

# Consultation response

## Scottish Government consultation on a new tenancy for the private sector

December 2014

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## Summary

- Shelter Scotland welcomes the Scottish Government's intention to introduce a new tenancy to Scotland's private rented sector.
- Increasing security of tenure should be front and centre of the Scottish Government's reform and Shelter Scotland strongly agrees with the proposal to exclude the 'no fault' route for possession from the new tenancy.
- To provide for a simple and easily understood tenancy framework for both landlords and tenants the new tenancy should be a statutory tenancy.
- There should be an element of discretion in the grounds for possession which relate to rent arrears, antisocial behaviour and other breaches of the tenancy agreement. This is to protect tenants from being evicted for trivial matters and to allow for a defence where arrears relate to housing benefit administration errors.
- Private rents should be reasonable and predictable. Initial rents should be set by the local market, mid-tenancy rent increases should be limited to no more than one per year and they should be subject to an upper limit in line with an inflationary index.
- To provide low income households with an affordable housing option the Scottish Government should commit to build at least 10,000 socially rented homes per year.

## Introduction

Shelter Scotland welcomes the opportunity to respond to this consultation on a new tenancy for Scotland's private rented sector (PRS). There is a pressing need for reform in Scotland's PRS. The number of households renting privately has more than doubled in the past ten years and currently stands at 312,000, housing 13% of all households in Scotland.<sup>1</sup> The number of families with children renting in PRS has also risen over this time; an estimated 80,000 households with children now call the PRS home, equating to around 1 in 7 households with children in Scotland.<sup>2</sup>

During the same period homeownership has become increasingly difficult to access; the financial crisis of 2008, alongside stagnant wages, making it more difficult to both save for deposits and secure mortgages. Social housing is also increasingly restricted; there are currently 150,500 people on local authority waiting lists across Scotland.<sup>3</sup> The end result of this is that for many people in Scotland the only readily available housing option is the private rented sector. This is a shift from the private rented sector's 'traditional' consumer base of students, young professionals and those in temporary seasonal work. There is now a growing emphasis on the sector providing long-term homes and stability for a wider range of households.

However, because of how the current PRS tenancy<sup>4</sup> operates many households renting privately can be offered as little as one or two months' security of tenure in their home, depending on how their tenancy agreement is laid out. We know that private renters want to keep the flexibility that they value about private renting, but this does not need to be at the expense of their security of tenure. In particular, the perception of insecurity among private renters plays a significant role in hampering the development of the sector. This is echoed by research for the Scottish Government which found that tenants in the PRS expressed

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<sup>1</sup> Scottish Government, Scottish Household Survey, 2013  
<http://www.scotland.gov.uk/Publications/2014/08/7973/downloads>

<sup>2</sup> Scottish Government, Scottish Household Survey, 2013,  
<http://www.scotland.gov.uk/Publications/2014/08/7973/downloads>

<sup>3</sup> Scottish Government, Scottish Household Survey, 2013,  
<http://www.scotland.gov.uk/Publications/2014/08/7973/downloads>

<sup>4</sup> The short assured tenancy (SAT)

dissatisfaction with the fact that their accommodation “did not constitute a home”.<sup>5</sup> The current tenancy in the PRS creates a sense of insecurity for tenants which is not easily assuaged, and does little to support the development of the sector as a viable long-term housing option.

This is why Shelter Scotland believes that addressing both the real and perceived insecurity in the PRS should be front and centre of the reform of the private sector tenancy. This would provide the foundation for growth in the sector, and support private renting as a positive stable housing option alongside social housing and home ownership. As an increasing number of people move to the private sector, and stay for longer, it is vital that we take this opportunity modernise the tenancy regime. As such Shelter Scotland welcomes the Scottish Government’s proposal to remove the ‘no fault’ route for possession of PRS homes.

Shelter Scotland recognises that changes to the tenancy regime must be fair and need to work for landlords as well as tenants. Landlords should be confident that they’ll be able to regain possession of the property if their tenant breaches the tenancy agreement, or if they need to sell a property or change its use. Consequently, the grounds for possession in the new tenancy should be clear, easy to understand and apply. The process for regaining possession should be straightforward and fair for both parties. This means that the introduction of the Private Rented Sector Tribunal should coincide with the roll out of a new tenancy, and this tribunal must be adequately funded to ensure the route for possession is clear, easy to understand and efficient.

Shelter Scotland has been working with organisations across the private rented sector – including private landlords and private tenants – to help secure a new tenancy which increases professionalism, and provides stability and predictability for all parties. We hope the Scottish Government’s proposals will achieve this, and we look forward to playing a role in the development of a new tenancy for the private rented sector.

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<sup>5</sup> D, Barr K, and Dean, J, Research on the private rented sector in Scotland, Department of Urban Studies, University of Glasgow, 2002

**Question 1: Do you agree that the no-fault ground for a landlord to repossess their property should be excluded from the new tenancy system?**

Yes.

**Please explain your answer**

Shelter Scotland believes that it should be reasonable for a private renter to expect to stay in a property for as long as they need, so long as they pay rent and stick to their obligations under the tenancy, unless their landlord's circumstances change. Consequently we strongly agree that the no-fault 'ground' for possession – or more accurately, eviction on the basis that the contract between landlord and tenant has come to an end – should be excluded from the new tenancy system. We believe this should be central to the Scottish Government's reform of the private rented sector tenancy for a number of reasons:

**Make private rented housing a home**

Giving tenants the confidence that they can stay in their home for as long as they need would give people effectively locked out of homeownership and social housing the same stability and security afforded to homeowners and social renters. This came through in research commissioned by the Scottish Government to inform the Private Sector Tenancy Review Group's final report<sup>6</sup> – tenants with experience of the security offered by the social rented sector were strongly of the view that they should be allowed to stay in their home for as long as they need.<sup>7</sup> The young families who call the PRS home will have the confidence that they will remain in the same neighborhood – close to their personal support networks, local services such as their GP, dentist, and local schools. Frequent moves have been shown to have a negative effect on people's health, with frequent movers being less likely to be registered with a GP than the rest of the population.<sup>8</sup> In 2013 44% of household who had

