Written submissions from the Housing Team at Garden Court Chambers to the consultation on A New Deal for Renting

INTRODUCTION

1. This is the response of the Garden Court Chambers Housing Team to the consultation on the New Deal for Renting. We respond to the specific questions below. As lawyers who act for tenants and other occupiers, we wholeheartedly support the proposals for the abolition of s.21 ground for possession. We believe that s.21 no fault evictions have led to unfairness in the balance between landlord and tenant and have been the cause of profound insecurity, contributing to homelessness and to children in particular having to move homes far too often at a significant cost to their education and well-being.

2. Garden Court Chambers has one of the largest specialist housing law teams in the country and has a reputation for excellence in this area. We cover all aspects of housing law including possession claims, unlawful eviction, homelessness, allocation of social housing, disrepair and housing benefit. Our practitioners also have specialist expertise in many of the 'niche' areas within housing law including Romani Gypsy and Traveller Rights, disability issues, welfare benefits, anti-social behaviour, community care, unfair terms in tenancy agreements, general planning matters, grants, licensing of houses in multiple occupation, housing standards, and the housing health and safety rating system. We are particularly committed to representing tenants, other occupiers and homeless people.

3. We are grateful for the opportunity to respond to this consultation and are happy to discuss our comments and proposals further if that would assist. Our comments are intended to be constructive rather than critical.

CONTEXT

4. Since s.21 was introduced, in Housing Act 1988 in force from January 1989, the private rented sector has grown considerably. In 2018, 4.5 million households lived in the private rented sector in England, 19% of all households, making it the second largest tenure after owner occupation (64%). The English Housing Survey found that private renters have the lowest satisfaction with their tenure (69%), spend a third of their income on rent (more than social renters or owner occupiers do), and that private renters in London spend 42% of their income on rent. Private rented properties have the highest proportion of non-decent homes (25%).[1]

[1] English Housing Survey, private rented sector, 2017 - 2018

5. In 2016, Shelter's analysis of the English Housing Survey commented that one in four private renters had moved in the previous years and 29% had moved three times or more in the previous five years. Shelter commented on the high costs involved in moving home and also on the disruption to children (noting that one in four families now live in the private rented sector). Shelter said "If you have a child, that frequency of moving is practically nomadic. It makes it almost impossible to give them somewhere that they will be able to think of as their childhood or family home."[2] Similarly, statutory homelessness statistics have identified the ending of assured shorthold tenancy as a significant driver of homelessness for a number of years.[3]

6. Our experience supports this. We frequently represent families who are forced to move at two months' notice, and have to arrange alternative accommodation, find new schools and/or make applications for homelessness assistance. The availability of the s.21 procedure inevitably creates insecurity and anxiety for tenants, who do not know whether they will be required to move (at no more than two months' notice).

7. In addition, where tenants receiving s.21 notices make applications for homelessness assistance, local housing authorities' practice of requiring them to wait until the landlord has obtained a possession order and indeed a notice of execution of warrant has been sent until interim accommodation is provided continues. Although as a matter of law, a tenant who has received a valid s.21 notice is now threatened with homelessness (s.175(5) Housing Act 1996 inserted by Homelessness Reduction Act 2017), the duty on a local housing authority is to help that tenant prevent his or her homelessness. There is no duty to secure interim accommodation. In our experience, it continues to be routine for local housing authorities to advise that, whilst they have a duty to help, accommodation will not be provided until the day of execution of the warrant.

8. We believe that the private rented sector in England should provide stable, secure, affordable and decent homes. We note the abolition of no fault evictions in Scotland and proposals to abolish s.21 in Wales and believe that England should follow suit. In our opinion, the right to respect for a home (Article 8, European Convention on Human Rights) should include the right to occupy a home for as long as the tenant wishes, subject to compliance with the tenancy agreements and to certain protections for the landlord.

