

**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**

PRS Champion

**Title** Mr  Ms  Mrs  Miss  Dr  **Please tick as appropriate**

**Surname**

More

**Forename**

Gerry

**2. Postal Address**

5 New Mart Place

Edinburgh

**Postcode** EH14 1RW

**Phone** 0131 4558350

**Email**

prschampion@homesforscotland.com

**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**

## **Introduction**

My role as the PRS Champion is to facilitate the delivery and construction of new homes for the private rented sector (PRS) in Scotland, funded by long term patient capital. The significance of regulatory impact of the PRS in Scotland must not be underestimated. If the regulatory conditions are not appropriate then institutional capital will not invest in Scotland.

In my discussions with investors the extent of regulation has been the starting point. Whilst we are making good progress in ways in which the land, planning and financial environment could be improved to attract institutional money in Scotland, the positive impact of any of this will be entirely undermined if the regulation framework is not supportive of investor needs.

## **Value of Potential Loss of Investment**

Under the right conditions the potential value of investment into the PRS in Britain is estimated by the British Property Federation as £30bn over the term of the next UK Parliament. If Scotland is to secure its fair share of this investment this would equate to at least £3bn.

Through my own assessments and discussions I would estimate the potential size of the new build PRS sector in Scotland to be between 7,000 and 10,000 homes over the lifetime of the next Scottish Parliament, equivalent to the potential investment value of at least £1bn.

This estimate is closer to that undertaken by the PRS Task Force in England which had previously identified £10bn of investment for the PRS in England. Proportionally this would equate to £1bn for Scotland.

## **Consultation Response**

Rather than answer each of the individual questions, I have grouped the response around the fundamental issues raised within the 2<sup>nd</sup> consultation. The views expressed are my recommendations in creating the right environment for new and significant long term investment in the new build institutionally funded PRS in Scotland.

Whilst great lengths have been taken to ensure the tenant's voices are heard within this tenancy review, I fear that the opinions of institutionally backed investors have been of secondary importance because at the moment they are not an active stakeholder in the PRS in Scotland. It is not surprising that the Scottish Government has not received many direct responses from these investors, with many not yet even having Scottish residential investment opportunities on their radar. However it is absolutely imperative that Ministers take account of the impact that any changes to the tenancy regime will have on Scotland's ability to compete for domestic and global investment, if we are to have a strong built-to-rent sector.

## **Removal of No-fault Ground**

Despite "most industry bodies, landlords, letting agents and legal respondents" raising objections at the first consultation to the suggested removal of the 'no fault' ground for possession, I note that the Scottish Government has taken the decision to "remain committed to removing the 'no fault' ground" without fully worked through proposals as to how the mandatory grounds would operate.

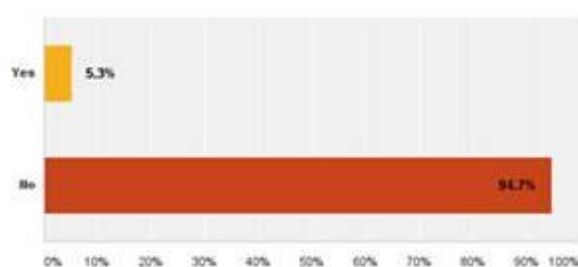
Whilst acknowledging that there are no specific questions covering the removal of the no-fault within the second consultation, it is important that I take this opportunity to express my on-going objection to the loss of the 'no fault' ground.

Firstly, there is no evidence to suggest that the no-fault ground is currently abused by landlords. In fact:

- Evidence from ARIM suggests that eviction rates overall (UK-wide) were only 0.85%\*. The vast majority were for non-payment of rent. The remaining 0.05% were due to terminations initiated by landlords in contemplation of a sale.  
\* Looking at the Scottish units under management, the rate is 1.6%. Again, the vast majority were for non-payment of rent. If we exclude terminations initiated by landlords in contemplation of a sale, this takes it down to 1%. There were no illegal and/or "revenge" evictions. Source: ARIM database for the year to 31st December 2014.
- Evidence from Places for People (recently collected through Touchstone) suggests that UK total evictions were also at a rate of 0.85% of lettable stock, with 0.05% for non-arrears, basically sales. Scottish figures were 0.54% of lettable stock, all of which were related to arrears.
- Evidence from DJ Alexander shows that, regardless of the reason, all notices served amount to a total of only 1.72% pa of the average portfolio size over 10 years. Specifically, 'no fault' notices only amount to <0.1% pa.
- Evidence from Letting Stats tenant survey in December 2014 with over 6,500 responses shows that only 5.3% of respondees have ever been asked to leave a property for a reason that was not explained or that they considered unreasonable (see below).

