

Consultation on a new tenancy for the private rented sector



RESPONDENT INFORMATION FORM

Please note: this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Govan Law Centre

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

Daily

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3. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

Yes No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

- (c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate

Yes No

Yes, make my response,
name and address all
available

or

Yes, make my response
available, but not my
name and address

or

Yes, make my response
and name available, but
not my address

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes

No

CONSULTATION ANSWER FORM

Question 1: Do you agree that the no-fault ground for a landlord to repossess their property should be excluded from the new tenancy system?

Yes No Don't know

Please explain your answer.

The Short Assured Tenancy (SAT) regime was originally introduced by the *Tenants' Rights Etc. (Scotland) Act 1980* as a means to encourage more private sector residential property to be made available for let in Scotland (and indeed in the rest of the UK with similar provisions introduced for the UK generally). The rationale given was that a new short length tenancy with an automatic mandatory route to recover was needed to encourage landlords to let property which they would often require to move back into (e.g. their home). However, the private rented sector (PRS) in Scotland has radically changed since 1980. We have seen many former council houses sold under the right to buy and form part of property business portfolios for rent; and in the last decade the PRS has almost doubled in size in Scotland, now representing almost 14% of all households (from 7% a decade ago). In relation to the UK mortgage market, buy to let mortgages (which are not subject to the FCA's MMR rules) remain a major growth area. Accordingly, there is a very strong socio-economic case for removing the no-fault ground in Scotland's PRS. Private lets are generally a significant business for many landlords and their agents, and there is now no cogent reason for tenants to have weak security of tenure in the PRS. It is in both the public and consumer interest for PRS tenants to have proper and proportionate levels of security of tenure. That should be the primary aim of this law reform exercise, however for reasons that we give in Answer 5(a), we do not believe this is achieved; instead we think the proposals as presently drafted would create a much more inadequate private rented sector in Scotland from the perspective of tenants. Govan Law Centre acts exclusively for tenants, and has done so for almost twenty years in Glasgow.

Question 2: Do you agree that the ability to roll over tenancies on a monthly basis should be excluded from the new tenancy system?

Yes No Don't know

Please explain your answer.

To be consistent with the removal of the no-fault recovery route it would not make sense to have month to month roll over tenancies.

Question 3a: Do you agree that the new type of tenancy should have a minimum duration of six months?

Yes No Don't know

Please explain your answer.

Landlords should be required to offer a minimum period of six month save in exceptional circumstances such as where the tenant is a seasonal or travelling worker and chooses a lesser period. Care will have to be taken to ensure than the ability to choose a shorter period is not exploited and misused as a loophole by landlords or their agents. A minimum period is in the interests of both tenants and landlords.

Question 3b: Do you agree that the tenancy should have no maximum period?

Yes No Don't know

Please explain your answer.

Parties should in principle be able to agree a longer period. However, there is generally an imbalance in power between landlords and tenants and thought should be given to tenants being required in practice to enter into much longer contracts than they might want to (e.g. as they may be told by an agent it is a 'take it or leave it' offer of let) or creating a situation whereby they cannot give notice for a unreasonably long period which would prevent them from moving out to alternative premises for work or personal reasons.

Question 3c: Do you agree that a tenant should be able to request a shorter tenancy?

Yes No Don't know

Please explain your answer.

In exceptional circumstances; please see our response to Question 3(a).

Question 4a: Do you agree that the notice period should be linked to how long the tenant has lived in the property?

Yes No Don't know

Please explain your answer.

This is a reasonable proposal linking the length of notice to how long a tenant has let a property for, if for no other reason than someone may be more settled in their home over a longer period and it is not unreasonable to expect them to have more notice; however, that said the issue of notice is rendered of little consequence in practice by the proposed grounds of repossession: please see our response to Question 5(a).

Question 4b: Do you agree with the four proposed notice periods?

Yes No Don't know

If you do not agree with all four of the notice periods, please tell us which ones you disagree with and why.

The proposed notice periods appear reasonable and proportionate.

Question 5a: Do you agree that all of the proposed repossession grounds should be mandatory?

Yes No Don't know

Please explain your answer.

No. The proposed repossession grounds would represent a serious weakening of the rights of tenants' in Scotland's private rented sector by removing the defence of 'reasonableness'. In fact, these proposals are