9. We also note that there are wider questions implicit in this consultation. A tenant's ability to defend possession proceedings is often dependent on his or her ability to obtain legal aid. Whilst legal aid remains available to defend possession proceedings (subject to means and merits tests), the Law Society has recorded "housing advice deserts" where it is very difficult indeed to find a legal aid solicitor or access housing advice.[4]

10. Finally, we welcome the proposals to end no fault evictions. However, we believe that they will only be effective if rent increases can be limited. Otherwise, a landlord could simply

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[2] https://blog.shelter.org.uk/2016/02/renting-families-move-so-often-they-are-nearly-nomadic-new-research/ [accessed 1 October 2019].

[3] See, most recently: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/831246/Statutory_Homelessness_Statistical_Release_Jan_to_March_2019.pdf [accessed 6 October 2019]

[4] https://www.lawsociety.org.uk/policy-campaigns/campaigns/access-to-justice/end-legal-aid-deserts/ [accessed 1 October 2019].

increase the rent to unaffordable levels aware that the tenant will accrue arrears and that possession will be granted. In addition, we believe that there should be more effective provisions requiring landlords to construct and maintain let properties to a decent standard.

QUESTIONS

Question 1: Do you agree that the abolition of the assured shorthold regime (including the use of s.21 notices) should extend to all users of the Housing Act 1988? If not, which users of the Housing Act 1988 should continue to be able to offer assured shorthold tenancies?

11. We believe that the assured shorthold regime and the use of s.21 notices should be abolished across the board. We do not see a case for exempting housing associations, local authorities or other social landlords.

12. We do accept that private registered providers of social housing (housing associations) should be able to offer one year probationary tenancies. Currently, they do so by offering assured shorthold tenancies which will be converted into assured tenancies after the first year. We would suggest that Housing Act 1988 be amended so that private registered providers of social housing can offer introductory tenancies for the first year, as local housing authorities can under Housing Act 1996.

QUESTION 2: Do you think that fixed terms should have a minimum length? If yes, how long should it be?

13. We believe that fixed terms should have a minimum length. This provides stability and security for both landlord and tenant. We would prefer minimum terms of three years, with a break clause providing for the tenant (but not the landlord) to serve a notice of termination giving a certain period of notice. The landlord would be protected during the fixed term by the availability of fault-based grounds for possession.

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

14. We believe that a break clause should be available for a tenant to terminate the tenancy, upon a prescribed minimum notice period. This would allow the tenant, for example, to terminate the tenancy if he or she could no longer afford the rent.

15. We consider that a break clause should <u>not</u> be available to the landlord. As set out above, the landlord is protected by the fault grounds for eviction if the tenant fails to pay rent or otherwise breaches the terms of the tenancy.[5] In the absence of default on the part of the tenant we do not regard it as necessary for a landlord to be able to recover possession prior to the expiry of the fixed term.

16. We consider that the stability of a fixed-term tenancy, for a period of at least three years, allows a tenant to settle in his or her home, and feel secure. The availability of a landlord's break clause would mean that the tenant would, in practice, only have security for the period up to the break clause and the problems of insecurity and anxiety would continue.

[5] Grounds 2, 7A, 7B, 8, 10, 11, 12, 13, 14, 14A, 15 and 17

A landlord's break clause would in effect continue no fault evictions.

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

17. Yes, but under strict conditions. First, that the landlord gave notice of the possibility of a family member needing to live in the property before the tenancy was granted, so that the tenant accepted the tenancy aware of the possibility. Second, that there is a prescribed definition of "family" confined to close family members: spouse/partner and children. Third, that notice is given to the tenant that the landlord requires possession on the ground with a generous minimum period (such as four months). Fourth, that compensation or alternative suitable accommodation is available for the tenant. Fifth, that there is a minimum period within which the family member must move into the property and a further minimum period during which the family member must occupy the property. Sixth, that sufficient evidence is provided to establish that the fifth condition will be met, prior to possession being granted. If the latter conditions are not enforced, there is potential for misuse in that a family member could move in, and shortly afterwards the owner could put the property on the market or let to a new tenant at a higher rent.

QUESTION 5: Should there be a requirement for a landlord or family member to have previously lived at the property to serve a s.8 notice under 1?