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<sup>6</sup> Scottish Government, Private Sector Tenancy Review Group, Final Report, 2014

<http://www.scotland.gov.uk/Topics/Built-Environment/Housing/privaterent/government/Tenancy-Review/report>

<sup>7</sup> Para. 5.20, Scottish Government, 'Qualitative research to explore the implications for private rented sector tenants and landlords of longer term and more secure tenancy options', 2014

<sup>8</sup> Department for Communities and Local Government, 'Moving on – reconnecting with frequent movers', 2006

been in their property for under one year came from the PRS.<sup>9</sup> Instead of frequent moves – and their associated cost – being the norm, private tenants would know that they are secure in their home. The same applies to the so-called ‘Generation Rent’ – i.e. the increasing number of under 35s renting in the private sector.<sup>10</sup> They too would be offered the security of tenure which was more widely available for previous generations. In fact Scotland – and the rest of the UK – is exceptional in that it offers relatively little security of tenure to its private tenants in comparison to other OECD<sup>11</sup> countries. France, Spain and the Republic of Ireland offer tenants between three and five years’ security of tenure, while Germany offers indefinite security of tenure to private renters.<sup>12</sup> Increasing security of tenure would bring Scotland in line with these countries, and fit into a tenure-neutral approach to housing policy – with the private rented sector becoming a viable third option for stable and secure housing. This also has the potential to strengthen mid-market rent products offered by local authorities and registered social landlords.

### **Build stronger communities**

Increased security of tenure would foster more stability in the PRS and provide the foundation necessary for building stronger communities. According to the Scottish Government only a quarter of private renters were engaged with voluntary community work, compared to a third of homeowners.<sup>13</sup> This is a symptom of the culture of short-termism prevalent in Scotland’s private rented sector, underpinned by the lack of security of tenure. Consequently, making this change would go some way to meeting the Scottish Government’s national outcome of having “strong, resilient and supportive communities”.<sup>14</sup>

### **A stronger consumer voice**

Private tenants would also be able to request that landlords comply with their statutory duty to keep properties up to the ‘repairing standard’, without feeling that they may

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<sup>9</sup> Scottish Government, Scottish Household Survey, 2013

<http://www.scotland.gov.uk/Publications/2014/08/7973/downloads>

<sup>10</sup> 33% of 16 to 34 year olds were renting privately in 2010, up from 13% in 1999 see Scottish Household Survey 2010 as cited in ‘Private rented sector – Evidence Review’, Scottish Government, 2012

<sup>11</sup> Organisation for Economic Cooperation and Development

<sup>12</sup> Shelter, ‘Generation rent: learning from different rental markets’, 2011

<sup>13</sup> Scottish Government, Scottish Household Survey, 2009 (data made available on request)

<sup>14</sup> Scottish Government, National Performance Framework, 2011

<http://www.scotland.gov.uk/About/scotPerforms/pdfNPF>

simply be asked to leave at the end of a tenancy. By removing the 'no fault' route for possession, tenants will have confidence in the legal protections available to them and the procedures they need to follow should complaints escalate beyond initial contact with their landlord. Currently, private tenants can take repairs cases to the Private Rented Housing Panel (PRHP) – a tribunal with the power to make landlords carry out repairs. In 2012 the PRHP received 232 applications 108 of which were withdrawn or rejected. Of these 32 were abandoned by the PRHP, one of the reasons for this being that the tenancy had come to an end.<sup>15</sup> If the legal framework of the tenancy regime is such that a landlord can end a tenancy without reason, rather than address a repairs issue, then the action that can be taken against landlords who fail to comply with their statutory duties in tribunals such as the PRHP is limited.

**Case study from a Shelter Scotland client: a flat is in poor condition, a tenant complains and the landlord brings the tenancy to an end**

*Mhairi is to move into a flat but she discovers that it is in such poor condition that she can't move in until her landlord carries out emergency repairs. When she finally moves in she finds that the property is still in a poor standard of repair, which means she is having to pay far more for her heating than she should be. After Mhairi complains to her landlord about the state of the property she is asked to leave at the end of her tenancy.*

**Provide stable income for landlords**

This common sense shift towards increased security of tenure – and the way that we view the PRS – would also benefit landlords. If tenants are able to see the private sector as being a viable place to call home long-term, and we take a step away from the current culture of short-termism, landlords may experience fewer void months. Mortgage lenders have also begun to reflect the changing nature of the private rented sector in their mortgage agreements with landlords; the Mortgage Works – part of the Nationwide Building Society Group – recently began to allow landlords to offer their tenants long-term tenancies.<sup>16</sup>

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<sup>15</sup> Private Rented Housing Panel, Annual Report, 2012

<http://www.prhpscotland.gov.uk/prhp/128.21.24.html>

<sup>16</sup> Shelter, 'Nationwide allows landlords to offer longer-term tenancies', 26 June 2013

### **Set down a tenancy that works for landlords**

Currently if a private landlord wants to gain possession of property that they are letting out, in general it is far easier to rely on the 'no fault' route for possession rather than pursuing a possession action under one of the 17 grounds for possession. This includes everything from rent arrears to antisocial behaviour and demonstrates why the current system needs to change from the perspective of private landlords. Landlords need grounds for possession and dispute resolution processes which actually work, while tenants require the stability that security of tenure provides. Under the short assured tenancy neither of these needs are adequately satisfied.

In summary, Shelter Scotland believes that removing the 'no fault' route for possession is the legal change that should be at the centre of the Scottish Government's reform of the private rented sector tenancy. Scotland's private rented sector would be brought in line with rental markets across Europe, and the sector would be capable of providing for the need for stable and secure housing desired by today's diverse set of private renters, and set the PRS on track for the kind of growth that we want for the future in Scotland. Shelter Scotland also believes that Scotland's private landlords are well geared up to provide tenants with greater security of tenure. As long as the grounds for possession and the process for regaining possession of a property are robust – ensuring that the new PRS tribunal is adequately funded is key to this – then the sector will adjust well to removing the 'no fault' route for possession.

