



A NEW DEAL FOR TENANTS - RENTED SECTOR STRATEGY CONSULTATION. SHELTER SCOTLAND SUBMISSION, APRIL 2022

Shelter Scotland exists to defend the right to a safe home and fight the devastating impact the housing emergency has on people and society. We work in communities to understand the problem and change the system. We run national campaigns to fight for home.

We welcome the opportunity to respond to the Scottish Government's consultation "A New Deal for Tenants". We also welcome the consultation's focus on marginalised groups and look forward to more work being done in this area to fix the broken and biased housing system which disproportionately harms people with disabilities, women and people from ethnic minority backgrounds.

In order to fundamentally tackle Scotland's housing emergency and fix the broken housing system the Scottish Government needs to both strengthen tenants' rights and ensure that there are enough social homes built to reduce affordable housing need. Many of the proposals in this consultation have the potential to improve Scotland's rented sector, and we are pleased both rights and supply will be considered as part of the Rented Sector Strategy.

Supply of social housing

The way to most effectively address many of the issues explored in this consultation is through ensuring that enough social homes are built in the right places. For example, one of the structural causes of high and unaffordable private rents is the lack of social housing in certain areas, leading to increased competition for homes and pushing up private rents as a result. A lack of social housing stock also leads to difficulties relating to access and allocations of social homes. To create a rented sector that is fairer, safer, and more affordable, delivering the social homes we need to reduce housing need must be at the heart of this strategy.

We welcome the Scottish Government's decision to increase its social and affordable housebuilding commitment, with a commitment to deliver 110,000 affordable homes, including 70% for social rent by 2032. This commitment and investment in our communities is crucial if we are to start to reduce housing need. We now need to see the quality homes being delivered at pace, in the right places, and of the right size, in order to reduce housing need and meet wider social justice aims.

Housing rights

Delivery of the New Deal for Tenants should be undertaken in the context of the upcoming Human Rights Bill to include the progressive realisation of the human right to adequate housing, with a commitment to incorporating this right in Scots law. The rights of tenants need to be strengthened permanently in order to protect them against eviction and homelessness. Alongside this, tenants must be empowered to know and defend their rights. The Scottish Government's commitment to deliver a new human right to adequate housing through the forthcoming Human Rights Bill is welcome and is a vital step on the journey to ensuring everyone in Scotland has access to a home that meets their needs.

The other steps which need to be taken to improve tenant rights are explored in our consultation response. To summarise, these are:

- Making routes to consumer redress, such as the First-tier Tribunal more effective and accessible.
- The Pre-Action Requirements for the rent arrears ground under the Private Residential Tenancy (PRT) should be made permanent, and the grounds for eviction under the PRT must all remain discretionary. These measures, brought in during the pandemic, introduced important extra protections for tenants against eviction and must not be lost¹.
- There should be a wholesale review of the current grounds for eviction in the PRT under a human rights framework, with consideration as to how to ensure the right to adequate housing is realised in Scotland.
- More action is needed to prevent and address illegal evictions, including increased repercussions for landlords who illegally evict tenants.
- The Scottish Government must promote best practice among landlords when dealing with rent arrears. For example, more could be done to ensure that Pre-Action Requirements are adhered to in a meaningful way, and that early intervention and support is provided to help the tenant as soon as rent arrears occur.
- Underpinning all of this is the need for a rights awareness information campaign. Tenants need to be aware of their rights to empower them to defend them, thus making sure that these rights are realised.

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¹ Shelter Scotland (2021) [Response to "Covid Recovery: A consultation on public services, justice system and other reforms"](#)

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

Social housing supply is key

By ensuring that enough social homes are built to meet housing need the Scottish Government will be able to effectively address many of the barriers which people with protected characteristics face in the rented sector. Many people with protected characteristics would benefit from being able to access a social home. Households from minority ethnic groups are more likely to be living in poor quality and overcrowded private rented homes, which are unaffordable to them. The same is true for disabled tenants for whom the lack of social housing stock means that they are often trapped in accommodation that is unsuitable for their needs and are unable to move into a home that is better suited for them. By building the social homes Scotland needs, these groups will be more able to access good quality, affordable housing.

People from ethnic minority groups

People from minority ethnic groups are more likely to be private renters and are less likely to live in the social rented sector or in owner occupation than white Scottish/British households. For example, 40% of households from minority ethnic backgrounds live in the private rented sector in Scotland, compared with 13% of white Scottish/British households².

People from minority ethnic groups are more likely to be living in poverty after housing costs than people from the 'White -British' (including white Scottish) group. In 2015-20 the relative poverty rate was 41% for the 'Asian or Asian British' ethnic groups, and 43% for 'Mixed, Black or Black British and Other' ethnic groups, compared with 24% for 'White -Other' and 18% for 'White -British'³.

Minority ethnic households in poverty are more likely to be living in homes that are more unaffordable to them, spending more of their money on housing costs. According to research by the Joseph Rowntree Foundation, 51% of minority ethnic households are spending more than 30% of their income on housing costs. This is compared to 44% of white households in poverty spending more than 30% of their income on housing costs⁴.

There is evidence that minority ethnic households are also more likely to live in poor quality and overcrowded homes, compared to other ethnicities. A higher proportion of minority ethnic highest income householder (HIH) households had some level of disrepair to the dwelling⁵. Households from minority ethnic groups are almost four times more likely than White households to live in overcrowded properties – 11.8% compared with 2.9%⁶.

For European Economic Area nationals who have got into housing difficulty, often their eligibility for housing and homelessness assistance is tied to immigration law. This means the

² Scottish Government (2022) [Scottish Household Survey 2020](#)

³ Scottish Government (2021) [Housing needs of minority ethnic groups: evidence review](#)

⁴ Joseph Rowntree Foundation (2021) [Ethnicity, poverty, and the data in Scotland](#)

⁵ Scottish Government (2021) [Housing needs of minority ethnic groups: evidence review](#)

⁶ Equality and Human Rights Commission (2016) [Scotland's Ethnic Minorities face overcrowding, poverty and unemployment, says equality and human rights body](#)

process of determining eligibility and accessing support for this group is unnecessarily complex and takes a significant amount of time. As result this group of people are put at significant risk of destitution and homelessness. Shelter Scotland is unable to offer advice on such cases as our organisation is not accredited to provide immigration advice by the Office of the Immigration Services Commissioner (OISC). These factors mean that this group can struggle to access support to resolve their housing issues.

Shelter Scotland is currently leading a research project on the housing issues that adults from specific minority ethnic groups face, such as accessing housing advice, and secure, affordable and suitable housing. The project will co-produce recommendations alongside those with lived experience. We hope the findings of the research will be able to feed into future policy or legislative proposals relating to the Rented Sector Strategy, to address the housing inequalities many people from minority ethnic backgrounds experience.

Links between social security and people with protected characteristics

Issues relating to social security and the rented sector disproportionately affect women and people with disabilities as they are groups that are more likely to be in receipt of benefits.

Through our casework, Shelter Scotland is aware of people being denied access to tenancies in the private rented sector because they are in receipt of social security. For example, research which Shelter Scotland commissioned showed that a majority of private landlords preferred not to let to tenants who are in receipt of housing benefit or are out of work⁷.

The way in which some social landlords require rent to be paid can also lead to additional barriers for people in receipt of social security. Housing benefit is paid in arrears, which can lead to some people being in technical 'arrears' if their rent is charged ahead of this payment. Some housing associations issue their tenants with late rent letters in response to this. This can cause significant distress for some people. We previously raised a linked issue whereby some housing associations have a policy of asking for payment of a month's rent in advance, before the signing of a tenancy agreement⁸. This is not compatible with the way that benefits are paid and can result in people beginning their tenancy in rent arrears or being unable to start a tenancy at all. It is important to note too that many housing associations have found ways around this. Shelter Scotland worked with SFHA in 2017 to put together and raise awareness of a good practice guide for housing providers⁹, and whilst some progress was made there is further work to be done.

People with disabilities

A significant barrier for tenants with disabilities is the lack of socially rented accommodation which meets their needs. This includes homes with disabled access or ground floor bedrooms for people that are unable to climb stairs, or homes which can be adapted for wheelchair users

⁷ Shelter Scotland (2017) [Shelter Scotland briefing: 'No DSS'](#)

⁸ Shelter Scotland (2017) [First Month's Rent Flexibilities - Good Practice Guide](#)

⁹ Shelter Scotland (2017) [First Month's Rent Flexibilities - Good Practice Guide](#)

for example if the structure of the building means that doorways are unable to be widened, or ramps installed. This means that these disabled tenants are often trapped in accommodation that is unsuitable for their needs, and because of the lack of social housing stock are unable to move into a home that is better suited for them.

