

EXPLANATORY MEMORANDUM TO
THE DWELLING HOUSES (EXECUTION OF POSSESSION ORDERS BY
MORTGAGEES) REGULATIONS 2010

2010 No. 1809

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 These Regulations, made with the consent of the Lord Chancellor, prescribe the form and content of the new notice to be served on any tenant/occupier of a dwelling house when the landlord's mortgage lender ("the mortgagee") seeks to enforce a possession order by obtaining a warrant for possession. The notice makes the tenant aware that a warrant for possession is being sought against the property, and advises them of their rights and the need to seek advice on their position.
 - 2.2 The Regulations also prescribe a period of fourteen days after service of the notice, before which the court will not execute the warrant for possession. The Regulations prescribe suitable methods of service for the notice, any of which may be used by the mortgagee.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 This is the first exercise of the Secretary of State's powers under the Mortgage Repossessions (Protection of Tenants etc) Act 2010 (c. 19) ("the Act.")
4. **Legislative Context**
 - 4.1 These Regulations are made under the Secretary of State's powers in section 2 of the Act, which received Royal Assent on 8th April 2010. Section 2 was commenced by S.I. 2010/1705.
 - 4.2 The Act applies to those tenants whose tenancies are not binding on their landlord's mortgagee (defined in the Act as "unauthorised tenants"), and gives them the opportunity to request a delay of up to two months when the mortgagee seeks to enforce a possession order by obtaining a warrant for possession at the property. (Where the tenancy is binding on the mortgagee, the mortgagee must of course comply with the terms of the tenancy). The unauthorised tenant can first seek a written undertaking from the mortgagee not to enforce a possession order. If the mortgagee refuses, the tenant can make an application to the court under the Act.
 - 4.3 In order to make these new rights effective, the tenant/occupier must have notice of the mortgagee's intention to enforce the possession order by seeking a warrant from the court. The Regulations provide that the notice must be sent in each case where the mortgagee seeks a warrant for possession.
5. **Territorial Extent and Application**
 - 5.1 This instrument extends to England and Wales.

6. **European Convention on Human Rights**

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. **Policy background**

- *What is being done and why*

7.1 The Act fills a gap in the legal protection available to tenants of dwelling houses whose landlords have not obtained the agreement of their mortgagee before renting the property out. A tenant of a landlord who has not received ‘consent to let’ from their mortgagee can find themselves subject to short notice eviction when the mortgagee seeks possession of the property from the landlord borrower. Prior to the Act the tenant would have no rights in court and a judge could not take account of their circumstances.

7.2 The issue was brought to the previous Government’s attention by the housing charity sector. The sector provided many examples of short notice eviction and the distress and disruption it caused to a variety of households. Due to the hidden nature of the problem, it is not possible to give an accurate picture of how many tenants are affected. However the Impact Assessment estimates the numbers to be 5,000 – 20,000 between a ten year time scale of 2010 and 2020. Alternatives to legislation, such as a voluntary code of conduct were considered with partners from both the advice sector and mortgagees, however the shared conclusion was that legislation was the only way to address the gap in legal protection for tenants.

7.3 This situation does not arise with tenants of Buy To Let properties or where the mortgagee has given the borrower landlord ‘consent to let’.

7.4 The purpose of the Act is to prevent the short notice eviction of unauthorised tenants by mortgagees. This has been achieved by giving the right in statute for tenants to request that possession is delayed by up to two months to give the tenant time to find an alternative place to live once they are aware that repossession is likely. It does not prevent the repossession but delays it.

7.5 In order to make these new rights effective, the tenant must have notice that a mortgagee has obtained a possession order and that the mortgagee proposes to obtain a warrant for possession and take possession of the property on a given date. As a mortgagee will not know that a tenant exists in the property, the Act requires them to issue a Notice of Execution of Possession Order to all properties where it plans to enforce possession. These Regulations prescribe the step that triggers the mortgagee’s obligation to give notice (the making of an application for a warrant to execute the possession order), the period after the notice is given within which the order may not be executed (14 days), and the form of the notice. The form includes an explanation of the steps that mortgagees and tenants should take reflecting the legislative change.

- *Consolidation*

7.6 No consolidation is needed as a result of these Regulations.

8. Consultation outcome

8.1 CLG published a formal public consultation document on 5 August 2009 entitled, *Lender Repossession of tenanted property – protection of tenants*. The then Minister for Housing sought, and received, permission from Cabinet Office to open the consultation for a shorter period of ten weeks, until 14 October 2009. This was in order to ensure that Ministers would have an opportunity to take consideration of consultation responses in time for the introduction of legislation in the 5th Parliamentary session. It was originally envisaged that the provisions would be contained within primary legislation. In the event the provisions were taken forward as a Private Members Bill by Dr Brian Iddon MP with full cross party support in both Houses of Parliament.

8.2 The previous Government received over 30 responses to the consultation document. Respondents included those from mortgagees, the advice and legal sectors, as well as from Landlord organisations, Local Authorities and individual members of the public. The majority of respondents were in favour of pursuing the previous Government's objective of giving tenants a notice period when a possession order was granted in order that the tenant had time to find an alternative home.

8.3 Mortgagees were less convinced of the new and additional step for them to notify the tenants of the intention to apply for a warrant for possession feeling it to be a disproportionate response. The Council of Mortgage Lenders and the Building Society Association in particular suggested possible changes and clarifications. The Department responded to this by meeting with individual partners and made some changes as result. These included giving the ability for mortgagees to receive rent in the two month notice period, ensuring that receipt of this income does not create a tenancy, a commitment to ensure that the timetable and process for action would be clearly set out in the regulations, not prescribing a particular method of delivery for the Notice of Execution of the Possession Order but leaving it to mortgagee discretion, and ensuring that the new requirements do not apply to cases where the mortgagee has already applied to the court for possession but only to new cases after commencement of the legislation.

8.4 Other suggestions included a request that the Her Majesty's Court Service serve the Notice of Execution of the Possession Order. This was rejected as the court service systems make this unfeasible.

9. Guidance

9.1 The Act does not require formal statutory guidance to be issued for implementation agents. However, to ensure that agencies involved in implementing these provisions are clear about what is expected of them, and that unauthorised tenants are informed of their rights, the Department is proposing to publish guidance to explain the steps that all involved need to take. The audience for the guidance will include mortgagees and their agents, courts, advice agencies and local authorities. The guidance will be published to coincide with the commencement of the Regulations in October 2010.

10. Impact

10.1 The legislative change will have cost impacts on mortgagees. Costs and benefits of this new requirement on mortgagees are set out in detail in the attached implementation stage Impact Assessment. The costs of the new notification are estimated to cost £12.3m, on the basis that 390,000 notices would be served between 2010 and 2020. As a result of the notice there will also be additional costs to mortgagees of delays; these are expected to be around £2m.

10.2 Costs on the public sector (costs of appeals in court) are offset by benefits (in Housing Benefit) and details are set out in the attached Impact Assessment.

10.3 An Impact Assessment is attached to this memorandum. There were no amendments to the Bill in either the House of Commons or the House of Lords. The Impact Assessment is therefore the one that was published with the Bill at introduction.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 It is not possible to offer measurable outcomes to these provisions as the scale of the problem can only be estimated, as described paragraph 7.2. The intended outcome of the Act is to prevent all involuntary, short notice evictions of unauthorised tenants. The intended outcomes of these Regulations will be measured by the combination of different outputs, including the number of notices sent, the number of applications arising from the notices, the number of delays granted by mortgagees as a result of the applications, or the number of successful court appeals in favour of the unauthorised tenant. These will largely depend on whether or not the unauthorised tenant successfully receives the notices, understands their content, and acts accordingly.

