

# A New Private Tenancy Regime for Scotland Shelter Scotland's Consultation Response

December 2016

Until there's a home for everyone.

[shelterscotland.org](http://shelterscotland.org)

Shelter  
Scotland

---

# CONTENTS

<b>Key Points</b>	<b>3</b>
<b>Introduction</b>	<b>4</b>
<b>Section 1: Consultation Questions on the Prescribed Notices</b>	<b>5</b>
Tenant’s Notification to a Landlord of a Referral to the Tribunal under Section 14 or 16 of the Private Housing (Tenancies) (Scotland) Act 2016	5
Landlord’s Notification to a Tenant of a Rent Increase under Section 22 of the Private Housing (Tenancies) (Scotland) Act 2016	6
Tenant’s Rent Increase Referral to Rent Service Scotland under Section 24(1) of the Private Housing (Tenancies) (Scotland) Act 2016	8
Landlord’s Application for a Rent Increase as a Result of Improvements Made to a Property in a Rent Pressure Zone under Section 43(1) of the Private Housing (Tenancies) (Scotland) Act 2016	9
Subtenant’s Notice to Leave under Section 61 of the Private Housing (Tenancies) (Scotland) Act 2016	10
Notice to Leave under Section 62(1)(D) of the Private Housing (Tenancies) (Scotland) Act 2016	12
<b>Section 2: Consultation Questions on the Model Tenancy Agreement</b>	<b>13</b>
<b>Section 3: Serving Documents Electronically</b>	<b>23</b>
<b>Section 4: Statutory Terms</b>	<b>25</b>
<b>Conclusion</b>	<b>27</b>

---

## KEY POINTS

- Shelter Scotland welcomes and greatly appreciates the opportunity to respond to the drafts of the Recommended Model Tenancy Agreement and prescribed notices.
- In drafting this response to the Consultation on Proposals for Regulations and Policy Supporting the Private Housing (Tenancies) (Scotland) Act 2016, Shelter Scotland consulted our support service advisers, law service and private sector tenants, who are members of our Private Tenants' Forum.<sup>1</sup>
- The prescribed notices have mostly minor issues, which should be addressed. However, some notices are particularly difficult to understand and need to be amended in order to make them fit for purpose.
- In relation to the Recommended Model Tenancy Agreement, the difference between mandatory and statutory terms is likely to be highly confusing for both tenants and landlords.
- Several terms of the Recommended Model Tenancy Agreement should be revised in order to ensure that tenants and landlords get the most out of the tenancy – including allowing tenants to make the let property feel like their home.
- Moreover, Shelter Scotland is particularly worried by the wording of several terms and the inclusion of the term “Landlord’s costs and interests”, which puts an undue burden on the tenant to cover the costs and fees incurred by landlords. This is likely to affect vulnerable tenants, who are in desperate need of the additional support that this new tenancy regime is intended to provide, the most.
- Electronic communication is a vital aspect of the relationship between tenants, landlords and letting agents. However, Shelter Scotland is of the opinion that serving prescribed notices using electronic communication should not be allowed.
- It is highly regrettable that the Recommended Model Tenancy Agreement will not be mandatory. As such, it is even more important that the number of statutory terms is expanded to other vital information, which all tenancy agreements should include. This includes information on the deposit, the Repairing Standard, equalities requirements and information on ending the tenancy. The contents of these terms are already legal obligations that the landlord and tenant have to fulfil. However, if this information is not included in the tenancy agreement, the tenant and landlord are much less likely to know about their legal rights and duties and to act accordingly.

---

<sup>1</sup> Shelter Scotland (2016), [Private tenants' forum](#).

---

# INTRODUCTION

Shelter Scotland greatly welcomes and appreciates the opportunity to provide feedback on the drafts of the Recommended Model Tenancy Agreement and prescribed notices.

The agreement and notices are part of a transformational change in private renting, for which Shelter Scotland has been campaigning for many years. Shelter Scotland is confident that this shift will improve the everyday lives of over 350,000 households currently living in the private rented sector, 91,000 of which contain children.<sup>2</sup>

The recently released statistics on conditions in the private rented sector illustrate the importance of creating a strong tenancy regime, which empowers tenants, landlords and letting agents. The 2015 Scottish House Condition Survey found that over half of the properties in the private rented sector failed the Scottish Housing Quality Standard, while 5 per cent of the stock is below the tolerable standard – indicating that the property's state is so bad that no one should be expected to live in it.<sup>3</sup>

A majority of landlords and letting agents are well-meaning and hardworking individuals or companies, who fulfil all of their legal responsibilities and tend to have good relationships with their tenants. It is just as important for them, as it is for the tenants, that the few rogue landlords and letting agents are unable to operate or forced to fulfil their obligations.

In order to ensure that tenants, landlords and letting agents fulfil all of their legal responsibilities, they first must be made aware of their rights and obligations. This is why the tenancy agreement, which is often the first document a tenant or landlord will look at when trying to determine their legal rights and duties, must include information on all the relevant duties and rights of both tenant and landlord. Moreover, it must be accessible and easy to understand.

---

<sup>2</sup> Scottish Government (2016), [Scotland's People: results from the 2015 Scottish Household Survey](#).

<sup>3</sup> Scottish Government (2016), [Scottish House Condition Survey 2015: Key Findings](#).

---

# SECTION 1: CONSULTATION

## QUESTIONS ON THE PRESCRIBED NOTICES

### Tenant's Notification to a Landlord of a Referral to the Tribunal under Section 14 or 16 of the Private Housing (Tenancies) (Scotland) Act 2016

**Q1.** Do you think the proposed "Tenant's notification to a landlord of a referral to the Tribunal under section 14 and 16 of the 2016 Act" is fit for purpose?

- Yes
- No – please set why you think the notification is not fit for purpose
- Unsure

While Shelter Scotland is of the opinion that this notification is easier to understand and more straightforward than some of the other notices, we believe that small changes, as detailed below, should be made.

**Q2.** Do you think the proposed "Tenant's notification to a landlord of a referral to the Tribunal under section 14 and 16 of the 2016 Act" is easily understood?

- Yes
- No – please set why you think the notification is not easy to understand
- Unsure

Most of the tenants we consulted found this notification easy to understand.