Another issue relates to getting adaptations for both social and private tenants. Private landlords often refuse to undertake the necessary adaptations, and tenants are forced to search for alternative accommodation that might better meet their needs.

Case study: A private tenant had recently started using a wheelchair asked the landlord to convert the bathroom into a wet room, so they were able to shower. Despite the tenant having sought advice on their rights from Shelter Scotland, the landlord refused and the tenant had to move out of their home as a result.

For social tenants one barrier is the length of time it takes for a housing needs assessment to be carried out.

Case study: A social tenant with epilepsy in the north of Scotland required the bath in his home to be replaced with a shower. The housing needs assessment took several months to be carried out and so the tenant was living in accommodation unsuitable for his needs for a significant period of time.

Shelter Scotland has found that some social housing providers can treat learning disabilities or mental health issues differently to physical disabilities, requiring a higher standard of evidence before they will recognise the condition. For example, most local authorities will not accept a doctor's note confirming the mental health condition as proof, instead asking for a psychiatrist's diagnosis. This is both difficult and costly to obtain and is often not an option for people.

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

Private tenants in Scotland currently lack an organised means of authentically reflecting their views and experiences to policy makers. This lack of a consumer voice in the Private Rented Sector (PRS) is one of the reasons the sector does not provide for its tenants as adequately as it could do.

Shelter Scotland considers that support needs to be given to tenants to articulate their voices collectively. There also needs to be particular consideration given to the opinions and views of consumers with protected characteristics, such as those from ethnic minorities, or those with a disability. These groups often experience additional barriers to housing, and yet are the same groups whose voices are often overlooked.

The Scottish Government have set out their commitment to human rights and taking a human rights-based approach, and participation is a key element of this. The Scottish Human Rights Commission describes a human rights-based approach as a framework for using international

human rights standards to ensure that people's human rights are put at the very centre of policies and practice.¹⁰ This should include a focus on empowering individuals and groups to know and claim their rights, and involving people in decision making and change, rather than viewing individuals as passive recipients of charity.

We are supportive of the Scottish Government's intention to embed tenant participation within the private rented sector with the establishment of a Private Rented Sector Tenant Participation Panel. The necessary funding and support should be made available for this to be done meaningfully.

Community organising is also a useful model to adopt to help establish trust and relationships within communities. Community organising is the process of building an individual or communities' skills, tools and agency to be able to assert their rights and tackle the social injustices affecting them. For example, community organising tools that can be used to increase tenant participation include: conversation cafes held in community spaces; setting up stalls at community events and spaces to discuss tenant participation; and skills building training, aimed at empowering tenants to galvanise the participation of other tenants. Establishing trust and a two-way relationship is crucial for reaching out to those most marginalised – or indeed any community. One way to do that is to reach out and engage with groups and organisations that are already established and who are supporting the targeted community.

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

Shelter Scotland is aware of the important work that tenants' unions do in helping tenants realise their rights; often providing support, advice and representation. We are supportive of tenants' unions and recognise the opportunity that they offer for collective voices to be heard.

It is also necessary to acknowledge that many private tenants may choose not to collectively organise. Private tenants are a very diverse group, and many do not identify with the term 'private renter', and therefore may not join a tenants' union. Therefore, whilst we welcome tenants' unions as a way to support tenants participate in active decision making, this should be one part of a wider programme aimed at encouraging private tenant engagement with policy making.

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

It is important to highlight that tenants not only need to be aware of their rights, but they must also have the capacity, motivation and resources to uphold them.

¹⁰ Scottish Human Rights Commission (2022) [Human rights based approach](#)

Our advisers report that vulnerable tenants with less financial power often have a lower awareness of their rights and are less confident to exercise them. Research by the Joseph Rowntree Foundation, highlighted in the consultation document, also finds that low-income households are less likely to challenge unprofessional practice and to raise disputes with their landlords¹¹. This intersects with people's protected characteristics and special consideration needs to be given in how to raise awareness of rights among these groups.

A. The private rented sector?

The independent evaluation of the Private Residential Tenancy (PRT) funded by Nationwide Foundation found that private tenants' awareness of their rights is low and stated that: *"more work is needed, led by Scottish Government and involving wider advisory stakeholders, to raise awareness of rights as a starting point to empower tenants and increase their access to justice"*¹².

Our advice services regularly work with private tenants who have a poor understanding of their rights in relation to their tenancy agreements, and also a lack of knowledge surrounding how they enforce their rights.

When the private residential tenancy was first introduced in Scotland, we made a series of recommendations as to what awareness raising activities were needed to support this legislative change. This consultation offers the opportunity for these recommendations to be reconsidered, as five years on the awareness of rights among tenants is still far too low.

- Use should be made of the national landlord register. The Scottish Government should be promoting and supporting local authorities to communicate with private tenants on their rights, via their details recorded in the register.
- There needs to be ongoing national communication to tenants, through multiple channels, on their rights and future changes to these rights.
- Learning should also be taken from the success of previous rights awareness raising work. For example, during the coronavirus pandemic the Scottish Government wrote to all private tenants outlining the changes to their rights under the emergency covid legislation and directing them to forms of support.

The Scottish Government must also consider how to ensure that tenants have access to advocacy and advice when they are accessing, or are seeking to access, the First-tier Tribunal to exercise their rights. Data analysis carried out by Shelter Scotland into the First-tier Tribunal found that tenant attendance at the hearing is low: in four out of five cases in our sample where the landlord was the applicant, the tenant did not attend their hearing. Furthermore, in most of the cases (88% of those we analysed) there was no representation or support for tenants recorded as present¹³.

¹¹ Scottish Government (2021) [A New Deal for Tenants - draft strategy: consultation](#)

¹² Nationwide Foundation (2020) [Rent-Better-Wave-1-Summary](#)

¹³ Shelter Scotland (2020) [First-tier Tribunal \(Housing and Property Chamber\): data analysis and recommendations](#)

Shelter Scotland made a number of recommendations in this report for how access to justice for tenants through the Tribunal could be improved. These included:

- **Better collection and publication of data** - we recommend that the data routinely recorded and published by the Tribunal should be expanded, making information more freely available and allowing for better analysis of the Tribunal process and a deeper understanding of tenants' experiences.
- **Training for advice providers** - There needs to be a focus on capacity building for organisations that provide housing advice and support. There is currently a lack of training for providers in how to support tenants through the Tribunal system, and so there needs to be additional resources created to meet this need.
- As tenant attendance and representation at Tribunal is so low, consideration should be given to other tools which may help tenants actively participate and put forward their case using the Tribunal system. This could, for example, include a digital tool or advice pre-hearing.

B. The social rented sector?

As the social sector is far more organised than the private sector, and social landlords have more extensive responsibilities, social tenants are an easier group to reach for awareness raising activities. However, our advice services often hear from social tenants who have a lack of awareness of their rights. An example of this is the rules surrounding tenancy succession which changed in November 2019. Now, in order for a social tenancy to be transferred to another person who is living in the property after the tenant dies, that person must have been living there for 12 months and have notified the landlord when they moved in. We have advised many people who were not aware that they had to inform their landlord that they lived in the property, which has resulted in them having no right to succession. This has led to them losing their home, in many cases that they have lived in for years.

5. After 4 years of use, how well do you think these grounds are working? Is there anything that you would like to see changed?

Shelter Scotland welcomed the changes that were brought in under the Private Housing Tenancies Act 2016. This made significant improvements to private tenants' security of tenure, strengthening the rights of tenants. We now consider that these grounds can be strengthened further. There should be a wholesale review of the current grounds for eviction in the PRT under a human rights lens, with consideration as to how to ensure the right to adequate housing is realised in Scotland. Further, we believe that all grounds for eviction should remain discretionary, as brought in under emergency coronavirus measures.

Retaining discretionary grounds for eviction

All grounds for eviction in the PRT should remain discretionary, rather than some grounds reverting to mandatory after the emergency legislation ends.

The negative impact that eviction has on tenants, and particularly children, is well documented. It is a highly stressful process that can be damaging to both mental and physical health. The upheaval of being evicted and potentially having to move away from friends and family and change schools adds an extra layer of emotional distress. Eviction also puts people's wellbeing at risk by potentially pushing them into homelessness and often overcrowded, poor quality temporary accommodation. The possibility of numerous moves in a short period of time can cause further disruption and instability. These factors can lead to enormous strains on relationships within the household.

