

# Rented Sector Strategy consultation response

Response submitted to Scottish Government 12 April 2022

This is a response to the Scottish Government consultation on the Rented Sector Strategy. Our response has been informed by our paper on the [whole rented sector](#) published in November 2021 and a CIH members' roundtable which took place in February 2022.

## Consultation questions

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

CIH Scotland has worked with Scottish Women's Aid over recent years to highlight and address the unique challenges that women and children experiencing domestic abuse face when maintaining a secure tenancy in the rented sector. These issues and challenges are summarised in our report, [Improving housing outcomes for women and children experiencing domestic abuse](#), with tenancy insecurity, unaffordable rents, unreasonable costs to furnish and set up a home and being forced to move to new areas where they lack family and friendship networks among the most prominent barriers. We would draw your attention to the conclusions and recommendations in this report.

We would also reflect the findings from our recent paper on [housing and human rights](#) that vulnerable and disadvantaged groups are also over-represented in the private rented sector (PRS). Some 32 to 50 percent of all people from different ethnic minority groups are private renters compared to 11 percent of white Scottish and/or British households. Many private renters from all backgrounds have also not yet signed a private residential tenancy (PRT) which can make them more vulnerable to eviction than other households. Other reasons include their greater exposure to a risk of rent arrears and illegal evictions, with the latter persisting during the COVID-19 crisis, despite the temporary ban on evictions<sup>1</sup>.

Our work on the role of the housing sector in supporting people with dementia suggests that some people have difficulty getting their privately rented home adapted to meet their needs. This could be because of a lack of awareness of their legal rights or how to access assistance, an assumption that their landlord would say no, or fear of being asked to leave their tenancy.

The Scottish Household Survey suggests that barriers to adaptations can be an issue across the PRS, not just for older people. Six percent of private tenants report needing an adaptation to make it easier to go about their daily activities but the PRS is the least likely tenure to have adaptations in place. For example, only one percent of private tenants reported having ramps in place compared to three percent in the social sector and only four percent of private renters reported having handrails installed compared to 21 percent in the social sector<sup>2</sup>.

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<sup>1</sup> Davidson, j (2021) [Locked out: tenants in Scotland have faced losing their homes, even during the pandemic](#), Holyrood

<sup>2</sup> <https://www.gov.scot/publications/scottish-household-survey-2020-telephone-survey-key-findings/documents/>



**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?**

CIH Scotland's recent paper on the [whole rented sector](#) suggests that PRS tenants are often less concerned with participation and more about affordability, quick response time, adequate services and landlords getting it right first time. While there are undoubtedly benefits to having greater tenant participation in the PRS, in the first instance there is a greater need to provide greater assurances on rights and responsibilities for tenants and landlords. This includes measures such as extending the tenancy protection available for victims of domestic abuse in the social sector to the PRS as suggested in the draft strategy. But beyond this we want all tenants to have clarity over certain standards e.g. maintenance, decarbonisation, repair and response time, pet ownership, communication and commitment to fix first-time if living in the PRS - some of which was recommended in a recent report by the University of Stirling on how to make a house a home in the PRS<sup>3</sup>. We believe such assurances can be made as part of the development of a Private Rented Sector Charter which would be based on the principles of the Scottish Social Housing Charter and extend these to the PRS/whole rented sector. This Charter could:

- State clearly what tenants and other customers can expect from landlords.
- Set out how tenants can hold landlords to account.
- Allow transparent assessment of how private landlords are meeting the Charter outcomes.

This Charter could be established nationally as part of a new approach to regulation of the PRS and the establishment of the PRS regulator as set out in the Scottish Government and Scottish Green Party cooperation agreement. The creation of such a body might also create a more aligned approach to regulation in the rented sector, instead of having local authorities, the Tribunal, and Scottish Housing Regulator having distinct roles as they currently do across the private and social sector.

**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?**

No response

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

See response to question two

**5. After 4 years of the Private Residential Tenancy being in place, how well do you think the 18 grounds for eviction are working? Is there anything that you would like to see changed?**

No response

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

There are recent legislative changes with the [Domestic Abuse \(Protection\) \(Scotland\) Act 2021](#) which, when provisions come into force, will give social landlords the power to initiate eviction proceeding against a perpetrator of domestic abuse, while giving the victim the right to stay in their own home if they wish to do so. We believe such protection should also be extended to tenants living in the PRS as set out in the consultation, creating alignment on tenancy rights across the

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<sup>3</sup> <https://foss.stir.ac.uk/2021/05/27/the-role-of-prs-landlords-in-making-a-rented-house-a-home/>

rented sector. However an extension of this legislation will not in itself improve housing outcomes for victims of abuse and therefore consideration will need to be given as to what duties landlords should have to progress with a one party eviction where there are grounds to do so.

