Government's proposal to retain fixed term tenancies. He believes that the use of fixed term tenancies is not appropriate for an increasingly diverse population of renters, many of whom have long-term housing needs. The Mayor strongly believes that open-ended tenancies - which are effectively offered through assured periodic tenancy agreements as proposed in the Government consultation - coupled with strong protections from unnecessary eviction, is the best solution to improve security of tenure for private renters.
14. The Mayor is concerned that renters will not have enough knowledge or influence to negotiate an assured periodic tenancy. In a competitive market, such as London, renters who do not agree to the terms set out by the landlord are likely to lose out on the chance of securing the property to another prospective renter.
15. Furthermore, the Mayor is concerned that landlords might offer an assured periodic tenancy at a higher rent than they would ask for a fixed term tenancy, effectively pricing lower income renters out of a choice and out of increased security. The Mayor urges the Government to scrap proposals for assured fixed term tenancies and to make assured periodic tenancies the default option for private renters.
16. As set out in the London Model, the Mayor recognises that there might be a need for some users of the Housing Act 1988 to continue to be able to offer assured shorthold tenancies. The Mayor considers that these could include:
  - i. purpose-built student accommodation;
  - ii. accommodation provided to support homeless households and those at risk of homelessness (pathways to independence-type accommodation);

- iii. holiday, and other short-term, lets;
  - iv. corporate lets;
  - v. shared ownership;
  - vi. tied accommodation.
17. The Mayor recognises that social housing providers currently use assured shorthold tenancies in some circumstances, for example to provide intermediate rent homes to households within a specific income range or to make accommodation available to key workers. The Mayor urges Government to consider how the proposed legislation could best respond to demand for intermediate products, or other innovative forms of rented housing such as those offered by community-led schemes.
18. More widely, the Mayor is clear that the assured periodic tenancy proposed by Government falls far short of the reforms required to better balance the rights of landlords and renters. It lacks essential elements set out in the Mayor's London Model, including an increase in landlord to tenant notice periods, access to better tenancy sustainment support, dispute resolution and redress and tenant relocation payments.

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

19. No. As stated in response to Question 1, and set out in the London Model, the Mayor believes the use fixed term tenancies is not appropriate. A minimum tenancy length risks locking tenants into contracts and can make it hard to leave if, for example, a relationship breaks down, a tenant is affected by domestic abuse or financial circumstances change. The Mayor believes that the use of fixed terms, and break clauses, fundamentally undermines the Government's ambition to give renters greater security and stability.

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

20. No. The Mayor does not support retaining the ability to include a break clause within a fixed-term tenancy. He has made this clear in the London Model (paragraphs 3.2-3.10), which does not permit the use of break clauses in tenancy agreements. Any break clause could be open to abuse by unscrupulous landlords who might use it as a de-facto Section 21 notice. If possession grounds are responsive and comprehensive enough to cover all the legitimate reasons for an eviction, and effective dispute resolution can be provided, there should be no need for such clauses. Removing them altogether would also encourage landlords to resolve disputes through mediation.

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

21. Yes. The Mayor agrees that it should be possible for a landlord to regain possession if an immediate family member wishes to use the property as their own home. The Mayor is pleased that the consultation recognises that there will need to be robust evidence requirements to prevent landlords using this ground spuriously and welcomes the commitment to work with the Judiciary on this.
22. The Mayor believes that a tenant relocation payment (London Model recommendation 7, paragraphs 3.41–3.56) should be made by landlords to tenants in all cases where they seek possession when a tenant is not at fault.

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

23. No. The Mayor believes a requirement for a landlord or family member to have previously lived at the property to serve a section 8 notice under ground 1 is unnecessarily restrictive.

**Question 6: Should the requirement to give prior notice to use ground 1 remain?**

24. Yes, the Mayor believes that the requirement to give prior notice should remain to encourage openness and honesty about intent from the beginning of the tenancy. The Mayor understands that this might be attractive to tenants and act to increase transparency at the beginning of a tenancy. However, it is possible that, if this measure was introduced, landlords would automatically provide their tenant with prior notice, even if they have no plans to sell, in case they wish to use the ground in the future. This would render the prior notice provision meaningless, other than as a means for tenants to challenge possession if it had not been issued.
25. Even when prior notice has been given, a landlord must also be required to present robust evidence to the court for it to be a mandatory ground for possession (London Model, paragraph 3.33) The Mayor is pleased that Government has recognised the importance of landlords presenting robust evidence and has committed to working with the Judiciary to achieve this.

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

26. Yes, the Mayor believes that it should be possible for a landlord to gain possession in these circumstances, subject to the landlord providing suitable evidence of their intent to the court and the court deciding that it is reasonable for them to do so.