By keeping the ground for eviction discretionary, the Tribunal can take all these factors into account in their decision making, balancing the needs of the tenant and the landlord in each individual case. For example, we support that the discretionary grounds allow for the Tribunal to be able to consider whether it is appropriate to evict a family from their home and make them homeless in order for the landlord or their family member to move in.

The ability to exercise discretion is of particular importance for the rent arrears ground, which should be considered within the context of adherence to the pre-action requirements and whether it is reasonable and fair to evict following these steps. It is important that tenants are given the opportunity to access all the advice and support available to them before eviction.

Review of the grounds for eviction under the human rights lens

There should be a wholesale review of the current grounds for eviction in the PRT under a human rights lens, with consideration as to how to ensure the right to adequate housing is realised in Scotland. For example, as a principle we do not consider it to be fair or just that a tenant should lose their home through a situation outside of their control, through no fault of their own. In this section we explore how some of the grounds for eviction could be altered to reflect this.

- Ground 1 – landlord intends to sell and Ground 2 – property to be sold by lender

A review should consider whether Ground 1 – landlord intends to sell, or Ground 2 – property to be sold by lender should be removed entirely from the PRT. For example, under the previous Assured and Short Assured tenancies, there was no ground for eviction on the basis that the landlord intends to sell.

If these grounds are to remain, steps should be taken to strengthen the rights of tenants in these situations, including stopping misuse of this ground by the landlord. We are aware of tenants who have been evicted using this ground, for the property to then not be sold.

Case study: Private tenant in Glasgow was evicted under Ground 1, that the landlord intended to sell. The Tribunal granted this eviction despite all grounds being discretionary at the time. The tenant became homeless and was supported by Shelter

Scotland to make a homeless application. A few weeks later the tenant reported seeing the property advertised for rent online with a higher rental charge.

We recommend that ground 1 and 2 could be strengthened as follows:

- A landlord should be required to meet a higher evidence bar if looking to evict under Ground 1 – Landlord intends to sell. One option could be that the landlord must be actively marketing the property for sale at an appropriate market price in accordance with professional advice, in order to be seeking to evict a tenant under this ground¹⁴. Another option is to mandate the provision of a recent home report. Further consideration is required here to address the issues raised above.
- Steps should be taken to encourage the sale of a property with a sitting tenant. There are letting agencies which specialise in the sale of properties of sitting tenants. Opportunities for sharing and demonstrating best practice on this practice should be encouraged by the Scottish Government. For example, a change could require a set of pre-action requirements to be developed which ensure that a landlord wanting to evict under Ground 1, or a lender wanted to evict under Ground 2 must prove that they have explored this option before an eviction order is granted. Landlords and lenders could also be required to offer to sell property to the sitting tenant first.
- The current legal structure which exists to prohibit the misuse of grounds for eviction places the responsibility on the evicted tenant to identify that the landlord misled the Tribunal. That tenant must then pursue the case by applying to the Tribunal for a wrongful termination order. This structure relies on the individual having access to information on what happened to the property after they were evicted. For example, knowing whether the landlord advertised it for rent again after evicting on the ground that they would sell. It also relies on the tenant having the resources and capacity to pursue this case through the Tribunal.

Shelter Scotland proposes that this responsibility for identifying the misuse of grounds for eviction be placed instead on other parties, including the Tribunal, local authority and proposed regulator. There should be a standardised way of recording which ground for eviction was used. This could for example be collected as part of the section 11 notification to local authorities, and as part of the Tribunal case record. This data could then be used to carry out spot checks to follow up on whether the landlord actually followed through on the ground which was used to evict. If the landlord is found to have misused the ground for eviction then there must be repercussions, for example wrongful termination orders should be pursued on the tenant's behalf which should prompt a review of the landlord's registration.

¹⁴ Shelter Scotland (2016) [Stage 1 debate briefing for the Private Housing \(Tenancies\)\(Scotland\) Bill](#)

- Ground 13 – Criminal behaviour

Shelter Scotland also consider that Ground 13 – Criminal behaviour should be reviewed in the context of whether it is appropriate for a tenant to be punished additionally for a criminal offence than a homeowner. When an individual commits a criminal offence, this is and should be dealt with in the criminal courts and the appropriate ramifications should be given there, rather than by making someone homeless.

- Ground 16 – landlord has ceased to be registered

It is unjust that a tenant should lose their home if their landlord is removed from the register. Options should be explored on whether the property could be sold with a sitting tenant, as outlined above, or whether there should be enforcement of alternative management of the property by a local authority or housing association for example through a private sector leasing scheme.

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

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

7. Do you have any views on our proposal to take forward a clarification in relation to the use of ground 6 – ‘Landlord intends to use for non-residential purpose’?

Shelter Scotland believes that the sharp increase in short-term lets in Scotland is having an adverse impact on housing supply across Scotland, but crucially in saturated housing markets like Edinburgh where demand already exceeds supply. Evidence suggests that the growth of short-term lets is having an adverse effect on the housing stock available to those looking for a permanent home¹⁵.

Tenants should not be evicted from their home in order for the property to be removed from the private rental market and turned in a short-term let. Shelter Scotland therefore welcomes the proposal to clarify that ground 6 cannot be used to evict someone in order for the landlord to turn the property into a short-term holiday let. This clarification will help to strengthen tenants’ rights and further protect them against eviction and homelessness.

¹⁵ Shelter Scotland (2020) [Short Term Lets consultation response](#)

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

Private rented sector

Shelter Scotland believes that the pre-action requirements (PARs) for eviction proceedings on ground of rent arrears should be made permanent, as contained within the draft Coronavirus (Recovery and Reform)(Scotland) Bill. We consider that this policy has been a welcome step forward in improving the rights-based framework for tenants in Scotland. To remove it would be a significant step backwards, reducing rather than strengthening tenants' rights and therefore putting at risk the progress made to ensure the prevention of evictions and homelessness wherever possible. It would also go against the fundamental human rights-based principle of progressive realisation of rights. It was also a step towards greater parity of protection for private and social tenants, in line with the Scottish Government's commitments under the Housing to 2040 strategy.

Shelter Scotland believes that this extra protection for renters against evictions in the private sector should be made permanent. The PARs encourage landlords to help their tenants access support and advice on rent arrears management before any eviction action is taken, thus helping them to manage their debt and remain in their home. Shelter Scotland are also supportive of the PARs as they serve to write good practice for private landlords into law. Therefore, by making these PARs permanent it will also contribute to professionalising and ensuring more consistency across the private rented sector.

It is also important that the PARs in the PRS are effective. The First-tier Tribunal has a key role to play in ensuring that landlords are adhering to this legislation and are making all reasonable efforts to support tenants to remain in their homes. Currently no data is available from the Tribunal. Alongside the PARs being made permanent we believe they should be evaluated to ensure that they are robust, cover all reasonable steps landlords should take, and that they are working in practice, with the Tribunal ensuring that they are upheld. Reporting from the Tribunal on the use of PARs would help ensure these measures can be monitored effectively.

In addition, private landlords are also required by law to send a section 11 notice to the local authority when they start eviction proceedings. However, our understanding is that this is not consistently followed. The lack of published data makes it difficult to understand the extent of the issue and any patterns of non-compliance, and therefore what changes or awareness raising might be required. We recommend that publication of section 11 data is restarted as well as standardised data collection and publication from the Tribunal.

A 2019 report published on advice and support for private renters recommended that the *"Scottish Government works with relevant partners to consider the potential use of Section 11 data to inform local evidence bases and to revise Local Housing Strategy guidance to strengthen links between housing options and wider advice/support approaches at local level."*¹⁶ Shelter Scotland would support this approach.

¹⁶ Donohoe, T, and Young, G. (2019) [Where to Turn: A review of housing support and advice for private tenants in Scotland](#)

Social rented sector

Whilst there is lots of good practice throughout the country from social landlords, it is notable that Shelter Scotland's Housing Law Service is very successful in preventing eviction and homelessness through its court representation of tenants at risk of social sector evictions, indicating that there is often more that could be done by social landlords to prevent court action, eviction and homelessness.

For example, tenants for whom English is not their first language, have mental health issues or learning disabilities, it is highly important that support must be delivered not just through letters, but also through face to face engagement with tenants who are at risk of eviction and homelessness. This will ensure that the most vulnerable tenants are also given the support that they need.

