

Second Consultation on a New Tenancy for the Private Rented Sector

Shelter Scotland response

May 2015

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Introduction

Shelter Scotland welcomes the Scottish Government's direction of travel in relation to reforming the private rented sector tenancy. We are particularly pleased to see the Scottish Government reaffirm its commitment to improving security of tenure in the private rented sector by removing the "no fault" route for possession. This will go some way towards laying down strong legal guarantees that the 312,000 households renting privately – including some 80,000 households with children – will be able to stay in their homes for as long as they need, so long as they maintain their tenancy responsibilities.

Another important facet of the Scottish Government's more detailed proposal is to put the private tenancy on a statutory footing. We hope this will bring additional clarity and certainty to the tenancy framework for both private landlords and tenants.

Shelter Scotland does however have some concern around the grounds for possession outlined by the Scottish Government. In particular the ground relating to rent arrears which allows for mandatory possession where a tenant is in arrears of one month's rent.

This should be set at three months and discretion should be allowed – particularly where arrears relate to changes in circumstances outside private tenants' control, such as moving on to or out of benefits.

The focus on rents in the private rented sector is also to be welcomed and the Scottish Government should pay close attention to the impact the shift in reliance on the relatively expensive private rented sector will have on poverty rates in Scotland. Shelter Scotland would like to see a coordinated approach in relation to the affordability of housing across all tenures, taking into account housing supply and the potential for taxation on land and property to provide for a more stable housing market.

We look forward to further engagement with the Scottish Government and partners from across the private rented sector on this issue in anticipation of a Bill being introduced to the Scottish Parliament in the autumn of 2015.

Question 1a: Do you agree that there should be an initial tenancy period during which a tenant and landlord would be unable to give notice unless one of the specified circumstances existed?

Yes

Please explain your answer.

Shelter Scotland agrees with the proposal for the new private tenancy to have an initial period where the landlord is unable to regain possession of the tenancy – unless the tenant has breached a term of the tenancy agreement – and the tenant is unable to serve notice.

This would give private tenants the certainty that they would not be asked to leave the property during this period. Shelter Scotland also supports the added flexibility of allowing for a shorter tenancy where a tenant requests this. This will enable the new private tenancy to accommodate renters whose employment may be short term. It is also positive that landlords and tenants can agree a longer initial period within which neither landlord or tenant can serve notice. If a tenant wishes to have an additional long-term guarantee that their landlord will not terminate the tenancy, then this will be possible under the new tenancy.

Importantly prospective tenants must be made aware that that they are not required to sign up to a longer agreement, and be tied into the long-term rental liability that entails. Such an arrangement will not be suitable for all tenants, e.g. those who may be required to move with short notice due to a change in their employment circumstances. Therefore the legal consequences of signing a longer initial tenancy agreement must be clearly stated in any explanatory notes accompanying the model statutory. In particular that the tenant will be tied into the full term of the initial period without being able to serve notice during this time.

The initial period would also be to the benefit of private landlords. They would be safe in the knowledge that the tenant would be residing in the property for at least the initial period, thus enabling them to shape an effective business plan around the renting of that particular property.

Question 1b: Do you agree that after the initial period a tenant or landlord may serve notice at any time with the relevant notice periods?

Yes

Please explain your answer.

Shelter Scotland strongly agrees with this proposal. The process of serving notices under the current short assured tenancy regime is complicated and confusing. For example, under the short assured tenancy regime notices must be served by a particular date if a tenant wishes to vacate their property. If a tenant misses the correct date and a landlord also does not serve notice a tenancy can 'repeat' by a process known as 'tacit relocation' for the length of the whole initial period – depending on how the tenancy agreement is laid out. This means a tenant may be tied into their tenancy agreement for a further six months. By allowing notices to be served at any time this confusion is completely avoided and this part of how the private tenancy operates is significantly simplified.

Question 2: Do you agree that Notice to Quit and Notice of Proceedings should be combined into one Notice to Leave?

Yes

Please explain your answer.