12.2 It is intended that a review should be undertaken and published on a yearly basis. Led by the Department with close working with implementation partners, including mortgagees or trade associations which represent them, and debt advice agencies and charities the aim will be to measure usage of the legislation as well as the outcomes where it is used. It is not possible for Her Majesty's Court Service to easily capture any meaningful data on cases of unauthorised tenants appealing for a delay to possession through the court service.

13. Contact

13.1 Kirstin Blagden at the Department of Communities and Local Government
Tel: 0303 444 3761 or email: Kirstin.blagden@communities.gsi.gov.uk can answer any queries regarding the instrument.

Title:

Impact Assessment of Protecting Tenants against Short Notice Eviction

Lead department or agency:

Communities and Local Government

Other departments or agencies:

Impact Assessment (IA)

IA No: CLG0006

Date: 08/07/2010

Stage: Enactment

Source of intervention: Domestic

Type of measure: Primary legislation

Contact for enquiries:

Kirstin Blagden 0303 444 3761

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

A gap in protection means that when a landlord's property is repossessed by a mortgage lender, some "tenants" are not entitled to any notice that they have to leave. Government intervention is necessary to prevent the households involved from suffering very significant consequences, including not being able to find alternative accommodation quickly enough, or financial implications, severe disruption and stress arising from the experience. There is a risk this imposes costs on the taxpayer by causing affected households to seek support from Local Authorities when they wouldn't normally.

What are the policy objectives and the intended effects?

To protect tenants by enabling those that are required to move due to their landlord's mortgage default to receive up to two months notice that they need to vacate the property, while causing the minimum of delay to mortgage lenders and borrowers.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

- 1) Make no legislative change ('do nothing').
- 2) Give courts powers to delay possession for these tenants to have sufficient notice to leave, and introduce a new notice of intention to enforce possession, with a mechanism to apply for a delay.

Option 2 is preferred because it is expected to have a positive net impact. Other options were considered at earlier stages and are detailed in the evidence base.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved? It will be reviewed 06/2011

Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review? No

Ministerial Sign-off For enactment stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister: Grant Shapps..... Date: 12th July 2010.....

Summary: Analysis and Evidence

Policy Option 1

Description:

Allow courts to delay possessions for these tenants and introduce a new notice of intention to enforce possession and delay mechanism

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
		10	Low: -2.1	High: 7.9	Best Estimate: 2

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	1.2	0.6	6.3
High	1.2	1.0	10.2
Best Estimate	1.2	0.8	7.9

Description and scale of key monetised costs by 'main affected groups'

Costs to lenders of reviewing cases and extending court process (£100,000), staff training and system changes (£1,170,000), from delaying possession (£1,900,000) and from serving additional notification of possession proceedings (£4,030,000). Costs to government of additional court time and administration (£330,000).

Other key non-monetised costs by 'main affected groups'

N/A

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0.5	4.2
High	0	2.1	18.1
Best Estimate	0	1.1	9.9

Description and scale of key monetised benefits by 'main affected groups'

Reduction in tenants expenditure on moving costs (£1,900,000), additional rents paid to lenders (£4,600,000) and Housing Benefit savings to government (£3,400,000).

Other key non-monetised benefits by 'main affected groups'

An estimated 10,000 households would be protected from short notice eviction between 2010 and 2020. These individuals are likely to benefit significantly from reductions in stress and disruption associated with having to move home at very short notice.

Key assumptions/sensitivities/risks

Results are particularly sensitive to:

- numbers of tenants living in properties let without consent of mortgage lenders;
- future rates of repossession;
- proportion of tenants that attend court;
- percentage of tenants that leave properties without eviction orders;
- interest and capital costs for lenders.

Discount rate (%)

3.5

Impact on admin burden (AB) (£m): New AB: 0.014	AB savings: 0	Net: 0.014	Impact on policy cost savings (£m): Policy cost savings:	In scope No
---	----------------------	-------------------	---	-----------------------

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?		England and Wales			
From what date will the policy be implemented?		07/2010			
Which organisation(s) will enforce the policy?		HM Courts Service			
What is the annual change in enforcement cost (£m)?		0.033			
Does enforcement comply with Hampton principles?		Yes			
Does implementation go beyond minimum EU requirements?		N/A			
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded: 0		Non-traded: 0	
Does the proposal have an impact on competition?		No			
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?		Costs: 100		Benefits: 100	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties ¹ Statutory Equality Duties Impact Test guidance	No	
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	
Small firms Small Firms Impact Test guidance	No	
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

¹ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No. Legislation or publication

- 1 Lender repossession of tenanted property: protection for tenants consultation and IA : <http://www.communities.gov.uk/publications/housing/lenderrepossessionconsult>
- 2 The Mortgage Repossessions (Protection of Tenants etc) Act 2010 (Commencement) Order 2010
- 3
- 4

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs	1.0	0	0	0	0	0.2	0	0	0	0
Annual recurring cost	0.5	1	1	0.9	0.9	0.7	0.6	0.5	0.4	0.4
Total annual costs	1.5	1	1	0.9	0.9	0.9	0.6	0.5	0.4	0.4
Transition benefits	0	0	0	0	0	0	0	0	0	0
Annual recurring benefits	0.7	1.5	1.5	1.4	1.3	1.2	1.1	1.0	0.9	0.8
Total annual benefits	0.7	1.5	1.5	1.4	1.3	1.2	1.1	1.0	0.9	0.8

* For non-monetised benefits please see summary pages and main evidence base section

Evidence Base (for summary sheets)

There is discretion for departments and regulators as to how to set out the evidence base. However, it is desirable that the following points are covered:

- Problem under consideration;
- Rationale for intervention;
- Policy objective;
- Description of options considered (including do nothing);
- Costs and benefits of each option;
- Risks and assumptions;
- Administrative burden and policy savings calculations;
- Wider impacts;
- Summary and preferred option with description of implementation plan.

Revised text for Impact Assessment of the Mortgage Repossessions (Protection of Tenants etc) Act 2010

Scope

This impact assessment analyses the costs and benefits of protecting tenants from being evicted at short notice following the repossession of their landlord's property by a mortgage lender.

Since the standard notice period given for an assured short hold tenancy is two months, the policy objective of the legislation is to enable tenants that are required to move due to their landlord's mortgage arrears leading to their lender commencing possession action, to have two months' notice of the need to vacate the property, whilst causing minimum delay to mortgage lenders and borrowers facing repossession.

The Act enables unauthorised tenants to request of the landlord's lender that possession is delayed by up to two months. If this is refused the Act enables the tenant to apply to court to postpone the date for delivery of possession. If the court did not postpone the date for delivery of possession when making the possession order, the tenant has a further opportunity when the lender applies for a warrant of possession. The Act requires lenders, who have obtained a possession order to give notice of the proposed execution of the order at the property before the order is executed.

This legislation affects mortgage lenders, reposessed borrower landlords and their tenants in England and Wales. The proposals could impact upon all borrowers if additional costs incurred by lenders are passed on to customers in the form of higher financing costs or greater restrictions are placed on access to credit.

The policy is appraised over a ten year period (from 2010 to 2020). Costs and benefits are determined relative to a baseline scenario where there is no legislative change, and have been discounted in line with HM Treasury Green Book appraisal guidance.

Issue

Some² tenants, who we refer to as 'unauthorised' (they have no statutory right to stay in the property as their tenancy is non-binding on the mortgage agreement), are being evicted at short notice because borrowers are letting properties with owner-occupier mortgages without the knowledge or consent of lenders, and in contravention of their mortgage agreement. In this document we refer to this type of mortgage as Residential Turned Let. In such circumstances the right to occupy and right to notice that tenants would expect are not enforceable as against the lender. If the property is reposessed,

² Estimates of the number of affected tenants are set out in the section outlining the scale of the problem, page 9

occupiers may first be made aware that they must leave at short notice by bailiffs presenting a warrant for eviction.