**7. Do you have any views on our proposal to clarify the original policy intention in relation to the use of ground 6 for ending a tenancy ('Landlord intends to use for non-residential purpose') - to make clear that this eviction ground cannot be used to evict a tenant in order to use the property as a short-term holiday let?**

Agree with the proposal

**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?**

As set out in the report 'Improving housing outcomes for women and children experiencing domestic abuse' we propose amendments are made to The [Housing \(Scotland\) Act 2001](#) and [2010 statutory repossession guidance for social landlords](#) and it should include a new pre-action requirement for social landlords to ensure that they have fully considered domestic abuse before commencing legal action to recover possession of a property. A similar requirement could be placed on the court to be satisfied that social landlords have fulfilled this pre-action requirement. Guidance should specify what constitutes full consideration of domestic abuse and the actions required by a social landlord to investigate, and to respond to and support victim-survivors of domestic abuse. Such amends should also be made to legislation pertaining to PRS landlords.

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

Yes. Tenants should not be forced to remain responsible for a property if it is not safe, appropriate, or affordable for them to do so. Allowing one party to end their interest in a joint tenancy with an appropriate notice period gives both rights to the tenants and security to the landlord that there will not be an immediate change in circumstances. Maintaining the expectation that both parties' permission is required can allow for one party to hold power over the individual that wishes to end their tenancy interest. It is a reasonable proposal and still gives the other person the right to remain in the home - should they wish to. The notice period for one party leaving a tenancy should be equal to that of a notice period required under any other circumstance or tenure.

**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 four week period apply for a joint tenant in the private rented sector giving notice to their landlord and other joint tenant(s) to end their interest in the tenancy? 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?**

See question 11

**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?**

Yes, No, Don't know - Please explain your answer.

No, See question 11





**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, see question six

**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 principle of the policy seems broadly sensible and would allow victims of abuse to go through a legal process that is less adversarial approach compared to a Sheriff Court and allow people to engage directly, without the need for third party legal representation. It is likely to be less intimidating and less costly for tenants who might not have the means to pay for legal assistance going through the court system.

However we have concerns about the lack of expertise and understanding of specific issues such as domestic abuse among members of the Tribunal and before any transfer of cases there would need to be comprehensive training and legal and lay members on for example domestic abuse and how it can manifest itself. This training gap would need to be comprehensively addressed before any transfer of responsibilities to a Tribunal.

There is also a broader consideration about the role of the Tribunal and Sherriff court in relating to housing disputes in the private and social sector respectively. Changes enacted in 2017 have removed private rented sector housing disputes from a court setting and placed them within the Housing and Property Chamber of the First-tier Tribunal (the Tribunal). Instead of going through the Sheriff Court the dedicated tribunal allows tenants in the private rented sector to have housing disputes dealt with in a more proportionate, efficient and cost-effective service.

We note the Scottish Government did consider establishing a tribunal system to also cover the social rented sector, but ultimately rejected the idea as set out in their policy memorandum. Reason for this rejection included:

- the need for regulation was greater in the PRS compared to the social sector;
- uncertainty about the scale of resource implications in transferring all rented housing cases from the courts; and
- a PRS tribunal could act as a model before implementing a broader housing tribunal

Pre pandemic feedback on the operation of the Tribunal had been broadly positive<sup>4</sup> with one landlord noting that issues around delays have largely been overcome, with increasing numbers of administration staff recruited who are better trained and have more experience under their belt. Indeed with the same landlord noted that many PRS landlords were dissuaded from engaging with the Sheriff Court because of fear, cost and unpredictability of outcome, the surge in cases being managed by the HPC should be of little surprise.

Additionally TC Young reported at a PRS conference in March 2019 that there was now a swifter process for case management, with the average time taken for cases to reach the sift process now just four to five days, no doubt a consequence of increased resources. Furthermore, with the next

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<sup>4</sup> CIH Scotland stakeholder interviews, April 2019

formal stage being a case management discussion, there are reports that many cases are being resolved between parties at this stage or through referral to mediation without the need for a full hearing. This anecdotal evidence supports the view that the process has become less adversarial.

