

# Consultation response

## A strategy for the private rented sector

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Shelter  
Scotland

## Summary

- Shelter Scotland shares the Scottish Government's overall vision for a Private Rented Sector (PRS) that can play a greater role in meeting housing need. The proportion of households in the PRS has more than doubled in Scotland in the last ten years, and it is expected that the demand will grow further in the future especially from families, young people and low income households.
- To meet this growing demand for homes in the PRS, it is vital that problems in the sector are addressed. This Strategy presents an opportunity to review the functioning of the sector and ensure that the right framework is in place to allow it to evolve to become fit for the twenty-first century. To achieve this, the Strategy must be bold and ambitious in its scope.
- The central goal of the Strategy should be the aim of increasing consumer confidence in renting. To achieve this, four central issues must be addressed, how to ensure that tenants and landlords understand their respective rights and obligations, how to give tenants more stability and security, how to find a more effective way of settling housing disputes and how to ensure that regulation deals with the worst performing landlords.
- Reform of the PRS by the Scottish Government should, therefore, focus on:
  - Better information and access to advice for tenants and landlords about their rights and obligations
  - Reform of the tenancy regime to give tenants more security from eviction, if for example, they seek higher standards or redress
  - Quicker and less bureaucratic dispute resolution for tenants across the sector.
  - Better targeted and more effective regulation

If all elements are pursued, tenants themselves will be in a better position to drive up standards among landlords, enabling public authorities to focus enforcement activity on the most difficult cases.

- Informed tenants are better consumers in the rental market. Tenants who know and understand what services they can expect from their landlord, what constitutes a 'fair deal', the rights they have and how these are protected, where they can turn if things go wrong and their responsibilities as a tenant will help the sector to function more effectively. The forthcoming Tenants Information Pack provides an opportunity to develop a more comprehensive information strategy for private tenants that could incorporate a new 'web-hub' that brings together advice and

information to support delivery of the pack. Shelter Scotland would welcome further discussion with the Scottish Government about developing this idea.

- Shelter Scotland argues that there is a strong case for reviewing the tenancy regime to encourage a sector that can play a greater role in meeting housing needs. Private renting is valued as a housing option that offers flexibility to tenants. We would want to retain this element of flexibility but Shelter Scotland would also like to see private renting as a mainstream choice for a wide range of households who cannot afford, or do not wish to buy. The current tenancy regime creates a framework of insecurity which in the long run is bad for both tenants and landlords. Shelter Scotland considers that more secure tenancies would not only be a more suitable form of tenancy for many people but that they would also present opportunities to deal with a number of the key difficulties faced by the sector in its current form. More secure tenancies would:
  - Encourage the development of the PRS as a realistic longer-term option for those households for whom stability is important.
  - Foster more cohesive neighbourhoods and communities with higher levels of engagement from those living in PRS accommodation.
  - Empower tenants to be able to use their rights effectively.
  - Promote a more tenure-neutral approach to housing policy which is able to rely on the PRS to provide a viable third tenure option.

Shelter Scotland's preferred option for creating greater security and stability for private tenants is to alter the tenancy provisions as set out in the Housing (Scotland) Act 1988. We have set out in more detail our initial thoughts about how the assured tenancy model could be modernised, and would welcome further discussion with the Scottish Government and other stakeholders about the details of this option, or alternatives that might be suggested.

- To protect the most vulnerable tenants Shelter Scotland recommends streamlining the current systems of landlord registration and HMO licensing to create a single system. One option for achieving this is to establish a process of selective licensing targeted on specific areas and/or types of rented housing. Selective licensing could be part of wider area based regeneration initiatives that include improvement of housing condition and neighbourhoods.
- Shelter Scotland support more comprehensive regulation of letting agents which could be in the form of a mandatory licensing system that sets minimum standards and through whom tenants and landlords could seek redress if the standards weren't met. Such a system of licensing should be independent from the industry

itself to give consumers (landlords and tenants) the assurance that their complaints will be dealt with fairly.

- We need a more effective approach to dealing with illegal evictions in Scotland. Shelter Scotland would like a duty on local authorities to take reasonable steps to investigate where there are accusations of alleged unlawful evictions. This duty would fit more efficiently with duties on local authorities to prevent homelessness.
- Changes to housing benefit levels and eligibility are already starting to take effect in Scotland. We suggest that the Scottish Government takes urgent action to try to mitigate the worst of the effects for tenants in the PRS. We have three suggestions for actions that the Scottish Government could take.
  - Make best use of DHP to help tenants in the PRS
  - Secure availability and access to shared accommodation
  - Develop social lettings agencies in Scotland

## Introduction

Shelter Scotland welcomes the opportunity to respond to the Scottish Government's consultation on a strategy for the private rented sector (PRS). In 2009, Shelter Scotland were invited to join the Scottish Government's PRS Strategy Group and we have contributed extensively both to the Private Rented Housing (Scotland) Act 2011, and, subsequently, to development of this consultative strategy.

This Consultation reflects the deliberations, over many months, of the members of the Strategy Group, including Shelter Scotland. In it we see the core elements that came out of the Group's discussions, and which are highlighted in the Chair's introduction to the Consultation: the need to reconsider current tenancy arrangements, the need to rethink redress arrangements between landlord and tenant, and the need to provide clear and accessible information to tenants. These three elements are collectively part of a process of empowering consumers within the PRS which, we argue, should be the central pillar of a Scottish Government strategy for a twenty-first century private rented sector.

### **The importance of tenancy reform in the PRS**

Throughout this submission we have emphasised the importance of reform of the tenancy regime as the lynchpin for transforming the PRS. As we set out in our response, the sense of insecurity that pervades the PRS is at the heart of the problems that the sector faces. Enabling tenants to feel stable and secure in their private rented homes addresses many of the challenges the sector faces, and would:

- Encourage the development of the PRS as a realistic longer-term option for those

households for whom stability is important.

- Foster more cohesive neighbourhoods and communities with higher levels of engagement from people living in PRS accommodation.
- Empower all tenants to be able to use their rights effectively and exercise consumer power to raise standards in the PRS.
- Promote a more tenure-neutral approach to housing policy which is able to rely on the PRS to provide a viable third tenure option.

The test of the Scottish Government ambition for the sector will be in the degree to which the Strategy deals with the vital issue of tenure reform.

The private rented sector has grown substantially over the last decade and plays a vital role in housing thousands of people across Scotland. In addition, local authorities use private rented properties through leasing schemes to provide temporary accommodation, and the Scottish Government has sanctioned the use of privately rented homes as settled accommodation into which a local authority can discharge its homelessness duty. So private rented housing is being used increasingly to supplement social housing. Yet, Shelter Scotland's experience is that the sector is not adequately meeting the needs and aspirations of all private renting households. Problems in the private rented sector are widespread and disproportionate to the size of the sector:

- 31% of people who called Shelter Scotland's helpline in 2011/12 to seek help in dealing with a housing problem were private renters, whereas they are only 11% of all households in Scotland.
- 16% of homeless applicants come from the PRS, as opposed to 12% of applicants from the social rented sector.
- 67% of private rented homes failed the Scottish Housing Quality Standard and 8% of private rented homes have a 'poor' National Home Energy Rating compared to 3% of owner occupied and 1% of social rented properties. 21% of private renters who called us were looking for help in dealing with dampness or disrepair.

These figures paint a picture we see represented in the stories of people who come to Shelter Scotland to ask for help.

In responding to the consultation questions below we set out a programme for reform in the PRS that would boost consumer confidence and power in the sector, a programme

that would benefit good landlords and letting agents and drive the worst performing and criminal landlords and agents out of the sector altogether. It is a programme that would lead to growth in private renting to meet the needs of households and families, but would also transform private renting from a transient, short term, small scale sector, into one that is fit for the twenty-first century.

## Responses to questions

### 1a. Do you agree with the vision and strategic aims proposed by the Scottish Private Rented Sector Strategy Group, for the sector over the next 10 years?

Yes  No

Shelter Scotland agrees that the vision and strategic aims for the PRS as set out in the consultation represent the right ambitions, however, the real test of the final strategy will be the emphasis and action that follows. The PRS has grown significantly over the last 20 years and forecasts suggest it will play an even bigger role in housing people in the future. Demographic trends, changes in the mortgage and housing market and growing pressure on social housing will all contribute to more households turning to the private rented sector to make their home. These changes will not only mean greater numbers in private renting, but types of households not usually attracted to the sector will be turning to private renting. In particular, the trends noted above suggest that more families with children and low income households will be looking to meet their housing needs in the PRS. This shift is already apparent with 17% of families in Scotland housed in the PRS in 2010, compared to only 7% in 1999. In addition, more households are likely to stay in the PRS for longer periods of time.