**Q3.** Do you think the "Tenant's notification to a landlord of a referral to the Tribunal under section 14 and 16 of the 2016 Act" should have additional content?

- Yes – please tell us what that content should be and explain why you think it is required
- No
- Unsure

Shelter Scotland believes that further information should be provided to the tenant in regard to point 1(b) in the Notes for Tenants. This information should let the tenant know what other information the landlord must give to them or provide a link to where such information can be found. The tenant could then tell whether or not the landlord has provided all of the necessary information and documentation.

Moreover, it would be useful to include a short notice at the start of the notification to clarify to the tenants that there are notes for guidance on when and how to use this notice at the end of the notice.

---

**Q4.** Do you think anything in the “Tenant’s notification to a landlord of a referral to the Tribunal under section 14 and 16 of the 2016 Act” should be removed?

- Yes – please tell us what you think should be removed and explain why you think it is unnecessary
- No
- Unsure

No further comments.

## Landlord’s Notification to a Tenant of a Rent Increase under Section 22 of the Private Housing (Tenancies) (Scotland) Act 2016

**Q5.** Do you think the proposed “Landlord’s notification to a tenant of a rent increase under section 22 of the Private Housing (Tenancies) (Scotland) Act 2016” is fit for purpose?

- Yes
- No – please set why you think the notification is not fit for purpose
- Unsure

Shelter Scotland is of the opinion that the highly detailed information regarding rent in Rent Pressure Zone is not necessary in all cases and can be very confusing to both tenants and landlords.

**Q6.** Do you think the proposed “Landlord’s notification to a tenant of a rent increase under section 22 of the Private Housing (Tenancies) (Scotland) Act 2016” is easily understood?

- Yes
- No – please set why you think the notification is not easy to understand
- Unsure

As mentioned above in relation to Question 5, the information provided in Part 2 (RPZ) and Note 4 to 7 to Tenant is highly detailed and is not easy to understand, especially in relation to the equation. Members of our Private Tenants’ Forum found it very complicated. One member stated that this was especially the case “*for those who struggle with maths. I personally do and cannot even begin to work out how to reach the end total of my rent increase. It is far from tenant friendly.*” This can make the entire notification very intimidating to both landlords and tenants.

---

**Q7.** Do you think the “Landlord’s notification to a tenant of a rent increase under section 22 of the Private Housing (Tenancies) (Scotland) Act 2016” should have additional content?

- Yes – please tell us what that content should be and explain why you think it is required
- No
- Unsure

In Note 2 and 3 to Tenant, the notification informs the tenant that they can contact a solicitor or an organisation that gives advice on housing matters. While we highly appreciate that we are included as a point of reference for tenants and landlords, we believe that the note should also inform the tenant that they might be eligible for legal aid.

Moreover, it states that they can contact the relevant organisations in case they are in doubt about the date of their last rent increase or what kind of tenancy they have. We suggest that this is amended to reflect the fact that they can contact the relevant organisations, a solicitor or the local authority to get information on any issues or questions they may have in regard to this notification.

Part 3 should be completed by the tenant and returned to the landlord. At the end of the part it states that “This is an important document and it should be kept in a safe place.” It is unclear if this refers to the whole notification or just Part 3. However, we suggest that this statement rather states: “This is an important document. After you have filled out Part 3, you should make a copy of it for your own records, before returning it to your landlord.”

**Q8.** Do you think anything in the “Landlord’s notification to a tenant of a rent increase under section 22 of the Private Housing (Tenancies) (Scotland) Act 2016” should be removed?

- Yes – please tell us what you think should be removed and explain why you think it is unnecessary
- No
- Unsure

As mentioned above, Part 2 (RPZ) and Note 4 to 7 to Tenant should be changed. These parts of the notification should be removed for properties that are not in Rent Pressure Zones but should be included if the property is in a Rent Pressure Zone. Since these notices will be available electronically, this could be done in such a way that if the landlord ticks off a box stating that the property is in a Rent Pressure Zone, this information is then included.

However, if these changes are made, even the version for properties that are not situated in Rent Pressure Zones should make a clear reference to Rent Pressure Zones and provide some basic information on the topic. This information could consist of a reminder to the tenant to ensure that they check whether or not the let property is in such a zone and where they can obtain this information.

---

## Tenant's Rent Increase Referral to Rent Service Scotland under Section 24(1) of the Private Housing (Tenancies) (Scotland) Act 2016

**Q9.** Do you think the proposed "Tenant's application form to a rent officer for adjudication on a proposed rent increase" is fit for purpose?

- Yes
- No – please set why you think the form is not fit for purpose
- Unsure

Shelter Scotland believes that this application form should include some further information – as detailed below – which can make an important difference for all parties involved. We are therefore of the opinion that it is currently not fit for purpose.

**Q10.** Do you think the proposed "Tenant's application form to a rent officer for adjudication on a proposed rent increase" is easily understood?

- Yes
- No – please set why you think the notification is not easy to understand
- Unsure

No further comments.

**Q11.** Do you think the "Tenant's application form to a rent officer for adjudication on a proposed rent increase" should have additional content?

- Yes – please tell us what that content should be and explain why you think it is required
- No
- Unsure

We think it would be helpful for the tenant and aid him or her in using this notice if information on where tenants can get additional guidance, besides from Rent Service Scotland, is added to the notes at the end. This would increase the likelihood that the tenant is able to make full and appropriate use of this form, which would be beneficial for all parties involved. Moreover, this information is already included in other notifications and forms.

In regard to Question 11, the tenant is asked to advise of the dates over the next month that they are not available for an inspection, which would take place during normal office hours from Monday to Friday. Many tenants will work during these hours and will generally not be available. The form should therefore provide additional information on what tenants facing this situation should do and what can be done to arrange an inspection at a time that suits all parties involved.

In addition, it would be helpful for the tenant if he or she is reminded to make a copy for their landlord, which they must send to the landlord along with Section 3 of the rent increase notice, and for their own records, before submitting this form.



---

**Q12.** Do you think anything in the “Tenant’s application form to a rent officer for adjudication on a proposed rent increase” should be removed?

- Yes – please tell us what you think should be removed and explain why you think it is unnecessary
- No
- Unsure

No further comments.