CIH Scotland, however, recognise some of the inherent challenges in establishing a Tribunal for the social sector still remain

1. **Capacity:** The biggest challenge to supporting a change in the law would be management of the expected increase in caseload. Simply dealing with the PRS within the HPC saw a threefold increase in casework to just under 3,000 in the first year. An expansion of case work would require both a significant increase in the number of legal members, as well as the employment of permanent tribunal judges. The growth in legal members would also require tribunal offices across Scotland, as it would be neither feasible or desirable to manage all housing cases in Glasgow. There would be a cost implication for expanding the remit of the HPC to incorporate social housing, and while there may be savings to be made by removing cases from the Sheriff Court it may not cover the increased demand under the new system.
2. **Understanding of the law:** Applications to the existing HPC are at times made without a full understanding of the law and the obligations of the landlord and tenant. This can come from legal members who may for example not understand a landlord's specific obligation under for example a tenancy deposit scheme but more often tenants do not have evidence of a tenancy breach or they have made an incomplete application. Without access to independent advice from agencies such as Citizens Advice Bureaux and Shelter Scotland which can guide tenants on their rights and provide advice on the value of an application then there will continue to be an inadvertent misuse of the system.

However we also recognise the case for a social sector Tribunal exists because there remains dissatisfaction with the Sheriff Court system for both tenants and social landlords. For example, there are concerns about the following:

- **Cost:** Actions in the Sheriff Court are costly for the landlord and those not entitled to legal aid. Indeed, a landlord taking eviction action can seek expenses which the tenant can be forced to pay<sup>5</sup> and as such, some tenants may wish to give up their tenancy rather than take the risk of paying legal costs. In addition, one RSL in Glasgow with around 3,000 homes noted that they spend £50k a year on housing legal costs, most of which is to manage arrears. With around 600,000 social rented homes in Scotland this suggests millions of pounds may be spent every year enforcing legal action rather than investing in housing stock.
- **Inconsistency:** There is a perception among many social landlords that while Sheriffs are consistent in their own decisions, there is a lack of consistency applied across Sheriffdoms due to the lack of specialist housing expertise in the Sheriff Court. This was noted in the O'Carroll and Scott paper from 2004. However there is now greater transparency in the decision-making process with all decisions of FTT cases now published online<sup>6</sup>.

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<sup>5</sup> [Guidance for Social Landlords on Pre-Action Requirements and Seeking Repossession of Social Housing](#), 2012

<sup>6</sup> <https://www.housingandpropertychamber.scot/previous-tribunal-decisions>



- **Limited access to legal redress:** Following changes to allocation policy many applicants and tenants struggle to challenge fundamental decisions and may be compelled to take up a judicial review for some cases such as homelessness decisions.
- **Specialism:** A 2014 parliamentary report<sup>7</sup> noted the limited degree of specialisation in the Sheriff Courts and said that there was ‘widespread support amongst witnesses for Sheriff specialisation’. A number of stakeholders responded to the consultation noting the need for greater housing specialism among Sheriffs.
- **Participative:** A Sheriff Court does not allow litigants to represent themselves or have representatives who are not, as a matter of course, legally qualified, whereas a tribunal is a more participative process which could support the unrepresented or unqualified litigant in achieving an enhanced form of justice with the support of a housing expert.
- **Policy changes:** Changes to the legislative framework around the ending of Right to Buy and an increase in investment in social housing has led to a rise in the number of social rented homes in Scotland, with social landlords now managing around 600,000 homes, compared with 370,000 homes in the PRS. For the first time in decades, social landlords are now expanding their stock and with increased responsibility for tenants, there is a case for a dispute mechanism that meet the needs of these tenants.

**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?**

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

As noted above one of the main challenges facing victims of domestic abuse living in the PRS is the ability to end a joint tenancy but ensuring the victim can remain in their home. A change in the law to mirror the recent provisions provided to social landlords would help to achieve this. Beyond this we believe the following measures, if adopted will improve housing outcomes for victims of domestic abuse in the PRS

- Making the PRS more affordable for victim- survivors, including access to money for a deposit and first month’s rent if they do choose to move home and support to covering housing costs where required.
- All landlords to have a domestic abuse policy and it becoming a mandatory ground for eviction of the perpetrator.
- Access to training and networks for landlords, as well as knowledge of signposting, including tenancy move for victims where appropriate.
- Landlords applying for civil orders to support victims stay in their own home.
- Improving understanding of why benefits are not accepted by all PRS landlords and how to overcome this barrier.
- Encouraging mid-market rent landlords to use social stock to facilitate domestic abuse management transfers.