considerably more regressive for tenants than the then Conservative Government's introduction of the short assured tenancy regime in Scotland some 34 years ago. In relation to rent arrears, the proposed ground 6 (three months' arrears of rent) is in direct conflict with the will of the Scottish Parliament in legislating in the Homelessness etc., (Scotland) Act 2003 to provide a reasonableness defence for the current three months arrears of rent (ground 8, schedule 5, Housing (Scotland) Act 1988). Where is the evidence now that this defence should be repealed in relation to rent arrears which may be due to housing benefit errors or delays? The proposed new mandatory grounds 1 to 3 are couched in very weak language: the use of the word 'want' sets the bar very low. For example, it would not be necessary to provide evidence that a house was being marketed for sale, or that the mortgage lender had required a sale to repay the lending secured over the property. Instead, all that would be required to evict a tenant in the private sector is that the landlord 'wanted' to move back in, or sell, or that their lender wanted to sell. In other words, there would be no need to establish an actual sale was taking place or that the landlord really did need to and was moving back into the property. Ground 4 is even more open to exploitation by landlords to the detriment of tenants: all that a landlord need say is that he or she intended to 'refurbish' to evict a tenant/family. What is 'refurbish'? It might never materialise, or indeed it could be as little as painting a wall or installing a new sink. Why should this be a mandatory ground of eviction? Ground 7 makes provision for a mandatory ground of repossession for 'anti-social behaviour'. If the anti-social behaviour was a symptom of an illness or behaviour that had since been modified why should the tenant be subject to mandatory repossession? The requirement on the court to consider reasonableness is an essential requirement to ensure fairness and justice. Finally, ground 8 enables a mandatory ground of eviction where the tenant has otherwise breached the tenancy agreement. Without the common sense protection of a defence of 'reasonableness' will tenants be evicted for the most minor contractual breaches? We note PRS evictions will no longer be dealt with by the Sheriff Court, and instead will be dealt with by the First Tier PRS Tribunal. This change in policy (for reasons of cost savings) does concern us because losing the roof over your head is such an important issue that it should be dealt with by an experienced and more senior judge. We also question how can PRS Tribunals be seen to be genuinely impartial when their chairs are often part-time judges employed or engaged by landlords in private practice to undertake eviction actions?

Question 5b: Do you agree with the proposed list of new repossession grounds?

Yes No Don't know

Please explain your answer.

See the answer to Question 5(a).

Question 5c: Are there other repossession grounds we should include in the list?

Yes No Don't know

Please explain your answer.

See the answer to Question 5(a).

Question 6: Do you agree that landlords should be able to recover possession of their property with a 28-day notice period in the circumstances proposed?

Yes No Don't know

Please explain your answer.

We disagree as we do not believe the current proposed mandatory grounds are fair, proportionate, or necessary in relation to the empirical evidence in the current Scottish PRS market; please see our answer to Question 5(a).

Question 7: Do you agree that landlords should no longer have to issue pre-tenancy notices to recover possession of their property?

Yes No Don't know

Please explain your answer.

We disagree as we do not believe the current proposed mandatory grounds are fair, proportionate, or necessary in relation to the empirical evidence in the current Scottish PRS market; please see our answer to Question 5(a).

Question 8: Do you agree that the notice period for all proceedings should be four weeks?

Yes No Don't know

Please explain your answer.

This proposal seems fair, reasonable and logical creating a uniform period.

Question 9: Do you agree with the proposed timescales for a tenant giving notice to a landlord to leave the property?

Yes No Don't know

Please explain your answer.

We think a period of 4 weeks in all cases is reasonable in relation to tenants.

Question 10: Do you agree that a model tenancy agreement should be introduced?

Yes No Don't know

Please explain your answer.

However, what happens if the landlord fails to include mandatory clauses or introduces discretionary clauses that misrepresent the correct legal position? – what would be the legal implications be in practice? If there are no consequences then how will the policy work in practice?

Question 11a: What are your views on rent levels in the private rented sector in Scotland?

It has been reported this month that rental prices in the Scottish PRS are up 11.7% from last year (<http://www.propertywire.com/news/europe/uk-rental-price-growth-201412159931.html>). The average monthly rent is £638, and the gap between the cost of rents in the social rented sector and the PRS continue to grow. Given that so much public money goes into the PRS via housing benefit we believe there is a cogent case for the Scottish Government to introduce a robust and new fair rents mechanism for tenants

in the PRS. We have examples of economic price regulators in the UK (OFCOM, OFGEM, OFWAT, the new Competition and Markets Authority, and most recently the proposal from the FCA to price-cap short term high interest consumer credit loans in the UK); so why shouldn't the PRS have a robust legal mechanism to economically regulate rent increases which are far outstripping the CPI or inflation generally?

Question 11b: What action, if any, should the Scottish Government take on rent levels in the private rented sector in Scotland?

Please explain your answer

See our answer to Question 11(a).

Question 11c: What rent review conditions, if any, should the new tenancy system include?

Please explain your answer.

Rent review should be linked to a new fair rents mechanism and be objectively justified.

Question 12: Overall, do you feel that the proposed new tenancy system strikes the right balance between the interests of landlords and tenants?

Yes No Don't know

Please explain your answer.

The proposed new tenancy system would provide less security of tenure and protection for tenants than the current system given the unjust and unfair mandatory repossession grounds which are proposed. In practice, tenants would have little or no security of tenure if the new tenancy system was introduced. **We urge the Scottish Government to reconsider the proposed mandatory grounds of repossession and ensure that Scottish tenants are given more protection not less.**

Question 13: Do you have any (other) suggestions/comments on the new tenancy system for the private rented sector? If so, please tell us.