In our response to the prevention of homelessness consultation we highlighted the importance of early engagement and support as key to successfully addressing rent arrears. Action should be taken as early as possible, as soon as rent arrears begin to build up. Every effort must be made by social landlords to proactively work with tenants in addressing arrears at the earliest possible date.

In particular, we would stress the importance of information and support to access independent advice and advocacy and would welcome another measure which makes specific reference to provision of information on how to access legal representation including legal aid in specific situations.

As an illustration of why independent advice is crucial, Shelter Scotland has for the past year been running a service commissioned by Dundee City Council to respond to section 11 referrals in the city. This has been very successful and where the council had low levels of engagement from tenants who have been served notice previously, around 11%, Shelter Scotland has secured 56% engagement. In general, our experience with this service and others, including the service which supported the client quoted below, have shown that some people who do not feel able to accept help from their landlord or statutory services are more likely to engage with independent support.

Case study: Fiona lost her job because of poor mental and physical health and got into arrears on her rent as a result. She was burying her head in the sand and unable to accept support from the council. Housing officers at the council had been round to Fiona's house but she wouldn't open the door to them because of her anxiety. "The council tried to come out, but I wouldn't open the door. It was daunting the housing officers coming around to my door. They put the dreaded white slip through but don't say what it's about." [Fiona, a client of Shelter Scotland's Foundations First service in Renfrewshire]

Within the prevention duty proposals, our understanding is that the PRG proposed a form of pre-action requirements for tenants facing court proceedings not related to rent arrears (and therefore not covered by the existing PARs duty). We welcome this approach, taking on board learnings from PARs in relation to court proceedings under the rent arrears ground. All efforts should be made to prevent an eviction where court proceedings are being considered by a landlord against a tenant.

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

[no answer provided]

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

An arrangement where someone is being asked for payment for the housing costs in the form of sexual favours, otherwise known as sex for rent, is an abhorrent, exploitative practice which is preying on vulnerable people who are already facing housing difficulty¹⁷. Shelter Scotland is anecdotally aware of offers of free or reduced rent in exchange for sex in Scotland in recent years, but it is not an issue that our housing advice and support services have been approached on.

This issue relates to the wider problem of the supply of affordable housing. The Scottish Government needs to ensure that it builds enough social homes to provide for everyone in Scotland who is in housing need. This will help prevent the exploitation of vulnerable people that are struggling to access affordable accommodation.

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

Under the current joint tenancy agreement in a PRT, both tenants must agree to end the tenancy in order for it to be terminated. All tenants are also liable for the full rent and if one tenant does not pay the landlord can ask any or all of the other tenants to pay.

Our advisers have seen several cases where a joint tenancy agreement is being used as a way for an abusive partner to exert control over their victim.

Case study: Our second-tier advice service (ScotWRAS) was recently approached regarding a married couple in a joint PRT. Domestic abuse had occurred, and the wife had left the property. The husband had continued to live in the property but had not been paying any rent. The wife had been continuing to pay the full rent in order to avoid arrears building up. The wife wanted to end the tenancy, but the husband was refusing to do so. The landlord was also reluctant to consent to the tenancy being signed over to the husband, due to the husband's refusal to pay rent.

¹⁷ Shelter Scotland (2018) [Sex for rent in Scotland](#)

This is a clear example of the joint tenancy agreement being used by a perpetrator of domestic abuse as a way to exert financial abuse over their victim. By refusing to end the tenancy they can trap the victim in the tenancy agreement, thus continuing their control over them.

Shelter Scotland are therefore strongly supportive of the Scottish Government's proposals to ensure that joint tenants can terminate their interests in a PRT without the agreement of the other joint tenants.

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

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

As this 4-week notice period for joint tenancies already exists in the social sector Shelter Scotland agrees that it would be appropriate for this to also apply to the private sector. This will bring the rights of private tenants more in line with those in the social sector. It will also lessen confusion for both tenants and advice organisations around joint tenancy rights.

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

[no answer provided]

13. Should this proposal be taken forward, are there any additional safeguards that should be put in place for remaining joint tenants in the private rented sector?

[no answer provided]

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

Yes, Shelter Scotland agree that introducing this ground which currently exists in the social sector to the private sector would be appropriate, and again would be a step towards bringing the rights of private tenants up to the same standard as social tenants.

Domestic abuse is already a highly distressing experience, it should not also result in a victim/survivor losing their home and all the additional disruption which comes with that. Therefore, the private landlord should be able to evict the perpetrator from the joint tenancy and the tenancy transferred to the survivor.

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

The First-tier Tribunal (Housing and Property Chamber) is the forum where tenancy disputes in the private rented sector are resolved. It therefore follows that this should be where cases involving the transfer of tenancy in cases relating to domestic abuse in the private rented sector should be considered. The more inquisitorial nature of the Tribunal compared to the sheriff courts may also be welcomed here, as additional circumstances can be taken into account.

Appropriate precautions should be taken over whether the two estranged partners need to be in the same room for the hearing or if representatives could be in attendance instead.

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

We welcome the suggestion to streamline the eviction process in cases relating to domestic abuse, and the intention that this would allow survivors to leave the situation faster. However, we consider that the suggested benchmark of imprisonment is too high. Often in cases of domestic abuse the perpetrator will be found guilty but will not receive a prison sentence. We therefore suggest that the benchmark should be conviction on domestic abuse in the previous 12 months, rather than imprisonment.

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

[no answer provided]

18. If unclaimed deposits were to be reinvested, do you agree that the period after which the funds would be available for reinvestment should be:

- i. after all avenues to reunite deposits with their tenants have been exhausted, and**
- ii. after a period of 5 years?**

Shelter Scotland does not have a strong policy position on this proposal to reinvest unclaimed deposits. In principle this appears to be an appropriate course of action, and the two criteria which must be met acceptable.

As outlined in the consultation document, the possibility of these funds being used to support tenants in other ways should be explored. For example, they could be ring-fenced to support tenant legal representation at the Tribunal.

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

Pets are only allowed in private tenancies by explicit written permission from the landlord, and in many cases the landlord will impose extra conditions for this for be granted – for example an increase in rent, or an informal deposit for potential damage. Shelter Scotland’s Living Home Standard research found that 48% of private renters reported that they were unable to have a pet, compared to 11% of social tenants¹⁸.

We propose that the right to keep a pet is introduced as a statutory right and written into the Model Tenancy Agreement. Pets can be extremely important to people, and beneficial to their wellbeing¹⁹. Private rented tenancies are tenants’ homes and so they should not be restricted from keeping a pet. We do not consider that there should be an additional deposit put in place, as the existing deposit scheme is already intended to protect the landlord against damage to property and so should be sufficient.

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

Pets can be extremely important to people and their wellbeing²⁰. As such, Shelter Scotland believes that tenants in both the private and social sectors should be able to own a pet, with the correct protections and responsibilities in mind.

¹⁸ Shelter Scotland (2018) [Living Home Standard](#)

¹⁹ Shelter Scotland (2018) [Shelter Scotland response to “Paws Clause” stakeholder consultation](#)

²⁰ Shelter Scotland (2018) [Shelter Scotland response to “Paws Clause” stakeholder consultation](#)

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

We are aware that many private tenants express that they don't feel like their home is actually theirs as they are unable to personalise it. Often their landlord doesn't allow them to decorate or even hang pictures on the wall. Our Living Home Standard research found that 32% of private tenants reported that they were unable to decorate, compared to 11% of social tenants²¹.

We believe tenants should be allowed to personalise and decorate their living spaces. This will help contribute to them feeling more settled in their home. This may also be to the landlord's benefit as by allowing the tenant to personalise their home could lead to improvement to the property. The tenants may also be inclined to take better care of the property and stay longer.

22. Should different consideration be given where a property is furnished or unfurnished?

[no answer provided]

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

No, we do not consider that a higher tenancy deposit should be required in order to protect against damage caused to the property caused by personalisation. Any disputes over the personalisation to the property should be resolved within existing deposit protection schemes which are intended to provide some protection to the landlord against damage to the property.

There also needs to be a recognition that personalisation of the property may also lead to improvement of the property. For example, a fresh coat of paint or installing new fitted shelves. Personalisation should not be viewed in a negative light and may actually serve to benefit the landlord as well as the tenants in the property.

²¹ Shelter Scotland (2018) [Living Home Standard](#)

24. Do you think additional protections against the ending of tenancies during the winter period are needed?

Shelter Scotland were supportive of a winter eviction ban during the pandemic as a public health measure. Looking beyond the pandemic we consider that the focus of the Scottish Government needs to be on structural long-term change to the rights of tenants – strengthening protections against evictions year-round, not just during the winter, and ensuring tenants can effectively uphold their rights.