Combining both the Notice to Quit and Notice of Proceedings represents a further important simplification in relation to the private tenancy.

There should, however, be additional communication between landlord and tenant in the case of rent arrears. This could take a similar form to the pre-action requirements currently used in the social rented sector. A pre-action requirement could have benefits for both tenants and landlords. Early engagement where there are rent arrears will give tenants the best possible opportunity to engage with their landlord early on and, hopefully, resolve the issue before a possession action and subsequent eviction is necessary. Landlords will have a defined process to use to engage with tenants who fall into arrears, giving them the tools they need to ensure they did all they can to avoid a potentially expensive possession action through formal dispute resolution processes.

Shelter Scotland envisage this pre-action requirement comprising of one pre-set form that a landlord would be required to serve on a tenant once a they fall into rent arrears. The form would: state the amount of the arrears at the time of service; advise that the tenant to seek housing and/or financial advice; include details of advice providers; and inform the tenant that the landlord may decide to raise possession proceedings against them if the arrears are not repaid.

Shelter Scotland agrees with combining the Notice to Quit and Notice of Proceedings with the addition of a pre-action notice where a tenant is in rent arrears and the landlord intends to seek a possession order at the First Tier Tribunal.

Question 3: Do you agree with the proposed notice periods a landlord should give a tenant?

No

Please explain your answer.

The proposed notice periods are simpler than those originally set out in the Scottish Government's first consultation on a new private tenancy – the new proposal sets out two different notice periods, rather than four – and Shelter Scotland welcomes this additional simplicity.

In our response to the Scottish Government's first consultation on a new private tenancy we argued for only two notice periods: both linked to the grounds for possession rather than four different notice periods linked to the length of time a tenant had resided in the property. Shelter Scotland's preference is still that the notice periods are linked to each of the grounds for possession; this would offer both simplicity and would act as a deterrent for landlords misusing the grounds for possession to gain vacant possession of a property.

However, based on the Scottish Government's new proposal Shelter Scotland would like to see a notice period of 8 weeks (56 days) where a tenant has spent six months or less in a tenancy and 16 weeks (112 days) where a tenant has spent over six months in tenancy. The additional cushion of 8 or 16 weeks would enable tenants to find alternative accommodation, which is particularly important for families in pressured housing markets.

Based on the Scottish Government's simplified proposal Shelter Scotland would like to see notice periods of 56 days (8 weeks) where a tenant has spent less than six months in a tenancy and 112 days (16 weeks) where this is over six months.

Overall Shelter Scotland would prefer that notice periods are linked to the grounds for possession to further simplify the tenancy framework and deter landlords from misusing the grounds for possession, as set out in our response to the Scottish Government's first consultation on a new tenancy for the private rented sector.

Question 4a: Do you agree that a landlord may serve a Notice to Leave when a tenant has been in rent arrears for two consecutive months?

No

Please explain your answer.

Shelter Scotland strongly disagrees with the proposal that a private landlord may serve a Notice to Leave when a tenant has been in arrears for two consecutive months, and then secure a mandatory possession order if rent arrears amounting to one month's rent are not cleared by the following month.

We are very concerned that the Scottish Government have reduced the total amount of rent arrears required to trigger a mandatory eviction, down from three months as set out in the Scottish Government's first consultation on a new private tenancy, to one month's rent arrears over two consecutive months. From the experience of Shelter Scotland we believe that one month's rent arrears over two consecutive months is far too small an amount for no discretion to be applied at the First Tier Tribunal. Even if a total of three months have passed since the tenant first fell into rent arrears.

For example, if an employer fails to pay an employee who is renting privately for two consecutive months and the employee falls into rent arrears they will be at risk of eviction. The tenant – who will have been under significant financial pressure – may be unable to repay their rent arrears by the third month thus triggering the granting of a mandatory possession order. In this scenario a tenant could be made homeless due to matters outside of their control.

