
improving living in scotland



Consultation on a New Tenancy for the Private Sector

December 2014

ABOUT HOMES FOR SCOTLAND

Homes for Scotland is **the** voice of the home building industry.

With a membership of some 200 organisations together providing 95% of new homes built for sale in Scotland each year as well as a significant proportion of affordable housing, we are committed to improving the quality of living in Scotland by providing this and future generations with warm, sustainable homes in places people *want* to live.

Visit www.homesforscotland.com for further information and follow us on twitter @H_F_S

PROCESS

Homes for Scotland represents members on a wide range of issues affecting their ability to deliver much needed homes.

Our views are endorsed by committees and advisory groups utilising the skills and expertise of key representatives drawn from member companies.

This consultation response has been discussed, drafted and approved by our Housing Policy Advisory Group. HFSD also liaised with the PRS Working Party and PRS Champion in developing our response.

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

Homes for Scotland

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

Campbell

Forename

Karen

2. Postal Address

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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.

In building a new private rented sector for Scotland, we are keen for the sector to become a tenure of choice for a variety of different types of households. The PRS should no longer be seen as only a transient choice. Investors will be keen to see tenants sustain their tenancies for a long duration of time. We want to see households settling in communities in homes in the PRS. There is no motivation for an investor to remove a tenant that is fulfilling their tenancy requirements.

However, without the ability to end tenancies at the end of a lease, without any grounds, there is a concern that investors will perceive that it is much harder to remove bad tenants within the Scottish tenancy regime. It will therefore act as a disincentive to investment in the growth of the PRS in Scotland.

Furthermore, the mandatory grounds for repossession as they stand within consultation are not detailed enough. Clear routes for repossession are required to give investors confidence. As drafted, it is not clear how grounds will be evidenced. Obvious examples, include how the sale of a property is evidenced (or at least the attempted sale) or the extent and evidence on the renovations that have taken place.

This lack of clarity will inevitably put undue pressure on the tribunal system. Without clarity on the proposed mandatory grounds, it is impossible to support the removal of the no-fault ground for repossession.

After careful consideration therefore, HFS opposes the removal of the no-fault grounds.

Other issues:

- If the no-fault grounds were to be removed, would landlords with any concerns about their tenants take action to remove them now before the new regulations apply? What will that mean for these households? Furthermore, would landlords become extremely careful about whom they let their properties to, and what impact would that have on the ability of households to access the sector? We expect that landlords would be less willing to take a chance on a tenant.
- If the no-fault grounds were to be removed, but mandatory ground covering 'any other tenancy breach' was to be in place, will landlords not just use this to add perhaps unnecessary conditions into tenancy agreements for example, the tenant must wash the windows once a week, to then remove the tenant based on that breach. What impact would the possession of tenancies in this way have on a tenant's ability to access future tenancies? It would be better, and less subject

to abuse, to retain the no-fault ground and allow the landlord the option to legitimately end the tenancy.

- Homes are often sold with sitting tenants in them. Tenancy changes may impact on the approach to the valuation. There is a risk therefore that it becomes more attractive to use the sale as a ground to remove the existing tenant as it would be less attractive for the new owner/landlord to risk taking on an existing tenant when they may be unable to remove them if it does not work out. In addition, land is often bought with sitting tenants occupying properties and it would have to be clear where the builder stood when it came time to develop that land.
- We understand that some organisations are suggesting that the ability to utilise the no-fault ground is frozen if the tenant has submitted a complaint to the housing panel, for example because the landlord has failed to undertake repairs. HFS is sympathetic to this idea, as it would stop abuse of the no-fault grounds by landlords i.e. those simply looking to get rid of tenants who complain about repairs that are required and therefore strengthen tenants rights.

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.

We disagree with this proposal as we feel that the current arrangements allow maximum flexibility for both the landlord and the tenant.

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.

We are supportive of the default term being a minimum of 6 months, unless agreed between the tenant and landlord

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

Yes No Don't know

Please explain your answer.

We are supportive of this approach. The tenancy duration beyond the 6 months should be agreed between the landlord and the tenant.

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.

We are supportive of the flexibility that this provides, where the tenant and landlord are both happy with a shorter initial term.

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.

We agree that this is helpful to households (particularly families) who are established in homes/communities.