By contrast, where lenders consent to tenancies, occupiers are entitled to a period of notice prior to eviction. This is already the case for properties subject to a Buy-To-Let (BTL) mortgage.

Rationale for intervention

Achieving greater equity is the primary rationale for intervention. It is unfair that, through no fault of their own, a small minority of tenants should suffer adverse impacts on their health and wellbeing due to having to move home with little or no notice. Legislation was enacted to ensure that tenants living in properties where their landlord had not received permission to rent, receive a notice period equal to other tenants in the private rented sector prior to eviction.

ANALYSIS OF COSTS AND BENEFITS

Key assumptions

The main assumptions behind the estimates of costs and benefits presented in this Impact Assessment are listed here. These take account of information submitted in response to the consultation are based on firm evidence wherever possible. Assumptions are flagged as illustrative where this is not the case.

- There are an estimated 330,000 RTL properties in England and Wales, within a likely range of 180,000 to 500,000. This estimate is obtained by comparing data on the number of residential mortgages outstanding with the number of owner occupiers who report that they are buying their property with a mortgage, then filtering out mortgages that might relate to second homes or houses being purchased for persons other than the mortgage holder. (Council of Mortgage Lenders; Survey of English Housing 07/08; Living in Wales Survey 2008)
- The rate of repossession for RTL properties is equal to the rate at which control of properties with BTL mortgages are taken over by lenders i.e. repossessions and appointments of receivers of rent as a proportion of all BTL mortgages. In the year to Q2 2009 this rate was 1.2% of BTL mortgages (CML).
- In the absence of this legislation the number of properties with unauthorised tenants in situ that are repossessed will remain at its current level over the period to end 2012 as the impact of the recession is felt. In the later years of the appraisal period these type of repossessions will gradually return to lower levels: falling by 10% per annum from 2013 to 2020. This is an illustrative scenario; there are no reliable long term forecasts of repossessions. The sensitivity of results to more optimistic and pessimistic repossession scenarios is also explored.
- Half of BTL mortgage arrears result from non-receipt of rental income (White Horse Mortgage Services) and therefore only 50% of repossessed RTL properties will have paying tenants in residence at the time of repossession.
- In a small percentage of RTL repossession cases borrowers will have obtained consent from the lender prior to letting the property and the tenancy will be honoured. In the absence of more concrete evidence we assume for illustrative purposes that this normally occurs 10% of the time, and consider the implications of more (up to 15%) and less (as few as 5%) RTL mortgages having been agreed by lenders.
- In other cases lenders or their representatives will manage to make contact prior to the date of possession and agree a period of notice with tenants. In the absence of evidence, we assume this occurs in between 5% and 15% of RTL repossession cases – with 10% as the central estimate.
- In other instances the borrower will be surrendering the property voluntarily. It is highly likely that lenders would become aware of the existence of tenancies prior to the date of possession in such cases, as lender representatives typically attend properties to make them secure. The estimate

- Up to a third of tenants evicted at short notice might be owed the statutory homeless duty through being in priority need (based on characteristics of PRS sector as a whole; SEH 06/07). For illustrative purposes a half of priority need households evicted at short notice are assumed to receive assistance from local authorities in the form of a three month stay in temporary accommodation, at an average cost of £2,300 per case (based on a sample of data on housing benefit claims).
- Other households evicted at short notice and not presenting as homeless are likely to accrue additional costs, for example as a result of having to move twice before finding settled accommodation. To illustrate the scale of costs to households we estimate that costs averaging £500 must be met by half of households that do not receive assistance from local authorities. This estimate is based on costs that might be incurred renting more expensive temporary accommodation for three months whilst finding a new dwelling and other costs of transport, storage and removal.
- The average cost of serving an additional notice of possession proceedings could vary widely depending on the method of delivery chosen by lenders: it could range potentially from £3 to £61 per notice depending on whether these are served by standard recorded post or personally by a specially instructed agent. A central estimate of £12 is used to represent the cost of delivery (based on £9 average delivery plus 15 minutes of staff time at £13.84 per hour; ONS, Annual Survey of Hours and Earnings 2009). The impact of different notification costs is also explored.
- Possession hearings where tenants choose to make representations are likely to take longer as courts have to establish whether genuine tenancies exist. For illustrative purposes we assume that hearings take 5 minutes longer per case. Time spent preparing for each case is assumed to increase by 10 minutes.
- Based on HM Courts Service guidelines, the cost to lenders of extra time spent at court by their legal representatives is taken to be £150 per hour (HMCS, Guideline Figures for the summary assessment of costs 2008).
- On average lenders hold 20% capital in reserve against mortgages in arrears; the average value of outstanding mortgages on repossessed property is £150,000; and lenders' cost of capital averages 5% per year. In practice these will vary between lenders and across mortgages depending on individual circumstances, so per unit costs faced by particular lenders may be higher or lower than implied by the estimates presented below.
- The average interest rate payable on outstanding mortgage balances is 5%.
- Between 2010 and 2020, gains in the price of some houses will offset falls in others so that on aggregate, delays to the sale of repossessed properties will not impose additional costs on either lenders or borrowers. However fluctuating house prices mean that some properties may appreciate or depreciate in value over the time that possession is delayed. This will lead to some distributive impacts for the lenders and borrower landlords involved.
- Costs to lenders may be offset by rents that tenants continue to pay during the two month period. Average rents paid on private sector assured tenancies are used to estimate this impact (CLG, Live Table 731).
- Enhancing protection for tenants living in properties with RTL mortgages will entail setup costs for lenders. These will arise from the need to undertake staff training and to modify systems. Average wage rates of £19 per hour for professional employees and £14 per hour for associates and technicians are used for the purposes of costing these (ONS, Annual Survey of Hours and Earnings 2008).
- One third of tenants that are notified that they are at risk of short notice eviction will attend court (excluding cases of voluntary possession). Sensitivity analysis has been undertaken to investigate the impact of varying proportions of tenants attending court.
- The additional period of habitation granted to unauthorised tenants who make themselves known to lenders, can run concurrently with the usual 28 days notice on possession orders and fall within the time taken to conduct other parts of the possession process. So in the vast majority of cases this legislation will cause minimal additional delay for lenders in taking possession.

- Where unauthorised tenants make themselves known following receipt of the new notification but do not vacate properties voluntarily at the end of their specified notice period, possession is likely to be delayed by up to one month, since a warrant of eviction will be required.
- Lenders will incur costs through staff time spent reviewing applications from unauthorised tenants. This is estimated assuming 15 minutes of an associates time is taken up with each genuine application. An allowance for spurious claims has also been included; this assumes that false claims are made by of around 1% of the total number of borrowers repossessed each year.
- The estimated numbers of short notice evictions that can be avoided as a result of legislating are based on the assumptions that all lenders will comply fully with this and all eligible households will take advantage of the new mechanism for their protection. In practice this might not always be the case; some tenants may be unaware of proceedings still, and some may not choose to act on it. Tenants are less likely to be aware of their landlords circumstances if lenders chose to deliver the notification by normal post rather recorded signed for or courier delivery; letters may be ignored (this could be a particular problem for tenants living in a block of flats with common mail collection).

