

# What you need to know about the PRS tenancy consultation



## Background

[The Private Housing \(Tenancies\) \(Scotland\) Act 2016](#) (the Act) was passed by the Scottish Parliament on 17 March 2016 and received Royal Assent on 22 April 2016.

The Act creates a new private residential tenancy which will replace current assured and short assured tenancies. The new tenancy aims to provide improved security for tenants, alongside appropriate safeguards for landlords, lenders and investors.

It removes the 'no fault' clause which currently allows landlords to ask a tenant to leave at the end of the tenancy period without having to give any reason. Under the new regime, the tenancy can only be ended by a tenant giving notice or if a landlord can prove a ground for possession as set out in the Act.

The Act limits landlords to one rent increase in a 12 month period. It also includes discretionary powers for local authorities to apply to Ministers to limit the amount by which rent can be increased in 'rent pressure zones', if there is evidence that rents in a specific area are increasing too quickly.

The new tenancy regime will apply to the private rented sector (PRS) and mid market rent and is expected to come into force in December 2017.

The Scottish Government is currently consulting on secondary regulations and policy to support the new tenancy regime. The full consultation document can be found on the [Scottish Government's website](#).

The deadline for responses is 25 December 2016.

CIH Scotland is developing a response to the consultation and we welcome any general comments or concerns from members.

## Recommended Model Tenancy Agreement

The Scottish Government will recommend that landlords use the new model tenancy but it will not be compulsory.

Landlords will be free to develop their own tenancy agreements as long as they meet legal requirements.

The Model Tenancy Agreement contains two categories of clause:

- **The core rights and obligations** which include the statutory terms applicable to all private residential tenancies, the repairing standard and tenancy deposit. These are mandatory clauses which must feature in all agreements when using this model.
- **Discretionary terms** which a landlord may or may not include in the written tenancy agreement. Landlords may add discretionary terms providing the requirements of the Act, supporting secondary legislation, Statutory Terms, Regulations and other housing legislation are met.

## Prescribed Notices

The Act enables secondary legislation for the content and any other requirements of certain forms/notices which must be used under the new tenancy regime.

The forms are expected to be electronic with interactive drop down options. These will also be printable so that they can be completed by hand.



The consultation is seeking views on the draft content of the following 6 forms:

1. Notice to a landlord that tenant intends to refer a case to a Tribunal.
2. Rent increase notice from a landlord to a tenant.
3. Tenant's rent increase adjudication referral to a rent officer.
4. Landlord's application form to apply to a rent officer for property improvement costs in a rent pressure zone.
5. Notice to leave from a landlord to a sub-tenant.
6. Notice to leave from a landlord to a tenant.

Views on whether the notices are clearly laid out and easy for landlords and tenants to understand would be welcome.

## Serving documents

The consultation seeks views on whether or not documents should be served to a tenant electronically if this is the preferred method of communication. The current position under the 1988 Act is that a tenancy agreement must be provided as a hard copy and signed by the landlord(s), tenant(s) and a witness.

The Act requires a landlord to provide a written document to a tenant setting out the terms of the tenancy but it does not specify 'how' the written document should be provided to the tenant. This will allow the tenant and landlord to communicate in the way which suits them best.

However, if the preferred option is electronic communication, this must be mutually agreed by both parties. If one party is not content with this approach, it cannot be used and other ways for the documents to be served must be used. There will still be a provision to allow for hard copies to be used for some landlords and tenants if this is the preferred method of communication.

## CIH Scotland position

One of the original aims of reviewing the tenancy regime and introducing a new model tenancy was to simplify the system and make the tenancy document easier for landlords and tenants to understand. We are concerned that by making the model tenancy document optional, some landlords may decide not to use it. If a significant number of landlords decide to develop their own tenancy agreements, we could end up with a situation similar to the current regime where multiple versions of tenancy agreements are in use, some of which could be overly complex and difficult for tenants to understand.

The consultation is seeking specific comments on the content and wording of the model tenancy and the prescribed notices. It is essential that these are fit for purpose and easy to understand. We would welcome thoughts from members on how these documents will work in practice. For example, is there anything missing from any of the documents or issues with the wording?

For further information or to feed into our consultation response, please contact:

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