The next few years will also see the impact of changes to entitlement for housing benefit become evident, many of which will impact on the affordability of private renting, and the types of properties being sought. For example changes to the shared room rate will increase demand for HMO accommodation, and reductions in LHA to cover only the bottom third of rents will make competition for houses at an affordable rent more intense (see our response to question 17 below).

Shelter Scotland strongly support the approach that the Scottish Government is taking in setting out a long-term vision for the sector to meet the challenges ahead. In particular, and as we set out in more detail in our responses below, we see the aspiration to create a sector that inspires consumer confidence as pivotal to the whole strategy. We want a PRS that can become a sector of choice rather than of last resort, and where all tenants have confidence in renting privately and can make a positive choice to make their home in a private let.

**1b. Do you agree with the key strategic challenges for the sector?**

Yes  No

**Are there any other key strategic challenges that should be highlighted in the strategy? Please provide reasons for your answer.**

Shelter Scotland agrees broadly with the challenges set out in the consultation document, though we recognise that the Strategy will have to acknowledge that some are more within the scope of Scottish Government powers than others. For example, effective fiscal levers to encourage investment and changes to subsidies for housing costs, are not within devolved powers. It is right for the consultation to address questions across the range of challenges affecting the sector, but the Strategy should focus on driving progress in areas of existing devolved competence. In our response we have focussed on a programme of change that meets this criterion.

We would like to add to the strategic challenges listed in the consultation document, the challenge of how we can move private renting from a culture of endemic short-termism towards fully realising its potential role in providing long term, stable accommodation for an increasing number of tenants? It is vital that this question be addressed in order to ensure that private renting plays a full role meeting housing need in future years. Addressing this challenge will mean tackling a number of the central issues the consultation raises and to which we give a more detailed response in answer to the questions below, such as how do we give tenants more stability and security, how do we offer a more effective way of settling disputes, how do we refocus regulation to encourage more professional landlords and letting agents and how can we improve the consumer / producer relationship through empowering consumers? Indeed, these issues are the ones that the Strategy Group highlighted as the key interrelated elements that the Scottish Government Strategy should address.

**2. What can Scotland learn from the approach to the private rented sector taken in either of the two case study examples or other countries? Please state what specifically would be transferrable from these countries to Scotland and why.**

The experience in both Germany and Ireland demonstrate that security of tenure and a thriving rental sector can go hand in hand. Germany and Ireland are only two examples of countries across Europe whose tenancy arrangements have helped to create a stable and thriving sector. In Ireland, the Part 4 Tenancy introduced by the Residential Tenancies Act in 2004 significantly increased the security of tenure for private tenants and made private

renting more attractive for long term occupation<sup>1</sup>. Similarly in Germany contracts are usually unlimited and as a result renting is seen as a fully accepted alternative to owner occupation.

Conclusions from a comparative study of private renting across Europe have recently been published by the London School of Economics<sup>2</sup>. The study found that:

- Regulation is not inherently associated with smaller, poorly operating private rented sectors. Evidence from countries with large scale, stable private rented sectors and well defined regulatory frameworks suggest that greater certainty over rent and longer term tenancies help investors to obtain the returns that they require.
- Private renting is not only for young, mobile and transient households. There are countries where large numbers of family households live comfortably and by choice in the private rented sector.
- Private renting is not inherently unsuitable for more vulnerable households, but there tends to be considerable government support and regulation in place where it works well.

Shelter have also published an international comparison of rental markets to compare approaches to balancing landlord and tenant interests<sup>3</sup>. In comparison with a broad range of other OECD countries, the report shows that private tenancies in the UK<sup>4</sup> are exceptional in offering tenants very short periods of security from eviction (see figure 1) and no protection against rent rises for the duration of the tenancy. This can undermine the stability and affordability of tenants' homes, even if they pay their rent on time and comply fully with their tenancy agreement.

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<sup>1</sup> Michelle Norris, 'Ireland' in 'Towards a sustainable private rented sector: The lessons from other countries' Kath Scanlon and Ben Kochan (eds) LSE London 2011 p123

<sup>2</sup> 'Towards a sustainable private rented sector: The lessons from other countries' Kath Scanlon and Ben Kochan (eds) LSE London

<sup>3</sup> [http://england.shelter.org.uk/\\_data/assets/pdf\\_file/0019/392410/International\\_comparisons\\_briefing\\_v6.pdf](http://england.shelter.org.uk/_data/assets/pdf_file/0019/392410/International_comparisons_briefing_v6.pdf) (published by Shelter in England)

<sup>4</sup> The report refers to the English Assured Shorthold Tenancy which is broadly comparable to the Short Assured Tenancy in Scotland.



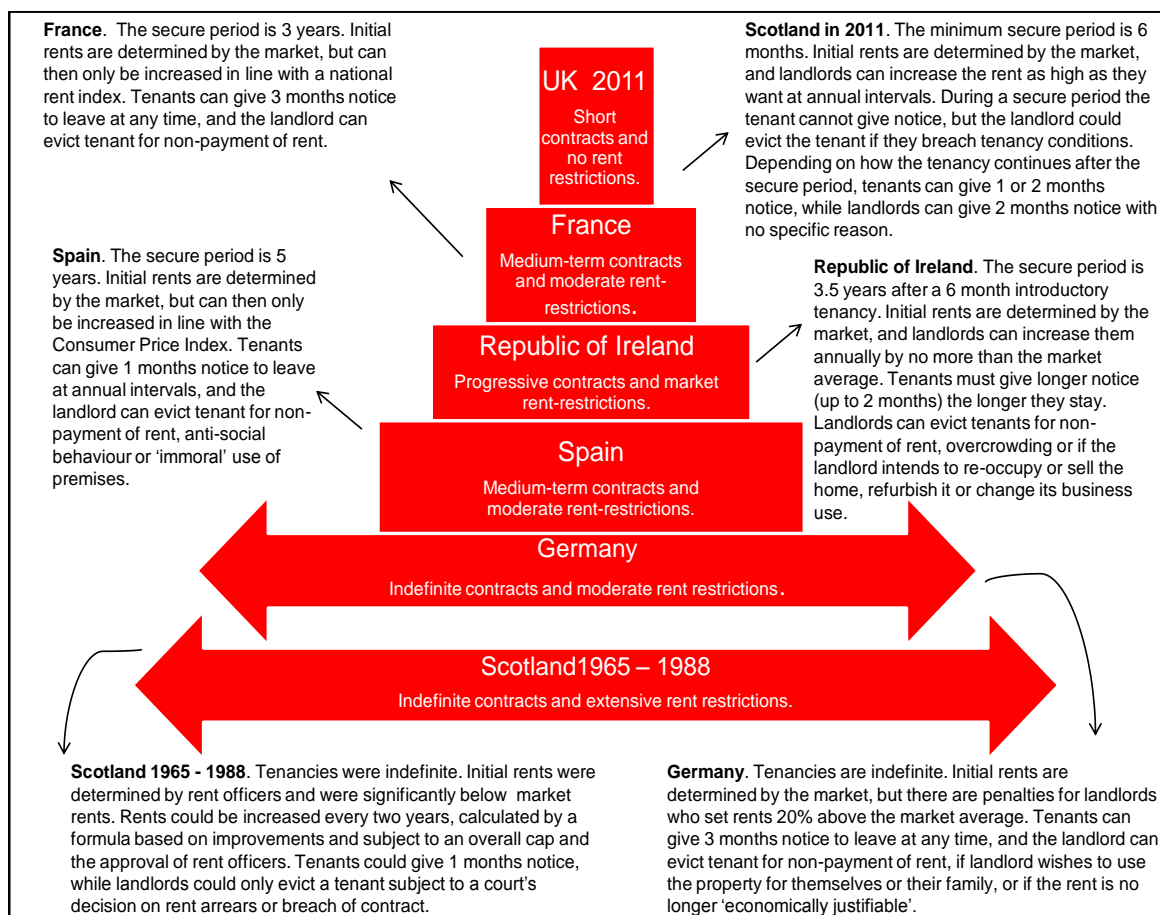


Figure 1. An international comparison of tenure<sup>5</sup>

The report shows that different systems can be better understood as a broad spectrum of options. The various models share many similar attributes and exemptions, and all seek to balance the interests of tenants and landlords. The main conclusions of the study were that:

- All private rented systems assessed give landlords the power to evict tenants who do not pay their rent or who breach the terms of their contract. This allows landlords to protect themselves against the risk of default on their mortgage or losses as a result of damage.
- The real difference the report found was in landlords' confidence in the court process and the associated costs of evicting non-paying tenants. Slow and/or complex court processes can undermine landlords' financial security and make insecure tenancies seem more attractive.

