

# The case for greater security for private tenants in Scotland

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Shelter  
Scotland

## Summary

- Shelter Scotland shares the Scottish Government's 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<sup>1</sup>, and it is expected that the demand will grow further in the future especially from families, young people and low income households. Scotland has an opportunity to review how the PRS functions and ensure that the right framework is in place to allow it to evolve to become fit for the twenty-first century.
- Shelter Scotland is calling for greater security of tenure in the PRS. We believe that the current short assured tenancy regime, where the most common tenancy term is six months, is not fit-for-purpose given the size of the sector and the shifting demographics of tenants who rent privately.
- As more people call the PRS home it is important that the sector adapts to the changing needs of its customer base. Young people are increasingly locked out of home ownership and more families are now living in the PRS. There is no reason why these groups should not have the level of security in their home that previous generations could aspire to. As the PRS is now a long-term housing option for many, it is imperative that we consider the current level of security and stability the sector provides.
- Introducing greater security of tenure in the PRS would mean that tenants could stay in their home for as long as they need, but still retain the flexibility to move if their circumstances change. It would not mean tying tenants into long contracts with long term rent liability. Our solution is to replace the short term fixed tenancies which currently exist in Scotland, with open ended and more secure tenancies. Tenants would be able to give their landlord reasonable notice should they need to leave, with the potential for longer notice periods where tenants have been living in a property over a specified period of time. This would give landlords enough time to find a new tenant, while making sure that tenants who need flexibility are not stuck in long tenancies.
- Greater security would allow tenants to confidently ask landlords to fulfil their legal responsibilities without fear of being asked to leave at the end of their tenancy. This

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<sup>1</sup> 'Housing Statistics for Scotland - Key Information and Summary Tables' published 26 August 2013  
<http://www.scotland.gov.uk/Topics/Statistics/Browse/Housing-Regeneration/HSfS/KeyInfoTables>

would in turn increase the overall housing quality in the sector. It would allow households with children to make plans for their future, eg what school their children will go to, knowing that they will have a place to call home for as long as they need. Those locked out of home ownership would also benefit from the stability of extra security – being able to lay down roots in their communities.

- The benefits of more security for tenants also extend to landlords. Tenants who are confident that they can stay in their homes for as long as they need could help to reduce the number of void months that landlords need to account for per year, and encourage investment in the PRS.
- Importantly, landlords would still be able to get their property back if they require to live in it as their home, or sell it. And we need to consider whether the current notice periods are sufficient – longer notice periods for tenants who have been living in a property for a long period of time should be considered. To supplement this, an easy-to-access dispute resolution service should be available for both tenants and landlords, in the form of a housing tribunal.

## Recommendations

Shelter Scotland recommends that the Scottish Government act to rethink the current relationship between landlords and tenants in Scotland's private rented sector. We believe this can be achieved by:

- Removing the short assured tenancy and modernising the assured tenancy to guarantee that tenants have a home to live in for as long as they need it.
- Reviewing the current grounds for possession under the assured tenancy regime to ensure that landlords can regain possession of their properties under certain circumstances.
- Reviewing the procedure for rent increases, with consideration of starting with an initial market rent put up by an inflationary index or contractually agreed amounts at agreed points during the tenancy.
- Keeping a flexible approach to notice periods ensuring that flexibility remains for those tenants who need it.

- Setting up an easy-to-access dispute resolution service to resolve issues between landlords and tenants, and to ensure that possession procedures are efficiently handled.

## Introduction

The private rented sector in Scotland has expanded rapidly over the past ten years. In this time the demographic of people who live in the PRS has also changed; more families set-up home in the sector and those priced out of home ownership also live in the sector long-term. Expansion of the PRS as a housing provider presents many opportunities – particularly given the current pressures on housing supply in Scotland. Shelter Scotland believes that the PRS plays a vital role in meeting housing need. For it to live up to its full potential we need to consider whether the current tenancy regime best suits the tenants who set up home in the PRS.

In our submission to the Scottish Government's 'Consultation on a Strategy for the Private Rented Sector'<sup>2</sup>, we argued that reforming the tenancy regime is the lynchpin for transforming the PRS. 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.

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

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<sup>2</sup> Shelter Scotland, 'Consultation response: A strategy for the private rented sector', July 2012  
[http://scotland.shelter.org.uk/data/assets/pdf\\_file/0010/577522/Shelter\\_Scotland\\_PRS\\_Strategy\\_Consultation\\_Response\\_July\\_2012\\_FINAL.pdf](http://scotland.shelter.org.uk/data/assets/pdf_file/0010/577522/Shelter_Scotland_PRS_Strategy_Consultation_Response_July_2012_FINAL.pdf)

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.