### Landlord’s Application for a Rent Increase as a Result of Improvements Made to a Property in a Rent Pressure Zone under Section 43(1) of the Private Housing (Tenancies) (Scotland) Act 2016

**Q13.** Do you think the proposed “Landlord’s application form to a rent officer to apply for property improvement costs in a rent pressure zone” is fit for purpose?

- Yes
- No – please set why you think the form is not fit for purpose
- Unsure

As detailed below, further information regarding Question 6 and Part 8, which asks for the new proposed rent amount, should be provided.

**Q14.** Do you think the proposed “Landlord’s application form to a rent officer to apply for property improvement costs in a rent pressure zone” is easily understood?

- Yes
- No – please set why you think the form is not easy to understand
- Unsure

No further comments.

---

**Q15.** Do you think the “Landlord’s application form to a rent officer to apply for property improvement costs in a rent pressure zone” should have additional content?

- Yes – please tell us what that content should be and explain why you think it is required
- No
- Unsure

Shelter Scotland believes that it would be helpful for tenants and landlords to include a clear reference to an inventory in Question 6.

Further information on the limit on rent increases set by Scottish Ministers should be provided in Part 8. We suggest that this could take the form of a link to where such further information can be found, including where the landlord can find out what the limit on rent increases for the relevant zone is.

Moreover, Part 8 should clarify whether or not the new proposed rent amount should include the additional increase above the regular limit on rent increases due to improvements or if the Rent Officer will determine this additional amount. Stating that the proposed rent increase must not exceed the limit on rent increases set by Scottish Minister might be confusing to landlords when they are using this form exactly with the purpose of increasing the rent above the limit on rent increases (using the formula that does not take improvements into account) due to improvements.

As with the Tenant’s Rent Increase Referral Form, we think it would be helpful for the landlord if information on where he or she can get additional guidance and help, such as through their solicitor, is added to the notes at the end of the application form.

**Q16.** Do you think anything in the “Landlord’s application form to a rent officer to apply for property improvement costs in a rent pressure zone” should be removed?

- Yes – please tell us what you think should be removed and explain why you think it is unnecessary
- No
- Unsure

No further comments.

## Subtenant’s Notice to Leave under Section 61 of the Private Housing (Tenancies) (Scotland) Act 2016

**Q17.** Do you think the proposed “Notice to leave from a landlord to a sub-tenant” is fit for purpose?

- Yes
- No – please set why you think the notice is not fit for purpose
- Unsure

There are some inconsistencies, as discussed below, which should be addressed in order to make the notice fit for purpose.

---

**Q18.** Do you think the proposed “Notice to leave from a landlord to a sub-tenant” is easily understood?

- Yes
- No – please set why you think the notice is not easy to understand
- Unsure

The lists of eviction grounds provided in Note 3 to Sub-tenant, Note 6 to 11 to Sub-tenant and in the Notes for Landlords are not consistent. While we understand the additional information provided in Note 6 to 11 and the Notes for Landlords, such as labelling the grounds as “Eviction Ground 1” etc., the language used should be as consistent as possible in order to avoid confusion. An example of this is Eviction Ground 9. In Note 3, it states that one eviction ground is that the “Tenancy was entered into on account of the Tenant having an assessed need for community care and the tenant has since been assessed as no longer having that need”. However, in Note 8, this ground is simply referred to as “Tenant no longer in need of supported accommodation (EVICTION GROUND 9)”.

**Q19.** Do you think the “Notice to leave from a landlord to a sub-tenant” should have additional content?

- Yes – please tell us what that content should be and explain why you think it is required
- No
- Unsure

Note 1 to Sub-tenant should stress the importance of seeking advice as soon as possible if they think that they might be at risk of becoming homeless.

**Q20.** Do you think anything in the “Notice to leave from a landlord to a sub-tenant” should be removed?

- Yes – please tell us what you think should be removed and explain why you think it is unnecessary
- No
- Unsure

We believe that it is highly unlikely that a landlord would be eligible for legal aid given a landlord’s likely income and capital. Including the sentence “If you need to employ a solicitor, legal aid may be available depending on your income” might be confusing and create misunderstanding.

---

## Notice to Leave under Section 62(1)(D) of the Private Housing (Tenancies) (Scotland) Act 2016

**Q21.** Do you think the proposed “Notice to leave from a landlord to a tenant” is fit for purpose?

- Yes
- No – please set why you think the notice is not fit for purpose
- Unsure

However, some aspects of the notice should be amended in order to improve it.

**Q22.** Do you think the proposed “Notice to leave from a landlord to a tenant” is easily understood?

- Yes
- No – please set why you think the notice is not easy to understand
- Unsure

No further comments.

**Q23.** Do you think the “Notice to leave from a landlord to a tenant” should have additional content?

- Yes – please tell us what that content should be and explain why you think it is required
- No
- Unsure

As with the Notice to Sub-tenants, Note 1 should mention that the Tenant should seek advice as soon as possible if they believe that they might be at risk of becoming homeless.

**Q24.** Do you think anything in the “Notice to leave from a landlord to a tenant” should be removed?

- Yes – please tell us what you think should be removed and explain why you think it is unnecessary
- No
- Unsure

Shelter Scotland is of the opinion that, as stated above, it is highly unlikely that a landlord would be eligible for legal aid given a landlord’s likely income and capital. Including the sentence “If you need to employ a solicitor, legal aid may be available depending on your income” might be confusing and create misunderstanding.

---

## SECTION 2: CONSULTATION

### QUESTIONS ON THE MODEL TENANCY AGREEMENT

**Q25.** Do you think the proposed “Recommend Model Tenancy Agreement” is generally fit for purpose?

- Yes
- No – please set why you think the model agreement is not fit for purpose
- Unsure

Shelter Scotland has, as outlined below, several concerns regarding the Recommended Model Tenancy Agreement and currently considers it not to be fit for purpose.

Besides several concerns dealing with specific terms, Shelter Scotland is particularly worried that the model tenancy agreement is not mandatory. The tenancy agreement is meant to state the tenant’s and landlord’s rights and responsibilities. If it is up to the landlord to decide what to include or not to include, with the exception of the statutory terms, the purpose of providing clarity and a summary of the duties and rights of both tenants and landlords can easily be lost. This is particularly the case, as the terms that currently are statutory seem to largely focus on the duties of tenants and not on their rights.