18. Ground 1 contains a mandatory ground for possession. As such, there must be strict conditions in order to prevent mis-use by the landlord. We do consider that, if this ground is to be relied upon, notice of the possibility must be given before the tenancy is entered into. We would also expect a generous period of notice requiring possession on this ground (four months or more), compensation or alternative suitable accommodation to be made available for the tenant and for there to be minimum periods of occupation as set out above.

19. Currently, Ground 1 is not routinely used by landlords because of the availability of s.21. However, if s.21 is abolished, the concern will be that Ground 1 becomes a means of circumventing the abolition of no fault evictions.

20. Ground 1 will need careful amendment in order to ensure that it is not routinely used by landlords and letting agents as a means of circumventing the abolition of no fault evictions. A landlord seeking possession on this ground should be required to show that he or she (or his or her spouse or partner) had previously lived at the property. The evidence required should be prescribed (eg electoral roll, Council tax payments) and limited to such evidence as would show actual occupation, rather than simply payment of bills. If there is any doubt, the ground should prescribe that possession should not be granted.

QUESTION 6: Currently a landlord has to give a tenant prior notice (that is, at the beginning of the tenancy) that they may seek possession under ground 1, in order to use it. Should this requirement to give prior notice remain?

21. Yes, for the reasons set out above.

QUESTION 7: Should a landlord be able to gain possession of their property before the fixed-term period expires, if they or a family member want to move into it?

22. In general no. To do so would undermine the security and certainty of a fixed-term. Even if the landlord did not use this ground, a tenant would be anxious that he or she might do so.

23. We can see a limited exception where the landlord has served notice of this possibility prior to the tenancy, the tenancy agreement reflects that possession on this ground might be sought and provides for a minimum notice period to the tenant if the landlord intends to rely on it, and a generous period for the notice requiring possession is prescribed.

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?

24. In general no. We believe that even periodic tenancies should provide security for the tenant of a minimum period of three (not two) years. We can see a limited exception where the landlord has served notice of this possibility prior to the tenancy and the agreement provides for a generous minimum notice period to the tenant if this ground is to be relied upon.

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?

25. No, save for the exceptions of prior notice and generous minimum notice period above.

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?

26. No. Where possession is required for reasons that are not the fault of the tenant, we believe that the tenant should have sufficient time to find alternative accommodation. Two months is not sufficient. Four months would be the minimum.

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

27. More than two months, see above.

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?

28. We do not support the new ground. We consider that landlords can sell their property with the tenant in occupation. If the ground is to be introduced, we would support both prior notice before the tenancy is entered into, and a generous period of notice requiring possession. We would also support compensation to the tenant and/or alternative accommodation.

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')?

29. As set out above, we do not support this proposed new ground. If it is to be introduced, we consider that the order should be discretionary, so that hardship to the tenant can be balanced against hardship to the landlord.

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?

30. We do not support this proposed new ground. If it is to be introduced, there should be a minimum period of occupation for at least two years.

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

31. No. Where possession is required for reasons that are not the fault of the tenant, we believe that the tenant should have sufficient time to find alternative accommodation. Two months is not sufficient. Four months would be the minimum.

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

32. More, see above.

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

33. This is the current position.

QUESTION 17 (cont'd): 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

34. We do not agree in the reduction of the amount of arrears under Ground 8. To give one obvious example of the hardship this could cause, problems with Universal Credit which are not the fault of the tenant can frequently cause temporary arrears of around one month's rent. This should not provide a basis for eviction. If one month's arrears are outstanding, and there is a history of persistent delay in paying arrears, the Court retains a discretionary power to grant possession (Grounds 10 and 11).

35. Further, we consider that the Court of Appeal decision in North British Housing Association v Matthews[6] is wrong and should be overturned in legislation. Courts should be permitted to grant adjournments of possession claims where a tenant has applied for housing benefit (or universal credit), the application has not yet been determined and there is no evidence that any delay was due to the fault of the tenant.

