



Law Society
of Scotland

Consultation Response

A New Deal for Tenants - draft Rented Sector
Strategy consultation

April 2022



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Property and Land Law and Rural Affairs sub-committees welcome the opportunity to consider and respond to the Scottish Government's consultation: *A New Deal for Tenants - draft Rented Sector Strategy*¹. We have the following comments to put forward for consideration.

General comments

We recognise the importance of ensuring “all tenants, whether living in private or social rented homes, can access secure, stable, tenancies, with affordable choices - whilst also benefiting from good quality of homes and professional levels of service and rights.”² However, it is also important to recognise the need to balance the interests of tenants and landlords.

Particularly in respect of private rented homes which amount to 14% of households in Scotland³, we note that the increasing administrative and regulatory burden on landlords may cause landlords to exit the market thus perpetuating existing difficulties around availability of rental properties. We suggest that careful consideration is required as to how best to meet the aims around protection of tenants and good quality homes, while also balancing the requirements on landlords.

Consultation response

1. What particular barriers do people with protected characteristics face in their experience of the rented sector?

No comment.

¹ <https://consult.gov.scot/housing-and-social-justice/draft-rented-sector-strategy/>

² Draft Strategy, Executive Summary

³ Draft Strategy, Chapter 2

2. Do you have any suggestions for how we can better meaningfully embed tenant participation within the private rented sector, including for people with protected characteristics, in national and local policy/decision making?

No comment.

3. What are your views on the future role tenants' unions could have in supporting tenants to actively participate in decision-making at a national and local level in Scotland?

No comment.

4. How best can we ensure people are aware of their rights and how to exercise them in:

A. The private rented sector?

We suggest the introduction of landlord pre-action requirements on a permanent basis for all grounds of eviction so that tenants are provided with clear information about the terms of their tenancy, their rights and sources of support in advance of repossession proceedings being raised.

B. The social rented sector?

Registered social landlords and local authorities are already required to comply with pre-action requirements before raising repossession proceedings. We do not make any further suggestions.

5. After 4 years of the Private Residential Tenancy being in place, how well do you think the 18 grounds for eviction are working? Is there anything that you would like to see changed?

We generally consider these work well and a number of the grounds are important for all but large portfolio landlords whose circumstances may change at any stage. In the experience of our committee members, the most commonly relied upon grounds are:

- Rent arrears
- Anti-social behaviour
- Not occupying the let property
- Breach of tenancy agreement
- Landlord intends to sell
- Landlord intends to live in property
- Family member intends to live in property

6. Are there any additional specific grounds for ending a tenancy that you think should be added?

No.

7. Do you have any views on our proposal to clarify the original policy intention in relation to the use of ground 6 for ending a tenancy ('Landlord intends to use for non-residential purpose') - to make clear that this eviction ground cannot be used to evict a tenant in order to use the property as a short term holiday let?

We recognise that there has been uncertainty in this regard and would welcome clarification in the law. While we note that this is said to be contrary to the original policy intention, we question whether preventing eviction in order for the property to be used as a short-term holiday let may be an unreasonable infringement on the rights of the landlord.

8. What further refinements could be made to either the private rented or social rented sector pre-action requirements in order to further protect and support tenants?

We consider the pre-action protocols would benefit from greater detail as to what is expected of a landlord. We consider that there would be merit in standardising the information landlords are to provide to tenants in compliance with the pre-action requirements to ensure that this is consistent across the board. This would also assist individual private landlords to ensure compliance with their obligations.

9. Can you provide any examples/case studies of where the pre-action requirements have worked well in practice?

No.

10. What measures could be implemented to support people involved in sex work, including women subject to commercial sexual exploitation in the rented sector?

No comment.

11. Do you agree with our proposal to amend the 2016 Act to ensure that all joint tenants can end their interest in a private residential tenancy without the agreement of other joint tenant(s)?

Yes, we consider this appropriate.

12. In the social rented sector, the notice period required for a joint tenant to end their interest is four weeks.

A. Should a similar 4 week period apply for a joint tenant in the private rented sector giving notice to their landlord and other joint tenant(s) to end their interest in the tenancy?

Yes.

B. Should there be longer notice periods where there are more than two joint tenants to reflect the greater prevalence of multiple joint tenancies in the private rented sector, for example in student households?

No comment.

13. Should this proposal that a joint tenant can end their interest in a tenancy without the other joint tenant's agreement be taken forward, are there any additional safeguards that should be put in place for remaining joint tenants in the private rented sector?

No comment.

14. Should we introduce a similar ground to that in the social sector to enable private landlords to initiate eviction proceedings to end a perpetrators interest in a joint tenancy and transfer the tenancy to a tenant who was subject to domestic abuse, allowing the victim/survivor to remain in the family home where they wish to do so?

