

To: Housing and Community Safety Policy Board

On: 12th May 2015

Report by: Director of Development and Housing Services

Heading: Response to the Second Consultation on a New Tenancy for the Private Sector

1. Summary

- 1.1 The Scottish Government issued a consultation paper, “Second Consultation on a New Tenancy for the Private Sector” on 30th March 2015. This document seeks views on proposed reforms to the private sector tenancy regime that are designed to create a new and simplified system that will benefit both private rented sector tenants and private landlords and follows on from an initial consultation held between October and December 2014. The Council’s response to the first consultation was reported to the Housing and Community Safety Policy Board on 20 January 2015.
 - 1.2 The closing date for responses to this second consultation was 10th May 2015. (The response is attached as Appendix 1 and the consultation paper at Appendix 2). The Scottish Government has been informed that formal approval will not be gained until the Housing and Community Safety Policy Board decision is known and any changes to the consultation resulting from the Board decision will be communicated to the Scottish Government.
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2. Recommendations

It is recommended that the Policy Board

- 2.1 Approves the consultation response, (attached as Appendix 1) which was submitted to the Scottish Government before the closing date.
 - 2.2 Homologates the actions of the Director of Development and Housing Services in submitting the attached response in order to meet the consultation deadline.
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3. **Background**

- 3.1. The private rented sector (PRS) in Scotland has more than doubled in size over the last 15 years, accommodating an increasing number of families and individuals who are choosing the private rented sector as a tenure option. The 2011 Census found that around 10% of all homes in Renfrewshire are now in the private rented sector.
- 3.2. The profile of the sector is changing, with a diverse range of landlords, including a significant number of '*reluctant landlords*' who rent out their properties having been unable to sell in the depressed housing market. The tenant profile has also changed with an increasing number of families with children living in the private rented sector. These changes together with the rapid expansion of the sector have prompted the need for reform within the sector.
- 3.3. Against this backdrop, the Scottish Government set out its policy in relation to the sector in its 2013 private rented sector strategy, "A place to stay, a place to call home". This Strategy sets out the Scottish Government's vision for the sector which is:

"A private rented sector that provides good quality homes and high management standards, inspires consumer confidence, and encourages growth through attracting increased investment"

- 3.4. Following publication of this strategy, the government set up the Private Rented Sector Tenancy Review Group to examine how suitable and effective the current private rented sector system was and to consider whether changes in the law were needed.
- 3.5. The Review Group produced a report in May 2014. It had one main recommendation; that the current tenancy system for the PRS be replaced by a new private tenancy that covers all future PRS lets. It also made a series of suggestions for clarifying and simplifying the tenancy system.

3.6. The Scottish Government's proposal for a new tenancy system builds on the groups' work and its report findings. The reforms aim to improve security of tenure for tenants, while giving suitable safeguards for landlords, lenders and investors. It is hoped that a new and simplified system will result in better property management by providing clarity for tenants and landlords, helping both parties fully understand what the tenancy agreement means for them.

3.7. The first consultation on a New Tenancy for the Private Rented Sector was issued in October 2014. This second consultation takes account of feedback received from the first consultation and tries to address the key issues raised, seeking views on more developed proposals.

3.8. Where proposals remain unchanged from the original consultation, the Scottish Government is not seeking further comment on these issues. **The key proposals which remain unchanged are:**

- Removal of the 'no-fault' ground for bringing tenancies to an end. This is designed to improve security of tenure, with tenants asked to leave only where there is good reason. The grounds on which re-possession can be sought will be increased from 8 to 11 and landlords can do so through the new First-tier Tribunal rather than the courts.
- Landlords should no longer have to issue pre-tenancy notices to enable recovery of possession. The new model tenancy agreement should alert tenants to any pre-existing circumstances under which they may be asked to leave.
- Introduction of a model tenancy agreement which should include mandatory and discretionary clauses. This is to be set out in secondary legislation to allow consultation with stakeholders.

3.9. The second consultation includes **key proposals which have been amended or further developed and on which views are now sought.** These are:

- The creation of a statutory Scottish Private Rented Tenancy (SPRT) - a minimum tenancy agreement of 6 months, within which a tenant cannot give notice and a landlord cannot regain possession of a property except where a tenant is at fault or a lender is selling the property following a landlord breaking their loan conditions. Under these proposals, a degree of

flexibility will remain with an option to request a shorter tenancy agreement to meet personal circumstances possible.

- Landlords would no longer be able to end a tenancy simply because the fixed tenancy agreement length has come to an end. Instead landlords would give a single 'Notice to Leave' with two clear periods of notice for tenants of 4 weeks (for tenancies of six months or less) and 12 weeks (for tenancies longer than six months). A 'Notice to Leave' may only be issued based on 11 defined 'Grounds for Repossession', with the option for tenants to refer cases where they think a landlord has acted inappropriately to a new 'First Tier-Tribunal' rather than a sheriff, who can compensate tenants with a refund of up to 3 months rent.
- The consultation also seeks views on the use of rent reviews by landlords, suggesting that such reviews take place no more than once a year and that following a review, tenants should receive 12 weeks notice of any increase in rental charges with an option for tenants to raise any unreasonable rental increases with the First Tier-Tribunal for adjudication.
- Views were also sought in relation to the creation of area based rent limits and possible evidence bases should legislation be introduced by the Scottish Government that local authorities would be required to produce should they wish to apply for any 'rent pressure area' designation.

3.10. Overall, Renfrewshire Council's response welcomes the Scottish Government's proposals for a new private sector tenancy regime as a positive step to increase security of tenure for private sector tenants, to create clarity for both landlords and tenants in their roles and responsibilities and to simplify the procedure for setting up and ending tenancies. However, comments on specific points raised in the consultation include the following:

- Where tenants are given a Notice to Leave for rent arrears by landlords, landlords will be required to signpost them to available sources of money advice. However, there is a need to ensure that effective advice and information is available to private tenants so that vulnerable tenants and those experiencing financial hardship are not put at risk of homelessness due to the proposed accelerated process for rent arrears.
- The proposed grounds 1-5 for repossession are mandatory. There is provision to enable tenants to refer cases to the First-tier tribunal where they are not satisfied that the landlord is behaving appropriately and the Tribunal can award a former tenant up to three months rent if a landlord is found to have acted inappropriately. However, this is unlikely to be a

serious deterrent unless there are strong and effective arrangements in place to provide advice and support to tenants on such matters.

- While the proposed measures in relation to rents are welcome (restricting the frequency of rent increases, ensuring appropriate notice of rent increases is given to tenants, and allowing for unreasonable rent increases to be referred for adjudication) these fall short of comprehensive control over rent levels.

3.11. The Council's response includes reference to Renfrewshire's Tackling Poverty Commission report, which was published in March 2015 and highlights concerns about housing costs and affordability in the private rented sector, and to the agreement by Council that it should call for additional powers to ensure that that private tenants are charged a fair price.

3.12. The response notes that despite rapid growth in the private rented sector in recent years, there is no effective and comprehensive control over rents and standards in the sector and this wider issue should be addressed by the Scottish Government. Careful consideration should be given to options for rent regulation at a national level. There is a need for a national analysis of private rent levels and affordability and this should include consideration of the proportion of income spent on rent, the need for recourse to housing benefit (including working households claiming benefit) and patterns of housing benefit expenditure. There is evidence of affordability problems, even for working households who cannot fully support housing costs in the private rented sector and this suggests the need for some form of intervention on rent levels.

3.13. Consideration should be given to what the most appropriate form of intervention would be, perhaps drawing on international comparisons, and taking cognisance of the need to avoid unintended consequences such as disinvestment in quality by landlords or landlords moving out the sector. Private sector rents are linked to the operation of the wider housing market and this analysis needs to take account of the wider issues and pressures which affect the whole housing system.

3.14. Renfrewshire Council's consultation response also includes comments on the need to facilitate a stronger link between the condition of properties and the registration of landlords. When applying for registration, landlords are required to confirm that they comply with all legal requirements relating to the letting of houses. The Repairing Standard, contained in the Housing (Scotland) Act 2006, covers the legal and contractual obligations of private landlords to ensure that a property meets a minimum physical standard.

However, local authorities currently have no legal right to inspect properties under the Act to ensure compliance. While the obligation to ensure properties meet the Repairing Standard firmly remains with private landlords, it would be beneficial to amend the registration scheme to enable councils to visit and inspect selected properties as part of the registration process. All privately rented properties should meet minimum standards and this is particularly important where properties are attracting public subsidy through housing benefit. As well as new legal powers, additional resources would be required to enable local authorities to carry out this function.

Implications of the Report

1. **Financial – None.**
2. **HR & Organisational Development – None.**
3. **Community Planning –**
Community Care, Health & Well-being – None.
Greener – None.
Safer and Stronger – None.
4. **Legal – None.**
5. **Property/Assets-None.**
6. **Information Technology – None.**
7. **Equality & Human Rights** – The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report because it is for noting only. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website.
8. **Health & Safety – None.**
9. **Procurement – None.**

10. **Risk** – None.
11. **Privacy Impact** – None.

List of Background Papers

- Consultation on a New Tenancy for the Private Sector, Housing and Community Safety Policy Board, 20th January 2015

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Ref: Document1
Date: 05/05/2015

Second consultation on a new tenancy for the private rented sector

RESPONDENT INFORMATION FORM

Please note: this form **must** be returned with your response to ensure that we handle your response appropriately



1. Name/Organisation

Organisation Name

Renfrewshire Council

Title Mr ☒ Ms ☐ Mrs ☐ Miss ☐ Dr ☐ Please tick as appropriate

Surname

Campbell

Forename

Mark

2. Postal Address

Development & Housing Services

Renfrewshire House

Cotton Street

Paisley

Postcode PA1 1JD

Phone 0141 618 6268

Email

mark.campbell@renfrewshire.gov.uk

3. Permissions – I am responding as...

Individual

/

Group/Organisation

☐

Please tick as

☒

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

☐ Yes ☐ No

- (b) Where confidentiality is not requested, we will make your response available to the public on the following basis

Please tick ONE of the following boxes

- (c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate

☒ Yes ☐ No

Yes, make my response,
name and address all
available ☐

or

Yes, make my response
available, but not my
name and address ☐

or

Yes, make my response
and name available, but
not my address ☐

- (d)** We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Government to contact you again about this consultation exercise?

Please tick as appropriate

☒ **Yes**

☐ **No**

CONSULTATION ANSWER FORM

Question 1a: Do you agree that there should be an initial tenancy period during which a tenant and landlord would be unable to give notice unless one of the specified circumstances existed?

Yes ☒ No ☐ Don't know ☐

Please explain your answer.

Yes, in that this may bring stability and greater security to both landlords and tenants. However it would be important to retain the ability to allow shorter fixed term tenancies should both tenant and landlord agree in order to maintain flexibility in the sector and meet the needs of people who are attracted to this sector because of this flexibility.

Question 1b: Do you agree that after the initial period a tenant or landlord may serve notice at any time with the relevant notice periods?

Yes ☒ No ☐ Don't know ☐

Please explain your answer.

Yes, as long as the 'no-fault' ground is removed as proposed and landlords would only be able to seek repossession of the property on the 11 grounds outlined in the consultation paper.

Question 2: Do you agree that Notice to Quit and Notice of Proceedings should be combined into one Notice to Leave?

Yes ☒ No ☐ Don't know ☐

Please explain your answer.

This would make matters a lot simpler by only requiring one type of notice to be issued and should remove a level of uncertainty for tenants.

Question 3: Do you agree with the proposed notice periods a landlord should give a tenant?

Yes ☒ No ☐ Don't know ☐

Please explain your answer.

Under the proposed new arrangements, a notice period of four weeks would apply to tenancies of six months or less and 12 weeks to tenancies of more than six months. This acknowledges that the longer a tenant has lived in the property the more likely they are to have developed links in the area and it is reasonable to expect a longer notice period. The simplified notice periods makes good practical sense and reducing the number of different types of periods will make the process easier for all parties.

Question 4a: Do you agree that a landlord may serve a Notice to Leave when a tenant has been in rent arrears for two consecutive months?

Yes ☐ No ☒ Don't know ☐

Please explain your answer.

As the consultation paper makes clear, the Scottish Government wants landlords '*to be confident that they can remove a tenant swiftly to protect their investment*' and this is the reason for the proposed accelerated process for rent arrears. Under the proposed new arrangements, if a tenant has '*failed to pay any amount*' of rent due for a period of two consecutive months then the landlord can send a Notice to Leave and if the tenant fails to pay the rent due by the end of the following month, repossession may be sought at the First-tier Tribunal.

While we welcome the proposed requirement for the Notice to Leave to highlight available sources of financial information and advice, it is not clear whether adequate support will always be available and accessible to tenants. We would want to ensure that vulnerable tenants and those experiencing financial hardship are not put at risk of homelessness due to this accelerated process for rent arrears.

In particular, we note that the proposed new ground for repossession refers to a failure to pay rent '*in full*' over two consecutive months. The proposal to make this a mandatory ground seems harsh given that it applies to **any amount** of rent which is not paid over two consecutive months.

Question 4b: Do you agree that when a tenant has reached three consecutive months of rent arrears, a landlord should be able to refer a case to the First-tier Tribunal?

Yes ☒ No ☐ Don't know ☐

Please explain your answer.

We agree that when a tenant has reached three consecutive months of rent arrears a landlord should be able to refer a case to the First-tier Tribunal. However, we do not agree that there should be a **mandatory** ground for repossession where the amount of rent arrears due equates to at least one full month's rent. Please see response below to question 6/ ground 6.

Question 5a: Do you agree that the list of repossession grounds now covers all reasonable circumstances where a landlord may wish to recover possession?

Yes ☒ No ☐ Don't know ☐

Please explain your answer.

The list of grounds is comprehensive and should cover most eventualities.

In response to the first consultation we commented that 'refurbishment' should not be grounds for mandatory repossession unless it was made clear that major works were involved which could not be undertaken with the tenant living in the property. We note that this is now included.

We note that breaching the clauses of a tenancy agreement will be mandatory or discretionary grounds for repossession depending on which of the clauses has been breached. We agree that there should be consultation on this as part of consultation on the model tenancy agreement. It is important that there is clarity on this issue and that sanctions are proportionate – eg there are some clauses, such as grass cutting and stair cleaning, which should not be mandatory grounds for repossession.

Question 5b: Do you agree that the First-tier Tribunal should have an element of discretion in grounds 6, 7 and 8?