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<sup>7</sup> <https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/76275.aspx#g>





However we want to stress that progress is still to be made improving housing outcomes for women and children experiencing domestic in the social rented sector. We recognise the government has accepted the recommendations in the December 2020 report and an implementation group has been established. While CIH is pleased to be part of this monitoring and implementation group it is important to recognise these recommendations have not been implemented and there is still some way to go to improve housing outcomes in the social sector for victims of domestic abuse.

**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?**

Yes, it is reasonable to have both conditions met and exhausted before tenants' unclaimed deposits are reinvested.

**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?**

No response

**20. Should the right to keep pets also be introduced as a right in the social sector?  
Yes, No, Don't know - Please explain your answer.**

Yes, tenants' homes are exactly that, their home. Outwith structural changes they should have flexibility to arrange their home as suits their comfort and family. This includes having pets if they so wish. Tenancies in the social sector can be life long and as such limiting an ability to have a pet undermines the principle that the property is the tenant's home. Although we recognise there are limits and responsibilities with this right i.e. managing mess in a common area or limits on numbers of pets.

**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?**

Personalisation is a consequence of letting out a home. While there will be some appropriate limitation on what a tenant can do without agreement of the landlord, these stipulations should be by exception thereby allowing the tenant the maximum possible flexibility while living in their home. We note some examples of personalisation that should be allowed without any impact on deposit and without approval by the landlord

- Having a pet
- Attaching pictures to a wall
- Emergency repairs where landlord cannot be contacted

Decision on decoration, replacing white goods, furniture etc should be taken by agreement between landlords and tenants. It is reasonable that the landlord may not wish to make any changes immediately at the beginning of a tenancy. However, if changes are reasonable (colour, quality, cost etc) then it would be appropriate for landlords to give tenants discretion in these areas.



Wear and tear is already a consideration that landlords use when setting rent levels and utilising tax exemptions, we do not believe there is a need for further protection for landlords against any damage to property from personalisation. Indeed, it is unrealistic for landlords to expect tenants not to personalise their home. The existing tenancy deposit arrangements are sufficient, as is the decision-making process - striking the right balance between the rights of the tenant and the landlord.

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

Yes, see above

**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, see above

**24. Do you think additional protections against the ending of tenancies during the winter period are needed? For example, some or all of the following:**

- restricting the service of notices during the winter period;
- pausing or extending notice periods so that notices do not expire during the winter period;
- pausing or extending the period (following expiry of the notice period) during which eviction proceedings can be raised; and/or
- restricting the ability of landlords to raise eviction proceedings (following expiry of the notice period) during the winter period.

**Yes, No, Don't know - Please explain your answer.**

CIH Scotland does not consider there is a requirement for restricting evictions over the winter months. While there are a number of other steps that can better support tenancy sustainment over the medium term to long term we are concerned that taking measures that pause or limit winter eviction may have a significant impact on the financial resilience of the social and private rented sector. We note the contributory impact of eviction restrictions on social landlords during the period of the pandemic. For example, as of March 2021 total arrears of social landlords was £160.5m and by the end of December 2021 arrears had increased to £174.5m.

We also have concerns about how a further winter eviction projections would be applied. Given the capacity issues within the court and tribunal system in managing eviction as noted above, we are not clear if proposed winter eviction protection would stop

- an eviction order being raised;
- a court or tribunal determination being made; or
- an eviction being enforced.

Given the uncertainty around the length of time being taken to resolve cases, we believe seasonal protections could undermine the ability of landlords to successfully evict a tenant and would in turn exacerbate the level of arrears landlords are already managing. Rent provides vital income for social housing services and significant increases in arrears over the long term will have a detrimental impact on social landlords' ability to provide services to existing tenants, maintain and improve existing homes and deliver new affordable homes in line with ambitious Scottish Government



targets as set out in Housing to 2040. Costs incurred through arrears are also ultimately bourn by tenants who do pay their rent.