The negative impact that eviction has on tenants, and particularly children, is well documented. It is a highly stressful process that can be damaging to both mental and physical health. The upheaval of being evicted and potentially having to move away from friends and family and change schools adds an extra layer of emotional distress. Eviction also puts people's wellbeing at risk by potentially pushing them into homelessness and often overcrowded, poor quality temporary accommodation. The possibility of numerous moves in a short period of time can cause further disruption and instability. These factors can lead to enormous strains on relationships within the household. Therefore, tenants should be protected against evictions and homelessness year-round.

Some of the steps which the Scottish Government must take to improve tenant's rights, and strengthen protections against evictions long-term include:

- Taking forward commitments to a new Human Rights Bill in Scotland and fully incorporating the right to adequate housing into Scots law with robust access to justice; reporting annually on progress to equalise housing rights across all marginalised groups.
- Making routes to consumer redress, such as the First-tier Tribunal more effective and accessible. Data analysis of the First-tier Tribunal found that in four out of five cases where the landlord was the applicant, the tenant did not attend the hearing. Also, in 88% of cases (234 out of 265 analysed) there was no representation or support for tenants recorded as present²².
- The Pre-Action Requirements for the rent arrears ground under the Private Residential Tenancy (PRT) should be made permanent, and the grounds for eviction under the PRT must all remain discretionary. These measures, brought in during the pandemic, introduced important extra protections for tenants against eviction and must not be lost²³.
- The grounds for eviction in the Private Residential Tenancy (PRT) must also be reviewed and strengthened. There should be a wholesale review of the current grounds for

²² Shelter Scotland (2020) [First-tier Tribunal \(Housing and Property Chamber\): data analysis and recommendations](#)

²³ Shelter Scotland (2021) [Response to "Covid Recovery: A consultation on public services, justice system and other reforms"](#)

eviction in the PRT under a human rights framework, with consideration as to how to ensure the right to adequate housing is realised in Scotland.

- More action is needed to prevent and address illegal evictions, including increased repercussions for landlords who illegally evict tenants. Our helpline receives calls from tenants in the PRS who have been illegally evicted from their homes. There are often little, if any, repercussions for the landlord or recourse for tenants. This is often due to a lack of awareness among tenants of their rights surrounding illegal evictions, and a lack of awareness from Police Scotland that evicting a tenant without following the correct legal procedure is a criminal not a civil offence.
- The Scottish Government must promote best practice among landlords when dealing with rent arrears. More could be done to ensure that Pre-Action Requirements are adhered to in a meaningful way, and that early intervention and support is provided to help the tenant as soon as rent arrears occur.
- The Scottish Government needs to ensure that financial support for tenants who are struggling to afford their home continues to be available and is promoted to tenants, landlords and local authorities. This includes the tenant grant fund, the Scottish welfare fund and discretionary housing payments. These funds are vital in helping tenants on low incomes to afford their housing costs and avoid rent arrears and eviction.
- Underpinning all of this is the need for a rights awareness information campaign. Tenants need to be aware of their rights to empower them to defend them, thus making sure that these rights are realised.

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

Looking beyond the pandemic we consider that the focus of the Scottish Government needs to be on structural long-term change to the rights of tenants – strengthening protections against evictions year-round, not just during the winter, and ensuring tenants can effectively uphold their rights.

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

The actions required to protect tenants against evictions year-round are outlined in our answer to question 24.

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

Looking beyond the pandemic we consider that the focus of the Scottish Government needs to be on structural long-term change to the rights of tenants – strengthening protections against evictions year-round, not just during the winter, and ensuring tenants can effectively uphold their rights’.

28. Do you agree the current calculation for unlawful eviction should be reformed and simplified, as proposed?

Shelter Scotland agrees with the assertion that calculating civil damages where an unlawful eviction occurs is costly and inaccessible, particularly because it requires specialist valuation of the property to be carried out. We welcome the proposal to reform this system in order to simplify the process for the tenant and recognise that a system that makes it easier to seek repercussions may also serve to deter landlord for carrying out illegal evictions. Shelter Scotland also considers LSA’s proposed new method of calculation as acceptable and is content to follow their expertise in determining this approach.

29. If the current system for calculating damages was reformed in this way, what do you think would be the appropriate minimum and maximum level of multiplication that the First-tier Tribunal for Scotland (Housing and Property Chamber) could apply?

Shelter Scotland is content to follow the expertise of LSA and agree with their proposal for calculating penalties for illegal evictions. The significant maximum penalty should act as a deterrent to landlords who may be considering evicting their tenant without following the correct legal process.

However, fundamentally this penalty will not be effective if awareness among tenants of their rights surrounding illegal evictions are not improved. Police Scotland also need to be aware that an illegal eviction is a criminal matter not a civil matter and needs to be treated as such. Making tenants aware of their rights and ensuring that they will be supported by Police Scotland to challenge illegal evictions if they occur will empower tenants to use this new proposed system to claim damages.

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

Tenants need to be aware of their rights regarding illegal evictions. This needs to be coupled with Police Scotland being informed that illegal evictions are a criminal matter, and so should

be treated as such. This will enable tenants to be empowered to defend their rights, with the appropriate support from the police.

Shelter Scotland considers that the core issue surrounding illegal evictions is the lack of awareness of the issue among both tenants, and Police Scotland, as well as the unfortunately often-correct belief among landlords that they will not face any repercussions for illegally evicting their tenant. For a landlord to be charged with illegal eviction tenants must be aware that their landlord's behaviour is criminal and be confident enough to report this to the police. The police also need to be aware of what an illegal eviction is, support the tenant, and where required prepare a report to send to the procurator fiscal who will decide whether to pursue a prosecution.

Shelter Scotland often hears from tenants who have been a victim of an illegal eviction. However, in nearly every case where the tenant has contacted the police, they have been told that it is a civil not a criminal matter and so the police cannot help. This is incorrect information: under the Rent (Scotland) Act 1984, it is a criminal offence for a tenant to be evicted without a court order.

Case study: A Shelter Scotland adviser took a call from a tenant who had come home to find that the locks had been changed. The landlord had served an incorrect notice to leave 28 days earlier and the tenant had not agreed to move out. The tenant contacted the police and was told that it was a civil not a criminal matter and so they wouldn't attend. Our adviser informed them that this was a criminal offence and supplied the relevant legislation to point this out to the police.

This lack of awareness among police officers that evicting someone without a court order is a criminal offence is a long-standing issue. For example, we carried out a joint campaign with Police Scotland to raise awareness of the issue in 2014²⁴. In 2021 we worked with Police Scotland to design training for call handlers on illegal evictions. However, this issue remains ongoing.

Additionally, we know that many illegal evictions also go unchallenged or unreported by tenants because they lack the knowledge and/or the confidence to pursue the case. While we agree that a reform to the way in which illegal eviction damages are calculated is welcome, this penalty will not be effective if awareness among tenants of their rights surrounding illegal evictions are not improved. Police Scotland also need to be aware that an illegal eviction is a criminal matter not a civil matter and needs to be treated as such. Making tenants aware of their rights and ensuring that they will be supported by Police Scotland to challenge illegal evictions, will empower tenants to use this new proposed system to claim damages. The Scottish Government needs to do more to raise awareness of illegal evictions among both tenants and Police Scotland.

²⁴ Shelter Scotland (2014) [Shelter Scotland campaign briefing: Illegal eviction](#)

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

If an illegal eviction is reported but the tenant chooses not to pursue a criminal prosecution, the local authority (or potentially the PRS regulator when this is established) could and should take action. They should consider if the landlord behaved in a fit and proper manner, in line with the criteria for being a registered landlord. If the landlord is found not to have behaved appropriately then they should be struck from the register. Assuming there is sufficient evidence, repercussions are necessary even if there is no criminal conviction.

While criminal prosecution and the resulting fines act as an important deterrent to landlords, by this stage much of the damage has already been done in that the tenant has already lost their home. To prevent this from happening again, the landlord responsible should not be allowed to continue to rent out their property or properties. The responsibility should be on the local authority or the suggested PRS regulator to ensure that the landlord is removed from the register and cannot illegally evict someone again.

In our response to question 5 of this consultation, we stated that the Ground 16 for eviction – Landlord has ceased to be registered, should be removed from the PRT. It is unjust that the tenant should lose their home through no fault of their own. If the landlord is removed from the register, options must be explored to help the tenant remain in their home should they wish to do so, for example through alternative management of the property.