This briefing paper examines how PRS tenants' needs have changed in recent years and how we can best meet these needs, making the case for enhancing security of tenure.

## Context

There are currently 305,000 households living in the PRS – this constitutes 12% of all households in Scotland and is double what was ten years ago<sup>3</sup>. During this period the number of households living in the social rented sector has decreased, from 32% in 1999<sup>4</sup> to 24% in 2012<sup>5</sup>. The number of owner-occupiers has remained roughly the same; barriers to home ownership include rising property prices, the unavailability of mortgages and stagnant wages. There has been a marked decrease in households living in the more secure social sector and at the same time, an increase in people living in the less secure PRS.

In many other countries across Europe and worldwide, private renting is a mainstream housing option and constitutes a large proportion of housing. Reflecting the importance of the sector as a housing provider, many of these countries offer tenants a relatively high level of security in their homes. Shelter in England conducted an international comparison of rental markets to compare approaches to balancing landlord and tenant interests<sup>6</sup>. In comparison with a broad range of other OECD<sup>7</sup> member countries, the report shows that private tenancies in the UK, including Scotland<sup>8</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

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<sup>3</sup> 'Housing Statistics for Scotland - Key Information and Summary Tables' published 26 August 2013

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

<sup>4</sup> Scottish Government, 'Scotland's People, Annual report: 2011, Scottish Household Survey 2011',

<http://www.scotland.gov.uk/Publications/2012/08/5277/downloads>

<sup>5</sup> 'Housing Statistics for Scotland - Key Information and Summary Tables' published 26 August 2013

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

<sup>6</sup> Shelter Policy briefing, 'Generation Rent: Learning from different rental markets', October 2011, published by Shelter in England

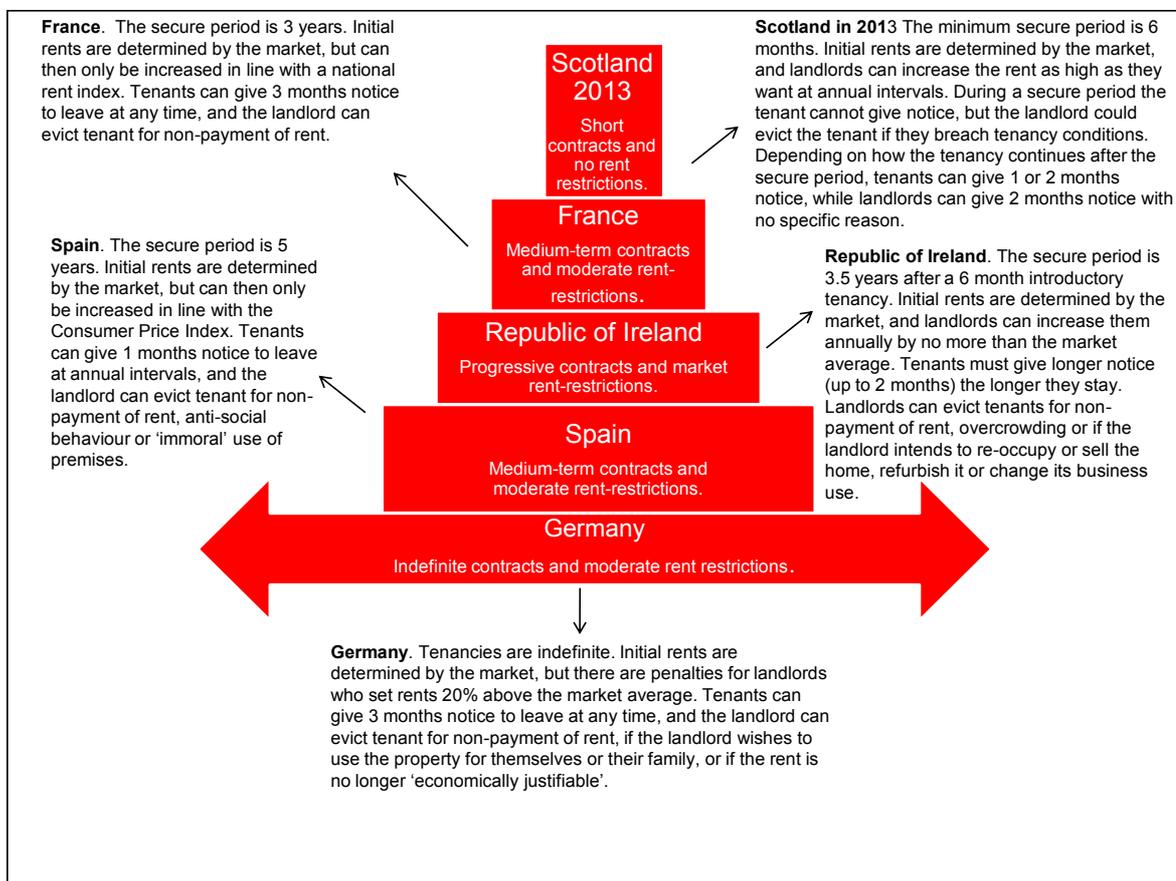
[http://england.shelter.org.uk/\\_data/assets/pdf\\_file/0019/392410/International\\_comparisons\\_briefing\\_v6.pdf](http://england.shelter.org.uk/_data/assets/pdf_file/0019/392410/International_comparisons_briefing_v6.pdf)