Shelter Scotland is of the view that discretion is critical in situations such as these and that this ground for possession must be reframed to enable the application of a flexible approach to rent arrears by private landlords. To provide private tenants with sufficient protection against eviction – and subsequent homelessness – should they fall into financial difficulty Shelter Scotland is of the view that a mandatory eviction can only be sought if arrears are equal to three months' rent arrears.

Shelter Scotland case study:

A Shelter Scotland client fell into rent arrears of one month as they came off housing benefit and moved into work. They informed their landlord that rent would be paid – but not until the end of the month when they would be receive their first pay cheque. However, their landlord served them with a Notice to Quit using the “no fault” possession route. They later applied as homeless with their local authority but were found intentionally homeless because they had rent arrears from the previous tenancy.

We are also concerned about the added discretionary ground for eviction. On the face of it this could allow a landlord to initiate possession proceedings where a tenant's arrears over the period of two months are nominal. For example, arrears of one pound in month one and two pounds in month two would satisfy the serving of a Notice to Leave. As set out in the proposal a total of one month's rent arrears would be required for a mandatory possession order to be granted, however, arrears could quickly build up and tenants may be left with little protection from eviction in cases where early intervention may have provided a solution for both landlord and tenant.

This last point is key: in relation to arrears early intervention should be a priority for private landlords, as it is in the social rented sector and in mortgage arrears cases through pre-action requirements. Consequently, Shelter Scotland believe that this is a good opportunity to lay down a pre-action framework for private landlords to follow in rent arrears cases, as set out in our answer to Question 2. This would have the dual benefit of giving landlords a clear and easy to follow process in rent arrears cases and ensure, as far as possible, that the framework of the grounds for possession in the private tenancy prioritise the early resolution of rent arrears issues.

Shelter Scotland strongly disagrees with one month's rent arrears triggering a mandatory possession order and recommends that this is increased to three months' rent arrears.

Where arrears are below three months Shelter Scotland believes that the First Tier Tribunal should be free to exercise discretion in coming to its decision.

Question 4b: Do you agree that when a tenant has reached three consecutive months of rent arrears, a landlord should be able to refer a case to the First-tier Tribunal?

No

Please explain your answer.

Shelter Scotland does not agree with this proposal as currently laid out in the second consultation on a new tenancy. While it may be reasonable for a private landlord to take a case to the First Tier Tribunal where a tenant has been in arrears for three consecutive months, it is critical that where the amount of arrears is relatively low the First Tier Tribunal must be able to exercise discretion in coming to their decision. We suggest that a landlord is able to refer a case to the First Tier Tribunal where a tenant has been in arrears for three consecutive months but that the tribunal must exercise discretion, unless the arrears equate to three or more months' rent.

As currently set out in the Scottish Government's proposal: where a tenant has been in arrears for three consecutive months, and at any point in in that period rent arrears have equated to one month's rent then the First Tier Tribunal must grant a possession order. Removing the power for the decision maker at tribunal to consider discretion to this extent could lead to disproportionate outcomes for private renters. For example, a tenant may have been unable to pay rent in month one due an unexpected expense. They may have then only been able to pay back part of the arrears in month two and again in month three. In this situation the tenant will have been in arrears for three consecutive months and at the arrears will have amounted to one month's rent meaning a tribunal must grant a possession order – even though the tenant is taking steps to clear the arrears. Shelter Scotland is strongly of the view that discretion is absolutely necessary in this scenario and the Scottish Government should allow the First Tier Tribunal to exercise discretion in all cases where arrears amount to less than three months' rent.

Shelter Scotland disagrees with the Scottish Government’s proposal that rent arrears for three consecutive months which at any point amounted to one month’s rent must result in the granting of a possession order.

Shelter Scotland’s position is that where rent arrears amount to less than three months’ rent the First Tier Tribunal must be free to exercise discretion.

Question 5a: Do you agree that the list of repossession grounds now covers all reasonable circumstances where a landlord may wish to recover possession?

Yes

Please explain your answer.

With the addition of a process to follow in cases of abandonment Shelter Scotland believes that private landlords will have all the tools they need to manage their properties professionally and effectively.