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

27. The Mayor firmly believes that it should be at the courts' discretion whether it is reasonable to lift the two-year restriction on a landlord taking back a property. In order to maintain supply of, and investment in, properties for private rent, landlords should be confident that they will be able to regain their properties should their circumstances change suddenly, subject to them being able to clearly evidence this.

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

28. No. The Mayor believes that, where there is no tenant-fault, two months' notice is not sufficient.

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

29. The London Model proposes that landlords be required to give their tenants a four-month notice period, instead of the current standard of between one and two months (recommendation 5, paragraphs 3.11-3.15). Tenants would still be required to give landlords one month's notice, as is currently the case.
30. Longer notice periods would help tenants on limited incomes to plan for the cost of a house move, and four months would mean that tenants with school-age children would never be forced to move during term time. Support for the general principle of a longer notice period for landlords to give tenants is borne out by the evidence presented in the Government's response to their 2018 longer tenancies consultation.

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

31. As in our response to question 6, the Mayor understands that prior notice might be attractive to tenants and act to increase transparency at the beginning of a tenancy. However, it is easy to imagine that, if this measure was introduced, landlords would automatically provide their tenant with prior notice, even if they have no plans to sell, in case they wish to use the ground in the future. This would render the prior notice provision meaningless, other than as a means for tenants to challenge possession if it had not been issued.
32. It would be necessary to guard against the spurious use of prior notice by ensuring that landlords must present a high standard of evidence to the court (London Model, paragraph 3.33). The Mayor is pleased that Government has recognised the importance of landlords presenting robust evidence and has committed to working with the Judiciary to achieve this.

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

33. Yes, the Mayor believes that the new ground should be mandatory if the landlord can provide enough evidence to satisfy the court that they intend to sell the property (London Model, paragraph 3.33). The London Model contains detailed recommendations about how spurious claims should be discouraged, including tenant relocation payments (London Model paragraphs 3.41-3.56) and increased tenancy sustainment support, dispute resolution and redress (London Model, recommendation 11, paragraphs 4.12-4.26).
34. Landlords should be required to provide tenant relocation payments in all cases where an eviction occurs that was not due to tenant fault. This recognises the significant expense and disruption tenants face when a tenancy ends unexpectedly. The payment should be set at the equivalent of one-month's rent - a level that is not unnecessarily punitive to landlords. Crucially, a tenant's right to take legal action against a landlord for illegal eviction must be protected in this situation.

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

35. Yes. For the reasons set out above, the Mayor believes that a landlord should be able to apply to the court if they wish to use the new ground to sell their property before two years from when the first agreement was signed. The court should have discretion whether to grant possession in these circumstances.

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

36. No. The Mayor does not believe that two months is an appropriate amount of notice for a landlord to give a tenant if they intend to use the new ground to sell the property.

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

37. As in our response to question 11 above, the Mayor believes that, in any case where there is no tenant fault, landlords should be required to give tenants four months' notice to move out (London Model, paragraphs 3.11-3.15).

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

- **the landlord can serve a two-week notice seeking possession once the tenant has accrued two months' rent arrears;**
  - **the court must grant a possession order if the landlord can prove the tenant still has over one months' arrears outstanding by the time of the hearing;**
  - **the court may use its discretion as to whether to grant a possession order if the arrears are under one month by this time; and**
  - **the court must grant a possession order if the landlord can prove a pattern of behaviour that shows the tenant has built up arrears and paid these down on three previous occasions.**
38. The Mayor recognises concerns of stakeholders across the sector about any change to the current arrears possession ground and urges the Government to consider carefully all potential impacts of their proposal. An improved approach, set out in the London Model, could be for the tenant to accrue the equivalent of three months' rent areas before the



landlord can secure a court date. However, when that date arrives, the tenant must have brought their arrears down to less than one month to avoid a possession order being granted (London Model recommendation 6, paragraphs 3.31-3.38).

39. The most effective way to ensure possession times are reasonable is to invest in the court system, so that possession cases are not held up by administrative delays (London Model recommendation 10, paragraphs 4.2-4.11). Without doing so, landlords might still face a long wait to secure a bailiff's warrant. Landlords should have insurance which would cover rent arrears in urgent circumstances. The most effective way to avoid rent arrears accruing in the first place is better access to tenancy sustainment support and dispute resolution for both landlords and tenants (London Model, paragraphs 4.12-4.26).
40. In addition, the Mayor supports the approach taken in other countries, including Scotland, whereby if a tenant is in rent arrears due to a delay in the benefits system, the court has discretion not to grant possession (London Model, paragraphs 3.31-3.38). It is vital that Government addresses the problems in the system that are causing misery to tenants and landlords alike.