<sup>7</sup> Organisation for Economic Co-operation and Development

<sup>8</sup> The report refers to the English assured shorthold tenancy which is broadly comparable to the short assured tenancy in Scotland.

tenants' homes, even if they pay their rent on time and comply fully with their tenancy agreement.

Figure 1<sup>9</sup>:



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>9</sup> Adapted from Shelter Policy briefing, 'Generation Rent: Learning from different rental markets', October 2011, 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.

## Who calls the private rented sector home?

In recent decades private renting has been seen as a sector for people who want flexibility – for example, students, migrant workers and young professionals. However, as the sector has increased in size, this picture has changed. The so-called ‘Generation Rent’ now rely on private renting for their long term homes, with around 33% of the 16 to 34 age group renting privately in 2010, up from 13% in 1999<sup>10</sup>. Locked out of the owner-occupier market due to a mixture of high house prices, stagnated wages and low availability of mortgages, for this group, the PRS is already a long-term housing option, even though their long-term aspiration may still be home ownership.

More and more families also now live in the PRS; 26% of households renting privately in Scotland have children<sup>11</sup>. And, strikingly, research has shown that the number of children living in the private rented sector is growing rapidly. The ‘Growing Up in Scotland’ study found that the proportion of children living in the PRS more than doubled between 2004/5 and 2010/11 – up from 6% in 2004/5 to 16% in 2010/11<sup>12</sup>. Stability is of the utmost importance for families with young children – it has a positive effect on children’s overall health and educational attainment.

According to the Scottish Household Survey, 51% of those who had lived at their current address for less than one year are from the PRS<sup>13</sup> - demonstrating that the reality is that PRS is currently geared towards being a more transient housing option. The short-term

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<sup>10</sup> Scottish Household Survey 2010 as cited in ‘Private rented sector – Evidence Review’, Scottish Government, April 2012 <http://www.scotland.gov.uk/Topics/Built-Environment/Housing/privaterent/evidencereview>

<sup>11</sup> Scottish Government, ‘Scotland’s People, Annual report: 2011, Scottish Household Survey 2011’, <http://www.scotland.gov.uk/Publications/2012/08/5277/downloads> - detailed breakdown of data made available on request

<sup>12</sup> Scottish Government, ‘Growing up in Scotland: Birth Cohort 2, Results from the first year’, p45 <http://www.scotland.gov.uk/Resource/0041/00414641.pdf>

<sup>13</sup> Scottish Government, ‘Scotland’s People, Annual report: 2012, Scottish Household Survey 2012’, <http://www.scotland.gov.uk/Publications/2013/08/6973/downloads>

nature of PRS tenancies does not help. It can put consumers in a poor bargaining position when it comes to asserting their tenancy rights. Tenants may prefer not to complain to their landlord due to the risk that their tenancy will be terminated at the end of the fixed term. This is clearly not in the interests of a household looking for long-term home.

Importantly, it is still the sector of choice for students too, 68% of whom choose to live in the PRS during their studies<sup>14</sup> – highlighting the importance that any change to the tenancy regime should not be overly restrictive for tenants who require flexibility. However, all PRS tenants should be able to make plans for the future in a home that is safe, secure and of a high standard.