6 [2004] EWCA Civ 1736, [2005] 1 W.L.R. 3133

36. The primary purpose of possession proceedings on the grounds of rent arrears should be to recover the arrears, so as to avoid depriving a person of their home and so that the landlord and tenant can continue in their relationship. If it is the case that the tenant has persistently delayed in paying his or her rent, so that it is reasonable for the landlord to obtain possession, the Court can make an order for possession under Ground 11. For possession sought on other grounds, if the arrears can be repaid and the rent will be paid in the future, it is inappropriate to order possession.

QUESTION 17 (cont'd): the court may use its discretion as to whether to grant a possession order if the arrears are under one month by this time

37. We do not support the reduction of Ground 8 to one month's arrears. We note that Ground 10 is available in any event for arrears of less than two months. If the amount in Ground 8 is to be reduced, we would support the proposal that it is a discretionary ground for possession. However, we consider Ground 10 to be sufficient.

QUESTION 17 (cont'd): 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. We see no reason for this ground. Ground 11 (persistent delay in paying rent) encompasses these circumstances. We consider that rent arrears grounds should be discretionary, rather than mandatory, so as to encourage tenants to pay their arrears.

QUESTION 18: should the government provide guidance on how stronger clauses in tenancy agreements could make it easier to evidence ground 12 in court?

39. We accept that, for non-professional landlords, obtaining possession on the grounds of anti-social behavior can be difficult. We do not consider that the grounds should be amended. However, guidance to landlords would be useful on the following:
    i. Identifying non-exhaustive examples of anti-social behavior, which could result in breaches of the tenancy agreement and a ground for possession, in the tenancy agreement;
    ii. Procedural steps in bringing a claim for possession on these grounds;
    iii. Evidence required to support the ground, including the burden and standard of proof;
    iv. Guidance as to the admissibility and weight of hearsay evidence.

40. It is our experience that the difficulties in obtaining possession under Ground 12 for anti-social behaviour are due to non-professional, and indeed some professional, landlords, not understanding Court proceedings. In particular, they rarely understand the need to prove their case (that the tenant has engaged in anti-social behaviour) or how to adduce evidence in order to prove their case. All too often, hearsay evidence is given and contemporaneous records are not disclosed. We understand the reluctance of victims of anti-social behaviour to give evidence and the necessity of adducing hearsay evidence at times. However, landlords need guidance so that they can bring possession cases to court which are properly prepared, comply with the Civil Procedure Rules and contain sufficient evidence for the Court to be satisfied that the Ground is made out.

QUESTION 19: as a landlord, what sorts of tenant behaviour are you concerned with?

41. Not applicable.

QUESTION 20: have you ever used Ground 7A in relation to a tenant's anti-social behaviour?

42. Not applicable. We represent tenants who face possession proceedings under Ground 7A regularly. Our experience has been that this ground is often used – in our view – inappropriately, for example in respect of minor criminal offences committed some considerable time ago. These are not the urgent cases, involving the most serious anti-social behaviour, which the grounds was intended to target. In addition, if the tenant is afforded a review process, the review is often carried out in a manner which is procedurally unfair, without giving the tenant the chance to obtain representation, present his or her case or see or challenge the evidence against him or her. We are also concerned that injunctions and closure orders (both of which may go on to form the basis of a case brought on ground 7A) are granted too readily, often in the absence of the tenant, before he or she has had the chance to obtain legal assistance and (particularly in the case of closure orders) without any real scrutiny of the evidence. For these reasons we believe that the continued use of Ground 7A should be reviewed with a view to its abolition.

QUESTION 21: Do you think the current evidential threshold for Ground 7A is effective in securing possession?

43. We would oppose any reduction in the evidential threshold and, instead, believe that consideration should be given to abolishing Ground 7A. See above. We acknowledge that conviction of a serious offence, together with the other conditions set out in Ground 7A, matters. However, these matters can be raised in the context of Ground 14. We do not see why the Court should not balance hardship to the landlord and/or neighbours against potential hardship to the tenant and his or her household. The case-law under Ground 14 makes it clear that neighbours must be protected against the possibility of future anti-social behaviour, whatever the hardship to the tenant. But, providing the anti-social behaviour will not continue and that the harm caused to any neighbours etc is not irredeemable, we do not believe that the tenant should automatically be evicted in all cases where a particular type of anti-social behaviour has occurred. A better way to deal with those urgent cases involving the most serious anti-social behaviour, which Ground 7A was intended to deal with, would be to expedite court proceedings, albeit while still leaving sufficient time for the tenant to obtain advice and prepare his or her case.