The scale of the problem

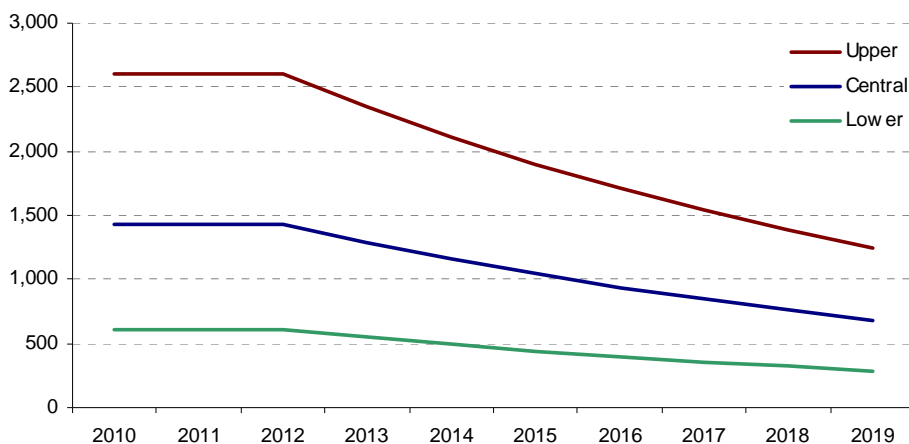
Using the assumptions set out above we estimate that between 600 and 2600 tenant households in the private rented sector may have been subject to short-notice eviction due to the landlord being repossessed in the year to June 2009. There are no reliable long term forecasts for repossessions but we assume that numbers of RTL repossessions will remain at their current level until end 2012 before falling over the period to 2020.

Table 1 presents our baseline assessment of the number of households likely to be evicted at short notice had no legislative change been made. These are our best estimates given available information on the size of the RTL sector and the propensity of properties containing tenants to be subject to repossession.

Table 1: Number of households evicted at short notice due to repossession of RTL properties	
	Total: 2010-2020
Upper estimate	20,000
Central estimate	11,000
Lower estimate	5,000

The upper and lower ranges reflect a likely margin of error surrounding our central estimate of the number of properties being let out without the consent of lenders. However it is possible that the number of tenants facing short notice eviction lies outside this range due to uncertainties around the underlying assumptions set out above – particularly the number of tenanted properties being repossessed. Chart 1 illustrates the assumed time profile of short notice evictions of unauthorised tenants.

Chart 1: Estimates of short notice evictions of unauthorised tenants each year



Baseline costs

A proportion of households evicted at short notice are likely to seek accommodation from their Local Authority, and others will have additional costs to meet themselves. Table 2, below, illustrates how much short-notice evictions would have cost Government in the absence of legislation if one sixth of evicted households received assistance from Local Authorities over the period from 2010 to 2020. It also sets out the costs that would have been incurred by households themselves if half of the remaining tenants faced higher costs due to having to move at short notice. The upper and lower estimates illustrate the impact of different numbers of short notice evictions – detailed in Table 1.

Table 2: Baseline costs from short notice evictions of tenants from RTL properties

	Cost to government of providing temporary accommodation	Costs to households of moving at short notice
Upper estimate	£4,400,000	£3,600,000
Central estimate	£2,400,000	£2,000,000
Lower estimate	£1,000,000	£800,000

Impact of the Legislation

A range of options for protecting tenants from being evicted at short notice were considered. These included: making no legislative change; giving courts the power to delay possession in residential mortgage cases to give a notice period to persons with a tenancy agreement; enhancing the existing notification of possession proceedings; introducing a new notice of intention to enforce possession and a mechanism for tenants to apply for a delay of possession; and adding a mechanism for staying enforcement of actual possession at the warrant stage.

Following a consultation on these options, legislation was introduced to do two things:

1. give unauthorised tenants the right to be heard at possession hearings, and give courts the power to postpone possession to allow unauthorised tenants who have proved their claim a decent time to move. These tenants would be granted up to two months to vacate the property.

2. require lenders to serve a new notice of intention to enforce possession, with a mechanism for the tenant to apply for a delay. This would enable unauthorised tenants to register a claim to two months' notice before vacating the property at the point at which lenders are able to enforce possession.

Costs associated with giving unauthorised tenants the right to be heard at court

The principle costs are:

- Longer court hearings in 1,600 cases where tenants make representations. This has costs for government and for lenders, shown in Table 3. We estimate court costs to government of £260,000.
- Delays of one month for lenders in taking possession of 300 properties. We estimate that the cost to lenders of foregone mortgage interest payments may total £170,000 and that holding capital in reserve is likely to reach £70,000 (Ref. Table 3).
- Additional costs associated with damages to properties by tenants in the delay period could also amount to £60,000, assuming that this occurs in 5% of cases.

Table 3: Costs resulting from allowing tenants to present at court

	Costs to lenders					Costs to government
	Court costs	Cost of capital	Foregone interest	Cost of reviewing	Damages to properties	Court costs
Upper estimate	£90,000	£130,000	£320,000	£9,000	£110,000	£470,000
Central estimate	£50,000	£70,000	£170,000	£4,000	£60,000	£260,000
Lower estimate	£20,000	£30,000	£70,000	£2,000	£30,000	£110,000

Costs associated with requiring lenders to serve an additional notice and creating a mechanism for delay

The principle costs are from requiring lenders to serve an additional notification of their intention to enforce possession. This is estimated to cost £5.2m, on the basis that 390,000 notices would be served

between 2010 and 2020. This estimate of the costs of notification takes account of the activities involved in processing and delivering each notice. It also includes one-off costs to lenders, and related agencies, of providing staff training (estimated at £290,000) and from changing systems and processes (estimated at £880,000 for the industry).

- Where systems modifications might be necessary in order to serve improved or additional notifications of possession we assume that most lenders will be able to make the necessary changes in one week employing a small team of five technical staff (at a cost averaging £4,000 per lender).
- Across the lending industry, this legislation might require 250 professionals to undergo a days familiarisation training (at a cost of £30,000) and that 2,500 associate staff might receive half a days instruction in the new procedures (at a cost of £120,000). These training activities are assumed to be repeated after five years.

There will also be costs for lenders / borrowers from delays in achieving vacant possession. This will be limited to cases where:

- An application is made for delayed enforcement *and* the occupier remains in the property after the two month notice period, requiring the lender to seek a warrant for possession. In the absence of firm information on the likely behaviour of tenants we have assumed for illustration that this may occur in 20% of the short-notice eviction cases.
- A lender's decision to turn down an application for delayed enforcement is appealed to the court. No data are available to suggest in how many cases this is likely. To illustrate the cost of these possible delays we have assumed that 5% of tenants at risk of short notice eviction will appeal.

In other circumstances we expect the notice period granted will overlap with the existing processes. In total we expect delays to 2,200 possession proceedings at an estimated cost to lenders of £1.2m in foregone mortgage interest and £470,000 relating to capital held against these loans.

Additionally, there is a chance that tenants will cause damage to the property during the extra time they remain in situ. This is estimated on the basis of an average 6 week deposit being lost and is assumed to occur in 5% of cases at a total cost of £300,000. These costs, together with the costs to lenders of reviewing applications to delay enforcement and of appeals against lender decisions, are detailed over the appraisal period in Table 4.

	Costs to lenders						Costs to government
	Costs of new notification	Cost of reviewing	Damages to properties	Cost of capital	Foregone Interest	Appeal costs	Appeal costs
Upper estimate	£5,200,000	£61,000	£600,000	£870,000	£2,160,000	£30,000	£130,000
Central estimate	£5,200,000	£35,000	£300,000	£470,000	£1,190,000	£10,000	£70,000
Lower estimate	£5,200,000	£18,000	£100,000	£200,000	£500,000	£10,000	£30,000

The lender may pass the additional costs on to those at fault, the landlord borrowers, in the form of increased fees associated with the repossession and deducted from the proceeds of the sale. However, in cases of insufficient equity these expenses may be borne by the lender. There is a risk that ultimately these will be passed on; raising costs for all borrowers.