## The current tenancy regime in the private rented sector

The main form of tenancy in the PRS is the assured tenancy. The most common form of this tenancy is the 'short assured tenancy' which has a minimum term of six months. Landlords and tenants have the option to sign longer contracts, however these are rarely used and the six month minimum is by far the most common term of tenancy<sup>15</sup>. At the end of the fixed period landlords are guaranteed possession of the property as long as they serve the correct notices. No reason other than the end of the fixed term is required to ask a tenant to leave. Those tenants who are in this situation have no choice but to find another property before the tenancy comes to an end. We believe that this is not a satisfactory situation for a household looking to put down roots in a community. A tenancy in the PRS should not be seen as the poor relation of a let in socially rented home or of home ownership. Households in the PRS should be offered similar, if not the same, level of security in relation to their home as tenants renting under different tenures.

## Are insecure tenancies a problem?

The current short assured tenancy (SAT) regime creates a framework of insecurity which in the long run is bad for both tenants and landlords. Tenants have a very limited security of tenure – sometimes as little as six months – which can lead to insecurity in their home. Landlords can be left in a situation where they need to find new tenants at the end of every fixed period. Meaning they need to budget for potentially unnecessary void months where no tenant is living in a property. However, a survey of tenants conducted as part of the Scottish Government review of the PRS reported that many people were satisfied with

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<sup>14</sup> Scottish Government, Household Survey 2010, as cited in 'Private rented sector – Evidence Review', Scottish Government, April 2012 <http://www.scotland.gov.uk/Topics/Built-Environment/Housing/privaterent/evidencereview>

<sup>15</sup> A survey of private landlords found that only 6% offered full assured tenancies, see Scottish Government, 'Review of the Private Rented Sector: Volume 1', 2009 <http://www.scotland.gov.uk/Resource/Doc/264996/0079349.pdf>

a six month SAT. In particular, people who had been living in the sector for less than a year<sup>16</sup>. 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>17</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 easily should their landlord decide to end their tenancy<sup>18</sup>. The prevalence of this problem is confirmed nationally where the private rented sector is given as the third most common last accommodation among households applying as homeless, after living with family or with friends/partners, and coming ahead of social lets and owner occupied accommodation<sup>19</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 2012/13, around a quarter of families with children who applied as homeless gave the PRS as their last accommodation. For couples with children this rises to 43%, far exceeding any other form of accommodation. The homelessness figures also show that 40% of homeless applicants from the PRS left as a result of action by the landlord, as opposed to 6% of applicants from local authority landlords, and 8% from registered social landlords<sup>20</sup>.

In addition to the reality of homelessness from the PRS, the perception of insecurity by private tenants plays a significant role in how private tenants think about where they live. 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

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<sup>16</sup> Para. 4.58, Scottish Government, 'Review of the Private Rented Sector: Volume 1', 2009  
<http://www.scotland.gov.uk/Resource/Doc/264996/0079349.pdf>

<sup>17</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>18</sup> Para. 5.14, Scottish Government, Review of the Private Rented Sector: Views and Experiences of Tenants in the Private Rented Sector, Volume 2, 2009 <http://www.scotland.gov.uk/Publications/2009/03/23153402/0>

<sup>19</sup> Scottish Government, Homelessness Annual Reference Tables 2012/13 (table 6)  
<http://www.scotland.gov.uk/Topics/Statistics/Browse/Housing-Regeneration/RefTables/adhoc-analysis/annualreferencetables201213>

<sup>20</sup> Scottish Government, Homelessness Statistics, Publication tables for 2012/13 (table 5a)  
<http://www.scotland.gov.uk/Topics/Statistics/Browse/Housing-Regeneration/RefTables/PublicationTables2012-13>

home'<sup>21</sup>. The SAT creates a sense of insecurity for tenants, which is not easily assuaged and does little to support the development of the sector as a viable long term housing option. Rather than seeing the PRS as a sector of last resort, we want to see the PRS as a sector of choice. Tenants should have confidence in the private sector as a provider of long-term housing. They should feel confident when asking for legal standards to be enforced and feel secure in their home, able to plan for the future and give stability for their families. To achieve this it is vital that the tenancy regime in the PRS adapts to reflect the changing needs of tenants by adopting stronger security of tenure.

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 active consumers who are 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.

To achieve this it is essential that increased security is embedded throughout the whole PRS tenancy regime and not just promoted for a select few households. The overwhelming majority of landlords will, by and large, continue to prefer to use shorter fixed term tenancies if they are still available, regardless of whether more open-ended assured tenancies are promoted. What we need is a sector-wide change to the tenancy regime to guarantee greater security for all PRS tenants and deliver a step change for the whole sector. This can only be brought about by a legislative change to current tenancy regime for all tenants and landlords, rather than relying on voluntary arrangements.