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

41. Yes. The Mayor recognises that it might be helpful to provide additional guidance to make the anti-social behaviour grounds simpler to understand for both landlords and tenants, and therefore more effective. It will be vital, however, to guard against unscrupulous landlords setting terms which the tenant cannot easily challenge, whether in court or in their communications with their landlord.

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

42. The Mayor welcomes the Government's intent to update ground 14a to give survivors of domestic abuse greater rights to remain in their home if they wish to do so. He believes the new ground should apply to all types of rented accommodation, including in the private rented sector. However, the Mayor urges the Government to:
  - i. invest in support services so that people who are trying to leave an abusive relationship can do so. This includes provision for refuges;
  - ii. consider how effective ground 14A is currently, understanding when and how it is used in the social rented sector; and

- iii. make landlords' duties explicit with regards to safeguarding and reporting concerns to, and sharing evidence with, the police and local authorities.
43. The Government should consider how this ground would apply where survivors of domestic abuse are unable to afford their tenancy if they become the sole tenants. The Government should also consider how this will impact on homelessness decisions if a survivor wants to leave, or loses, the tenancy after the perpetrator is evicted.

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

44. Yes. The Mayor would support amending ground 13 to allow a landlord to gain possession where a tenant prevents them from maintaining legal safety standards, adding to the existing ground that covers an act, or inaction, that has caused the condition of the property or common parts to deteriorate. However, the Government must ensure that there are robust safeguards in place for tenants with mental health problems who might find it difficult to engage, or to protect tenants from harassment from unscrupulous landlords or unreasonable clauses being inserted into tenancy agreements. For this reason, the Mayor believes that this ground should remain discretionary.
45. However, the Mayor also recognises that there is scope to tackle this issue by strengthening landlord's rights of access where they are unable to maintain legal safety standards. He suggests Government explore this further, rather than relying solely on an additional possession ground.

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

46. The Mayor's view is that students, and sharers in other houses in multiple occupation (HMOs), should benefit from the same improvements in tenancy rights as other renters. Those Londoners sharing, or living in non-purpose-built student accommodation, often do so to bring down the cost of renting, but they can face some of the poorest conditions and worst exploitation in the rental market. They are also subject to a bewildering array of contractual arrangements, many of which are informal, but some of which also work well to meet their needs. It is important that the Government understands and regularises this type of renting, without endangering its supply. The Mayor is disappointed that the Government has given no indication as to how its proposals would apply to renters in HMOs.

47. As set out in the London Model (recommendation 14, paragraphs 5.34-5.51), the Mayor believes that further research is needed to determine exactly how student and sharers can benefit from greater security and stability. The same applies to those living in accommodation let on licence, property guardianships and other atypical contractual arrangements. The Mayor is concerned that introducing a new legal framework without fully understanding these contractual arrangements might lead to an increase in some landlords offering licences where they should be offering an assured tenancy (London Model, paragraph 5.52), or other unintended consequences.

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

48. Yes. The Mayor believes that neither the Government's tenancy framework nor the London Model provisions should apply to short-term and holiday lets of less than 90 days. The Mayor has called on the Government to introduce a new registration system for such accommodation hosts, to make it easier to regulate this type of letting and prevent landlords from continuously letting their properties on a short-term basis to circumvent current or new regulations.
49. The Mayor is clear that any rental agreement lasting longer than three months should not be considered a holiday let. Tenants renting for more than three months should have the same security of tenure as other renters. The London Model provisions would enable the tenant to serve notice whenever they needed to, and landlords would be able to regain their property efficiently should they have a legitimate need to do so.

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

50. Temporary accommodation and some forms of move-on accommodation (such as Clearing House) rely on Section 21. The Mayor is concerned that ending Section 21 without alternative arrangements being in place could create challenges for these services – for instance, landlords may no longer wish to offer their properties for use as temporary accommodation if they are not confident that they can regain possession if needed, or even if regaining possession would necessitate them going to court.
51. As set out in his London Model, the Mayor believes that all renters and landlords should be able to access effective support to sustain tenancies. However, if these services fail it is vital that landlords can continue to be incentivised to engage with and offer their

properties to the homelessness safety net, particularly until Government has committed to fund far greater numbers of social rent homes.