We also have concerns that a permanent ban on evictions throughout the winter may incentivise a number of private landlords to leave the sector at the time when there is (rightly) more expectation made about the quality of homes being let. Of course, this may be an intended outcome for the Scottish Government as it considers the relative size and balance of the housing sector and tenures in some areas and it considers a fuller role for strategic acquisition by social landlords in order to meet the 110,000 affordable homes target. But we do consider a permanent restriction on eviction during winter will catalyse change in the sector. We would also suggest the Government considers more fully the arrears eviction ban that was previously in place in Stirling and learns from the rationale that ended the ban<sup>8</sup>.

Instead we consider the following measures more appropriate to protect tenants from eviction and deliver the same policy outcome, without undermining the viability of the sector:

- Strengthening of pre action requirements across the social sector and introduced on a permanent basis in the PRS.
- Giving private landlords power to evict only the perpetrator of domestic abuse.
- Introduce a permanent tenant hardship fund, similar to Scottish welfare fund, which will give tenants access to a grant that can help pay rent/address arrears and be paid direct to a landlord so it does not impact on any benefits.

As noted above we want all tenants to have clarity over rights and responsibilities as part of a Private Rented Sector Charter. As well as detailing minimum service requirements this Private Rented Sector Charter should state clearly what tenants and other customers can expect from landlords; set out how tenants can hold landlords to account; and allow transparent assessment of how private landlords are meeting the Charter outcomes.

**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?**

See above

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

See above

**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?**

**Yes, No, Don't know - Please explain your answer**

No response

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<sup>8</sup> [http://news.bbc.co.uk/1/hi/scotland/tayside\\_and\\_central/8120711.stm](http://news.bbc.co.uk/1/hi/scotland/tayside_and_central/8120711.stm)



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

Yes. There is a case for simplification of consequences for illegal eviction and greater clarification of eviction clauses to protect people from being improperly evicted. For example while landlord can evict with intent to sell there needs to be greater scrutiny over instances where the property is subsequently re-let out, without the need for whistle-blowers.

**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?**

No response

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

No response

**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?**

No response

**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?**

Yes, No, Don't know - Please explain your answer.

No response

**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 response

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

No response

**35. How could we support the development of guarantor schemes that meet the needs of those groups who could benefit from them?**

No response

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

No response



**37. 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 you experience?**

No response

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

- 1. A tenant farm or a rented croft house?**
- 2. Tied accommodation as part of their employment?**

No response

**39. 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?**

No response

**40. 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)?**

The issue of affordability is complex, not least because the housing system and housing costs vary significantly across the country. Individual circumstances are also diverse and fluid and households can move in and out of poverty as employment, income and family dynamics change over time. There have been many previous discussions and attempts to define 'affordability' in the context of housing, and policy solutions put forward to address housing-related poverty. Suggestions have included a residual income approach which seeks common reference to the income which a household should have left over after housing costs are met to cover other costs such as food, fuel, travel, social interaction and so on. A shared understanding enables people to be held accountable/hold each other accountable and it helps to empower tenants to ask questions of landlords and support comparison between landlords. As such there are several principles that could inform the Scottish Government's approach to developing a shared understanding of affordability.

- While a shared understanding should prioritise those in the social and private rented sector, no part of housing has a monopoly on the issues of unaffordability and considerations should also cover temporary accommodation.
- Any standard of affordability should not aim simply to stop people living in poverty but should be set at a level to enable people to live a fulfilling life with dignity.
- The social rented sector operates its rent setting policy independent of the Scottish Government. As such, any understanding must be led by the housing sector, although Government policy and resourcing should support its delivery.
- There is an important distinction between what's affordable and what's cheaper. Retaining standards is important and affordable homes need to be good quality. We must consider affordability and standards at the same time.
- Any understanding should focus on those at lower end of income distribution. A residual income measure enables a focus on the lower end of the income distribution. We should consider the use of the Minimum Income Standard, which the Scottish Government has already referenced in the latest fuel poverty definition.





- While it must be practical for landlords, a shared understanding has to have the householder at the heart. The impact on individuals of unaffordable housing should be remembered.
- Better data can inform the case for policy action/resources and strengthen understanding. Having a definition or shared understanding will better enable us to know what data we need to collect.

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

See question 40

**42. 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.**

Existing Scottish Government data on PRS rents shows that there is significant variation in rent increases across Scotland. In hot spots such as Edinburgh and Glasgow, affordability is a serious and growing concern. However, other areas have only seen modest increases over the last nine years with most areas experiencing cumulative increases below inflation. The collection of additional data on private rents is essential. The scope of the data collection proposed is thorough.