Yes ☒ No ☐ Don't know ☐

Please explain your answer.

Yes, we agree that the First-tier Tribunal should be able to exercise discretion in considering individual cases where repossession is sought on grounds 6, 7 and 8 to allow the tribunal to take any mitigating factors into account when considering their decision. A level of discretion may promote human rights by allowing all factors to be taken into account.

The use of discretion is currently used in the Sheriff Court in relation to grounds 7 and 8, this should continue as these grounds may be less clear cut than the other proposed grounds for possession.

Question 6: From the details provided, do you agree that each of the following repossession grounds will work effectively?

Ground 1: The landlord is selling the home.

Yes ☒ No ☐ Don't know ☐

Please explain your answer.

Given that the 'no fault' clause will be removed which means that tenants cannot be asked to leave the property without good reason, we agree that where a landlord wishes to sell a property, he/she should be able to recover possession.

However, as with all the proposed mandatory grounds for repossession, robust and effective arrangements must be in place to protect tenants' rights. We would want to ensure that this ground is not used as a basis to recover possession by landlords who do not go on to sell their property but

simply want to change the tenant.

The consultation paper does include provision for tenants who are not satisfied that the landlord actually wishes to sell the property to refer the case to the First-tier Tribunal. The Tribunal can award a former tenant up to three months rent if a landlord was found to have acted inappropriately, but this is unlikely to be a serious deterrent unless there are strong and effective arrangements in place to provide advice and support to tenants on such matters.

Ground 2: The mortgage lender is selling the home because the landlord has broken the loan's conditions.

Yes ☒ No ☐ Don't know ☐

Please explain your answer.

This seems reasonable as any such sales will tend be out with of the landlord's control.

Ground 3: The landlord or a family member of the landlord wants to move into the property as their principal home.

Yes ☒ No ☐ Don't know ☐

Please explain your answer.

The comments above in relation to ground 1 also apply to circumstances where the landlord or a family member wants to move into the property. While it is reasonable in principle to enable the landlord to recover possession of the property in such circumstances, robust safeguards need to be in place to ensure tenants are aware of their right to refer cases to the First-tier Tribunal. It may also be difficult to prove that any new tenant/resident is related to the landlord despite the requirement to provide identity and relationship information within the Notice to Leave.

Ground 4: Refurbishment.

Yes ☒ No ☐ Don't know ☐

Please explain your answer.

Yes, we want to encourage landlords to invest in and improve the stock of privately rented homes and so it is necessary to enable repossession where substantial works are required where these works cannot be reasonably carried out while the tenant is living in the property.

We particularly recognise that this is potentially the case older properties and pre-1919 tenements. Such works may be disruptive to tenants and take place over long periods of time, making it unreasonable to carry such works

out whilst properties are tenanted.

Consideration should be given to allowing tenants to have the opportunity to move back into the property on completion of works if the property remains in the private rented sector.

As with other mandatory grounds 1-3, we would want to make sure that tenants are aware of their rights to refer cases to the First-tier Tribunal if they are not satisfied that the landlord actually plans to refurbish the property.

Ground 5: Change of business use, e.g. from home to shop (from residential to non-residential).

Yes ☒ No ☐ Don't know ☐

Please explain your answer.

Yes, this should be effective and allow landlords to change the use of a property from residential to not residential use subject to appropriate notice being given to tenants.

As with other mandatory grounds, we would want to make sure that tenants are aware of their rights to refer cases to the First-tier Tribunal if they are not satisfied that the landlord actually plans to change the use from residential to non-residential.

Ground 6: The tenant has failed to pay the full rent over three consecutive months.

Yes ☒ No ☐ Don't know ☐

Please explain your answer.

While we agree that landlords should be able to seek repossession where there are serious rent arrears, we do not think that there should be a mandatory aspect to this ground. The First-tier Tribunal should be able to use discretion in considering all individual cases referred for reasons relating to failure to pay rent.

We welcome the proposal that the Notice to Leave should signpost tenants to available sources of money advice. However, we need to ensure that effective advice and information is available to private tenants.

Please also see our response to questions 4a and 4b above.

Ground 7: The tenant has displayed antisocial behaviour.

Yes ☒ No ☐ Don't know ☐

Please explain your answer.

We agree that landlords should be able to gain repossession in cases of serious anti-social behaviour.

We note the reference to Ground 15 of Schedule 5 of the Housing (Scotland) Act. However, the circumstances set out there, which are broadly similar to those covered by ground 7 of the new consultation paper, are grounds on which the sheriff **may order** possession. Our view is that the First-tier Tribunal should be able to consider individual cases involving anti-social behaviour and that this should continue to be a discretionary ground for possession.

Ground 8: The tenant has otherwise breached the clauses of their tenancy agreement.

Yes ☐ No ☐ Don't know ☒

Please explain your answer.

This may be an effective ground but clarity would be required regarding the definition of a breach in the tenancy agreement and the development of a standard tenancy agreement, although it is proposed that this will be addressed in secondary legislation. The potential to refer to the First-tier Tribunal, which will have discretion in deciding whether a breach has taken place, should help to protect the interests of tenants.

Ground 9: Abandonment.

Yes ☒ No ☐ Don't know ☐

Please explain your answer.

Yes this ground should work effectively.

Ground 10: The property was let to the tenant because they were employed by the landlord, and the tenant is no longer employed by the landlord.

Yes ☒ No ☐ Don't know ☐

Please explain your answer.

Yes this ground should work effectively.

Ground 11: The property is normally needed to house a full-time religious worker of a religious denomination, and is required for this purpose.

Yes ☒ No ☐ Don't know ☐

Please explain your answer.

Yes this ground should work effectively.

Question 7a: Do you agree that rent reviews should take place no more than once a year?

Yes ☒ No ☐ Don't know ☐

Please explain your answer.

Yes, this would promote stability in the sector for tenants and would facilitate more effective financial planning for tenants with rental costs clear for at least a 12 month period.

Question 7b: Do you agree that a tenant should receive 12 weeks' notice in advance of a change in the rent?

Yes ☒ No ☐ Don't know ☐

Please explain your answer.

Yes, as a matter of good practice and to allow the tenant to either give notice and find an alternative home or make an application to the tribunal.

Question 7c: Do you agree that tenants should be able to refer what they regard as unreasonable rent increases for adjudication?

Yes ☒ No ☐ Don't know ☐

Please explain your answer.

Yes, this is necessary to ensure transparency and fairness in the system and should help to discourage landlords from imposing unreasonably high rent increases upon tenants as a means to remove a tenant from their property.

Question 7d: Do you think there is a role for the additional regulation of area-based rent limits?

Yes ☒ No ☐ Don't know ☐

Please explain your answer, setting out what you view as the advantages and disadvantages of such an approach.

Our reading of the proposals for possible further rent regulation (page 34 of the consultation document) seems to restrict this to 'hot-spot' areas where local authorities could apply to Ministers for a 'rent pressure area' designation where there is evidence to show that rents for sitting tenants in the area were increasing excessively.

Along with the measure outlined in questions 7a to 7c above (which would improve current arrangements by restricting the frequency of rent increases, ensuring that tenants receive appropriate notice of rent increases and ensuring that tenants can refer unreasonable rent increases for

adjudication), this additional role would assist in local areas where rents are particularly high.

However, these measures fall short of exerting comprehensive control over rent levels. The private rented sector has grown rapidly in recent years and is increasingly providing homes for a variety of types of households, often including families with children, who may not formerly have sought housing in this sector. In Renfrewshire, there are now slightly more registered private rented properties than there are housing association properties. However, there is currently no comprehensive control over standards and rents in this sector.

If the Scottish Government's policy is that the private rented sector should be encouraged to continue to grow to address supply issues within the housing system, then these issues should be addressed.

Many people living in private rented housing are on low incomes and receive housing benefit. Rent levels are therefore important both in terms of tenant affordability and public expenditure.

While we understand concerns that rent regulation could impact on supply in the private rented sector, the consultation paper itself notes that good examples were quoted in response to the first consultation of how rent regulation works in other countries and that Scotland could learn from these approaches.

These matters must be considered in the context of the whole housing system and the wider economy, as well as taking account of local variations and historic trends. In Renfrewshire, rent levels for 2 bedroom properties remained relatively stable over the three year period 2012-2014 with rent levels just below the Scottish average and cumulative rent increases from 2010 to 2014 below CPI. Nevertheless, rent affordability is an issue for lower income households with large numbers of working households having to rely on housing benefit to help meet costs of living in the sector.

With rents in the private sector higher than social rents, this impacts on public spending through increased housing benefit costs. In 2012, the Scottish Federation of Housing Associations estimated that the cost of housing benefit for tenants of private landlords increased by 153% in the previous 10 years compared to an increase for Council and Housing Association tenants of 21% of the same period¹.

Question 7e: If we were to legislate for this proposal, what types of evidence should local authorities have to present to Ministers when applying to designate an area as a 'rent pressure area'?

Please explain your answer.

¹ SFHA Briefing, October 2012, 'Housing Benefit Spending: Busting the Myths'.

Further consideration would need to be given to the specific information required but this could potentially include local income to local PRS rent level ratios, consideration of PRS rents for property types/sizes against affordable housing rents, housing benefit claimant levels, and historic trend information.

Question 8: Do you have any comments on the partial Equality Impact Assessment?

No

Please explain your answer.

Question 9: Do you have any comments on the partial Business and Regulatory Impact Assessment?

No

Please explain your answer.

Additional comment:

Overall, Renfrewshire Council considered that the Scottish Government's proposals for a new private sector tenancy regime are a positive step to increase security of tenure for private sector tenants, to create clarity for both landlords and tenants in their roles and responsibilities and to simplify the procedure for setting up and ending tenancies. However, the Council believes that more could be done to address issues of property quality within the sector and to address affordability.

There is a need to facilitate a stronger link between the condition of properties and the registration of landlords. When applying for registration, landlords are required to confirm that they comply with all legal requirements relating to the letting of houses. The Repairing Standard, contained in the Housing (Scotland) Act 2006, covers the legal and contractual obligations of private landlords to ensure that a property meets a minimum physical standard. However, local authorities currently have no legal right to inspect properties under that Act to ensure compliance. While the obligation to ensure properties meet the Repairing Standard firmly remains with private landlords, it would be beneficial to introduce new powers of inspection for local authorities, which would enable them to visit and inspect selected properties in the private rented sector. This would enable relevant investigations to be carried out in relation to landlords who require to be registered. All privately rented properties should meet minimum standards and this is particularly important where properties are attracting public subsidy through

housing benefit. As well as new legal powers, additional resources would be required to enable local authorities to carry out this function.

Renfrewshire Council established a Tackling Poverty Commission in April 2014 which included a range of experts in education, housing, the voluntary sector, the economy and people who work with residents living in poverty. The Commission's report was published in March 2015. While private rents in Renfrewshire have been relatively stable in recent years and are just below the Scottish average, the Commission's report notes that private rents are estimated to be around 50% higher than Council rents in Renfrewshire (although private rents will mainly be for furnished properties and so the costs are not directly comparable). Housing costs are the biggest element of many households' expenditure. The more money people spend on rent, the less disposable income they have to buy other things they need such as food and fuel. Following publication of the Commission's report, Renfrewshire Council agreed to call for additional powers to ensure that private tenants are charged a fair price.

As noted above in response to question 7d, despite rapid growth in the private rented sector in recent years, there is no effective and comprehensive control over rents and standards in the sector and this wider issue should be addressed by the Scottish Government. Careful consideration should be given to options for rent regulation at a national level.

In response to the first consultation, Renfrewshire Council highlighted that, in the context of a private rented sector which continues to grow and house an increasingly wide range of households, there is a need for a national analysis of private rent levels and affordability. This should include consideration of the proportion of income spent on rent, the need for recourse to housing benefit (including the number of working households claiming benefit) and patterns of housing benefit expenditure. There is evidence of affordability problems, even for working households who cannot fully support housing costs in the private rented sector and this suggests the need for some form of intervention on rent levels. Consideration should be given to what the most appropriate form of intervention would be, perhaps drawing on international comparisons, and taking cognisance of the need to avoid unintended consequences such as disinvestment in quality by landlords or landlords moving out the sector. Private sector rents are linked to the operation of the wider housing market and this analysis needs to take account of the wider issues and pressures which affect the whole housing system.

Second Consultation on a New Tenancy for the Private Sector

March 2015



HOW WE WOULD LIKE YOU TO HELP

- This second consultation paper builds on the outline proposals in our first *Consultation on a New Tenancy for the Private Sector*, held in late 2014. It takes account of the feedback and analysis from the first consultation and addresses the key issues raised, presenting more-developed proposals.
- Please read the paper and give us your views on the proposed outline of the new tenancy. Please do this by completing the consultation answer form available separately in MS Word format on the same webpage.
- Your answers will help us shape a new, modernised and simplified tenancy system for the private sector in Scotland.

HOW TO RESPOND

You can download the respondent's details form and consultation answer form in an easily editable MS Word format from the same page of the Scottish Government website as this consultation paper. Go to the 'associated downloadable documents' section.

Please send your completed respondent's details form and consultation answer form to:

PRSTenancies@scotland.gsi.gov.uk

Alternatively, you may post the respondent's details form and consultation answer form to:

Jen Gracie
Private Rented Sector Team
Scottish Government
1H-South
Victoria Quay
Edinburgh
EH6 6QQ

Please send us your response to this consultation paper **by 10 May 2015**.

COMPLETING THE CONSULTATION ANSWER FORM

- The respondent's details form and consultation answer form are available in MS Word format. If possible, please send us an electronic reply to the above email address.
- When completing the electronic Word document, please ensure you have enabled editing. A bar should appear across the top allowing you to select this option.

- When selecting a box to be ticked, double-click it and select 'checked'.
- In the Permissions section, you can respond as an individual or a group/organisation. Whichever option you select, please note you should complete only ONE column (questions (a) and (b) for individuals or question (c) for organisations). But everyone who responds should complete question (d), whether replying as an individual or for an organisation.
- In addition to giving your details, you should complete the consultation answer form. It will help us if you use the Word consultation answer form provided. If, however, you prefer to respond in hard copy using a separate piece of paper, please clearly show which questions you are responding to as this will help our analysis.