32. Should students living in Purpose Built Student Accommodation be offered similar rights to students who rent from a private landlord? If so, how can we best achieve this without impacting on the supply of Purpose Built Student Accommodation?

The current rights of students living in Purpose Built Student Accommodation (PBSA) are minimal. Shelter Scotland considers that all tenants should have access to the same standard of rights, this include students that are living in PBSA.

Shelter Scotland have heard from students, and student representative bodies, on their concerns with this type of accommodation. Key issues raised include:

- The landlord is not required to give notice for entering the property. This leads to serious safety and safeguarding concerns.
- Each room in PBSA can be owned by an individual landlord and there is no standardised contract. The standard of rights that a tenant has can vary greatly between rooms.
- Deposits of students living in PBSA are not required to be protected.
- The cost of renting in PBSA is often very high, and the quality of the accommodation and the services often do not match that high price point.
- Students living in PBSA cannot resolve disputes through the First-tier Tribunal.

Shelter Scotland considers that the PBSA sector requires more regulation, particularly in terms of rights. There needs to be a set of standardised rights that applies across all PBSA, which are up to the same standard as those given to PRT tenants.

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

[no answer provided]

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

[no answer provided]

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

[no answer provided]

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

According to our advisers, the main problems regarding tenants in residential mobile homes is the lack of regulation of the sector. There is often confusion from all parties involved – the site owner, the tenant and the local authority, on what type of tenancy they have and as a result what their rights are. This is exacerbated by the fact that there is often a lack of a paper trail, and informal agreements for things such as utilities payments. All of these factors make rights hard to define.

In Shelter Scotland's experience, often tenants who are renting mobile homes can be vulnerable, for example they can have chronic mental and/or physical disabilities. We also know anecdotally that there is a high population of elderly people that rent these types of homes. This equalities angle must also be taken into consideration.

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

a) A tenant farm or a rented croft house?

[no answer provided]

b) Tied accommodation as part of their employment?

Many of the advice queries Shelter Scotland receive on tied accommodation relate to poor conditions and overcrowding. In one case, an agricultural worker living in tied accommodation in Aberdeenshire had no electricity in their home and several of the windows were broken. In another case, 15 agricultural workers with tied tenancies shared a four-bedroom house.

Awareness of rights among tenants with tied accommodation can be very low. This is exacerbated by the fact that often these tenants are not British citizens, and English is not their first language. As the nature of this accommodation is such that it is tied to a person's employment, tenants are often hesitant to challenge or dispute the standards due to the possible repercussions this could have on their employment. Work to improve awareness of rights, as well as analysing where rights need to be strengthened, would help improve the housing experiences of those in tied accommodation.

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

Eviction is a stressful and upsetting experience, and this can be compounded for individuals who have lived in their home for long periods who are forced to leave on their retirement. Possible policy solutions to mitigate this upheaval could be ensuring that sufficient and explicit notice be provided that their occupancy rights will cease on the confirmed date of retirement, for example This will ensure the tenant is aware of what their rights are and give time to find alternative housing.

Case study: A tenant who had been living in tied accommodation on a country estate for over 20 years had recently retired from the job which their home is tied to. The employer gave their tenant no prior warning that they would be required to leave their accommodation when they retired. The tenant is now facing homelessness.

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

[no answer provided]

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

The critical test of a meaningful approach to housing affordability is how well it helps those households with fewer affordable housing choices and how well it supports the wider aim to reduce poverty.

As the consultation document outlines, affordability is a key element of the human right to adequate housing. The United Nations Committee on Economic, Social and Cultural Rights' (CESCR) general comment²⁵ details affordability as

“Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised.

Steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels.

States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs.

In accordance with the principle of affordability, tenants should be protected by appropriate means against unreasonable rent levels or rent increases.

In societies where natural materials constitute the chief sources of building materials for housing, steps should be taken by States parties to ensure the availability of such materials”

This comment is a reasonable starting point for how the issue of housing affordability should be broached. For example, the Minimum Income Standard developed by Joseph Rowntree Foundation provides a benchmark of minimum needs based on goods and services that the public think are necessary for an adequate standard of living in the UK. This is updated annually and includes food, clothes, housing, and social and cultural participation, and it is calculated for different household types, taking into account different expenditure pressures. JRF uses 75 per cent of the MIS as a poverty indicator. How well any shared understanding of affordability interacts with poverty measures is crucial.

The householder's perspective is also important in evaluating any shared understanding of affordability. For example, the Living Home Standard²⁶ developed by Shelter and Ipsos Mori through public consultation, including a series of discussion groups, workshops and quantitative surveys carried out in Scotland and across Britain. These different strands brought together public views on what a home should provide, which was honed into a list of 39 attributes from 5 dimensions which together define the Living Home Standard – a standard that all homes should

²⁵ Office of the High Commissioner for Human Rights, [CESCR General Comment No. 4: The Right to Adequate Housing \(Art. 11\(1\) of the Covenant\)](#)

²⁶ Shelter Scotland (2018) [Living Home Standard](#)

meet, irrespective of their tenure, size or age. The affordability dimension included whether a household can meet the rent or mortgage payments on the home without regularly having to cut spending on household essentials like food or heating, whether they were worried that rent or mortgage payments could rise to a level that would be difficult to pay, and whether they can meet rent or mortgage payments on the home without regularly preventing participation in social activities or being prevented from putting enough money aside to cover unexpected costs.

Affordability issues are one of the main reasons people approach Shelter Scotland for support. However, this affordability issue is not solely down to housing costs – often it is prompted by a change in income or period of unemployment, problems with social security such as benefit cap being imposed or a change in household composition affecting income. We know that housing unaffordability, and poverty, disproportionately affect different groups, including single parents and people with disabilities. Any definition of affordability should be considered and evaluated within the wider context of support including social security, a well-functioning labour market with wages keeping in line with inflation, affordable childcare, and so on. There is an urgent need to address the high rent levels in hot spots like Edinburgh and Glasgow, and some specific localities where rents have been increasing way above inflation for years and are already unaffordable to large numbers of people.

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

Shelter Scotland has long called for data to be collected on the current rents that sitting private tenants are paying²⁷. The private rent statistics that are published annually by the Scottish Government are largely based on advertised rents, rather than the rents being charged for live tenancies²⁸. Getting accurate data on private sector rents is a crucial first step in understanding affordability in Scotland, and being able to take informed steps to address it.

We therefore welcome the proposal in the consultation to collect a wide range of data on the private rented sector. The suggestions for what are to be collected will help us form not only an understanding of rents, but also what the private sector looks like more generally. This will allow for more extensive and detailed analysis.

What isn't clear from the consultation document is how often this data is to be collected. We strongly suggest that the data on rents should be collected annually via the national landlord register.

²⁷ Shelter Scotland (2021)[Response to the consultation on the Fair Rents \(Scotland\) Bill](#)

²⁸ Scottish Government (2021)[Private sector rent statistics: 2010 - 2021](#)

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

Currently if a private landlord is renting out a property without being registered then the local authority can issue a rent penalty notice to the landlord. Shelter Scotland is supportive of this consultations proposal that this penalty is extended to instances where there has been a failure to provide up to date rent data and property details.

Local authorities should be properly resourced to follow up with landlords who have not entered the required data annually.

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

Shelter Scotland considers that making rental and property information publicly available for tenants is a positive move. This increased transparency would benefit tenants, as it will allow them to make more informed choices. It would also add an extra way in which this data can be checked for accuracy, as if the tenant notices that they are paying more rent than is stated on the register they could challenge this.

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

Currently if a private landlord is renting out a property without being registered then the local authority can issue a rent penalty notice to the landlord. Shelter Scotland is supportive of this penalty being extended to instances where there has been a failure to provide up to date rent data and property details. Repercussions would work as an important tool to ensure that this information is kept up to date. This in turn will help to contribute to better professionalism and regulation of the private sector. However, the local authority team in charge of issuing rent penalty notices must be properly resourced to ensure that this threat of repercussion can become reality.

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

Shelter Scotland supports the proposal that the rent adjudication process should only result in rents being decreased or maintained. The current process allows for the Rent Officer to increase to rent if they see fit. This means that there is a risk for tenants that challenging the rent could actually lead to their rent rising, and therefore their home becoming more unaffordable. We consider that this acts a disincentive to tenants who may otherwise choose

to challenge their rent and therefore the current rent adjudication process does not adequately address affordability in the private rented sector.