We estimate that the additional court processes, will increase admin burdens on lenders by £14,000 between 2010 and 2020 (2005 prices, undiscounted).

Total costs of legislation

The central estimate of the overall cost is £7.9m; this includes the costs to lenders of delivering new notices to all tenants, the costs to lenders of delays in possessions, and the costs to government of extending court hearings/appeals (Ref. Table 5).

Table 5: Overall cost of legislating			
	Cost to lender	Cost to government	Total
Upper estimate	£9,600,000	£600,000	£10,200,000
Central estimate	£7,600,000	£330,000	£7,900,000
Lower estimate	£6,200,000	£140,000	£6,300,000

Benefits associated with giving unauthorised tenants the right to be heard at court

Allowing unauthorised tenants to be heard at court could prevent 1,600 short notice evictions. This is expected to reduce government expenditure on housing benefit paid to tenanted households resorting to temporary accommodation by £500,000 over the appraisal period, and private expenditure by tenants by £300,000 over the same period.

Table 6: Benefits from allowing unauthorised tenants to present at court			
	Housing Benefit savings to government	Savings to tenants	Rents paid to lenders
Upper estimate	£1,000,000	£500,000	£1,300,000
Central estimate	£500,000	£300,000	£700,000
Lower estimate	£200,000	£100,000	£300,000

Lenders costs may be partially offset by rents that tenants continue to pay during the two month period, which are estimated to total up to £700,000 over the course of the appraisal period. This derived based on average rents paid on private sector assured tenancies (£600 pcm) and a reduction of 20% is made to reflect the likelihood that it will not always be worthwhile for lenders to collect rent from tenants (CLG, Live Table 731). This assumes that few tenants will be deterred from paying rent by the knowledge of their eviction whereas in some instances they may be reluctant to do so, especially where they have already paid upfront to the landlord or face the prospect of losing their deposit.

Benefits resulting from the new notifications and delay mechanisms

By serving all occupants of repossessed properties with clear notification that they need to vacate the premises and putting mechanisms in place to ensure that tenants receive two months notice, the legislation is expected to prevent all short notice evictions from occurring (providing tenants use the mechanism). Our central estimate is that the requirement to serve a notification will prevent 8,700 short notice evictions between its introduction in mid 2010 and 2020. This would result in savings in government expenditure and to individual households (Ref. Table 7).

Table 7: Benefits resulting from new notice			
	Housing Benefit savings to government	Savings to tenants	Rents paid to lenders
Upper estimate	£5,300,000	£2,900,000	£7,100,000
Central estimate	£2,900,000	£1,600,000	£3,900,000

Lower estimate	£1,200,000	£700,000	£1,700,000
-----------------------	------------	----------	------------

We estimate rent paid to lenders during the additional notice periods could total £3.9m, using the assumptions described above (CLG, Live Table 731).

Total benefits of legislation

The legislation has significant *non-monetised* benefits for 10,300 households with unauthorised tenancies if our central estimate is realised. In addition to the benefits following from the new protections that have been quantified, these households will avoid the stress and disruption they would otherwise have suffered as a result of short notice eviction. Many other tenants may avoid worrying about whether they will be required to leave their homes at short notice simply because their landlord has mortgage arrears. At present some tenants may decide to leave their home as a precaution against the threat of being suddenly evicted, but such households will now have certainty that they will receive a decent period of notice if the possession does go ahead and will be more likely to stay in their homes until this time, while finding alternative accommodation.

The central estimate of the overall monetised benefits to be accrued from legislating is £9.9m (ref. Table 8). These estimates assume that notifications reach all eligible households, and should therefore be taken as maximum savings; in practice the savings may be lower if not all households are made aware of their landlord's circumstances and act upon it.

Table 8: Total benefits from legislating				
	Savings to government	Savings to tenants	Savings to lenders	Total
Upper estimate	£6,300,000	£3,400,000	£8,400,000	£18,100,000
Central estimate	£3,400,000	£1,900,000	£4,610,000	£9,900,000
Lower estimate	£1,400,000	£800,000	£2,000,000	£4,200,000

Net impact

Our central estimate is that the net monetised benefits (net present value) of legislation is £2m (ref. Table 9). The monetised benefits of the option will exceed monetised costs over the appraisal period if more than 8,200 short notice evictions are avoided over the period (this is known as the 'switching value').

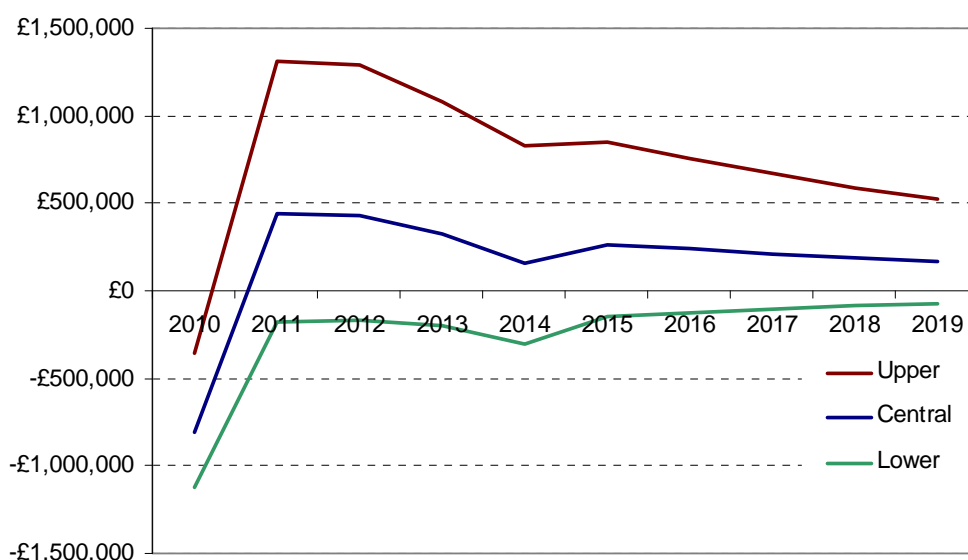
Table 9: Net Monetised Benefits			
	Total Cost	Total Benefit	Net Benefit
Upper estimate	£10,200,000	£18,100,000	£7,900,000
Central estimate	£7,900,000	£9,900,000	£2,000,000
Lower estimate	£6,300,000	£4,200,000	-£2,100,000

The central estimate for size of the RTL sector, that 11,000 unauthorised tenants might be evicted at short notice, implies that this policy will generate positive net social impacts regardless of the scale of other, non-monetised benefits. In the lower estimate the non-monetised benefits would need to be £2.1m to justify the policy on efficiency grounds – this implies that preventing short notice eviction for each tenant must be valued at £240 a month (this is the amount they must be willing to pay). If the non monetised benefits are expected to be less than this, then the policy would not have a positive net social impact.

As highlighted by Chart 2, the high initial setup costs mean that net monetised benefits are likely to be much lower in the first year after implementation than in subsequent years. The number of short notice evictions that can be avoided this year is also lower (as the Act comes into force part way through 2010), which contributes to the net benefits being negative in 2010.

Net benefits rise considerably in 2011 and thereafter, although the highest benefits – and most costs – accrue in the first few years of the appraisal period when possessions are likely to be higher. This is because benefits are greatest in periods when more short notice evictions are avoided. Net benefits increase in such circumstances because costs of preventing the short notice evictions are unlikely to rise proportionately with the benefits of doing so. The net benefits associated with the new notification are higher than those associated with allowing tenants to present at court as, despite being more costly to deliver, this mechanism for delay is expected to help more tenants avoid short notice eviction.