For tenants excluding the no-fault route for possession would:

- Give private renters the confidence that they can stay in their home for as long as they need, while also allowing the flexibility that tenants in both the social and private sectors value about renting
- Foster more cohesive neighborhoods and communities with higher levels of engagement from people living in private rented accommodation.
- Empower tenants by enabling them to use their rights effectively and exercise consumer power to raise standards in the private rented sector.
- Promote a tenure-neutral approach to housing policy in Scotland where the private rented sector is a viable third tenure option to social renting and owner occupation.

For landlords excluding the no-fault route for possession would:

- Increase consumer confidence in the private rented sector as provider of stable and secure accommodation.
- Reduce the potential for void months where no rent is paid, with a possible side-effect being increased income.
- Provide a tenancy framework that works for landlords, alongside clearly laid out grounds for possession and a dispute resolution procedure that works.

### **Replacing the contractual tenancy with a statutory tenancy for private tenants**

Excluding the 'no fault' route for possession removes the opportunity for a landlord to gain possession of a property purely on the basis that the contract has reached its end. As such we believe that there is strong merit in carrying through to the obvious next step, which is removing the contractual element of the private tenancy completely and establishing a statutory tenancy for all private rented sector lets.

Currently, the Housing (Scotland) Act 1988 allows for an assured tenancy (which gives more security of tenure than the short assured tenancy) to be a contractual tenancy initially. The tenancy becomes a statutory tenancy once the contractual tenancy is terminated and tenants are guaranteed security of tenure, unless the landlord initiates a possession action under one of the grounds. This may have been intended to allow flexibility to all landlords and tenants to agree contractual terms particular to the property, such as stair cleaning in common property or maintenance in relation to a garden. However, in practice, it allows for tenancy terms to be dictated by the landlord as they are the stronger party. There is also confusion as to when the statutory tenancy – and the security of tenure associated with it – begins. Rather than replicating the assured tenancy as set out in the Housing (Scotland) Act 1988 Shelter Scotland's preference is to follow the approach of the Scottish secure tenancy<sup>1</sup> and lay down clear, easily understood, statutory terms that all private tenancies should contain. We would welcome further discussion on this issue with landlord and tenant organisations as the Scottish Government's policy proposal for a new private tenancy develops.

**Question 2: Do you agree that the ability to roll over tenancies on a monthly basis should be excluded from the new tenancy system?**

Yes.

**Please explain your answer.**

Shelter Scotland welcomes the removal of the ability for a private tenancy to roll over on a month-to-month basis where tenants have as little as one or two months' security of tenure. This can put households in a very fragile situation, families with young children can be left with no guarantee that they can stay in their property beyond a one or two month window. Not only does this matter from a legal perspective but it also matters in relation to tenants' perception of their private rented home. If their agreement states that they have as little as one month's security on a rolling basis – alongside tenancy terms restricting what tenants can and can't do in the property – then their perception of their home is not likely to be one of safety and security, but one of temporariness and fragility. Addressing this instability should be at the heart of the Scottish Government's reform of the private rented sector.

**Question 3a: Do you agree that the new type of tenancy should have a minimum duration of six months?**

Yes.

**Please explain your answer.**

Shelter Scotland believes that a minimum initial term of six months is sensible and allows landlords to structure their business models effectively, agreeing with their tenant that they will receive at least six months' rent. Importantly, another aspect of the tenancy proposal sets out that tenants can request that initial tenancies be shorter than six months, but no less than three months.

However, under the current proposals from the Scottish Government, where an initial tenancy is for six months it would 'repeat' or 'roll over' for another six months, if the tenant or landlord does not give notice to end the tenancy at the end of the initial six month period.

This means the tenant is effectively tied into the tenancy for another six months. This has implications for tenants who value the flexibility of the private rented sector.<sup>17</sup> For example, a tenant who is offered a job in another town one month into a 'rolled over' six month period, would be liable for rent for the remainder that period.<sup>18</sup> Another situation that could arise is confusion over exactly when a tenant should serve notice to their landlord intimating that they want to end the tenancy. If a tenant misses the time window in which they need to give eight weeks' notice to their landlord, then they would be liable to pay rent for the whole of the subsequent six month 'rolled over' period. A simple mistake such as this should not be capable of having such a significant consequence for a private tenant.

Shelter Scotland's preferred tenancy framework would be one which allows for tenants to leave by giving eight weeks' notice at any point once the initial six month period has come to an end. So, a tenant who is offered a job in another part of the country one month after the initial six month period is able to give two months' notice that they need to leave, and would not be held liable to pay the remaining five months' rent, as they would be in the Scottish Government's current proposal. The problem of a tenant accidentally missing the window of opportunity to serve the eight weeks' notice required to end the tenancy would also be avoided. Effectively the tenancy would be open-ended once the initial six month period come to an end, unless either party gives notice. This would retain the flexibility currently valued by many tenants in Scotland's PRS, and contribute to the Scottish Government's aim of simplifying the tenancy arrangements in the private rented sector.

### **Question 3b: Do you agree that the tenancy should have no maximum period?**

Yes.

#### **Please explain your answer.**

Tenancies should be allowed to continue for as long as a tenant requires the property, presuming they still comply with all major aspects of the tenancy agreement, and the

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<sup>17</sup> Para. 5.10, Scottish Government, 'Qualitative research to explore the implications for private rented sector tenants and landlords of longer term and more secure tenancy options', 2014

<sup>18</sup> From our discussions with others in the sector, including private landlord bodies, we understand that a rolling six month tenancy period would also not be workable for landlords.

landlord does not have a reason for regaining possession of the property under one of the grounds.

**Question 3c: Do you agree that a tenant should be able to request a shorter tenancy?**

Yes.