This is especially important, as without the requirement for landlords to provide tenants with Tenant Information Packs, tenants would primarily get the information about their rights and responsibilities from the tenancy agreement. The tenancy agreement thus has to include this information. In this regard, it is vital that the tenancy agreement, for example, includes the term on the Repairing Standard – as detailed further below in Section 4 on statutory terms.

There also seems to be little sense in classifying certain terms as ‘mandatory if using this model’, if a landlord can simply choose not to use the model and make his or her own model using parts of the terms included in the Recommended Model Tenancy Agreement. The question that, in our eyes, needs to be addressed is how the tenant or Tribunal is supposed to determine whether or not the model has been used. This will then in turn determine whether or not the mandatory but not statutory terms have to be included. Given that a large majority of the mandatory terms are not statutory, this is of great importance.

Moreover, allowing landlords and letting agents to alter the wording of the agreement could create unnecessary confusion and misunderstanding.

In addition, Shelter Scotland is particularly worried about the inclusion of electronic submission of notices and some of the additional responsibilities put on tenants, especially in regard to landlord costs and interests, overcrowding and HMOs. These terms put an undue burden on the tenant. It should also be noted that tenancy agreements must comply with The Unfair Terms in Consumer Contracts Regulations 1999 (as amended by The Unfair Terms in Consumer Contracts (Amendment) Regulations 2001) – something which should be mentioned in Section 1 on How to Use the Model.

*Question 25 continued*

Several terms, including the restriction of using Sellotape on walls, will prevent tenants from making the property feel like their home – something that is beneficial for all parties involved, as it encourages tenants to properly look after the property.

Considering these concerns and the fact that the agreement is not mandatory, it needs to be ensured that the Recommended Model Tenancy Agreement is as accessible and easy to understand and use as possible. This will encourage landlords and letting agents to use this model.

**Q26.** Do you think the proposed “Recommended Model Tenancy Agreement” is easy to understand?

- Yes  
 No – please set why you think the model agreement is not easy to understand  
 Unsure

Shelter Scotland understands that it is difficult to find the right balance between providing relevant and important information and ensuring that the agreement is easy to understand and not too long. Yet, we believe that important changes need to be made in order to make the agreement easy to understand. These changes are further outlined below in relation to specific terms.

Our advisers and solicitors found Section 1 on How To Use The Model to be unclear and confusing, especially in regards to the separation between mandatory and statutory terms and what legal implications this has for tenants and landlords. It should be noted that when professionals, who have years of experience in working on housing and private rented sector cases, have problems understanding something, it is highly unlikely that tenants and landlords will find the same thing to be easy to understand. Moreover, the rest of the agreement does not point out which terms are statutory (and therefore also mandatory) and which ones are only mandatory but not statutory.

We would further like to stress the importance of the legal commentary, which has yet to be developed. Together with the rest of the agreement, the legal commentary must set out the duties and rights of landlords, letting agents and tenants and is therefore a vital part of the agreement. We recommend and expect that the Scottish Government will develop this commentary in association with stakeholders to ensure that it strengthens the Recommended Model Tenancy Agreement.

**Q27.** Do you have any comments on the terms numbered from 1 to 9 in the “Recommended Model Tenancy Agreement”?

- Yes – please tell us your comments using the comment box below for the relevant term(s)  
 No  
 Unsure

Term 1 is “Landlord”

The HMO 24-hour contact number and HMO registration expiry date information does not apply to all properties. The wording “if applicable” should therefore be added, so that it reads: “**HMO 24-hour contact number (if applicable)**” and “**HMO registration expiry date (if applicable)**”.

---

Term 2 is “Letting Agent/Factor/Managing Agent”

Shelter Scotland agrees that the information provided under Term 2 should be mandatory. However, there should be an option for landlords to state that they do not employ a letting agent, if that is the case.

Moreover, it would be useful to include information about who the first point of contact is for the tenants, i.e. the landlord or the letting agent, in case of enquiries and, for example, when the tenant has to report the need for a repair.

Term 3 is “Tenant”

Based on the arrangements made between the tenant and the landlord or letting agent, Shelter Scotland believes that it should not be mandatory for the tenant to provide their email addresses, especially given that not all tenants might have an email address.

Term 4 is “Communication”

Shelter Scotland strongly suggests that, given the importance of this term, it should be mandatory.

Moreover, we have serious concerns regarding the possibility of serving notices through electronic communication. These concerns and our proposed solutions are further detailed in Section 3.

Term 5 is “Details of the let property”

No further comments.

Term 6 is “Date when tenancy starts”

No further comments.

Term 7 is “Occupation and use of the let property”

No further comments.

Term 8 is “Rent”

There is some contradiction in the information provided in Term 8. It states that rent can be payable in advance and arrears – something which Shelter Scotland strongly supports, especially given that housing benefits are always paid in arrears. However, it continues that “The first payment will be paid on the date the tenancy starts or before and subsequent payments must be received on or before the same [day of each week/four weekly period/date of each calendar month] thereafter.” This clearly contradicts the earlier option of allowing the tenant to pay rent in arrears. The wording, hence, needs to be changed to allow the landlord to specify when the first and subsequent payments are to be made.

Moreover, it should specify that the landlord can apply to the third-party scheme holding the deposit for any deposit deductions due to rent arrears.

Term 9 is “Rent receipts”

No further comments.

---

**Q28.** Do you have any comments on the terms numbered from 10 to 19 in the “Recommended Model Tenancy Agreement”?

- Yes – please tell us your comments using the comment box below for the relevant term(s)
- No
- Unsure

Term 10 is “Rent increases”

Some basic information about Rent Pressure Zones should be included in Term 10, along with where the tenant and landlord can find further information. In addition, the landlord should have to disclose whether or not the let property is currently located in a Rent Pressure Zone and, if that is the case, for how long the Rent Pressure Zone will currently apply for.

Term 11 is “Deposit”

Shelter Scotland proposes that the following is also included in the information that the landlord must provide to the tenant within 30 working days of the tenancy beginning: the name of the landlord, the name of the letting agent (if applicable) and the name of the tenant.