Chart 2: Estimates of Net Benefits each year



Sensitivity analysis

The only uncertainty taken into account by the cost-benefit estimates presented above is around the number of unauthorised tenants at risk of short notice eviction (largely dependent on the number of RTL mortgages outstanding). This section considers how changes in other key assumptions affect our assessment of the impact legislation is likely to have. It takes into account the main, known uncertainties in the estimation of number of tenants likely to face short notice eviction and the costs of preventing these. It should be noted, however, that our knowledge of uncertainties is incomplete and therefore the sensitivity analysis only captures part of the overall uncertainties related to costs.

Sources of uncertainty have been considered individually – including using switching values to show by how much an assumption would have to vary in order to reduce benefits or increase costs so much as to make undertaking the policy difficult to justify on efficiency grounds – and jointly, exploring some of the interactions between assumptions using Monte Carlo techniques.

Description of key uncertainties

Assumption	Description of uncertainty	Possible impact
Number of	Depends on housing market	If lower than expected, fewer tenants

landlords being repossessed	conditions and wider economy	will benefit from legislation but initial setup costs remain fixed. Could have a large impact.
Cost of notification	The method of service is left to the discretion of lenders. A wide variety of delivery options are possible.	Lenders have flexibility over how to serve notice. This may reduce costs if they choose cheaper delivery options, but less onerous methods are likely to offer tenants less protection. Potentially large impact.
Delay cost	Depends on real mortgage interest rates, outstanding mortgage balances and percentage held as capital by lenders.	Higher real interest rates likely to increase costs to lenders and borrowers. Medium impact possible.
Delay period	Depends on time taken by existing repossession processes, how many tenants remain in situ longer than permitted, and duration of appeal process.	Costly delays cannot exceed two months but could occur in more instances if new requirements are not carried out within time currently available during possession process, tenants are reluctant to move out or appeals against lender decisions take long to be heard.
Number of claims and appeals	No evidence is available to estimate this proportion. Depends on behaviour of tenants and lenders	If more tenants make themselves known or have to appeal lender decisions, then costs and benefits are both likely to rise; the net impact is likely to be positive.
Moving costs	Depend on the distances moved, and time spent in temporary dwelling.	May be higher than estimated; such changes would likely increase benefits.
System and training costs	Depend on how long it takes individual lenders to refine/set up systems and train their staff.	May be higher or lower than anticipated. There is a small possibility that the change is great enough to have a significant bearing on net impact.
Receipt of rental income	Dependent on lenders willingness to accept rent (by putting systems in place) and tenants' willingness to pay rent (which may be lower if they have lost deposits or other rent paid to unprofessional landlords).	A lower proportion of tenants may pay rent than estimated, reducing offsetting benefits to lenders somewhat.

More attention is given to the costs and benefits with the greatest degree of uncertainty, and those with the largest impact on the net present value of the policy. Since uncertainty around the number of short notice evictions, delay and notification costs is particularly large and has a significant impact, these are analysed below.

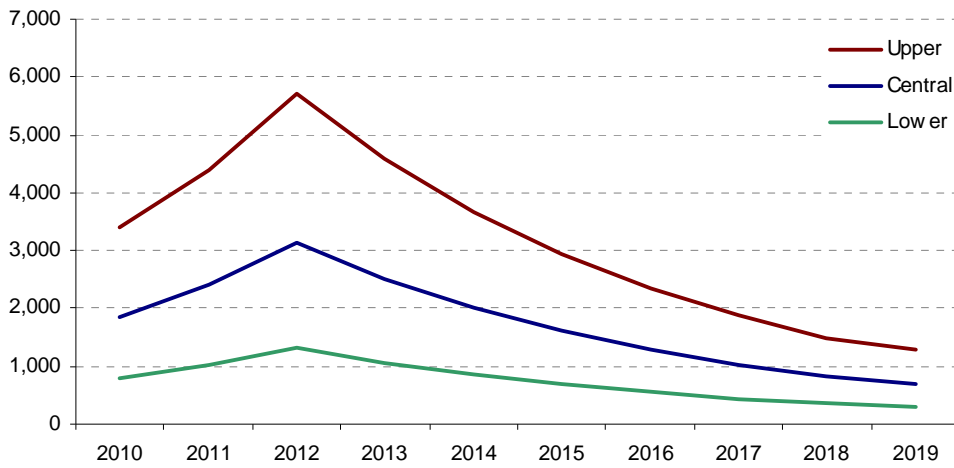
Repossessions and Short Notice Evictions

The number of landlords subject to repossession and consequent number of short notice evictions is a fundamental to the net impact of the legislation. The fixed costs such as systems changing will remain the same magnitude regardless of the number of short notice evictions, and do make up a significant proportion of the overall costs. However, other costs such as the notification and delay costs, and the benefits to tenants are dependent on the number of households that avoid short notice eviction as a consequence.

Aside from the number of RTL mortgages in existence, the number of short notice evictions depends largely on the number of possessions over the appraisal period. The net social and monetised impact of the policy will rise with the number of short notice evictions avoided. The number of short notice evictions is subject to high uncertainty given the large range around even short-term repossession forecasts, which reflects the potential for the number of homeowners in difficulty to vary a great deal depending upon conditions in the housing market and wider economy.

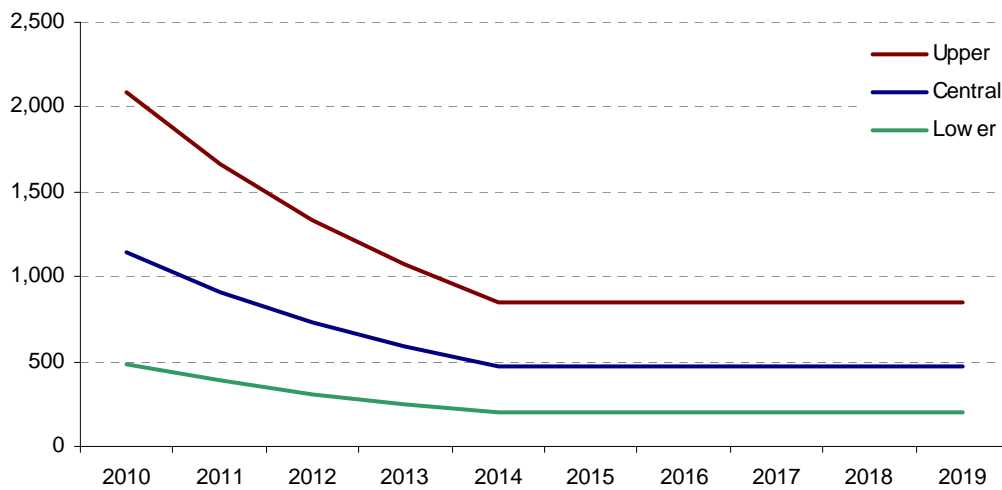
As noted above, the number of short notice evictions resulting from repossessions would need to be around 8,200 between 2010 and 2020 to justify the proposals on efficiency grounds. If the assumptions about the RTL sector hold, then this seems a plausible outcome. In a pessimistic repossessions scenario there might well be 17,000 short notice evictions between 2010 and 2020, assuming the central estimate for the RTL sector is correct (Ref. Chart 3).

Chart 3: Estimates of short notice evictions in a pessimistic repossessions scenario



In contrast an optimistic repossessions scenario might involve as few as 6,000 short notice evictions, making it difficult to justify the legislation on efficiency grounds (Ref. Chart 4.). These repossessions scenarios are illustrative and in practice are likely to differ.