HANDLING YOUR RESPONSE

- We need to know how you want us to handle your response and whether you are happy for it to be made public. Completing the respondent's information form will ensure we treat your response appropriately. If you ask us not to publish your response, we will view it as confidential and treat it accordingly.
- Everyone who responds should be aware that the Freedom of Information (Scotland) Act 2002 applies to the Scottish Government. We would therefore have to consider any request made to us under the Act for information about responses.

NEXT STEPS IN THE PROCESS

- If you have given us permission to make your response public, and after we have checked that it contains no potentially offensive material, we will make it available to the public in the Scottish Government Library and on the Scottish Government consultation web pages within 25 working days of the consultation closing. You can arrange to view responses by contacting the Scottish Government Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.
- After the consultation closing date, we will analyse and consider all responses along with other available evidence to help us reach decisions. We aim to issue a report on this within 12 weeks of the closing date.

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Second consultation on a new tenancy for the private rented sector



RESPONDENT INFORMATION FORM

Please note: this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Title Mr ☐ Ms ☐ Mrs ☐ Miss ☐ Dr ☐ Please tick as appropriate

Surname

Forename

2. Postal Address

<input type="text"/>		
<input type="text"/>		
<input type="text"/>		
<input type="text"/>		
Postcode	Phone	Email

3. Permissions – I am responding as...

Individual

/

Group/Organisation

☐

Please tick as appropriate

☐

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

☐ Yes ☐ No

- (b) Where confidentiality is not requested, we will make your response available to the public on the following basis

Please tick ONE of the following boxes

- (c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate

☐ Yes ☐ No

Yes, make my response,
name and address all
available ☐

or

Yes, make my response
available, but not my
name and address ☐

or

Yes, make my response
and name available, but
not my address ☐

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Government to contact you again about this consultation exercise?

Please tick as appropriate

☐ **Yes**

☐ **No**

CONSULTATION ANSWER FORM

Question 1a: Do you agree that there should be an initial tenancy period during which a tenant and landlord would be unable to give notice unless one of the specified circumstances existed?

Yes ☐ No ☐ Don't know ☐

Please explain your answer.

Comments

Question 1b: Do you agree that after the initial period a tenant or landlord may serve notice at any time with the relevant notice periods?

Yes ☐ No ☐ Don't know ☐

Please explain your answer.

Comments

Question 2: Do you agree that Notice to Quit and Notice of Proceedings should be combined into one Notice to Leave?

Yes ☐ No ☐ Don't know ☐

Please explain your answer.

Comments

Question 3: Do you agree with the proposed notice periods a landlord should give a tenant?

Yes ☐ No ☐ Don't know ☐

Please explain your answer.

Comments

Question 4a: Do you agree that a landlord may serve a Notice to Leave when a tenant has been in rent arrears for two consecutive months?

Yes ☐ No ☐ Don't know ☐

Please explain your answer.

Comments

Question 4b: Do you agree that when a tenant has reached three consecutive months of rent arrears, a landlord should be able to refer a case to the First-tier Tribunal?

Yes ☐ No ☐ Don't know ☐

Please explain your answer.

Comments

Question 5a: Do you agree that the list of repossession grounds now covers all reasonable circumstances where a landlord may wish to recover possession?

Yes ☐ No ☐ Don't know ☐

Please explain your answer.

Comments

Question 5b: Do you agree that the First-tier Tribunal should have an element of discretion in grounds 6, 7 and 8?

Yes ☐ No ☐ Don't know ☐

Please explain your answer.

Comments

Question 6: From the details provided, do you agree that each of the following repossession grounds will work effectively?

Ground 1: The landlord is selling the home.

Yes ☐ No ☐ Don't know ☐

Please explain your answer.

Comments

Ground 2: The mortgage lender is selling the home because the landlord has broken the loan's conditions.

Yes ☐ No ☐ Don't know ☐

Please explain your answer.

Comments

Ground 3: The landlord or a family member of the landlord wants to move into the property as their principal home.

Yes ☐ No ☐ Don't know ☐

Please explain your answer.

Comments

Ground 4: Refurbishment.

Yes ☐ No ☐ Don't know ☐

Please explain your answer.

Comments

Ground 5: Change of business use, e.g. from home to shop (from residential to non-residential).

Yes ☐ No ☐ Don't know ☐

Please explain your answer.

Comments

Ground 6: The tenant has failed to pay the full rent over three consecutive months.

Yes ☐ No ☐ Don't know ☐

Please explain your answer.

Comments

Ground 7: The tenant has displayed antisocial behaviour.

Yes ☐ No ☐ Don't know ☐

Please explain your answer.

Comments

Ground 8: The tenant has otherwise breached the clauses of their tenancy agreement.

Yes ☐ No ☐ Don't know ☐

Please explain your answer.

Comments

Ground 9: Abandonment.

Yes ☐ No ☐ Don't know ☐

Please explain your answer.

Comments

Ground 10: The property was let to the tenant because they were employed by the landlord, and the tenant is no longer employed by the landlord.

Yes ☐ No ☐ Don't know ☐

Please explain your answer.

Comments

Ground 11: The property is normally needed to house a full-time religious worker of a religious denomination, and is required for this purpose.

Yes ☐ No ☐ Don't know ☐

Please explain your answer.

Comments

Question 7a: Do you agree that rent reviews should take place no more than once a year?

Yes ☐ No ☐ Don't know ☐

Please explain your answer.

Comments

Question 7b: Do you agree that a tenant should receive 12 weeks' notice in advance of a change in the rent?

Yes ☐ No ☐ Don't know ☐

Please explain your answer.

Comments

Question 7c: Do you agree that tenants should be able to refer what they regard as unreasonable rent increases for adjudication?

Yes ☐ No ☐ Don't know ☐

Please explain your answer.

Comments

Question 7d: Do you think there is a role for the additional regulation of area-based rent limits?

Yes ☐ No ☐ Don't know ☐

Please explain your answer, setting out what you view as the advantages and disadvantages of such an approach.

Comments

Question 7e: If we were to legislate for this proposal, what types of evidence should local authorities have to present to Ministers when applying to designate an area as a 'rent pressure area'?

Please explain your answer.

Comments

Question 8: Do you have any comments on the partial Equality Impact Assessment?

Please explain your answer.

Comments

Question 9: Do you have any comments on the partial Business and Regulatory Impact Assessment?

Please explain your answer.

Comments

PURPOSE OF THIS CONSULTATION

In October 2014, we launched our [*Consultation on a New Tenancy for the Private Sector*](#). We received more than [2,500 responses](#). They came from a range of interested parties including tenants, tenant-representative organisations, landlords, landlord-representative organisations, letting agents, investors and local authorities. We had the responses analysed independently.

You can see the consultation analysis report on the [publications section](#) of the Scottish Government website.

We have used the findings from the analysis to help us develop the proposals in this second consultation paper, which explains in more detail how we expect the new tenancy system to work in practice.

We were particularly keen to understand as fully as possible what tenants thought of our initial proposals. Therefore, in addition to considering written responses to the consultation, we arranged a number of focus groups during December 2014 to gather the views of tenants in the Aberdeen, Edinburgh, Falkirk, Glasgow, Paisley, Scottish Borders and Stirlingshire areas.

We have included a partial Equality Impact Assessment (EQIA) and partial Business and Regulatory Impact Assessment (BRIA) in the document. The Scottish Government welcomes feedback on the equalities impact of the proposals presented, and their possible effect on different sectors of the population. We also welcome views about the possible impact of the proposals on businesses.

We will use responses to this paper to help us develop a Bill on private sector tenancies that we plan to introduce in the Scottish Parliament in the autumn.

WHY DO WE NEED A NEW PRS TENANCY SYSTEM?

The private rented sector (PRS) is changing. It is growing in size and is becoming an increasingly important part of the Scottish housing system. It is now home to many tenants who want to settle in it in the longer term, as well as to those who continue to use it for its flexibility.

Responding to that change, we produced a strategy for the sector in May 2013. It set out our vision and aims for the sector. These were that it would be an attractive housing option, provide good-quality homes and high management standards, and attract investment in existing stock and new homes to rent.

The strategy was clear in its commitment to deliver improvement for tenants and landlords, and set out a series of actions to achieve this. These included the regulation of letting agents, so that landlords and tenants could be assured of a consistently high standard of service across the sector; a new route of redress for tenant-and-landlord disputes, by transferring cases from the civil courts to the new First-tier Tribunal; further additional powers to local authorities to support their enforcement of PRS regulations; measures to improve property condition and energy efficiency; and ways of enabling growth and investment in the sector.

The strategy also contained an action to examine the suitability and effectiveness of the current private rented sector tenancy system. The system is complicated. Many tenants and landlords do not understand it, so they are not clear about their rights and responsibilities under it. We propose introducing a clearer and simpler system that will help tenants and landlords understand what a tenancy agreement means for them. This new system will give tenants who meet their responsibilities greater security, and give landlords confidence that their investment is safe.

Under our proposals, landlords will be able to evict tenants only in certain clearly defined circumstances. This will improve tenants' security of tenure and help them assert their rights, for example on the condition of their homes, without fear of eviction. Landlords will benefit from better and simpler arrangements for recovering possession of their property and for dealing with rent arrears.

Rent levels vary across Scotland, reflecting supply and demand in local markets. In most areas the market provides rents that are affordable for tenants and decent returns to landlords and investors. We have no plans to intervene generally in this state of affairs. We do, however, want to ensure that unscrupulous landlords do not use excessive increases as a way of forcing tenants from their homes when they have no lawful grounds to evict them. Our proposals include arrangements that will stop such tactics.

While not proposing any further general regulation of rents, we are considering whether specific measures may be justified to protect tenants from excessive increases in hot-spot areas. We discuss an approach we could adopt if, in the light of responses to this consultation, we concluded that there could be a role for such measures.

We set out the detail of our proposals in the following section and provide an overview of them at ANNEX A.

OUR PROPOSALS IN DETAIL

There was a consensus among the respondents to the first consultation that we should provide more detail on how we expected our proposals to work in practice. In this section we provide that detail. It begins with proposals we have not changed since the first consultation, and continues with proposals we have revised in the light of the responses.

As the following proposals remain unchanged from the initial consultation, we are not seeking any further views on these.

KEY PROPOSALS THAT REMAIN UNCHANGED

Bringing tenancies to a natural end (otherwise known as the ‘no-fault’ ground)

Initial proposal: Our first consultation proposed that the new tenancy system should not permit a tenancy to end automatically on its expiry date (which is currently a feature of a Short Assured Tenancy).

Consultation responses: 81% of respondents agreed there should not be a ‘no-fault’ ground in the new tenancy system. Support for this approach generally came from advice, campaign-group, local-authority, tenant and trade-union respondents. It was also supported by everyone who identified themselves as being part of the ‘Living Rent’ campaign. Most industry bodies, landlord, letting-agent, and legal respondents took the opposite view and did not want it removed.

Among those who agreed with our proposal, some felt it was important to consider the extent to which the PRS now provides long-term housing for many households, including those with children. They suggested that longer-term tenancies would be better for families, allowing them to put down roots and contribute towards developing stable, balanced communities. There was also a widely held view that if a landlord can end a tenancy without giving a reason, some tenants will feel unable or reluctant to assert their rights.

Those who disagreed with our proposal thought removing the ‘no-fault’ ground would damage the health of the PRS market and undermine the potential for investment in it. They argued that investors needed confidence they could regain possession of their property, and that the ‘no-fault’ ground provided this. Losing the ground would make it more difficult for them to manage their business efficiently and at a reasonable cost. They felt it could lead some landlords to be more selective in the tenants they were willing to accept.

Way forward: Having considered all the consultation responses, we remain committed to removing the ‘no-fault’ ground. Improving security for tenants is a key aim for the proposed new tenancy system. In a professionally managed sector, tenants should only be asked to leave their homes for a good reason. We want tenants to feel secure in their homes and be able to assert their rights without feeling that this may lead to them being asked to leave for no other reason.

Improved security for tenants must be balanced with proper safeguards for landlords, investors and lenders, who need to be sure they can recover their property in all reasonable circumstances. To reassure them of this, we have increased from 8 to 11 the number of grounds on which they can seek re-possession. Briefly, they are as follows:

- The landlord is selling the home.
- The mortgage lender is selling the home.
- The landlord or a family member of the landlord wants to move into the property.
- Refurbishment.
- Change of business use.
- The tenant failed to pay the full rent for three consecutive months.
- Antisocial behaviour.
- The tenant has otherwise breached their tenancy agreement.
- Abandonment.
- The tenant is no longer employed by the landlord.
- The property is required to house a full-time religious worker.

We describe each of these more fully at page 24. Moreover, a landlord wishing to regain possession on one of the new grounds will be able to do so through the new First-tier Tribunal, which landlords tell us will be easier and more straightforward than using the courts, as happens at present.

Pre-tenancy notices

Initial proposal: Our first consultation proposed that landlords should no longer have to issue pre-tenancy notices to enable them to recover possession of their property.

Consultation responses: 87% of respondents who answered this question – including most advice-service, campaign-body, industry-body, landlord, legal-body, letting-agent, local-authority, union, other and individual respondents – agreed that landlords should no longer have to issue pre-tenancy notices to recover possession of their property. Only among tenant-and-resident group respondents was there a majority against the proposal.

Those who agreed with the proposal said the notices were unnecessary; those who disagreed tended to argue that the current system worked well, or that it was important for tenants to be informed at the outset how re-possession could be obtained.

Way forward: We want the new tenancy system to be simple to use and clear to understand. We confirm our proposals that pre-tenancy notices should no longer be required. The model tenancy agreement we propose will alert tenants to any pre-existing circumstances under which they could be asked to leave the property, e.g. the house is normally needed to house a full-time religious worker.

Model tenancy agreement

Initial proposal: Our first consultation proposed the introduction of a model tenancy agreement for all future PRS lets.

Consultation responses: 79% of respondents agreed with this proposal. Respondents highlighted the need for the model agreement to be flexible enough to work for a diverse range of circumstances and properties.

Way forward: We propose that the model tenancy agreement should contain mandatory and discretionary clauses, and a statutory guidance note that would summarise the meaning of the clauses in plain language. We propose that the model tenancy agreement should be set out in secondary legislation rather than in the forthcoming Bill. This would allow stakeholders to be consulted about the content of the model agreement during the legislation's development to help ensure it would be fit for purpose.

If a landlord failed to give a tenant a tenancy agreement that contained at least the specified mandatory clauses, the tenant would be able to refer the matter to the First-tier Tribunal. The tribunal would be able to draw up a tenancy agreement that complied with the model agreement's mandatory requirements.

