



# WHAT YOU NEED TO KNOW ABOUT THE SECOND CONSULTATION ON A NEW TENANCY FOR THE PRS

## Background

The Scottish Government launched a [consultation](#) on a new tenancy regime for the private rented sector (PRS) in Scotland in October 2014. The consultation proposed replacing the existing PRS tenancy regime with a single model tenancy for all PRS lets in Scotland. The consultation document also proposed removal of the 'no fault' clause, a new set of mandatory grounds for possession and raised the issue of whether some form of rent regulation should be introduced.

The consultation received over 2,500 responses. CIH Scotland's response to the consultation is available [online](#) and the Scottish Government has published an analysis of all responses on its [website](#).

Considering the level of interest generated by the initial consultation and numerous requests for additional details on the content of the new tenancy and the grounds for possession, the Scottish Government launched a [second consultation](#) on 30 March 2015 ahead of legislation due to be introduced this autumn.

This briefing outlines the main proposals of the new consultation document.

## Proposals Outlined in the Second Consultation

### Gaining Possession of a Property

The new consultation document confirms that the 'no fault' clause will be removed and that this proposal is not open to further consultation. Currently, under the 'no fault' clause, when a tenancy reaches its natural end, the landlord can decide not to renew it without having to give any reason. The removal of the 'no fault' clause means that a landlord could only ask a tenant to leave under one of the new grounds for possession. In recognition of concerns expressed by landlord and letting agent representative bodies, the Scottish Government has included three grounds for possession in addition to the eight proposed in the original consultation. The three additional grounds for possession are:

- Abandonment;
- The tenant is no longer employed by the landlord; and
- The property is required to house a full time religious worker.



The inclusion of additional grounds for possession is intended to strike a balance of security for tenants while ensuring that landlords are able to recover their property if they need to.

In response to the original consultation, CIH Scotland supported the principles behind the removal of the 'no fault' clause but only on the condition that the grounds for possession were robust and reasonable, ensuring that the system worked for both tenants and landlords. The inclusion of additional grounds for possession is welcome.

We also raised concern about the lack of detail on how the grounds for possession would work in practice and the fact that all grounds were to be mandatory. It is therefore reassuring that some additional detail on the grounds for possession has been included in this consultation and that an element of discretion has been added for some of the grounds which will be assessed by the First Tier Tribunal (FTT).

We also welcome the proposal that tenants will be able to appeal to the FTT if they feel that a landlord has failed to follow through on a cited ground for possession, e.g. if the landlord claimed to be selling their property but then re-advertised it for let after gaining possession. The process for this type of appeal is to be developed through further stakeholder consultation and will be set out in guidance following the forthcoming legislation.

We welcome this commitment to further consultation. However, in response to the previous consultation, we stated that if the new system is to be successful it is essential that the FTT is equipped to deal quickly and effectively with repossession cases. We feel that further clarification is still required on how the proposed system for possession will work in practice to ensure the right balance between security for tenants and landlords.

The consultation document states that a single model tenancy will be introduced, but that this will be set out in secondary legislation following the initial legislation which is due to be introduced this autumn. This will allow for further consultation on the content of the tenancy which we believe to be essential given that one of the grounds for possession will be breach of the tenancy agreement.

### Length of Tenancy and Notice Periods

The revised proposals state that the initial tenancy period should last for six months as standard but, by mutual agreement, could be longer or shorter. During the initial period, the tenant would not be able to give notice and the landlord would only be able to gain possession under certain prescribed circumstances. As per our response to the initial consultation, we welcome the flexibility allowed for tenants and landlords to agree a mutually beneficial tenancy period. This has the potential to provide security for those seeking to settle into an area as well as flexibility for those who may only be seeking short term accommodation.



A new proposal has been put forward to replace the current Notice to Quit and Notice of Proceedings with a single notice called the Notice to Leave. This would be issued by a tenant wishing to end their tenancy or a landlord seeking possession. As with the initial consultation, it is proposed that the Notice to Leave should reflect the length of time the tenant has been living in the home for both the tenant and the landlord. However, taking feedback into account, the new proposals suggest a maximum period of notice from landlords to tenants of 12 weeks rather than 16 as originally proposed.

In cases involving rent arrears where the landlord is seeking possession, the new proposals would require the landlord to issue a Notice to Leave when the tenant has failed to pay any amount of rent due for two consecutive months. This Notice to Leave would inform the tenant that if they fail to pay the rent due by the end of the following month, possession will be sought immediately through the FTT. The Notice to Leave would include information on sources of financial information and advice.

While we welcome the proposal to include information about sources of support for debt management, it is not clear whether adequate support would always be available or be sought out by the tenant. It will be important to ensure that vulnerable tenants are not put at risk of homelessness due to this accelerated process for arrears cases.

### Rent Regulation

The Scottish Government recognises that average rents in Scotland have not increased significantly in recent years and that capping of rents could exert upward pressure on the market in lower rent areas and potentially jeopardise investment in the PRS. However, the consultation still seeks to introduce regulations to protect tenants from unjustified or excessive rent increases.

In order to achieve this, it is proposed that initial rents continue to be set by tenants and landlords based on open market rates. After the initial rent setting, landlords would be restricted to one rent increase in any 12 month period and would have to give the tenant 12 weeks notice. There is no proposed limit on the amount that the rent could be increased, but if the tenant felt their rent had been increased excessively above the local market rate, they would have the option to appeal to the FTT.

In addition to these proposals, the consultation seeks views on further regulation of rent in 'hot-spot' areas. The proposal would give Ministers the power to limit rent increases for sitting tenants in areas designated as 'rent pressure areas' based on evidence gathered by the local authority.

As per our response to the previous consultation, we do not feel that rent regulation should be ruled out but that the introduction of any measures to restrict rents requires careful consideration. This is especially pertinent given the Scottish Government's aims to increase investment and supply in the PRS, as well as introducing regulations regarding minimum standards for private sector homes which are likely to require some degree of investment from landlords to improve their properties.