We recognise the concerns raised in the consultation about how the Government can compel landlords to provide up to date information across all these rent data points and agree that incentivising and compelling compliance is key. However, we believe that, if rent controls are introduced, the reporting against the suggested criteria should not be onerous and is also unlikely to change substantially year on year. We do consider that letting agents can play a central role in collating and registering data on the properties they manage and that in the first instance it may be useful to pilot the data collection exercise in an area where there is a significant number of letting agencies or where a significant proportion of homes are let through agencies. This will help identify best practice in rolling out the requirement across the PRS.

In order to incentivise/ prompt annual reporting the suggestion of a rent penalty notice is appropriate and CIH agrees that rent data findings across all properties should be made public and transparent. Such a process will allow for appropriate consideration of rent levels against other factors such as location, standards, size etc. Ultimately the role of a PRS regulator will be key in building a clear understanding of rents across Scotland.

**43. 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.**

See response to question 42

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

See response to question 42

**45. 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?**

See response to question 42

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

No response

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

Given the broad divergence between rents in the PRS and social rented sector we do not believe there is a requirement for national rent controls to extend to the social rented sector. We also note that much of the additional borrowing by social landlords, which may lead to higher rents, is undertaken in order to support national priorities such as social home building or zero carbon retrofit. As such, rent controls risk undermining social landlords' efforts to meet national priorities as their ability to borrow and service loans would be affected.

In order to minimise rent pressures in the social rented sector we believe the Government needs to consider how it can more fully fund the national policy requirements it places on the social sector. Otherwise tenants rents, rather than taxpayers will pay for improvements in housing stock.

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

**Please explain your answer.**

No response

**49. Are there elements of the existing Rent Pressure Zone system that could be built upon when designing a new system of rent controls? Please explain your answer.**

Yes, we think that the Rent Pressure Zone (RPZ) system should be reviewed. The RPZ system was designed to allow local authorities discretion to deal with unaffordable rent in a targeted way which would not be possible under a blanket rent control approach. As noted above, Scottish Government data suggests a wide variation in private rents across Scotland with some areas showing a clear significant increase over time but most areas showing rent increases below the rate of inflation. This suggests that a blanket rent control approach is not necessary and may result in disinvestment in the sector. Whereas a more targeted approach to rent controls may strike the right balance

Unfortunately, despite appetite from some local authorities, no RPZs have been designated to date. This is because the requirements for designating an RPZ are very specific and the data required to support an application is not available. Under current regulations, local authorities must provide evidence to satisfy all of the following criteria:

- rents in the proposed area are rising too much; **and**
- the rent rises in the area are causing undue hardship to tenants; **and**
- the local authority is coming under increasing pressure to provide housing or subsidise the cost of housing as a consequence of the rent rises within the area.

The Scottish Government should work with local authorities to revise the criteria and evidence required to support an application and improve data collection ahead of any move to a national rent control policy.

Other options to address issues with affordability should also be explored including:

- Increasing the supply of homes, especially in areas of high demand.
- Ensuring that new measures introduced to regulate short-term lets are effective and are preventing residential homes being converted into holiday accommodation where this is having a negative impact on local communities.
- Continuing to work with the UK Government and with devolved powers to ensure that the social security system reflects the actual costs of renting.

**50. 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.**

The vision and principles set out with regards to rent controls doesn't consider the practical implications for the Government, landlords, tenants and the sector from such an approach. There is no sense from the consultation to what extent:

- It values the social rented sector operating its rent setting policy independent of the Scottish Government and in consultation with its own tenants.
- What an affordable rent would look like, what cost there is for the Government in enacting such a system and what further market intervention may look like.
- Private landlords may exit the sector, what any disruption looks like, will people be made homeless/ have less choice and what size should the PRS be thereafter.

**51. 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 acquisition of 'second hand' stock for sale on the open market is part of the solution to meet housing need across Scotland, in particular where funding can be made available to remodel/ rehabilitate/ convert existing properties where this is considered a strategic priority.

We note a number of local authorities are already committed to purchasing homes on the open market through a combination of borrowing, Capital Finance from Current Revenue (CFCR), ring-fenced contribution from council tax for second and empty homes and AHSP subsidy.