<sup>5</sup>[http://england.shelter.org.uk/\\_data/assets/pdf\\_file/0019/392410/International\\_comparisons\\_briefing\\_v6.pdf](http://england.shelter.org.uk/_data/assets/pdf_file/0019/392410/International_comparisons_briefing_v6.pdf) (adapted from a diagram published by Shelter in England)

- All the private rented sectors studied have similar structures and attributes – the difference is that they strike different balances between the interests of landlords and tenants. In most systems there is a quid pro quo – where landlords offer longer stability for tenants, there are often sensible exemptions, such as landlords being able to regain possession of the home if they intend to use it for themselves or sell it.
- All private rented sectors continue to offer flexibility for tenants who want it with tenants able to give reasonable notice to end the tenancy, showing that it is possible to create tenancy regimes that offer both stability and flexibility.

Both of these studies draw similar conclusions about the relationship between regulation and tenancy security on the one hand, and thriving sectors that protect landlords interests on the other. While it is rarely possible to successfully directly transfer a policy framework from one country to another, international experience shows that Scotland is at one end of a spectrum in the balance of interest between landlords and tenants, and that a better balance could be achieved.

### **3. What more could the Scottish Government and Local Government do to encourage investment or to grow the supply of new homes in the private rented sector?**

Shelter Scotland sees many of the problems in the private rented sector as being driven in part by a market where demand outstrips supply in many parts of Scotland. This leads to market failure, where landlords, as suppliers, have little competitive pressure to offer high standards of accommodation and management, and private renters, as consumers, have little power to challenge poor practice or make informed choices due to intense competition for accommodation, particularly at the lower end of the market.

These problems can be exacerbated by the fact that many landlords currently see letting property as a sideline investment and are not fully aware of their legal responsibilities, but market conditions of short supply and high prices also make it easier for some landlords to deliberately evade their responsibilities and exploit tenants.

Shelter Scotland fully agrees with the assessment of the market context presented in the Consultative Strategy. The dynamics of private renting are changing as the buy to let market becomes less attractive to investors looking for significant capital return, and new 'reluctant' landlords enter the market to let former homes they have been unable to sell. The dominant business for landlords has been to achieve capital growth on their property. This has meant that landlords needed quick access to realise capital and consequently short tenancies made sense. In the context of very low capital growth and depressed

house prices, rental income plays a much bigger part in business models, and longer more stable tenancies become more attractive.

Economic assessments of the housing market suggest that these conditions will continue for many years. These market conditions have also strengthened and diversified demand for private rented housing which offers the opportunity for the sector to grow. The new market context, in which investment will be based more on steady income streams with less emphasis on capital appreciation, and increased demand from tenants looking for more stable homes, brings opportunities for the sector to adapt and develop a more sustainable business model. Indeed, we would welcome efforts to encourage RSLs to diversify into long term rented housing at near market rents providing that this was not at the expense of funding or other resources for their social housing.

Shelter have recently published researched commissioned from consultants at Jones Lang LaSalle<sup>6</sup> which investigates the business models of a number of landlords through detailed interviews and case studies. Looking at investment portfolios over a 15 year lifespan, and applying different scenarios to the landlord's portfolio, Jones Lang LaSalle's modelling indicates that many landlords' returns would have been higher if they had offered tenants longer contracts with predictable, indexed rent increases than the current status quo of short contracts, sporadic rent increases and uncertainty for tenants.

In addition, therefore, to the specific initiatives set out in the Consultation, we think that the Scottish Government has a vital role to play in setting the right regulatory context to foster growth in the wider market. The Scottish Government can contribute to growth in the sector by pursuing the agenda we set out below: to develop more stable and secure tenancies; to strengthen the voice of consumers; to streamline and focus regulation on protecting vulnerable tenants; and to develop more efficient access to justice for landlords and tenants.

#### **4. What more can be done to support and encourage private landlords to invest in:**

##### **a. maintaining and improving their properties condition;**

Property conditions and disrepair in the PRS are worse than any other sector in Scotland, with 61% of properties failing to meet the Scottish Housing Quality Standard in 2010. The majority of homes failed the standard on the basis of poor energy efficiency, but the Scottish House Condition Survey also found that 67% of properties in the PRS suffer disrepair to critical elements that make the home wind and weather proof and structurally

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<sup>6</sup>[http://england.shelter.org.uk/\\_\\_data/assets/pdf\\_file/0004/569641/Jones\\_Lang\\_LaSalle\\_PRS\\_Shelter\\_report.pdf](http://england.shelter.org.uk/__data/assets/pdf_file/0004/569641/Jones_Lang_LaSalle_PRS_Shelter_report.pdf)

stable, and that three in ten properties are considered to have extensive disrepair to critical elements. This picture certainly accords with the experience of people who contact Shelter Scotland for advice.

### **Mary's story**

*Well, where do i start: Sometimes I wonder if my own standards are too high, or maybe my expectations, but I feel if I'm am handing over a lot of money for a home, then that home should be in good condition.*

*I first moved into a private let nearly 2 years ago, having lost the home that I had before. This first let had partly been used as a kennel - and the smell of animals was overwhelming, the landlord and letting agents said they were dealing with it, that is until they started getting rent, then they just didn't bother any more. Water leaks, faulty oil storage tanks, sewage leaking into back yards.*

*I eventually found another property in the same village. In this house, the boiler is faulty, the heating control units is faulty, there is sunlight pouring through the roof, the temperatures in the children's bedroom are around 6 degrees at night. The heating comes on at 3am, 1pm, 10pm. There are faulty window, the front door is faulty - some days it takes ages to get out, if we were in a fire and the door jammed like it does, we would be dead. The seals on the windows and doors are poor. There is minimal insulation, and I mean minimal, all rolled up in bundles here and there. I have been offered free insulation and landlord refused. My gas usage is massive and not because I am greedy and keep my heating on constantly, I am out of the house most days of the week, but because what heating is on escapes through where the sun shines in the roof, where there is no insulation, where the door and window seals don't exist.*

*I look after the property well, I've decorated it, replaced light fittings, bulbs, shower heads, toilet seats, and decorated to a standard well in excess of that I moved in to. I keep it clean, I report problems to them as and when I become aware of them and have asked them for only one improvement and that is to change the hob cooker to gas because there have been a number of power cuts and I am left without any means to cook, heat etc during these power cuts.*

*I gave the landlord a letter after months of politely asking for works to be done - response - "get the council to give you a house" ---- I'm waiting now for the inevitable eviction notice.*

### **Ruth's Story**

*Ruth and her son Simon (3 years) moved in to an unfurnished private let bungalow. Within days of moving in she began to notice mould, damp and condensation in the property and reported it immediately to her landlord, who then inspected the property but did nothing to address the problems. His advice to Ruth was to keep her windows open at all times – which she felt she could not do for safety reasons.*

*After numerous attempts over many months to get the landlord to take action, Ruth contacted the Council's Environmental Health department, who visited but could not find the source of the damp.*

*Ruth then paid for two surveys to get to the bottom of the problem - which found stagnant water under the property. She also contacted the Private Rented Housing Panel – but again, no action was taken by the landlord. During this time Ruth was in a six month lease with £650 per month rent.*

*As the weeks went on Ruth found she had to throw away furniture she had bought only months before, including Simon's new bed and mattress. She also had to throw away clothes and her son's toys, leaving her thousands of pounds out of pocket. Simon has been hospitalized as a result of the damp and has developed severe asthma.*

*After months of trying to deal with the problem, Ruth felt she could no longer live in the house with her son and decided to move out (but she had to keep paying rent until the end of her contract.) She made a homelessness application with Edinburgh City Council and was accepted as unintentionally homeless (the council accepted she could no longer live in the property and had no choice but to leave). Ruth contacted Shelter Scotland for help and advice in pursuing her complaint against her landlord.*

These stories illustrate not only the disrepair in privately rented homes and the impact that this has on the families that live there, but also the difficulties and powerlessness that tenants experience in getting repairs done. Shelter Scotland hears from many families living in poor conditions and fighting for the most basic of services who are too scared to push too hard for their landlord to do the work for fear of eviction. Greater security of tenure would benefit tenants who need to persuade their landlords to make vital repairs and improvements.

Disrepair is a symptom of market failure in the PRS. In markets that work well, consumers are able to exercise choice about the properties that they rent, have access to redress if

things go wrong, and are able to use the redress mechanisms available to them. Suppliers, or landlords, have an incentive to offer properties for rent that are in good repair and well maintained. Shelter Scotland argues that for property conditions in the PRS to rise, tenants need to understand their rights in relation to property condition and be empowered to push for repairs and maintenance.

At Shelter Scotland, we know that fear of eviction and harassment are big deterrents to tenants using consumer powers to hold landlords to account. We regularly speak to tenants who are too afraid to complain to their landlord or the Private Rented Housing Panel and would rather live with the problem or move out, leaving a future tenant to deal with it. In 2011, only 229 applications were made to the PRHP and 102 cases in that year were withdrawn or rejected without being considered<sup>7</sup>. Clearly this does not reflect the scale of disrepair that exists in the PRS. Giving tenants greater security from arbitrary eviction would give the Repairing Standard teeth and enable tenants to use the PRHP with confidence. In answer to questions later in this consultation, we set out how greater security of tenure for tenants might be achieved.