We are concerned about the phenomenon of '**revenge evictions**' in the PRS. We can illustrate our concern by reference to two recent case studies in Glasgow. We would urge the Scottish Government to give thought to how this very real problem can be tackled through new law reform, policy and enforcement solutions.

Case study 1

A client contacted us in January 2014 following an electrical fire at her property in 2013. Her landlord had refused to carry out a number of repairs and the electrical system was a danger to her and her son. The sockets were giving her shocks, the electricity box was sparking and there was no power in the kitchen and in several other sockets, so she was using extension leads. An electrical engineer had been sent out previously and advised that the property was a health risk and required to be re-wired, however both the engineer and the landlord did not respond to our requests for a copy of this report.

We wrote to the landlord several times, advising that they had failed in their duty under sections 12 and 13 (1)(c) of the Housing (Scotland) Act 2006, to ensure that the gas and electricity supply was in a reasonable state of repair and in working order. The landlord failed to respond and a complaint was made to the Private Rented Housing Panel. The landlord then failed to respond to the panel's invitation to take part in mediation and their order to provide an electrical engineer's report prior to the hearing date.

The landlord then sent the client a notice to quit, advising that they 'would not be renewing the tenancy when it ended on 10th December 2014'. This was sent before the hearing, it was not sent by recorded delivery, and was not posted in time to provide the required two month notice period. The letter was backdated, so it appeared to give the required notice, and it did not contain the required prescribed information.

The PRHP inspected the property and a hearing took place in October. A number of other issues were discovered, which required to be raised in a separate complaint. The landlord failed to attend the hearing but sent in a letter stating that they were aware of the issue but had been refused access by the tenant. The client was upset by this as she had been trying to resolve this for around one year and her landlord had never replied to her or us.

An order was made by the panel for the landlord to have a report completed by an electrical engineer, and the required work carried out within four weeks. We advised the landlord that their tenant should be decanted in the meantime. This period has expired and the order has not been complied with. We are waiting for the Panel's decision on what action will be taken, as the order set out that, failure to comply without reasonable excuse, is an offence liable on summary conviction, amounting to a fine, not exceeding level 3 on the standard scale. A landlord also commits an offence if they re-let the property when the order is in effect.

Our client had asked for Housing benefit to be paid to her directly and had thereafter been withholding this in a savings account. The landlord has now advised the Benefits Service that she is in arrears and they have started paying this directly to the landlord again. Despite failure to respond throughout this whole process, the landlord has now written to us stating that they 'trust our client is making arrangements to move out on 10th December' and that failing this they will be taking steps to evict on due to the 'rent arrears'. There has been no mention of a court action being raised.

Our client has been forced to contact Glasgow City Council to make a homeless application, due to danger the property poses to her and her son and due to further issues with the property, which mean she cannot heat it properly. Another complaint has been made on the basis of these repair issues and another hearing will require to take place on these issues, however our client is likely to have been accommodated as homeless by the time this is heard. Our client's mental health has been worsened due to the experience, she has had her medication increased and she is being left with no money for essentials, after the heating costs have been paid.

Case study 2

A client referred himself to our service as his letting agency was refusing to release him from his month to month contract after he was offered a permanent tenancy by a Registered Social Landlord. He was concerned about challenging the letting agent as other tenants had told him the letting agent regularly kept deposits.

We contacted the letting agent to ask why the written notice he had received was not adequate and he initially claimed he hadn't received any notice and then changed his mind to say he hadn't received it in a form he recognised. He also falsely claimed the tenant had not paid monies which fell under the deposit protection legislation. He claimed the tenant was just fleeing because he had rent arrears but declined to provide evidence of this.

The letting agent then emailed GLC to say that after our initial contact he had discovered Housing Benefit was in payment for our client and that "if he does not comply with the tenancy agreement we will report him for fraud as he works in his parent's shop who are also tenants of ours and we will evict them".

The client did work in his parents in laws shop and his income and hours were fully declared to the authority's HB department and the correct HB in payment.

We asked the letting agent to provide his grounds for evicting the parents and their landlord's instructions to evict them. He responded in email by saying he "did not need any grounds, simply two months' notice will suffice" He did not forward the landlords instructions.

We made an appointment with a solicitor for the clients Parents in Law as they did receive a Notice to Quit from the letting agent the following day. However, English was not their first language and they were frightened of challenging the letting agent and chose to just secure another private let. The letting agent then reported to the landlord that these clients had simply fled owing rent.

The same letting agent in the same email also queried why we were trying to get in touch with him about a different client. We responded that he had referred himself regarding dampness and mould in his property. The letting agent said this was just a smoke screen for rent arrears and the following day this tenant also received a Notice to Quit and has since left the letting agency's property. Again a deposit was not held in a tenancy deposit protection scheme.