Clearly the First Tier Tribunal is critical to how each of the grounds for possession will work in practice. The Scottish Government must ensure that the Tribunal is adequately funded to ensure it is capable of handling a high number of private rented sector cases, thus ensuring that disputes are resolved fairly and efficiently.

Question 5b: Do you agree that the First-tier Tribunal should have an element of discretion in grounds 6, 7 and 8?

Yes

Please explain your answer.

Shelter Scotland is pleased to see the addition of a discretionary element relating to a delay in housing benefit payments in Ground 6 which relates to rent arrears.

The addition of a discretionary element to Ground 7 which relates to antisocial behaviour is also a step in the right direction. This will allow decision makers in the First Tier Tribunal to

come to a reasoned decision based on a variety of evidence. Importantly, a possession order must only be granted in this way if it is “reasonable” in all circumstances to do so.

Shelter Scotland welcomes the commitment to introduce clauses to the model tenancy agreement which will set out whether the particular breach of the tenancy be mandatory or discretionary.

Question 6: From the details provided, do you agree that each of the following repossession grounds will work effectively?

Ground 1: The landlord is selling the home.

Yes

Please explain your answer.

Shelter Scotland believe that the details as set out in the Scottish Government’s proposal should ensure that this ground for possession is effective.

Landlords should be required to provide evidence that they are taking steps to sell the property. Evidence could include a combination of: a letter from their solicitor stating they wish to sell the property; evidence that the property has been put on the market, e.g. details of a listing with an estate agency; or a Home Report. If a tenant is not satisfied with the evidence provided by the landlord and does not accept the Notice to Leave then a landlord should be required to go to the First Tier Tribunal where the possession action will be considered.

Ground 2: The mortgage lender is selling the home because the landlord has broken the loan’s conditions.

Yes.

Please explain your answer.

Shelter Scotland believe that the details as set out in the Scottish Government’s proposal should ensure that this ground for possession is effective.

Consideration should be given to allowing lenders to sell the property with the tenant in situ.

As stated above consideration should be given to whether the landlord – who in this case will technically be the lender – should be required to compensate the tenant for the costs of seeking and securing a new property.

Ground 3: The landlord or a family member of the landlord wants to move into the property as their principal home.

Yes

Please explain your answer.

Shelter Scotland believe that the details as set out in the Scottish Government's proposal should ensure that this ground for possession is effective.

Ground 4: Refurbishment.

Yes

Please explain your answer.

Shelter Scotland believe that the details as set out in the Scottish Government's proposal should ensure that this ground for possession is effective. We particularly welcome the requirement for landlords to pay tenants reasonable removal expenses.

Shelter Scotland is also of the view that consideration should be given to this ground being discretionary given the wide range of types of refurbishment that can take place. For example, refurbishing one room in a property does not necessarily mean a tenant would have to move out. By making this ground discretionary tenants would be able to query the landlord's intention to refurbish and their need to move out and the First Tier Tribunal would be given the space to consider whether a possession order is reasonable given the circumstances.

Ground 5: Change of business use, e.g. from home to shop (from residential to non-residential).

Yes

Please explain your answer.

Shelter Scotland believe that the details as set out in the Scottish Government's proposal should ensure that this ground for possession is effective. We particularly welcome the requirement for landlords to pay tenants reasonable removal expenses.

Ground 6: The tenant has failed to pay the full rent over three consecutive months.

No

Please explain your answer.

Shelter Scotland strongly believes that the ground for possession for rent arrears needs to be rethought.

Under the proposals a landlord is able to serve a "Notice to Leave" where a tenant is in arrears for two months in a row. A technical reading of this seems to allow for a Notice to Leave to be served where a tenant has only a very small amount of arrears – for example two pounds over two months. Clearly, serving a Notice to Leave is a disproportionate reaction to such a small amount of arrears.