**Please explain your answer.**

In the context of additional security of tenure, by excluding the 'no fault' route for possession, this will provide additional flexibility to the private rented sector that does not currently exist. This arrangement will likely suit seasonal workers and people who need to rent for a short period of time; for example those who are between properties and students who are studying for one semester. Currently these tenants can fall outside of the short assured tenancy arrangements and the benefits associated with it – e.g. the right to have their property reach the repairing standard.<sup>19</sup> Consequently this would represent an improvement for these groups of private tenants.

**Question 4a: Do you agree that the notice period should be linked to how long the tenant has lived in the property?**

No.

**Please explain your answer.**

Frequent unplanned moves have many negative consequences for households in the PRS. They are expensive and can uproot local support networks, particularly disadvantageous for households with children.<sup>20</sup> Moves such as these can be just as disruptive for a household who has been living in a property for six months, as they can be for a household who have been living in a property for five years. Consequently, Shelter Scotland would like to see the same notice periods across the board for private renters.

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<sup>19</sup> s.13 Housing (Scotland) Act 2006

<sup>20</sup> Department for Communities and Local Government, 'Moving on – reconnecting with frequent movers', 2006

Rather than linking notice periods to time spent in a home, notice periods should be linked to the grounds for possession with longer notices periods for grounds where the tenant is not at fault, and shorter notices where the fault lies with the tenant. We suggest a notice period of 16 weeks where a landlord is using a ground for possession which does not relate to any 'fault' on the part of a tenant, and 28 days where the tenant is at 'fault'.

This also has the advantage of meeting the Scottish Government's aim of simplifying the tenancy. We have concerns that introducing notice periods which vary depending on how long a tenant has resided in a property would lead to unnecessary confusion for landlords and tenants when serving notices.

**Question 4b: Do you agree with the four proposed notice periods?**

No.

**If you do not agree with all four of the notice periods, please tell us which ones you disagree with and why.**

Shelter Scotland would like to see a simpler approach to notice periods from landlords to tenants that will benefit both parties. We believe that notices should be linked to the grounds for possession only and that there should be two notice periods: 16 weeks where the tenant is not at fault, and 28 days where the tenant is at fault. (We set out our position in relation to this more fully in our answer to question 5a below.) This would make the process of serving notice for the point of view of a landlord much simpler as there would be no need to work out how long a tenant has been residing at the property. For private rented sector tenants, all would benefit from the protection of that greater notice periods provide. 16 weeks' notice would dissuade landlords from misusing the grounds for possession, and provide all tenants with adequate notice where the landlord genuinely needs the property back. We think that standard notice periods linked to the ground for possession that applies fits with the aim of simplifying the tenancy regime, and creating a level playing field for all tenants.

**Question 5a: Do you agree that all the proposed repossession grounds should be mandatory?**

No.

**Please explain your answer.**

Shelter Scotland is strongly of the view that there should be an element of discretion in some of the grounds for possession. We accept that private landlords would like the certainty of mandatory grounds for possession. However, we are very concerned about how some of the grounds are laid out in the government's proposal, and how they could lead to disproportionate outcomes for private renters.

As many of the grounds in the proposal are not defined in current legislation, and do not have universally accepted meanings, they may be difficult to define. Furthermore, the grounds must both require a level of evidence which prevents landlords from misusing them, while at the same time not be too burdensome and restrictive to be practically applied, giving landlords the confidence to use them. If mandatory grounds are poorly defined in legislation, private tenants may be subject to unduly punitive evictions on technical grounds. For example a breach of a tenancy term which relates to a requirement to cut the grass, or clean a stairwell, resulting in someone losing their home.

It is Shelter Scotland's view that such outcomes will be avoided if some of the grounds are made discretionary. This is not only in the interests of private tenants, but also landlords. It may be far simpler for a landlord to prove on the balance of probabilities that they require possession of the property, rather than strictly adhering to the specific evidential requirements of a tightly defined mandatory ground for possession. For private tenants discretion would reduce the risk of an eviction order being granted for relatively minor technical breaches of the tenancy agreement.

Shelter Scotland also believes that linking the notice periods that landlords need to use to terminate a tenancy to the grounds for possession, rather than the duration of a tenancy, would make for a simpler system of notices. Notice periods should be longer where a tenant is not at fault, for example where the landlord intends to sell or wishes to live in the property as their home. This would not only give all private tenants the advance notice of an unplanned move, but provide put private landlords off from misusing the grounds for possession.

Below we set out which grounds should be discretionary, what we consider to be a reasonable level of evidence for each ground for possession, what the appropriate period of notice is and whether a tenant should be compensated for the misuse of a ground.

Ground	Evidence	Mandatory or discretionary?	Notice	Compensation for misuse
<b>Ground 1: the landlord wishes to sell the home</b>	Landlords should send a written statement to the tenant explaining that they intend to start actively trying to market the property. <sup>21</sup> This statement must detail what steps they have already taken, and any accompanying evidence if available. Tenants can then either accept the notice and move out, or challenge it at the Private Rented Housing Tribunal where the landlord will be asked to provide additional evidence that they intend to sell the property. Landlords must intend to sell the property within three months of the ending the tenancy, unless there is a good reason for not doing so.	Mandatory	16 weeks	Three months' rent where a tenant has left the property and tribunal finds that the landlord did not intend to sell.
<b>Ground 2: the mortgage lender wants to sell the home</b>	A test similar to the one set out above for ground 1 could be used for a lender to prove that they intend to sell the property.	Mandatory	16 weeks	N/A
<b>Ground 3: the landlord or family member wants to</b>	To establish this ground the landlord should be able to show that they or a family member intend to move into the property, and make it their home, within three months of the end of the tenancy. This is should be set out in a statement sent to their	Mandatory	16 weeks	Three months' rent where a tenant has moved out, but the property has been

<sup>21</sup> Similar to the definition set out in Article 4(1)(c) of The Applications by Creditors (Pre-Action Requirements) (Scotland) Order 2010