#### **b. the energy efficiency of their properties?**

The Scottish Government is consulting separately on a Sustainable Housing Strategy to improve the energy efficiency of homes across all tenures including the private rented sector. As the Strategy Consultation makes clear, energy efficiency standards will have to improve dramatically to meet the Scottish Government's 2020 Climate Change Targets. Incentives for landlords to improve energy efficiency in their lets is problematic since the landlord is required to make the initial investment but savings that can be made will benefit the tenant through lower fuel bills. Tenants may not choose to make investments in energy efficiency measures since they have no assurance that they will remain in the property long enough to recoup their investment through lower energy bills.

Educating and enabling tenants to make a more active choice about the energy efficiency of the property before they let may act as an incentive to landlords to invest. There are a range of schemes available to help landlords meet the costs of energy efficiency measures, and more active promotion of these would be beneficial. Shelter Scotland hosts the Scottish Empty Homes Partnership which is producing an information guide to energy efficiency funding schemes that landlords can take advantage of.

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<sup>7</sup> Figures provided on request from the PRHP.

We understand that the Scottish Government is considering the scope for regulating to require landlords to make energy saving improvements, and while Shelter Scotland are supportive of this in principle, we would want to look carefully at the details in due course.

**5. Is better regulation of the private rented sector in Scotland required to improve standards of management and access to redress for consumers? If so, in what areas do existing regulations fall short and how could this be improved?**

**6. Are there non-legislative alternatives to improving quality of service within the private rented sector that may be as effective?**

**7a. What more can landlord registration do to improve the quality of management in the sector?**

**7b. What further action can be taken to ensure that landlord registration can be effectively enforced?**

**7c. Are there ways of simplifying the burden for good landlords?**

**8. What further action can be taken by local authorities and their community planning partners to help remove the worst landlords from the private rented sector in Scotland?**

We have answered questions 5, 6, 7 and 8 together.

The regulatory framework for private renting in Scotland is characterised by the incremental way it has been devised and implemented to address problems identified along the way. As a result, the different and overlapping elements respond to policy objectives that, taken as a whole, do not lead to a coherent strategy for creating a thriving, professional sector that people choose to meet their housing needs across their lifetimes.

As a result of all of these initiatives, we now have one system (HMO licensing) that requires some landlords and properties to meet basic standards<sup>8</sup>, and another that ensures that all landlords pass a criminal check in order to trade (registration)<sup>9</sup>. Added to

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<sup>8</sup> The system for licensing shared housing was designed to address serious safety fears about the quality of the accommodation and how it was managed in the 1980s. The HMO licensing scheme is largely concerned with physical standards and is not exclusively targeted at the PRS.

<sup>9</sup> As a result of concern about the impact of antisocial behaviour on communities, the inability for local authorities to contact landlords of anti-social tenants was identified. A system of registering all private landlords was created to solve this problem, with a fit and proper person test built in to provide some assurance to tenants that their landlord was suitable. Landlord Registration quickly grew beyond this starting point to become a way for local authorities to intervene in the private rented sector in their area. Local



this is the voluntary Landlord Accreditation Scotland<sup>10</sup> scheme through which some landlords can seek to increase standards, and in return, advertise to potential consumers that they meet these standards, and private sector leasing schemes that may also insist on a different set of standards.

In our view, the current statutory arrangements are poorly targeted. Landlords are falling through the gaps between schemes and tenants are confused and largely unaware about the standards they should expect.

A better system of regulation of the PRS should be based on clear principles and designed to:

- encourage landlords to enter and stay in the sector
- ensure landlords provide high quality service and accommodation
- prevent the worst landlords from letting
- enable positive consumer choice
- allow access to dispute resolution if things go wrong

The development of a long term strategy for the PRS that identifies far-reaching reform to bring about a clear strategic vision for the future of the sector, is a move away from a piecemeal and iterative approach to reform that has so far focussed on solving particular problems or refining the operation of the existing regulatory mechanisms.

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authorities have taken advantage of the opportunities presented by Registration to different extents, with some setting up dedicated teams to interact with landlords and tenants in order to respond to problems, drive out poor practice and drive up professionalism in the sector. However, the main emphasis and the focus of resources remains on the administrative exercise of creating and maintaining a list of landlord contact details. It was always clear that mandatory registration would be a rather blunt instrument for driving up standards, but the level of uptake and the very limited number of refusals raises serious doubts about what actually has been achieved so far. The scheme risks suffering from a poor reputation if it is just seen as a means of charging a fee for landlords to be on a list.

<sup>10</sup> Landlord accreditation, in principle, provides a more comprehensive approach to the development of management standards. The main potential drawback to any accreditation scheme is its voluntary nature and it is unlikely that the national scheme will attract sufficiently large numbers of landlords to impact on standards, whether it will appeal to the full range of landlords rather than those serving the top end of the market, and whether the approval process will be seen by tenants to be robust. The SG Review landlord survey suggested that only 12% of dwellings were owned by landlords in the Landlord Accreditation Scotland scheme. Some 70% of tenants in the tenant survey did not know if their landlord was currently in a scheme suggesting that it has little relevance for consumer decision-making at present, but some 60% of tenants suggested that it would be important to look for an accredited landlord in the future so this may offer some grounds for cautious optimism.



Shelter Scotland envisages a two tiered approach to reform of regulation. The first level focuses on creating the conditions for a better functioning market in the sector, and at the second level, regulation should be targeted at the worst practices in the sector.

Level 1 – A better functioning market - informed consumers and professional landlords

This approach acknowledges the difficulty in regulating a sector of such a size and diversity and looks for measures that create a better functioning market. It takes as a starting point, that critical to the future of the PRS is changing the culture of renting by strengthening the hand of consumers and getting tenants to appreciate their rights and how they can pursue them. Tenancy reform is vital to this, as for the reasons set out in answer to question 16, we need to focus on changing the way that people think about renting. Reform should then focus on measures to increase tenant's awareness of their rights and their inclination to pursue them. Measures to improve consumer behaviour could then be built on by refocusing regulation and enforcement on the worst performing landlords. Options include:

- reform of the tenancy regime to give tenants more security from eviction if they seek higher standards or redress
- Better information for tenants about their rights
- Access to advice for tenants
- Well recognised and respected landlord accreditation
- quicker and less bureaucratic dispute resolution for tenants across the sector
- a model of better targeted and more effective regulation that would involve a restructuring of the present models of registration and licensing, in tandem with the level 2 approach below

If all elements of this approach are pursued, tenants themselves will be in a better position to drive up standards among landlords leaving public authorities to engage in more focussed enforcement activity. However, even with these consumer measures, the most vulnerable tenants would still need support.

Level 2 – A focus on the problem areas in private renting

This approach would build on level 1 but would enable local authorities to focus attention and resources on particular problem areas. Our preferred option for achieving this is to streamline the current twin systems of landlord registration and HMO licensing to create a single system.

There are valid questions and concerns about both regulatory systems that could be addressed by refocusing them:

- Does focusing on HMOs (essentially non family households - now mostly shared flats occupied by young single people) effectively target the worst conditions and greatest risk?
- Has either Landlord Registration or HMO Licensing successfully prevented the worst landlords from letting property?
- Does Landlord registration give tenants the confidence that they are letting from a reputable landlord?
- Is the cost of administering the current Landlord Registration System warranted by the public benefits it brings?

The approach to date has been to try to improve the operation and functioning of Landlord Registration and HMO Licensing, rather than consider a new regulatory framework, and recent changes to the systems have sought to bring them more into line with each other. Fines for offences under both systems are now set at the same level, and the Fit and Proper Person Test is now the same under each regime.

We think the time has come to take stock of the system for regulating private landlords and to rethink the system more strategically while considering how we retain comprehensiveness, how we target enforcement and make it effective, and how we ensure certain standards are met.

One option might be to consider the establishment of a risk based licensing system in designated areas or types of properties. Legislation on Local Housing Strategies should be modified to require councils to review conditions in the PRS and decide whether any sub sectors were sufficiently “at risk” to require licensing. The criteria for selection would depend on conditions, complaints etc rather than the type of household occupying the property. Licensing conditions should encompass both physical and management aspects.

### **9. How can problem tenants living within privately rented properties be dealt with more effectively?**

Problems arise in private lets where tenants are not behaving as responsible neighbours. Sometimes this can be reasonably straightforward issues such as not maintaining gardens or common areas. Many problems can be dealt with by tenants being better

informed of their responsibilities. We address ways in which tenants could be supported to be better informed in answer to question 14 below, and we see the Tenants Information Pack and associated information strategy having a key role here.

