

Private Rented Sector Strategy and Reform Division  
Ministry of Housing, Communities and Local Government  
Third Floor, South West – Fry Building  
2 Marsham Street  
London  
SW1P 4DF

23<sup>rd</sup> October 2019

Dear Sirs,

**Consultation response: A new deal for renting: resetting the balance of rights and responsibilities between landlords and tenants (removal of Section 21 notice procedure)**

This is a response to the above consultation by the Compulsory Purchase Association (CPA).

The CPA is a not for profit member organisation that promotes best and effective practice in delivering land for infrastructure, housing and regeneration. It is non partisan and does not support or oppose, nor comment upon specific schemes. Its members represent acquiring authorities and claimants working in or affected by Compulsory Purchase.

The CPA's objective is to work for the public benefit in relation to compulsory purchase and compensation in all its forms. This includes promoting the highest professional standards amongst practitioners at all levels and participating in debate as to matters of current interest in compulsory purchase and compensation.

The CPA is concerned that the proposals at present may give rise to a significant problem in the field of Compulsory Purchase, in that they may leave landlords without an alternative mechanism to secure vacant possession, especially on Estate Regeneration schemes. It is also concerned that the proposals may give rise to unintended consequences that may have the effect of frustrating the Government's agenda for simpler, fairer and faster compulsory purchase processes.

Our response is provided herewith both in brief and in detail. Further information is provided following the detail specifically relating to the questions asked.

### **Consultation response – brief**

Our consultation response focuses around Questions 12-16 which concern the additional ground to Section 8 of the Housing Act 1988. Our response in brief is as follows-

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?

Answer: No

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')?

Answer: Yes

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?

Answer: Yes

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?

Answer: No

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

Answer: Members of our Board have differing opinions, as discussed below

### **Consultation response – in detail**

The proposals as they currently stand in the consultation have the potential to stymie schemes which compulsory purchase and the prospect thereof rely on.

By delaying or increasing costs of such schemes, the public purse is strained further, providing a greater degree of uncertainty.

Examples of such schemes include –

- 1) Housing Regeneration including of Council Estates
- 2) Linear schemes such as for road and rail improvements
- 3) Other infrastructure schemes such as the creation of the Third runway at London Heathrow, High Speed 2, Crossrail 2 and others
- 4) A range of energy infrastructure schemes such as power stations, wind energy farms and others

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Question 12 – provision of a prior notice to a tenant

Upon commencement of a tenancy, many Landlords who subsequently sell on Compulsory Purchase terms are not aware of the threat of Compulsory Purchase, leaving it impractical for a notice to have been served prior to commencement of a tenancy agreement.

In Council estate regeneration in particular, which represents a significant portion of affected landlords, the low income socio-demographic makeup increases potential for non compliance, through error or omission.

An acquiring authority wishing to use Compulsory Purchase (or the threat thereof with a voluntary transaction), may often not be aware of the timing when properties are required. For example, it is not uncommon for Landlords who believe they have a number of years remaining to then be informed they have a matter of months to sell or lose their property through Compulsion.

All of this leads to uncertainty, additional costs and brings the viability of schemes into further question, potentially stymieing or delaying development.

It is vital therefore that Landlords are able to respond quickly in seeking vacant possession without being prevented from doing so by changes the consultation proposes.

Question 13 – whether selling should be a mandatory justification for court consent

For the reasons above, it is essential that Landlords have the ability to terminate tenancies so the property can be sold, to facilitate the scheme underlying the purchase.

Question 14 – Whether a Landlord should be able to use the ground prior to expiration of two years from tenancy commencement

This again, is essential for the reasons set out above.

Landlords may not be aware at least two years prior to wanting or needing to serve notice, due to the way Compulsory Purchase schemes often work.

The turnover of private tenants on Council Estates undergoing regeneration can be higher than the average elsewhere as tenants move out due to a combination of factors not experienced in most of the external market. This can leave Landlords in the position where they either cannot sell when they want/need to or that they attempt to secure additional compensation from the acquiring authority to be able to bargain with their tenant to move out by agreement.

If the proposals set out in the consultation become law, there is the risk of increasing costs and uncertainty to acquiring authorities, connected partners and to Landlords.

It is important therefore that Landlords have the flexibility to serve notice to terminate tenancies throughout the contractual and any holding over period of the tenancy agreement.