While we agree with this proposal in principle, it is difficult to see how a private landlord could be expected to be aware of domestic abuse in a relationship involving joint tenants or why it would be their responsibility to initiate eviction proceedings in such circumstances.

15. Unlike the social rented sector, private rented sector housing cases are heard by the Tribunal. What are your views on the Tribunal's role being expanded to consider transfer of tenancy in relation to cases of domestic abuse?

If a similar eviction ground concerning domestic abuse was to be introduced in the private sector to that which exists in the social sector, we agree that the Tribunal's jurisdiction should be expanded to hear cases concerning transfers of tenancy.

16. Should we streamline the eviction process (remove the discretion of the Tribunal), where there has been a criminal conviction punishable by imprisonment in the previous 12 months relating to abuse of another person living with them in the let property (joint tenant or co-habitee)?

Yes.

17. How can we help improve the immediate and longer term housing outcomes of domestic abuse victims living in the private rented sector?

No comment.

18. If unclaimed tenancy deposits were to be reinvested, do you agree that the period after which the funds would be available for reinvestment should be: i. after all avenues to reunite deposits with their tenants have been exhausted, and ii. after a period of 5 years?

Yes, we agree.

19. How could a right to keep pets be most effectively introduced for the private sector, for example by the introduction of a statutory right or by amendment to the Model Tenancy Agreement, and should exceptions be allowed?

We do not seek to comment substantively on the policy of introducing a right to keep pets however we do consider that it is appropriate that this matter is given consideration.

20. Should the right to keep pets also be introduced as a right in the social sector?

We have no comment.

21. How could the right to personalise a privately rented home be most effectively introduced for the sector and what is an acceptable definition of personalisation? For example, should the property be returned to the original state by the tenant where there is no explicit agreement between the tenant and landlord?

We do not seek to comment substantively on the policy of introducing a right to personalisation however we do consider that it is appropriate that this matter is given consideration.

22. Should different consideration be given for the right to personalise where a property is furnished or unfurnished?

We have no comment.

23. Is there a need to review how a private landlord can be protected against damage to their property caused by personalisation, above the current tenancy deposit limits, and who should resolve disputes?

Yes, we consider this is appropriate given the potential costs involved to a landlord. We suggest that the First-tier Tribunal should have jurisdiction for private sector and the Sheriff Court should have jurisdiction for public sector matters.

24. Do you think additional protections against the ending of tenancies during the winter period are needed? For example, some or all of the following:

- **restricting the service of notices during the winter period;**
- **pausing or extending notice periods so that notices do not expire during the winter period;**
- **pausing or extending the period (following expiry of the notice period) during which eviction proceedings can be raised; and/or**
- **restricting the ability of landlords to raise eviction proceedings (following expiry of the notice period) during the winter period.**

We suggest that if a legal ground for eviction exists, a landlord should be entitled to rely on that at any point in the year.

25. If measures to restrict the ability of landlords to commence eviction proceedings during the winter period were introduced, what do you think is a reasonable ‘winter period’ timeframe?

We have no comment.

26. What other policies or interventions could be considered to prevent evictions during the winter period?

We have no comment.

27. Should we introduce a specific requirement for the Tribunal and Sheriff Court to consider delaying the enforcement of eviction orders and decrees during the winter period?

We have no comment.

28. Do you agree the current calculation of damages for unlawful eviction should be reformed and simplified, as proposed (see paragraph 4.3 of draft strategy)?

Yes.

29. If the current system for calculating damages for unlawful eviction was reformed as suggested in paragraph 4.3 of the draft strategy, what do you think would be the appropriate minimum and maximum level of multiplication that the First-Tier Tribunal for Scotland (Housing and Property Chamber) could apply?

We suggest no minimum multiplication and a maximum multiplication of 12.

30. What other ways can we make it easier and more attractive for victims of illegal eviction to seek redress and exercise their rights?

We have no comment.

31. In the event of a criminal prosecution not taking place, how best can we ensure that a tenant is compensated, where evidence exists of an unlawful eviction action?

We have no comment.

32. Should students living in Purpose Built Student Accommodation be offered similar rights to students who rent from a private landlord?

No, as they are different types of accommodation.

33. Are there any particular aspects of the Private Residential Tenancy that are not working for the student market and what, if any changes/amendments, would help to address these or to encourage landlords to rent more to students? Please explain your answer.

We have no comment.

34. What would be the key features of an effective rent guarantor scheme?

We have no comment.

35. How could we support the development of rent guarantor schemes that meet the needs of those groups who could benefit from them?