<b>move into the home</b>	tenant. As with a landlord's intention to sell the property, tenants should have the option to challenge the landlord's notice at the Private Rented Housing Tribunal if they believe the landlord is using this to evict them for another reason.			re-let.
<b>Ground 4: refurbishment</b>	A tenant should only be asked to leave where the refurbishment is substantial. For example, repair work which requires a tenant to cease to occupy a spare room for a month should not result in a tenant being asked to leave a property. The basis of this test should be that the landlord cannot carry out the work without the tenant giving up possession of the property – similar to ground 6 under the assured tenancy regime. <sup>22</sup>	Mandatory	16 weeks	Three months' rent where a tenant has moved out, but the property has been re-let without the refurbishment taking place.
<b>Ground 5: change to the use of the home</b>	Change of use must be a change from residential use which requires planning consent. Landlords must apply for this within three months of the ending of the tenancy, and they should be prohibited from letting out the property during this time.	Mandatory	16 weeks	Three months' rent where a tenant has moved, but the landlord has not applied for planning consent and has re-let the property.

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<sup>22</sup> Sch.5, Part 1, Ground 6, Housing (Scotland) Act 1988

<b>Ground 6: the tenant failed to pay three full months' rent</b>	<p>The level of rent required to establish this ground must be a total of three months' rent 'lawfully due'. This ensures that where landlords have not carried out repairs, or have seriously breached their responsibilities in relation to the tenancy in another way, tenants are not precluded from being able to withhold rent. It is important that discretion can be exercised in relation to this ground where housing benefit payment issues are the reason for the arrears.<sup>23</sup> If a landlord wants to start proceedings for rent arrears where less than 3 months' rent are due, they would have the option to do this under Ground 8 which allows for the discretion of the tribunal to be applied.</p>	Mandatory (but discretion may be applied where arrears relate to delay or failure of housing benefit payments).	28 days	N/A
<b>Ground 7: the tenant is anti-social</b>	<p>Given how subjective the concept of antisocial behaviour is, this ground should be discretionary. Tenants would be able to defend a possession action for where they believe this to be unmerited, and private landlords would be able to take a flexible approach towards antisocial behaviour, allowing for a combination of evidence to heard at tribunal.</p>	Discretionary	28 days	N/A
<b>Ground 8: the tenant has otherwise breached</b>	<p>Shelter Scotland's preference is for this ground to be discretionary given how widely it is currently described. For example, the ground could be established where a tenant has paid rent one</p>	Discretionary	28 days	N/A

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<sup>23</sup> Sections 18 and 20 of the Housing (Scotland) Act 1988 as amended by section 12 of the Homelessness etc. (Scotland) Act 2003

<p><b>the tenancy agreement</b></p>	<p>day late, as this would technically be a breach of the tenancy agreement. Clearly this is unreasonable and unfair. Only material breaches of the tenancy agreement should be capable of establishing this ground for possession. For example where a tenant who has caused significant damage to the property. To provide guidance to private landlords about the terms that can lead to a possession action the Scottish Government could set out a list of discretionary clauses which can be included in the tenancy agreement. Some of these would be explicitly prohibited from being used in a possession action, including requirements in relation to specific aspects of a property, for example: grass cutting, window cleaning, etc. This is the form the tenancy in the social rented sector takes: some clauses are mandatory (set out in bold), others are discretionary (set out in italics).<sup>24</sup> This gives social landlords flexibility over which terms they include in the tenancy agreement, and could be a suitable approach in relation to tenancy terms which can trigger a repossession action.</p>			
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<sup>24</sup> Scottish Government, Model revised Scottish secure tenancy agreement, 2002 <http://www.scotland.gov.uk/Publications/2002/09/15391/10792>

In summary, Shelter Scotland would like to see:

- Discretion applied for some grounds.
- The process for a tenant to challenge a notice for possession from a landlord to be clear and easy to follow.
- Protection for tenants from the grounds being misused in the form of compensation reflecting the cost of unplanned moves, and notice periods which are sufficiently long for grounds where the tenant is not at fault.
- In relation to ground 8 a 'suite' of discretionary tenancy terms that a landlord can include in the tenancy agreement which can be relied upon as a ground for possession, similar to that used in the social rented sector.
- Further consultation on the specifics of each ground, and how the process for a possession action will operate, in advance of a Bill being brought to Parliament.

**Question 5b: Do you agree with the proposed list of new repossession grounds?**

Yes.

**Please explain your answer.**

In principle Shelter Scotland agrees with the proposed list of eight grounds for possession. However, as outlined above we have serious questions over how exactly the grounds will operate in practice. The Scottish Government should consult further on how exactly the ground for possession will work, and the procedure that landlords must follow to establish that a ground has been met.

**Question 5c: Are there other repossession grounds we should include in the list?**

Yes.

**Please explain your answer.**

Shelter Scotland, alongside the Scottish Association of Landlords, believe that the introduction of a new tenancy is an opportunity to introduce a procedure for abandonment to the private rented sector. Procedure for abandonment exists in the social rented sector<sup>25</sup> – but not in the private rented sector. Given that increased security of tenure is a key part of the Scottish Government's proposal, it is vital that a process for abandonment is also included. This would deal with the situation where a landlord suspects a tenant has vacated the property. Currently, where a landlord suspects that a property is abandoned they will either terminate the tenancy at the end of the fixed term, or simply change the locks and take possession themselves. Importantly, recourse must be available for tenants where the ground for abandonment is used mistakenly and a possession order is granted where a tenant has not abandoned the property. Using this opportunity to set down clear procedure in relation to abandonment would give private landlords the legal recourse they need in these cases. While we think that there is a strong case for landlords to have a clear process to follow in cases of abandonment, we would welcome further consultation about how such a ground would operate in practice.

**Question 6: Do you agree that landlords should be able to recover possession of their property with a 28-day notice period in the circumstances proposed?**

Yes.