Shelter Scotland is of the view that the Scottish Government should take this opportunity to devise a set of pre-action requirements that private landlords must follow should they need to pursue a possession action in the case of rent arrears. This approach already works well in the social rented sector and for mortgage lenders in the case of mortgage arrears. Private tenants would be given clear information on where to seek advice in relation to the arrears and private landlords would have a clear set of procedures to follow in the case of rent arrears.

Crucially, where the arrears relate to late payments of housing benefit (or the housing costs element of universal credit) the tribunal should be allowed to exercise discretion in coming to its decision in all circumstances, including where rent arrears amount to three or more months' rent. This is particularly important given that in most cases housing benefit is paid four weeks in arrears. In addition, under current arrangements, Universal Credit will be paid monthly and in arrears. Claimants have been told to expect the first payment of Universal Credit to be made "no more than seven days" after the end of a claimant's first monthly assessment period.¹ Consequently private tenants will not be in a position to make a rental payment to their landlord using Universal Credit until around five weeks after they first claim Universal Credit. This would place all Universal Credit claimants at risk of a mandatory eviction at the First Tier Tribunal. The ground for possession for rent arrears must take into account these factors to avoid disproportionate outcomes for renters which could include homelessness and the potential for homeless applicants to be deemed "intentional" where the eviction relates to rent arrears with homeless applicants' right to permanent housing also being put at risk.

Shelter Scotland strongly disagrees with one month's rent arrears triggering a mandatory possession order and recommends that this is increased to three months' rent arrears. Where arrears are below three months Shelter Scotland believes that the First Tier Tribunal should be free to exercise discretion in coming to its decision.

Shelter Scotland disagrees with the Scottish Government's proposal that rent arrears for three consecutive months which at any point amounted to one month's rent must result in the granting of a possession order. Shelter Scotland's position is that where rent arrears amount to less than three months' rent the First Tier Tribunal must be free to exercise discretion.

Shelter Scotland would like to see the addition of a pre-action notice for a landlord to serve on a tenant where there are rent arrears and the landlord intends to seek a possession order at the First Tier Tribunal.

¹ Gov.uk, 'Universal Credit frequently asked questions',
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/404224/uc-faq.pdf,
accessed 29 April 2015

Crucially this ground must take into account the dates which housing benefit and Universal Credit are paid. The First Tier Tribunal should always be able to exercise discretion where rent arrears relate to payment of housing benefit and/or Universal Credit.

Ground 7: The tenant has displayed antisocial behaviour.

Don't know

Please explain your answer.

Shelter Scotland believes that antisocial behaviour which blights communities and causes misery and distress should be tackled quickly and effectively. Within the context of this ground for possession it is vital that private landlords and tenants have space to pursue measures aimed at tenancy sustainment. Shelter Scotland would be very concerned if this ground led to instances of mandatory possession orders being granted arbitrarily. For example, where a visitor to the property has been charged with a relatively minor criminal offence. At the very least the ability for the Tribunal to take such matters into account for the purposes of a mandatory grounds for possession should be limited to 12 months after the date an offence has been committed.

Ground 8: The tenant has otherwise breached the clauses of their tenancy agreement.

Yes

Please explain your answer.

Shelter Scotland welcomes the approach outlined by the Scottish Government in the second consultation document on a new tenancy. A model tenancy with mandatory and discretionary clauses should provide the space for certain aspects of a tenancy to competently give rise to a mandatory possession order and others where discretion must be exercised. For example, a failure to meet a requirement to cut grass should not give rise to a mandatory order for possession. Given the wide range of matters covered in private tenancy agreements Shelter Scotland envisions that most breaches of the tenancy agreement will not give rise to a mandatory possession order and discretion should be applied by the First Tier Tribunal.

Ground 9: Abandonment.

Yes

Please explain your answer.

Shelter Scotland welcomes the addition of ground relating to abandonment. This should lay down a clear and easy to follow process for private landlords to secure possession of a property where it has been abandoned. Crucially, an abandonment order must be sought from the First Tier Tribunal therefore ensuring that an independent decision maker is able to assess whether the tenancy has genuinely been abandoned.