While this is discussed in detail in Section 4, we would like to stress the importance of the Deposit term. Shelter Scotland strongly suggests that this term is included in all tenancy agreements and therefore made a statutory term where a landlord asks for a deposit.

More information should also be included about the reason for landlords to apply for a deposit deduction. One such reason, for example, is to cover the costs of any damages caused by the tenant that the tenant has not yet been charged for. This would be consistent with information provided in several other terms of this agreement, including the terms on Rent and Utilities.

Term 12 is “Landlord’s costs and interests”

Shelter Scotland is particularly concerned about the inclusion of this term in the Recommended Model Tenancy Agreement. Making the tenant responsible for meeting all reasonable fees and outlays incurred by the landlord, including legal fees, places an undue burden on the tenant. This is likely to especially effect, and doesn’t account, for vulnerable tenants and tenants, who are eligible for legal aid. It is clear that tenants in such situations – as well as many other tenants – would be unable to afford to meet all fees and outlays incurred by the landlord, especially as legal aid is unlikely to cover for the tenant having to pay for the landlord’s expenses.

This puts a burden on the tenant before even a verdict has been made on the validity of the landlord’s claims, as a landlord can argue that the tenant has to cover the legal fees for reasonable cases, which the court or tribunal found in favour of the tenant. Indeed, one of our advisers has dealt with a case involving a social sector tenant, who was asked by their landlord to cover the legal fees of the landlord for a case, which the tenant won, due to a very similar clause in the tenancy agreement. The landlord in this case specifically argued that they had the contractual right to do this, despite losing the case.

Moreover, this encourages the landlord to make use of enforcement action even for minor arrears of rent or other minor breaches of the tenant’s obligations under this agreement, such as using Sellotape to put up one poster.



---

*Comment regarding Term 12 continued*

In addition, giving the landlord or letting agent the option to insert any interest rate can easily lead to misuse by rogue landlords or letting agents, who could try to charge absorbent interest rates. It should be noted that the [Office of Fair Trading](#) considers “a requirement to pay unreasonable interest on arrears of rent, at a rate substantially above the clearing banks’ base rates, as an unfair penalty.” While this statement was made in reference to tenancy agreements in Wales and England, The Unfair Terms in Consumer Contracts Regulations 1999 (as amended by The Unfair Terms in Consumer Contracts (Amendment) Regulations 2001) also applies to Scotland.

We therefore strongly recommend that Term 12 is removed from the Recommended Model Tenancy Agreement.

Term 13 is “Notification about other residents”

Shelter Scotland is of the opinion that, once a tenant has informed the landlord of the number of persons aged 16 and above living at the property, it should no longer be the tenant’s responsibility to ensure that the let property becomes an unlicensed or unregistered house in multiple occupation (HMO).

It is clearly the responsibility of the landlord or letting agent to submit an application for a HMO license, if this is required. The tenant can therefore not be held responsible if the landlord or letting agent fails to do this after the tenant has informed the landlord or letting agent about the number of occupants at the property.

Moreover, Shelter Scotland strongly believes that it is greatly unreasonable to make the tenant liable for any reasonable costs and expenses, including legal or court expenses and any fines payable by the landlord or letting agent, due to the let property becoming an unlicensed HMO.

Term 14 is “Overcrowding”

Further information should be included in relation to the maximum number of people, who may live at the property. While it is mentioned that the number of people, who may live in a property, depends on the number and size of the rooms, and the age, gender and relationships of the people, Shelter Scotland believes that asking the landlord to mention a specific maximum number of people is contradictory to this information and may lead to confusion.

In order for both the landlord and the tenant to better understand their responsibilities and rights, it would be beneficial to include some more detailed information or to provide a link to where such information may be found. Perhaps it would make more sense to list the number of rooms that are counted (living rooms and bedrooms) or to list the number of maximum adults above the age of 16 that may live at the property.

Furthermore, given the complexity of various scenarios and the lack of adequate information provided in Term 14, Shelter Scotland believes that it is unreasonable to place the burden of not allowing the property to become overcrowded on the tenant.

Term 15 is “Subletting and assignment”

No further comments.

Term 16 is "Contents and condition"

Term 16 should be made mandatory, as all tenants should receive an inventory and have the right to check an inventory and record of condition. Having an accurate inventory is vital for both the landlord and tenant. This term is particularly important, as it applies to all tenants and landlords, irrespective of other circumstances, and the inventory can become evidence in disputes over a variety of issues, including repairs and deposit – both of which have legal responsibilities attached to them. Moreover, the inventory is also mentioned in some of the prescribed notices, which further illustrates the importance of this term.

The tenant should not be responsible for repairing, replacing or paying for any of the contents that has been destroyed, damaged, removed or lost that is not attributable to his or her fault or negligence, that of any person residing with him or her, or any of his or her guests. This wording reflects what is repeated in other parts of this agreement, including in the Payment for Repairs section of Term 33. Including this clarification would, hence, also increase the overall coherence of the agreement.

Moreover, it should specify that the landlord can apply to the third-party scheme holding the deposit for any deposit deductions.

Term 17 is "Local authority taxes/charges"

Term 17 should also allow for situations where tenants are not exempt from paying the local authority taxes/charges but their landlord pays them and they are, hence, included in the rent.

Term 18 is "Utilities"

The right of tenants to change supplier if they pay the energy supplier directly for gas or electricity is a basic right of the tenant. In order to ensure that the tenant is fully aware of their rights and responsibilities, it should be mandatory to include this information in the tenancy agreement.

Moreover, it should specify that the landlord can apply to the third-party scheme holding the deposit for any deposit deductions.

Term 19 is "Insurance"

Term 19 should account for wear and tear, which is currently not mentioned. This is particularly relevant to the last sentence of the term, which clarifies that the tenant will be responsible for meeting the costs of any damages caused by them, as this does not apply to wear and tear.

29. Do you have any comments on the terms numbered from 20 to 29 in the "Recommended Model Tenancy Agreement"?

- Yes – please tell us your comments using the comment box below for the relevant term(s)
- No
- Unsure

Term 20 is "Absences"

No further comments.