**Please explain your answer.**

Shelter Scotland appreciates that in some circumstances landlords will need to regain possession of a property swiftly. For example in the case of rent arrears, a landlord who may only own one or two properties – which applies to most PRS landlords in Scotland – will not have much capacity to handle the non-payment of rent for a long period of time.<sup>26</sup> In these circumstances we understand that regaining possession of the property will be a high priority for private landlords with small portfolios.

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<sup>25</sup> Sections 17 and 19 of the Housing (Scotland) Act 2001

<sup>26</sup> Para. 2.7- 2.8, Scottish Government, Review of the Private Rented Sector: Volume 1, 2009  
<http://www.scotland.gov.uk/Publications/2009/03/23153136/0>

**Question 7: Do you agree that landlords should no longer have to issue pre-tenancy notices to recover possession of their property?**

Yes.

**Please explain your answer.**

Shelter Scotland believes that streamlining the tenancy agreement itself, and the various number of documents which go with it, should be a key part of PRS tenancy reform. As we set out in our answer to question 1 above, we believe that there are strong arguments in favour of establishing a statutory tenancy in the PRS. One of the consequences of this would be removing the need for pre-tenancy notices. This will make it easier for all private sector landlords to comply with the various pieces of legislation which cover the PRS. This would be beneficial for tenants, too. The process of signing a tenancy agreement in the PRS would be easier to understand for tenants. They would no longer be provided with various papers to sign and read at the beginning of a tenancy. One clear and concise document would help tenants understand the terms of their tenancy, and with this their rights and responsibilities in respect of the property.

**Question 8: Do you agree that the notice period for all proceedings should be four weeks?**

Yes.

**Please explain your answer.**

As we explain in our answer to question 6 we understand that gaining possession of a property swiftly will be a high priority for some landlords. Shelter Scotland believes that 28 days is sufficient time to give tenants notice that legal proceedings are being raised for possession under one of the eight grounds. It should be clear in the notice for proceedings that is open to the tenant to challenge the possession action.

**Question 9: Do you agree with the proposed timescales for a tenant giving notice to a landlord to leave the property?**

Yes.

**Please explain your answer.**

28 days in the first six months and eight weeks thereafter strikes a good balance between the interests of landlords and tenants.

**Question 10: Do you agree that a model tenancy agreement should be introduced?**

Yes.

**Please explain your answer.**

As we outline in our answer to question 7 above Shelter Scotland sees this as an opportunity to make it easier for all private sector landlords to comply with their responsibilities and understand their rights as private landlords. This should also make it easier for private tenants to understand their rights and responsibilities under their tenancy agreement. Providing a model tenancy – made easily available through the Scottish Government’s website and promoted through the appropriate channels – should set out to be a cornerstone of tenancy reform. We also think that in creating a model agreement, there is scope to extend the reform of the tenancy in the private rented sector to remove contractual tenancies in the private rented sector, and establish a statutory tenancy that operates from the start, as we set out in answer to question 1.

The model agreement should incorporate both the Tenant Information Pack<sup>27</sup> and the pre-tenancy notices which are currently required for some forms of tenancies in relation to security of tenure, and the grounds that landlords may seek to use during the tenancy. Instead of being provided with a bundle of various different signed forms at the beginning of

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<sup>27</sup> Scottish Government, Tenant Information Pack, 2013  
<http://www.scotland.gov.uk/Publications/2013/02/8719>

a tenancy, private tenants would have one document which sets out their rights and responsibilities in relation to the tenancy, reducing the potential for confusion and lost tenancy agreements. This would mean that private tenants across Scotland can expect the same standard tenancy agreement wherever they rent. Key statutory obligations – such as the repairing standard and requirement to register deposits – will be in every private tenancy agreement.

The terms of the model tenancy agreement should be as clear and concise as practically possible. A lease is by nature a legalistic document so there will be a limit as to how 'simple' terms of a lease can actually be in practice. To help tenants, and indeed landlords, understand the terms of the agreement the model tenancy should come with a cover document explaining each of the terms in plain English. This is current practice in Scotland's social rented sector.

The model tenancy should also offer mandatory and discretionary terms, which should be clearly distinguishable, as they are in the Scottish secure tenancy.<sup>28</sup> This would allow landlords to customise the tenancy agreement to the particular property they are leasing out. For example, there may be a garden that requires to be maintained. These terms could also state whether they are capable of forming part of a ground 8 action for possession.

As with the grounds for possession Shelter Scotland would like to see further consultation on what exactly the model tenancy will contain in advance of legislation being brought to Parliament.

## **Question 11a: What are your views on rent levels in the private rented sector in Scotland?**

### **Comments**

In relation to rents in the private sector there are two distinct questions: firstly, what is the overall picture of rental levels and affordability in Scotland's private rented sector? And secondly, how should mid-term rent increases be managed in tenancies where tenants have

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<sup>28</sup> Scottish Government, Model revised Scottish secure tenancy agreement, 2002  
<http://www.scotland.gov.uk/Publications/2002/09/15391/10792>

greater security of tenure? We address the first of these questions below, and tackle the issue of mid-term rent increases in our answer to question 11c.

Shelter Scotland recognises that the availability of good quality, affordable housing is an acute issue across the whole of Scotland. There are currently 150,500 households on council waiting lists across Scotland<sup>29</sup> and homeownership has been increasingly difficult to access since 2008's financial crisis. The private rented sector has picked up some of this 'slack' in Scotland's housing market – now providing a home for 13% of all households in Scotland.<sup>30</sup>

Shelter Scotland believes that everyone in Scotland should be able to access an affordable home, and that rents should be reasonable and predictable for all private tenants. Evidence on rents in Scotland for the period 2010 to 2014 has shown rents for two bedroom properties (the main type of property in Scotland's private rented sector<sup>31</sup>) in the Aberdeen, Aberdeenshire and Lothian areas rose by more than the rate of the Consumer Prices Index (CPI).<sup>32</sup> While rents for two bedroom properties across the rest of Scotland have risen below CPI inflation. Shelter Scotland's analysis also shows that in six Scottish local authority areas (Moray, City of Edinburgh, East Lothian, Midlothian, Aberdeen and Aberdeenshire) a household renting privately with one full time earner on median wage would need to spend above 35%<sup>33</sup> of their net income on their rent for a two bedroom property<sup>34</sup> – making these areas relatively unaffordable for a private renter household receiving median income. In addition, the number of private renters who needed help to pay their rent through housing benefit rose by 60% between 2008 and 2014.<sup>35</sup> These factors, alongside the recent boom in private renters, brings the affordability of the private rented sector into focus.