### **More security means more stability for private renters**

While the sector is valued for flexibility and ease of access, this doesn't necessarily reflect the requirements of all its tenants. The Scottish Government 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%

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<sup>21</sup> D, Barr K, and Dean, J, Research on the private rented sector in Scotland, Department of Urban Studies, University of Glasgow, 2002

among non-students<sup>22</sup>. Mobility, particularly among disadvantaged groups, can have a negative effect on children's education. Around 26% of PRS households contain dependent children<sup>23</sup>, which belies the myths that the PRS is the exclusive domain of the young, single and mobile. Research by the Department of Communities and Local Government has 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>24</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 security makes for stronger 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>25</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's national outcome of strong, resilient and supportive communities<sup>26</sup>. Greater security would encourage higher levels of community involvement from local people, pride in the local environment and increased cohesion between individual households.

### **More security would empower private tenants to assert their rights effectively**

As a general principle, a market works best where consumers are equal partners and well informed. 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 the consumer's 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

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<sup>22</sup> Para 3.20, Scottish Government, 'Review of the Private Rented Sector: Volume 1', 2009  
<http://www.scotland.gov.uk/Resource/Doc/264996/0079349.pdf>

<sup>23</sup> Scottish Government, 'Scotland's People, Annual report: 2011, Scottish Household Survey 2011',  
<http://www.scotland.gov.uk/Publications/2012/08/5277/downloads> - detailed breakdown of data made available on request

<sup>24</sup> Department for Communities and Local Government, 'Moving on – reconnecting with frequent movers', 2006

<sup>25</sup> Scottish Household Survey 2009 (data provided on request)

<sup>26</sup> Scottish Government, National Outcomes (2007), Communities  
<http://www.scotland.gov.uk/About/Performance/scotPerforms/outcomes/communities>

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 Private Rented Housing Panel (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% 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>27</sup>. This research is also reflected in Shelter Scotland's experience of working with clients. 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.

### **Tackling disrepair**

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<sup>28</sup>. 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 stable, and that three in ten properties are considered to have extensive disrepair to critical elements<sup>29</sup>.

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 PRHP and would rather live

<sup>27</sup> Citizens' Advice, Tenant's dilemma - warning: your home is at risk if you dare complain, 2007, [www.citizensadvice.org.uk/tenants\\_dilema\\_-\\_document.pdf](http://www.citizensadvice.org.uk/tenants_dilema_-_document.pdf)

<sup>28</sup> Scottish Government, 'Scottish House Condition Survey: Key Findings 2010', November 2011 <http://www.scotland.gov.uk/Publications/2011/11/23172215/0>

<sup>29</sup> Scottish House Conditions Survey 2010 as cited in 'Private rented sector – Evidence Review', Scottish Government, April 2012 <http://www.scotland.gov.uk/Topics/Built-Environment/Housing/privaterent/evidencereview>

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>30</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<sup>31</sup> teeth and enable tenants to use the PRHP with confidence.

### **More security would mean 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.

## **How would greater security work for landlords?**

Shelter Scotland sees many of the problems in the PRS as being driven in part by a market where demand outstrips supply in many parts of Scotland, leading to market failure. Landlords, as suppliers, have little competitive pressure to offer high standards of accommodation and management. On the other hand private renters, as consumers, have

<sup>30</sup> Figures provided on request from the PRHP.

<sup>31</sup> Contained in s.13(1) of the Housing (Scotland) Act 2006

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.

However, the dynamics of private renting are changing. Many landlords in the buy-to-let market have become more reliant on rental income, rather than capital return on the sale of properties. New 'reluctant' landlords have entered the market to let former homes they have been unable to sell. Traditionally, the dominant business model for buy-to-let landlords has been to achieve capital growth on their property. This has meant that landlords needed quick access to their property to realise capital – in this context short tenancies make sense from the point of view of the landlord. However, given recent market conditions of very low capital growth and depressed house prices, rental income has started to play a much bigger role in landlords' business models, and longer more stable tenancies now seem 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. The mortgage market is already beginning to respond to the changing needs of the sector. Most lenders have restricted buy-to-let borrowers by requiring them to offer their tenants a maximum contract of 12 months. However, The Mortgage Works, part of the Nationwide Building Society Group, recently became the first mainstream buy-to-let-lender to allow landlords to offer their tenants longer-term contracts<sup>32</sup>.