---

Term 21 is “Reasonable care”

Shelter Scotland is disappointed to see the inclusion of the prohibition on applying “any Sellotape or any other sticky materials to the internal walls of the let property” and strongly suggests that this is taken out of the tenancy agreement. A tenant should be allowed to make the let property their home. From many tenants, we have heard that this includes the ability to hang up posters and pictures on the wall. They thought that “*all of these things should be allowed as long as you don’t damage the property structurally.*” The tenants pointed out that, if they are able to make the let property feel more like their home, they would also be more inclined to invest in the property, live there longer and further look after it. This is clearly to the benefit of all parties.

Moreover, whether or not the tenant is allowed to use sticky material on the internal walls or not should be a decision of the landlord, ideally made in consultation with the tenant. It therefore should not be mandatory to include this in the Recommended Model Tenancy Agreement.

This is particularly important, as a breach of this term by the tenant or the decision of the landlord to allow the tenant to use such sticky materials could have serious repercussions for the tenant (in the form of eviction) or landlord (in the form of being found to have breached the clause that all mandatory terms have to be included when using this model).

Term 22 is “Alterations”

Shelter Scotland greatly appreciates that Term 22 makes specific reference to both Citizens Advice Bureau and Shelter Scotland. However, the local authority should also be mentioned as a point of contact for advice and help.

Moreover, forbidding the tenant to carry out any internal or external decoration without prior consent of the landlord is unwarranted. Tenants should be able to decorate, as long as they don’t cause damage to the let property. This would allow tenants to make the let property feel more like their home.

Term 23 is “Common parts”

It should be noted that Term 23 could also be relevant for non-flatted properties.

Moreover, it should specify that the landlord can apply to the third-party scheme holding the deposit for any deposit deductions.

Term 24 is “Private garden”

It should be specified that the landlord can apply to the third-party scheme holding the deposit for any deposit deductions due to rent arrears.

Term 25 is “Roof”

No further comments.

Term 26 is “Bins and recycling”

No further comments.

---

Term 27 is “Storage”

It should also be mentioned that belongings left stored in the common stairwells may not cause a fire or safety hazard.

Term 28 is “Dangerous substances”

Given the importance of this notice, particularly in regard to the safety of the neighbours and local community, Term 28 should be mandatory.

Term 29 is “Respect for others”

Shelter Scotland appreciates the inclusion of the definition of anti-social behaviour.

**Q30.** Do you have any comments on the terms numbered from 30 to 40 in the “Recommended Model Tenancy Agreement”?

- Yes – please tell us your comments using the comment box below for the relevant term(s)
- No
- Unsure

Term 30 is “Equality Requirements”

Shelter Scotland believes that, given the importance of this term, it should not only be a mandatory but also a statutory term. This is further discussed in Section 4.

Term 31 is “Pets”

Shelter Scotland suggests that this terms should be changed to include the following sentence: “Any such consent will not be unreasonably withheld.”

This ensures that landlords and tenants are given flexibility in regard to the tenant owning pets and would provide more protection for people, who may have a medical or psychological need for a pet. Members of our Private Tenants’ Forum have also stated that this would make the let property feel more like their home.

Term 32 is “Smoking”

It should be up to the landlord to decide whether or not the tenant and others are allowed to smoke tobacco or any other substances in the let property. This especially applies to any gardens, terraces or balconies belonging to the let property.

Term 33 is “The Repairing Standard etc. and other information”

The Repairing Standard is a legal responsibility of the landlord and should therefore be made a statutory term, which has to be included in all tenancy agreements. This is further discussed in Section 4.

Moreover, due to the importance of the Repairing Standard, the term should include information about where tenants and landlords can seek advice and help, such as local authorities, Citizens Advice Bureau and Shelter Scotland.

*Comment regarding Term 33 continued*

The paragraph dealing with defective fixtures and fittings mentions that “The landlord will repair or replace any of the fixtures, fittings or furnishings, supplied by the Landlord in the let property, which become defective through usual wear and tear; and will do so within a reasonable period of time.” Further down in the same paragraph, it is stated that “This paragraph does not apply to damage caused by fair wear and tear or vandals (provided that the Tenant has reported the damage to the Police and to the Landlord as soon as the damage is discovered).” There clearly is a contradiction between the two statements and we suggest that the second sentence is amended accordingly. Moreover, we believe that the first statement regarding the landlord’s responsibility to repair or replace defective fixtures, fitting and furnishings applies not only to situation where the defect is due to “usual wear and tear” but also due to, for example, theft, vandals or natural disasters. This is not the responsibility of a tenant and a landlord will typically have an insurance, which would cover such instances.

Moreover, the part on Payment for Repairs should specify that the landlord can apply to the third-party scheme holding the deposit for any deposit deductions.

Term 34 is “Liquid petroleum gas”

It should be ensured that this term does not forbid “the normal and safe storage of petroleum and gas for garden appliances (mowers etc., barbeques, candles or other commonly used household goods or appliances,” as stated in Term 28 on dangerous substances.

Term 35 is “Legionella”

Shelter Scotland welcomes the inclusion of this term.

Term 36 is “Access for repairs”

No further comments.

Term 37 is “Data protection”

No further comments.

Term 38 is “Ending the tenancy”

As detailed further below in Section 4, Shelter Scotland strongly recommends that Term 38 on Ending the tenancy should be a statutory term.

The term should further mention in the second paragraph on “This Tenancy may be ended by:-“ that the landlord must have a ground for repossession in order to give notice, that they must disclose the reason(s) for repossession to the tenant in the notice and that the landlord may seek possession by referring the case to the First-tier Tribunal if the tenant fails to leave the property before the notice period expires.

Term 39 is “Declarations”

No further comments.

---

Term 40 is “The Guarantor”

No further comments.

**Q31.** While users will have the ability to add their own unique tenancy terms, are there any other terms that you think it would be helpful to include as standard terms in the “Recommended Model Tenancy Agreement”?

- Yes – please tell us what the term should be and why you think it should be included
- No
- Unsure

As described in Section 3, Shelter Scotland suggests that communication between the landlord, letting agent and tenant is divided into two categories, and therefore two separate terms in the Recommended Model Tenancy Agreement. Please see Section 3 for further details.