Ground 10: The property was let to the tenant because they were employed by the landlord, and the tenant is no longer employed by the landlord.

Yes

Please explain your answer.

Shelter Scotland accepts that this ground may be required in certain circumstances. In order to be effective and this must be tightly defined. It must be stated in the tenancy agreement that a landlord may require to repossess the property under this ground.

Ground 11: The property is normally needed to house a full-time religious worker of a religious denomination, and is required for this purpose.

Yes

Please explain your answer.

Shelter Scotland accepts that this ground may be required in certain circumstances. In order to be effective this must be tightly defined. It must be clearly stated in the tenancy agreement that a landlord may require to repossess the property under this ground.

Question 7a: Do you agree that rent reviews should take place no more than once a year?

Yes

Please explain your answer.

As outlined in Shelter Scotland's response to the Scottish Government's first consultation on proposals for a new private tenancy we believe that it is reasonable that rent reviews are not carried out any more than once per year.

This would give tenants a cast-iron guarantee that their rent will not increase more than once per year. Currently, where a tenancy runs on a month-to-month basis tenants are not protected from frequent rent increases. In putting together a new tenancy framework it is essential that the Scottish Government lay down a clear framework for fixing rents.

Landlords too will benefit from this clarity – being able to make effective business plans when it comes to fixing rents. And, indeed, a side-effect of a new tenancy with greater security of tenure at its heart should be more-settled tenants who stay for longer. Reducing the number of void months that landlords need to account for per year.

Shelter Scotland strongly recommends that rent reviews take place no more than once per year.

Question 7b: Do you agree that a tenant should receive 12 weeks' notice in advance of a change in the rent?

Yes

Please explain your answer.

In addition to rent reviews being limited to no more than one per year Shelter Scotland believe that 12 weeks' – roughly three months – notice is reasonable and will give renters enough time to budget for the rental increase. This lays down a clear framework for landlords to use when it comes to increasing rents, should this be necessary. This notice should be set down in a form drafted by the Scottish Government and highlight tenants' right to challenge

any increase on the basis that the rent being asked for outstrips rents for similar properties in the local area.

Shelter Scotland strongly recommends that private tenants be given 12 weeks' notice of any increase in their rent.

Question 7c: Do you agree that tenants should be able to refer what they regard as unreasonable rent increases for adjudication?

Yes

Please explain your answer.

Shelter Scotland strongly agrees that private renters should be able to refer unreasonable increases for adjudication. Very importantly renters should also be able to refer their current or initial rent to the First Tier Tribunal too.

For example, a renter without a detailed understanding of the local rental market may take on a property with an overly inflated rent. A renter in this situation should be able to complain to the First Tier Tribunal and have a rent set which is in line with the local market for a property of that type and condition. Technically, this is already the case in Scotland's private rented sector today: private renters who believe the rent they are being charged is above market rent can go to the Private Rented Housing Panel who can fix a market rent. However, given the limited security of tenure that most private tenants have in Scotland this option is not as effective as it otherwise might be.

Information on the decisions made by the Tribunal should be made available online in an easily accessible and searchable format. Thus increasingly transparency across Scotland's private rental market. Details of adjudications could also form part of the evidence that a tenant is able to present at tribunal when contesting the level of rent they are being charged. In order for the Tribunal to operate efficiently it must be adequately funded to enable it to respond quickly where a tenant believes they are being charged above the market rent, or the rent increase is unreasonable.

Shelter Scotland is also of the view that the Scottish Government should lay down a framework for the setting of reasonable and predictable variations in mid-term rents. Our

preference is to see mid-term rents subject to an upper limit of the Consumer Prices Index (CPI).² This would enable private renters to accurately predict how their rent increase will be calculated: either in line with local rents, or where the rents are out-pacing inflation increases would be limited to CPI.

Shelter Scotland recommends that private renters be able to refer unreasonable rent increases and unreasonable rents for adjudication at the First Tier Tribunal.