QUESTION 22: Have you ever used ground 14 in relation to a tenant's anti-social behaviour?

44. Not applicable. We represent tenants who are defending possession proceedings brought under Ground 14.

QUESTION 23: Do you think the current evidential threshold for ground 14 is effective in securing possession?

45. Yes. We would oppose any amendments changing the burden of proof or the standard of proof. Hearsay evidence is admissible in possession proceedings, so that victims who are not prepared to give evidence in Court do not need to do so. We consider that the admissibility of hearsay evidence provides sufficient protection to victims and/or

neighbours. We are concerned that sometimes allegations of anti-social behaviour may not be true and/or may result from a dispute between neighbours in which all parties are at fault. Without the opportunity for the Court to test the credibility of the evidence adduced, whether by hearsay or directly, there is the real possibility of miscarriages of justice, with the Court being required to accept an allegation without the opportunity to inquire into the truth of it.

QUESTION 24: Should this new ground apply to all types of rented accommodation, including the private rented sector?

46. The current Ground 14A does not apply to private rented properties. We do not see why victims of domestic abuse should have greater protection in the social housing sector, and lesser protection in the private rented sector.

47. The abolition of s.21 means that private rented landlords will be reliant on the specified grounds for possession at Schedule 2. It would be appropriate therefore for private landlord to be able to bring possession proceedings on the grounds of domestic abuse.

QUESTION 25: Should a landlord be able to only evict a tenant who has perpetrated domestic abuse, rather than the whole household?

48. The decision should be that of the Court. There are circumstances when a victim of domestic abuse would want only the tenant to be evicted (and for the tenancy to be transferred into her name). There may be other circumstances in which the victim would prefer the household, or another member of the household, to be evicted. We consider that the Court should make the decision, taking into account, and giving significant weight to, the views of the victim.

QUESTION 26: In the event of an abusive partner threatening to terminate a tenancy, should additional provisions protect the victim's tenancy rights?

49. In our experience, the ability of one joint tenant (or a sole tenant) to terminate a tenancy is a significant form of abuse. Furthermore, the remedies preventing termination are complex: application has to be made under the Matrimonial Causes Act 1973, the Family Law Act 1996 or the Children Act 1989 for an order preventing the tenant from serving a notice to quit on the landlord so as to preserve the rights of the other tenant (or occupier) to apply for the tenancy to be transferred into her or his name. Once a notice to quit has been served by a tenant on the landlord, the tenancy will terminate. As a result, the victim of abuse, who may have remained in the property, will have no legal right to have the tenancy transferred to her (since no tenancy exists).

50. We believe that the procedure for preventing a tenant from terminating a tenancy against the wishes of his or her joint tenant should be amended, so that a notice to quit requires the consent of both tenants. We also believe that there should be a speedy, cheap and effective remedy if a sole tenant is threatening to serve a notice to quit and terminate the tenancy. Legal aid should be available for the victim to access the Courts.

QUESTION 27: Should a victim of domestic abuse be able to end a tenancy without the consent of the abuser or to continue the tenancy without the abuser?

51. Currently the victim can terminate a joint tenancy without consent of his or her abuser. However, we consider that the ability of one joint tenant to terminate a joint tenancy without consent is more frequently used by the abuser than by the victim. For that reason, we prefer that joint tenancies can only be terminated with the consent of all tenants.

52. As set out above, there should be a quick, accessible and effective remedy whereby a Court can intervene, on application by the victim, so as to prevent termination by an abuser and/or to permit a victim to terminate a tenancy without the abuser's consent or to transfer the tenancy to the victim. However, that decision should be made by the Court.

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?

53. We would only support this if:
    a. Ground 13 remained discretionary;
    b. The ground could only be used where the tenant routinely prevented the landlord from maintaining legal safety standards;
    c. A failure to gain access would put the landlord in significant breach of legal safety standards; and
    d. The landlord can show that all other reasonable efforts to gain access have failed.