Question 15 / 16 – Whether two months is an appropriate period of time to provide and what is

There are differing opinions within our Board on this point.

Where sales are on Compulsory Purchase terms, it is commonplace for tenants to struggle to find alternative accommodation in the private sector. Quite often, they are already living in the lowest value accommodation in the area and often at a reduced rent by a Landlord trying to persuade them to stay till the property needs to be sold.

As such, it is very common for local authorities to suggest to the tenant that they require their landlord to go through the eviction process to get a court order before they can assess their housing need.

This gives a somewhat double edged sword, hence our Board having differing opinions. Less than 2 months would remove unnecessary delay in instances where the process of providing housing assistance by a local authority (if available) does not begin until a court order has been granted in the landlords favour. However, it would provide the tenant with less time to find their own housing which could increase the potential strain on the public purse, making re-housing more likely.

**Further information**

There are few related points which we would like to raise which do not relate solely or directly to the questions asked but do support our answers. These include explanations on how the proposed changes could affect Compulsory Purchase and further issues we suggest are considered when drafting any proposed legislative changes.

The further information is on the below subjects –

- 1) Statutory mechanism to acquire by Compulsory Purchase
- 2) Acquiring authorities taking on tenants
- 3) Specific Compulsory Purchase ground within a revised Section 8
- 4) Question 29 additions – terminations without a hearing
- 5) Sales to acquiring authorities connected partners
- 6) Sale by agreement rather than through Compulsory Purchase
- 7) Option agreements

## **Statutory mechanism to acquire by Compulsory Purchase**

Landlords interests are almost invariably acquired through a process called a General Vesting Declaration. This process does not permit acquisition of minor rights such as Assured Shorthold tenancies. There is a separate process that can acquire such interests. However, doing so requires additional cost and bureaucracy and increases the risk of community cohesion breaking down through the process.

If the Statutory Notice to Treat route is used to acquire minor interests such as an Assured Shorthold Tenancy, compensation by the acquiring authority to the tenant may become payable under Section 20 of the Compulsory Purchase Act 1965, applying more pressure on the public purse. Where a General Vesting Declaration has been served, a further Notice to Treat and Notice of Entry needs to be served under Section 9 of the Compulsory Purchase (Vesting Declarations) Act 1981 to bring a minor tenancy to an end. However, where a voluntary agreement has been reached for the consensual transfer of the landlords interest to the acquiring authority, it is unlikely that the acquiring authority would want to serve a General Vesting Declaration simply to bring Section 9 into play.

The net result of this is that though there is a mechanism for minor tenancies to be bought to and end through use of Compulsory Purchase powers, it is technically complicated and costly.

As such, where authorities have the ability to grant Assured Shorthold Tenancies themselves (some do, some do not), the added costs, technicalities and risks associated with using statutory powers over tenants, may also result in authorities taking the risk averse attitude of not renting properties if they can avoid doing so. This may result in more properties being left empty for extended periods of time at the same time as the general housing shortage applies pressure on authorities to use empty properties.

The current Section 8 ground for demolition also currently requires court approval which provides uncertainty. This uncertainty can also result in acquiring authorities or their partners leaving properties empty rather than renting out.

It is therefore extremely important that Landlords are able to secure vacant possession through a revised Section 8 notice as simply and cost effectively as possible, without barriers to use.

## **Acquiring authorities taking on tenants**

If some categories of acquiring authority such as a local authority buy a property subject to the rights of a sitting tenant, it provides further problems. Some (e.g. many Councils) are unable to grant Assured Shorthold Tenancies and as such, any tenants would become Council tenants with associated rights. These may for example include re-housing and compensation.

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Re-housing is a problem due to the shortage that most Council's and other authorities have and the costs and liabilities connecting with the same. Additional compensation can affect scheme viability, creating risks for development or delay.

Furthermore, this would potentially result in disputes over the affect on compensation due to the landlord for being dispossessed of their interest. Acquiring authorities may suggest that compensation payable should be reduced to account for vacant possession not being provided. Landlords may suggest that it is improper to reduce values if they had no opportunity to provide vacant possession but would have been able to at a later date not available to them. At a time of increasing hostility on many Housing regeneration schemes in particular, this potential loophole in the law should be avoided rather than created.