We believe this model can not only help identify homes in the right location and right size at a more appropriate cost for a social landlords, but it reduces the need for core building materials and limits carbon generation. While there will continue to be a need for new stock, as we see further intervention in and regulation of the PRS market it is vital that local authorities and RSL take advantage of the opportunities available to buy housing on the open market to meet their strategic housing needs.

If there is likely to be shrinkage in the PRS due to pace and scale of upcoming reforms then it would be worth the government to considering developing a strategic mechanism that allowed social landlords to engage with private owner about selling the property but also allowing tenant to remain in situ.



**52. 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? Please explain your answer.**

See previous question

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

No response

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

No response

**55. 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?**

There are always going to be pressures on allocations while demand outstrips supply. Allocations guidance creates a framework for social landlords while allowing flexibility. This is unlikely to need radically altered but would benefit from regular review to determine if it requires any update.

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

The application process can be complicated, especially in places without a common housing register where they need to apply to multiple landlords in the area.

The process would be improved with landlords having better awareness of different needs for conditions that might not be familiar or immediately apparent e.g. a single person that might need an extra room for a carer. Or a couple that needs an extra room because one of them is very disruptive with sleep, need for ground floor access for someone who has mobility issues but not in a wheelchair.

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

As has been noted above CIH Scotland supports the development of a Private Rented Sector Charter, setting out what tenants can expect from their landlords, how tenants can hold landlords to account, as well as the behaviours tenants can expect from housing professionals. This would include standards and timescales for core repairs and maintenance, communication and other outcomes as well as extension of tenancy protection for victims of domestic abuse into the PRS. The Charter should be supported by a code of practice for private landlords to help them deliver on the outcomes expected, as part of the overall approach to regulation and enforcement. This would be informed by the existing voluntary code developed by SAL<sup>9</sup>.

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<sup>9</sup> <https://scottishlandlords.com/download/54889/>



**58. 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?**

Landlords need to have the right skills, values, behaviours and training for engaging with customers and delivering services. When tenants interact with landlords they should expect and receive a professional service from competent and empathetic staff with the right values.

The rented sector is somewhat unique across the housing sector in that, letting agents aside, there is no requirement for staff to undertake any training or qualification. Whereas other professions associated with the housing sector such as planners, social workers, surveyors or architects all have dedicated career pathways and are expected to achieve and maintain certain levels of education and training in order to practice as professionals.

The [Housing \(Scotland\) Act 2014](#) made the provision for the regulation of letting agents in Scotland. This was established to improve the standards of service for those letting properties through letting agents and requires appropriate people in each letting agency to hold a relevant qualification and where necessary, additional training on letting agency work.

Letting agents are required to re-apply for registration every three years and keep their relevant training and qualifications up to date. Feedback from some landlords and letting agents suggests the current system does not necessarily work effectively as there is no meaningful enforcement and monitoring of new letting agencies that are neither registered, nor have proportionately qualified staff. There is concern that this may undermine the drive to professionalise the sector and the investment made by those letting agencies that do encourage staff to study qualifications and undertake CPD. As such, CIH Scotland has commissioned an independent review of the impact of letting agent regulation, and what difference application of CPD requirements could make to improving the performance of private and social landlords - this will report back in the autumn of 2022.

The report [Change, Justice, Fairness](#) considered the performance of social housing professionals in Fife with regards to services and support for victims of domestic abuse. Housing professionals admitted a lack of skills and confidence when supporting tenants experiencing domestic abuse and victim-survivors reported feeling let down by the very people who were supposed to help them.

Following the report findings, staff at Fife Council are now given training, e-learning and webinars on gender equality, domestic abuse, multi-agency risk assessment conferences and housing options. This has improved their skills and knowledge so they can intervene at an earlier stage to help victims of abuse and help them to make decisions about their own housing - improving tenants' housing outcomes.

A focus on CPD can help improve practice across the sector, as has been evidenced in Fife with regards to domestic abuse. It can ensure that landlords act professionally and engage with tenants in an empathic and positive way. Making a commitment to staff development and training will give landlords greater assurance about their skills and competencies and give tenants greater assurance that they are engaging with skilled professionals. This is relevant irrespective of the tenure of housing landlords work in.

At its heart, housing is a profession and those that let out homes are housing professionals, whether they work for social or private landlords. As a nation we recognise the value and importance that training and education plays in other professions such as social work, surveyors and planners as well



as letting agents. But we stop short of expecting the same standards of those working in the social or private landlord sector.