52. The Mayor's view (London Model recommendation 13, paragraphs 5.23-5.33) is that the best option to protect the supply of temporary accommodation and other homelessness services is to create:
- i. a new mandatory possession ground that specifically covers temporary accommodation and other homelessness services; and
  - ii. an exemption for 'pathways to independent living' type accommodation, as long it clearly meets these criteria:
    - accommodation needs to be owned, commissioned, procured or facilitated by a public body, social landlord (including housing association) or registered charity; and
    - accommodation must be a stage of a recognised pathway to independent living. This will need to be clearly defined, and safeguards put in place, to ensure that the exemption is not misused.
53. This would mean that 'trusted' providers of accommodation services could be granted possession whenever they felt it necessary for the overall benefit of the service, or where the tenant was deemed to no longer have a support need and can be supported to access mainstream PRS housing – for instance move-on accommodation. This could be modelled on the discretionary ground in Scotland, which covers situations where the tenant no longer needs the supported accommodation provided. The Mayor recognises that this approach is not without difficulties, as discussed in paragraphs 5.31 – 5.32 in the London Model.

**Question 45: Do you think these proposals will have an impact on homelessness?**

54. As important as tenancy reform is, it cannot single-handedly resolve the wider structural barriers that low income and other vulnerable tenants face in the housing market. The London Model sets out, in detail, the Mayor's assessment of these challenges and mitigations to overcome them (paragraphs 5.2-5.22).
55. Many renters, in London and elsewhere in the country, may be described as vulnerable or disadvantaged in the private rented sector. These include:
- a. households with children;

- b. renters who are not in full-time, secure, employment;
  - c. people reliant on any form of income-related benefits;
  - d. disabled people and people with support needs;
  - e. migrants;
  - f. older people; and
  - g. people who are not able to supply good references, pass a UK-credit check or have a UK passport.
56. To truly address the challenges preventing the most disadvantaged renters from accessing suitable homes, the Mayor is urging the Government to adopt his tenancy reform proposals, and specifically to:
- i. review the support available to private tenants through the welfare system, to ensure it operates effectively and is commensurate with market rents in London;
  - ii. fund more social housing for vulnerable renters who should not have to compete in the PRS; and
  - iii. ban outdated and discriminatory 'No DSS' clauses in Buy-to-Let mortgages, tenancy agreements, and adverts for rental properties.

**Question 46: Do you think these proposals will have an impact on local authority duties to help prevent and relieve homelessness?**

57. As set out in paras 48-51 above, reforms to increase security for most renters must not endanger the supply of accommodation for statutory and non-statutory homelessness services. Some of these types of accommodation currently use Section 21 notices and short-term tenancies as a property-management tool or a necessary guarantee to convince landlords to let their properties.
58. Following extensive discussion with sector experts, the Mayor has proposed a new possession ground for temporary accommodation and an exemption for accommodation that is part of a defined 'pathway to independent living', such as the Clearing House stock used for rough sleepers (London Model, paragraphs 5.23-5.33).

**Question 47: Do you think the proposals will impact landlord decisions when choosing new tenants?**

59. The Mayor recognises that, although tenancy reform will substantially benefit vulnerable renters who are currently most at risk from unfair evictions and forced to move

frequently, it could lead to greater reluctance to let to these groups (London Model, paragraphs 5.2-5.22). For instance, landlords might introduce more stringent pre-tenancy checks, require guarantors, or otherwise raise the barriers to entry for tenants they perceive as less 'desirable'. This will particularly be the case if landlords continue to lack confidence in the court system and their ability to regain their property, should they have a legitimate need to do so.

60. The London Model proposals seek to mitigate these potential negative impacts on access and mobility by building in measures that will give landlords the confidence to continue letting to this group – including new and enhanced possession grounds, improved court processes, and enhanced tenancy sustainment and dispute resolution services. The Mayor strongly urges Government to implement his proposals.
61. The Government should also consider what more could be done to encourage landlords to let to vulnerable, disadvantaged and low-income renters. This might include additional incentives to let to those in receipt of welfare benefits, including a simple process for direct payments of benefits, and enhanced tenancy sustainment and dispute resolution services.
62. The Mayor supports measures to encourage landlords to both maintain supply and improve property conditions beyond their statutory obligations. In other parts of the world where the rental market is more heavily regulated, especially where that control applies to rent-setting, investment in the sector is supported by governments to ensure that housing supply is protected. The London Model advocates the same approach (recommendation 12, paragraphs 4.27-4.34). This could include tax incentives and other initiatives to encourage improved property conditions, enhanced energy efficiency, tenanted sales and renting to low-income households.

**Question 50: Do you agree that the new law should be commenced six months after it receives Royal Assent? If not, what do you think would be an appropriate transition period?**

63. The Mayor recognises that renters, landlords, local authorities and the courts will all need time and resources to prepare for the commencement of any new tenancy framework. The Mayor urges the Government to protect tenants from any move by unscrupulous landlords to evict them from their existing tenancy using Section 21 instead of renewing the tenancy under the new regime.