KEY PROPOSALS THAT HAVE BEEN AMENDED OR FURTHER DEVELOPED

We would be grateful for your views on each of the revised proposals described below (see the ‘*Way forward*’ sections).

Length of tenancy and roll-over arrangements

Initial proposal: Our first consultation proposed that the new tenancy should last a minimum of six months unless a tenant requested a shorter tenancy and the landlord agreed to it. We also proposed that tenancies should not have a maximum period or be able to roll over on a monthly basis, or indeed on any other basis that offered a shorter duration than the original tenancy agreement (e.g., at least a six-month roll-over for a six-month agreement).

Consultation findings: 76% of respondents said tenancies should be for a minimum of six months, 69% said they should have no maximum period, and 74% said a tenant should be able to request a shorter tenancy.

79% of respondents disagreed with removing the monthly roll-over. Many of them said it would reduce the sector’s flexibility, or saw no need to remove it if the ‘no-fault’ ground was excluded. Particular concerns among respondents were that tenants could find themselves liable for the rent to cover the rest of the tenancy period and that abandonments (and associated problems for landlords) could increase.

Way forward: In the light of the responses, we propose introducing a statutory Scottish Private Rented Tenancy (SPRT) for all PRS lets.

Initial period: For the first six months of the tenancy a tenant would be unable to give notice and a landlord would be unable to regain possession of the property unless the specified circumstances arose of the tenant being at fault or the landlord’s mortgage lender intending to sell because the landlord had broken their loan conditions.

However, we want to provide flexibility in the new system. Therefore, if a tenant and landlord are content, a longer initial tenancy could be agreed, e.g. one year. Alternatively, where the tenant has requested it and the landlord agrees, a shorter initial tenancy could be agreed, e.g. three months. In all cases, during the initial tenancy period, a tenant would be unable to give notice and a landlord would be unable to regain possession of the property unless one of the above specified circumstances arose.

Continuation of tenancy: After the initial period had expired, the tenancy would continue indefinitely. Both the tenant and landlord would then be able to give notice to end the tenancy at any time, with the required notice periods that we discuss below.

PLEASE PROVIDE YOUR RESPONSE TO THIS CONSULTATION USING THE SEPARATE CONSULTATION ANSWER FORM

Question 1a: Do you agree there should be an initial tenancy period during which tenants and landlords would be unable to give notice unless one of the specified circumstances existed?

Question 1b: Do you agree that after the initial period, a tenant or landlord may serve notice at any time with the relevant notice periods?

The Notice to Leave – To replace both the Notice to Quit and Notice of Proceedings

Way forward: To achieve our aim of modernising and simplifying the tenancy system, we propose that the Notice to Quit and the Notice of Proceedings should be replaced by a single notice called the 'Notice to Leave'. This is a new proposal that did not appear in our first consultation. It would give tenants and landlords a less bureaucratic, less confusing and more streamlined approach to the notice process.

The new Notice to Leave would cover every eventuality currently covered by the Notice to Quit and Notice of Proceedings, such as a tenant wishing to leave the property or a landlord wanting to repossess their property and, if required, refer a case to the First-tier Tribunal. Instead of issuing two separate notices (Notice to Quit and Notice of Proceedings) only one notice would be required (Notice to Leave).

We propose that the content of the Notice to Leave, as with the model tenancy agreement, would be set out in secondary legislation rather than in the forthcoming Bill. This would allow stakeholders to be consulted during its development.

Question 2: Do you agree that Notice to Quit and Notice of Proceedings should be combined into one Notice to Leave?

Notice to Leave (formerly Notice to Quit) – from landlords to tenants

Initial proposal: Our first consultation proposed the following notice periods from landlords to tenants:

- Six months or less in the property = 28 days' notice (four weeks).
- More than six months, but less than two years in the property = 56 days' notice (eight weeks).
- Two years or more, but less than five years in the property = 84 days' notice (12 weeks).
- Five years or more in the property = 112 days' notice (16 weeks).

Consultation responses: 60% of respondents who answered agreed that the period of notice should reflect the length of time the tenant had spent in the property. However, respondents were evenly divided on the four notice periods, with a small majority (54%) disagreeing with their length. Some respondents, in particular landlords and letting agents, agreed with the principle of linking notice period to

length of occupancy, but argued that 16 weeks' notice for tenancies over five years was too long to wait if the landlord required the property under one of the new simplified repossession grounds, particularly if they were planning to sell. Others commented on the risk of tenants with long notice periods abandoning or failing to pay the rent during that period.

Another important consideration is that houses marketed for sale in Scotland must have a valid Home Report. This is a pack of three documents: a Single Survey, an Energy Report and a Property Questionnaire. The Home Report is made available on request to potential buyers. To ensure potential buyers get the most up-to-date information, the Home Report must be no more than 12 weeks old when the house is put on the market. If we retained the proposed maximum notice period, a landlord may obtain a Home Report that could be outdated by the time the tenant moves out.

Way forward: In the light of the above, we now consider that a 16-week notice period may be too long. We propose, therefore, to reduce the number of notice periods from four to two:

- Six months or less in the property = 28 days' notice (four weeks).
- More than six months = 84 days' notice (12 weeks).

Question 3: Do you agree with the proposed notice periods a landlord should give a tenant?

Notice to Leave (formerly Notice to Quit) – from tenants to landlords

Initial proposal: Our first consultation asked for views on introducing a sliding scale for a tenant giving notice to a landlord linked to how long the tenant had been living in the property. The notice periods outlined were:

- Six months or less in the property = 28 days' notice (four weeks).
- Longer than six months in the property = 56 days' notice (eight weeks).

Consultation responses: 57% of respondents supported this proposal, including most tenant focus-group participants. They tended to see the approach as reasonable, fair and striking a good balance between the interests of landlords and tenants.

Landlords and letting-agent respondents were evenly divided, with many saying that the notice periods for landlords and tenants should be the same. We now propose 12 weeks as the maximum Notice to Leave period a landlord will have to give a tenant.

However, we think 12 weeks is too long for a tenant giving notice to a landlord. This is because a tenant could be subject to unforeseen circumstances that affects their ability to stay in the property, e.g. the need to move for work or education, relationship breakdown etc. Further, a 12-week notice period could reduce the sector's flexibility, including a tenant's ability to take up other accommodation.

Way forward: We propose that the tenant's notice periods should remain as follows:

- Six months or less in the property = 28 days' notice (four weeks).
- Longer than six months in the property = 56 days' notice (eight weeks).

As this proposal remains unchanged from the initial consultation, we are not seeking further views.

Shorter Notice to Leave (formerly Notice to Quit) in certain circumstances

Initial proposal: Our first consultation proposed that, for some of the new repossession grounds, landlords should be able to regain repossession by giving tenants 28 days' notice, regardless of how long the tenant had lived in the property. Our proposal covered cases where the tenant had:

- failed to pay full rent over three months
- displayed antisocial behaviour
- otherwise breached their tenancy agreement.

Consultation responses: 67% of respondents who answered agreed that landlords should be able to recover possession with a 28-day notice period in the circumstances outlined above. Advice-service, campaign-body, industry-body and legal-body respondents were more evenly divided.

Some respondents supported the proposal in principle, but said its application should be subject to a test of reasonableness by the First-tier Tribunal.

Some respondents who disagreed with the proposal said 28 days was too short a time for a tenant to find other accommodation. Others said a shorter notice period should apply in some circumstances.

Way forward: We think 28 days' Notice to Leave is suitable when a tenant has displayed anti-social behaviour or otherwise breached their tenancy agreement. As this proposal remains unchanged from the initial consultation, we will not be seeking further views.

On rent arrears, we want landlords to be confident they can remove a tenant swiftly to protect their investment; but we recognise we could do more to direct tenants towards sources of financial information and advice.

Therefore, we now propose the following accelerated process for rent arrears cases. If a tenant has failed to pay any amount of rent lawfully due for a period of two consecutive months, then before taking any repossession action, the landlord must send the tenant a Notice to Leave saying they have fallen into rent arrears and if they fail to pay the rent lawfully due by the end of the following month, repossession may be sought at the First-tier Tribunal. The Notice to Leave will also highlight available sources of financial information and advice. If after three consecutive months the tenant is still in rent arrears, further notice will **not** be required. Instead a landlord may immediately refer the case to the First-tier Tribunal.

The amount of rent arrears would determine whether the mandatory or discretionary repossession ground would apply. See page 26 for more on repossession in cases of rent arrears.

Question 4a: Do you agree that a landlord may serve a Notice to Leave when a tenant has been in rent arrears for two consecutive months?

Question 4b: Do you agree that when a tenant has reached three consecutive months of rent arrears, a landlord should be able to refer a case to the First-tier Tribunal?

Notice to Leave (formerly Notice of Proceedings)

Initial proposal: Our first consultation proposed introducing a four-week minimum notice period that a landlord must give a tenant before raising proceedings under any of the new repossession grounds.

Way forward: As discussed at page 18, the Notice of Proceedings will become obsolete. Instead a landlord will have to serve the tenant with a Notice to Leave that includes the relevant notice period outlined on page 18.

Grounds for repossession

Initial proposal: As part of our overall aim of modernising and simplifying the tenancy system, our first consultation proposed reduced the current 17 grounds for repossession to 8 mandatory grounds, which were:

1. Landlord wants to sell.
2. Mortgage lender wants to sell because the landlord has broken the loan's conditions.
3. Landlord or family member wants to live in the property.
4. Refurbishment.
5. Change of use.
6. Tenant has failed to pay full rent over three months.
7. Tenant has displayed antisocial behaviour.
8. Tenant has otherwise broken their tenancy agreement.

Consultation findings: 78% of those who answered agreed that all the proposed repossession grounds should be mandatory. However, most advice and campaign groups disagreed.

Some respondents identified certain grounds, usually 6, 7 and 8, which they said should be discretionary rather than mandatory. Some respondents stressed that all the grounds should be mandatory and 'watertight', particularly if they were to be the only route through which a landlord could regain possession.

Many third-sector organisations strongly opposed mandatory grounds. They suggested that if the First-tier Tribunal was not allowed any discretion when considering individual cases, this could result in some tenants being disadvantaged.

Way forward: We think many of the grounds for possession describe circumstances that, if established, justify the landlord recovering possession. In these cases there is no need for anything else to be considered. If the ground is established, the First-tier Tribunal has to grant what the landlord seeks.

However, a few of the grounds (or particular aspects of them) describe situations that merit the First-tier Tribunal having discretion to consider whether wider circumstances justify ordering possession, even though the basic ground for possession is established. This is similar to allowing the tribunal to apply a test of reasonableness in these particular cases. We have outlined each of the grounds in the table of repossession grounds provided below, given a view on whether the ground should be mandatory or discretionary, and defined each ground.

The proposed grounds with a discretionary element are 6, 7 and 8. Respectively these are rent arrears due to housing benefit delay, less serious antisocial behaviour, and the tenant otherwise breaching a non-mandatory tenancy agreement condition.

Respondents were evenly divided on the proposed list of repossession grounds and whether they thought other grounds were required. General comments by those who agreed with the proposed grounds often referred to them being fair, reasonable and straightforward. Other additional grounds proposed included a property being required for an employee, persistent late payment or non-payment of rent, and the tenant having abandoned the property. Some religious groups said they would want to regain possession of a property if it were needed for a church worker.

Given that the new system will not allow tenancies to come to a natural end at the expiry of the tenancy agreement, we consider it important to provide a set of comprehensive and accessible grounds that enable landlords to recover possession when there are grounds for it. We therefore propose three further grounds that offer landlords possession in all reasonable circumstances. These are:

- Abandonment.
- The property was let to the tenant because they were employed by the landlord, and the tenant is no longer employed by the landlord.
- The property is normally needed to house a full-time religious worker of any religious denomination and is required for this purpose.

Question 5a: Do you agree that the list of repossession grounds now covers all reasonable circumstances where a landlord may wish to recover possession?

The First-tier Tribunal

Before detailing the repossession grounds, we wish to explain that under the Housing (Scotland) Act 2014 all PRS civil cases, including those relating to repossession, will be transferred from the sheriff court to the First-tier Tribunal (FTT). The tribunal's main benefits will be specialism, consistency and accessibility, improving access to justice for both tenants and landlords in the PRS.

The tribunal will be a judicial decision maker and will have to follow a process when deciding cases, including cases where there is a mandatory ground for repossession.

First-tier Tribunal decision process for a mandatory repossession ground

If a case cites one of the mandatory grounds for repossession, the tribunal will have to consider the evidence and decide whether the basic repossession ground is established. If the tribunal is satisfied that the ground exists, it must issue an order for possession. For example, if a landlord refers a case to the FTT because they want a family member to live in the property, the tribunal will need enough evidence to be satisfied the family member does indeed intend to live there. If the tribunal decides there is enough evidence to meet the ground, it will grant a repossession order. And if there is not enough evidence, it will reject the case.

If a case referred to the FTT cites one of the discretionary grounds for repossession, the tribunal must consider the evidence and then decide whether the repossession ground exists. If the tribunal decides that the ground does exist, it will still have discretion on whether to issue an order for possession.

A tenant's right to refer a repossession case to the First-tier Tribunal

A tenant will be able to refer a case to the tribunal if they think a landlord has acted unjustly by failing to follow through on the cited repossession ground. Example: a tenant is served with a Notice to Leave because the landlord wishes to sell the property. However, six weeks after leaving the property, the former tenant notices that the same property is re-advertised for let. The former tenant could refer a case to the tribunal. It is up to the tribunal to decide whether there are reasonable grounds for the landlord's action. If the tribunal finds in favour of the former tenant, the tribunal can require the landlord to pay the former tenant up to a maximum of three months' rent.

We propose producing guidance for the tribunal outlining the forms of evidence that may be presented to help it decide whether or not the specified ground is met. This guidance will not appear in the forthcoming Bill but will be set out later. We will fully consult key stakeholders during its development.

Below, we give more detail on the definition of each of the repossession grounds.

Question 5b: Do you agree that the First-tier Tribunal should have an element of discretion in grounds 6, 7 and 8?

PROPOSED REPOSSESSION GROUNDS – DEFINITION AND FURTHER DETAIL

Respondents to our first consultation wanted more detail on how our proposals would work in practice, particularly regarding the definition of the repossession grounds. We have therefore set out below our proposals for each of the grounds.