It is therefore crucial that Landlords have the ability to secure vacant possession through the court process.

### **Specific Compulsory Purchase ground within a revised Section 8**

A specific ground of selling on Compulsory Purchase terms to a buyer to help facilitate future development would be appropriate and would mitigate against risks associated with a 'catch all' ground.

It would be appropriate to have this ground as a mandatory ground with no requirement for a court hearing..

To mitigate against the risk of abuse, it would be reasonable for one of the below evidentiary requirements –

- 1) A letter from a solicitor confirming that the sale is on Compulsory Purchase terms and is to facilitate future development. Also confirmation that the sale is to a legal entity who is helping to facilitate the development.
- 2) Correspondence from an authority capable of applying for *or* having powers of Compulsory Purchase confirming that the subject property can sell on Compulsory Purchase terms to facilitate future development. This could include public information on the internet set out by the authority or in a newsletter.
- 3) Confirmation that the sale is to a legal entity who is helping to facilitate the development.

The current ground under Section 8 for demolition may not apply in some instances where an acquiring authority or their partner is buying properties on Compulsory Purchase terms. Demolition can come a number of months and sometimes years later.

### **Question 29 additions – terminations without a hearing**

Question 29 of the consultation lists various issues and asks whether it would be appropriate for them to be dealt with, without a hearing.

We suggest that following addition and that a court hearing should **not** be required.

*Where the Landlord is seeking vacant possession in order to sell the property on Compulsory Purchase terms to an acquiring authority or to a developer or Housing Association who the same authority have publically stated that they support the demolition plans of which directly affect the property.*

### **Sales to acquiring authorities connected partners**

Many purchases on Compulsory Purchase terms are not be an acquiring authority. They are by a Joint Venture partner working with them, often a developer or housing association. It is important therefore that the legislation is not too prescriptive as to require the sale to be to an acquiring authority.

The vast majority of purchases on Compulsory Purchase terms are also in advance of when properties are required. This is often to ensure –

- 1) Community cohesion
- 2) Risks for developments are mitigated
- 3) Budgets for schemes are managed appropriately

### **Sale by agreement rather than through Compulsory Purchase**

A central part of Government guidance on Compulsory Purchase is that negotiations to purchase properties by agreement on Compulsory Purchase terms are entered into at an early stage in the process. The idea is that as much as possible should be done by agreement rather than through use of Compulsory Purchase powers which should be used as a last resort.

Housing Regeneration including of Council estates is a primary example of this. The number of Landlords affected by these schemes and the proposals in the consultation is potentially the most significant within our field of Compulsory Purchase.

On these schemes, the vast majority of properties acquired are done so by agreement. The principle of early engagement and negotiations is supported by Government advice but would be inadvertently undermined if the consultation proposals as they currently stand became law.

It is also important therefore that the legislation is not too prescriptive as to require the sale to be at any specific stage in the Compulsory acquisition process.

### **Option agreements**

Anecdotally, in the current uncertain market conditions we are faced with, the number of Option agreements put forward by acquiring authorities and their partners to facilitate development has increased.

Those Option agreements mitigate against risks associated with viability and often support the Governments stated aim of making Compulsory Purchase simpler, fairer and faster.

One of these option agreements for example is the proposed bond scheme for Landlords affected by the Heathrow Third runway scheme.

Landlords could potentially leave themselves unable to comply with the terms of an Option agreement if the legislation does not permit them to secure vacant possession. For example, it is common for there to be say a 12 month notice period served to exercise the option agreement, with a sale permitted within that period of time. Landlords may be unable to comply with the terms depending on when the tenant moved in. For example the consultation suggestion of 2 years having to expire before a Section 8 notice can be served may be a requirement that cannot be met.

It is important that Landlords have the flexibility to be able to respond to option agreement requirements which the consultation suggestions as they stand may currently prevent.


### **Our resolution**

The current mechanism of the Section 21 Notice procedure has been a blunt tool for Landlords affected by the threat of Compulsory Purchase. It is not without its faults but it does work.

We would support abolition of the procedure, provided that the replacement within a revised Section 8 is fit for purpose, as per the recommendations in this consultation response.

If we can be of any further assistance in for example clarifying the points in this letter or consulting further, please do not hesitate to get in contact.

Yours sincerely



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Director