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

[no answer provided]

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

[no answer provided]

48. Are there elements of the existing Rent Pressure Zone system that could be built upon when designing a new system of rent controls?

The Rent Pressure Zones (RPZs) that were introduced in 2016 to protect tenants from unreasonable and unpredictable rent increases have proven extremely difficult to implement. There is a lack of data on the rents that current PRS tenants pay and so the evidence requirements for a rent pressure zone to be established cannot be met²⁹. As a result of this there are currently no RPZs in Scotland. Having robust, detailed data on the actual rents that tenants pay is the first step in being able to tackle affordability in the private rented sector.

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

"Vision for future rent controls: Tenants pay affordable and reasonable rent for good quality homes, helping to support efforts to reduce poverty and improve outcomes for low income tenants and their families.

Underlying principles for national rent controls:

- *They will have an appropriate mechanism to allow local authorities to introduce local measures.*
- *They will be evidence based.*
- *Their design will support and encourage the private rented sector to improve the quality of rented properties.*
- *Policy development on rent control legislation will seek to learn from the processes already in place for social sector tenants in relation to rent levels.*

²⁹ Shelter Scotland (2018) [An Evaluation of Rent Regulation Measures within Scotland's Private Rented Sector](#)

- *Policy will be developed taking into consideration the views of all stakeholders but with a particular focus on giving private tenants a stronger voice."*

Shelter Scotland largely agree with the vision and principles for a future model of rent controls for the private rented sector in Scotland, with some suggested additions and amends.

Whilst the vision refers to tenants paying affordable and reasonable rent, it seems appropriate to include this as one of the principles. A principle should be included which reflects the commitment to realising the human right to housing in Scotland; any rent controls should seek to address affordability element of this right within the private rented sector.

The addition of 'stable' would also be welcome within the vision: Shelter Scotland believe that rents should be stable and predictable and that tenants should be protected from unpredictable and unreasonable rent rises.

The government should also consider how the vision and principles could be amended to reflect the need for a fairer balance of power between tenants and landlords. At present, in many areas of Scotland tenants cannot exercise consumer power because of the broken housing system, and a severe lack of affordable social homes which meet people's needs. Any system of rent controls should effectively address these market failings, which we believe can result in tenants paying higher rents than the quality of accommodation justifies and blunts incentives for landlords to improve quality to justify price.

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

The right balance between building new homes and buying back existing homes is one that results in local authorities being able to deliver on their Local Development Plans and Strategic Housing Investment Plans, providing a sufficient supply of affordable homes to meet existing and future demand. The necessary resources must be made available at a national level through the Affordable Housing Supply Programme to make these local and national plans a reality. The meeting of existing and future affordable housing need must be one of the central measures of striking this balance.

Moreover, bringing empty homes back into use as affordable/social homes where possible must be a key part of local authorities' housing strategies rather than a standalone activity. Mainstreaming empty homes work means that local authorities can look beyond the open market and also purchase former rental properties, or properties owners have inherited, that have been empty for more than a year but are not being actively marketed for sale or rent. This has been done in Perth and Kinross and North Lanarkshire and we have seen empty homes officers working with others to bring empty homes back into use as social housing through buy back schemes or property and tenancy management services.

While it is outside of the control of the Scottish Government, we also believe that creating a level playing field between the VAT rates that apply to new build properties and those that apply

to the refurbishment of empty homes would also help to achieve the right balance. At present, VAT is not charged on labour or building materials for work on new homes, but is payable in full or at a discounted rate where homes have been empty for less than 10 years.

Extending funding available for the retrofitting of existing homes to include empty homes being brought back to use through the Affordable Housing Supply Programme would also help to ensure that costs of retrofitting homes and installing zero emission heating systems were not acting as disincentives for acquiring existing properties under the programme.

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

[See answer to question 50]

52. Beyond the routes already available to deliver MMR homes how could new, additional investment in this be supported?

[no answer provided]

53. What measures can we put in place to help encourage BtR developments in Scotland?

[no answer provided]

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

Our advisers regularly deal with cases of current social tenants that need to move to more suitable accommodation but are unable to because of the lack of social housing available. Often tenants are trapped in social homes that are no longer suitable for their needs for years. Similarly, the Scottish Household Survey reports that over 40% of people on waiting lists for social housing had been on these lists for over three years³⁰.

Case study: A large family in Dundee is overcrowded and had been waiting to move into a larger social home for over four years but had been unable to do so. This is because the size of home required is not available.

³⁰ Scottish Government (2022) [Scottish Household Survey 2020 - telephone survey: key findings](#)

The structural issue relating to allocations is the fundamental lack of supply of social housing in Scotland, with demand outstripping supply. The only way to address this is with national long-term investment to increase the supply of social housing in order to meet existing and future demand. The Scottish Government's commitment to build 110,000 affordable homes over the next 10 years, 70% (77,000) of which should be social homes, must be prioritised and delivered on. By creating a net increase in social housing stock, the demands, impact and necessity of the allocations process will be reduced.

There are other issues with social housing allocations which could be addressed in order to help everyone who needs to access a social home be able to do so. A refreshed look at prioritisation processes and categories might help ensure that households are consistently and accurately prioritised based on their level of need. One example of this is overcrowding which in some allocations is given a generic point, whether the household is overcrowded by one or more bedrooms. Further, common housing registers help ensure that the application process is straightforward. For areas without a common housing register, the process can be unnecessarily complex with applicants required to apply separately to each housing provider. This is very time consuming and is a particular barrier for some people, such as those with learning disabilities or for whom English is not their first language.

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

The application process for social homes needs to be as accessible as possible, in order to reduce barriers for people with protected characteristics. This means that social landlords should allow for online, paper, telephone and face-to-face applications. Access to the internet intersects with protected characteristic such as age, as well as groups that are more likely to experience poverty – such as ethnic minority groups. The application material should also be available in multiple languages for people whose first language is not English.

Practical support should be available to assist people in accessing social housing who may struggle to apply on their own. For example, people with a learning disability or mental health problems. Current application processes are often very complex, and some groups of people with protected characteristics may struggle to navigate them.

In terms of allocations of social homes, work needs to be done to ensure that mental health issues are treated in a similar way to physical disabilities. In Shelter Scotland's experience, a doctor's note confirming the mental health condition is often not accepted as proof, and a psychiatrist's diagnosis is required. This can be both difficult and costly to obtain and is often not an option for people. In order to help people with mental health conditions access a suitable social home, social landlords must ensure mental health is taken into consideration in the same way that physical health is.

Whilst disabled people are more likely to live in social housing, there is currently not enough accessible social homes available. There needs to be more accessible social homes built to meet

the housing needs of people with disabilities³¹. The Scottish Government must continue to invest in building social housing, ensuring the right homes are built in the right places, and at the right pace. This will help people with disabilities to access social homes which are appropriate for their needs.

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

[no answer provided]

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

Private landlords have been required to register since 2006. This registration process was developed to respond to concerns that some landlords were not fit to let property. The current registration system charges local authorities with registering private landlords based on a 'fit and proper person' test. The intention being to improve the practice of landlords, and imposing penalties on those who do not meet the standards, including refusal of registration.

There are a number of ways in which landlord registration has been used in a positive way to improve private renting. Perhaps most significantly it has allowed for communication with registered landlords enabling them to be provided with advice, training and information on their responsibilities. During the coronavirus pandemic it also allowed for communication with private tenants on their rights and the forms of support available to them.

However, Shelter Scotland has serious concerns around the lack of enforcement of the current registration system. We are aware from our work that some local authorities are not applying the "fit and proper person" test in any meaningful way. There is also the lack of the use of sanctions for those landlords who are continuing to use bad practice – for example illegal evictions³². This means that some of the most poorly behaved landlords are able to gain registration and remain registered despite poor practice.

Case study: A private tenant was illegally evicted by her unregistered landlord. The tenant then took a civil action against her landlord for damages and her lost belongings. The judgement was made in her favour and damages were awarded against the landlord. The same landlord then went on to attempt to register, despite this evidence against him being a 'fit and proper person' he was awarded registration and continues to be allowed to rent out properties.

Case study: A private tenant had been living in their home for several years before getting into rent arrears. The landlord was not registered and there was no written tenancy agreement between the tenant and landlord. The landlord applied to register and immediately after started eviction proceedings. The tenant went to their local

³¹ Equality and Human Rights Commission (2015) [Housing and disabled people: Scotland's hidden crisis](#)

³² Shelter Scotland (2009) [Landlord registration in Scotland: three years on](#)

authority for support and to get the local authority to take action, but the local authority stated there was nothing they could do because the landlord was now registered.