We expect to give the First-tier Tribunal guidance in due course on the evidence it may use to demonstrate each of the grounds.

GROUND FOR POSSESSION	DEFINITION AND FURTHER DETAIL
<p>1. The landlord is selling the home.</p> <p>A mandatory ground.</p>	<p>We propose that a landlord must give the tenant a written statement explaining they intend to start actively trying to sell the property and detailing any steps they have already taken, along with any accompanying evidence (if available).</p> <p>A tenant who is not satisfied that the landlord wishes to sell the property can refer a case to the First-tier Tribunal. The landlord may be asked to give evidence that they intend selling the property within three months of ending the tenancy, or that they are appropriately seeking repossession under the ground.</p> <p>The tribunal would be able to award a former tenant a maximum of three months' rent if it decided the landlord had acted inappropriately.</p> <p>If a landlord puts a property up for sale but is unable to sell it and wishes to re-let it within six months of the tenant leaving, the landlord would have to offer the original tenant first refusal of a further tenancy. Again, the tribunal would be able to award the former tenant a maximum of three months' rent if this did not happen.</p> <p>If a landlord sells their property, the new landlord can re-let it immediately if they so wish.</p>

2. The mortgage lender is selling because the landlord has broken the loan's conditions. A mandatory ground.	<p>A lender's letter must be provided to the tenant, showing that the property must be sold to repay the lending secured over it. The landlord or lender must clearly provide sufficient proof that the ground is met.</p>
3. The landlord or a family member of the landlord wants to move into the property as their principal home. A mandatory ground.	<p>The definition of 'family member' will be similar to that at section 128 of the Housing (Scotland) Act 2006, updated to cover living together as a married couple rather than the outdated reference to same- and opposite-sex relationships.</p> <p>The Notice to Leave will specify:</p> <ul style="list-style-type: none"> • the intended occupant's identity • his or her relationship to the landlord (if not the landlord) • the expected duration of the occupancy (which must be at least three months). <p>The landlord will have to offer the former tenant a further tenancy of the property if it is vacated by the person referred to in the Notice to Leave within six months from the end of the relevant notice period.</p> <p>If the tenant is not satisfied that the landlord wants the property for themselves or a family member, they can refer a case to the First-tier Tribunal. The tenant will still be able to refer a case to the tribunal after moving out.</p> <p>If the tenant has already moved out of the property, the tribunal can award the former tenant up to a maximum of three months' rent.</p>
4. Refurbishment. A mandatory ground.	<p>This ground will be similar to the provisions for refurbishment that currently exist under the assured tenancy system. These are specifically that the landlord intends to demolish or reconstruct the whole or a substantial part of the house or to carry out substantial works and these works cannot reasonably be carried out</p>

	<p>without the tenant giving up possession of the property.</p> <p>Under this ground, the landlord will have to pay the tenant's reasonable removal expenses. If the parties cannot agree on the sum, a case can be referred to the First-tier Tribunal for a decision on what expenses are reasonable.</p> <p>If the tenant is not satisfied that the landlord wants to refurbish the property, they can refer a case to the tribunal. The tenant will still be able to refer a case to the tribunal after moving out.</p> <p>If the tenant has already moved out of the property, the tribunal can award them a maximum of three months' rent.</p>
<p>5. Change of business use, e.g., from home to shop (from a residential to non-residential).</p> <p>A mandatory ground.</p>	<p>The evidence landlords may use to demonstrate this ground will be covered in our proposed guidance for the First-tier Tribunal. It may include proof of a planning application or planning permission.</p> <p>Under this ground, the landlord will have to pay the tenant's reasonable removal expenses. If parties cannot agree on the sum, a case can be referred to the tribunal for a decision on what expenses are reasonable.</p> <p>If the tenant is not satisfied that the landlord wants to change the use of the property, they can refer a case to the tribunal. The tenant can still refer a case to the tribunal after moving out.</p> <p>If the tenant has already moved out of the property, the tribunal can award the former tenant up to a maximum of three months' rent.</p>
<p>6. Tenant failed to pay full rent over three consecutive months.</p> <p>A mandatory ground where the amount</p>	<p>If a tenant has failed to pay in full the amount of rent lawfully due over two consecutive months, then before taking any repossession action, the landlord may send the tenant a Notice to Leave informing them that they have fallen into rent arrears and that if they fail to pay the rent lawfully due by the end of the following</p>

<p>of rent arrears due equates to at least one month's full rent.</p> <p>A discretionary ground if the rent arrears due are less than one month's full rent or if failure to pay rent is due to a delay in housing benefit.</p>	<p>month then mandatory repossession may be sought. The notice will also signpost the tenant to available sources of money advice. If on reaching the end of the three-month period, the tenant is still in rent arrears, the landlord will be able to refer the case to the First-tier Tribunal immediately. The landlord must give notice of raising any proceedings to the local authority in whose area the property is situated (unless the landlord is the local authority).</p> <p>If at the date the tribunal is considering the case, the tenant is still in rent arrears and the amount of rent arrears equates to at least one full month's rent, or if the tenant has at any point during the tenancy been in rent arrears over a period of three consecutive months and the amount of those arrears at any point in that period equated to at least one full month's rent, the tribunal must order possession.</p> <p>If at the date the tribunal is considering the case, the tenant is still in rent arrears and the amount of rent arrears is less than one full month's rent, or at any point during the tenancy the tenant has been in rent arrears over a period of three consecutive months and the amount of arrears at no point in that period equated to at least one full month's rent, the tribunal may order possession.</p> <p>If the tenant's rent arrears have fully or partly been caused by a delay in housing benefit, the tribunal may order possession.</p> <p>In all cases, a landlord will have to wait one month from the date of issue of the Notice to Leave before referring a case to the tribunal.</p>
<p>7. The tenant has displayed antisocial behaviour.</p> <p>A mandatory ground where a tenant has a relevant conviction, and a discretionary ground where judgment must be exercised.</p>	<p>If a tenant, a person living in the property or a person visiting the property has been convicted of using the property or allowing it to be used for immoral or illegal purposes, or has been convicted of an offence punishable by imprisonment committed in, or in the locality of, the property, the tribunal must order possession.</p> <p>If a tenant, a person living in the property or a person visiting the property has acted in an antisocial manner towards a person residing in, visiting or otherwise engaged in lawful activity in the locality, or has pursued a course of conduct</p>

	<p>amounting to harassment of such a person or a course of conduct that is otherwise antisocial conduct towards such a person, then the tribunal may order possession.</p> <p>The proposed provisions are broadly similar to those in Ground 15 of Schedule 5 of the Housing (Scotland) Act 1988.</p>
<p>8. The tenant has otherwise breached the clauses of their tenancy agreement.</p> <p>Mandatory or discretionary depending on which of the clauses has been breached</p>	<p>The model tenancy agreement will contain mandatory and discretionary clauses and a statutory guidance note that outlines the clauses in plain language.</p> <p>The content of the model tenancy agreement will be set out in secondary legislation rather than in the forthcoming Bill. We will consult stakeholders while developing the model agreement and seek views on which of the clauses should attract either the mandatory or discretionary ground.</p>
<p>9. Abandonment.</p> <p>A mandatory ground.</p>	<p>Broadly, if a landlord has good reason for believing that their property is unoccupied and the tenant does not intend to occupy it as their home, the landlord may serve a Notice to Leave on the tenant. The Notice to Leave will require the tenant to inform the landlord in writing within four weeks of serving the notice whether or not they intend to occupy the property as their home.</p> <p>The notice will also inform the tenant that, if it appears to the landlord at the end of the four-week notice period that the tenant does not intend to occupy the property, the landlord could refer a case immediately to the First-tier Tribunal. If the tribunal is satisfied that the property has been abandoned, it must order possession. This proposal is similar to the process outlined in the social sector under section 17 and 18 of the Housing (Scotland) Act 2001.</p>
<p>10. The property was let to the tenant because they were employed by the landlord, and the tenant is no longer employed by the landlord.</p>	<p>The evidence that may be used to demonstrate this ground will be covered in our proposed guidance for the First-tier Tribunal – it could include an employment contract.</p>

<p>A mandatory ground.</p>	
<p>11. The house is normally needed to house a full-time religious worker of a religious denomination, and is required for this purpose.</p> <p>A mandatory ground.</p>	<p>The landlord will need to demonstrate that a full-time religious worker requires the property for work purposes.</p> <p>This is a similar provision to what exists in the current legislation, specifically, Ground 5 in Schedule 5 of the Housing (Scotland) Act 1988.</p>

With the removal of the 'no-fault' route to repossession, we recognise that the list of repossession grounds must be comprehensive and robust, providing landlords with a clear route to possession under all reasonable circumstances. In the light of the further detail provided above, we wish to seek views on how far the proposed grounds meet this aim.

Question 6: From the details provided above, do you agree that each of the repossession grounds will work effectively? -

Ground 1: The landlord is selling the home.

Ground 2: The mortgage lender is selling the home because the landlord has broken the loan's conditions.

Ground 3: The landlord or a family member of the landlord wants to move into the property as their principal home.

Ground 4: Refurbishment.

Ground 5: Change of business use, e.g. from home to shop (from residential to non-residential).

Ground 6: The tenant has failed to pay the full rent over three consecutive months.

Ground 7: The tenant has displayed antisocial behaviour.

Ground 8: The tenant has otherwise breached the clauses of their tenancy agreement.

Ground 9: Abandonment.

Ground 10: The property was let to the tenant because they were employed by the landlord, and the tenant is no longer employed by the landlord.

Ground 11: The property is normally needed to house a full-time religious worker of a religious denomination, and is required for this purpose.

RENT LEVELS

First consultation

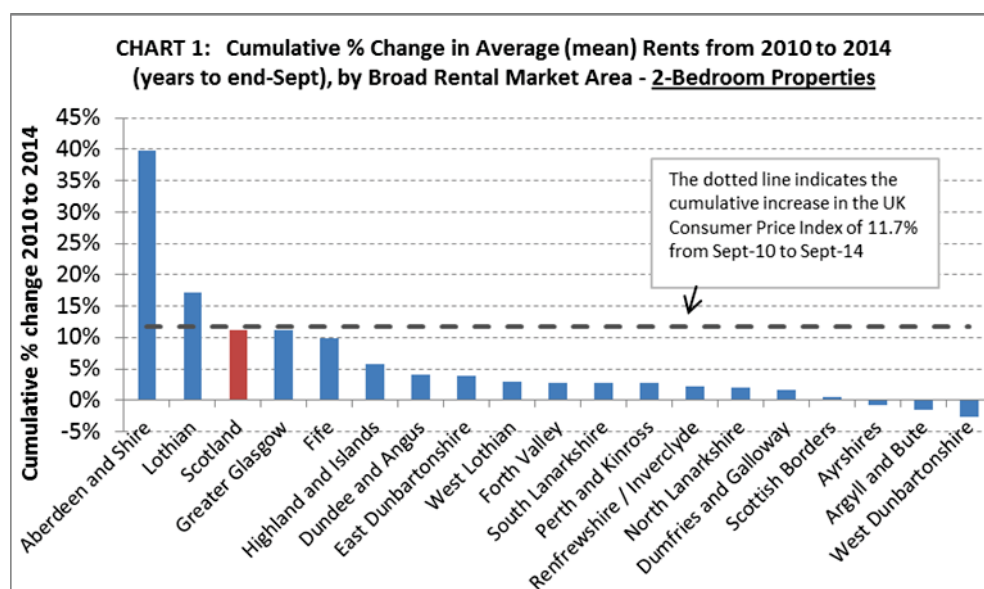
Initial proposal: Our first consultation set out the available evidence on rent levels and asked respondents the following three questions:

1. What are your views on rent levels in the private rented sector (PRS) in Scotland?
2. What action, if any, should the Scottish Government take on rent levels in the PRS in Scotland?
3. What rent review conditions, if any, should the new tenancy system include?

Further evidence on rent levels

In addition to the evidence in our first consultation paper, we published on 12 November 2014 a statistical bulletin on rent levels in the private rented sector. These statistics were based on Broad Rental Market Areas (BRMAs). The figures gave a range of information on rent levels and rent increases, across 1 to 4 bedroom properties. The 2-bedroom property size is generally used as the standard measure for comparisons, given that this is the most common size of property in the sector.

The publication showed that between 2010 and 2014 most average rents had increased below the rate of inflation, with some rents falling. However, in Aberdeen City and Shire, and in Lothian, rents had generally increased above inflation (see chart below).



At the Scotland level, there had been an 11.2% cumulative increase in average rents from 2010 to 2014 for 2-bedroom properties, compared with an increase in the Consumer Price Index (CPI) of 11.7% for the same period.

For 2-bedroom properties, the Aberdeen and Shire area of the country has seen the highest increase in private rents between 2010 and 2014, with a 39.8% cumulative

increase in average monthly rents over the four years. Average rents for 2-bedroom properties in the Lothian area rose by a cumulative 17.2% in that period. To some extent these rent increases will have reflected considerable average income growth in particular areas during the period, such as Aberdeen.

In all other areas, private rents on average fell in real terms (i.e. recorded increases less than the cumulative increase in CPI). Rents in Greater Glasgow increased by 11.1%, and in Fife by 9.8%. For the remaining areas of Scotland, cumulative increases over the last four years have ranged from 5.7% in Highlands and Islands to 0.6% in the Scottish Borders. In addition, three areas of the country have seen cumulative decreases in average rents from 2010 to 2014 – Ayrshires (0.8% fall), Argyll and Bute (1.5% fall), and West Dunbartonshire (2.7% fall).

Consultation findings

Overall, 2,508 respondents commented on whether the Scottish Government should take any action on rent levels. Around three out of four respondents favoured the Scottish Government taking some form of action, including the 1,908 signatories to Campaign 3 (the Living Rent campaign), who called on the Scottish Government to bring rents under control, noted that in other countries there are laws limiting how much landlords can charge, and stated that this was the approach they wanted for Scotland.

The majority of non-campaign respondents said the Scottish Government should not take any action to control rents or rent levels. Around two out of three non-campaign respondents suggested the Scottish Government should take no action, sometimes noting that it is not for Government to interfere in the market and that to do so could have significant negative consequences on the supply of private housing to rent. Some respondents suggested that annual rent reviews are either current practice or would be an acceptable way forward (or both).