We have no comment.

36. What are the key issues and concerns relating to current pitch agreements for Gypsy/Travellers on public sector sites?

We are aware that in some instances, there are insufficient pitches to meet demand.

37. If you rent or let a residential mobile home as a main residence, what type of tenancy do you have and what are the common problems you experience?

We have no comment.

38. What do you believe are the key housing issues facing people with:

1. A tenant farm or a rented croft house?

More generally, we note potential difficulties in terms of agricultural holdings as aside from maintenance obligations on tenants and classic renewal and repair requirements on the landlord, there are limited obligations to improve properties.

2. Tied accommodation as part of their employment?

If a person's contract of employment comes to an end, they have no security of tenure and are required to leave their tied accommodation.

We note that the new private residential tenancy (PRT) regime effectively turns tied accommodation into a PRT, however, true tied accommodation is a licence to occupy rather than a lease.

39. What can we do to improve the outcomes for those people with a tied house for their employment who are approaching retirement and may face losing their home?

We consider that this is a matter of public policy which may be addressed by the provision of good quality public sector rented housing.

40. What are the most important factors to be incorporated into a shared understanding of housing affordability (e.g. household size and composition, regional variations, housing standards, treatment of benefits)?

We have no comment.

41. If we are successful in reaching a shared understanding of affordability in Scotland, how should it be used and evaluated?

We have no comment.

42. Do you think the data we are proposing to collect will provide all the necessary evidence to inform national and local rent control considerations? Please explain your answer.

Yes.

43. What can we do to ensure that landlords and agents provide accurate rental data (and other relevant property information), as soon as any changes are made? Please explain your answer.

We have no comment.

44. What is your view on making rental and property information publicly available for tenants and others to view?

We consider this appropriate.

45. What is your view on enabling Rent Penalty notices to be issued where a landlord fails to provide up to date registration, rent data and property details?

We consider that a fine would be a more appropriate penalty.

46. Do you agree that the rent adjudication process should only result in rents being decreased or maintained? Please explain your answer.

Yes – this seems to strike a fair balance between the landlord and the tenant.

47. Do you agree with the proposal not to extend any national rent controls to the social rented sector?

We have no comment.

48. Do you think the current safeguards for rent setting in the social rented sector are sufficient and, if not, how could they be strengthened? Please explain your answer.

Yes, we consider these sufficient.

49. Are there elements of the existing Rent Pressure Zone system that could be built upon when designing a new system of rent controls? Please explain your answer.

We have no comment.

50. Do you agree with the vision and principles set out in the strategy in relation to a future model of rent controls for the private rented sector in Scotland? Please explain your answer.

We have no comment.

51. How do we ensure that we are achieving the right balance between building new properties and acquiring existing properties through the Affordable Housing Supply Programme?

We have no comment.

52. Where has the acquisition of existing stock for the Affordable Housing Supply programme worked well? Are there other opportunities to engage with owners/landlords to allow first refusal to those delivering the Affordable Housing Supply Programme?

We have no comment.

53. Beyond the routes already available to deliver Mid Market Rent homes how could new, additional investment in this be supported?

We have no comment.

54. What measures can we put in place to help encourage Build-to-Rent developments in Scotland?

We have no comment.

55. Is the current approach to social rented sector housing allocations achieving the right balance between supporting existing social tenants and those who are seeking a home within the social sector?

We have no comment.

56. What more can be done to support people with protected characteristics trying to access social rented homes?

We have no comment.

57. What is the best way to ensure that landlords undertake essential repairs in a timely fashion?

The introduction of penalties for failing to do so, such as civil financial penalties, may be a way to ensure essential repairs are undertaken.

58. What do you think are the strengths and weaknesses of the current housing registration systems and what could be improved to help drive up standards of management?

We have no comment.

59. What are the key challenges for landlords in meeting all the housing standard requirements and timescales and what support could be put in place to help landlords overcome barriers?

We have no comment.

60. What is your personal experience in securing necessary adaptations for disability - either for yourself, or for your tenants - in rented accommodation?

A. What barriers did you face, if any?

B. Did this occur in the private or social rented sector?

We have no comment.

61. Do you consider the vision and principles for the private rented sector Regulator to be the right ones? Are there any additional principles that you think are important? Please explain your answer.

We have no substantive comment to make on the vision and principles for the Regulator. However, we note the potential that increasing requirements may have the effect of removing properties from the housing supply. We therefore suggest that any additional principles to be added to the regulatory regime reflect the 'Principles of Better Regulation' in being proportionate, targeted, transparent, and consistent. This will promote confidence of the regulated sector in the regime.

For further information, please contact:

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