

# Tenure Reform - Working Paper on Grounds for Eviction

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## Working paper – seeking members’ views

1. This paper forms a series that BPF is issuing to members on tenancy reform in the residential sector.
2. The Government is committed to a Renters’ Reform Bill during its term of 2019-2024. There are no signs it will move a Bill shortly, but it is important the BPF puts in work now to ensure it can engage in the pre-legislative period and articulate our members’ concerns.
3. This second paper in the series focuses on the existing grounds for eviction. We are grateful to members, Eleanor Murray (CMS) and Kelly Smith (Allsop) for their help and expertise in drafting it.
4. The focus of the paper is on the existing grounds, with discussion and commentary including where we consider it may be helpful to consolidate some discretionary grounds with mandatory grounds to strengthen them.
5. Annexe 1 contains the paper and 2 contains a list of existing grounds for eviction.

**We would be grateful to members for their input.**

**Do you agree with the discussion and commentary around specific grounds (in italic text)?**

**Are there additional changes members would like to see?**

## Annex 1 - Paper prepared for the BPF Tenancy Reform Working Group Spotlight on Grounds for Possession: Housing Act 1988

**Kelly Smith and Eleanor Murray**

### Background

1. This paper has been prepared to provide a framework for discussion in relation to the proposed reforms contained in the Government consultation 'A New Deal for Renting' (also known as abolition of Section 21) published in July 2019 and thereafter the proposed Renters' Reform Bill which pledged to abolish s21 and reform the grounds for possession in the Housing Act to improve the court process for landlords to make it quicker and easier to get back possession when using the s8 regime.
2. It will focus on what have been identified as the key grounds likely to be of most relevance to the BPF discussion and specifically how these existing grounds might be bolstered and changed to best support landlords in the future absent s21. A separate paper has been prepared to deal with the Court process.
3. In addition, below are some broader points to add context and which may aid the discussion:-

### **Abolishing AST's**

4. The proposed abolition of Section 21, the 'no fault eviction' notice, will essentially mean the abolishment of the assured shorthold tenancy regime whereby all tenancies will effectively become secure / assured tenancies (either fixed term or periodic) leaving little flexibility for landlords to be able to gain possession quickly and easily in circumstances where landlords will have no alternative but to work within the framework of prescribed grounds, mandatory and discretionary.

### **What scope is there for use of Accelerated Possession Proceedings (APP)?**

5. The current regime under s21 allows for the use of Accelerated Possession Proceedings (APP), where there is no requirement for a court hearing. It is not clear absent s21, the extent to which an order for possession can be secured using APP which would allow for claims to be determined more swiftly and more cost effectively. There is a strong appetite for the use of APP to remain and become a feature of any reformed regime. We consider it could be used for grounds 1, 2, 6, 7, 7A, 7B and 8 (all being mandatory grounds) subject to sufficient evidence being provided. What might sufficient evidence mean?

### **Will Landlords be able to include break provisions in new tenancies and how will they operate?**

6. The consultation proposes incorporating mutually agreed break clauses into tenancy agreements, which should be agreed prior to commencement of any tenancy. This requires further clarity as to what constitutes 'agreement' and what notice periods will apply. Likewise, will these be tenant only break clauses or will landlords also be able to operate break clauses and will there be any restrictions/procedures as to how these will operate within fixed term/when it becomes a periodic tenancy?

## Notice periods

7. What are the current notice period for existing grounds and should these change absent s21? (NB, for the purposes of the discussion we are assuming an end to Covid restrictions and extended notice periods when serving s8 notices)

## Observations/ lessons learned following the Private Housing (Tenancies) (Scotland) Act 2016

8. What can we learn from Scotland? The extent to which the reforms have created barriers to landlords obtaining possession are not clear. Prior to the pandemic there were reports by 2019 of considerable delays in the new Tribunal process introduced and a 3-fold increase in the number of applications for possession.