Some respondents noted that rent control was complex. They said any rent regulation proposals needed to be subject to detailed modelling and further consultation before being introduced. Others noted there were good examples of rent regulation in other countries from which Scotland could learn; some referred to the approaches in the Netherlands, Denmark and France. They said affordable and predictable rents should be the goals of any system of rent regulation, and that these could be achieved by limiting the frequency and level of increases.

Our proposals

Our evidence suggests that rents generally are not increasing significantly and in most of Scotland average private rents have actually been falling in real terms over recent years. Where they occur, increases vary in the light of local market conditions, with areas of robust economic activity and income growth, such as Aberdeen, seeing high levels of demand reflected in higher-than-average increases. We want to see supply in such areas grow to meet demand because increasing the supply of homes is the sustainable, long-term solution to addressing housing affordability. To this end, the Scottish Government is currently supporting a range of initiatives to attract investment to build more private rented housing. Heavy-handed

regulation of rents, while seeking to tackle the issue in the short term, could jeopardise efforts to improve affordability through increasing supply by discouraging much-needed investment. Moreover, capping rents at below-market levels could increase demand on other parts of the PRS, putting an upward pressure on rents in that area. In the longer term, that would make it harder for people to find homes to rent in areas where they want to live and work. Therefore, we do not propose introducing general controls on rents.

Instead, we propose that the forthcoming Bill should include specific provisions that give tenants safeguards against unjustified and excessive increases – which could, for example, be used as a means to evict them – and greater predictability on when their rents will increase.

Setting initial rents

Consistent with our broad approach, we propose that initial rents should continue to be set by tenants and landlords in the open market.

Rent reviews during a tenancy

Tenants need to be able to plan, and a system that provides greater predictability will enable them to do so and reduce the risk of them falling into rent arrears. To that end, we propose that rent reviews should take place no more than once in any 12-month period. We also propose that landlords should have to give tenants 12 weeks' notice of a change in the rent. This would help tenants to plan when managing their finances to cover the rent.

Protection for tenants against unjustified and excessive rent increases

We need to protect tenants against the possibility of unscrupulous landlords using large and unjustified rent increases to force them from their home when otherwise they are complying with their tenancy agreement. In such cases, if the tenant thinks the proposed rent increase would take their rent well over rents charged for comparable properties in the area, we propose they should be able to refer the increase for adjudication, for example to the First-tier Tribunal.

Question 7a: Do you agree that rent reviews should take place no more than once a year?

Question 7b: Do you agree that a tenant should receive 12 weeks' notice in advance of a change in the rent?

Question 7c: Do you agree that tenants should be able to refer what they regard as unreasonable rent increases for adjudication?

The possibility of introducing further rent regulation

The above arrangements would provide predictability in rent increases, help tenants to budget and avoid arrears, and enable landlords to reflect inflation and the cost of improvements and other new investment through justified increases. While not proposing any further general regulation of rents, we are considering whether specific measures may be justified to protect tenants from excessive increases in hot-spot areas. We discuss an approach we could adopt if, in the light of responses to this consultation, we conclude there could be a role for such measures.

The scope to regulate the level of rent increases in hot-spot areas could, if exercised, provide relief to sitting tenants who may struggle to afford increases that were larger than they had been used to. But, as with other forms of rent regulation, the drawback could be to discourage investment in the private rented sector that would provide the sustainable, long-term solution to lack of supply and high rents. We do not want to risk discouraging such investment, including large-scale investment from overseas, by creating a regime that is less attractive than regimes elsewhere. So it is important that any measures will give landlords confidence that they can recover all their legitimate costs, including those for new investment and expenditure, and that they can reflect market conditions when they agree a new tenancy.

In these circumstances, the approach we have in mind would enable Ministers to limit the levels of rent increases for sitting tenants in hot-spot areas. As this is intended to be a means of responding to a problem affecting tenants in a local area, we propose that this power would be triggered by a local authority applying to Ministers for an affected area to be designated a 'rent pressure area'. Local authorities would have to present evidence to show that rents for sitting tenants in the area were increasing excessively. This evidence may include: statistics on average rent rises, income growth and general price inflation; an increase in the number of rent increases being referred to the First-tier Tribunal; and an increase in the number of PRS tenants approaching the council with concerns over their ability to afford excessive and unjustified increases. It would be for Ministers to decide whether, in the light of the evidence presented, to limit the rate of increase in a designated area for a time-limited period. We would regard this as a short-term measure to protect tenants from large rent increases, and to make time for other measures in the mid-to-longer term, to improve the affordability of housing. To safeguard the interests of responsible landlords, Ministers would be under duties to ensure that the limit took account of inflation and other reasonable costs and to consult tenants, landlords and other relevant stakeholders before bringing it into force. As an additional safeguard, landlords would be able to challenge at the First-tier Tribunal the use of the limit on their properties in the area if they thought it did not allow them to recover their legitimate costs – for example if they had recently invested heavily in their property.

The details of these proposals would be given effect through secondary legislation following successful passage of the Bill through Parliament. The details would therefore be subject to further consultation on how they would work in practice.

In view of the existing evidence on rent increases and in the light of our general approach to regulation of rents under the new proposed tenancy:

Question 7d: Do you think there is a role for the additional regulation for area-based rent limits we discuss above? Please explain your answer setting out what you view as the advantages and disadvantages of such an approach.

Question 7e: If we were to legislate for this proposal, what types of evidence should local authorities have to present to Ministers when applying to designate an area as a 'rent pressure area'?

ANNEX A

POLICY OVERVIEW

The ‘at a glance’ table below shows the proposed policy that forms the basis of our second consultation.

The red text shows areas where we have changed or developed our policy compared to what was in the first consultation. We have made these changes and developments in the light of our consultation analysis and ongoing discussions with colleagues and stakeholders.

Subject	Current provisions	Policy in the first consultation	Proposed policy in this consultation
‘No-fault’ ground for repossession	Under a Short Assured Tenancy, landlords can reclaim their property simply because the fixed term has ended. This is called the ‘no-fault’ ground for repossession.	The ‘no-fault’ ground for repossession will be removed.	The ‘no-fault’ ground for repossession will be removed.
Tenancy roll-over arrangements	Tenancies can roll over on a monthly basis after the initial lease period expires.	Tenancies will not be able to roll over on a monthly basis.	Tenancies will not be able to roll over on a monthly basis.
Length of tenancy	Under a Short Assured Tenancy, the shortest tenancy duration is six months. There is no minimum for an assured tenancy.	Landlords must offer a minimum tenancy of six months. No maximum is proposed. The new system will not allow tenancies to roll over on any basis that offers a shorter duration than the current tenancy agreement. If the initial lease period ends without a Notice to Quit being issued, either automatic renewal will	Landlords must offer a minimum tenancy of six months. No maximum is proposed. A statutory ‘Scottish Private Rented Tenancy’ (SPRT) will be the new tenancy agreement. For the first six months of the tenancy a tenant will be unable to give notice and a landlord will be unable to regain possession of the property unless the tenant is at fault or the mortgage

		<p>apply or a new contractual tenancy will be needed.</p> <p>A tenant will be able to request a tenancy agreement shorter than six months to meet their personal circumstances, e.g. a seasonal or travelling worker.</p>	<p>lender is intending to sell because the landlord has broken their loan conditions. After the initial six-month period either the tenant or landlord can serve notice to end the tenancy at any time, subject to a statutory notice period, unless they agree a shorter period.</p> <p>A tenant will be able to request a tenancy agreement shorter than six months to meet their personal circumstances, e.g. a seasonal or travelling worker.</p>
Notice to Quit periods	Currently landlords and tenants must give each other Notice to Quit of between 28 and 40 days.	<p>The Notice to Quit period will be linked to how long the tenant has lived in the property. Landlords will have to give tenants the following notice:</p> <ul style="list-style-type: none"> • Six months or less in the property = four weeks' notice. • Over six months up to two years in the property = eight weeks' notice. • Over two years up to five years in the property = 12 weeks' notice. • Over five years in the property = 16 weeks' notice. 	<p>To further simplify the process, we now propose two notice periods (rather than four) based on how long the tenant has lived in the property. Landlords will have to give tenants the following notice:</p> <ul style="list-style-type: none"> • Six months or less in the property = four weeks' notice. • Over six months = 12 weeks' notice. <p>Rather than having a separate Notice to Quit and Notice of Proceedings, we now propose introducing a single document called a Notice to Leave. This means that under the new tenancy system a landlord will only need to issue a tenant with one notice document. See page 18 for further information on the 'Notice to Leave'.</p>

<p>Grounds for repossession</p>	<p>There are 17 grounds under which a landlord can repossess their property. About half of these are mandatory - in other words, the court must give a possession order if the ground is proved. The rest are discretionary. All need a Sheriff court order.</p>	<p>Reduce the number of grounds for possession to eight, all of which will be mandatory.</p> <p>The new proposed repossession grounds are:</p> <ol style="list-style-type: none"> 1. landlord wants to sell the home 2. mortgage lender wants to sell the home 3. landlord wants to move into the home 4. refurbishment 5. change of use of the home 6. tenant failed to pay three full months' rent 7. tenant is antisocial 8. tenant has otherwise breached the tenancy agreement 	<p>Reduce the number of grounds for possession to 11, some of which will be mandatory and some discretionary.</p> <p>The new proposed repossession grounds are as follows:</p> <ol style="list-style-type: none"> 1. The landlord is selling the home. 2. The mortgage lender is selling the home. 3. The landlord or a family member of the landlord wants to move into the home. 4. Refurbishment. 5. Change to business use. 6. The tenant has failed to pay full rent over three consecutive months. 7. The tenant has displayed antisocial behaviour. 8. The tenant has otherwise breached the tenancy agreement. 9. Abandonment. 10. The property was let to the tenant because they were employed by the landlord, and the
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			<p>tenant is no longer employed by the landlord.</p> <p>11. The house is normally needed to house a full-time religious worker of any religious denomination and is required for this purpose.</p> <p>As under the Housing (Scotland) Act 2014, all civil PRS cases will be considered by the First-tier Tribunal rather than a sheriff.</p> <p>Further details on each of the grounds are given in the table on page 24.</p>
Shorter Notice to Quit period in certain circumstances	No current provisions.	<p>If repossession grounds 6, 7 or 8 above apply, landlords will be able to give tenants 28 days' Notice to Quit regardless of how long the tenant has lived in the property.</p>	<p>For grounds 7 or 8 above apply, landlords will be able to give tenants 28 days' Notice to Leave regardless of how long the tenant has lived in the property.</p> <p>For ground 6 (rent arrears), we propose a different approach, which is covered at page 26.</p> <p>The Notice to Leave will replace both the Notice to Quit and the Notice of Proceedings. See page 18 for more about the Notice to Leave.</p>
Pre-tenancy notices	Landlords must give advance notice to tenants if they intend to use some of the repossession grounds.	Pre-tenancy notices will not be required.	Pre-tenancy notices will not be required.
Notice of	The length of notice required	A standard four-week notice period will	A Notice of Proceedings will no longer be

Proceedings	before a landlord can take legal proceedings is two weeks or two months, depending on the ground being used.	be required before proceedings can be raised.	needed. A Notice to Leave will replace the Notice of Proceedings and Notice to Quit. See page 18 for further details on the Notice to Leave.
Notice to Quit	Currently landlords and tenants must give each other Notice to Terminate of 28-40 days.	<p>Tenants will be have to give landlords the following notice:</p> <ul style="list-style-type: none"> • Six months or less in the property = four weeks' notice. • Over six months in the property = eight weeks' notice. <p>The Notice to Quit will be replaced by the Notice to Leave.</p>	<p>Tenants will be have to give landlords the following notice:</p> <ul style="list-style-type: none"> • Six months or less in the property = four weeks' notice. • Over six months in the property = eight weeks' notice. <p>The Notice to Quit will be replaced by the Notice to Leave.</p>
Model tenancy agreement	No prescribed tenancy agreement.	<p>We will introduce a model tenancy agreement containing mandatory and discretionary clauses and a statutory guidance note that outlines the clauses in plain language. This will remove the need to issue a Tenant Information Pack, so we propose to remove this requirement.</p>	<p>We will introduce a model tenancy agreement containing mandatory and discretionary clauses and a statutory guidance note that outlines the clauses in plain language. This will remove the need to issue a Tenant Information Pack, so we propose to remove this requirement.</p> <p>We expect the content of the model tenancy agreement to be specified in secondary legislation.</p>

Partial Equality Impact Assessment

Title of policy	Private Tenancies Bill
Summary of aims and desired outcomes of policy	The aim of this policy is to increase security of tenure for tenants while providing appropriate safeguards for landlords, lenders and investors.
Directorate: Division: Team	Housing, Regeneration and Welfare: Housing Services and Regeneration: Private Rented Sector Policy

Executive Summary

The Private Tenancies Bill will introduce a new tenancy system for all future private rented sector (PRS) lets. The overall aim of the new tenancy is increased security of tenure for tenants, including those who are vulnerable, and appropriate safeguards for landlords, lenders and investors.

The Government understands the growing role of the private sector in meeting housing need – and how, as part of that, the sector is housing a wider variety of households than ever before.

The results of this EQIA show there are no potentially negative effects of the proposals on equality groups in the PRS. During this assessment key barriers to equality that exist under the current tenancy system were identified. These included access to longer-term housing options and the confidence to request necessary repairs.

This EQIA was informed by a range of evidence, including a full public consultation. The findings suggest there are no potentially negative effects and highlight a variety of possible benefits for vulnerable groups in the PRS.

Background

The PRS has grown over the past 15 years and is an integral part of Scotland's housing system, representing around 14% of all housing stock. The core demand still comes from tenants looking for flexibility, but there has been significant growth among people who may now benefit from a more secure tenancy arrangement. The proportion of PRS households with children in 2013 was 24%, with the PRS now providing a home for 13% of all households with children in Scotland. The sector also provides a home for a wide cross-section of tenants, including more vulnerable tenants.

In 2013, Ministers asked a Private Rented Sector Tenancy Review Group to examine how suitable and effective the current PRS tenancy system was, and to consider whether changes in the law were needed. The Review Group reported to Ministers in May 2014. Its main recommendation was *'that the current tenancy for the Private Rented Sector, the Short Assured Tenancy and the Assured Tenancy, be replaced by a new private tenancy that covers all future PRS lets'*.

The first public consultation on initial proposals for a new tenancy took place between 6 October 2014 and 28 December 2014. We received more than 2,500 responses from a broad mix of interested parties including industry bodies, tenants, tenant-representative organisations, landlords, landlord-representative organisations, letting agents, investors, local authorities and campaign groups. The second consultation paper builds on these policy proposals. It takes account of the feedback and analysis from the first consultation and tackles the key issues raised. It also seeks views on these developed proposals as well as this Equality Impact Assessment.