#### Have you ever been asked to leave a property for a reason that was not explained or that you considered unreasonable?

Answered: 6,058



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Larger scale investors and good quality managers entering the market will only serve to reinforce this position - good landlords do not evict good tenants.

Based on this evidence I conclude that any abuse of the 'no fault' ground is undoubtedly carried out by a minority of rogue landlords in an attempt to avoid carrying out repairs and/or to gain increased rent - so called 'retaliatory evictions'.

I believe that these rogues will continue this practice whether the no fault ground is removed or not, since they appear to operate under the legislative and regulatory radar anyway. In my view, this should be tackled through better enforcement of landlord registration and repairing standards as opposed to the removal of the no fault ground within the new tenancy regime.

I am very keen to see these rogue elements driven out of the market for good; as their existence has been over sensationalised and blown out of all reasonable proportion given the evidence.

Secondly, the absence of the no-fault ground results in greater uncertainty around when a landlord can regain vacant possession (VP) which adds unacceptable risk, and it consequently has an adverse impact on capital value, whether for the purposes of tenanted sale, loan security or accounting purposes.

Institutional Investors in the mature commercial real estate market deal with long leases of fixed durations. To quickly attract institutional investors into new build PRS in Scotland will require a similar legal structure rather than one based on enduring tenancies.

## **Rent Reviews**

I support the Scottish Government statements within the consultation “that rents generally are not increasing significantly and in most of Scotland average private rents have actually been falling in real terms over recent years.” and that it is desirable “to want to see supply in such areas [e.g. Aberdeen] grow to meet demand” as the “long term solution to addressing housing affordability.”

I am also pleased to see acknowledgement that “heavy regulation of rents...could jeopardise efforts...by discouraging much needed investment.”

As with my response to the first consultation, I strongly recommend that the Scottish Government takes no action to intervene on rent levels. To attract new investment into the sector it is critical that rent levels in the private rented sector remain market led and have the ability to reset to market rent levels once the tenancy commences.

A clear distinction needs to be made between rent reviews and rent increases; it is fair and reasonable to have rent increases no more than annually. However where a rent is reviewed and an increase not effected at that time, the landlord should be able to review the rent again at any time thereafter, and not have to wait until the next anniversary, simply for review.

If it is insisted that rent reviews can only happen once a year, the likelihood is that the landlord will effect an increase every year, where they otherwise would not have (landlords often make little or no increase in rent, when they have a good tenant that they want to encourage to stay).

It is reasonable to give tenants 12 weeks notice of a rent increase, but it should be insisted that tenants have to dispute any increase within 4 weeks of notification. Tenants are also already able to refer what they regard as unreasonable rent increases for adjudication through the Private Rented Housing Panel and I see no issue in this continuing.

I disagree that there is a role for the additional regulation of area-based rent limits and would not support Ministers having the power to designate ‘rent pressured areas’. The way to reduce the cost of housing in the market pressured areas is to increase the supply (of all tenures). Rent hot spots could change at any point due to the volatility in rents and therefore

presents risks to landlords and investors; the areas deemed rent pressure areas are the very ones where demand outstrips supply and where much needed investment needs to be encouraged.

Rent regulation, whether area-based or not, cannot be introduced, considered or even suggested, either now or in the future if Scotland wants to attract institutional investment into the PRS. Rent regulation coupled with enduring tenancies, as a result of the removal of the no-fault ground, creates a significant disincentive for institutional investment in the fledgling new build PRS market.

### **Additional Grounds**

There must be an additional ground introduced to cover Student and other short term lets of less than a year.