QUESTION 29: Which of the following could be disposed of without a hearing?

54. We do not consider that accelerated possession proceedings are appropriate for any grounds for possession. Even in s.21 cases, there are disputes over whether a notice was served, and/or whether the landlord had complied with the other mandatory provisions of s.21. Each of the grounds for possession listed has potential for disputes over facts. We consider that the effective and efficient administration of justice would require listing for a five minute hearing, with notice to both parties. If the tenant indicates in advance or at the hearing that he or she does not wish to defend the claim, the Judge will simply determine whether the grounds for possession are made out on the landlord's evidence. If the tenant indicates that the claim is genuinely defended on grounds that are appear to be substantial (CPR 55.8), then we would expect directions to be made for a defence, disclosure and witness evidence.

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

55. We consider that ground 4 should be abolished, so that students have the same rights as other tenants. In practice, most students vacate properties at the end of the agreed period. Where a student has a reason for wishing to stay, and has not breached the terms of the tenancy, that should be possible.

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

56. No. We consider that this would result in the opportunity for widespread abuse in that lettings would be granted as short term, not subject to the possession proceedings regime, and then potentially renewed (or not).

QUESTION 32: Should the existing ground 5 be reviewed so possession can be obtained for re-use by a religious worker, even if a lay person is currently in occupation?

57. We are not aware of any significant problems in relation to ground 5 that would require this amendment.

QUESTIONS 33, 34 and 35: agricultural tenancies

58. We do not comment.

QUESTION 36: Are there any other circumstances where the existing or proposed grounds for possession would not be an appropriate substitute for s.21?

59. No.

QUESTION 37 – 44

60. These questions request statistical evidence from landlords and so we do not respond.

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

61. We consider that the number of applications for homelessness assistance will fall. We note that, until 2017 -2018, the ending of an assured shorthold tenancy was the most common reason for applications for homelessness assistance and that it is currently the second most common reason. We consider that these proposals will encourage landlords to grant stable, long-term tenancies to the benefit of both tenants and landlords.

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

62. As above, we consider that there will be fewer applications for homelessness assistance and therefore the pressure on local housing authorities will be reduced. In so far as private landlords may be more reluctant to accept nominations from local authorities, due to the greater security of tenure, then the grounds for possession for rent arrears and anti-social behaviour remain and routinely landlords request rent guarantees or other incentive payments from local authorities against the risk of arrears in any event.

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

63. We hope that the proposals will result in landlords co-operating with their tenants to provide long-term secure homes with a regular return by way of rent. We hope that the culture of landlords ending tenancies so as to remarket the property on a significantly higher rent will cease. Landlords will receive a regular return, by way of rent, and will also be able to realise the capital value of the property, with or without a tenant in occupation.

64. Having said this, we are concerned that the invidious trend of landlords refusing to accept

tenants who are in receipt of housing benefit or Universal Credit ('No DSS') might increase. Safeguards should be implemented to counter this form of discrimination which we consider to be unlawful under the Equality Act 2010.

QUESTIONS 48 and 49: Do you have any views about the impact of our proposed changes on people with protected characteristics as defined in s.149 Equality Act 2010? If any such impact is negative, is there anything that could be done to mitigate it?

65. Discrimination on the grounds of protected characteristics when it comes to deciding whether to let a property, or on what terms, is already prohibited under Part 4 Equality Act 2010. We would not expect landlords to breach Part 4 Equality Act 2010 as a result of these proposals save that the exception to this might be the example highlighted above: refusals to let to tenants in receipt of welfare benefits. It is highly likely that this is unlawful indirect discrimination under Equality Act 2010, but in any event we believe that measures should be taken to counter this behaviour. For example, local authorities could be given the power to impose penalties on landlords in these cases.

QUESTION 50: Do you agree that the new law should be commenced six months after it receives Royal Assent?

66. Yes.

67. We hope that the comments above are of some assistance. Please contact us if there are any of the points we have made which require further elaboration or discussion.

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