This lack of enforcement may be a result of possible lack of capacity and budget for councils to effectively carry out their duties with regard to landlord registration. The current system puts responsibility on the tenant to report any poor practice to the council and pursue the case, something which many tenants may not feel able to do.

In order to improve the landlord registration system and for it to be effective in helping to professionalise the sector the Scottish Government needs to ensure local authorities have the resources to not only administer the process of registering landlords and implement the 'fit and proper person test' in a meaningful way, but also effectively address worst practice by carrying out enforcement actions as appropriate.

Local authorities should also work with the relevant teams and organisations to ensure that landlords with poor practice are identified and are reported through all possible channels to the landlord registration team. These teams include Police Scotland, local authority homelessness and benefit teams, and the First-tier Tribunal. This would mean that enforcement would not only rely on tenants reporting poor practice.

It is very difficult to secure data on the numbers of landlord licenses that are revoked or refused based on poor practice. As a result, we do not have a true image of how effectively the landlord registration system is working currently. Data on the numbers of landlords that have had their licence refused or revoked should be collected in a standardised way and made publicly available. This will improve transparency of local authority enforcement and will help inform policy development in this area.

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

[no answer provided]

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

A. What barriers did you face, if any?

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

In Shelter Scotland's casework experience, private landlords often refuse to undertake the necessary adaptations, and tenants just end up moving into other private accommodation that better meets their needs.

Case study: A private tenant had recently started using a wheelchair and after receiving advice from Shelter Scotland on their rights, asked the landlord to convert the

bathroom into a wet room so they were able to shower. The landlord refused and the tenant had to move out of their home as a result.

For social tenants, one of the key barriers we see in getting adaptations for social tenants is the length of time it takes for a housing needs assessment to be carried out.

Case study: A social tenant in Aberdeen with epilepsy required the bath in his home to be replaced with a shower. The housing needs assessment took months to be carried out and so the tenant was living in accommodation unsuitable for his needs for a significant period of time.

Another issue is that social homes are often unable to be adapted, for example the door frames are unable to be widened to fit a wheelchair through. This means that these disabled tenants are often trapped in accommodation that is unsuitable for their needs, and because of the lack of social housing stock are unable to move into a home that is better suited for them.

The importance of tenants being able to advocate for themselves in order to secure the necessary adaptations that they require cannot be overstated. Tenants need to be empowered and vocal in order to get the local authority or Registered Social Landlord to take their demands seriously. In our experience this can be difficult for people with disabilities to do. The Equality and Human Rights Commission's report in housing and disabled people in Scotland highlighted that access to advocacy and advice for disabled people is critical in helping them to navigate a complex system and maintain their housing rights³³.

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

Although private tenants in Scotland have relatively strong rights, there are still significant barriers to the enforcement of these rights. Shelter Scotland welcomes this focus in the New Deal for Tenants on exploring ways in which enforcement and standards in the private rented can be improved. Any regulatory system, whether it is a PRS Regulatory body or another system must focus on supporting tenants to assert their rights, and where appropriate uphold their rights on their behalf. Consideration could also be given to introducing an ombudsman type system, which might be better suited to giving the tenants the support that they require to gain equity of access to justice, so their rights are upheld.

These are some of the current issues with enforcement of private tenants' rights which we are aware of through our work, and through research commissioned in 2020 on routes to consumer redress in the rented sector in Scotland³⁴:

³³ Equality and Human Rights Commission (2015) [Housing and disabled people: Scotland's hidden crisis](#)

³⁴ Shelter Scotland (2020) [Reviewing consumer redress in Scotland's social and private rented sectors](#)

- Current dispute resolution schemes often put a significant responsibility on the tenant to pursue the issue and hold the landlord accountable. Vulnerable tenants with less financial power often have a lower awareness of their rights and are less confident to exercise them. This intersects with people's protected characteristics.
- There is a lack of awareness of rights among private renters, and lack of awareness of the formal routes to redress and justice. Nationwide Foundation's RentBetter Research found that private tenant's awareness of the Tribunal is 'extremely low'³⁵.
- Tenants can be reluctant to exercise their rights through formal processes. This reluctance may come from the insecurity felt by renters, who don't want to rock the boat out of fear of the landlord evicting them³⁶. The lack of suitable, affordable accommodation available for renters, especially those on low incomes, may also contribute to this hesitancy in holding their landlord accountable.
- The difficulty in accessing justice is also highlighted in research as being a key barrier to ensuring tenants' rights are enforced in the private rented sector³⁷. There is an imbalance of power at the Tribunal. Our data analysis found that in 88% of cases (234 out of 265 Tribunal cases analysed) there was no representation or support for tenants recorded as present³⁸. Where the tenant did have representation, the Tribunal was more likely to find in their favour.
- The annual report of the Scottish tribunals service shows that a total of 75% of applications to the Tribunal came from landlords seeking to evict a tenant (42%) or for civil proceedings (33%)³⁹, usually for payment orders concerning rent arrears or damage to rented property. This indicates that this forum is overwhelming being used by landlords and letting agents to pursue tenants, rather than tenants using it to hold their landlord to account. Through our casework and other data, we would expect more tenants would have cause to raise their experiences at the Tribunal. For example, considering the high-level disrepair that we know exists in the private rented sector, it could be expected that more tenants would seek to resolve this issue through the Tribunal. However, whilst research shows that 65% of all PRS properties have disrepair to critical elements^{40 41}, only four percent of all tribunal applications in 2019-2020 regarded repairs⁴².

³⁵ Nationwide Foundation (2020) [RentBetter Wave 1 Summary](#)

³⁶ Shelter Scotland (2020) [Reviewing consumer redress in Scotland's social and private rented sectors](#)

³⁷ Shelter Scotland (2020) [Reviewing consumer redress in Scotland's social and private rented sectors](#)

³⁸ Shelter Scotland (2020) [First-tier Tribunal \(Housing and Property Chamber\): data analysis and recommendations](#)

³⁹ Judiciary of Scotland (2021) [Scottish Tribunals Annual Report 2019-2020](#)

⁴⁰ Scottish Government (2020) [Scottish house condition survey: 2019 key findings](#)

⁴¹ Disrepair to critical elements refers to disrepair to building elements central to weather-tightness, structural stability and preventing deterioration of the property, such as roof coverings or the structure of external walls.

⁴² Judiciary of Scotland (2021) [Scottish Tribunals Annual Report 2019-2020](#)

- Pursuing action against a landlord through a formal process can be a very time-consuming process, which may restrict many tenants from being able to enforce their rights through the Tribunal.
- There is a lack of enforcement of the current landlord registration system. We are aware that some councils are not applying the 'fit and proper person' test in any meaningful way. This lack of enforcement means that some landlords are able to gain and remain registered despite continued extremely poor practice. A lack of the use of sanctions for those landlords who are continuing to undertake bad practice – for example illegal evictions⁴³ is also an issue.

To address these issues, tenants need to be aware of their rights, able and confident to enforce them with support as necessary, and other bodies should be ready and willing to take action on behalf of actual or future tenants to ensure there is a level of accountability amongst landlords. Shelter Scotland has a number of recommendations as to how enforcement of private tenants' rights can be improved:

- There needs to be ongoing national communication to tenants, through multiple channels, on their rights.
- The Scottish Government must consider how to best ensure tenants who are accessing, or are seeking to access, the First-tier Tribunal have access to advocacy and advice and this process should be as straightforward and efficient as possible.
- There should be better collection and publication of data - we recommend that the data routinely recorded and published by the First-tier Tribunal should be expanded allowing for deeper understanding and better analysis of how the Tribunal is working. Further, whilst private landlords are required by law to send a section 11 notice to the local authority when they start eviction proceedings, our understanding is that this is not consistently followed. The lack of published data makes it difficult to understand the extent of the issue and any patterns of non-compliance, and therefore what changes or awareness raising might be required. We recommend that publication of section 11 data is restarted as well as standardised data collection and publication from the Tribunal.
- Local authorities should work with the relevant teams and organisations to ensure that landlords with poor practice are identified and are reported through all possible channels to the landlord registration team. This would mean that enforcement would not only rely on tenants reporting bad practice.
- Adequate funding needs to be provided for local authorities to ensure that they can implement the 'fit and proper person test' for landlord registration in a meaningful way and

⁴³Shelter Scotland (2009) [Landlord registration in Scotland: three years on](#)

carry out enforcement actions, including making third-party applications to the Tribunal where appropriate.