## How can we increase security of tenure?

Increasing security of tenure doesn't just mean offering longer tenancies. Giving tenants the choice of being tied in to a long term tenancy has its obvious downsides; tenants who want flexibility in renting do not want to be tied into a tenancy should they need to move

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<sup>32</sup> Shelter in England press release, 'Nationwide allows landlords to offer longer-term tenancies', 26 June 2013, [http://england.shelter.org.uk/news/june\\_2013/nationwide\\_allows\\_landlords\\_to\\_offer\\_longer-term\\_tenancies](http://england.shelter.org.uk/news/june_2013/nationwide_allows_landlords_to_offer_longer-term_tenancies)

and, left with a large rent liability to pay their landlord. What we need is an open-ended agreement between landlords and tenants, similar to that in the social rented sector. Tenancies should give tenants the option to stay for as long as they need and landlords enough notice should a tenant wish to leave. By moving away from the current fixed-term, short assured tenancy we can achieve long-term security for families. At the same time we can retain flexibility for those who need it, eg students and young professionals, by using the procedure for notice from the full assured tenancy regime<sup>33</sup>.

Shelter Scotland believes that these are the key features of a new, modernised, assured tenancy regime for the private rented sector:

- **Security for tenants** – full security of tenure would be offered to tenants with repossession by the landlord only possible through a repossession order obtained in court, or in a housing tribunal<sup>34</sup>.
- **Notice** – reasonable notice would be given by the tenant before they wish to leave the property, 28 days is currently the minimum in the social rented sector. Where tenants have been living in the property for a long period of time, consideration should be given to extending the notice period that landlords must give to take the property back, if they need to sell it or live in it themselves. In Ireland, for example, landlords are required to give their tenant 16 weeks' notice where a tenant has been living in a property for four or more years<sup>35</sup>. We also support the creation of a more informal and less-costly dispute resolution forum, by way of a housing tribunal, to handle issues such as notice periods and possession actions.
- **Repossession grounds** – we suggest a review of the current grounds and notice periods for repossession, given that it has been 25 years since the passage of the Housing (Scotland) Act 1988.

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<sup>33</sup> The current method for terminating a short assured tenancy at the 'ish' (end date) requires notice from either the landlord or the tenant. If either party omits to serve the correct notices, the tenancy continues for the same period again, depending on what is stated in the lease. So, in the case of a student let landlords will in general serve notice on the tenant indicating that the tenancy will come to an end on the 'ish' date. Enhanced security of tenure would shift this responsibility on the tenant – all they need to do is give their landlord notice that they need to move.

<sup>34</sup> As we argue in our response to the Scottish Government consultation: 'Better Dispute Resolution in Housing: Consultation on the Introduction of a New Housing Panel for Scotland', April 2013 [http://scotland.shelter.org.uk/\\_data/assets/pdf\\_file/0008/650969/Consultation\\_response\\_-\\_Better\\_Dispute\\_Resolution\\_in\\_Housing\\_-\\_Shelter\\_Scotland.pdf](http://scotland.shelter.org.uk/_data/assets/pdf_file/0008/650969/Consultation_response_-_Better_Dispute_Resolution_in_Housing_-_Shelter_Scotland.pdf)

<sup>35</sup> s.66(3) Part 5 Residential Tenancies Act 2004 <http://www.oireachtas.ie/documents/bills28/acts/2004/a2704.pdf>

- **Rent** – reviewing the procedure for rent increases, with consideration of starting with an initial market rent put up by an inflationary index or contractually agreed amounts – either set by the market or another percentage – at agreed points during the tenancy.
- **Repairs** – a clear statement that the landlord must meet the repairing standard and make repairs when given reasonable notice from their tenant.
- **Succession** – consider whether the current succession arrangements for spouses and civil partners need to be revisited, examining whether joint tenancies for sole survivors should be transferred automatically to tenancies.
- **Subletting and assignment** – to require the consent of landlords, as at present.

## Conclusion

One of the defining characteristics of the PRS is the short term transitional nature of the standard tenancy arrangement. 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 Scotland's housing needs. Private renting is valued as a housing option that offers flexibility to tenants. We want to retain this element of flexibility and enhance security of tenure for those who need it, to ensure that private renting can become a mainstream choice for a wide range of households who cannot afford or do not wish to buy.

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Shelter Scotland helps over half a million people a year struggling with bad housing or homelessness – and we campaign to prevent it in the first place.

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

Until there's a home for everyone

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