## The Grounds: Schedule 2 Housing Act 1988 (Parts 1 and 2) for feedback and discussion

9. Below are key grounds identified for discussion with commentary including where we consider it may be helpful to consolidate some discretionary grounds with mandatory grounds to strengthen them. **(Please note this is not designed to restrict discussion of other grounds)**

### Ground 1: Prior notice has been given that the landlord may wish to take the property as their own home (Mandatory) (Notice is Two months or more)

10. *Commentary: Ground 1 should ensure a clearly defined position around 'spouse' and what constitutes 'evidence'. This Ground should also include provision to sell, which again should be evidenced and the definition of such 'evidence' set out in the legislation. The Consultation considered widening to circumstances where the Landlord's **family member** wishes to use the property as their home. We agree and do not think there should be a restriction requiring the Landlord/family to have lived there previously.*

## Rent Arrears grounds

### Ground 8: rent arrears (Mandatory) (Two weeks)

11. *Commentary: Suggest reducing the amount of arrears required at the hearing date for an Order to be made to less than 8 weeks. Consultation refers to 1 month. How do we prevent those who play the system ensuring minimum payments are made on the eve of the hearing to avoid the mandatory ground being made out?*

### Ground 10: rent arrears (Discretionary) (Two weeks)

12. *Commentary: Could this be combined with Ground 11 to strengthen it. At what points should the existence of rent arrears become a mandatory ground and should the threshold change under the new regime?*

### Ground 11: regular failure to pay rent (Discretionary) (Two weeks)

13. *Commentary: To avoid abuses by tenants, could Ground 8 be consolidated with the Discretionary Grounds 10 and 11 to strengthen the overall Mandatory Ground 8? It is usual that when serving a Ground 8 Notice, Grounds 10 and 11 are also relied upon to bolster any claim. E.g., a 3-strike rule to convert into a mandatory ground regardless of rent arrears level at time of hearing?*

## **Reconstruction/Repair/Refurbishment grounds**

**Ground 6: Reconstruction, demolition or other works (Mandatory) (Notice is Two months or more)**

*14. Commentary: This is an important ground for landlords to maintain/refurb/upgrade their investments and must remain mandatory. Notice should not exceed 2 months i.e., no longer than under s21.*

**Ground 13: A tenant/occupant has caused the property to be neglected (Discretionary) (Notice is Two weeks)**

*15. Commentary: Can this be more carefully defined to demonstrate ground has been met? Should this be upgraded to a mandatory ground if sufficient evidence is available?*

**Ground 15: poor treatment of furnishings (Discretionary) (Notice is Two weeks)**

*16. Commentary: Should ground 6 be incorporated with grounds 13 and 15 when dealing with refurbishments as opposed to demolition?*

## **Criminal/Illegal or Anti-social behaviour grounds**

**Ground 7A: conviction for serious offence (Mandatory) (Notice is Four weeks/1 month)**

**Ground 7B: service on landlord of notice by Secretary of State in respect of illegal immigrants (Mandatory) (Notice is Two weeks)**

*17. Commentary: These must both remain mandatory grounds and the notice periods must not be extended. Can we bolster Ground 7A to define "serious offence" so that Landlords have certainty when seeking to rely on this ground? Can it be extended to encompass Ground 14A which is currently a discretionary Ground and there may not yet be a conviction but at least evidence of violence/threats of violence.*

**Ground 14: anti-social behaviour (Discretionary) (Immediate)**

*18. Commentary: Should this become a mandatory ground? How do we define the use of this ground where anti-social behaviour can be difficult to define?*

## **Other grounds**

**Ground 12: Any obligation of the tenancy (other than non-payment of rent) has been broken or not performed (Discretionary) (Notice is Two weeks)**

*19. Commentary: Any views around bolstering this ground where its use absent s21 may be more necessary?*

## Annexe 2 – List of Current Grounds

### a. Mandatory Grounds

#### i. Ground 1: landlord taking property as their own home

Used when the landlord wants to live in the property as a permanent home. It is only permitted when the landlord has already lived in it as their main home or they, or their spouse require it to live in as his or her main home.