The main aspects of the developed proposals are as follows:

- We propose introducing a Scottish Private Residential Tenancy for all future PRS lets. Following an initial six-month term, in which the landlord and tenant may only give notice under specific circumstances, the tenancy will continue indefinitely with both parties able to give notice at any time.
- Landlords will no longer be able to regain possession of their property simply because the tenancy has come to its natural end (otherwise known as the ‘no-fault’ ground). Instead, a landlord will have to use one of the proposed new grounds for repossession.
- These grounds will offer a more progressive route to repossession, covering every eventuality where a landlord may reasonably require possession of the property. If there is no need for the First-tier Tribunal (FTT) to consider how ‘reasonable’ it may be to grant repossession (in cases of anti-social behaviour, rent arrears and breaches of tenancy agreement), these grounds will be mandatory. This means that if the ground is proved, repossession will be granted.
- We propose introducing a standard 12-week notice period for a landlord to give a tenant who has been in place for longer than six months. Currently, the maximum given to tenants is 40 days.

Scope of the EQIA

The likely effects of the proposals were assessed through a range of evidence, including a full public consultation.

Scottish Government Housing Policy officials and Analytical Services colleagues also examined evidence from a range of studies, reports and surveys, including the following:

- The Scottish Government’s 2009 Review of the Private Rented Sectorⁱ. This provided a detailed primary evidence base on the sector in Scotland, including information about the protected characteristics (vulnerable groups of tenants).

- The Scottish Government's 2013 Evidence Review of the Private Rented Sector Tenancy Framework in Scotland¹. This gave an overview of some of the key issues about the private rented sector in Scotland, particularly focusing on the tenancy framework.
- Craigforth's 2014 qualitative research to explore the implications for private rented sector tenants and landlords of a longer-term and more secure tenancy². This outlined tenants' and landlords' knowledge and understanding of the current tenancy, including its advantages and disadvantages.
- Results from the 2013 Scottish Household Survey³. Scottish Government Analytical Services did further analysis of these with regard to protected characteristics.
- Results from the 2012 Scottish House Conditions Survey. This gave more details of the physical condition of housing stock.⁴
- 2011 Census data.⁵ This gave more information about the profiles of tenants in the PRS.
- Consultation on a New Tenancy for the Private Sector: Analysis of Consultation Responses.⁶ As part of this consultation, six tenant focus- group discussions were held by an external contractor. These aimed to reach tenants who might not normally engage with key stakeholders or public consultations and would therefore not have been adequately represented otherwise. We also received over 2,500 responses to the consultation, which included key stakeholders such as industry bodies and third-sector organisations, as well as individual tenants and landlords.

Key findings

The limited evidence available suggests that some vulnerable tenants need a more stable housing option and are therefore less likely to seek the short-term, flexible accommodation that the sector currently provides. While certain parts of the PRS offer a more stable situation, it is doubtful whether this is large enough to cater for all those who are looking for a longer-term home and whether it allows tenants to exercise choice in the market. Furthermore there is concern that while the demand for private rented housing increases, more-vulnerable tenants may become

¹ The Scottish Government (2013) Evidence Review of the Private Rented Sector Tenancy Framework in Scotland; Available at: <http://www.scotland.gov.uk/Resource/0044/00449746.pdf>

² The Scottish Government (2014) Qualitative research to explore the implications for private rented sector tenants and landlords of longer term and more secure tenancy; Available at: <http://www.scotland.gov.uk/Publications/2014/03/7326>

³ More general data from the Scottish Household Survey is available here: <http://www.scotland.gov.uk/Topics/Statistics/16002> Scottish Government Analytical Services provided further analysis of this.

⁴ The Scottish Government (2013) Scottish House Conditions Survey 2012; Available at: <http://www.scotland.gov.uk/Publications/2013/12/3017>

⁵ National Records of Scotland (2014) Census 2011: Release 3J - Detailed characteristics on Housing and Accommodation in Scotland; Available here: <http://www.scotlandscensus.gov.uk/news/census-2011-release-3j-detailed-characteristics-housing-and-accommodation-scotland>

⁶ The Scottish Government (2015) Consultation on a New Tenancy for the Private Sector: Analysis of Consultation Responses; Available at: <http://www.gov.scot/Publications/2015/03/1968>

increasingly marginalised, with fewer housing options that give them appropriate quality and security. As set out below, the proposals to increase security of tenure for tenants in the PRS will tackle many of these issues.

There are sources of data on the make-up and characteristics of PRS tenants in Scotland, but similar information on landlords is not routinely collected. Despite this, we have used the EQIA to consider how the proposals affect PRS landlords with protected characteristics and do not think there are any negative consequences.

Age

In recent years the proportion of young people renting has risen dramatically. Projections indicate this will increase further, with diverse demand including from vulnerable and lower-income young people. Some, such as students and young professionals, are in the sector through choice and they value its flexibility. However, some of this increase can also partially be attributed to a lack of options due to the growing proportion of young people unable to buy a home⁷. The proportion of renters in the 16-34 age group expanded from 13% in 1999 to 39% in 2013 – while owner occupation in this age group has decreased from 53% to 34% over the same period⁸.

As well as some younger households, older tenants may benefit from increased security of tenure. Just 13% of those aged 50 or over in the PRS expect to move in the next year, and 69% would not expect to move at all. They are also more likely to have stayed in their homes longer⁹. So these proposals to introduce more security of tenure could benefit a cross-section of age groups in the PRS, whether they are older, more settled residents or younger tenants who may be finding it hard to buy a home.

The evidence shows that most landlords are also relatively young, so it is reasonable to believe that their circumstances may change¹⁰. As well as improving security of tenure, the policy proposes comprehensive safeguards for landlords to ensure they can recover possession of their property if they need it to meet these circumstances. We consider that the new robust grounds for repossession, along with shorter notice-to-quit periods in certain circumstances, will reassure landlords that they can gain repossession and protect their investment in all reasonable situations.

Disability

Currently, a landlord can reclaim their property because the fixed term has ended – this is called the ‘no-fault’ ground. Also, currently, a tenant has a right to proportionate modifications to their home, but consultation analysis showed that tenants commonly feel unable or reluctant to assert their rights because they fear their lease will be terminated for no reason. The evidence also suggests that, relative

⁷ The Scottish Government (2013) Evidence Review of the Private Rented Sector Tenancy Framework in Scotland; Available at: <http://www.scotland.gov.uk/Resource/0044/00449746.pdf>

⁸ Further analysis of the Scottish Household Survey (2013), as provided by Scottish Government Communities Analytical Services. More general data from the Scottish Household Survey is available here: <http://www.scotland.gov.uk/Topics/Statistics/16002>

⁹ The Scottish Government (2009) Private Rented Sector Review; Available at: <http://www.scotland.gov.uk/Topics/Built-Environment/Housing/privaterent/government/prsreview>

¹⁰ As above

to other groups in the PRS, tenants with a disability or limiting long-term illness are more likely to be dissatisfied with their home¹¹. This may be due to many factors, but we consider it reasonable to suggest that the proposal to remove the no-fault route to repossession may make it easier for those with a disability to request repairs and proportionate modifications to their home without fear of eviction.

Further, if a disabled person has made adaptations to their home, they may wish to stay there longer, which the proposals for greater security of tenure would help.

Sex

Findings suggest there is little difference between the experiences of male and female tenants or landlords in the sector.¹²

However, lone-parent households, the majority of which are women, are less likely to seek short-term accommodation¹³. Focus-group respondents to the first consultation living in rural areas, and particularly those with school-age children, also noted the need to stay within a local community that may have few if any tenancies coming up for rent¹⁴. These proposals would give lone-parent households a comparable level of security and community as those able to access home ownership. If the landlord does seek repossession under one of the new grounds, they may also benefit from a longer 12-week notice period and therefore more time in which to find other suitable housing.

Pregnancy and maternity

There is a lack of relevant data for pregnant women and new mothers, but we believe their situation may be similar to that of lone-parent households. More security of tenure would have a positive impact here as it would mean that those expecting children would not be asked to leave their homes and communities without reason or on short notice.

Gender identity: transgender people

There is a lack of robust data about the housing issues of transgender people, but some evidence suggests they are over-represented in the homelessness statistics¹⁵. Proposals that protect against no-fault eviction and introduce further security of tenure may go some way to tackling this for those in the PRS. This is because, in gaining a PRS tenancy, they will get a more stable housing option than previously.

Sexual orientation

Evidence suggests a range of issues on this including being evicted from the family home or rented accommodation, resulting in homelessness. It also shows that lesbian, gay and bisexual (LGB) young people are disproportionately represented in the number of people homeless or threatened with homelessness compared with the

¹¹ As above

¹² As above

¹³ As above; The Scottish Government (2013) Evidence Review of the Private Rented Sector Tenancy Framework in Scotland; Available at:

<http://www.scotland.gov.uk/Resource/0044/00449746.pdf>

¹⁴ The Scottish Government (2015) Consultation on a New Tenancy for the Private Sector: Analysis of Consultation Responses; Available at: <http://www.gov.scot/Publications/2015/03/1968>

¹⁵ Scottish Transgender Alliance (2012) Trans Mental Health Study 2012; Available at: http://www.scottishtrans.org/wp-content/uploads/2013/03/trans_mh_study.pdf

general population¹⁶; there is also a proportionately higher representation in the PRS¹⁷. These proposals would go some way to tackling this for those in the PRS, as this tenure will now offer a longer-term housing option.

Race

Despite proportionately higher levels of minority ethnic group households in the PRS¹⁸, findings show that one in three minority ethnic group tenants have difficulty accessing appropriate PRS housing compared to one in five of all tenants¹⁹. As with lesbian, gay, bisexual and transgender (LGBT) individuals, people from minority ethnic groups are over-represented in the homelessness statistics²⁰. The proposals would benefit tenants who may have found it difficult in the past to secure a long-term home. Extended notice-to-quit periods also mean that tenants who face repossession will have enough time to find suitable accommodation.

The limited evidence available shows that around 5% of landlords are from minority ethnic group backgrounds. There are unlikely to be any race-related disadvantages for landlords as a result of this policy²¹.

Religion and belief

There is a lack of evidence detailing any concerns among people of different religious denominations with regard to housing. Census data shows there is a wide range of religious groups in the PRS, with varying levels of potential reliance on it²².²³ In considering this, we are satisfied that the proposals do not negatively affect any group.

Recommendation and conclusions

The Scottish Government has found that none of the proposals is discriminatory and that there are no significant issues that will negatively affect the various groups. The intended benefits of the policies will apply to all who live or operate in the PRS in Scotland. They will, however, particularly benefit some vulnerable groups who may have previously found it difficult to gain secure, longer-term housing in the PRS, or who felt unable to assert their rights for fear of eviction.

¹⁶ Homeless Action Scotland (2013) Youth Homelessness in Scotland 2013; Available at: <http://www.homelessactionscotland.org.uk/uploads/Youth/Youth%20Homelessness%20in%20Scotland%202013.pdf>

¹⁷ Further analysis of the Scottish Household Survey (2013), as provided by Scottish Government Communities Analytical Services. More general data from the Scottish Household Survey is available here: <http://www.scotland.gov.uk/Topics/Statistics/16002>

¹⁸ The Scottish Government (2013) Evidence Review of the Private Rented Sector Tenancy Framework in Scotland; Available at: <http://www.scotland.gov.uk/Resource/0044/00449746.pdf>

¹⁹ The Scottish Government (2009) Private Rented Sector Review; Available at: <http://www.scotland.gov.uk/Topics/Built-Environment/Housing/privaterent/government/prsreview>

²⁰ Scottish Government (2014) Operation of the Homeless Persons Legislation in Scotland: Quarterly Update: July-September 2014; Available at: <http://www.scotland.gov.uk/Topics/Statistics/Browse/Housing-Regeneration/RefTables/HomelessJultoSep2014>

²¹ The Scottish Government (2009) Private Rented Sector Review; Available at: <http://www.scotland.gov.uk/Topics/Built-Environment/Housing/privaterent/government/prsreview>

²² The Scottish Government (2005) Analysis of Religion in the 2001 Census: Summary Report; Available at: <http://www.scotland.gov.uk/Publications/2005/02/20757/53572>

²³ Similar analysis of the 2011 census will be published on 26/03/2015, which is too late for inclusion in this EQIA. This data will be available on the Equality Evidence webpages of the Scottish Government website: <http://www.gov.scot/Topics/People/Equality/Equalities>

As the EQIA process was started at an early stage of the Bill process, it has ensured that equality considerations have informed policy development.

The EQIA, along with consultation analysis and ongoing discussions with key stakeholders, made policy officials aware that some minimal changes to policy were needed to obtain the best outcome for equality concerns. Through the EQIA, the importance of making any model tenancy agreement accessible to all was identified. To ensure this, the model tenancy agreement will contain plain-language explanatory notes.

We recognise that the data available does not allow a complete picture of the needs of those with protected characteristics. However, the EQIA has given the opportunity to consider these needs fully, and we will continue to do so as the proposals move forward.

Partial Business and Regulatory Impact Assessment

Title of Proposal

Partial Business and Regulatory Impact Assessment for the Private Tenancies Bill.

Purpose and intended effect of introducing a new type of private rented sector tenancy for all future PRS lets.

Background

We are introducing a new tenancy system for all future PRS lets. The tenancy system provides for the legal agreement between tenant and landlord and is central to making the sector work well. It also sets out how tenants and landlords can assert their rights, and affects whether investment in the sector is likely to be attractive.

The current system in Scotland originates from the 1988 Housing (Scotland) Act, which was introduced for all new private rented tenants from 2 January 1989. This Act introduced the Assured Tenancy Regime, which covers two types of tenancy – an Assured Tenancy and a Short Assured Tenancy.

To take forward an action in the PRS Strategy, in September 2013 the Scottish Government set up the Private Rented Sector Tenancy Review Group to examine how suitable and effective the current private rented sector system was and consider whether changes in the law were needed.

The Review Group produced a [report](#) for Ministers on 9 May 2014. It had one main recommendation, *'that the current tenancy for the Private Rented Sector, the Short Assured Tenancy and the Assured Tenancy, be replaced by a new private tenancy that covers all future PRS lets'*.