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<sup>29</sup> Scottish Government, Scottish Household Survey, 2013-14

<sup>30</sup> Scottish Government, Scottish Household Survey, 2013-14

<sup>31</sup> 129,000 out of a total of 268,000 privately rented properties had 2 bedrooms, source: Scottish House Condition Survey 2012

<sup>32</sup> Scottish Government, Private sector rent statistics: 2010-14, 2014

<http://www.scotland.gov.uk/Publications/2014/11/2313/downloads>

<sup>33</sup> While there is no accepted definition of what is 'affordable' in Scotland, 35% is a commonly used marker for the affordability of housing internationally.

<sup>34</sup> Based on comparing local net median income to the median two bedroom rent in each Scottish local authority.

<sup>35</sup> From 60,050 in 2008 to 96,363 in 2014, DWP, Stat Xplore, December 2014

A growing private rented sector, with high rents, has consequences for overall poverty rates in Scotland. Research carried out by Glasgow University for the Joseph Rowntree Foundation identified the important role that housing tenure plays as a policy intervention which impacts on poverty rates.<sup>36</sup> Scotland, compared to the rest of the UK, has had a slower growth in the number of households renting privately and at the same time rents in the social rented sector have not risen as steeply as they have done in England. This, in part, explains why Scotland compared to the rest of the UK can be said to have a lower rate of poverty.

However, given that rents in Scotland's private rented sector are higher than rents in the social rented sector, (the average social sector rent in Scotland was £273 per calendar month during 2012-13<sup>37</sup> and the average rent for a two bedroom property in the private rented sector in 2013 was £576<sup>38</sup>) a trend towards an increasing reliance on private rented sector housing to provide housing options for low income households is likely to put household budgets under pressure. This in turn would have a detrimental impact on poverty rates in Scotland, unless incomes were also to rise.

To tackle poverty in Scotland the cost of housing – across all tenures – is an issue that needs to be addressed now. Both to tackle the current demand for affordable housing in Scotland and to ensure that everyone in Scotland has access to a safe and secure affordable home in the long term. We set out how this might be tackled in our answer to question 11b below.

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<sup>36</sup> Bailey, N, 'Lower poverty in Scotland: pinning down the change', Glasgow University and the Joseph Rowntree Foundation, 2014

<sup>37</sup> Scottish Government, Social sector housing tables, 2013

<http://www.scotland.gov.uk/Topics/Statistics/Browse/Housing-Regeneration/HSfS/socialtables>

<sup>38</sup> Scottish Government, Private sector rent statistics: 2010-14, 2014

<http://www.scotland.gov.uk/Publications/2014/11/2313/downloads>

## Question 11b: What action, if any, should the Scottish Government take on rent levels in the private rented sector in Scotland?

### Please explain your answer

In relation to overall rent levels and the cost of housing in the context of this consultation Shelter Scotland believes that the Scottish Government should take a two-stage approach to addressing the issue of affordability in relation to housing:

- **Build at least 10,000 socially rented homes per year:** to help the 150,500 on council waiting lists across Scotland the Scottish Government should increase the number of socially rented homes built per year to 10,000. This would go some way to meeting current demand for affordable accommodation, and give Scotland the homes it needs to provide alternative housing for future generations in need of stable and affordable housing.
- **Ensure private rents are reasonable and predictable:** renters in the private rented sector should be safe in the knowledge that they won't be subject to unreasonable or unpredictable increases in their housing costs. (We outline our preferred method of achieving this in our answer to 11c below.) This would allow renters to make financial plans for their future effectively, with confidence that they won't be subject to an unfair and unreasonable rental increase. This would also protect renters from rental increases being used by a landlord as a method to price tenants out of their homes, rather than using one of the grounds for possession.

Shelter Scotland believes this would address the current need for low cost housing in Scotland, whilst at the same time protecting those who find themselves in the private rented sector from unreasonable and unpredictable rental increases.

Given the high cost of private renting, rent caps in the form of limits on what landlords can charge tenants, may seem like an attractive option. However, crudely applied caps can have distorting effects on rental markets. Where a cap on rental levels is applied, rents at the lower end of the private rented market can rise to meet the cap – pricing out tenants in this part of the market. At the same time landlords are given little incentive to invest in rental properties, potentially reducing the quality of privately rented accommodation available in Scotland.

A much better approach is to implement a method of varying rents which builds in scope for reasonable and predictable rent rises. This is the model followed in Germany's private rented market<sup>39</sup> – arguably the most advanced private rented sector in Europe. This would allow tenants to accurately predict what rent they'll be paying over the coming year, and ensure private landlords can make a reasonable return on private renting. We set out how we believe this can be achieved in our answer to question 11c below.

**Question 11c: What rent review conditions, if any, should the new tenancy system include?**

**Please explain your answer.**

Shelter Scotland believes that private tenants should be protected from unreasonable and unpredictable rent increases. This protection is particularly important in a scenario where tenants are given greater security of tenure: if there are no limits within which a landlord can increase rent mid-tenancy, then increasing rent to a point that forces out a tenant could be a tactic to seek eviction 'by the back door'. Consequently it is important that tenants are able accurately predict what rent they will be paying in future.

**Case study from a Shelter Scotland client: a young family has their rent increased and is evicted**

*Sarah is a young single parent with two year old child. She works part time and pays £550 per month in rent, which is partly covered by housing benefit. Her landlord tried to increase her rent by well-above inflation. She was already having difficulty paying her rent as her wages didn't cover all of her rent. Instead of negotiating a lower rent increase her landlord ended her tenancy and evicted Sarah.*

We consider that under the tenancy proposed by the Scottish Government rents should be subject to the following review conditions:

- **Initial rents should be set by the market:** landlords and tenants would still be free to negotiate rent levels at the beginning of a tenancy.