We also acknowledge that as in all other housing sectors, there are people who fail to respect their neighbours and communities and take part in anti-social behaviour. In most cases, dealing with such behaviour requires the landlord to take an active role and often in partnership with the local authority and police. Effective use of existing local authority powers is vital to manage anti-social behaviour and there is a role for information sharing and best practice guidance between local authorities.

Ultimately, when a tenant persists in anti-social behaviour the ultimate sanction for the landlord is to evict the tenant, and landlords need to be assured that they can regain possession of their properties swiftly when serious problems arise. As the Consultation document sets out, this is a vital issue that needs to be addressed to give landlords the confidence to offer more secure tenancies. In response to questions 11 and 15, we look at how changes to the system of redress for landlords and tenants, and changes to the assured tenancy regime could give landlords added confidence that antisocial behaviour can be dealt with effectively.

**10a. In addition to action on tenancy deposits and illegal premiums – what more can be done to address the problems identified from poor letting agent practice?**

**10b. Is further regulation of letting agents in Scotland the answer?**

Yes  No

**If you think that it is, please provide reasons for your answer, explaining what the best format might be for regulation. For example:**

- **expansion of landlord registration to include all agents;**
- **a separate system for agents similar to that proposed for property factors due for implementation in October 2012; and/or**
- **a legal obligation that all agents must be a member of a recognised professional body.**

We have answered questions 10a and 10b together.

Tenants and landlords need assurance that the letting agents they use are operating to high professional standards and that there is a route of recourse if a dispute arises. Shelter Scotland welcomes the progress that the Scottish Government have made in protecting consumers by acting to protect tenant's deposits and clarifying the law around

charging fees to tenants. Disputes over deposits and fees to set up tenancies are both issues that many people come to Shelter Scotland for advice about. But other areas of letting agent practice are also cause for concern, such as how well client's money is protected, how tenancies are set up and managed, discriminatory tenant selection practice, and service standards for tenants and landlords.

Currently in Scotland, letting agents are not well regulated, and even the industry bodies such as ARLA and the Property Ombudsman have called for legislation to regulate all letting agents to raise standards, and consequently the reputation of the industry.<sup>11</sup>

Any system of regulation should provide for:

- mandatory insurance for clients money
- minimum core standards of practice in relation to lettings policy and tenancy management
- rules about fees structures and fair levels of fees
- independent dispute resolution service and sanctions against letting agents who fail to comply.

We support more comprehensive regulation of letting agents which could be in the form of a mandatory licensing system that sets minimum standards and through whom tenants and landlords could seek redress if the standards weren't met. Such a system of licensing should be independent from the industry itself to give consumers (landlords and tenants) the assurance that their complaints will be dealt with fairly.

## **11. What more can be done to provide better access to justice for tenants, landlords and local authorities pursuing housing related cases?**

Throughout the discussions of the PRS Strategy Group the issue of access to justice and the functioning of the court system has been a central theme for landlords, tenants and local authorities. This issue is not new and problems with the court system for housing cases have been identified over a number of years.

In the PRS, there are large numbers of small scale landlords, most with limited experience of housing management. Only around 50% of landlords use managing agents<sup>12</sup> and as we have already discussed above, these agents vary in quality. Attempts to improve management standards, for example, through accreditation schemes, have had only

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<sup>11</sup> <http://news.bbc.co.uk/1/hi/business/8593580.stm>

<sup>12</sup> Views and Experiences of Landlords in the Privately Rented Sector, Table 4.4 Scottish Government, 2009

limited uptake, and the Landlord Registration Scheme has not proved effective in intervening where poor property management takes place. The net result is that, when problems do occur, they are often dealt with informally, for example, through illegal eviction or the tenant moving on to a new tenancy, or more often, they are not dealt with at all. Even in more difficult cases, the police are usually very unwilling to get involved in what can seem like a private dispute between two parties. The position is exacerbated by the tenancy regime and its emphasis on short term tenancies since a complaint by a tenant is likely to result in the non renewal of the tenancy. And, for their part, landlords faced with difficult tenants often prefer to wait until the tenancy has ended rather than take formal action through the courts for repossession.

Although legislation provides recourse for both parties to the courts, court action is perceived as slow and expensive. Both the Gill Review of the Scottish Civil Courts<sup>13</sup> and the Report of the Scottish Civil Court Advisory Group<sup>14</sup> identified a number of problems in dealing with housing cases through the courts. These include inconsistent decisions, lack of specialism, time taken for cases to be dealt with, lack of priority given to housing cases and the cost of taking action.

Shelter Scotland have joined with others in the housing sector to push for reform, and we are pleased to see that the Government are planning to implement the recommendations of the Gill commission to establish a third tier of court to deal with housing cases in a specialist way. We are also encouraged that the Scottish Government will be consulting on alternative dispute resolution mechanisms to the courts over the coming year.

Ensuring that tenants and landlords have efficient, accessible, low cost and specialist dispute resolution mechanisms is a vital element in empowering consumers in the private rented sector, and giving landlords the confidence to offer tenants greater security. One option that should be considered is expanding the remit, resources and specialism of the existing Private Rented Housing Panel to allow it to hear a wider range of cases. We understand that this is one of the options that may be considered in the forthcoming consultation.

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<sup>13</sup> <http://www.scotcourts.gov.uk/civilcourtsreview/>

<sup>14</sup> <http://www.consumerfocus.org.uk/scotland/files/2011/01/Civil-Justice-Advisory-Group-Full-Report.pdf>

**12. Do you think that consumer empowerment can succeed in providing improvement in quality and standards in the private rented sector? Please provide reasons for your answer.**

**13. What more can be done to support and empower consumers in the private rented sector?**

We have answered question 12 and 13 together.

We agree with the analysis set out in the Consultation document that encouraging greater consumer empowerment is central to the overall vision of creating a thriving, professional private rented sector. Consumers can help drive improvement in the sector through the choices that they make, and more empowered consumers work with a more targeted regulatory regime to identify and act on illegal practice. As we set out in response to questions 14, 15 and 16 below and question 11 above, empowering consumers will require three interrelated sets of changes:

- firstly, tenants need access to good quality information and advice to build a greater understanding of their rights and obligations. Better information and advice will also help tenants to make good choices and hold their landlord or agent to account for poor or illegal practice
- secondly, tenants need greater security and stability in their tenancies to give them confidence to take action to improve poor services or quality in their homes
- Thirdly, tenants (and landlords) need better access to justice that is efficient, expert and in which they have confidence.

**14. What more can be done to improve consumer awareness of rights and responsibilities in the private rented sector?**

Informed tenants are better consumers in the rental market. Tenants who know and understand what services they can expect from their landlord, what constitutes a 'fair deal', the rights they have and how these are protected, where they can turn if things go wrong and their responsibilities as a tenant will help the sector to function more effectively. Informed tenants are also good for landlords as they help to raise standards and improve competition through rewarding good practice and good service. Good quality information and advice can enable tenants to be more responsible and cause fewer problems for landlords, making it easier to avoid disputes.

The Scottish Government Review of the Private Rented Sector found that 22% of tenants surveyed said they did not understand their rights<sup>15</sup>. The survey also found very low levels of awareness by tenants of key initiatives introduced by the Scottish Government to

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<sup>15</sup> <http://www.scotland.gov.uk/Publications/2009/03/23153402/14>

help protect them; 69 per cent of tenants had not heard of Landlord Registration for example. Of the 28 per cent of tenants who had heard of landlord registration, 38 per cent did not know whether their landlord was registered or not. In addition, 70 per cent of tenants did not know if their landlord was accredited, just 11 per cent had heard of the PRHP and 12 per cent had heard of the Repairing Standard.

There is an opportunity with the introduction of the Tenants Information Pack to develop a more comprehensive information strategy for private tenants. The pack is likely to comprise a pdf document that landlords must prove they have delivered to tenants. While this information is welcome, it needs to be built upon to ensure that tenants understand their rights and responsibilities and know where to turn for help. There are a number of options to develop an information strategy for tenants:

- Accompany the launch of the pack with an information/advertising campaign that reaches tenants and prospective tenants. The pack will be mandatory and previous experience suggests that there have been low levels of awareness of new mandatory requirements among tenants in Scotland. New social media as well as traditional media could be used to reach tenants.
- Develop a new 'web-hub' that brings together advice and information to support delivery of the pack. This could be hosted by the Scottish Government or by a third party. It could be where tenants go to download the pack, and would support the pack by providing more detailed information, links and potentially online discussion boards or access to tailored advice. Shelter Scotland would welcome further discussion with the Scottish Government about developing this idea.
- Develop tenant's representative groups. These groups exist elsewhere in Europe but are as yet underdeveloped in the UK. There is one example of a private tenants group in Edinburgh, and a handful of examples of groups from England who have set up to promote the tenant 'voice'.