Chart 4: Estimates of short notice evictions in an optimistic repossessions scenario



Analysis suggests that the upper bound for short notice evictions under a pessimistic repossessions scenario could be around 32,000, whilst the lower bound from an optimistic repossessions scenario might be just 3,000 (Ref. Table 10). This shows that there is a very large degree of uncertainty around this assumption, which is fundamental to the overall impact of the policy.

Table 10: Short Notice Evictions in different possession scenarios

	Optimistic Scenario	Baseline Scenario	Pessimistic Scenario
Upper estimate	11,000	20,000	32,000
Central estimate	6,000	11,000	17,000
Lower estimate	3,000	5,000	7,000

Looking solely at the central estimate in the baseline, pessimistic and optimistic scenarios, we observe the impact of this large range on the net present value of the policy.

Delay Costs

Costs associated with delays to possession include foregone mortgage interest and the cost of capital held by lenders. These are uncertain since average outstanding mortgage balances for RTL loans facing possession are not known, lenders have some discretion over the percentage of loan balances held as capital and mortgage rates / opportunity cost of capital are both related to the nominal interest rates that are determined by the Bank of England. Since decisions on interest rates are affected by inflation (expected and observed), the costs associated with these factors are partly dependent on the wider economy. It should be noted that given the positive correlation between interest rates and inflation, the real increase in costs following on from higher mortgage rates / cost of capital are likely to be lower than presented below (these are based on nominal scenarios and make no allowance for possible inflation over the period).

If the cost of capital and mortgage rate rose above 7.5% and remained at this level until 2020, then this would likely cause per unit costs of delay to rise from £650 to £1,000 a month, resulting in a reduction of £0.9m to the net benefit (which would be £1.1m in the central estimate).

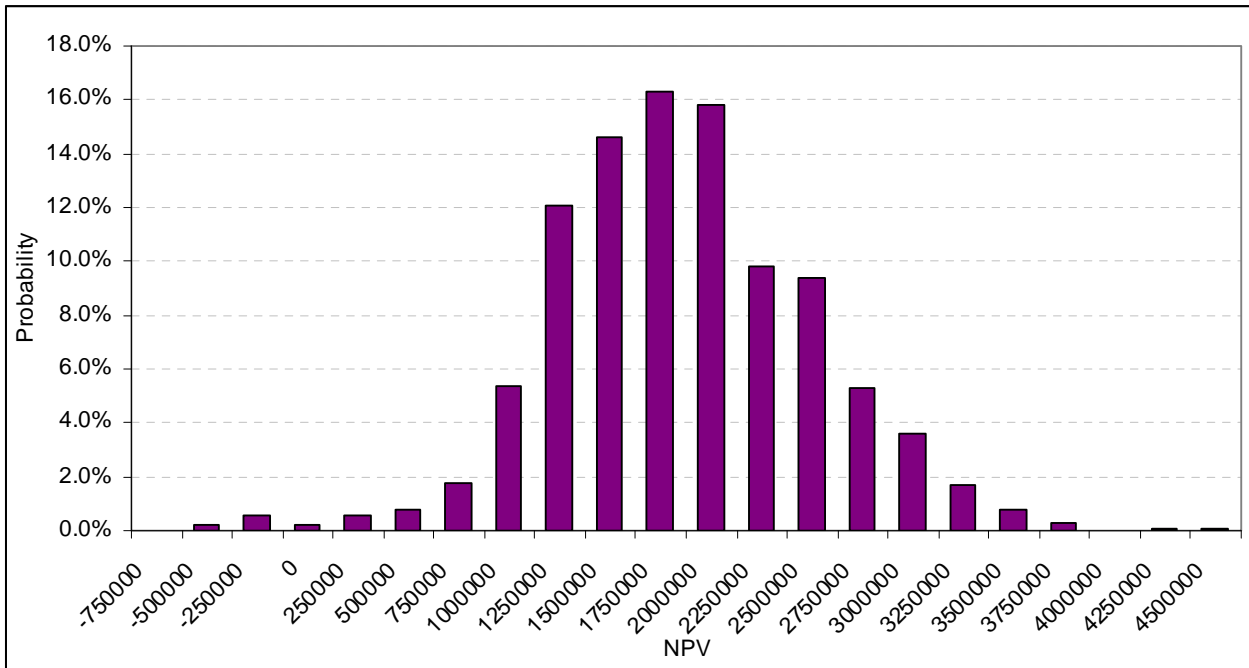
Repossessions and delays

It is also worthwhile looking at interactions between the uncertainties affecting these two key assumptions: landlords subject to repossession and delay costs. A likely range of net benefits is estimated using Monte Carlo analysis, which entails simultaneously varying the number of possessions and aspects of the delay costs many times within reasonable ranges and then assessing what the most likely level overall net benefits is and what foreseeable deviation from this might occur.

Possession figures were allowed to vary between the optimistic and pessimistic scenarios (between 6,000 and 17,000), assuming a uniform distribution. The mortgage costs and possession figures are likely to be correlated and this was reflected in the sensitivity testing. Mortgage rates were assumed to remain constant throughout the appraisal period and to follow a gamma distribution with 4% and 12% as bounds and most values falling between 4% and 8%. The percentage held as capital was allowed to vary between 15% and 25%, and the outstanding mortgage was allowed to vary between £80,000 and £220,000. Both these variables were assumed to follow a normal distribution (where data clusters around the mean) with 20% and £150,000 as their respective means.

Monte Carlo analysis of the plausible possession scenarios (baseline, optimistic and pessimistic) around our central estimate indicates that our expected net benefit of 2m is a conservative one. The range of likely outcomes was found to be £5.75m with results lying between -£4.5m and -£1.25m; this indicates that possessions and mortgage costs have a significant impact on the net benefits of the legislation. The analysis suggests there is a 98.8% probability that the net present value will be positive if mortgage rates and possessions fall between the chosen values (Ref. Chart 5). The same distribution of results is expected to apply for our upper and lower estimates of the RTL sector and short notice evictions, but with the mean being centred closer to their respective net benefit estimates (£7.9m and -£2.1m). However, the costs of delivery of the notification appear to have a considerably larger effect on the results.

Chart 5: Estimates of net benefits varying repossessions scenarios and mortgage costs



Notification Costs

As the largest source of cost, the method of service associated with the new notification that lenders are required to serve has a major impact on costs to lenders and overall net benefit of legislation. This factor is uncertain, because the method of notification is left to the discretion of lenders. The impacts of choosing different methods of delivering notifications are compared below.

The total delivery cost is likely to range between £1m and £21m depending on the chosen method of notification (the delivery cost taking a value between 30p for second class postage and £58 for courier service). We anticipate that lenders will send either normal post or recorded signed for post, meaning that costs are at the lower end of the range. In some circumstances more expensive delivery methods (such as hand delivery) may be required (in perhaps 15% of cases), raising the average variable cost to around £12. If only 5% of cases required hand delivery the AVC would be £6, and if 60% of cases required hand delivery the AVC would be £38. This implies that keeping other things equal, the total net benefit of the policy could range between £4 m and -£6.7m. In the more expensive scenario, the legislation may only be worthwhile on fairness grounds, as the non-monetised benefit would need to be around £650 for each short notice eviction that is delayed.

Variable cost (per unit)	Total cost to lender	Net Benefit
£6.00	£2,100,000	£4,000,000
£12.00	£4,000,000	£2,000,000
£38.00	£12,800,000	-£6,700,000

It is clearly important that notification costs are kept to the minimum level compatible with preventing short notice evictions. However, there is likely to be a trade off between the cost of the option and its effectiveness at enabling tenants to make themselves known to lenders and thereby avoid eviction at short notice. If a lower cost method is chosen by lenders, then the notification may not be given as much attention by tenants. There is also a risk that the notification may not reach everyone meaning some cases of short notice eviction could be missed if tenants have not already been made aware at an earlier stage (via the existing notice). This will reduce the overall savings. If the effectiveness of the notification is reduced through a cheaper delivery method, then savings will be less than our stated estimates, decreasing the overall net benefit. If problems with the delivery mean that 20% of eligible tenants do not receive the notice, then the savings will be £7.9m. This implies a £2m reduction in the net benefit, meaning the legislation will have no net impact.