**Q32.** Do you have any other general comments on the “Recommended Model Tenancy Agreement”?

- Yes – please tell us what they are
- No
- Unsure

No further comments.

---

## SECTION 3: SERVING DOCUMENTS ELECTRONICALLY

Section 3 looks at whether or not there should be an option of serving documents electronically, subject to a tenant's and landlord's prior agreement.

**Q33.** Do you agree that a landlord and tenant should have the option of serving documents electronically to the electronic mail address provided by the relevant party, provided they have both previously agreed in writing to this?

- Yes
- No – please tell us why you disagree
- Unsure

While Shelter Scotland agrees that it should be up to the tenant and landlord or letting agent to decide on the main form of communication between the parties, the issue regarding the serving of notices should be treated differently.

We acknowledge that communication has developed immensely over the last few decades and that electronic communication is generally seen as being convenient, efficient and cost-effective, while also reducing the impact on the environment. Shelter Scotland therefore believes that regular communication between the landlord, letting agent and tenant, which, for instance, deals with the services provided, should be allowed to be conducted using electronic communication, such as email. This includes the landlord and tenant requesting repairs to be made and to arrange access to the property.

Nonetheless, Shelter Scotland is of the opinion that this should not be an option when it comes to serving documents, such as the notices included in this consultation, due to a number of reasons.

The Scottish Government states that such electronic serving of documents would only be allowed where “a landlord and tenant have mutually agreed to send documents electronically.” From our experience, such mutual agreement often consists of the landlord including this condition in the tenancy agreement without properly discussing it with the tenant. The tenant might therefore not be aware that they had an option of not using electronic communication for such purposes.

Even if the tenant is aware that they can negotiate the terms of the agreement, they often feel unable to do so at the time of signing the agreement, as they fear that doing so will lead to the landlord not proceeding with the tenancy. Shelter Scotland therefore suggests that at least a separate document would have to be signed and discussed by the landlord and tenant. The document should inform both parties of their right to refuse such electronic communication.

However, even if both tenant and landlord agree to the serving of documents by using electronic communication, several issues remain. Some tenants might run into financial issues, which can lead to a very restricted access to the Internet and their email accounts. This is especially the case for vulnerable tenants, who maybe lost their jobs and no longer have access to the Internet because of unpaid bills.

*Question 33 continued*

Other tenants, who will be adversely affected by the electronic serving of documents, are, for example, remand prisoners. Remand prisoners often continue their tenancies, as they have not yet been convicted and therefore might soon return to their current home. Remand prisoners do not have access to the Internet or their email accounts. While an [Email a Prisoner Service](#), which allows the prisoner to receive copies of the emails that they receive, does exist, it is not for free and not all prisons have such a service.

Shelter Scotland is further concerned by the exact wording of “electronic communications (such as emails)”. It is not further specified what other forms of electronic communication this includes. At Shelter Scotland, we have seen cases where the landlord simply sent the tenant a WhatsApp message informing them that the landlord intends to sell the property and that the tenant therefore needs to move out by a certain date. Of course, we understand that the landlord would still have to serve the actual notice in this case. However, we would be concerned if the landlord could do so using text messages or a messaging service such as WhatsApp or Facebook, which also allow for documents to be sent.

Furthermore, it can be difficult to prove that such communication has been sent and received (or not received). While it is possible to see whether or not someone has read a message or received an email through the use of specific applications, not all email accounts or messaging services allow the sender to receive a notice once the receiver has seen the communication. Given that emails can get sorted into the Spam folder or are sometimes simply not received, we believe that they should not be used for serving important documents, such as the notice to leave or the notice regarding an upcoming rent increase. Members of our Private Tenants’ Forum expressed similar concerns and made comments such as “*I would be concerned that some notices may genuinely not arrive.*” They also acknowledged that they themselves do not necessarily check their email account very often.

Shelter Scotland fears that this can have a significant impact on the First-tier Tribunal, as it may result in the Tribunal spending a considerable amount of time and resources on trying to determine whether or not certain notices were served or not. We would therefore like to stress that it is in the interest of all parties that the tenant and the landlord receive the documents on time, as this results in less time and financial resources being used by all parties involved and ensures that everyone is able to fulfil their duties and make full use of their rights.

Shelter Scotland has similar worries with regard to the option of serving notices personally. Personal delivery could perhaps be considered if the landlord or letting agent has to get a separate document signed by the tenant, which acknowledges that the tenant received the notice in question on that particular date (and at that particular time).

Of course, electronic communication should be allowed when it is used as a supplement to a traditional method for serving notices. An example of this is if a landlord serves a Rent Increase Notice through post using recorded delivery, but also sends the notice as an attachment to an email. However, the recorded delivery – and not the email – would determine the notice period.

Considering the reasons outlined above, Shelter Scotland proposes that Term 4 on Communication is split up into two separate terms: one dealing with regular communications, which can include electronic communication and personal delivery, and another term, which solely focuses on ‘Methods of service of prescribed notices’ and excludes electronic communication and personal delivery (unless by a sheriff officer).



---

## SECTION 4: STATUTORY TERMS

As mentioned above, the Recommended Model Tenancy Agreement includes mandatory, statutory and discretionary terms.

All statutory terms are mandatory but not all mandatory terms are statutory. Mandatory terms must be included when using the Recommended Model Tenancy Agreement, which is not mandatory itself. However, statutory terms must be included in all tenancy agreements – regardless of whether or not the Recommended Model Tenancy Agreement is used.

Currently the main content of the following terms is statutory: Rent receipts (Term 9); Rent increases (Term 10); Notification about other residents (part of Term 13); Subletting and assignment (Term 15); and Access for repairs (part of Term 36).

**Q34.** Are there any other terms that should be included in the regulations as a statutory term applicable to all private residential tenancies?

- Yes – please tell us what other terms you think should be included and explain why you think they should be statutory terms
- No
- Unsure

As mentioned above in relation to specific terms of the Recommended Model Tenancy Agreement, Shelter Scotland strongly suggests that Term 11 on Deposit, Term 30 on Equality Requirements, the parts of Term 33 dealing with the Repairing Standard and Term 38 on Ending the tenancy are included in the regulations as statutory terms applicable to all private residential tenancies.