**15. What more can be done to meet the demand for longer tenancies and greater security of tenure through the existing Short Assured Tenancy, for those tenants and prospective tenants that desire it?**

**16. Should the Scottish Government consider alternatives to the Short Assured Tenancy in order to enable greater tenancy security? If so, what would be the conditions that would need to be met for this to work for landlords as well as tenants? Please provide reasons for your answer.**

We have answered questions 15 and 16 together.



One of the defining characteristics of the PRS is the short term transitional nature of many tenancies. Shelter Scotland thinks there is a strong case for reviewing the tenancy regime to encourage a sector that can play a greater role in meeting housing needs. Private renting is valued as a housing option that offers flexibility to tenants. We would want to retain this element of flexibility but Shelter Scotland would also like to see private renting as a mainstream choice for a wide range of households who cannot afford or do not wish to buy. Below we present the key arguments for greater security and stability for tenants in the PRS, and we provide a potential way in which greater security can be achieved while retaining flexibility for tenants by modernising the assured tenancy regime.

The operation of the Short Assured Tenancy (SAT) regime should not be considered in isolation from how the sector works at present. The current tenancy regime creates a framework of insecurity which in the long run is bad for both tenants and landlords. The PRS is often regarded as a short-term accommodation option with a 'naturally' high level of turnover. The survey of tenants conducted as part of the Scottish Government review of the PRS reported that many people were satisfied with a six month SAT, in particular, people who had been living in the sector for less than a year. This group may include students and people using the sector between house purchases for example. However, the tenant survey notes that it was not possible to explore why tenants thought the SAT should remain at 6 months; nor is it clear what other options might be put to them.<sup>16</sup> The survey also found that people who had been in the sector for longer than two years, and therefore likely to be viewing the PRS as a long term choice, were more likely to want greater security.

What is clear from the survey is that tenants want flexibility in their tenancy, but some find that the lack of security inherent in the SAT has a destabilising influence on their family lives, particularly where it may be difficult to secure alternative accommodation close at hand should their landlord decide to end their tenancy. The prevalence of this problem is confirmed nationally where the private rented sector is given the third most common last accommodation among households applying as homeless<sup>17</sup>. More worryingly still, the PRS is by far the most common previous housing circumstance among families with children who had applied as homeless in 2011/12, nearly a third of all families with children who applied as homeless gave the PRS as their last accommodation, and for couples with children this rises to almost 40 per cent, far exceeding any other form of accommodation. The homelessness figures also show that 39 per cent of homeless

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<sup>16</sup> For example, the questionnaire in the tenant survey explicitly guided the interviewers to tell respondents that any minimum period would apply equally to tenants as to landlords. This not need be the case.

<sup>17</sup> Homelessness Annual Reference Tables 2011/12 (table 6)  
<http://www.scotland.gov.uk/Topics/Statistics/Browse/Housing-Regeneration/RefTables/adhoc-analysis/annualref2011-12>



applicants from the PRS had left as a result of action by the landlord, as opposed to 6 per cent of applicants from local authority landlords and 7 per cent from RSL's.<sup>18</sup>

In addition to the reality of homelessness from the PRS, the *perception* of insecurity by private tenants plays a significant role. This is echoed by research for the Scottish Government which found that tenants in the PRS expressed dissatisfaction with the fact that their accommodation 'did not constitute a home'.<sup>19</sup> The SAT creates a sense of insecurity for tenants which is not easily assuaged and which does little to support the development of the sector as a viable long term housing option.

Shelter Scotland considers that more secure tenancies would not only be a more suitable form of tenancy for many people but that they would also present opportunities to deal with a number of the key difficulties faced by the sector in its current form. More secure tenancies would:

- Encourage the development of the PRS as a realistic longer-term option for those households for whom stability is important.
- Foster more cohesive neighbourhoods and communities with higher levels of engagement from those living in PRS accommodation.
- Empower tenants to be able to use their rights effectively.
- Promote a more tenure-neutral approach to housing policy which is able to rely on the PRS to provide a viable third tenure option.

***More secure tenancies can provide the sort of stability which is important to many groups in the PRS*** - While the sector is valued for flexibility and ease of access, this doesn't necessarily reflect the requirements of all its tenants. The SG Review found that 31% of tenants surveyed sought the PRS because they were explicitly looking for short term accommodation. However, among students this figure is 60%, compared to only 20% among non-students. Mobility, particularly among disadvantaged groups, can have a negative effect on children's education. Around 22 per cent of PRS households contain dependent children. This is comparable to other sectors in which 26 per cent of the social rented sector and 24 percent of owner occupied housing is occupied by households with children<sup>20</sup> and belies the myths that the PRS is the exclusive domain of the young, single and mobile. CLG (Department for Communities and Local Government) research has

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<sup>18</sup> Homelessness Statistics, Publication tables for 2011/12 (table 5a)  
<http://www.scotland.gov.uk/Topics/Statistics/Browse/Housing-Regeneration/RefTables/PublicationTables2011-12>

<sup>19</sup> D, Barr K, and Dean, J, Research on the private rented sector in Scotland, Department of Urban Studies, University of Glasgow, 2002

<sup>20</sup> Scottish Household Survey 2009 (data provided on request)

found that the link between mobility and educational outcomes is strong and that frequent moving may also have a negative impact on children's health, as frequent movers are less likely to be registered with GP surgeries<sup>21</sup>. Increasingly the government is also looking to house vulnerable groups in the PRS as an alternative to a social rented tenancy. The Scottish Government has indicated that longer term tenancies are a key element in ensuring stability for households placed in the PRS as a result of a homeless application under section 32A of The Housing (Scotland) Act 1987.

**More secure tenancies could also make a positive impact on communities.** It is notable that community engagement tends to be lower among private renters only a quarter of whom are likely to be involved in voluntary work in their local community as compared to a third of owner occupiers<sup>22</sup>. Shelter Scotland believes that longer-term tenancies for households who want to stay in the PRS can contribute positively to meeting the Scottish Government national outcome of strong, resilient and supportive communities by encouraging higher levels of community involvement from local people, pride in the local environment and increased cohesion between individual households.

**More secure tenancies would enable tenants in the PRS to become more empowered to assert their rights effectively.** As a general principle a market works best where consumers are equal partners and well informed. Thus, strengthening consumers' position is fundamentally about the interests of the sector as a whole. Much of the reform in the PRS in the last five years has focussed on top-down regulation because consumers' position is so weak. For example, how effectively can poor standards in the PRS be tackled in a system where a tenant can be so easily evicted if s/he attempts to exercise their rights to repair. Shelter Scotland believes that, in the first instance, landlords must live up to their responsibility to provide good quality homes for their tenants. However, we consider that short-term tenancies promote an attitude of 'what's the point' or worse, 'I can't risk it' among tenants who might otherwise raise issues of concern with their landlords, local authorities or the PRHP. Even if a landlord is not minded to evict their tenant in response to a complaint, the perception of this threat is powerful in itself. Research by Citizen's Advice found that 48 per cent of environmental health and tenancy relations officers considered that tenants were 'always' or 'often' put off from using their help because of fears of jeopardising their tenancy<sup>23</sup>. This research is also reflected in Shelter Scotland's experience, as we reflected in answer to question 4. More secure tenancies can provide more certainty for tenants, especially for those at the sector's lower end, for whom reliance on the market to eliminate bad practice and poor conditions is particularly ill-placed.

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<sup>21</sup> CLG, Moving on – reconnecting frequent movers, 2006

<sup>22</sup> Scottish Household Survey 2009 (data provided on request)

<sup>23</sup> Citizen's Advice, Tenants dilemma – warning your home is at risk if you dare complain, 2007

***More secure tenancy arrangements in the PRS would also enable the development of a more versatile sector able to play a greater role in meeting housing need overall.***

Policy makers' view of the PRS has evolved over recent years. Rather than seeing it as simply a stop gap transitional sector able to meet short term requirements, there has been a recognition that the sector can cater for a more diverse range of needs. Over recent years the PRS has played an increasingly vital role in meeting housing need for people who would not qualify for a social rented house and cannot afford owner occupation. In addition, the credit crunch has shaken the belief that owner occupation is the apex of housing aspiration, it has also coincided with the lowest stock of socially rented homes since 1959. There is a compelling case to be made for private rented housing playing a greater role as a long term housing choice.

Shelter Scotland believes that creating more secure tenancies should be a key part of the government's strategic vision for the PRS. The Scottish Government should consider whether the SAT, designed in the late 1980s to attract landlords back to a sector which had been in steep decline, is necessarily the best tenancy to promote future growth. If the sector is to grow, as the Scottish Government argues it should, then it seems inevitable that this will be from people seeking longer term accommodation. Specifically, if the sector is to house more homeless and lower income groups, then the Scottish Government Review shows that this will be accompanied by aspirations for longer tenancy lengths. Further, if prevention of homelessness is to continue to be a major theme in Scottish Government policy the increasing extent to which the PRS is a source of homelessness will need to be addressed.