To protect private tenants from unpredictable and unreasonable mid-tenancy rental increases Shelter Scotland recommends that private sector rental increases be subject to an upper limit of the Consumer Prices Index (CPI).

Question 7d: Do you think there is a role for the additional regulation of area-based rent limits?

Yes

Please explain your answer, setting out what you view as the advantages and disadvantages of such an approach.

Shelter Scotland sees daily evidence of the pressure that high housing costs put on householders' budgets across Scotland from our housing advice helpline. In Scotland there are 150,500 on local authority waiting lists³ and there were 36,457 homelessness applications made in 2013-14, 18% of which came from the private rented sector.⁴ In the past ten years there has been a shift from social housing as a housing provider for many thousands of households, to the more expensive private rented sector. This trend should be watched

² Shelter Scotland, 'Keeping rents reasonable and predictable in the private rented sector', 2014
http://scotland.shelter.org.uk/professional_resources/policy_library/policy_library_folder/keeping_rents_reasonable_and_predictable_in_the_private_rented_sector

³ Scottish Government, Housing Statistics for Scotland: housing waiting lists, August 2014
<http://www.gov.scot/Topics/Statistics/Browse/Housing-Regeneration/HSfS/HousingLists>

⁴ Scottish Government, Operation of the homelessness legislation in Scotland, 2013-14
<http://www.gov.scot/Resource/0045/00453960.pdf>

closely by the Scottish Government given the very direct impact that high housing costs can have on poverty levels in Scotland.⁵

Consequently we welcome the Scottish Government's focus on rent regulation in this consultation. We do, however, believe that when considering the affordability of housing in Scotland we must consider the housing market as a whole. In doing so there is a need for the Scottish Government to recognise the role that this shift from homes for social rent to homes for private rent plays in relation to affordability alongside the chronic lack of socially rented homes.

In relation to Scotland's private rented sector specifically it is essential that all private tenants are able to make effective plans for their futures financially and the Scottish Government should seek a method for regulating rents in such a way that enables this. Shelter Scotland would like to see a broad range of models for rent regulation considered before the Scottish Parliament considers the issue of private rents. These must be judged on the impact that they will have on the rent of private tenants and the impact they will have on the private rented sector. Shelter Scotland's preference is for mid-term tenancy increases in all private lets to be subject to an upper limit of CPI.

The Scottish Government's proposal seeks to set limits on rent increases in specific areas and is very much an emergency provision to tackle unaffordability in certain section of Scotland's private rented sector. Consequently, it is only likely to have an impact on private renters where they have already been pushed to the brink in terms of the affordability of their housing costs. Shelter Scotland would like to see the Scottish Government taking a more strategic approach in relation to the affordability of housing, including: a commitment to build at least 10,000 socially rented homes per year; and an examination of why housing in Scotland is currently so expensive and what tax varying powers can be used to stabilize property prices across the whole of Scotland. This should be a focus of both the Scottish Government's land reform programme and the review of local taxation being carried forward by the Commission on Local Taxation.

How any "limit" is defined is also crucial. Any overall limit on the amount of rent that can be charged for a particular kind of dwelling – e.g. a two bedroom apartment – could push up

⁵ JRF, Monitoring poverty and social exclusion in Scotland 2015, <http://www.jrf.org.uk/publications/monitoring-poverty-and-social-exclusion-scotland-2015>

rents in the lower end of the market as rents there rise to meet the limit set by the rent pressure area, passing most on the benefits to those at the upper end of the rental market and those who may be able to more easily afford a higher rent. Consequently Shelter Scotland would strongly advise against any overall cap on rent in a particular rental market. A better system would be to limit rent increases, rather than rental levels. In Shelter Scotland's response to the Scottish Government's first consultation on a new private tenancy we prefer a system for fixing rents which sets an upper limit for mid-tenancy rent increases in line with the Consumer Prices Index (CPI) which should enable tenants to accurately predict what their rent will be in the future and arrange their finances accordingly.