The conditions set out in these terms are already legal requirements. As such, it is not up to the individual landlord or letting agent to decide whether or not they apply to a particular tenancy.

Furthermore, the inclusion of these terms therefore does not alter the legal obligations of the landlord. However, whether or not they are statutory terms can have an immense impact on the tenant.

While most letting agents and landlords can be expected to make use of the Recommended Model Tenancy Agreement, the model is not mandatory. Moreover, its mandatory terms do not have to be included in all tenancy agreements. It can be argued that the landlords most likely not to use the Recommended Model Tenancy Agreement are the rogue landlords, who are already exploiting their tenants and harming the reputation of all landlords and letting agents involved in the private rented sector.

As discussed above in relation to Questions 25 and 26, the tenancy agreement will be the tenant's main reference point regarding their own rights and obligations, as well as the rights and responsibilities of their landlord and letting agent. Without the requirement of landlords to provide the tenant with a Tenant Information Pack, the information provided in the actual tenancy agreement becomes even more important in terms of the tenant being aware of their own duties and being able to hold the landlord or letting agent to account.

*Question 34 continued*

Considering the importance of the information contained in the terms, it is vital that these terms are made statutory. A tenant, for example, needs to know for what grounds they can be evicted and how the tenancy can be ended. Considering that Term 38 on Ending the tenancy also includes the obligations of the tenant, for instance, in regard to the notice period that the tenant has to give the landlord, it is also in the landlord's interest that the tenant has this information.

It should be noted that this lack of information is most likely to affect tenants, who already are vulnerable. This, for example, includes tenants, who are already being exploited by rogue landlords or who have a difficult time, for many different reasons, accessing other sources of information and advice. At Shelter Scotland, we see how important it is that tenants and landlords are properly informed about their rights and responsibilities.

Another important aspect of the Tenant Information Pack is that it provides tenants with further sources of advice and assistance. It, for example, specifically mentions both Citizens Advice Bureau and ourselves as organisations providing advice to tenants on any issues related to housing. Shelter Scotland believes that such information is vital and further helps to clarify important issues to both tenants and landlords. It also helps to avoid future problems, such as rent arrears, if tenants are able to get advice early on. This can save a lot of time and financial resources of landlords, local authorities and the tribunal system by preventing situations from escalating. Shelter Scotland therefore believes that as much of the information provided in the Tenant Information Pack as possible should be required to be included in all private tenancy agreements. If this is not possible, it should be considered if the Section 30(A) of the Housing (Scotland) Act 1988 (as added by Section 33 of the Private Rented Housing (Scotland) Act 2011) should be amended, so as to make the Tenant Information Pack compulsory for all tenancies under the new tenancy regime.

In addition, if, for example, the Repairing Standard is not part of the tenancy agreement, it is therefore not a contractual term between the landlord and the tenant. Hence, the tenant is unable to claim damages if the landlord has violated his or her responsibility and, depending on the terms of the tenancy agreement, the tenant may not have a right to withhold rent either. Allowing a tenant to claim damages is particularly important, as it further illustrates the importance of these standards to the landlord and is likely to lead to more landlords fulfilling their obligations. Moreover, being able to claim damages compensates the tenant for the hardship they had to endure as a result of the failure of the landlord or letting agent.

If, due to all or just one of the reasons mentioned above, the tenant wants to include these terms in the tenancy agreement but the landlord refuses to do so, the First-tier Tribunal cannot require the landlord to include the terms unless they are statutory. Moreover, a tenant or landlord can refer cases to the Tribunal if they consider the tenancy agreement to displace statutory terms. This further strengthens terms that are made statutory.

It should also be noted that members of our Private Tenants' Forum confirmed that they would expect a tenancy agreement to include information on rent, the deposit, the main obligations of the landlord and tenant (especially in regard to repairs), notice periods and ending the tenancy.

---

# CONCLUSION

Shelter Scotland welcomes and greatly appreciates the opportunity to respond to the drafts of the Recommended Model Tenancy Agreement and prescribed notices. The existence of this consultation itself is a clear sign of the Scottish Government's commitment to include civil society and the general population in the decision-making process.

As part of this response, we consulted our support service advisers, law service and members of our Private Tenants' Forum, all of whom experience or work with cases involving the private rented sector on a daily basis.

At Shelter Scotland, we are confident that the new tenancy regime has the potential to provide a significant improvement to tenants, landlords, letting agents, local authorities and wider communities. However, in order to ensure that this happens, the prescribed notices and especially the Recommended Model Tenancy Agreement need to reflect the current situation of the private rented sector and ensure that everyone is aware of and fulfil their rights and responsibilities.

Shelter Scotland believes that this is currently not the case. While many of the prescribed notices have mostly minor issues, which should be addressed in order to make them fit for purpose, some need to be amended significantly. We are also particularly worried by the wording of several terms of and the inclusion of the Term "Landlord's costs and interests" in the draft Recommended Model Tenancy Agreement, which puts an undue burden on the tenant to cover the costs and fees incurred by landlords. This is likely to affect vulnerable tenants the most. Several terms of the Recommended Model Tenancy Agreement should be further revised in order to maximise their efficiency and impact.

Moreover, the difference between mandatory and statutory terms is likely to be highly confusing for both tenants and landlords. It is highly regrettable that the Recommended Model Tenancy Agreement will not be mandatory. As such, it is vital that further terms are made statutory, especially in regard to securing the rights of both landlords and tenants.

While electronic communication is an important tool, Shelter Scotland believes that it should not be used for serving notices.

If the prescribed notices and the Recommended Model Tenancy Agreement are amended to reflect these concerns, the new tenancy regime will come a long way in making Scotland's fastest growing housing sector a safe and successful place for everyone, including landlords and tenants.

Shelter Scotland helps over half a million people every year struggling with bad housing or homelessness through our advice, support and legal services. And we campaign to make sure that, one day, no one will have to turn to us for help.

We're here so no one has to fight bad housing or homelessness on their own.

Please support us at [shelterscotland.org](https://shelterscotland.org)

RH7439. Registered charity in England and Wales (263710) and in Scotland (SC002327)

Shelter Scotland  
Scotiabank House  
6 South Charlotte Street  
Edinburgh EH2 4AW

[shelterscotland.org](https://shelterscotland.org)