Evidence of this may be required, together with evidence that the landlord intends to leave their current home.

#### ii. Ground 2: mortgage property

Used when the property is subject to a mortgage which existed before the start of the tenancy and the lender wants to repossess the property.

#### iii. Ground 3: holiday let

Used when the tenancy is for a period of a maximum of eight months and the property was occupied as a holiday let within the period of twelve months prior to the start of the tenancy. Written notice must be given before or at the start of the tenancy that possession might be recovered based on this ground.

#### iv. Ground 4: property tied to an educational institution

Used when the tenancy is for a period of no more than twelve months and the property belongs to an educational institution. Written notice must be given before or at the start of the tenancy that possession might be recovered based on this ground.

#### v. Ground 5: housing for a minister of religion

Used when the property is being used by a minister of religion and is required for another minister. Written notice must be given before or at the start of the tenancy that possession might be recovered based on this ground.

#### vi. Ground 6: refurbishment

Used when the landlord wants to reconstruct, demolish or carry out works on part or all of the property which cannot go ahead with the tenant there, perhaps because the tenant will not allow access. If this ground is used, the landlord has to pay reasonable removal costs.

#### vii. Ground 7: death of the tenant

Used when the previous tenant has deceased and the tenancy has passed to a new tenant but the new tenant does not have the right to carry on with the tenancy. Proceedings must be brought within twelve months following the death of the tenant, or within twelve months of the landlord becoming aware of the death of the tenant.

viii. **Ground 7A: conviction for serious offence**

ix. **Ground 7B: service on landlord of notice by Secretary of State in respect of illegal immigrants**

x. **Ground 8: rent arrears**

Used when the rent is still in arrears on the date that the Section 8 notice is served and on the date of the hearing. Where rent is due weekly or fortnightly, at least eight weeks' rent must be in arrears. Where rent is due monthly, at least two months' rent must be in arrears. Where rent is due quarterly, at least a quarter's rent must be in arrears by more than three months. Where rent is due yearly, at least three months' rent must be in arrears by more than three months.

## **b. Discretionary Grounds**

i. **Ground 9: alternative accommodation**

This ground states that alternative accommodation will be available for the tenant in the case that the possession order is made and that the landlord has to pay reasonable removal expenses.

ii. **Ground 10: rent arrears**

Used when any amount of rent is due on the date that the Section 8 notice is served and is still due on the date that proceedings begin.

iii. **Ground 11: regular failure to pay rent**

Used when the tenant has failed on a regular basis to pay the rent. Rent does not have to be in arrears on the date that the Section 8 notice is served.

iv. **Ground 12: breach of tenancy agreement**

Used when there has been a breach of any term of the tenancy agreement.

v. **Ground 13: neglect of property**

Used when the property has been neglected by the tenant, sub-tenant or someone living in the property with the tenant who the tenant has not removed and as a result the condition of the property has deteriorated.

vi. **Ground 14: anti-social behaviour**

Used when the tenant has caused problems with neighbours, visitors or anyone else; has used the property for illegal or immoral purposes and received a conviction for this; or has received a conviction for an indictable offence in or near the property.

vii. **Ground 14a: domestic violence**

Used when the property is occupied by a couple and one member of the couple has left due to violence or threats from the other partner towards the partner who has left or a member of their family who was residing in the property. This ground only applies to property which is owned by a charitable housing trust or registered social landlord.

## **viii. Ground 15: poor treatment of furnishings**

Used when the furniture in the property has been treated badly by the tenant or by someone residing in the property who the tenant has not removed.

## **ix. Ground 16: tied to employment**

Used when the tenant was employed by the landlord of the property and has now left the landlord's employment.

## **x. Ground 17: false statements**

The tenant is the person, or one of the persons, to whom the tenancy was granted and the landlord was induced to grant the tenancy by a false statement made knowingly or recklessly by—

- a. the tenant, or
- b. a person acting at the tenant's instigation