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.

Whilst supportive of linking notice periods to how long the tenant has lived in the property, we would suggest that 12 weeks is the maximum for tenancies with over a two year duration. The 16 weeks currently proposed for tenancies over 5 years is too long to wait if for example the landlord needs to release the investment through sale. We agree with the other timescales proposed.

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

Yes No Don't know

Please explain your answer.

We are also supportive of the retention of the no-fault ground as above.

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

Yes No Don't know

Please explain your answer.

However we do feel that the grounds are light on detail.

For example:

- The ground relating to payment of rent should include 'rent and service charges' rather than just 'rent'.
- How would the sale of a home be evidenced, and if the home was not successfully sold where would the landlord stand on re-letting?

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

Yes No Don't know

Please explain your answer.

Grounds that we feel are missing include:

- Grounds to cover properties tied to employment, where employment contracts are terminated the property should be able to be repossessed by the landlord.
- Grounds to cover abandonments, where it is proven that the tenant has abandoned the property the landlord should easily be able to repossess.

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.

Where the tenant has breached the grounds we would suggest that the landlord should be able to repossess their property without delay. The current 14 days notice to quit therefore seems more reasonable than an extension to 28 days as proposed.

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.

This will helpfully simplify the process for the benefit of the landlord and tenant.

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.

At present we understand that the length of notice required before a landlord can take legal proceedings is two weeks or two months, depending on the ground being used. It seems sensible to make this notice period consistent for all grounds.

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.

HFS would be keen to see a better balance between the notice that landlords have to give and the notice that tenants have to serve. We would therefore suggest that another timescale is introduced. Where a tenant has been in the home for over 2 years, they are required to give 12 weeks notice.

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

Yes No Don't know

Please explain your answer.

We would support the development of a model tenancy agreement that is fair and balanced. We would like further opportunity to input into a draft Model Tenancy Agreement and assume that the Scottish Government will be consulting later on that.

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

Rent levels in the private rented sector must be market driven.

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

We would suggest that the Scottish Government does not take any action on rent levels in the private rented sector.

It is also worth noting that evidence suggests that there is no need for rent control in Scotland. There is no evidence that rents have risen above inflation over the last few years, with the exception of the hot-spots such as the Aberdeen market.

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

Please explain your answer.

We would suggest that it would be fair for the new model tenancy agreement to outline how the landlord will review rent (i.e. once a year) so that the tenant knows what to expect.

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.

Due to the issues outlined above.

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

Scotland is a country with urgent yet diverse housing needs. The economic downturn has resulted in major demographic shifts, highlighting a changing housing landscape and the requirement to consider alternative models of funding and development. Increasing the capacity of Scotland's growing rented sector has a major role to play in achieving a balanced tenure mix. It also offers new and significant opportunities for investment and development.

Supported by the Scottish Government, in 2013 HFS led a major research project with world-renowned experts in housing finance from the Cambridge Centre for Housing & Planning Research and LSE London to determine how new sources of funding can be attracted into the Scottish rental market. Click [here](#) to read the research recommendations and [here](#) for the full report.

The final recommendation within the report provides a word of warning and addresses the issue of maintaining continued confidence and competitiveness in the development of a professional private rented sector at scale.

Recommendation 20

*One of the most important messages from this research has been the **need for stability in the policy, taxation and regulatory environments**. Although there is enthusiasm and considerable activity, there is also fragility. We therefore **recommend that the Scottish Government should ensure that all parties are fully aware of the very positive approaches taken in legislation with respect to the twenty-year rules and the introduction of Land and Buildings Transaction Tax in April 2015 (the successor to Stamp Duty Land Tax)**. There also needs to be a clear **commitment to ensure that the tax and regulatory environment does not negatively differentiate Scotland from the rest of the UK**. The value of continued commitment to maintaining a predictable transparent regulatory environment cannot be overstated.*

We would urge the Scottish Government to bear this recommendation in mind when considering changes to the Tenancy Regime. Any changes that dis-incentivise Scotland's ability to compete for investment would not be welcome.

Furthermore, the uncertainty caused by the review and consultation is likely to already be having an impact on investment decisions in the PRS in Scotland. It is absolutely essential that this consultation exercise does not drag in time unnecessarily. We need to reduce uncertainty as early as possible.