For properties let to students it is particularly important that the landlord is able to have some degree of control over when the tenancy ends because the demand for student properties is restricted to a few months of the year. If the landlord does not know if/when the tenants are going to leave he cannot market the property for new tenants, whether they might be tourist lets (i.e. during Edinburgh Festival and Fringe) or for the new student academic year. If tenants leave the property outwith the season of high demand then it will be very difficult for the landlord to find new tenants which will affect the viability of his investment. It is also important for prospective tenants that properties can be marketed in advance so that they can secure accommodation before leaving for the long summer break and have the reassurance of knowing they have a place to stay when they return to their studies for the next academic year.

I suggest that an additional "student let" ground for repossession be introduced and I am supportive of the suggestions put forward by the Scottish Association of Landlords as to how this operates.

Without this ground the student let market would be heavily disrupted and investment to this sector likely to be withdraw. With institutions now confident with the operation of the student housing market, it would be far from helpful to restrain it; particularly since this part of the sector is held up as a model as to how the PRS sector could be funded in Scotland.

### **First-tier Tribunal Discretion**

Despite being supportive of PRS cases being referred to a tribunal as opposed to the courts, my fear with the operation of the First-tier tribunal is the perceived higher risk as a result of the use of discretion on a number of grounds. Whilst I acknowledge that the guidance for operation of the tribunal is yet to be developed, feedback from investors suggest that they will have to add a cost for legal input increasing management costs and reducing net yield.

It is imperative that investors understand the mechanism for gaining vacant possession and the timescale involved in this. If the point of notice/referral through to vacant possession being granted is any longer than two months, this will also increase costs in time and effort, further increasing the impact on net yield.

### **Mandatory Repossession Grounds**

#### **Ground 1 – the landlord is selling the home**

To ensure the legislation provides clarity, it would be helpful to have examples of evidence that the landlord would need to present to show that they intend to sell the property. It

should also be noted that not all sale transactions are advertised with many landlords having their own contacts to sell the home privately. In the case of a sale by an institution it is unlikely to be the sale of one or two units but an entire development to a new investor. Whilst it is likely that such a sale would take place with the sitting tenants unaffected it may, for whatever reason, be a condition of the sales contract that all current tenancies are ended. The evidence required must reflect this circumstance.

I am concerned about how practical it will be for a landlord who is unable to sell the property and wishing to re-let it within six months of the original tenant leaving, being able to offer that tenant first refusal of a further tenancy. The extent to which the landlord has to go to make contact with the original tenant and the timescales involved in this are clear issues which have the potential to make the new legislation unworkable. I suggest that this part of the ground is removed. If the landlord has correctly used the ground based on their intention to sell the home then the tenancy has ended and it should be allowed to end cleanly at that point.

### **Ground 3 – the landlord or a family member of the landlord wants to move into the property as their principal home.**

I have two concerns with this ground as proposed. The first relates to the same point above where I question how practical it is to contact a tenant six months after the tenancy was ended correctly to offer them a re-let. Secondly, the fact that a landlord or family member could only take possession of their own property if they intend to live in it as their principle home rather than for example a holiday home or, more likely, as a city base to reduce work travel. Whilst this again is more likely to affect individual landlords rather than institutions it is worth mentioning to ensure the legislation produced is balanced and allows the owner of the property to gain possession in a fair and sensible way.

### **Ground 4 – Refurbishment**

If the refurbishment is an acceptable mandatory ground for possession, the landlord should not be asked to pay the tenant's removal expenses.

### **Ground 6 – Tenant failed to pay full rent over three consecutive months**

This does not protect the landlord from persistent late payment of rents, or shortfall payments, and failure to pay rent should not have to be consecutive for action to be taken.

### **Ground 7 – Tenant is anti-social**

In the absence of the 'no fault' ground, there is a risk of reprisals towards other residents/complainants. There is also the risk of other neighbouring tenants moving out pending the antisocial tenant being moved on.

### **Conclusion**

My role is to facilitate the delivery and construction of tenant/customer orientated large scale new home developments for the private rented sector (PRS) in Scotland.

There is no evidence base to suggest that the Scottish Government intervention is required in rent setting. The Scottish Government should therefore take no action in controlling rents. Furthermore, it is absolutely necessary for the confidence of investors that the no-fault grounds remain in place.

The introduction of a new streamlined tenancy regime is a positive move, provided it continues to attract institutional investment and protects existing, professionally managed and regulated supply. The points made within this response must be reflected in the final legislation to ensure this is achieved.