**What alternative arrangements could be made to provide tenants in the PRS with greater security and stability?**

Shelter Scotland's preferred option for creating greater security and stability for private tenants is to alter the tenancy provisions as set out in the Housing (Scotland) Act 1988. A short assured tenancy is a special form of assured tenancy allowed for under section 32 of the Housing (Scotland) Act 1988 which requires that the length of the tenancy is at least 6 months and a prescribed notice is served before the creation of the tenancy by the landlord to the tenant. The simplest way of modernising the short assured tenancy would be to abolish it and require that all future tenancies are let on full assured tenancies. This would be Shelter Scotland's preferred position since it would create a single category of secure tenancies in the private rented sector with broadly comparable levels of security to the social rented sector. The houses would, however, continue to be let on market rents (see below) and landlords would be able to repossess linked to specific grounds using modernised procedures.

We set out below in more detail our initial thoughts about how the assured tenancy model could be modernised, and we would welcome further discussion with the Scottish Government and other stakeholders about the details of this option, or alternatives that might be suggested.

### **Modernising the Assured Tenancy Regime**

The 1988 Act allows for an assured tenancy to be a contractual tenancy which only becomes a statutory tenancy once the contractual tenancy is terminated. This may have been intended to allow maximum flexibility to the parties to agree contractual terms although, in practice, it is likely to allow for terms to be dictated by the landlord as the stronger party. In any event it is very confusing since statutory requirements immediately commence in relation to certain matters once the contractual tenancy is terminated including security of tenure. In any revision of the assured tenancy provisions, it would be much better to follow the approach of the Scottish secure tenancy and set out clear minimum, statutory provisions leaving other matters for agreement between the parties.

On this basis, the assured tenancy statutory provisions should be modernised along the following lines:

- Full security of tenure so that repossession is only possible through a repossession order (approved by the court, or a Private Rented Housing Committee or alternative tribunal– see below) linked to specified grounds for repossession. In essence, this is the existing position for assured tenancies.
- Given that it is almost 25 years since the passage of the 1988 Act from which most of the grounds for repossession derive, it would be sensible to undertake a detailed review of the grounds for repossession.
- A specified period of notice for tenants wishing to terminate the tenancy – a period of 28 days is specified for the SST.
- Succession rights for spouses and civil partnerships with the automatic transfer of joint tenancies to tenancies of sole survivors – very similar to the existing provisions.
- An entitlement to a joint tenancy by spouses and civil partners.
- A prohibition of premiums and advance payments – as at present.

- A requirement on landlords to ensure that the house meets the statutory repairing standard together with access for landlords to undertake repairs and to assess the condition of the property given reasonable notice etc – similar to the existing provisions and a requirement on tenants to get permission before undertaking improvements or alterations.
- A clear statement that assignation and subletting of tenancies shall require the approval of landlords – as at present
- Provisions on rent – in effect allowing the initial rent to be fixed contractually between the parties with any subsequent rent increases to require agreement by a PRHP which would follow the principle of market rents. A variant of this would be to allow initial rents and a formula for subsequent changes to be agreed contractually with any subsequent changes requiring approval by a PRHP. Something on these lines would be broadly consistent with the current provisions. An alternative and less bureaucratic approach would be to specify that rents should only be increased at specified intervals (for example, not more than once per year on the anniversary of the tenancy) and then increased or reduced in line with the movement of market rents for equivalently sized houses in the relevant broad market rental area as assessed by the Rent Officer Service. It would be possible to index rents in other ways, for example, by linking increases to general price movements as reflected in the RPI/CPI or the movement of wages. But anything that moved away from market prices could either penalise tenants, as a link to the RPI/CPI would at present or, over time, dis-incentivise investment by landlords as was the case with rent controls in the past.
- Improvements in the arrangements for the recovery of tenancies by landlords under when the assured tenancy given the delay and cost involved in recovering tenancies through the courts. As noted above, our understanding is that the Scottish Government will be consulting on new arrangements for resolution of tenancy disputes which should include the responsibility for dealing with repossessions and other relevant tenancy disputes in the private rented sector.

## **17. What more can be done, and by whom, to ensure that vulnerable tenants living within the private rented sector are protected and are aware of their rights and responsibilities?**

In 2009, Shelter Scotland was commissioned by Consumer Focus Scotland to undertake a review of research on disadvantaged and potentially vulnerable households in the PRS<sup>24</sup>. Following this report, Shelter Scotland and Consumer Focus Scotland jointly published a report with recommendations to address the needs of this group.<sup>25</sup>

Vulnerable tenants include:

- those who have their rent paid either in full or in part by Housing Benefit and who therefore live on very low incomes;
- those in low-paid employment who have few housing options open to them other than the PRS;
- students who receive only limited or no parental support;
- migrant workers;
- tenants in tied housing which is linked to low-paid employment;
- individuals who moved into the PRS after being evicted from the social rented sector or, having their home repossessed by a mortgage lender; and
- formerly homeless households who have been housed in the PRS as a deliberate consequence of policy.

Our recommendations on reform of regulation and the tenancy regime should benefit vulnerable tenants.

### **Illegal evictions**

Despite the existence of laws intended to protect tenants, Shelter Scotland continues to be contacted by households who have been illegally evicted from their home. An illegal evictions occurs when a tenant is evicted without the landlord gaining a court order for possession; by changing the locks when the tenant is away from the property; or by engaging in threats of violence towards the tenant. Landlords are also guilty of harassment if they behave in a way intended to force the tenant from the property, for example intimidation, or withholding or withdrawing services such as gas or water.

An accurate assessment of the scale of unlawful evictions is difficult. This is because tenants have little knowledge of their rights, with many not reporting the matter to the police in the first place. It may be possible to get a figure for the number of reported

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<sup>24</sup> <http://www.consumerfocus.org.uk/assets/3/files/2009/10/Shelter-Report-for-CFS-on-the-Private-Rented-Sector-in-Scotland.pdf>

<sup>25</sup> <http://www.consumerfocus.org.uk/scotland/files/2009/12/CFS-Shelter-Report-Policy-Paper1.pdf>

unlawful evictions per year, but this is dependent on a robust reporting system within each police force. In a few cases, the procurator fiscal agrees to take forward court action, but this is rare. Nevertheless, Shelter Scotland hears from many tenants who come to us for advice or help with illegal eviction from their private sector let:

**Zoe** was assisted by Shelter after her landlord had tried to force entry to her flat to illegally evict her. The Police had been with the landlord and had tried to help the landlord to force access. Following contact with a Shelter adviser who advised the Police of the relevant legislation, the Police have now formally charged the landlord with harassment under the Rent (Scotland) Act.

**Sarah** called Shelter Scotland as she rented a large farmhouse where the landlord would enter without permission. The landlord entered the property and assaulted her and her husband and evicted them. She also believed that the landlord had illegally evicted other tenants. Private Landlord Registration at the council had advised her that they were investigating the landlord but there is a limit to what they can do. After going to the police she had been told that illegal eviction is a civil matter.

Shelter Scotland was contacted by **Gabriel** who had a private rented sector tenancy who was a few days late in paying his rent after problems with finding a bank branch while on holiday in England. The letting agent then sent round a "big man" round to the property who told the client that he had one hour to pack his belongings and to leave the property. Gabriel was from Nigeria and was not aware of the law. The letting agent took the keys away.

**Louise** called Shelter Scotland seeking advice after being evicted. Louise had been away from the flat for 6 days and returned to find the locks changed. She had received no paperwork regarding the letting agents wishing to end her tenancy.

**Jack** called Shelter Scotland as he was illegally evicted the previous night. His landlord had changed the locks to his property with the furniture still inside the flat. Subsequently Jack made a homeless application and the council contacted the landlord to advise him that the eviction was illegal and that he was entitled to his furniture and belongings. The landlord told Jack that he could get his belongings that day but the landlord was keeping the furniture.

**Emma** had a short assured tenancy and called Shelter Scotland as her landlord was not letting her into the property. She had signed a 12 month tenancy agreement four months previously. She had initially got on well with the landlord but then felt the landlord was beginning to harass her. She went to stay with her family for a few days to get away from the harassment and when she returned to the tenancy the landlord was in the property



and would not allow her in. Emma's property was still in the flat and she wanted to carry on living there.

**David** called Shelter Scotland seeking advice on behalf of his mother. She was told by her landlord that she had to leave the following day as she was complaining about repairs to the property and the landlord was refusing to carry these out. She had not been served any notices by the landlord.