As we move towards a whole rented sector we must expect higher standards of delivery from all housing professionals. Indeed we note that as part of the Social Housing White Paper the UK government has initiated a [review of qualification requirements](#) for social housing professionals south of the border and that the discussions are now considering the broad sweep of housing professionalism and how to embed this across the English social sector. We believe the Scottish Government should at least match the ambition of the UK Government in reviewing professional training and development to consider the appropriate qualifications and standards for housing staff across different tenures and ongoing CPD Requirements. This could helpfully be informed by work already taken place at the department of levelling up, housing and communities and on the ongoing CIH Scotland review of what impact mandatory qualifications for letting agents have had on improving outcomes for tenants- the CIH evaluation will report in the autumn

### **59. 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?**

The rented sector strategy is an opportunity to improve standards and tenant experiences across both the private and social sector. But achieving lasting change across the rented sector will require tax, regulatory and other policy reforms. The exact nature of these will depend on the Scottish Government's ambition, how the scope for alignment across the whole rented sector is defined and developing a collective understanding on the case for alignment of standards and services.

Our housing system is complex with a multitude of factors informing wellbeing and tenant outcomes and that is why we need alignment of the rented sector to consider a wide range of issues. We must start with the alignment of standards of our homes, there is no compelling case as to why we have differentiation of home and housing standards across the rented sector.

However, tenant experience is about more than just bricks and mortar. Therefore, to capitalise on this opportunity for system change we also need to consider the opportunities for alignment on tenants' rights and transparency, regulation, professionalism, and customer service and on affordability. Some of these issues are already under consideration by the Scottish Government, but others including professionalism and customer services are notably not. Nonetheless, we see these as the key pillars to inform progressive alignment of standards across the rented sector.

However, the principal barriers to enacting these changes are financial. As we look to more exacting standards with regards to indoor space, green space and accessibility among others, the challenge is who pays? The Scottish Government is understandably reticent to provide full financial backing for improvements in housing standards but if improvements are not funded by the State then the burden is likely to fall on tenants in the form of increased rents. A position that will undermine Scottish Government efforts to address tenant poverty where it exists.

Indeed, if private landlords are not supported to improve standards of their properties, they may leave the sector. We recognise the number of homes in the PRS has [reduced by 30,000](#) homes after the introduction of the PRT legislation in 2017 - although the increasing popularity of short-term let is likely to be a contributory factor in the shrinkage of the sector. As noted above the shrinkage of the PRS may be an intended outcome for the Scottish Government as it considers the relative size and balance of the housing sector and tenures in some areas and it considers a fuller role for strategic acquisition by social landlords in order to meet the 110,000 affordable homes target. But



regardless of which landlord owns the home, there is a requirement from the State to financially support new higher standards, across the rented sector.

**60. 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?**

Providing adaptations, often simple equipment, can help people to remain independent for longer and help to avoid accidents that result in hospital admission or costly residential care. Despite this, too many people are living in homes that are not suitable for their needs.

The process for accessing support with adaptations is complex with different routes and funding available depending on tenure. The responsibility for carrying out adaptations in the social sector lies with the landlord but access to adaptations may be constrained by tight criteria (which can also limit choice for the tenant) and lack of funding which can also result in long waits.

In the PRS, the tenant must seek permission before carrying out an adaptation to their home but the landlord cannot reasonably refuse such a request as this would amount to discrimination under the Equality Act 2010. However, as we mentioned under question one, we have heard that some people living in the PRS are reluctant to ask for adaptations to their homes, either through lack of awareness of their legal rights or where to find information, an assumption that their landlord will say no, or fear of being asked to leave their tenancy.

More must be done across the rented sector to ensure that people have access to the adaptations and equipment they need to live with dignity, regardless of their housing tenure.



### **About CIH**

The Chartered Institute of Housing (CIH) is the independent voice for housing and the home of professional standards. Our goal is simple – to provide housing professionals and their organisations with the advice, support, and knowledge they need to be brilliant. CIH is a registered charity and not-for-profit organisation. This means that the money we make is put back into the organisation and funds the activities we carry out to support the housing sector. We have a diverse membership of people who work in both the public and private sectors, in 20 countries on five continents across the world. Further information is available at: [www.cih.org](http://www.cih.org).

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**12 April 2022**