Ministers accepted the Review Group's recommendation and our proposal for a new tenancy system builds on the group's work and its report findings.

Objective

The private rented sector is changing. It has more than doubled in size in the past 15 years and covers more than an eighth of all homes in Scotland²⁴. Recent figures show 333,231 homes are rented privately²⁵.

The sector has always catered for a broad range of tenants and met a wide range of needs and demands. Tenants include young professionals and people who move often for their work, as well as students and newly formed households.

Two of the fastest-growing groups of tenants since 1999 have been families and people wanting to stay in the sector longer-term. In 2013, nearly a quarter of private rented sector households had children, an estimated 80,000 households compared

²⁴ Scotland's People Annual Report: Results from the 2013 Scottish Household Survey, August 2014, Scottish Government, Available at: <http://www.scotland.gov.uk/Publications/2014/08/7973/3>

²⁵ Figures from Landlord registration, as at 31 August 2014.

to 20,000 in 1999. The sector provides a home for nearly one in seven of all households with children²⁶.

We want the tenancy system to work well for all tenants. This has been an important part of developing our proposals. Some tenants need more secure, longer-term tenancies, while others greatly value the ability to move in and out of tenancies.

The proportion of landlords owning a small number of properties (often one or two) has remained broadly similar²⁷. Initial growth in the sector was led by the availability of buy-to-let mortgages. Since 2007 there has been an increase in those who have become landlords because they were unable or reluctant to sell their property²⁸. There is also the significant potential for, and growing interest from, new institutional investors in the sector to help fund the supply of new homes to privately rent. In developing these proposals, we have listened carefully to what landlords, lenders and investors want from a tenancy system.

This context of change has led us to propose our reforms. They aim to improve security of tenure for tenants, while giving suitable safeguards for landlords, lenders and investors. We know that the private rented sector is important in giving many tenants the flexibility they need in their living arrangements; but an increasing number could also benefit from improved security of tenure. We also know that the tenancy system must work well for landlords, lenders and investors, within the broader regulation and justice system.

Rationale for Government intervention

The Housing and Regeneration Outcomes Framework supports the Scottish Government's National Performance Framework, with a focus on homes and communities. The Scottish Government's vision for housing in Scotland is for '*...a Scotland where all people live in high quality sustainable homes that they can afford and that meet their needs*'. Four Housing and Regeneration outcomes have been identified as crucial to achieving this vision:

- a well-functioning housing system
- high quality, sustainable homes
- homes that meet people's needs, and
- sustainable communities.

The operation and growth of the PRS contributes to all four of these outcomes. Therefore, achieving the aims for the sector set out in the PRS Strategy is important for achieving the outcomes and vision for all housing in Scotland, and contributing to the Scottish Government's Purpose and National Outcomes.

The PRS Strategy was published in May 2013. It was informed by the work of the Private Rented Sector Strategy Group, which helped the Scottish Government to

²⁶ Scotland's People Annual Report: Results from the 2013 Scottish Household Survey, August 2014, Scottish Government, Available at: <http://www.scotland.gov.uk/Publications/2014/08/7973/3>

²⁷ Review of the Private Rented Sector: Volume 1: Key Findings and Policy Implications, March 2009, Scottish Government, Available at: <http://www.scotland.gov.uk/Publications/2009/03/23153136/4>

²⁸ Review of the Private Rented Sector: Volume 1: Key Findings and Policy Implications, March 2009, Scottish Government, Available at: <http://www.scotland.gov.uk/Publications/2009/03/23153136/9>

produce and consult on a draft PRS Strategy in 2012. The PRS Strategy aims to improve and grow the sector by enabling more effective regulation, applying tougher enforcement action and attracting new investment.

The PRS Strategy sets out our vision for the sector, which is:

‘A private rented sector that provides good quality homes and high management standards, inspires consumer confidence, and encourages growth through attracting increased investment.’

To achieve this vision, it listed three strategic aims:

- To improve the quality of property management, condition and service.
- To deliver for tenants and landlords, meeting the needs of the people living in the sector; consumers seeking accommodation; and landlords committed to continuous improvement.
- To enable growth and investment to help increase overall housing supply.

Reforming the tenancy system is an important part of achieving our vision and strategic aims. A new and simplified system will result in better property management by providing clarity for tenants and landlords, helping both parties fully understand what the tenancy agreement means for them. This will result in more professional management and give investors reassurance in the modern private rented sector. The new system also provides an opportunity to address concerns raised by landlords and letting agents on such issues as abandonment (tenants leaving without warning).

Consultation

Within Government

In developing these policy proposals we have consulted a wide range of Scottish Government officials including Housing Supply, Condition and Safety, Financial Innovation Unit, Chief Property Adviser, National Housing Trust, Community Analytical Services, Homelessness, Welfare Reform, Land and Tenancy Reform, Sustainable Housing, PRS Energy Efficiency, PRS Tribunals, Mortgage Market Issues, Analytical Services, Tribunals and Administrative Justice, Rent Service Scotland and Equalities.

This is a distinct Scottish policy on a topic that is fully devolved to Scotland.

Public consultation

The first public consultation on initial proposals for a new tenancy in the private sector took place between 6 October 2014 and 28 December 2014. We received more than 2,500 responses from a broad mix of interested parties including industry bodies, tenants, tenant-representative organisations, landlords, landlord-representative organisations, letting agents, investors, local authorities and campaigning groups. The non-confidential consultation responses have been published and can be viewed here: <http://www.gov.scot/Publications/2015/01/8970>.

A second public consultation on more detailed policy proposals was launched on 30 March 2015. We will consider carefully the results of both consultations to help inform the final shape of the new tenancy system.

Business

In parallel with the public consultations Scottish Government officials conducted engagement interviews with businesses and organisations from the sector likely to be affected by the proposals including:

- Shelter Scotland
- Council for Mortgage Lenders
- Homes for Scotland
- Scottish Land and Estates
- TC Young Solicitors
- Royal Institute of Chartered Surveyors
- Scottish Association of Landlords
- Let Scotland
- Scottish Property Federation
- Homeless Action Scotland
- Consumer Marketing Authority
- Association of Student Residential Accommodation

Options

Option 1: Do nothing

The first option considered would involve continuing with the current assured tenancy system in the Housing (Scotland) Act 1988. Tenants in the PRS will broadly have a Short Assured Tenancy or an Assured Tenancy. This approach would remove any ability to simplify and modernise the private rented sector tenancy system and miss the opportunity to introduce a modern and easy-to-understand system that is fit for the future.

This option was not supported by the Private Tenancy Review Group, which recommended to Ministers that the current system be replaced by an entirely new private tenancy.

Sectors and groups affected

This 'do nothing' option would affect the following groups, in that the existing tenancy system and the problems within it would remain:

- Tenants
- Private landlords
- Letting agents
- Lenders
- First-tier Tribunal (FTT)
- Housing advice providers
- Solicitors
- Residential investors
- House builders

Benefits

Tenants and landlords would continue to use the current system and would not need to change their arrangements and procedures. However, the complexities of the current tenancy system would remain.

Costs

The costs of meeting the Housing (Scotland) Act 1988 would continue.

Option 2: Create a new type of tenancy for all future private rented sector lets.

Sectors and groups affected

- Tenants
- Private landlords
- Letting agents
- Lenders
- Housing advice providers
- First-tier Tribunal (FTT)
- Solicitors
- Residential investors
- House builders

Costs or savings

There are unlikely to be additional costs or savings for tenants.

Under the current proposals, costs to landlords are likely to be minimal. The main points to note are as follows:

- Landlords will no longer be able to ask tenants to leave because the tenancy has come to its natural end, and instead will need to specify one of the new grounds. This could result in an increase in the number of cases they refer to the First-tier Tribunal.
- Providing the new type of tenancy agreement is likely to be cost neutral. But, by a specified backstop date, landlords will have to revise any old-style tenancy agreements still in operation. This cost, is however, likely to be minimal as the backstop date will be far enough in the future to ensure that most tenancy agreements will have been updated through the natural turnover of tenants.
- The model tenancy agreement and simplified notices and repossession grounds could result in less legal advice being needed, which could be a saving.

Letting agents, who often act on behalf of landlords, will need to issue the new type of tenancy agreement for all future PRS lets. This is likely to be cost neutral. But, by a specified backstop date, they will have to revise any old-style tenancy agreements still in operation. This cost is, however, likely to be minimal as the backstop date will

be far enough in the future to ensure that most tenancy agreements will have been updated through the natural turnover of tenants.

Mortgage lenders could incur some costs as we know that some current buy-to-let mortgage covenants specify the use of a particular type of tenancy agreement when letting the property. These covenants will likely require amendment to reflect the new type of tenancy.

Housing advice providers and the First-tier Tribunal could incur some minimal training costs to update their staff and members on the new tenancy system.

Landlords will no longer be able to ask their tenant to leave simply because their tenancy has reached its natural end date, and will instead need to use one of the new grounds. Currently, tenants are more likely to end a tenancy (around 8 in 10) and we envisage this trend continuing in the proposed new system. For tenancies ended by the landlord, if a tenant appeals the decision to the First-tier Tribunal, this could lead to an increase in cases heard by the tribunal. It is difficult to estimate case load as the tribunal has yet to be created, but we assume that any such increase would be small.

Benefits under the current proposals

The overall aim of the new tenancy system is to improve tenants' security of tenure while providing appropriate safeguards for landlords, investors and lenders.

Benefits for tenants

- Simplified tenancy system.
- Greater security of tenure as tenants can no longer be asked to leave their tenancy when their agreement has reached its end date.
- Longer notice-to-quit period if they have lived in their property for more than six months and an end to tenancies rolling over on a monthly basis.
- Confusing pre-tenancy notices will no longer be required.
- A mandatory tenancy agreement will be introduced containing statutory guidance that outlines in plain language its more formal clauses.

Benefits for landlords

- No requirement to issue confusing pre-tenancy notices.
- The Notice to Quit and Notice of Proceedings will be rolled up into a single Notice to Leave document.
- Modernised and simplified grounds for repossession will exist for landlords to recover possession of their property in all reasonable circumstances. These will be mandatory or contain a mandatory element. This means that if the First-tier Tribunal is satisfied that a specified ground exists, they must issue an eviction order.
- New repossession grounds will be introduced for use when the landlord wants to sell their property or the tenant has abandoned it.
- A mandatory standardised tenancy agreement will be introduced for use by all landlords that contains statutory guidance outlining in plain

- language its more formal clauses.
- Landlords will no longer need to give tenants a Tenant Information Pack.

In addition to these benefits for landlords, we think the following could act as a disincentive for landlords:

- Removing the ability of a landlord to ask a tenant to leave at the end of their tenancy agreement could result in landlords removing their properties from the sector.
- Introducing rent control may limit a landlord's ability to improve the quality of their property, including for any new standards in the future. This may also discourage further investment, including from institutions, to grow the sector and build more new homes for private rent.

Benefit for the First-tier Tribunal

- All the proposed new repossession grounds would be mandatory or contain a mandatory element. This means that if the ground is proven to exist, an order for eviction must be issued by the tribunal. Only three of the proposed 11 grounds contain discretionary elements. This will simplify decision making and ensure consistency. the model tenancy agreement should help the tribunal assess tenancy disputes.

Scottish firms impact test

We intend to carry out face-to-face meetings with businesses during the second consultation exercise. This may be done through stakeholder events or individual meetings.

Competition assessment

The changes will affect private landlords, letting agents, lenders, the First-tier Tribunal, housing advice providers, solicitors, residential investors and house builders. But given our answers to the four questions below, we do not expect the changes will distort any competition in the affected markets.

Will the proposal directly limit the number or range of suppliers? No

Will the proposal indirectly limit the number or range of suppliers? No

Will the proposal limit the ability of suppliers to compete? No

Will the proposal reduce suppliers' incentives to compete vigorously? No

Test run of business forms

Our proposals on implementing option 2 are likely to result in the creation of new business forms. To ensure ease of use, the planned forms will be prepared and tested with help from stakeholder businesses and representative groups during the development and drafting of secondary legislation

Legal aid impact test

We do not yet know how many, if any, additional referrals will be submitted to the First-tier Tribunal. Separate work is continuing to establish whether legal aid will be available for parties before they go to the tribunal. Therefore legal aid spending could be affected.

Enforcement, sanctions and monitoring

Option 1: Do nothing

Existing mechanisms would remain in place. Under the Housing (Scotland) Act 2014, all civil PRS cases would be considered by the First-tier Tribunal rather than the sheriff. The performance of the First-tier Tribunal would be monitored as part of the integrated tribunals system.

Option 2: Create a new type of tenancy for all future private rented sector lets

All courses of redress under the new tenancy system would be to the First-tier Tribunal. The performance of the First-tier Tribunal would be monitored as part of the integrated tribunals system.

Implementation and delivery plan

The provisions for a new tenancy system for the PRS will be instructed in a Bill scheduled for introduction to Parliament this autumn.

Subject to a successful parliamentary journey, implementation and delivery of the Bill will be developed further during the development of the supporting secondary legislation.

Post-implementation review

It is expected that a post-implementation review will take place within 10 years of the legislation introducing a new type of PRS tenancy coming in to force.

Summary and recommendation

Option 2 is recommended. The broad costs and benefits table will be fully completed for the final BRIA once the final policy proposals have been confirmed.

Summary of broad costs and benefits

OPTION	BENEFITS	COSTS
Do nothing	Tenants and landlords would continue to use the current system and would not be required to change their current arrangements and procedures. However, the existing complexities of the current tenancy system would remain.	No additional costs.
Introduce a new tenancy for all future PRS lets.	A new and simplified tenancy system would result in better property management by providing clarity for tenants and landlords, helping both parties to fully understand	Further work will be done on costs in the coming months.

	what the tenancy agreement means for them.	
<p>Declaration and publication</p> <p><i>The Cabinet Secretary or Minister responsible for the policy (or the Chief Executive of non departmental public bodies and other agencies if appropriate) is required to sign off all BRIAs prior to publication, using appropriate text as follows:</i></p> <ul style="list-style-type: none"> • <u>Sign-off for Partial Stage BRIAs:</u> <i>I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.</i> <p>Signed:</p> <p>Date: 23 March 2015</p> <p>Minister's name: Margaret Burgess Minister's title: Minister for Housing and Welfare</p> <p>Scottish Government Contact point: Susan Gilroy, 1H-South, Victoria Quay, Leith, EH6 6QQ</p>		



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