Another aspect of the proposal is that it would require local authorities to take action where private rents escalate. Shelter Scotland would be worried that this may shift the burden of responsibility for the relative unaffordability of the private rented sector onto the shoulders of local authorities alone.

Shelter Scotland supports the Scottish Government's focus on rent regulation and recommends that the Scottish Government carry out in-depth research into the impact that any rent regulation may have on the private rented sector. Area-based rent regulation should be a feature of this.

Shelter Scotland also recommends that the Scottish Government consider rent regulation in the wider context of housing costs across Scotland's whole housing market. Part of this should be a commitment to build at least 10,000 socially rented homes and the examination of how intelligent land and property taxation could act to stabilise house prices across Scotland.

Question 7e: If we were to legislate for this proposal, what types of evidence should local authorities have to present to Ministers when applying to designate an area as a 'rent pressure area'?

Please explain your answer.

Local authorities should be able to present a wide range of evidence to demonstrate that further action be taken in relation to private rents. This should include evidence from private tenants themselves, market evidence from letting agent hubs such as CityLets alongside

rental evidence gathered by Rent Officers, evidence on household incomes in the local area and rent determinations made by the First Tier Tribunal.

Shelter Scotland recommend that the Scottish Government expand the role of Rent Officers in each Scottish local authority area to further enhance the market information they already gather. Within this consideration should be given to providing more detailed local information than is already available via the Broad Market Rental Areas. This is important as some Broad Rental Market Areas cover a diverse range of private rented sector markets: for example the Lothian Broad Rental Market Area covers both rural East Lothian and central Edinburgh. Currently there is a wide variation in rents between the two areas, therefore, seen through the prism of the Broad Rental Market Area, the average rents for the East Lothian area are artificially inflated by the rental market of central Edinburgh. As the rental data that Rent Officers gather also includes the rents paid by tenants in their tenancies, and not just advertised rents, it is a particularly rich source of data on private rented sector rents in Scotland.

Shelter Scotland recommends that the Scottish Government expand the role of Rent Officers to gather a more data on the rents charged in local areas.

Question 8: Do you have any comments on the partial Equality Impact Assessment?

Please explain your answer.

Shelter Scotland believe that the proposal to increase security of tenure in the private rented sector would go some way towards the realisation of the right to adequate housing as set out in article 11 of the International Covenant on Economic, Social and Cultural Rights.⁶ A key aspect of the right to adequate housing is security of tenure,⁷ therefore the Scottish Government's intention to improve security of tenure is an important step in the right direction in human rights terms.

⁶ United Nations, Office of the High Commission on Human Rights, International Covenant on Economic, Social and Cultural Rights

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

⁷ p.3, Office of the United Nations High Commissioner on Human Rights, The Right to Adequate Housing, Fact Sheet no. 21, http://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf

In the Equality Impact Assessment Shelter Scotland would like to see a greater consideration of how vulnerable groups will be affected by the proposals. Particularly in the context of a growing proportion of homeless applicants coming from the private rented sector and an increasing emphasis on the private rented sector providing a route out of homelessness. In particular how any 'shift' to the private rented sector as a housing provider over socially rented sector tenures will impact on vulnerable groups in terms of the relative affordability of each tenure and how this might impact on their ability to budget. We have particular concerns about how this may impact upon tenants who may require additional support when it comes to budgeting and managing tenancies.

Question 9: Do you have any comments on the partial Business and Regulatory Impact Assessment?

Please explain your answer.

Shelter Scotland strongly believes that free legal assistance should be available for private tenants at the First Tier Tribunal. Detailed consideration should be given to how vulnerable tenants and those on low incomes will be supported through the First Tier Tribunal process. This should include an assessment of the role that solicitors and lay representatives funded by the Scottish Legal Aid Board could play in providing essential support.

We agree that there is much benefit to be had in simplifying the tenancy arrangements in the private rented sector for both landlords and tenants. There will, of course, be cost implications in terms of training Shelter Scotland's housing advisers. In the long-run this initial cost should be outweighed by the additional simplicity that the new private tenancy should bring.

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