Other Uncertainties

- Receipt of Rental Income - If tenants do not pay rent or lenders chose not to collect it, then there will be a reduction in the benefits to lenders. It is assumed in the cost benefit analysis that in 20% of cases rent will not be collected. If rent was received in 90% of cases, income generated would rise by £500,000. If rent was only collected in 50% of cases, then this would imply an additional fall in revenue to lenders of £1.6m. It is an important factor to consider given that for BTL mortgages one of the primary reasons for repossession is non-receipt of rental income. There is a risk that the proportion of cases where rent is not paid to lenders may rise above the assumed level. This might be because tenants are deterred from paying rent by the knowledge of their impending eviction and could be more likely in cases where tenants have already paid in advance or face the prospect of losing their deposit.
- Moving costs – If moving costs were higher than we have assumed in the IA, then the benefits to tenants of avoiding short notice eviction would be higher. This may be the case if evicted tenants are unable to find accommodation at such short notice or lodge with friends and family as we have assumed to happen in many cases.
- System costs - System modification costs were revised upwards in light of feedback on the consultation document, suggesting that our original estimate had been too conservative. The revised estimate of 175 hours per lender (costing around £4500) is likely to be a liberal estimate, and the final costs may not end up being as high as this. If the time spent was closer to 100 hours per lender, then costs would be £300,000 less.
- Availability of credit – Although not captured in the cost-benefit analysis, altering the right of mortgagees to take possession of residential properties may unintentionally have an adverse impact on the availability of credit. If lenders perceive that risk to their capital increases because there is less certainty over timing and recourse to security, then they could raise the price of credit or restrict its availability by imposing stricter lending criteria. However, any impact of this legislation is likely to be very minor. We also consider the possibility of this outcome to be low since the proposals are likely to apply in only a small number of cases, causing a maximum of two months delay and have little or no negative impact on quality of property in most cases.
- Lender forbearance – There is a remote risk that this legislation causes lenders to change the way in which they manage loans that enter arrears, to the detriment of all borrowers who encounter difficulties. Lenders might factor the potential for two month delays into their decision over when to initiate repossession proceedings. This could lead them to be less forbearing and pursue possession at an earlier stage than otherwise. Such behaviour might impact on any borrower in arrears, potentially incurring greater legal costs and increasing the number of households that are repossessed. However this is unlikely to occur since only a small number of delays are likely and these would be limited to a maximum of two months. Moves to accelerate possession proceedings would also go against lenders obligations to treat customers fairly and recent efforts to extend greater forbearance to borrowers in difficulty.
- Effectiveness and compliance – There is a risk that not all tenants will heed new notices and that, despite the additional costs incurred by lenders, tenants continue to face eviction at short notice. This could also occur if not all members of the lending industry comply fully with the requirements of the legislation. The likelihood of these outcomes occurring will be reduced by requiring that an effective notification of the legislative changes is provided in all instances.

Summary of Costs and Benefits

In summary, giving tenants the right to present in court is likely to prevent a relatively small number of short notice evictions from occurring. Requiring lenders to provide new notices with a mechanism for delay is expected to further achieve the policy objective of preventing all short notice evictions. The legislation is expected to bring substantial non-monetised benefits to 10,300 households that are protected from short notice eviction between 2010 and 2020.

There are high costs associated with the requirement to provide new notification of enforcement of possession, delays to some possession proceedings and from lengthening court proceedings. Together

these total £7.9m. This leads to the central estimate that legislation will have a positive monetised net benefit of £2m.

The legislation could also deliver significant monetised benefits (of £9.9m), including housing benefit savings to government and reduced expenditure by tenants on moving. The legislation is also expected to have large benefits that have not been monetised, including reductions to stress and disruption that might otherwise have been suffered by tenants. These form the primary justification for this intervention, making the legislation not only worthwhile on equity grounds, but also value for money.

Post Implementation Review arrangements

The intended outcome of the Act is to prevent all involuntary, short notice evictions of 'unauthorised tenants'. Preferably the intended outcomes of these regulations will be measured by the combination of different outputs, including the number of notices sent, the number of applications arising from the notices, the number of delays granted by lenders as a result of the applications, or the number of successful court appeals in favour of the 'unauthorised tenant'. These will largely depend on whether or not the 'unauthorised tenant successfully receives the notices, understands their content, and acts accordingly. The lack of data may limit our ability to assess the impact of the legislation, and we may have to draw on evidence from stakeholders and lenders to aid our assessment.

It is intended, that a review should be undertaken and published on a yearly basis; led from Government and with close working with implementation partners, including lenders or trade associations which represent them, debt advice agencies and charities. The aim will be to check that the new mechanisms are successfully preventing 'unauthorised tenants' from being evicted at short notice and are not imposing disproportionate costs on mortgage lenders or the Court Services. It is not possible for Her Majesty's Court Service to easily capture any meaningful data on cases of unauthorised tenants appealing for a delay to possession through the court service.

Specific Impact Tests

We have screened these proposals for a range of specific impacts, including on equalities. The results are presented below.

Statutory Impact Test (Race, Gender, Disability)

This legislative change will fill a gap in legal protection to avoid short-notice evictions of defaulting borrowers' tenants. This will affect any private tenant in exactly the same way, whatever their background, and will benefit all equalities groups equally.

Competition Assessment

No impact on competition has been identified.

Small Firms Impact Test

No impact on small firms has been identified.

Legal Aid

No impact on legal aid has been identified.

Sustainable Development, Carbon Assessment, and Environmental impacts

No impact on the environment has been identified.

Health

Short-notice evictions can have very significant consequences for the households involved, including financial implications, severe disruption and stress. This legislative change will fill a gap in legal protection to avoid short-notice evictions of defaulting borrowers' tenants. Therefore any impact on health, though unquantifiable, is expected to be positive in reducing the stress caused to households who would otherwise be subject to short-notice eviction.

Human Rights

No impact on human rights has been identified.

Rural Proofing

No significant impact on rural areas has been identified.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];

Government is committed to ensuring that 'unauthorised' tenants are not forced to leave their homes at short notice as a result of their landlords being subject to possession proceedings.

Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]

To check that the new mechanisms are successfully preventing 'unauthorised' tenants from being evicted at short notice and are not imposing disproportionate costs on mortgage lenders or the Courts Service.

Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]

An in-depth evaluation study will not be carried out because the problem being tackled is relatively small scale and lack of information is likely to hamper any review. Instead, we plan to identify what sources of data are available on the eviction of 'unauthorised' tenants or related events and engage in dialogue with the mortgage industry and other partners to establish how well the policy is operating.

Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]

Little data is currently collected on the number of 'unauthorised' tenants being evicted and it will be challenging to establish a baseline. We plan to draw on information held by stakeholders to construct one.

Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]

Criteria of success may include occurrences of 'unauthorised' tenants making use of the mechanisms to delay possession and recorded instances of delays taking place. Conversely the policy might require modifying if there is evidence that notifications are not being served or read, or that lenders are not delaying possession in all cases.

Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]

It would be disproportionately burdensome to introduce new data collection requirements or modify HM Courts Service IT systems to record details of a small number of court hearings. We plan to work with stakeholders to establish alternative sources of monitoring information.

Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here]

N/A

Add annexes here.