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<sup>39</sup> Kath Scanlon and Ben Kochan, 'Towards a sustainable private rented sector: the lessons from other countries', LSE, 2011

- **No more than one rental increase per year:** this should be a statutory limit, similar to that in the full assured tenancy regime, but applicable across all tenancies.
- **Rent increases within the tenancy to be set in line with the local market:** landlords would be free vary rents in line with the local market, subject to an upper limit in line with an agreed index – Shelter Scotland’s recommendation would be to link this upper limit to the Consumer Prices Index (CPI).
- **Three months’ notice:** tenants should get three months’ notice of any proposed rental increase.
- **Power to refer to the Rent Assessment Committee:** tenants should have the power to refer any dispute over rent increases to the Rent Assessment Committee.<sup>40</sup>

This approach strikes a balance between allowing landlords to make reasonable returns through rental income, enabling landlords to invest in their properties and meet energy efficiency requirements, while protecting tenants from inflation-busting rental increases. Shelter Scotland does recognise that limits on mid-tenancy rental increases must be implemented carefully. Evidence has shown that between 2010 and 2014 rents in all but two of Scotland’s Broad Rental Market areas rose by less than CPI inflation.<sup>41</sup> If all landlords in Scotland were to raise rents in line with CPI inflation it is likely that many more tenants would experience rent increases than is currently the case. Therefore, any limit on mid-tenancy rent increases must make it clear that where rents are not outstripping CPI inflation they should continue to rise or fall in line with the local market.

**Question 12: Overall, do you feel that the proposed new tenancy system strikes the right balance between the interests of landlords and tenants?**

Yes.

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<sup>40</sup> Shelter Scotland, 'Keeping rents reasonable and predictable in the private rented sector', 2014 [http://scotland.shelter.org.uk/professional\\_resources/policy\\_library/policy\\_library\\_folder/keeping\\_rents\\_reasonable\\_and\\_predictable\\_in\\_the\\_private\\_rented\\_sector](http://scotland.shelter.org.uk/professional_resources/policy_library/policy_library_folder/keeping_rents_reasonable_and_predictable_in_the_private_rented_sector)

<sup>41</sup> Scottish Government, Private sector rent statistics: 2010-14, 2014 <http://www.scotland.gov.uk/Publications/2014/11/2313/downloads>

**Please explain your answer.**

Shelter Scotland believes that the Scottish Government's proposal is the rebalancing exercise that the private sector needs and, in the long-run, will be to the benefit of both tenants and landlords.

Generally the proposed tenancy strikes the right balance between landlord and tenants. However, there are some key changes that Shelter Scotland would like to see to ensure the reform to the private rented tenancy delivers the change needed for both tenants and landlords. We want to see a statutory tenancy which clearly lays out the legal obligations under the contract to both landlords and tenants. This should retain the flexibility currently available in the short assured tenancy, by allowing tenants to give eight weeks' notice at any point. And an element of discretion should be part of the grounds for possession which relate to rent arrears, antisocial behaviour and any other breach to the tenancy agreement.

Shelter Scotland strongly agrees with the Scottish Government's proposal to exclude the 'no fault' route for possession from the new private tenancy. Currently private tenancies can be brought to an end for no reason, with as little as one or two months' notice in some circumstances, and tenants have no legal footing on which to challenge this. Clearly, this is not a suitable situation for the 80,000 households with children who rent privately. Nor the growing number of people for whom private renting is the only realistic housing option available to them over the long-term. What the current tenancy framework does is create a culture of short-termism in the private rented sector, preventing private tenants from exercising their rights as consumers.

While private landlords may contend that they would not use their power to end a tenancy without a good reason, the fact that the legal framework permits this undermines tenants' sense of security and stability in their home. All private tenants should be safe in the knowledge that they can stay in their homes for as long as they need. A stable and secure place to live provides the foundation we all need to set up home. Families are safe in the knowledge that their children will go to the same primary school, stay registered with the same GP and remain close to local support networks. By increasing security of tenure in the private rented sector the government is acting to make the private renting a genuinely safe and secure housing option for the 312,000 households who call the sector home, and supporting growth of the sector to meet a wider range of housing needs in the future.

For landlords this proposal presents a chance to professionalise and modernise Scotland's private rented sector. A clearly laid out and streamlined tenancy agreement will improve practice across the whole sector, and consumers will have a clear understanding of what to expect from a private rented home. We also believe that the proposals we have set out for regular and limited rent rises not only give predictability to tenants, but allow landlords to plan ahead and generate reasonable returns, setting businesses on a surer footing. While there is undoubtedly a significant shift in tenure rights from private landlords to private tenants, this is balanced by the proposal for eight grounds for possession which guarantee that landlords can take possession in certain circumstances. To ensure that this is a genuine rebalancing of rights in the private rented sector the bar that landlords will need to reach to use each of these grounds must be sufficiently high to prevent them being misused by landlords. This also relies heavily on dispute resolution for private rented housing being well-funded and efficient. Consequently the Scottish Government should resource the Private Rented Housing Tribunal adequately and ensure that the tenancy and the tribunal are introduced at the same time.

Ultimately, such a rebalancing exercise involves an element of give and take in relation to private landlords and tenants. Shelter Scotland is of the view that the government's proposal navigates this well: private tenants are given the security of tenure they need, and landlords are safe in the knowledge that in reasonable circumstances they are guaranteed possession of the property they rent out. This is an important and urgent reform and we strongly support the Scottish Government's proposal to increase both security of tenure, and professionalism in Scotland's private rented sector.

**Question 13: Do you have any (other) suggestions/comments on the new tenancy system for the private rented sector? If so, please tell us.**

N/A.

### **Contact**

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