A **social worker** called Shelter Scotland as one of the families she represented was threatened with eviction by their landlord. They had been in their private rented sector accommodation for four and a half months. The mother was heavily pregnant and father had severe mental health issues and a history of suicide attempts. The landlord was threatening to forcibly remove them from the property and change the locks. The social worker was also aware that this landlord recently evicted another family with no court order.

Eviction without due process and harassment of tenants is a criminal act and a breach of the Rent (Scotland) Act 1984 and provisions in the 1988 Housing Act. However, despite the apparent strong legal protection for tenants, unlawful evictions and harassment persist because the laws protecting tenants from unlawful eviction are difficult for tenants to enforce. Unlike in England, there is no requirement for police to investigate allegations of harassment or unlawful eviction in Scotland. For a landlord to be charged with unlawful eviction, the tenant must report the matter to the police, who in turn can decide whether to refer the matter to the procurator fiscal for prosecution. However, heavy caseloads mean that the police and the procurator fiscal face competing priorities, and as a result illegal evictions can be overlooked. The difficulties involved in getting the police to investigate, and the fiscal to prosecute, act as a powerful disincentive to tenants to take a case against a landlord who has broken the law.

In addition, tenants have very little knowledge of their rights regarding security of tenure or the law on eviction. Many tenants are unaware that landlords must gain a court order before being able to evict, let alone understand that the law can protect them if the landlord fails to do that.

The current system effectively makes it easier for landlords to break the law. They can exploit the fact that tenants have little knowledge of the law, and that criminal prosecutions are difficult to secure and very rare.



Shelter Scotland recommends legislation to change the way investigations are carried out. We need a duty on local authorities to take reasonable practicable steps to investigate where there are accusations of alleged unlawful evictions - similar to the duty they currently have under environmental health legislation to investigate instances of nuisance. This would take the burden off the police, and into the hands of local authorities.

An individual who has been the victim of alleged unlawful eviction would therefore contact the local authority, which would have a duty to investigate. As part of that investigation, it would notify the police as a precautionary measure, though the onus is on the local authority to assemble a case and present this to the procurator fiscal in order to consider whether a prosecution is merited. Such a system fits much more efficiently with duties on local authorities to prevent homelessness.

### **18. What more can be done by the Scottish Government to mitigate against the UK Governments Welfare Reforms that affect the private rented sector?**

Shelter Scotland is a member of the Scottish Government Stakeholder Advisory Group on housing benefit reform which has been monitoring the impact of the reforms to housing benefit and local housing allowance (LHA) and helping landlords and tenants to prepare for the introduction of Universal Credit.

The Scottish Government predicted that the cumulative effect of the changes to cap LHA and reduce the level at which it is paid, that took place in 2011, would impact on 55,000 households in Scotland with households losing on average £10 a week. The Scottish Government also estimates 3000 more homeless presentations due to changes to LHA. In addition, future increases in the rate of LHA will not be based on changes in actual rent levels but instead be linked to changes in the Consumer Price Index. Over time, this link to CPI is likely to significantly reduce levels of housing benefit for private tenants.

One further change in eligibility for housing subsidy for private tenants that came into effect in January 2012 has restricted claimants under the age of 35 to the rate of LHA for a room in shared accommodation, rather than a self contained home. This applies to all new claimants from January 2012, with existing claimants phased in later. Losses to tenants vary across Scotland from £17.31 to £54.23 a week, but all losses are large enough to severely restrict, if not eliminate, the affordability of non-shared accommodation for the under 35's. Of the around 7,500 single people aged 25-34 receiving housing allowance in Scotland, an estimated 4,400 will lose as a consequence of the change by an average of around £22 a week.

The change will restrict the options for under 35's in the PRS and limit the ability of local authorities to place single homeless people in private rented accommodation as a way of meeting their homelessness duties.

Changes to housing benefit levels and eligibility are already starting to take effect in Scotland. We suggest that the Scottish Government takes urgent action to try to mitigate the worst of the effects for tenants in the PRS. We have three suggestions for actions that the Scottish Government could take.

1. **Make best use of DHP to help tenants in the PRS -**

The DWP announced that they are making additional amounts of money available to local authorities to make discretionary housing payments (DHP's) to offset some of the impact of the cuts in the transitional period. The following table provided by DWP shows the core amount allocated for DHP over the next few years, and the additional amount provided to help LHA claimants and claimants in the social and private rented sectors who have been affected by the overall benefit cap<sup>26</sup>:

£ millions	2010/11	2011/12	2012/13	2013/14	2014/15
Core	20	20	20	20	20
LHA additional	-	10	40	40	40
Benefit cap	-	-	-	65	55

Local authorities can also add 1 ½ times these figures from their own budgets. As the name suggests, the award of these additional payments to tenants is at the discretion of the local authority, and the onus is on tenants themselves to be proactive to claim them. Shelter Scotland's concern is that tenants in the PRS will not know about the availability of DHP's to make a claim, and that the existence of DHP money will not do all it can to mitigate some of the impact of the cuts to the PRS in Scotland. We anticipate that tenants in the social rented sector will be at an advantage because social landlords will be actively encouraging them and supporting them to make a claim to protect their rental income. We would like the Scottish Government to work with Local Authorities to help to ensure that private tenants claims for DHP are given due consideration and that tenants who are claiming housing benefit are made aware both of the existence of DHP's and the criteria on which they will be assessed. This could be done through writing to all claimants, and proactively raising awareness of DHP's with advice agencies and landlords bodies. We would also like the Scottish Government to consider ways to monitor the distribution of DHP's and where claims for awards are coming from.

<sup>26</sup> The overall benefit cap will apply to both tenants in the social and the private rented sectors. The DWP have not indicated what proportion of the money available should be direct to PRS or SRS tenant, however, the numbers of tenants affected by the cap in the PRS are slightly higher and the average losses will be significantly greater, so it would seem logical that more of the money should be directed toward private tenants.

## 2. **Secure availability and access to shared accommodation –**

As we set out above, 4,400 tenants will lose out as a result of changes to the Shared Accommodation Rate (SAR) by around £22 per week. The Scottish Government have carried out analysis which shows that

*“in 14 out of Scotland’s 32 local authority areas, the annual supply of shared accommodation will have to more than double to meet the additional needs of those losing from the change”<sup>27</sup>*

In addition, in remote and very remote small towns and remote and very remote rural areas the existing supply of shared accommodation in these areas will have to increase by over 2/3 to meet the additional need.

*“Since the losers and existing supply will be scattered in ones and twos over the areas it is very unlikely that additional supply will become available in the right place to meet the change in need.”<sup>28</sup>*

Across Scotland, and particularly in these areas, the demand for shared accommodation is likely to increase significantly among benefits claimants over the next few years, and indeed for the population as a whole with the general trend towards people living alone set to continue at a faster pace.<sup>29</sup> Shelter Scotland would like the Scottish Government to proactively address how to increase the supply of and access to shared accommodation among low income households. One option might be for housing associations and other social enterprises to develop a letting management service designed to match people and help them access shared accommodation, and to support tenants with the additional responsibilities associated with sharing a home. The Cyrenians SmartMove project is an excellent example of this.<sup>30</sup>

## 3. **Develop social lettings agencies in Scotland –**

Social, or Local, Lettings Agencies are designed to open up access to the PRS to low income households, and while they have been developed extensively across England and Wales, they are relatively new to Scotland (PKC Lets established by Perth and Kinross Council in May 2010<sup>31</sup> as part of their housing options initiative).

Social Lettings Agencies aim to encourage more landlords to let to low income tenants by providing a low cost not-for-profit letting and management service, and

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<sup>27</sup> <http://www.scotland.gov.uk/Topics/Built-Environment/Housing/supply-demand/chma/marketcontextmaterials/ImpactSharedAccomm>

<sup>28</sup> Op cit.

<sup>29</sup> One adult households projected to increase from 36% of the total population in 2008 to 45% in 2033 quoted in: Evidence review of the Private Rented Sector in Scotland, Communities Analytical Services, Scottish Government, April 2012.

<sup>30</sup> [http://www.cyrenians.org.uk/what\\_we\\_do/smartmove.aspx](http://www.cyrenians.org.uk/what_we_do/smartmove.aspx)

<sup>31</sup> <http://www.pkc.gov.uk/Housing/Private+housing/Private+landlords++advice+and+support/PKC+Lets.htm>

to open up access to low income tenants by removing the fees and risk associated with commercial letting agents. In some areas, Social Letting Agencies have developed a private sector leasing scheme for shared accommodation to reduce the risk to landlords of operating shared accommodation.

We think there is merit in the Scottish Government actively looking to develop Social Lettings Agencies in Scotland, through both start-up funding and developing best practice and information sharing. Shelter Scotland would welcome further discussion with the Scottish Government to develop this further.

**For further information contact Rosemary Brotchie on 0344 515 2471 or [rosemary\\_brotchie@shelter.org.uk](mailto:rosemary_brotchie@shelter.org.uk)**